

EXPLANATORY STATEMENT

Select Legislative Instrument No. 101, 2015

Subject – *Industrial Chemicals (Notification and Assessment) Act 1989*

Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulation 2015

Section 111 of the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), being a national system of notification and assessment of industrial chemicals for the protection of human health and the environment to deliver the safe and sustainable use of chemicals.

Current government policy is that the costs of NICNAS activities are fully recovered from the regulated industry through fees and charges.

Subsection 110(1) of the Act provides that the regulations may prescribe fees for specified NICNAS services. Subsections 110(1A) to 110(6) set out details for when fees are due, the payment schedules and other arrangements. The fees for services defined in section 110 are prescribed in the regulations.

In addition to fees for specified NICNAS services, Section 80S of the Act provides for the imposition of a registration charge on manufacturers and importers of industrial chemicals. The charge is used to fund the cost of all NICNAS regulatory activities except fee-for-service activities. The amount of the registration charge is prescribed in subsection 80T(2) of the Act and is based on the value of the relevant industrial chemicals being introduced.

The purpose of the *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulation 2015* (the Regulation) is to:

- a. give effect to increases in NICNAS fees and charges for 2015-16 in accordance with the NICNAS Cost Recovery Impact Statement 2012-13 to 2015-16;
- b. allow the Director, NICNAS (or their delegate) to waive or remit certain registration charges and pecuniary late payment penalties; and
- c. allow the Director, NICNAS (or their delegate) to waive or remit NICNAS fees for applications to vary data requirements for new industrial chemical assessment applications.

The fees and charges for 2014-15 were foreshadowed in the NICNAS Cost Recovery Impact Statement (CRIS) 2012–13 to 2015–16, that was approved as part of the 2012-13 Health Portfolio Budget Submission. The NICNAS CRIS was developed with extensive stakeholder

consultation, including two phases of public consultation. Stakeholder views were taken into account in finalising the CRIS.

Further amendments make minor machinery changes to regulations by inserting new Regulations 14A, 16 and 16B allowing the Director, NICNAS (or their delegate) to waive or remit certain registration charges, late payment penalties and fees for applications to vary data requirements for new industrial chemical assessment applications.

Details of the Regulation are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and commences on 1 July 2015.

Authority: Section 111 of the *Industrial Chemicals (Notification and Assessment) Act 1989*

CONSULTATION

Fees and Charges

Current government policy is that the costs of NICNAS activities are fully recovered from the regulated industry through fees and charges. The fees and charges for 2014-15 were foreshadowed in the NICNAS Cost Recovery Impact Statement (CRIS) 2012–13 to 2015–16, that was approved as part of the 2012-13 Health Portfolio Budget Submission.

The NICNAS CRIS was developed with extensive stakeholder consultation, including two phases of public consultation. Stakeholder views were taken into account in finalising the CRIS.

Consultation was undertaken in accordance with the government's best practice principles, with an emphasis on achieving high-quality outcomes. NICNAS provided a variety of opportunities for stakeholders to contribute to the review through a mix of workshops, one-on-one consultations, online survey and written submissions. NICNAS also provided periodic updates to its established stakeholder advisory committees, the Industry Government Consultative Committee and Community Engagement Forum.

A draft discussion paper was released on the NICNAS website on 23 June 2010. The draft paper was open for written comment for approximately 6 weeks. During this time public consultation meetings were held in Sydney on Tuesday 1 June 2010 and Melbourne Friday 4 June 2010. NICNAS received over one thousand responses to an online survey, and at the request of a stakeholder in Perth, a one on one consultation was arranged.

A draft Cost Recovery Impact Statement was released on 19 October 2011 and was open for comments for approximately 6 weeks. Public consultation meetings were held in Sydney on 11 November 2011 and Melbourne on 14 November 2011.

The final CRIS is published on the NICNAS website at <http://www.nicnas.gov.au/about-nicnas/cost-recovery> where full details of the process, as well as the principles governing cost recovery at NICNAS, can be found.

New Regulations 14A and 16B

The Office of Best Practice Regulation (OBPR) determined that the proposals were minor and machinery in nature, and no impact analysis was required. As a result, NICNAS did not undertake a formal stakeholder consultation. Because of the nature of the change, NICNAS did not invite stakeholder comment.

New Regulation 16

The Office of Best Practice Regulation (OBPR) determined that the proposal will not require any significant additional compliance on the part of the applicant benefiting from the fee waiver and is therefore minor and machinery in nature and not likely to have a regulatory impact on business, community organisations, or individuals and no impact analysis was required. As a result, NICNAS did not undertake a formal stakeholder consultation. Because of the nature of the change, NICNAS did not invite stakeholder comment.

Amendment to Regulation 17(1)

As it is Government policy that, as a matter of principle, decisions which affect the rights, interests or obligations of an individual should be subject to merits review, no consultations were undertaken on this amendment.

Details of the Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulation 2015

Section 1 – Name of regulation

Section 1 provides for the regulation to be referred to as the *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulation 2015*.

Section 2 – Commencement

Section 2 provides for the regulation to commence on 1 July 2015.

Section 3 – Authority

This regulation is made under the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act).

Section 4 – Schedule

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 - Amendments

Industrial Chemicals (Notification and Assessment) Regulations 1990

Item [1] – New regulation 14A

This regulation allows the Director of NICNAS to remit a registration charge that has been paid when a registrant has paid an amount greater than that for which they were liable.

All importers and manufacturers of industrial chemicals for commercial purposes are required to register with NICNAS. Registration requires the payment of an administrative fee and, for introducers of relevant industrial chemicals at a threshold value of \$100,000 or above, a registration charge depending on the value of industrial chemicals introduced. Introducers are required to renew their registration each year by 31 August to avoid a mandatory pecuniary late payment penalty. The level of registration is based on an estimate of the value of relevant industrial chemicals.

In some cases where an introducer fails to introduce chemicals to the anticipated value of the threshold associated with their level of registration, they may be entitled to a refund of the difference in charge between that paid and the charge payable at the actual level of introduction (section 80P(3) of the Act). However, certain classes of registrants are currently not entitled to a refund and this amendment corrects that anomaly.

Item [2] – New regulation 16

This regulation allows the Director of NICNAS to waive or remit fees payable or paid for applications to vary data requirements for new chemicals applications in certain circumstances.

Section 23 of the Act sets out data requirements for applications to introduce new industrial chemicals. Section 24 of the Act allows an applicant to request that the Director vary the requirements of s23 and, provided certain conditions are met, the Director must vary the requirements.

Currently if a notifier wishes to omit or substitute any specified data item then the full fee must be paid at the time of lodgement of the application. This applies even when it is not technically possible for the notifier to conduct the specified test. Examples of this include:

1. If the chemical reacts dangerously with water then several of the physical-chemical properties tests cannot be conducted;
2. If the chemical is a gas at room temperature, an acute toxicity study via the oral route cannot be carried out.

This results in a notifier paying fees that are not justified based on the cost-recovered work that is required for these assessments.

It is, therefore, desirable for the Director to be able to waive the fee in certain variation applications such as these.

Item [3] – New regulation 16B

This regulation allows the Director of NICNAS to waive a current mandatory penalty for late renewal of registration in circumstances where he or she is satisfied that no cost has been incurred to NICNAS by pursuing the registration renewal, or otherwise where reasonable attempts were made by the registrant to renew their registration by the due date.

The requirement of the Act to apply a late penalty regardless of consideration of any extenuating circumstances often leads to an inequitable outcome where a person is able to demonstrate an intention to have renewed their registration by the deadline but the application is not received by NICNAS through postal delays and other misadventure. Furthermore, many registrants may renew their registration after the due date but before any resources are expended by NICNAS in pursuing the outstanding registration. The application of a late penalty fee in these circumstances is inconsistent with the Australian Government's cost recovery policy and guidelines.

Item [4] – Amendment to subregulation 17(1)

This amendment allows a person who is aggrieved by the Director's decision under new regulations 14A, 16 and 16B to appeal to the Administrative Appeals tribunal.

Amendments to NICNAS fees and charges

Items [5, 6 and 7] – Schedule 2 of the Regulations

Schedule 2 to the regulations prescribes the various fees and charges for NICNAS services for the relevant registration year.

Items 5 and 6 amend items 23 and 24 in the table in Schedule 2 of the regulations, respectively, to ensure the table in Schedule 2 accurately reflects the relevant wording of the Act which allows for the payments.

Item 7 amends the fees in the table in Schedule 2 of the regulations by inserting those which were determined by the NICNAS CRIS for 2012-13 to 2015-16.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulation 2015

This regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the regulation

The *Industrial Chemicals (Notification and Assessment) Regulations 1990* (the Regulations) require minor amendments relating to annual changes in fees and charges and amendments to allow the Director to waive or remit certain fees, charges and pecuniary penalties in particular circumstances. The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) administers the Regulations and it is current government policy that its functions are fully cost recovered from industry through fees and charges.

In line with the Australian Government's cost recovery policy and guidelines, NICNAS reviewed its cost recovery arrangements through a Cost Recovery Impact Statement (CRIS) for the period 2012-13 to 2015-16.

The changes give effect to:

- NICNAS fees for 2015-16;
- Minor amendments of some fee items to correct previous drafting errors;
- Allowing the Director of NICNAS to remit a registration charge that has been paid when a registrant has paid an amount greater than that for which they were liable;
- Allowing the Director of NICNAS to waive or remit fees payable or paid for applications to vary data requirements for new chemicals applications in certain circumstances, and
- Allowing the Director of NICNAS to waive a current mandatory penalty for late renewal of registration in certain circumstances.

Human rights implications

These amendments will not make any substantive changes. Fees will increase in line with the recommendations of an extensive public review whilst insertion of regulations 14A, 16 and 16B provide mechanisms to ensure registrants are only required to pay NICNAS fees, charges and penalties for which they are properly liable. The correction of previous drafting errors does not change the intent of the amended items but will simply provide certainty and clarity to the Regulations.

The amendment regulation does not engage any of the applicable rights or freedoms.

Conclusion

The amendment regulation is compatible with human rights as it does not raise any human rights issues.

Senator The Honourable Fiona Nash Assistant Minister for Health