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Chemicals and Biotechnology Assessments Section  
Environment Standards Division  
Department of the Environment  
GPO Box 787  
Canberra ACT 2601

**By email: [chemicals.management@environment.gov.au](mailto:chemicals.management@environment.gov.au)**

Dear Chemicals and Biotechnology Assessments Section,

**Re: National Standard for Environmental Risk Management of Industrial Chemicals Discussion Paper**

Environmental Defenders Offices of Australia (**EDOA**) welcomes the opportunity to comment on the Australian Government Department of the Environment's *National Standard for Environmental Risk Management of Industrial Chemicals Discussion Paper (Discussion Paper)*.

EDOA consists of eight independently-constituted and managed community legal centres located across the State and Territories. Each EDO is dedicated to protecting the environment in the public interest. Specifically, we:

- provide legal representation and advice,
- take an active expert role in environmental law reform and policy formulation, and
- offer a significant community education program designed to facilitate public participation in environmental decision making.

We note that this Discussion Paper is part of a broader effort to reform Australia's regulation and management of potentially hazardous industrial chemicals. EDOA recently made a submission to *Consultation Paper 2 – Implementing reforms to the National Industrial Chemicals Notification and Assessment Scheme (NICNAS)*.<sup>i</sup> Similarly, a number of states are consulting on changes to state and territory legislation, such as the NSW proposed reforms to Environmentally Hazardous Chemicals Legislation.<sup>ii</sup>

EDOA strongly supports the objective of these reforms to “achieve better protection of the environment through improved management of the environmental risks posed by industrial chemicals”. Where it is consistent with this objective, EDOA also supports objectives to improve transparency, consistency and efficiency in chemical risk management. Given the Productivity Commission concerns about insufficient environmental protection, both NICNAS reforms and the proposed risk management framework should not seek to merely maintain current health and environmental protections but strengthen them.

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This submission addresses the following issues:

1. Hazard Characterisation
2. Outcomes Based Approach
  - a. Duty to protect the environment
  - b. Cumulative impacts
  - c. Product labelling
  - d. Strengthening monitoring and reporting
3. Community Engagement

## 1. Hazard Characterisation

The Discussion Paper identifies that “(t)he Productivity Commission also recognised that existing national regulatory arrangements for industrial chemicals were not sufficient to provide adequate environmental protection.” In light of this, EDOA submits that the Department of the Environment should take a precautionary approach in hazard characterisation and assignment of risk criteria. Scheduled management activities should seek to minimise any release of hazardous chemicals to the environment and maximise the reporting requirements associated with chemical management. Participants of the Sydney consultation workshop noted that there is a risk that if stronger, and therefore more costly, management processes are implemented, some industry players may start to dispose of chemicals inappropriately. Greater reporting and transparency of chemical movement should be a key response to this potential issue.

In our response to the NICNAS review, EDOA submitted that any efficiency-driven reductions in regulatory assessment requirements should be accompanied by an increase in notification requirements and improved transparency in all phases of industrial and hazardous chemical management. Further, while it may be appropriate for risk management measures to consider engineering, economic, social and political factors as suggested in the Discussion Paper,<sup>iii</sup> the primary driver for decision making should be the protection of human and environmental health. Similarly, while it may be appropriate for the Advisory Committee to consider socio-economic considerations as part of the risk management recommendations, socio-economic considerations should not change risk management recommendations where such a consideration may compromise environmental protection.

## 2. Outcomes Based Approach

One objective of the review is to “implement an outcomes-based risk management approach to encourage continued innovation in environmental protection and also enable industry to keep costs related to risk management as low as possible”. In effect this has been translated into a series of Schedules which limit disposal methods and concentrations of releases with other management measures to be added as required. EDOA submits that a number of additional features are required to strengthen this process.

### *a. Duty to Protect the Environment*

The Discussion Paper notes that “(a) person conducting or undertaking an activity with industrial chemicals should also have the primary to duty to ensure **so far as is reasonably practicable**, that the environment is not adversely impacted by the conduct”<sup>iv</sup> (our emphasis). The inclusion of the term “so far as is reasonably practicable” reduces liability for environmental impacts and introduces socio-economic considerations. This is inappropriate in light of the goal of strengthening environmental management.

The statement that by seeking to harmonise management arrangements at a national level the “state and territory governments do not need to impose specific conditions or risk management measures beyond those in the scheduling decisions”<sup>v</sup> also risks reducing environmental outcomes if the schedules do not adopt best practice or lead to a reduction in protections at a state level. For example, many NSW Environmental Protection Licences currently include a condition that “Except as may be expressly provided in any other condition of this licence, the licensee must comply with section 120 of the *Protection of the Environment Operations Act 1997*”, i.e. licence holders are prohibited from polluting waters.

#### *b. Cumulative Impacts*

EDOA is concerned that risk management focused on concentration of releases, fails to adequately consider the potential for cumulative impact in the environment. Under the proposed Hazard Characterisation (Chart 1) and Schedule Assignment of Moderate Hazard Chemicals (Chart 2) a chemical that is “harmful, toxic or very toxic to aquatic organisms” can be considered a Schedule 2 or Schedule 3 chemical under certain circumstances. This categorisation occurs in isolation of any consideration of whether multiple sources of the chemical exist in a catchment. Such a consideration is necessary to achieve the goal of improving environmental outcomes in a new management regime.<sup>vi</sup> Specific conditions like this need to be retained.

#### *c. Product Labelling*

The Discussion Paper notes that “product labelling is not considered at this stage of the reforms process but may be considered more broadly following implementation of the National Standard”. This approach is inconsistent with an outcomes based approach more broadly. EDOA acknowledges the statement that “risk management measures will also attempt to prevent harm to the environment at the point in the supply chain where the measure will be most effective.” However, given that a large number of the chemicals likely to be assessed will be used in formulations, many of which will for domestic use with no specified waste control measures, it is important to provide information on what chemicals are being used in products and what the recommended disposal mechanisms are.

#### *d. Strengthen monitoring and reporting*

EDOA strongly supports the proposal to make scheduling decisions enforceable and publicly available. EDOA supports the recommendation made at the Sydney workshop to investigate whether reporting under the National Standard could be done through the National Pollutant Inventory (NPI). This approach would have the benefit of the making data on a broader range of hazardous substances available to the community through a single regulatory and reporting mechanism. It would also ensure that data is provided in a regular and timely manner.

### **3. Community Engagement**

EDOA strongly supports the supports the intention to make scheduled decisions easily accessible and searchable, however we note that the provision of this information occurs at the end of the assessment process. All consultation on risk assessment should involve community consultation (not just decisions that the Advisory Committee decide to consult on). Noting the proposed National Standard has recommended timeframes for assessment, effective and efficiency community consultation may involve the use of community consultative committees, where appropriately qualified and representative individuals are given an opportunity to provide feedback within a committee process.

In order to ensure trust and transparency in the proposed system, the Advisory Committee, in addition to being comprised of experts from a range of scientific and policy fields, should include at least one appropriately qualified individual who is independent of Government and industry.

The Discussion Paper notes that scheduling decisions will be reviewable, but it unclear from the documents whether third party community members will have the ability to request a review of these decisions. Similarly the Decision Maker's decision about whether a request for review by the Advisory Committee is valid, should be subject to third party review.

## **Conclusion**

Thank you for considering EDOA's submission and recommendations. We would be happy to address any queries or comments regarding this submission or provide further assistance.

For further information please contact Rachel Walmsley, Policy and Law Reform Director at EDO NSW, on ph: 02 9262 6989 or email: rachel.walmsley[at]edonsw.org.au.

Yours sincerely,

**Environmental Defenders Offices of Australia**



**Rachel Walmsley**  
**Policy and Law Reform Director, EDO NSW**

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<sup>i</sup> See: EDOA *Submission on implementing reforms to the National Industrial Chemicals Notification and Assessment Scheme*, March 2016. Available at: [http://www.edonsw.org.au/pollution\\_policy](http://www.edonsw.org.au/pollution_policy).

<sup>ii</sup> See for example: *Submission on Environmentally Hazardous Chemicals Act 1985 (NSW) review 21 August 2015*. Available at: [http://www.edonsw.org.au/pollution\\_policy](http://www.edonsw.org.au/pollution_policy).

<sup>iii</sup> Discussion Paper, p 10.

<sup>iv</sup> Discussion Paper, p 32.

<sup>v</sup> Ibid.

<sup>vi</sup> EDO NSW has further explored ideas for cumulative management of air pollution in *Environmental Defender's Office (2012) Clearing the air: Opportunities for improved regulation of pollution in New South Wales, Environmental Defender's Office (NSW) Ltd, Sydney, Australia* available at [http://d3n8a8pro7vnm.cloudfront.net/edonsw/pages/280/attachments/original/1380668034/120322pollution\\_discussion\\_paper.pdf?1380668034](http://d3n8a8pro7vnm.cloudfront.net/edonsw/pages/280/attachments/original/1380668034/120322pollution_discussion_paper.pdf?1380668034).