

# Industrial Chemicals (Notification and Assessment) Amendment (Miscellaneous Measures) Regulations 2018

## EXPLANATORY STATEMENT

### Select Legislative Instrument No. [ ], 2018

Issued under the authority of the Minister for Rural health

#### OUTLINE

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.

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.

Subsection 106(1) of the Act provides that if an industrial chemical is the subject of a prescribed international agreement to which Australia is a party, the regulations may prohibit, either absolutely or subject to such conditions or restrictions as are prescribed, the introduction (import) or export of the industrial chemical.

The purpose of the *Industrial Chemicals (Notification and Assessment) Amendment (Miscellaneous Measures) Regulations 2018* (the Regulations) is to:

1. give effect to increases in NICNAS fees for 2018-19 for services provided to notifiers of new industrial chemicals, holders of confidence and other parties, based on ‘fee for service’;
2. give effect to increases in charges for registration; and
3. take regulatory action regarding chemicals listed in Annex III of the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Convention). This allows Australia to fulfil its obligations under the Convention, done at Rotterdam on 10 September 1998.

#### 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 increased fees for services for 2018-19 (other than the NICNAS registration fees) are indexed in line with wage cost pressures to accommodate anticipated cost increases, based on a

weighted average indexation of WPI/CPI, currently 2.3 per cent. NICNAS registration fees are increased by a flat rate of \$56 across all registration levels to match the resources required to undertake all regulatory processes related to the registration of introducers of industrial chemicals. Increases to core registration charges of 5 per cent is to provide the resources required to efficiently administer the scheme, including additional work required to be undertaken in 2018-19 to prepare for reforms to the scheme that were announced in 2015.

#### Amendments resulting from international treaty actions

Australia has ratified the Convention, which is an international treaty promoting shared responsibility and cooperative efforts in the international trade of certain hazardous chemicals.

If an industrial chemical is the subject of a prescribed international agreement to which Australia is a party, subsection 106(2) of the Act specifies conditions that need to be satisfied before the power to make a proposed regulation which prohibits the introduction or export of a chemical may be exercised. The proposed regulation must not be made unless:

- (1) the Director of NICNAS has published in the Chemical Gazette a notice
  - (a) identifying the agreement or arrangement;
  - (b) listing the name or names by which the chemical is known to the public; and
  - (c) requiring all persons who introduce the chemical into, or export the chemical from, Australia to give to the Director information in the approved form about movements of the chemical into or out of Australia;
- (2) and a period of 30 days has elapsed since the notice was published.

The Director of NICNAS published a notice in the Chemical Gazette on 4 April 2018, which:

- (1) identified the Convention;
- (2) listed the name or names by which the chemicals are known to the public; and
- (3) required all persons who introduce the chemicals into, or export the chemicals from, Australia to give to the Director information in the approved form about movements of the chemicals into or out of Australia. It required persons to submit information to the Director by 4 May 2018.

Following publication of the Gazette notice, the Director of NICNAS received one response indicating import of trace amounts of tributyl tin oxide within a chemical product, no exports of tributyl tins compounds was reported. No reports of import or export of short chain chlorinated paraffin's were received.

Details of the Regulation are set out in the Attachment A. The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

## **CONSULTATION**

### Fees and charges

On 5 April 2018, NICNAS published the draft Cost Recovery Implementation Statement 2018-19, which was open for consultation until 11 May 2018. Three submissions were received, all from industry, which did not support the proposed increases in NICNAS's fees and charges in light of the funds already held on reserve within the NICNAS Special Account. Funds held on reserve are to be used in 2018-19 for capital investment and are not generally available for operational purposes. For transparency, a summary of stakeholder comments and NICNAS responses is included in the Cost Recovery Implementation Statement 2018-19 published on the NICNAS website.

### **REGULATORY IMPACT ANALYSIS**

The Office of Best Practice Regulation (OBPR) determined that the increase in fees and charges, and the addition of chemicals pursuant to Australia's obligations under the Rotterdam Convention 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 for fees and charges: 23651 and for international treaty: 23484)

**Details of the Industrial Chemicals (Notification and Assessment) Amendment (Miscellaneous Measures) Regulations 2018**

**Section 1 – Name of regulations**

Section 1 provides for the regulations to be referred to as the *Industrial Chemicals (Notification and Assessment) Amendment (Miscellaneous Measures) Regulations 2018*.

**Section 2 – Commencement**

Section 2 provides for the regulations to commence on 1 July 2018 or the day after registration on the Federal register of Legislation, whichever is the later date.

**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 registration charges**

**Item 1 – Regulation 11AB**

This regulation sets out the amount of registration charge persons must pay in order to introduce industrial chemicals into Australia. 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 a tier system with persons who introduce industrial chemicals of higher total value for a year, paying a higher charge. The amendment details the registration charges for the 2018-19 registration year.

**Part 2 – Amendments consequential upon changes to the Rotterdam Convention**

**Item 2 – Regulation 11C(1)**

Annex III of the Convention contains a list of chemicals which are subject to the Convention's Prior Informed Consent Procedure, which provides for information exchange regarding the import and export of those chemicals, this regulation lists industrial chemicals that are contained within Annex III of the Convention. The item inserts into subregulation 1, the industrial chemicals recently included in Annex III thus fulfilling Australia's obligations under the Convention to take regulatory action in respect of industrial chemicals listed in the Convention.

**Item 2 - Subregulation 11(C)(3)**

This subregulation sets out the particular restrictions that selected chemicals listed in subregulation 11(C)(1) are subject to, if a person wished to import a listed chemical. This item inserts a reference to the newly added chemicals that are to be subject to import restrictions.

**Part 3 – Amendments to NICNAS fees for services****Item 4 – Schedule 2 of the Regulations**

Schedule 2 of the regulations, prescribes the various fees for NICNAS services, and penalties for late registration.

Item 4 amends the fees for services in the table in Schedule 2 of the Regulations except for penalties for late renewal of registration which remain unchanged from the 2017-18 financial year.

## **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 (Miscellaneous Measures) Regulation 2018**

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 Principal Regulations) require minor amendments relating to changes in fees and charges which are indexed in line with wage cost pressures and to update the controls on the importation and export of certain chemicals so Australia can fulfil its obligations as a party to the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Convention).

The changes to the Principal Regulations:

- a. give effect to increases in NICNAS fees for 2018-19 for services provided to notifiers of new industrial chemicals, holders of confidence and other parties, based on ‘fee for service’; and
- b. give effect to increases in charges for registration; and
- c. ensure that Australia can fulfil its obligations under the terms of the Convention which require parties to take regulatory action regarding chemicals listed in Annex III.

#### **Fees and charges**

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) administers the Principal Regulations and it is current government policy that its functions are fully cost recovered from industry through fees and charges. These amendments will not make any substantive changes, fees for services will be indexed in line with wage cost pressures for 2018–19.

#### **Rotterdam Convention**

The amendment to the Principal Regulations adds a number of industrial chemicals, recently listed under the Convention, which are considered to have adverse effects on human health and the environment.

#### **Human rights implications**

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 Bridget McKenzie, Minister for Rural Health**