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Bills Digest
No. 127 2003–04

Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill 2004

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 127 2003–04

Industrial Chemicals (Notification and Assessment)
Amendment (Low Regulatory Concern Chemicals) Bill
2004

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20 May 2004

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Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill 2004

Date Introduced: 31 March 2004

House: House of Representatives

Portfolio: Health and Ageing

Commencement: Sections 1 to 3 commence on Royal Assent. The operative sections of the Act (Schedule 1) commence on a day to be fixed by Proclamation, or six months after Royal Assent.

Purpose

To amend the *Industrial Chemicals (Notification and Assessment) Act 1989* to ‘streamline’ some assessment and permitting processes for the manufacturing or importation of certain categories of industrial chemicals.

Background

The *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) provides the legislative framework for the National Industrial Chemicals Notification and Assessment Scheme (NICNAS). NICNAS assesses industrial chemicals¹ that are proposed to be imported into, or manufactured in, (‘introduced’ in the language of the Act) Australia for the first time. The assessment is intended to identify potential risks to occupational health, public health and the environment that may be associated with the chemical’s use. Existing chemicals listed on the Australian Inventory of Chemical Substances (AICS) may also be assessed where there are environmental or health concerns about these. In general, however, chemicals on the AICS may be introduced into Australia without any assessment or permitting process.²

NICNAS currently operates on a cost recovery basis, both through assessment and administrative charges for new chemical assessments and company registration charges. A standard assessment application fee is \$12,741.³ Registration is required if a company introduces chemicals to the value of \$500,000 or more a year. About 700 companies are registered with NICNAS. Registration fees are \$1,343 for introductions between \$500,000

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and \$5 million a year, and \$7,833 for above \$5 million a year.⁴ Overall, NICNAS recovers approximately \$4 million per year from the industrial chemicals sector.

In March 2001, the *Underpinning Australia's Industrial Growth* report by the Chemicals and Plastics Action Agenda Steering Group was handed to the Commonwealth Government.⁵ This cited the high cost of assessing chemicals, including so-called chemicals of 'low concern' that were not required to be assessed by NICNAS' equivalents in the USA or Europe, as being an impediment to the international competitiveness of Australia's chemicals and plastics industries.⁶ In its December 2002 [response](#)⁷ to the report, the Government said that it would 'consider and develop options for access to adequately assessed and/or tested chemicals presenting low regulatory concern'.⁸ A mixed government-industry-public/environment Low Regulatory Concern Chemicals (LRCC) Taskforce was subsequently formed to develop these options.⁹ According to its [final report](#)¹⁰, the LRCC Taskforce conducted extensive consultation, meeting 'with over 90 companies, individuals and representatives of state and territory agencies and community groups including the ACTU and environmental groups'.¹¹ A discussion paper was also released in May 2003 for public comment.

The LRCC Taskforce report contains 12 'groups' of recommendations. Many of these recommendations, such as those relating to international cooperation and community participation, do not require legislation or are issues for future implementation. The main recommendations that require legislation and hence are contained in the Bill, include:

- The introduction of self-assessment procedures for persons wishing to introduce certain chemicals. The Bill requires certain pre-screening by NICNAS of such applications and also introduces annual reporting and record keeping obligations for, amongst things, NICNAS audit purposes
- New permit categories for low-hazard and/or low concern chemicals, including a low hazard permit for chemicals of low volume, an early introduction permit system for low hazard and low risk chemicals and a new permit category for controlled use chemicals. In addition some permits will be able to be renewed by 'administrative processes' rather than being required to undergo full NICNAS assessment processes
- New exemptions from assessment processes or permit requirements for LRCCs in certain circumstances, including higher thresholds under 'low volume' schemes, and
- A range of other changes, including enabling the NICNAS Director to enforce any conditions to which a chemical listed on the AICS is subject, and mandatory company registration for all chemical introducers.

The Act was also amended in 2003 through the *Industrial Chemicals (Notification and Assessment) Act 2003*. The main change from that Act was the lifting of the maximum quantity allowed to be introduced under what is called a 'commercial evaluation permit' from 2000kg to 4000kg. The relevant [Bills Digest](#) commented that the rationale for lifting

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the limit appeared to rest only on anecdotal evidence from industry. It also noted the safeguards proposed to counterbalance the increased limit were to be introduced by regulation and there was no guarantee that these would in fact be implemented once the Bill was passed. However, these regulations were in fact enacted through the Industrial Chemicals (Notification and Assessment) Amendment Regulations 2003 (No. 1).

Main Provisions

Schedule 1 – Amendment of the Industrial Chemicals (Notification and Assessment) Act 1989

Items 6 and 7 effectively replace the term ‘hazardous substance’ with ‘hazardous chemical’ in the definitions section (section 5) of the Act. As currently, the meaning of the term is to be defined in regulations. No reason is given in the Explanatory Memorandum for the substitution of ‘chemical’ for ‘substance’.

Item 19 inserts **new subsections 5(2) and (3)** so as to define what is a ‘non-hazardous chemical’ under the Act.¹² A number of conditions must be met for a chemical to come within this definition, including under **new paragraph 5(2)(e)** that its introduction is ‘consistent with the reasonable protection of occupational health and safety, public health and the environment’. **New subsection 5(3)** lists a large number of matters that the Director must take account of in assessing whether **new paragraph 5(2)(e)** is satisfied. Amongst other things, non-hazardous chemicals may be eligible for the proposed self-assessment certificate system in Part 3 of the Act.

Items 20-38 deal with the Australian Inventory of Chemical Substances (AICS), which lists chemicals that have already been introduced into Australia. The Act currently divides ACIS into confidential and non-confidential categories.

Item 21 inserts new subsection **11(4)** so as to limit the circumstances in which a chemical listed on the ACIS may be imported without going through an assessment process or obtaining a permit. Specifically, if the listing provides that the introduction of the chemical is subject to a condition under **new section 13**, the introduction must take place in accordance with the condition, otherwise an assessment certificate or permit will be required.

Items 22-24 will allow the NICNAS Director to annotate listings in either category with details of the assessment and any condition(s) to which the introduction of a chemical is subject etc. In relation to the non-confidential category, the Explanatory Memorandum to the Bill comments that:

 this will give industry and the community better access to information about industrial chemicals and introducers will no longer have to try to envisage what uses their chemicals might be put to in the future because a particular chemical will only be able

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to be introduced for the specific use or uses that are specified for that chemical in the AICS. This will also prevent chemicals that have been assessed for a particular use from being imported or manufactured for a different use that has not been assessed, and which could be more harmful to health, safety and the environment.¹³

Item 24 inserts **new section 13A** which has the effect of requiring the NICNAS Director to notify the person introducing the chemical in question¹⁴ (the introduction will eventually result in its listing on AICS) that they intend to include and/or vary any particulars on the AICS and allow that person 28 days to make a case why those particulars should be included/varied. A decision of the Director rejecting the objection to the inclusion/variation of particulars is reviewable by the Administrative Appeals Tribunal (AAT).¹⁵

Item 25 inserts **new section 13B**. This gives holders of assessment certificates¹⁶ the option to request that the relevant chemical be included on the non-confidential section of the AICS before the five-year period following the assessment of the chemical has ended.¹⁷ The incentive for certificate holders to make the request within 28 days of being given an assessment certificate is that the early listing of the chemical in these cases will not attract a fee. Presumably this amendment to the Act is designed to increase the amount of information about relevant chemicals on the public record.

Item 27 adds a **new section 15A** which creates an offence of failing to comply with a condition to which a chemical is subject under the AICS in **new section 13**. The maximum penalty is 120 penalty units (\$13 200) for individuals, and five times that for companies. The Explanatory Memorandum comments:

This is a serious offence under the Act, as a breach of a condition that has been assessed in the context of a very specific combination of circumstances such as use, handling and storage of the chemical, could present a serious danger to occupational health and safety, public health and the environment if the industrial chemical is used, handled and/or stored for a different, unassessed use.¹⁸

Existing section 19 deals with the transfer by the NICNAS Director of a chemical from the confidential section to the non-confidential section of the AICS. In general, this occurs five years after the listing of the chemical unless the Director considers that the publication of some or all of the chemical's particulars could reasonably be expected to substantially prejudice the commercial interest of the person introducing the chemical and this prejudice outweighs the public interest in the publication of those particulars.¹⁹ The transfer cannot take place for at least 28 days after the Director's decision or pending the completion of a review by the AAT. **Item 32** amends **paragraph 19(7)(b)** to clarify that, where the Director decides to transfer a chemical to the non-confidential section of the AICS, the transfer of the 'particulars' of the chemical must also be delayed as mentioned above.

Existing Part 3, a key component of the Act, deals with the notification and assessment processes for industrial chemicals. In general, such chemicals cannot be introduced unless

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they have gone through an assessment process: existing subsection 21(1A). However, this does not apply in the situations outlined in existing subsections 21(2)-(4), including where certain permits have been issued. **Item 39** amends subsection 21(2) to create a new category of permit – a ‘controlled use chemicals’ permit. Details of the new controlled use permit system are provided by **new Division 1C of Part 3** of the Act (**item 84**). In relation to this new category, the Explanatory Memorandum comments:

Some new chemicals are not introduced to Australia because the notification and assessment costs may not be recoverable, the chemical may have limited available data or the quantity necessary for Australian introduction may exceed the current permit or exemption allowances. Such chemicals are not available to Australian manufacturing industry although they may be able to be used in a controlled way in low risk situations and may be of benefit to the Australian economy....

Establishing a new category and criteria for a Controlled Use Permit for chemicals to be introduced, handled and used in low risk situations would broaden the range of new chemicals potentially available to the Australian industry at a lower regulatory cost. This will enable industry to bring chemicals quickly to market and capitalise on business opportunities.... Establishment of the category will result in the potential for the workforce to be exposed to a greater number of new chemicals. It will be necessary for criteria for the category to be established such that introducers of chemicals ensure that all hazards and risks are understood and controlled. The guidelines for the category should also ensure that risks to the public and to the environment are controlled.²⁰

Item 41 amends subsection 21(4) to increase the quantity under the existing low volume chemicals exemption from 10kg in any 12 month period to 100kg in any 12 month period.

Item 42 amends paragraph 21(4)(b) to provide that a person introducing chemicals under the low volume chemicals exemption of up to 100kg per year must meet certain requirements prescribed in the regulations. According to the Explanatory Memorandum:

the regulations will ensure that the increased quantity allowed under the exemption is balanced with requirements for the introducer to keep records for 5 years and to make an annual report to the Director.²¹

Failure to meet the prescribed requirements in the regulations will be an offence under section 21(1), attracting a maximum penalty of 300 penalty units (\$33 000), and five times that for companies.

Item 43 inserts **new subsection 21(6)** which incorporates a number of new exemptions (or qualifies existing exemptions) regarding the prohibition on introducing new chemicals without assessment/permit. The Explanatory Memorandum comments that:

Each of the new or amended exemptions under new section 21(6) are accompanied by new annual reporting requirements for introducers under each exemption category, in new section 21AA.²²

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If a person fails to satisfy any of the provisions in **new section 21(6)**, they will commit an offence under existing subsection 21(1). This is consistent with the rest of existing section 21.

Item 44 inserts **new sections 21AA** and **21AB**. **New section 21AA** requires that persons introducing chemicals under either of the exemption categories in subsections 21(4) or 21(6) must provide an annual report to the NICNAS Director stating the name and volume of the chemical that was introduced in the relevant year. Failure to comply is an offence with a maximum penalty of 10 penalty units (\$1100) per day, up to a maximum of 120 penalty units, and five times that for companies. **New section 21AB** provides that the NICNAS Director must maintain a list of the chemical names and volumes reported under **new section 21AA** and publish this list in the Chemical Gazette at least once within a year of the annual **new section 21AA** reporting date.

Existing section 21Q sets out the object of the permit system for low volume chemicals. This is one of the permit systems referred to in both existing and **new subsection 21(2)**. **Item 63** amends paragraph 21Q(a) to enable the quantity of chemicals introduced under a low volume permit to be increased from 100kg to 1000kg in certain cases. As mentioned in the Explanatory Memorandum,²³ the 1000kg limit will only come into play where prescribed guidelines referred to in **new subsection 21U(2)** have been satisfied.

Item 64 adds **new subsections 21R(1A)-(1B)** to allow easier renewal of low volume permits – that is, by administrative means rather than requiring a new assessment process. Administrative renewal applications will be subject to a number of conditions that must be met to indicate that no new data is available in respect of the chemical and the conditions of introduction have not significantly changed. Under **new subsection 21U(2A) (item 73)**, an application to renew a low volume permit must be granted if the NICNAS Director is satisfied that these conditions have been met and section 21S has been complied with.

Item 72 inserts **new subsection 21U(2)**. Apart from some stylistic changes to the existing version, it also replaces the words ‘the intended use of the chemical does not constitute an unreasonable risk²⁴ to *health or to the environment*’ with ‘the intended use of the chemical does not pose an unreasonable risk to *occupational health and safety, public health or the environment*’ (emphasis added). The Explanatory Memorandum provides no explanation for the change, but the new phrase would seem to have a wider meaning, that is, a wider range of detrimental effects must be considered by the NICNAS Director in considering whether they should issue a low volume permit.

Items 78-79 and **81** make a similar change to **item 72** in new **paragraphs 21W(1)(d)-(e)** and **subsection 21W(3)**. Section 21W allows low volume permits to be subject to conditions.

Item 84 inserts **new Division 1C in Part 3 (new sections 22A – 22O)** to introduce a controlled use permit system. According to the Explanatory Memorandum, this:

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provides an alternative to the assessment certificate system in respect of industrial chemicals that are low risk to occupational health and safety, public health and the environment because of their highly controlled use, handling and exposure. A person who makes an application for a controlled permit under this new Division will also have to meet relevant safeguards.²⁵

Several ‘safeguards’ are contained in **new section 22C**. Amongst other things, these require an applicant for a controlled use permit to provide details about its proposed use, a summary of its effects on occupational health and safety, public health and the environment, and how much of the chemical the applicant proposes to introduce over the next three years. Regulations may also prescribe further information that is required regarding controlled use permit applications. **New section 22D** also allows the NICNAS Director to request further details about the above information. The Director must grant the controlled use application under **new section 22F** if he/she is satisfied that the various requirements in section 22C have been complied with, and that the intended use of the chemical does not pose an ‘unreasonable risk’ to occupational health and safety, public health or the environment. In making this decision, the Director must have regard to the inherent nature of the chemical, any guidelines prescribed in the regulations for the purposes of this provision and any other matters that the Director considers relevant. Again, a permit may be subject to conditions set down by the NICNAS Director, including any considered by him/her necessary or desirable to ensure that the use of the chemical will not result in an unreasonable risk to occupational health and safety, public health or the environment: **new section 22H**. A holder must advise the NICNAS Director if they become aware of any change of circumstances listed in **new subsection 22H(3)**, including if new relevant data becomes available in respect of the chemical about its adverse effects.²⁶ A maximum penalty of 300 penalty units (\$33 000) applies (and five times that for companies) for an offence of contravening a permit condition: **new section 22I**.

Item 85 inserts a new object and ‘overview’ of the assessment certificate system contained in Divisions 2 and 3 of Part 3 of the Act. According to the Explanatory Memorandum:

the object and overview explains the difference between the self-assessed system and the non-self assessed system, where a NICNAS officer assesses the chemical. The new processes for audited self-assessment of low regulatory concern chemicals are contained in Division 2 and Division 3 of Part 3 of the Act. The new audited self-assessment system allows introducers under the Act to self-assess a chemical against criteria and guidelines issued by NICNAS and/or prescribed by the regulations. This will introduce flexibility into the current assessment process for industrial chemicals to enable the fast tracking of low regulatory concern chemicals while maintaining existing levels of worker safety, public health and environmental standards.²⁷

Item 87 inserts **new section 23A**, which provides an option for introducers of polymers of low concern, non-hazardous chemicals and other chemicals or classes of chemicals that are prescribed by the regulations, to make an application for a self-assessed assessment certificate. In comparison to existing section 23 (non-self assessed assessment certificates), **new section 23A** does not list the type of information required to accompany

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the application, but states that the application ‘must be in the approved form’. Whether this form is to set out in regulations is unknown. The information requirements are important given that (see comments below in relation to **item 113**) the self-assessment route is only possible if NICNAS decides that the chemical does not pose any possibility of unreasonable risk of adverse health effects, safety effects or adverse environmental effects.

Items 98-103 amend various aspects of section 30A so as to revise the circumstances under which an early introduction permit may potentially be issued. Currently, the NICNAS Director must be satisfied that, amongst other things, the prescribed criteria²⁸ relating to the environmental effect of the chemical have been met and the introduction of the chemical is consistent with the ‘reasonable protection’ of occupational health and safety, public health and the environment. Under the proposed revised arrangements, the Director will essentially need only to be satisfied that the chemical is classed under the Act as a non-hazardous chemical, or polymer of low concern, or otherwise prescribed in regulations. In relation to early introduction permits, the Explanatory Memorandum comments:

Under current legislation, chemicals that may be of higher hazard but are of overall low risk to workers, the public and the environment and are supported by a complete and sound data package and effective exposure controls cannot qualify for an EIP and cannot be introduced until the assessment certificate is issued. The only other alternative for early introduction requires Ministerial approval. This option is reserved for chemicals that are needed in the national interest and is not a routine option for most chemical introductions....

Members of the workforce will not be adversely affected by the earlier introduction of the new chemical because information on its potential hazards, risk control measures and the permit status will be detailed on product Material Safety Data Sheets (MSDS). This information will enable employers to conduct risk analyses as required under current States’ OHS legislation. If an EIP is granted, the hazard and risk information conveyed to end-users will not differ from the information that will be available when NICNAS assessment has been completed. This option will only be available to chemicals with a complete data package that can be used by introducers together with exposure scenarios to implement appropriate risk control measures. The data package will also be used by NICNAS to determine that the risk is appropriate to allow early introduction of the chemical under permit.²⁹

Items 109-110 deal with time periods for completing assessments in relation to applications for assessment certificates. In particular **item 110** inserts new provisions that set out the time periods for completing assessments for applications for both non-self assessed assessment certificates (**new section 31A**) and self-assessed assessment certificates (**new section 31B**). Under the new self-assessment scheme, the assessment report, full public report³⁰ and summary report are to be completed by the NICNAS officer within 28 days after the day the application was made³¹ (assuming it is accepted under pre-screening procedures – see **item 113** below). Where an application is refused, the

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applicant must be notified of this refusal within 28 days of the making of the application. The time period for non self-assessed assessments under **new section 31A(1)** remains unchanged at 90 days. The Minister may extend the time period for completing the applications by up to 90 and 28 days for non self-assessed and self-assessed assessment applications respectively.

Item 113 inserts **new sections 33A-33C**. Where a person applies to the NICNAS Director for a self-assessed assessment certificate under **new section 23A (item 87)**, **new section 33A** requires a NICNAS officer to ‘pre-screen’ the application to determine (i) whether the chemical is one that is potentially eligible for such a certificate and (ii) whether the chemical poses any risk of adverse health effects, safety effects or adverse environmental effects as set out in section 32. If the application ‘passes’ this pre-screening – which primarily requires the NICNAS officer to determine that ‘there is no possibility of unreasonable risk of section 32 adverse effects occurring’ - the application becomes the section 31 assessment report, although the officer may include additional information or recommendations to be incorporated as part of this report: **new section 33B**. If the self-assessed assessment application fails to pass pre-screening, reasons must be given to the applicant: **new section 33C**.

Existing section 36 requires the NICNAS Director to give various reports to an applicant for an assessment certificate once the assessment report has been completed. **Item 114** amends section 36 to include equivalent provisions in relation to completion of a self-assessed assessment report, otherwise there are no substantive changes. Reports for both categories of assessments are published under existing section 38. **Item 116** amends paragraph 38(3)(a) to provide that the Director cannot publish a report until he/she has made a decision about any application under section 25 or section 37. As noted by the Explanatory Memorandum,³² existing paragraph 38(3)(a) only refers to a decision about an application under section 37.³³ Section 25 allows a person to request that the NICNAS Director treat specified information contained in an assessment application as exempt information for the purposes of the Act. Given that section 25 is an existing section, it is not clear why this change has been deemed necessary.

Item 124 inserts **new Division 3B in Part 3 (new sections 40K-40N)** into the Act. These cover the various obligations relating to commercial evaluation permits, low volume permits, controlled use permits and ‘self-assessed’ assessment certificates.

Under **new section 40K**, all holders of these permits and certificates are required to keep relevant records for 5 years. These records may be required to demonstrate the basis for any statements made by holders in their applications for permits/certificates. A failure to keep these records attracts a maximum penalty of 120 penalty units (\$13 200), and five times that for companies. Under **new section 40L**, the NICNAS Director may require all holders of these particular permits and certificates to provide information to him or her in connection with their application for, or application for renewal of, the permit or certificate that they hold. A failure to provide this information attracts a maximum penalty of 60 penalty units (\$6600), and five times that for companies. A standard clause relating

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to self-incrimination is inserted by **new section 40M**. Under this provision, the fact that the requested information might tend to incriminate the person from whom it was requested cannot be used as a reason for not providing it. However for criminal proceedings the information (or any information or thing obtained as a result of the information) can only be used as evidence in a prosecution under **new section 40L** or under the *Criminal Code* offences of providing false or misleading information or documents.

Under **new section 40N**, holders of these permits and certificates must give an annual report to the NICNAS Director stating the name and volume of the chemical in question, together with any adverse effect of the chemical on occupational health and safety, public health or the environment. Failure to comply is an offence with a maximum penalty of 10 penalty units (\$1100) per day, up to a maximum of 120 penalty units, and five times that for companies.

Item 128 makes an amendment to requirements for secondary notification³⁴ in existing section 64. **New paragraph 64(1)(a)** provides that, if any recommendations for secondary notification have been included in the particulars noted by the NICNAS Director in the AICS listing of the chemical, affected persons have notification obligations where the circumstances included in the particulars occur.

Items 129 and 130 make similar changes as in **items 78-79 and 81** by replacing the phrase ‘adverse health effects or adverse environment effects’ with ‘an adverse effect of the chemical on occupational health and safety, public health or the environment’ in **new paragraphs 64(2)(d)-(e)**.

Items 133-166 amend existing Part 3A to require mandatory company registration of all persons who introduce or propose to introduce relevant industrial chemicals. The Explanatory Memorandum comments that:

These changes are likely to improve industry knowledge of NICNAS and compliance with the Act, as well as maintaining public confidence in the regulatory scheme. In extending the company registration provisions to cover all introducers, those who introduce relevant industrial chemicals below the threshold value (currently \$500,000) per year...will continue to be exempt from company registration charges.³⁵

...

Those who do not pay the charge but introduce more than the threshold value are required to provide the Director with a final statement. The Director also has the power under the amended subsection 80W(1) to request a written statement from any person that the Director reasonably believes may have introduced a relevant industrial chemical during the particular registration year, indicating the value of the industrial chemicals that the person introduced in that year. This will enable the Director to identify situations where an unregistered person is required to be registered and, in some cases, where an unregistered person is also required to pay the company registration charge.³⁶

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Items 167-173 amend various parts of existing section 102 to update the list of decisions in the Act that are subject to review by the AAT.

Item 182 inserts new sections 110B and 110C. New section 110C provides that the NICNAS Director must ensure that the Chemical Gazette is made publicly available. This replaces the current requirement in existing section 80Y that the Director must use his/her best endeavours to provide a copy of each Chemical Gazette to each registered person in each company registration year.

Items 185-194 clarify that the various definitions, new assessment and permitting systems, obligations etc contained in the amendments listed in these items apply from the date Schedule 1 commences.

Concluding Comments

Judging from the LRCC Taskforce report, the Explanatory Memorandum to the Bill and other background material, the proposed changes to the Act may bring considerable benefits to the plastics and chemicals industry, particularly the smaller companies operating in this sector.

The proposed self-assessment process is one of the major measures aimed at securing such industry benefits by providing an option that reduces both the cost and time required to get a chemical assessed. However it is not clear if NICNAS has examined whether, at least for some categories of non-hazardous and/or low risk chemicals, it could reduce its fees and turn-around time for assessment applications without the need to introduce the self-assessment option. The LRCC Taskforce report suggests that the self-assessment option will provide an incentive for industry to

focus on the introduction of non-hazardous and/or low risk chemicals thus providing benefits in terms of incentives for introduction of safer and more environmentally friendly chemicals.³⁷

At this stage, it is unknown whether the Bill will be examined by a Parliamentary Committee. It is recommended that it should be subject to Committee review. At an absolute minimum, it is suggested that a comprehensive oral briefing be obtained from NICNAS setting out how in practice health and environmental risk assessments will be carried out in relation to proposed changes such as the new self-assessment procedures. Clarification as to what criteria will be used, including whether new regulations are to be introduced, would be useful in this regard. Particularly if the Bill does go to committee, views could also be sought from relevant parties as to whether any self-assessment process is likely to promote an increased focus by importers and manufacturers on non-hazardous and/or low risk chemicals as claimed by the LRCC Taskforce report.

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The proposed introduction of a ‘controlled use’ permit category is a significant step. As mentioned earlier in this Digest, this is intended to apply to:

chemicals that are low risk to occupational health and safety, public health and the environment because of their highly controlled use, handling and exposure.

It appears therefore that the appropriateness of having such a category ultimately depends on whether the relevant chemicals are handled, including during transport, in a way that genuinely results in a low environmental and health risk. Whilst the Bill does contain a range of safeguards designed to ensure that such permits are only issued in appropriate cases, further information on how this might operate in practice would be valuable.

The Explanatory Memorandum places great emphasis on various accountability measures – more public access to information, increased requirements for record-keeping, mandatory registration for chemical importers / manufacturers, and auditing by NICNAS. In relation to NICNAS, the changes contained in the Bill are generally characterised as improving NICNAS’s focus on higher risk introductions. Whilst the Explanatory Memorandum states that the Bill should have ‘minimal financial impact’, it will be important that NICNAS’s ongoing ability to carry out and oversee the accountability measures are adequately resourced. In this regard, it is worth noting that the NICNAS cost recovery policy is to be reviewed by Government in 2004-05.³⁸

The LRCC Taskforce also made a number of recommendations regarding community participation in NICNAS’s decision process. Amongst these were the creation of a ‘community based consultative forum’ and expanding NICNAS’s public inquiry service. To the author’s knowledge, the Government has yet to make a commitment regarding these recommendations.

Finally, given that this Bill may be accompanied by further non-legislative reforms affecting the regulation of industrial chemicals by NICNAS – such as moves towards accrediting assessments and approvals from Australia’s developed world trading partners – it would be useful if some form of review of the entire reform package was done in the medium term to ensure it is meeting stated objectives.

Endnotes

- 1 The term ‘industrial chemical’ is defined in section 7 of the Act. The definition is complicated, but essentially it is a chemical that has a use other than solely in the agricultural, veterinary, therapeutic or food sectors.
- 2 Existing subsection 11(3). However, a footnote in the Act states that subsection 11(3) is not intended to be an exhaustive description of the effects or consequences of including a

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chemical in the Inventory. There may be other consequences, express or implied, because of other provisions of the Act.

- 3 See: <http://www.nicnas.gov.au/obligations/new/05.htm>
- 4 See: <http://www.nicnas.gov.au/obligations/registration/generalinfo.asp>
- 5 An electronic version of the report (in two parts) can be downloaded from http://www.biotechnology.gov.au/content/controlfiles/display_details.cfm?ObjectID=1AEAD2E2-4AC2-45C0-A91DDDED687BC843
- 6 See: pp. 28–29 of the report.
- 7 See: http://www.industry.gov.au/assets/documents/itrinternet/cp_govresponse.pdf
- 8 The response rejected to Steering Groups recommendation that chemicals that were ‘grandfathered’ from assessment by certain Australian trading partners when they introduced their own chemical regulations should not require full assessment/permitting for introduction into Australia.
- 9 A list of Taskforce members is at page 33 of the Taskforce’s report.
- 10 See: <http://www.nicnas.gov.au/obligations/reform/pdf/FinalLRCCreportrecommendations-22June2003.pdf>
- 11 More detail on organisations involved in various aspects of the consultation is at pages 34–35 of the Taskforce’s report.
- 12 This definition is effectively the same as a range of criteria under which a permit for early introduction of a non-hazardous chemical may be granted in existing section 30A.
- 13 p. 62.
- 14 If the Director knows the name and address of the person.
- 15 Decisions subject to AAT review are listed in existing section 102.
- 16 Such certificates are issued to the person introducing a chemical once the chemical has successfully gone through the Part 3 assessment process.
- 17 Presumably commercial reasons may mean that newly assessed chemicals are first listed on the confidential section of the ACIS.
- 18 p. 63.
- 19 Where the commercial interest outweighs the public interest, this is ‘exempt information’ under section 75 of the Act.
- 20 pp. 15–16.
- 21 p. 66.
- 22 p. 66.
- 23 p. 69.
- 24 The term ‘unreasonable risk’ is not defined in the Act.

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- 25 p. 72.
- 26 The holder may be ‘taken to become aware’ of a change of circumstances if they ‘ought reasonably to have been aware’ of them: **new subsection 22H(4)**
- 27 p. 74.
- 28 These are prescribed in regulations.
- 29 pp. 13–15.
- 30 Under existing section 34, a public report consists of the contents of the assessment report other than exempt information. Exemption information is effectively defined in section 75 of the Act.
- 31 Unless further information is required, in which case the 28 day period starts again once the information is provided.
- 32 p. 78.
- 33 Section 37 allows the potential introducer of a chemical to request the NICNAS Director to vary the assessment report on the chemical in question.
- 34 For more information on the issue of secondary notification, see:
<http://www.nicnas.gov.au/publications/pdf/handbook/chapter12.pdf>
- 35 However, as NICNAS is a fully cost recovered scheme a small annual administration fee (currently \$336) will be required from all those who register.
- 36 pp. 80–81.
- 37 op. cit, p. 21.
- 38 Explanatory Memorandum, p. 8.

Warning: