

SECTION VII - Compliance

This section covers Compliance with the Act. The Act provides a legislative basis for enforcement and inspections involving industrial chemicals. This Section provides an overview of the compliance program and the enforcement requirements under the Act.

15 Compliance

15.1 Our Compliance Style

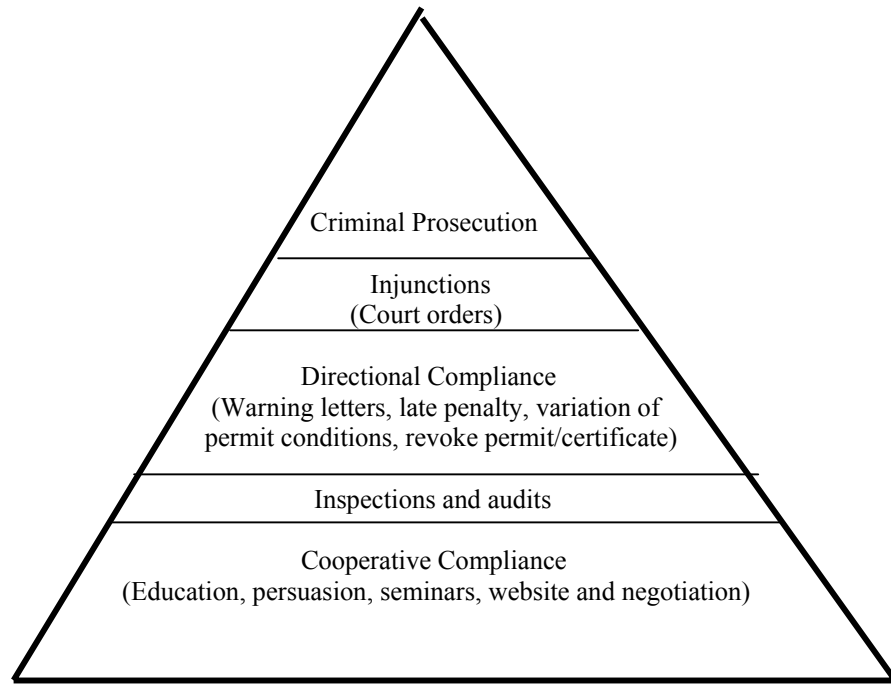
NICNAS is strongly committed to developing and maintaining an effective and proactive compliance strategy to ensure the safe use of industrial chemicals in Australia.

Under the Act, NICNAS scientifically assesses industrial chemicals for their health and environmental effects and makes recommendations for safe use. The Act sets out regulatory obligations on importers, manufacturers and exporters of industrial chemicals, which in essence, form the focus of the compliance program.

The compliance team is responsible for a number of NICNAS programs aimed at ensuring that manufacturers, importers and exporters of industrial chemicals are aware of and exercise their responsibilities under the Act.

NICNAS is committed to developing and maintaining an effective compliance strategy to ensure the safe use of industrial chemicals in Australia. Our strategy is to maintain the public's trust in chemical safety through compliance actions that ensure the integrity of the scheme. All industrial chemical manufacturers, importers and exporters should be aware that NICNAS conducts audits, inspections and investigations aimed at identifying non-compliance with the legislation.

NICNAS has adopted a conciliatory approach to compliance through partnerships with the Australian chemical industry and the public by maintaining a strong focus on education and raising awareness. We will protect the business interests of compliant importers, manufacturers and exporters by ensuring high levels of transparency, competence and professionalism in our approach to compliance.



The above pyramid features NICNAS hierarchal enforcement strategy, starting with a persuasive approach, which employs no sanctions, and gradually progressing to more severe sanctions.

15.2 Our Compliance Program

Under the Act, NICNAS scientifically assesses industrial chemicals for their health and environmental effects and makes recommendations for safe use. The Act sets out regulatory obligations on importers, manufacturers and exporters of industrial chemicals.

The aim of the program is to increase compliance by implementing the following strategies:

- Identify, assess and rectify non-compliance;
- Raise awareness of NICNAS obligations;
- Obtain feedback from industry and the public to assist NICNAS in developing and evaluating its education and compliance strategies;
- Assess the levels of compliance and industry awareness of the regulatory requirements;
- Develop and nurture relationships with industry and community contacts; and
- Maintain a visible presence in the chemical industry and show that NICNAS is proactive about compliance.

15.3 Discovery and Recording of Non-Compliance

Compliance casework is generated from self-reporting, third party allegations, audits and internal checks.

15.3.1 Self Reporting of Non-Compliance

These cases arise when importers and/or manufacturers or exporters formally advise NICNAS of non compliance with the legislation. Such notification would normally include information that demonstrated, or otherwise makes a claim, that non compliance was inadvertent.

Self-reporting is seen as the first step in taking action to come within NICNAS compliance activity. NICNAS has discretion in applying sanctions to an introducer (ie, importer and/or manufacturer) or exporter that self-reports a breach where:

- a) The reason for the non-compliance is explained and was inadvertent;
- b) The non-compliance was due, or partially due, to a systemic flaw and the offender has initiated or has expressed a willingness to remedy the flaw and check for further instances of non-compliance that may have resulted from that flaw; and,
- c) The offender is committed to taking action to remedy the breach within agreed timeframes.

If you inform NICNAS of any inadvertent breach occurring, our approach is to meet with you to draw up a timetable of actions to remedy the breach.

15.3.2 Third Party Allegations

A 'Report of non-compliance with NICNAS Requirements' form has been developed for those who wish to report suspected non-compliant activities. NICNAS values and encourages the community, industry and other government agencies and industry associations to provide information on any breaches of the industrial chemicals legislation. As a matter of policy all formal third party reports are investigated. Complete confidentiality is ensured in all cases.

If you wish to bring a compliance matter to our attention, you can:

- Email the compliance team at comply at comply@nicnas.gov.au;
- Telephone the compliance team on 1800 638 528;
- Fax details to the compliance team on 02 8577 8888;
- Write to the compliance team using our postal address; or,
- Arrange to come in and meet with us.

15.4 Enforcement Provisions, Offences and Penalties

This Section provides a guide to industry on the existing and new enforcement provisions that were created as part of the new Australian Government Low Regulatory Concern Chemicals initiative.

The information presented should be used as a guide only and should not be relied upon for legal advice. Persons should refer to the *Industrial Chemicals (Notification and Assessment) Act 1989* and the Industrial Chemicals (Notification and Assessment) Regulations 1990 which can be accessed via the SCALEplus website of the Australian Attorney-General's Department at <http://scaleplus.law.gov.au>.

Offences committed under the *Industrial Chemicals (Notification and Assessment) Act 1989* are punishable by prosecution in accordance with the *Crimes Act 1914*. Those who are prosecuted and found to be in breach of the Act will be liable for fines of up to \$33,000 for an individual and \$165,000 for a company. The specific penalties for each offence under the Act are listed in the tables below.

15.4.1 New Industrial Chemicals

A new industrial chemical is defined as an industrial chemical that is not listed on the Australian Inventory of Chemical Substances or if its importation and/or manufacture is subject to a condition of use. Certain chemicals, however, are exempt from notification requirements but have annual reporting obligations.

The following are some measures NICNAS has adopted to ensure the safety of workers, the public and the environment:

- The NICNAS compliance team conducts inspections and audits to monitor compliance with the Act;
- For all new industrial chemicals that are assessed by NICNAS, the chemical or trade name, use, hazardous status and applicant details are published in the *Chemical Gazette*; and
- A summary report of occupational health, public health and environmental effects are published in the *Chemical Gazette* for all chemicals assessed under a certificate category.

Table 15.4.1 Summary of New Chemicals offences and Penalties under the Act

Section Offence	Guidance	Maximum Penalty Individuals (corporation)
<i>New provision:</i>		
<i>s15A</i> Failing to comply with conditions of use of an AICS listed chemical (Fault based offence)	The Director may include in the AICS certain conditions associated with the mode of use or introduction of the chemical. The person importing or manufacturing the chemical must comply with those conditions.	\$13,200 (\$66,000)
<i>s21</i> Introducing a new industrial chemical (without a valid certificate/permit and not exempt) (Fault based offence)	A new industrial chemical is defined as one that is not listed on the Australian Inventory of Chemical Substances, or is listed but whose importation and/or manufacture is subject to certain conditions. All new industrial chemicals must be notified to NICNAS, and an assessment certificate or permit obtained before they can be imported/manufactured in Australia. This does not apply if the new industrial chemical is considered exempt from notifying to NICNAS	\$33,000 (165,000)
<i>New provision:</i>		
<i>s21AA(4)</i> Failing to provide annual report. (Fault based offence)	Persons introducing a new industrial chemical under an exemption must provide a report to the director before or on 28 September of the following registration year.	\$1,100 per day to a maximum of \$13,200 (\$5,500 per day to a maximum of \$66,000)
<i>s21L(4)</i> Contravening any of the conditions imposed on the commercial evaluation permit (Fault based offence)	Commercial Evaluation Chemical (CEC) permits are subject to stipulated conditions to safeguard public and occupational health, and the environment. All conditions specified on the permit must be adhered to by the importer or manufacturer and agreed user/s.	Director can cancel permit (s21N) AND \$33,000 (\$165,000)
<i>s21W(5)</i> Contravening any of the conditions imposed on the low volume permit (Fault based offence)	Low Volume Chemical (LVC) permits are subject to stipulated conditions to safeguard public and occupational health and the environment. The holder of the permit (importer or manufacturer) must follow all the conditions on the permit.	Director can cancel permit (s21W(6)) AND \$33,000 (\$165,000)
<i>New provision:</i>		
<i>s221</i> Contravening any of the conditions imposed on the controlled use permit (Fault based offence)	Controlled Use permits are granted subject to conditions that the chemical is imported or manufactured only for the use stated on the permit. Conditions designed to safeguard public and occupational health and the environment also apply. The holder of the permit (importer or manufacturer) must follow all the conditions on the permit.	\$33,000 (\$165,000)

<i>s30C</i> Using a chemical after receiving a revocation notice from Director (regarding Early Introduction Permit) (Fault based offence)	In certain circumstances, the Director may revoke an Early Introduction Permit (EIP). The holder of the permit must stop importing/manufacturing the chemical as soon as revocation notice is received.	\$33,000 (\$165,000)
<i>New provision:</i>		
<i>s40K(3)</i> Failing to keep supporting records for permits/certificates. (Fault based offence)	A person issued a Low Volume permit, Controlled Use permit, or a self-assessed assessment certificate is required to keep records in support of information associated with their application for the certificate and keep these records for 5 years.	\$13,200 (\$66,000)
<i>New provision:</i>		
<i>s40L(3)</i> Failing to supply requested information on permits/certificates to the Director. (Fault based offence)	A person must provide information to the Director if the Director requests information relating to a Low Volume permit, a Controlled Use permit, or a self-assessed assessment certificate.	\$6,600 (\$33,000)
<i>New provision:</i>		
<i>S40N(4)</i> Failure to provide annual report for permits/certificates (Fault based offence)	Persons introducing a new industrial chemical under a Commercial Evaluation permit, Low Volume permit, Controlled Use permit, or a self-assessed assessment certificate, must provide a report to the Director before or on 28 September of the following registration year.	\$1,100 per day to a maximum of \$13,200 (\$5,500 per day to a maximum of \$66,000)

For further information on New Chemicals Assessments see Section II in this handbook.

15.4.2 Priority Existing Chemicals

Chemicals of concern may be declared a PEC by the Minister (Health and Ageing) under section 51(1) of the Act, subsequent to the recommendation of the Director, NICNAS. The Director is required under section 54 of the Act to maintain a list of declared PECs.

A PEC declaration creates obligations for those importing or manufacturing the chemical to apply for assessment (within 28 days of the declaration) and provide information on the chemical.

Table 15.4.2 Summary of Priority Existing Chemicals offences and Penalties under the Act

Section Offence	Guidance	Maximum penalty Individual (Corporation)
<i>s48(7)</i> Contravening a notice requesting information about potential Priority Existing Chemicals (PEC) (Fault based offence)	The Director may place a notice in the <i>Chemical Gazette</i> calling for information about an existing chemical that is being considered for declaration as a PEC. The <i>Chemical Gazette</i> notice will include details of the person/s required to provide the information and the period in which the information is to be provided (the time frame specified must be at least 28 days).	\$6,600 (\$33,000)
<i>s56</i> Introducing a PEC (without applying for assessment under <i>s55</i>) (Fault based offence)	Importing and/or manufacturing a PEC is prohibited without submitting an application for the assessment of the chemical.	\$33,000 (\$165,000)
<i>s58(8)</i> Contravention of a call for information about a PEC (Fault based offence)	For the purpose of assessing a PEC, the Director may, by notice in the <i>Chemical Gazette</i> , require a person to provide information about the chemical. All persons specified in the Gazette notice must provide the required information to the Director within the timeframe specified.	\$6,600 (\$33,000)
<i>s61(4)</i> Failure of an importer or manufacturer to comply with a notice prohibiting an activity while the chemical remains a PEC (Fault based offence)	If the Minister believes that an activity involving a PEC gives rise to an unacceptable risk of adverse health or environmental effects, he/she may prohibit that activity by a notice in the <i>Chemical Gazette</i> . An importer or manufacturer must comply with the notice.	\$33,000 (\$165,000)
<i>s61(5)</i> Failure of a person other than an importer or manufacturer to comply with a notice prohibiting an activity while the chemical remains a PEC (Fault based offence)	If the Minister believes that an activity involving a PEC gives rise to an unacceptable risk of adverse health or environmental effects, he/she may prohibit that activity by a notice in the <i>Chemical Gazette</i> . A person, other than an importer or manufacturer of the chemical must comply with the notice.	\$26,400 (\$132,000)

For further information on Priority Existing Chemicals see Section III in this Handbook.

15.4.3 Secondary Notification After Assessment

All chemicals that have been assessed by NICNAS (both new and existing chemicals), including self-assessed chemicals, may be subject to secondary

notification. Once a chemical is assessed, the assessment report may recommend the secondary notification of the chemical in certain circumstances specified in the report. Under s64(1), if a person becomes aware of these particular circumstances, or any of the other circumstances that are specified in s64(2) of the Act (listed below), that person will be required to notify the Director within 28 days of becoming aware of these circumstances.

The Director may decide to require the secondary notification of the chemical under s65 of the Act, by notice in the *Chemical Gazette*, which must specify the information about the chemical that is to be given by way of secondary notification.

Table 15.4.3 Summary of Secondary Notification offences and penalties under the Act

Section Offence	Guidance	Maximum penalty Individual (Corporation)
<p><i>s64(1)(2)</i> Failure to notify the Director within 28 days of certain specified circumstances occurring giving rise to the obligation of secondary notification (Fault based offence)</p>	<p>Where a person who introduces an industrial chemical that has been assessed by NICNAS becomes aware that:</p> <ul style="list-style-type: none"> • the function or use of the chemical has or is likely to change; • the amount of chemical introduced has, or is likely to increase; • in the case of an imported chemical, it has begun to be manufactured; • the method of manufacture has, or is likely to, change; • additional information is available on the adverse health or environmental effects of the chemical; and/or, • other circumstances recommended on the assessment report for the chemical have occurred; <p>the person must notify the Director of the change in circumstances within 28 days.</p>	<p>\$13,200 (\$66,000)</p>
<p><i>s67</i> Failure to comply with secondary notification requirements (Fault based offence)</p>	<p>The Director may, by notice in the <i>Chemical Gazette</i>, require the secondary notification of a chemical by person/s to whom the notice applies within a period of not less than 28 days.</p> <p>Person/s to whom the notice applies must provide information about the chemical that is to be given by way of secondary notification within a period of not less than 28 days.</p>	<p><i>In the case of a new industrial chemical:</i> the Minister may suspend any assessment certificate or introduction permit held by the person for that chemical AND \$13,200 (\$66,000)</p> <p><i>In any other case:</i> the Minister may prohibit the importation and manufacture of the chemical by that person. AND \$13,200 (\$66,000)</p>
<p><i>s69</i> Contravention of a notice by the Director in the <i>Chemical Gazette</i> requiring</p>	<p>The Director may, for the purpose of assessing a new or existing industrial chemical requiring secondary notification, require through a notice in the <i>Chemical</i></p>	<p>\$6,600 (\$33,000)</p>

information for the purposes of assessment of chemicals (existing/new) requiring secondary notification
(Fault based offence)

Gazette:

- all persons who introduce the chemical; or
- specified persons who introduce the chemical; or
- specified persons who may have relevant information on the chemical; but who are not required to give secondary notification, to provide the Director the information specified on the notice.

For further information on secondary notifications see Chapter 11 in Section IV of this Handbook.

15.4.4 Registration of Chemical Introducers

NICNAS is committed to ensuring that the interests of members of industry who comply with the introducer registration requirements are protected against those who do not. NICNAS allocates considerable resources to identifying importers and manufacturers that have not registered.

The following are some measures NICNAS has adopted as part of its compliance program in relation to NICNAS registration matters:

- a list of registrants is published quarterly in the *Chemical Gazette*;
- registered importers and manufacturers may be audited, and will be required to justify the basis for determining their estimated value of relevant industrial chemicals manufactured and/or imported; and
- NICNAS makes use of other available information about industrial chemical importers and manufacturers; for example, import data, to monitor compliance with the legislation.

Table 15.4.4 Summary of NICNAS Registration offences and penalties.

Section Offence	Guidance	Maximum penalty Individuals (Corporation)
<i>s80B</i> Introducing relevant industrial chemicals without a registration in force (Strict liability offence)	You must be registered with NICNAS if you introduce (import and/or manufacture) relevant industrial chemicals in a registration year. A registration year runs from 1 September to 31 August in the following year.	\$33,000 (\$165,000)
<i>s80Q</i> Failure to provide the Director with a written statement indicating the total value of relevant industrial chemicals actually introduced in a registration year by 31 October (Strict liability offence)	If you have been registered with NICNAS for a particular registration year, you must, within two months of the end of that registration year, provide the Director with a written statement of the total value of relevant industrial chemicals actually introduced in that registration year.	\$3,300 (\$16,500)
<i>s80QD</i> Failure to retain records for five years (Strict liability offence)	If you are registered for a particular registration year, you must keep all records to prove your introduction value for that year. These records have to be kept for a period of five years.	\$3,300 (\$16,500)
<i>s80W(3)</i> Failure to comply with notice requiring information relating to the introduction of relevant industrial chemicals in a relevant registration year (Strict liability offence)	If the Director believes that you should have been registered in a particular registration year, he/she may require you to supply information relating to your introductions of relevant industrial chemicals for that registration year.	\$3,300 (\$16,500)

For further information on registration of chemical introducers, see Section V - NICNAS Registration.

15.4.5 Annual Reporting and Record Keeping

Table 15.4.5 Summary of annual reporting and record keeping offences and penalties under the Act

Section Offence	Guidance	Maximum Penalty Individuals (corporation)
<i>New provision:</i> <i>s21AA(4)</i> Failing to provide annual report. (Fault based offence)	Persons introducing a new industrial chemical under an exemption must provide a report to the director before or on 28 September of the following registration year.	\$1,100 per day to a maximum of \$13,200 (\$5,500 per day to a maximum of \$66,000)
<i>New provision:</i> <i>s40K(3)</i> Failing to keep supporting records for permits/certificates. (Fault based offence)	A person issued a Low Volume permit, Controlled Use permit, or a self-assessed assessment certificate is required to keep records in support of information associated with their application for the certificate and keep these records for 5 years.	\$13,200 (\$66,000)
<i>New provision:</i> <i>s40L(3)</i> Failing to supply requested information on permits/certificates to the Director. (Fault based offence)	A person must provide information to the Director if the Director requests information relating to a Low Volume permit, a Controlled Use permit, or a self-assessed assessment certificate.	\$6,600 (\$33,000)
<i>New provision:</i> <i>S40N(4)</i> Failure to provide annual report for permits/certificates (Fault based offence)	Persons introducing a new industrial chemical under a Commercial Evaluation permit, Low Volume permit, Controlled Use permit, or a self-assessed assessment certificate, must provide a report to the Director before or on 28 September of the following registration year.	\$1,100 per day to a maximum of \$13,200 (\$5,500 per day to a maximum of \$66,000)
<i>s80QD</i> Failure to retain records for five years (Strict liability offence)	If you are registered for a particular registration year, you must keep all records to prove your introduction value for that year. These records have to be kept for a period of five years.	\$3,300 (\$16,500)

For further information on record keeping and reporting requirements, see 15.6

15.4.6 Other Offences

Table 15.4.6 Summary of miscellaneous offences and penalties under the Act

Section Offence	Guidance	Maximum penalty Individuals (Corporation)
<i>s106(5)</i> Introduction or export of chemical in contravention of a Regulation made under s106 (i.e., a Regulation that bans or restricts a chemical that is the subject of an international agreement) (Strict liability offence)	You cannot introduce (import and/or manufacture) or export an industrial chemical that has been prohibited through an international agreement.	\$33,000 (\$165,000)
<i>New provision:</i>		
<i>S100G</i> A person commits an offence if the person fails to comply with the Director's request to provide information in relation to Australia's obligations under the Rotterdam Convention	The Director's request will specify the information that is required and how it is to be provided. It will also specify the final date that the information must be provided, giving at least 14 days notice of this.	\$6,600 (\$33,000)
<i>s88(3)</i> Refusal to answer questions or produce documents requested during an inspection	You must produce documents and requested information to a NICNAS inspector to ascertain whether the Act or regulations have been complied with.	\$3,300 (\$16,500)

15.5 Transfer of Assessment Certificates and Registrations

This Section deals with the circumstances specified in the Act under which transfer of assessment certificates and registrations may occur.

15.5.1 Assessment Certificate

Under section 73 of the Act, in certain circumstances a business may arrange to transfer any assessment certificates that it may hold where:

- the holder of the assessment certificate dies, the legal personal representative of his or her estate becomes the holder of that certificate;
- the holder of the assessment certificate becomes bankrupt, the person who becomes the trustee in bankruptcy of the estate of the bankrupt becomes the holder of the certificate; and/or
- a corporate body that is being wound up, the liquidator of the body corporate becomes the holder of the certificate; and/or,
- disposes of the business to which the certificate relates and it is a term of the agreement for the disposal of the business that the person who acquires the business becomes holder of the certificate, then that person will become the holder of the certificate.

It is important for those acquiring a business to make sure that there is a specific term in the acquisition agreement that specifies transfer of NICNAS assessment certificates with the acquisition. Permits are issued for limited periods and are not eligible for transfer.

When to notify the Director of changes to your circumstances?

Under s73 of the Act, the new holder must give notice to the Director of the transfer as soon as practicable. The Director may revoke a certificate if a person fails to provide notice of a transfer.

15.5.2 Registration

The registration of an importer or manufacturer under the Registration of Introducers of Industrial Chemicals provisions in Part 3A of the Act is not transferable except under the following circumstances:

if a registered person dies, the legal personal representative of the person's estate becomes the registered person;

if a registered person becomes bankrupt, the trustee of the estate of the bankrupt becomes the registered person; and/or

if a body corporate that is registered is being wound up, the person appointed to be the liquidator of the body corporate becomes the registered person.

When to notify the Director of changes to your circumstances?

Under s80R(5) of the Act, the Director must be notified in writing as soon as practicable if any of the above circumstances occur so that the Register of Industrial Chemical Introducers can be updated.

If a registered body corporate is taken over by another person (whether registered or not) and, as a result of the takeover, the body corporate ceases to exist, the Director must be notified of the particulars of the takeover within seven days after the takeover takes effect.

Also, if a registered body corporate merges with another body corporate (whether registered or not) to form a new body corporate, the Director must be notified of the merger by the new corporate within seven days of the merger taking effect.

15.6 Record Keeping and Annual Reporting Requirements

15.6.1 General Requirements

Under Regulation 7A of the Industrial Chemicals (Notification and Assessment) Regulations 1990, the importer of a chemical must keep:

2. A written statement specifying:
 - whether the chemical is, or contains, an industrial chemical;
 - in the case of an industrial chemical – whether a submission for the inclusion of the chemical in the AICS is being dealt with;
 - whether the chemical is a new industrial chemical;
 - whether there is an assessment certificate in force in relation to the chemical; and
 - whether there is a permit in force in relation to the chemical.
2. All relevant commercial documents (within the meaning of s240 of the *Customs Act 1901*) relating to the industrial chemical(s) for at least five years after the industrial chemical is imported into Australia. This includes commercial documents that came into the person's possession or control before, on, and after the entry of the industrial chemical(s) into Australia.

Relevant commercial documents could include a commercial invoice providing a description of the goods, orders/confirmations, bills of lading/airway bills, insurance certificates, receipts for purchase of goods, illustrated descriptive material and other records provided to Customs.

15.6.2 Annual reporting and record keeping obligations for exemption categories

Section 21AA of the Act details annual reporting obligations for introducers under the exemption categories in subsections 21(4) and 21(6). Introducers have 28 days from the end of the registration year on 31 August to provide their annual report. This

means that a person who introduced industrial chemicals under the exemption categories, namely:

- chemicals introduced solely for the purpose of research, development or analysis in quantities of not more than 100 kg per annum, or
- chemicals introduced at a port or airport that remain subject to the control of Customs at the port or airport at all times and leave Australia less than 30 days after the day of introduction, or
- chemicals that are used for non-cosmetic purposes and introduced in quantities of less than 100 kg per annum, provided that they pose no unreasonable risk to human health and the environment, or
- similar chemicals in quantities of less than 100 kg for cosmetic purposes provided prescribed requirements such as packaging and labelling are met, or
- non-hazardous chemicals introduced in a cosmetic at a concentration of less than 1%,

will be required to make an annual report for chemicals introduced in the 12-month period from 1 September – 31 August, and submit it in the approved form by 28 September each year.

Introducers are required to provide an annual report to the Director, NICNAS, stating the name and volume of chemical introduced during the year.

Record keeping requirements are effective immediately, and annual reporting is required for the period 1 September 2004 to 31 August 2005 with the report due on 28 September 2005.

15.6.3 Annual reporting and record keeping obligations for low volume permits, controlled use permits and self-assessment certificates

Under section 40K, all holders of low volume and controlled use permits and self-assessment certificates are required to keep records for five years for audit purposes. Section 40L gives the Director the power to require all holders of these particular permits and certificates to provide information in or in connection with their application for, or application for renewal of, the permit or certificate that they hold, to the Director on request.

Section 40N requires all holders of these permits and certificates to make an annual report to the Director stating the name and volume of the chemical, together with any adverse effect of the chemical on occupational health and safety, public health or the environment.

The annual report must be provided on or by 28 September of each year, with the first report required under these new arrangements due on 28 September 2005. This gives

introducers 28 days from the end of the registration year on 31 August to provide the annual report.

15.7 Role of NICNAS Inspectors

NICNAS inspectors are appointed by the Director of NICNAS. They are usually NICNAS staff, but the Director also has the authority under the Act to make arrangements for certain State and Territory public servants to exercise inspectorate powers for NICNAS.

NICNAS inspectors conduct:

- (i) site visits to monitor compliance with the Act; and
- (ii) investigations into suspected and/or reported breaches of the Act.

Section 86(5) of the Act provides that searches to monitor compliance with the Act can be conducted where there are reasonable grounds for suspecting that:

- (a) an industrial chemical is being manufactured;
- (b) an industrial chemical, whether imported into Australia or manufactured in Australia, is being stored, processed or used; or
- (c) records relating to the importation, manufacturing, handling, storage, use or disposal of an industrial chemical are kept.

An inspector may enter premises for the purposes of ascertaining compliance with the Act if the inspector has the consent of the occupier of the premises. If the consent is not given, the inspector may apply to a Court for a warrant to enter the premises.

15.7.1 Conducting an Inspection

During an inspection, the Inspector(s) may, to the extent that it is reasonably necessary for ascertaining compliance or non-compliance with the Act:

- (a) search the premises;
- (b) take photographs (or make sketches) of the premises or any substance or thing at the premises;
- (c) take and keep samples of any substance at the premises;
- (d) inspect any record or document kept at the premises; and/or
- (e) remove, or make copies of, any such record or statement.

15.7.2 Search and Seizure Provisions