

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 50, 2014**

#### *Industrial Chemicals (Notification and Assessment) Act 1989*

#### *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulation 2014*

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.

Subsection 110(1) of the Act provides that the regulations may prescribe fees for specified National Industrial Chemicals Notification and Assessment Scheme (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 of the Act are prescribed in the *Industrial Chemicals (Notification and Assessment) Regulations 1990* (the Principal 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 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.

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

The regulation increases NICNAS fees and charges for the 2014-2015 financial year in accordance with the NICNAS Cost Recovery Impact Statement for 2012-13 to 2015-16. The increases are on average, 3.5 percent for NICNAS fees for services and range from 2.5 per cent to approximately 7 per cent for NICNAS registration.

The purpose of the increases in fees and charges is to recover the predicted costs associated with funding the activities of NICNAS for the 2014-2015 financial year. The minor and machinery changes would simply provide certainty and clarity to the Regulations.

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*.

The regulation commences on 1 July 2014.

## **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 NICNAS Cost Recovery Impact Statement (CRIS) 2012–13 to 2015–16 complies with the Australian Government Cost Recovery Guidelines. The proposed fees and charges for 2014-15 were foreshadowed in the CRIS 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 has a broad range of stakeholders who have different ways of measuring efficient and effective delivery of the regulatory framework for industrial chemicals. To manage these different perspectives and to make sure that the outcome of the CRIS represented an equitable, well-balanced position, a Stakeholder Engagement Strategy was developed.

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 principals governing cost recovery at NICNAS, can be found.

### Amendment to regulations 2, 8A, 8C and 9B

The Office of Best Practice Regulation (OBPR) determined that the changes were 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.

Correction of an inaccurate reference in subparagraph 11C(4)(c)(i) and subregulation 11(C)(5) of the Regulations

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

**ATTACHMENT****Details of the proposed *Industrial Chemicals (Notification and Assessment) Amendment (Fees and Charges) Regulation 2014*****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 2014*.

**Section 2 – Commencement**

Section 2 provides for the proposed regulation to commence on 1 July 2014.

**Section 3 – Authority**

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

**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*****Items 1 and 2 – Regulations 2, 8A, 8C and 9B**

Regulations 8A, 8C and 9B of the Principal Regulations refer to the prescribed authority as “*the Department of Sustainability, Environment, Water, Population and Communities*” now known as the “*Department of the Environment*”. Items 1 and 2 changes the method for defining a Department as a result of that Department changing its name.

**Items 3 and 4 – Subparagraph 11C(4)(c)(i) and subregulation 11(C)(5) (definition of *fuel additive*)**

Subparagraph 11C(4)(c)(i) of the Principal Regulations refers to an approval granted under subsection 13(1) of the *Fuel Quality Standards Act 2000*. The Department of the Environment advised NICNAS that only fuels, and not fuel additives can be subject to a subsection 13(1) approval. To avoid confusion, item 3 deletes the words “*or in a fuel additive*” from subparagraph 11C 4(c)(i) of the Principal Regulations. Subregulation 11(C)(5) of the Principal Regulations defines “fuel additive” and the definition will be repealed as a consequence.

**Items 5 and 6 – Schedule 2 (table item 26) and Amendment of listed provisions**

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

Items 5 and 6 lists the amended fees, charges and penalties determined by the NICNAS Cost Recovery Impact Statement for 2012-13 to 2015-16. Additionally, item 5 corrects a drafting error which occurred during amendments to NICNAS fees and charges in 2013 whereby the fee was prescribed over a broader number of chemicals then was intended. Because of this error, NICNAS did not apply the fee in the 2013/14 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 2014***

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 some minor or machinery technical amendments. 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 has 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 and charges for 2014-15;
- Remove an incorrect reference to an incorrect phrase in the *Fuel Quality Standards Act 2000*, and
- Changes the method for defining a prescribed authority as a result of that authority changing its name.

#### **Human rights implications**

These amendments will not make any substantive changes. Fees and charges will increase in line with the recommendations of an extensive public review whilst amendments to regulations 2, 8A, 8C and 9B as well as to subparagraph 11C 4(c)(i) and subregulation 11(C)(5), 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 Hon Fiona Nash**  
**Assistant Minister for Health**