Comments on NICNAS proposed changes to the General Rules arising from the passage of the Industrial Chemicals Act

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PHAA submission on proposed changes to the General Rules arising from the passage of the Industrial Chemicals Act

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia.

The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.
Comments

Government amendments to the Industrial Chemicals Act

PHAA appreciates the opportunity to respond to the changes proposed by NICNAS to the ‘General Rules’ (the “Rules”) under the *Industrial Chemicals Act* (“the Act”) in response to the recent amendments.

PHAA has been closely engaged with the development of the new legislative scheme over the past two years. We have generally supported the new scheme, while making critical contributions to details of the new regime at a number of points.

The next stage of this reform program is the issuing of new Rules under the legislation passed in recent months. The Government’s amendments, which PHAA supports, require changes to the Rules in the Act regarding:

- Declarations for Exempted Chemicals
- Use of new animal test data for chemicals with multiple end uses, including in cosmetics (after 1 July 2020)

Concerns with NICNAS proposed changes to the Rules

PHAA supports the Government’s amendments to the Act. However, PHAA and other community groups are opposed to the changes to the Rules proposed by NICNAS, which in our view contradict the intent of the Government’s amendments regarding Exempted Chemicals. The changes to the Rules proposed by NICNAS appear to result in a significant increase in the number of chemicals, previously rated as “higher risk,” now being added to the list of “very low risk” category for Exempted Chemicals.

The amendments approved by the Government included significant changes to address concerns raised earlier - by PHAA and other community groups - that the proposed changes in the Act did not provide sufficient information by industry on the introduction of certain categories of industrial chemicals, and increased the health risks to people and the environment.

The Government did not accept the proposals in the Act that so-called Exempted Chemicals, as self-categorised by industry, would not be notified to the regulator on introduction, and that industry was only required to retain records for any possible random post-market compliance check. This would have resulted in no Government or public record of the many thousands of chemicals which would be introduced annually into Australia by industry as Exempted Chemicals. Industry claimed that this was an unnecessarily bureaucratic burden and increased cost for industry, while community groups pointed out that industry notification about the introduction of an Exempted Chemical would be straightforward using the Regulator’s new electronic notification systems.

PHAA is pleased that the Government’s amendments will now require introducers of so-called “very low risk” Exempted Chemicals to provide the name of the chemical, the annual volume, end-use and maximum concentration at end-use. It is of concern that this will be as a once-off declaration only at the end of the first year of registration.
NICNAS proposed changes to Rules are against the intent of the Government’s amendments

PHAA is concerned about and opposes the proposed Rule changes by NICNAS in response to the Government’s amendments, and changes that are against the intent of the Government’s amendments.

The NICNAS’ proposed changes would transfer large numbers of currently classified “higher-risk” chemicals from the Reported Category into the Exempted Category by planned changes to the health and environment criteria. The NICNAS changes would also significantly increase the allowable volumes for introduction of chemicals from the Reported Category which were previously not classified as “very low risk.” There are about 10,000 chemicals in the current Exempted Category and NICNAS reports in this Consultation Paper that it is not able to estimate how many additional “higher risk” chemicals could be moved into the Exempted Category by its proposed changes (which was requested by community members at the last NICNAS Strategic Consultative Committee meeting on 26 March 2019 when these proposed changes were first presented).

NICNAS cannot justify re-classifying a large number of previously-assessed “higher risk” chemicals as Exempted “low risk” chemicals on the basis of changes to the health and environmental assessment criteria. The NICNAS changes would result in industry significantly increasing the number of Exempted Chemicals with a once-off self-assessed declaration because these chemicals now meet the revised requirements for Exempted Chemicals.

Conclusions

PHAA has concerns, shared by other community groups, that the proposed rules do not reflect the intent of the recent amendments to the Industrial Chemicals Act.

PHAA does not support the changes to the Rules as proposed by NICNAS because of the increased health risks for people and the environment. In particular:

- The NICNAS changes would result in a significant increase in the number of higher risk industrial chemicals being added to the revised category for Exempted Chemicals;
- The NICNAS changes do not reflect the concerns in the Government’s amendments to the Industrial Chemicals Act for more regulatory oversight of industrial chemicals, and Exempted Chemicals in particular; and
- The NICNAS changes would significantly increase the number of Exempted Chemicals and result in lower numbers subject to random post-market compliance checks.

PHAA appreciates the opportunity to make these comments. Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

Terry Slevin
Chief Executive Officer
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17 May 2019