

**Uptake of NICNAS's Priority Existing Chemical Recommendations by
Government Chemical Management Bodies**

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Glossary of terms

ACCC	Australian Competition & Consumer Commission (ACCC)
ANZFA	Australia New Zealand Food Authority (predecessor of FSANZ)
APVMA	Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority for Agricultural and Veterinary Chemicals)
ASCC	Australian Safety and Compensation Council [ASCC succeeded NOHSC on 7 February 2005]
DOTARS	The Department of Infrastructure, Transport, Regional Development and Local Government.
EPHC	Environment Protection and Heritage Council
FSANZ	Food Standards Australia New Zealand
HSIS	Hazardous Substances Information System
HWSA	Heads of Workplace Safety Authorities
MSDS	Material Safety Data Sheet
NChEM	National Framework for Chemicals Environmental Management
NDPSC	National Drugs and Poisons Schedule Committee
NRA	National Registration Authority for Agricultural and Veterinary Chemicals (predecessor of APVMA)
NOHSC	National Occupational Health and Safety Commission (predecessor of ASCC)
OASCC	Office of the Australian Safety and Compensation Council [OASCC succeeded NOHSC on 7 February 2005]
OHS	Occupational health and safety
PEC	Priority Existing Chemical
TGA	Therapeutic Goods Administration

Contents of Report

Glossary of terms.....	ii
Uptake of NICNAS's Recommendations by Government Chemical Management Bodies...	1
Background	1
Methodology	2
The questionnaire.....	2
Structure of the questionnaire.....	2
Completion of the questionnaire	3
PART 1 – The uptake of NICNAS recommendations	4
Key Findings	4
1.1 – Recommendations to Commonwealth Government Agencies.....	4
PART 2 – Barriers to uptake of PEC recommendations.....	7
Reasons for the lack of uptake of PEC recommendations.....	7
Part 3 – Way Forward	9
Appendix 1 - The Relationship between NICNAS and other Commonwealth and State/ Territory agencies.	10
Appendix 2 - Status of Adoption of National OHS Standards into Regulation by States and Territories.....	12
Appendix 3 - Adoption of the SUSDP by States and Territories	13

Uptake of NICNAS's Recommendations by Government Chemical Management Bodies

Background

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) is established under the *Industrial Chemicals (Notification and Assessment) Act 1989*. The objectives of the Act in relation to industrial chemicals are to provide:

- (a) a national system of notification and assessment, based on information about the properties and effects of the chemicals obtained from importers and manufacturers, for the:
 - (i) protection of Australians and the environment by finding out the risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of the chemicals; and
 - (ii) providing information, and making recommendations, about the chemicals to Commonwealth, State and Territory bodies with responsibilities for the regulation of industrial chemicals; and
 - (iii) implementing Australia's obligations under international agreements relating to the regulation of chemicals; and
 - (iv) collecting statistics in relation to the chemicals.
- (b) national standards for cosmetics imported into, or manufactured in, Australia and the enforcement of those standards.

NICNAS assesses all new industrial chemicals that are entering Australia for the first time, and industrial chemicals that are already in use in Australia (i.e. existing chemicals) on a priority basis. Due to the large number (over 38,000) of existing chemicals in use in Australia, NICNAS assesses these chemicals in response to concerns about their health and/or environmental effects. Chemicals undergoing such assessment are referred to as Priority Existing Chemicals (PECs).

PEC assessment reports contain as a major output recommendations directed to State/Territory and Commonwealth regulatory authorities and to industry and others on ways to reduce the risk of adverse effects to human health or the environment, and/or measures to improve safe use of chemicals. Recommendations can cover occupational health and safety, environmental and/or public health issues. Recommendations to Commonwealth, state and territory bodies may include:

- hazard communication (e.g. changes to labels and MSDS);
- changes to occupational hazard classification or occupational exposure standards;
- changes to conditions of use and labelling for use in domestic products;

- monitor industry uptake of PEC recommendations relating to occupational health & safety and environment (eg. implementation of engineering controls); and
- any other appropriate measures.

To date, NICNAS has completed 72 PEC assessments and 8 secondary notifications.

NICNAS prioritises chemicals and prepares PEC reports in a six-stage process. The review process for PECs is detailed on the NICNAS website:

http://www.nicnas.gov.au/Industry/Existing_Chemicals/Six_Step_Review_Process_For_PECs.asp

The relationship between NICNAS and other Commonwealth and State/Territory authorities are described in Appendix 1.

NICNAS has commissioned this study to investigate the uptake of its PEC recommendations by Commonwealth and State and Territory regulatory bodies, as part of an overall evaluation of the PEC program.

Methodology

The questionnaire

A questionnaire was prepared for use in examining the uptake of a representative sample of NICNAS recommendations by State/Territory regulatory authorities and peak government organisations. The recommendations selected addressed a range of chemicals (approximately 40 chemicals) and risk management subjects and included both recommendations directed directly to government and also the surveillance of recommendations directed to industry. The majority of the recommendations followed up were for the occupational health and safety sector (31 recommendations), with others being for the public (6 recommendations) and environmental sectors (4 recommendations). The questionnaire aimed to identify, where applicable, the extent and timing of uptake of recommendations, barriers to the implementation of recommendations where these have not been taken up and potential strategies to improve the timely implementation of the PEC recommendations.

Structure of the questionnaire

In the questionnaire, NICNAS recommendations to government were sorted by the agency/agencies to which they were directed.

Recommendations to industry were directed at the agency/agencies responsible for monitoring or enforcement of their implementation.

At the end of the questionnaire, a number of questions directed at all agencies receiving or monitoring implementation of PEC recommendations from NICNAS were included.

The Parts within the questionnaire:

Background, Purpose and Structure

Part A – Recommendations to Commonwealth Government Agencies

Part B – Recommendations to State and Territory Government Agencies

Part C – Recommendations to Industry monitored by State and Territory Government Agencies

Part D – Questions addressed to all agencies

Completion of the questionnaire

The Background, Purpose and Structure to the questionnaire together with the appropriate Parts were circulated to relevant State/Territory regulatory authorities and peak government organisations.

Agencies were asked to consider the recommendations made to them, as listed, and identify the extent and timing of uptake of the recommendations. Where these had not been taken up agencies were asked to identify the barriers to their implementation. Agencies were also invited to identify potential strategies to improve the timely implementation of the PEC recommendations.

At an agreed time after the distribution of the questionnaire the NICNAS consultant held a teleconference with the identified officers from the agency at which time the questionnaire responses were discussed and finalised. In view of the limited time available for this survey, a number of agencies chose to complete the questionnaire themselves and forward to the consultant by email.

PART 1 – The uptake of NICNAS recommendations

Key Findings

1.1 – Recommendations to Commonwealth Government Agencies

National Coordinating Bodies

The questionnaire included PEC recommendations to the national bodies, Australian Safety and Compensation Council (ASCC), Environment Protection and Heritage Council (EPHC) and the National Drugs and Poisons Schedule Committee (NDPSC). Of the 16 PEC recommendations to ASCC considered in the questionnaire, 5 have been implemented as recommended. The Office of the ASCC (OASCC) considered that 2 did not require implementation for various reasons and that there were barriers to the implementation of the remainder. The OASCC indicated that all of the recommendations were received and considered in a timely manner. However, the time between release of the recommendation and final adoption varied greatly between recommendations, and ranged from 1 to 6 years. Appendix 2 indicates the adoption of National OHS Standards into State and Territory regulations.

The two recommendations to EPHC included in the questionnaire were examined in a timely manner by the EPH Standing Committee. The recommendations on formaldehyde were made in November 2006 and work is ongoing 12 months later. The recommendations on short chain chlorinated paraffins made in July 2004, were accepted. However differing views among the States and Territories on risk reduction measures, availability of baseline data on chlorinated paraffins other than the PEC, and information on availability of suitable alternative material required additional work before recommendation could be implemented. References to international work to identify suitable alternatives were provided in the PEC report.

All five of the PEC recommendations to NDPSC considered in the questionnaire were examined in a timely manner. The four recommendations relating to changes to the SUSDP were implemented within 12 months and one recommendation was not implemented as it related to action not applicable to the SUSDP. Appendix 3 indicates how the States and Territories adopt the SUSDP.

National regulatory agencies

The questionnaire included PEC recommendations to departments, agencies and non-government national organisations responsible for the regulation of end products and services including ACCC, APVMA (formerly NRA), FSANZ (formerly ANZFA), TGA, DOTARS and Standards Australia. NICNAS recommendations are directed to these agencies infrequently and the recommendations mainly refer to consideration of the PEC report during any activities related to the chemical by that agency. Some agencies reported that the PEC recommendations were considered but there was no need to take specific action as these were addressed independently of the NICNAS reports.

1.2 – Recommendations to State and Territory Government Authorities

This section addresses those recommendations made directly to State and Territory authorities and does not cover those made via NDPSC, ASCC or EPHC, which are addressed in section 1.1. The questionnaire covered five recommendations to State and Territory Work Cover authorities, one recommendation each to Environment Protection agencies and Health Departments.

Actions proposed in PEC recommendations were not generally directly adopted by the States and Territories. However, often the intent of the recommendation was addressed in broader projects or generic actions and legislation. This is particularly the case for those chemicals for which a significant risk or priority had been established by a jurisdiction. For example, although no jurisdictions took specific action on persulphates in hair dressing, four jurisdictions reported providing and distributing information on the safe use of chemicals, including persulphates, in the hairdressing industry. In the case of higher risk chemicals, such as carcinogens (e.g. benzene), these may have been picked up in the context of more generic actions and legislation relating to carcinogens.

In a number of cases (eg. formaldehyde) States indicated that the extent of their role was limited to publishing information for the industry on their websites. All jurisdictions consulted indicated that resources for chemical management was limited. Workcover agencies identified that hazards that lead to compensation claims (eg. work place hygiene, injury and accident) were the highest priorities and, therefore, attracted the majority of resources. Resources were more likely to be directed at high profile chemicals, especially carcinogens such as asbestos and benzene than chemicals that were low level chronic toxins.

It was also noted that State and Territory projects were planned and resources allocated on a “business case” model and that this meant that it could take up to two years from a recommendation being made to a project being commenced.

It was a common expectation that NOHSC/ASCC would accept NICNAS classifications based on PEC or New Chemical assessments and this was seen as a positive outcome in terms of achieving national consistency.

1.3 – Recommendations to Industry monitored by State and Territory Government Agencies

State and Territory agencies were presented with a sample of recommendations that had been directed to industry (importers, manufacturers, distributors, etc) and asked whether they had undertaken any monitoring activities to ascertain if the recommendations had been taken up. For affirmative answers, respondents were asked to identify the date of the survey and findings in regard to the uptake of the recommendations.

Nine of the recommendations, involving 7 chemicals, to industry were directed to workplace safety. One recommendation to industry was directed to both workplace safety and environmental protection for monitoring compliance.

Jurisdictions do not generally undertake monitoring of implementation of PEC recommendations directed specifically to industry. When the recommendations were followed up, the action was often customised to specific users or businesses operating in the jurisdiction. The smaller jurisdictions and those without a manufacturing base generally

rely on the industry and the larger States to ensure that MSDSs were correct and recommendations implemented.

PART 2 – Barriers to uptake of PEC recommendations

Reasons for the lack of uptake of PEC recommendations

National coordinating bodies

The reasons given for non-implementation of recommendations included:

- greater priority being given to prevention of exposure to disease causing agents;
- body considered that there were data gaps or the recommendation was likely to become outdated or be superseded by new data or review in other fora or jurisdictions (eg. IARC, the EU) and a decision was made to await the outcome of these future actions;
- body considered that the recommendation was not consistent with the national framework or that industry already had taken action to address the issue;
- body considered that the recommendations proposed specific solutions and did not allow the implementing agency to determine the most appropriate regulatory solution;
- the substance is not manufactured in Australia and the only potential uses are in controlled analytical environments. Further controls were not considered necessary;
- additional analysis required on the availability of alternatives and their usage levels; and
- action not applicable to the body to which it was directed.

National regulatory bodies

The reasons given for non-implementation of recommendations to National regulatory bodies included:

- the recommendation was noted but saw no need to take specific action as the issue had been addressed independently of NICNAS;
- there was an outcome focussed generic regulation in place that addressed the recommendation;
- not within the scope of the agency or because of competing priorities; and
- no established lines of communication or regular contact between NICNAS and some agencies as recommendations forwarded to these agencies were infrequent (less than 1 in 5 years).

States and Territories

The most common issues raised by States and Territories in relation to the uptake of recommendations were priorities and resources. Chemicals, other than high profile

carcinogens, tend to receive a low priority. Other reasons given included that:

- the chemical was not used in the State or already came under the provisions of existing generic legislation;
- recommendations not framed in clear and specific language to facilitate implementation;
- absence of a national framework in some sectors (eg. environment) impacts on the implementation of the recommendation;
- the authority to which the recommendation is referred is not the responsible authority for the action suggested in the jurisdiction; and
- jurisdictions with a small chemical manufacturing base have limited technical resources (eg. hygienists).

Part 3 – Way Forward

- NICNAS regularly review and update its database of contacts in all National, State and Territory authorities, and identify a specific position (not an individual) with responsibility for liaison with NICNAS in each regulatory agency. Individual jurisdictions provide up-to-date information to NICNAS that identifies appropriate agency responsibilities for implementation of regulatory controls.
- NICNAS review its formal linkages with the national coordinating bodies to ensure that these bodies are involved in priority setting for chemical review, in risk assessment and in the development of recommendations. NICNAS also engage with relevant National, State and Territory agencies during the assessment process and prior to finalisation to ensure that NICNAS's recommendations are appropriate, relevant and meaningful in the context of their sector.
- When making recommendations that have a regulatory component, NICNAS recognise that the risk management frameworks differ within the different sectors and develop recommendations in consultation with bodies/agencies to meet the requirements of the sectors.
- Introduce a review cycle within the PEC system to ensure that recommendations sent to authorities are followed up and where practicable hold periodic meetings with National, State and Territory bodies to review interagency cooperation in relation to implementation of PEC recommendations.

Appendix 1 - The Relationship between NICNAS and other Commonwealth and State/ Territory agencies.

NICNAS aids in the protection of workers, the public and the environment from the harmful effects of a wide range of industrial chemicals including plastics, paints, inks, surface coatings, cosmetics and other consumer chemicals. The Scheme aims to ensure the safe use of chemicals by making risk assessments and safety information on chemicals and their potential occupational health and safety (OHS), public health and/or environmental risks widely available to workers, the public, industry and other state, territory and Australian Government agencies. NICNAS scientific risk assessments support the wide range of chemicals management legislation for the protection of human health and the environment from the adverse effects of chemicals.

In order to achieve these goals, in addition to liaising with industry and non-governmental organisations, NICNAS may need to interact directly with over 36 government departments, agencies and intergovernmental coordinating schemes as indicated below. NICNAS must have regard to the different priorities that exist within each regulatory management system and jurisdiction. Furthermore, the responsible agencies in each jurisdiction within a common regulatory management system (eg workplace safety) have different legislation and responsibilities.

	Commonwealth	Coordinating bodies	States & Territories
Workplace safety	<ul style="list-style-type: none"> • Australian Safety and Compensation Council (The Department of Education, Employment and Workplace Relations - DEEWR) 	<ul style="list-style-type: none"> • Heads of Workplace Safety Authorities 	<ul style="list-style-type: none"> • WorkSafe/ WorkCover authorities in each State/Territory
Public Health	<ul style="list-style-type: none"> • Department of Health and Ageing (DoHA) 	<ul style="list-style-type: none"> • National Drugs & Poisons Scheduling Committee (NDPSC) - Maintains the SUSDP • enHealth Council 	<ul style="list-style-type: none"> • State/ Territory Health Departments – (Pharmaceuticals branch) • State/ Territory Health Departments - Environmental Health Division/ Units

	Commonwealth	Coordinating bodies	States & Territories
Environment	<ul style="list-style-type: none"> ● Department of the Environment, Water, Heritage and the Arts (DEWHA) 	<ul style="list-style-type: none"> ● Environment Protection and Heritage Council (EPHC) - National framework for Chemicals Environmental Management (NChEM) 	<ul style="list-style-type: none"> ● Environment Departments/ Environment Protection Agencies ● Water Supply/ Management authorities
End product regulation & control	<ul style="list-style-type: none"> ● The Australian Consumer & Competition Commission (ACCC) ● Food Standards Australia New Zealand (FSANZ) ● Therapeutic Goods Administration (TGA) ● Australian Pesticides and Veterinary Medicines Authority (APVMA) ● Department of Infrastructure, Transport, Regional Development and Local Government 		<ul style="list-style-type: none"> ● Various State/Territory agencies have responsibility for control of use.

Appendix 2 - Status of Adoption of National OHS Standards into Regulation by States and Territories

National Standard	Extent of Adoption by Jurisdiction								
	NSW	Vic	Qld	WA	SA	Tas	NT	Com	ACT
Control of Workplace Hazardous Substances (Declared 1995)	Y	Y	Y	Y	Y	Y	Y	Y	M
Control of Scheduled Carcinogenic Substances (Declared 1995)	Y	Y	N	Y	N	Y	Y	Y	N
Approved Criteria for Classifying Hazardous Substances (Last revised 2004)	Y	Y	Y	Y	Y	Y	Y	Y	Y

Y Key elements of the standard have been fully adopted into legislation.

M Most of the key elements of the standard have been adopted into legislation.

N Key elements of the standard have not been adopted.

Source ASCC

Appendix 3 - Adoption of the SUSDP by States and Territories

State/ Territory	How jurisdiction adopts the SUSDP?	Method and frequency of adoption of amendments	Entries for industrial chemicals not implement or amendment before adoption
WA	Referenced by the Poisons Regulations 1965	by reference	
SA	The legislation adopts the SUSDP by reference as amended by the Controlled Substances Act: Part 3 is struck out, Part 4 with is varied by regulation, and in Part 5 appendix B, D and J are struck out. Alternative control are substituted for these substances.	by reference	None known
TAS	Amended three times a year on the issuing of recommended amendments.	Action is required each time. A new Poisons Bill will go before parliament in 2008 and this will allow for adoption by reference.	No.
Vic	By reference	Automatic whenever SUSDP updates	No
NSW	Publishes the SUSDP as the Poisons List under the Poisons and Therapeutic Goods Act 1996.	Amended when SUSDP amended	No
Qld	By reference	By reference	No
ACT	By reference	By reference	No
NT	By reference	By reference	No