Making a submission

Submissions must be received by the Department of Health and Ageing by 5pm, Friday 27 July 2012

Please use this form to make your submission in response to the discussion paper. You may delete any sections that you do not wish to comment on.

While submissions may be lodged electronically or by post, electronic lodgment by email is preferred. For accessibility reasons, please email responses in a Word or RTF format not as a .pdf.

Email: NICNAS.review@health.gov.au

Mail: NICNAS Review
Department of Health and Ageing (MDP 71)
GPO Box 9848
CANBERRA ACT 2601

Organisation or Individual: Australian Manufacturing Workers Union
Principal contact: Deborah Vallance
Position: National OHS Coordinator
Phone: 03 9230 576`1 Fax: 
Mobile: 0439 988 704
Email address: Deb.vallance@amwu.asn.au

Street address: 2/251 Queensberry St
Suburb/City: Carlton Sth

Postal address: As above
Suburb/City:

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Please indicate if your submission:
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**Summary**

Please provide a short summary, up to half a page, outlining the key points of your submission:

It is well recognised that the current Australian regulatory framework for industrial and other chemicals is fragmented and lacks coordination between regulatory agencies. One of the better performing agencies is NICNAS. The capacity of NICNAS to perform its work must not be diminished, rather enhanced. Unfortunately the impact of the agency’s work is often robustly criticised by stakeholders. For example, the claim that NICNAS fails to take into account the work of international agencies is not reflected in the criteria being used by IMAP in which NICNAS is trying to address a 20 year lapse in assessment and prioritisation of chemicals on the AICS.

The effectiveness of NICNAS is limited by regulatory framework that fails to ensure that recommendations of NICNAS are operationalised by other Federal and State agencies/authorities.

It is essential that the criteria used to assess the work of NICNAS is based upon the “level of protection” given to workers and others i.e. competitiveness and streamlining must not be code words for deregulation, less coordination and less protection for workers and the community.

It is very important in any of these considerations to refer back to the role of NICNAS in undertaking evidence-based assessments of the risk to public health, occupational health and safety and the environment of certain industrial chemicals.

This discussion paper is clear and refreshingly acknowledges the difficulties and constraints of the current system. The Options presented have merit and show a willingness to rectify shortcomings. However, whatever NICNAS does to improve its performance a *holistic* approach to chemical regulation will not be achievable if there are no obligations placed on other agencies to implement, expeditiously, the recommendations and work of NICNAS.

The AMWU refers NICNAS to some more detailed comments in the joint ACTU/VTHC submission.

**Part 4 – The regulatory framework for industrial chemicals (options A1 – A3)**

**A1.** An industrial chemicals risk assessment and risk management manual would no doubt assist industry, as a good interim measure, whilst the broader industrial chemical framework is improved. A similar manual with less detail would also be of assistance to the general public, workers etc.

**A2.** The option of a cross portfolio group is strongly supported, however its establishment should not be delayed until the SCOC ceases. It is our understanding that the SCOC currently does not include NICNAS and SWA as formal members (the Departments are represented but not the actual agencies) --- this is odd indeed given that both agencies are key bodies in the chemical regulatory framework.

It must be noted that the terms of reference for the SCOC relate to the consistency of chemical regulation and do not include any reference to “health based” policy. The SCOC is a product of a Productivity Commission Report undertook a research study examining the current arrangements for the regulation of chemicals and plastics in Australia. In the light of the COAG regulatory principles, the Commission is to
assess the impact of current regulation on the productivity and competitiveness of the chemicals and plastics industry, Australian industry and the economy as a whole, together with the effectiveness of the regulations in addressing public health, environmental, and occupational health and safety issues, and substances of national security interest. (emphasis added). The primary focus and interest of the Report was “competitiveness and productivity”; it was not the protection of health of the community or the environment. Recent epidemiological evidence (presented at May 2012 seminar Cancer in the Workplace, A forum on practical solutions for prevention) would indicate that Australia is not effective at preventing exposures to known carcinogens, for example diesel fumes.

A3. Given the current fragmented regulatory system MOUs are essential. The content of any MOUs is critical. For example, in the current system there is no co-ordination between assessments made by NICNAS and the work of SWA in updating their data bases (see example in presentation by Michael Borowick http://www.cancer.org.au/cancerintheworkplace). For example: A MOU between NICNAS and SWA must ensure that the assessment work of NICNAS is not left to languish without being enacted upon or implemented by the relevant commonwealth and state authorities/agencies.

Part 5 – New industrial chemicals (options B1-B6)

The discussion paper outlines the process for “assessment certificates for new chemicals”. It is clearly inadequate that other agencies can take up to 2 years to consider NICNAS recommendations, especially as about a third of the certificates issued in 2010-2011 NICNAS recommended risk management measures (page 21 of 26). For higher risk chemicals NICNAS loses the power to refuse an assessment, impose conditions or enforce compliance ( page 22 of 56) and NICNAS cannot refuse an assessment certificate for a chemical that may pose an unacceptable risk to public health or worker safety etc. (page 23 of 56). This is seriously weird. The system is clearly not working effectively at protecting human health --- NICNAS has the remit to undertake evidence –based assessments of the risk to public health, occupational health and safety and the environment of certain industrial chemical but there are examples of regulatory gaps due to the behaviour of other “risk managers”. Action is clearly needed to coordinate the whole system, a task that cannot be undertaken by NICNAS alone and legislative change is required to ensure that there are regulatory links between agencies.

NICNAS has entered into formal agreements with agencies overseas to speed up and remove duplication from the process. NICNAS has also instituted reforms for the assessment of LRCC.

B1

Consolidation of the number of categories is only supported if an equivalent or better level of assessment and protection of human and environmental health is achieved. It is important that when overseas assessments are used, the potential use and exposures are those that would be expected with use in Australia.

B2

The evaluation in 2009 of the LRCC reforms noted that

The majority of industry respondents to the survey had low awareness of the reforms and didn’t know whether the reforms had enabled positive outcomes for safer chemicals, the innovation of safer chemicals and flexibility for industry. However of the smaller proportion of industry that did have an opinion on the matter, the majority had a positive view of the outcomes enable by the LRCC reforms.

Given a lack of knowledge of the above mentioned respondents it would be fool hardy to make changes to the exemptions for LRCC without an evaluation of the outcomes to date, the use of the changes by industry and if the chemicals introduced have replaced existing less safe chemical. Change without evidence is not supported.
B3
The AMWU supports this option.

B4
The first proposal is only supported if there is no lowering of the standard of the assessment process and hence the protection of health and safety of people and the environment. The second and third proposals are only cautiously supported as it is dependent upon an improved regulatory framework and better co-regulation from other risk managers. This approach also assumes that all risks can be managed. This is a dangerous assumption as the evidence from the surveys such as the 20120 SWA NHEWS: Exposure to dusts, gases, vapours, smoke and fumes and the provision of controls for these airborne hazards in Australian Workplaces indicate the poor implementation of risk management strategies in a significant minority of workplaces eg nearly 25% workers reported no risk control measures.

The reliance on “risk management” is not consistent with the preferred approach of the AMWU which is for the reduction in the toxic burden placed on workers, the community and the environment. A toxic use reduction approach should aim to phase out hazardous substances: for example IARC group 1 and 2A, reproductive toxins and mutagens.

B5
The AMWU notes that the option must be either the controls on use are listed in AICS or the chemical is not listed on AICS.

B6
It is important that NICNAS has the ability to refuse, on health grounds, an assessment certificate.
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Part 6 – Existing industrial chemicals (options C1-C6)

As noted in our introduction, the recent activity of prioritizing the “grandfathered” existing chemicals on AICS is fully supported and NICNAS must be commended on its work. This is a difficult area especially as there appears to be sectional opposition to updating and improving the data on AICS. The lack of any volume or use data for chemicals on AICS is a significant shortcoming and will not be able to be rectified without industry cooperation. There must be a re-focusing on the objective of improving human and environmental health as recent reviews have assumed that regulatory burden has few benefits to the community.

C1
The PEC scheme is fraught and its effectiveness is limited by the failure/inconsistent implementation by other relevant “risk managers” of the recommendations from the thorough full PEC assessments.

C2
Is this option referring to the current IMAP process or another?
NICNAS does need the ability to do a number of types of assessments, produce alternative information products and be able to get the information to be able to perform these functions. Therefore the proposals are generally supported however; caution must be exercised when doing group assessments. There would need to be a thorough justification for such an approach.

C3
NICNAS must be given to power to mandatorily acquire information. Provision can easily be made to ensure that commercial in confidence information was protected, if it had no impact on human or environmental health.

C4
A number of options were canvassed under the “new chemicals section” of the discussion paper which should be extended to the existing chemical category. NICNAS needs legislative powers to impose conditions, to recommend and for other “risk managers” to adopt NICNAS recommendations quickly and effectively
NICNAS needs to be able to remove a chemical from AICS using criteria that must be met for the with exercise of such a power. However there conditions cannot be so prescriptive to render such action extremely difficult.. The removal of chemicals of high concern from our environment must be one of the objectives of any system designed to protect public health.

Although the process has been slow, there are indications that the REACH regulation is having some positive impacts on the innovativeness of the EU chemical industry \(^1\) e.g. some 72% of companies surveyed thought it had led to an increase in access and scrutiny of information about chemical substances and 24% indicated they had been able to benefit from this thorough knowledge of substances and properties...however this had come at a significant cost to industry. Such an effect may also be seen in Australia and the implementation of systems such as IMAP is strongly supported.

C5
The updating of AICS and the information it contains is essential e.g. the removal of chemicals no longer in use. This is particularly difficult if no “use, exposures or volume” information is provided to NICNAS. Information from overseas agencies would be helpful in expediting this process.

The information provided on page 33 indicates that NICNAS appears to be correctly targeting their activities as 8 new companies were registered and changes were made to chemical registration.

**D1**
Streamlining of secondary notifications is supported, with ability for NICNAS to choose appropriate form of notification.

Listing of the function or use of an AICS chemical is supported.

**D2**
This option is supported as this will rectify the current anomaly whereby additional information such as adverse effect reports, NICNAS cannot declare or require a secondary notification. The criteria for secondary notification should include: adverse health/environmental effect reports, changes in overseas assessments or exposure standards, reclassification of risk categories (eg an addition to IARC 1).

**D3**
This option is supported.

**Part 8 – Other reforms – release of information and confidential commercial information (Options E1-E2)**

**E1**
This option is supported as a necessary component of improving the cooperation and coordination between agencies. The status of the information shared should not change unless there are human or environmental health implications.

**E2**
This option sounds reasonable, but there is little information about how these requirements are used or potentially misused under the WHS laws. For that reason the AMWU has significant misgivings about this proposal.

**Part 8 – Other reforms – use of foreign schemes / international assessments (Options F1-F2)**

Better alignment with overseas data is supported, as long as there are equivalent exposure and risk scenarios in the Australian context. Alignment needs to occur with comparable jurisdictions eg Canada and EU. The use of overseas data cannot be used a mechanism of deregulation and lowering of protections in Australia. For example, if we adopted Canadian approach to asbestos we would still be exporting and mining the material. This is clearly not acceptable.

It is also essential that if overseas data is used then there should be no “cherry picking” of the data used eg a ban or restriction overseas should not be scrutinized more than an overseas assessment that leads to the introduction of a chemical. The use of overseas data must be in the context of international harmonization to a higher standard of protection and the reduction of duplication and inconsistencies.
Part 8 – Other reforms – Import and export of chemicals under the Stockholm and Rotterdam Conventions (Option I1-I2)

The AMWU generally supports Option I2 because of the need to ensure that domestic action occurs under the Conventions.

Part 8 – Other reforms – Governance – Relationship with the Department of Health and Ageing (DoHA) (Option K1)

K1  
Support