

## EXPLANATORY STATEMENT

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

*Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulations 2017*

The *Industrial Chemicals (Notification and Assessment) Act 1989* (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.

Section 111 of 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.

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) Regulations 2017* (the Regulations) is to:

- a. give effect to increases in NICNAS fees for 2017-18 for services provided to notifiers of new industrial chemicals, holders of confidence and other parties, based on ‘fee for service’;
- b. give effect to a decrease in application charges for registration; and
- c. correct an ambiguity in current drafting.

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 2017-18 are indexed in line with wage cost pressures, resulting in an approximately 2.1 per cent increase in fees for services, there is no increase in for penalties for late registration. The decreases in application charges for registration were foreshadowed in the 2015 Budget in the context of the reforms to the NICNAS scheme.

Further amendments make minor machinery changes to regulations in order to avoid an unintended consequence of registration charges applying retrospectively in some cases.

Details of the Regulations are set out in the Attachment.

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 July 2017.

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

### **CONSULTATION**

In 2015 NICNAS published a public discussion paper on changes to the registration charge levied on industry to recover the cost of implementing reforms to the NICNAS Scheme. The paper proposed two options and quantified the additional registration charge for the years 2015-16 up to 2021-22.

The approach to 2017-18 fees and charges was developed following consultation with the NICNAS Strategic Consultative Committee, its main advisory committee comprising industry and community representatives.

### **BEST PRACTICE REGULATION**

The Office of Best Practice Regulation (OBPR) determined that the increase in fees is minor and machinery in nature and therefore no RIS was required. Additionally, OBPR determined that the amendments fall outside the Regulatory Burden Measurement Framework and, therefore, no costing was required (OBPR Ref: 22129).

**Details of the proposed Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulations 2017**

**Section 1 – Name of regulations**

Section 1 provides that the regulations to be referred to as the *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulations 2017*.

**Section 2 – Commencement**

Section 2 provides for the proposed regulations to commence on 1 July 2017.

**Section 3 – Authority**

Section 3 states that the regulations are made under the *Industrial Chemicals (Notification and Assessment) Act 1989*.

**Section 4 – Schedule**

Section 4 provides that 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**

**Part 1 - Amendments to NICNAS fees and charges**

**Item [1] – Schedule 2 of the Regulations**

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

Item 1 amends the fees for services in the table in Schedule 2 of the regulations except for the annual application fee for registration. The fees are indexed in line with wage cost pressures for 2017–18, resulting in an approximately 2.1 per cent increase in fees for services. The Item also removes the registration charges detailed in Schedule 2 for the various registration tiers. These charges are managed under the new regulation 11AB.

**Part 2 - Amendments of a minor and machinery nature**

**Item [2] – New regulation 11AB**

The purpose of this amendment is to avoid an unintended consequence of registration charges applying retrospectively in some cases.

Under provisions of the Act, every person who introduces relevant industrial chemicals during a year must become registered with NICNAS and pay the prescribed fee/charge for that year.

A registration year starts and ends from 1 September to 30 August each year and is paid by registrants in advance, based on an estimate of the value of relevant industrial chemicals they plan to introduce in a given registration year. The estimate places registrants into one of four tiers, A, B, C and D, with A being the lowest introduction value tier.

The current charges include an additional 25% applied to registration levels B, C, and D (companies introducing more than \$100,000 in relevant industrial chemicals per annum) to recover the cost of implementing the NICNAS reforms.

From 1 September 2017 going forward, the surcharge will decrease.

The Act requires certain persons who have paid the amount prescribed for the purposes of the registration charge must, within a prescribed period, provide the Director with a 'written statement indicating the value of the relevant industrial chemicals actually introduced by the person in that year. In practice this will occur after 30 August. The decrease in registration charges commence on 1 July 2017, that is, before introducers would confirm their introduction levels for the 2016-17 registration year.

Following receipt of the registrant's statement, NICNAS can assess the person's registration level and issue an invoice should a registered person be liable for an increase in their registration charge based on the relevant industrial chemicals actually introduced in that year.

NICNAS obtained legal advice, which stated that in situations where NICNAS assess an increased registration level for introducers during the 2016-17 registration year, then the registration charge assessment must be based on the amounts prescribed from 1 July 2017 and not on the amounts prescribed for the actual year of registration, i.e. 2016-17. This would result in a registrant paying a lower registration charge than they would properly be required to pay. In future years, after the additional surcharge is not being applied, it would mean that registrants could be assessed for a higher charge than they should properly pay.

The Item transfers the amounts of registration charge from the table in Schedule 2 to the new regulation and makes it clear what charge applies to the 2016-17 registration year, thus avoiding the unintended consequence which might arise after registrants submit their introduction statement to NICNAS.

### **Item [3] – Amended regulation 13**

The Item is consequential to Item 2. Item 3 repeals the current regulation 13, and insert a new regulation 13 describing the changed function of the table in Schedule 2 which would not include registration charges.

### **Items [4 to 6] – Editorial changes to Schedule 2**

The Items are consequential to Item 2. The Items amend the current headings of Schedule 2 and the Schedule 2 table to describe the changed function of Schedule 2 and its table.

### **Item [7] – Amendments to Schedule 2 table**

The Item is consequential to Item 2. Item 7 repeals the Schedule 2 entries that prescribe the amounts of registration charge consequential on the prescribing of those charges in a new regulation 11AB.

## **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) Regulations 2017**

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 changes in fees and charges and amendments to correct an ambiguity in current drafting to avoid the unintended consequence of registration charges applying retrospectively in some cases.

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.

The changes to the Regulations:

- a. give effect to increases in NICNAS fees for 2017-18 for services provided to notifiers of new industrial chemicals, holders of confidence and other parties, based on ‘fee for service’;
- b. give effect to a decrease in charges for registration; and
- c. correct an ambiguity in current drafting.

#### **Human rights implications**

These amendments will not make any substantive changes. Fees for services (except the annual application fee for registration, which remains unchanged) will be indexed in line with wage cost pressures for 2017–18 resulting in an approximately 2.1 per cent increase in fees for services. 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.

**The Honourable Dr David Gillespie Assistant Minister for Health**