

## EXPLANATORY STATEMENT

Issued under the authority of the Minister for Regional Services, Decentralisation and Local Government

*Industrial Chemicals (Notification and Assessment) Act 1989*

*Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulations 2019*

The *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) establishes the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), 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. NICNAS fees are calculated in accordance with the Australian Government Charging Framework and the Australian Government Cost Recovery Guidelines.

Subsection 80T(2) of the Act provides that the regulations may prescribe the amount of registration charge payable by a chargeable person in relation to a registration year. A chargeable person is one who introduces relevant industrial chemicals above a value of \$100,000 per annum (Levels B-D) in a four tiered registration framework (known as Levels A – D).

The purpose of the *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulations 2019* (the Regulations) is to:

1. give effect to increases in NICNAS fees for 2019-20 for services provided to notifiers of new industrial chemicals, holders of confidence and other parties, based on ‘fee for service’; and
2. give effect to increases in charges for registration.

### Fees and Charges

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

The fees for services for 2019-20 are indexed in line with wage price and consumer price pressures. An increase of 2.3 per cent in the registration fee per registrant will be applied across all registration levels, to accommodate anticipated cost increases, based on a weighted

average indexation of wage price index (WPI - public sector group)/consumer price index (CPI - all groups), currently 2.3 per cent. An increase of approximately 1.3 per cent will be applied to the core registration charge (Levels B to D) currently imposed under NICNAS. This increase is required to adequately fund the effort required to deliver the regulatory service concurrently with preparatory work required to implement the Australian Industrial Chemicals Introduction Scheme (AICIS), in accordance with the *Industrial Chemicals Act 2019*. AICIS is due to commence on 1 July 2020.

### Consultation

NICNAS published the draft Cost Recovery Implementation Statement 2019-20, which was open for consultation from 21 March to 5 April 2019. Three submissions were received. Stakeholders were not supportive of the increase in fees for services. Industry submissions also did not support the proposed additional charge of 1.3 per cent on Levels B to D.

AICIS will commence from 1 July 2020. The proposed fees and charges strike a balance between stakeholder views and the resources required to fund concurrent activities in 2019-20; business continuity under the Act and preparation for implementing the new scheme.

For transparency, a summary of stakeholder comments and NICNAS responses will be included in the final Cost Recovery Implementation Statement 2019-20 to be published on the NICNAS website.

### **REGULATORY IMPACT ANALYSIS**

The Office of Best Practice Regulation (OBPR) determined that the increase in fees and charges is minor and machinery in nature and therefore no RIS is required. (OBPR Ref: 25094)

Details of the Regulations are set out in the [Attachment](#).

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

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

The regulations would commence on 1 August 2019.

**Details of the *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulations 2019***

**Section 1 – Name of regulations**

Section 1 provides for the regulations to be referred to as the *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulations 2019*.

**Section 2 – Commencement**

Section 2 provides for the regulations to commence on the later of 1 August 2019, or the day after the instrument is registered.

**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**

**Items 1 to 3 – 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 2019-20 registration year.

**Part 2 – 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 (Fees and Charges) Regulation 2019***

This disallowable legislative instrument 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 legislative instrument**

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.

The changes to the Principal Regulations:

- a. give effect to increases in NICNAS fees for 2019-20 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.

#### **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, as fees for services and charges will be indexed in line with wage cost pressures for 2019-20, and a small additional levy is imposed to fund business continuity in 2019-20.

#### **Human rights implications**

These amendments do not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**The Honourable Mark Coulton MP, Minister for Regional Services, Decentralisation and Local Government**