

Dr Marion Healy
Director
National Industrial Chemicals Notification
and Assessment Scheme
GPO Box 58
SYDNEY NSW 2001

Dear Marion

I am writing in response to the two consultation notices published in the April Gazette:

- Consultation on requirement to prepare and publish summary reports; and
- Consultation on amendments to the Schedule to the Act.

ACCORD has a number of serious concerns regarding the consultation process for the proposed amendments as well as the content of the Gazette Notices. You may recall that in March 2009, we questioned the status of Gazette Notices used for consultation purposes. It is our understanding that Gazette Notices are regulatory instruments and therefore inappropriate to be used as a vehicle for consultation. We remain disappointed that NICNAS has not provided us with a direct answer. In the absence of an answer, we continue to hold our reservations regarding the appropriateness of using the Chemical Gazette as a consultative tool. Further, given that NICNAS is unable to advise us in this regard – we will take the matter up with the Attorney-General and seek his opinion regarding the legal status of Notices published in Commonwealth Gazettes.

Further – consultation via the Chemical Gazette is inconsistent with NICNAS' own approach to consultation, for example as outlined in the Draft NICNAS Engagement Strategy (the Strategy) proposed for the forthcoming Cost Recovery Impact Statement (CRIS). It is also inconsistent with the Consultation Principles in Attachment 1 of the Strategy taken from the Government's Best Practice Regulation Handbook. The use of the Chemical Gazette to publish notices fails to meet all seven principles for consultation. As active members of NICNAS' various stakeholder groups such as the IGCC and IEG, we do not understand why these proposals have not been previously discussed with industry. In the absence of any regulatory impact analysis – we do not understand how NICNAS can conclude that these proposed changes can be regarded as minor amendments.

Having considered the two Gazette Notices, ACCORD cannot support either proposal.

NICNAS contends that the proposed amendments to the *Industrial Chemical (Notification and Assessment) Act 1989* (ICNA Act) are either obsolete or minor. In the absence of any regulatory analysis, we are at a loss to understand how NICNAS can claim these changes to be minor, given the expected major consequences for industry arising from these proposed changes.

We offer specific comments on each of the Gazette Notices as follows:

- *Consultation on requirement to prepare and publish summary reports*
As users of the summary reports, we note that removing the requirement to prepare and publish the summary reports will add to industry's workload. The summary reports are of particular value and otherwise requiring stakeholders to go through entire assessment reports is inefficient – particularly when industry has already funded this through NICNAS' cost recovery arrangements. Further, though experience, we note that we cannot rely on the full functionality of the NICNAS website, for example when we checked on Wednesday 28 April 2010 we noted that not all of the links to the full reports were operational.
- *Consultation on amendments to the schedule to the Act*
These proposals are of significant concern to industry. We are particularly concerned with the proposals relating to “the ratification by Australia of the Stockholm Convention on Persistent Organic Pollutants (POPS)” and “minor amendments in accordance with international best practice”.

Firstly, as the Gazette notice notes, no work has been progressed by NICNAS since its January 2004 Gazette notice announcing that it will undertake to screen potential POPS. Since then, the Productivity Commission (PC), in its report into chemicals and plastics published in 2008, recommended that the responsibility for implementing the Rotterdam Convention should be removed from NICNAS (Rec 4.3). In its response, COAG agreed that this responsibility should be transferred to the Department of Environment, Water, Heritage and the Arts (DEWHA). We therefore believe that the NICNAS proposal is incongruous with the intent of Government and on that basis should not proceed.

We also question NICNAS' understanding of what constitutes minor amendments and the impact of these on industry operations if allowed to proceed. Some of the “minor amendments” proposed by NICNAS go against the international best practice, for example, the proposal to remove International Union of Pure and Applied Chemistry (IUPAC) chemical name from the list of acceptable chemical names.

IUPAC is an international authority in chemical nomenclature. The fact that NICNAS, the key Australian regulator of chemicals is suggesting that we no longer recognise these names is of huge concern and is further evidence of its remoteness from industry and international practices. The removal of recognising IUPAC names will also have implications for all other government agencies dealing with chemicals – as their nomenclature is based on this internationally recognised system. Further, its removal from the ICNA Act could also potentially result in a barrier to trade – this decision to amend the Act would have to be notified to the WTO – we do not believe it would receive support in this international trade fora.

In the Gazette notice NICNAS states:

“Other minor amendments are proposed, in accordance with international best practice. These include the following:

- *Enhanced requirement on information to be provided on ways in which the public at large may be exposed to the chemical;*
- *Clarification of requirements for some physical and chemical properties, including flammability; and*
- *Addition of requirement to provide information about the reaction scheme used to manufacture a polymer.”*

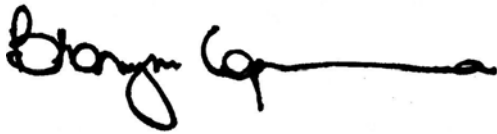
Industry does not view requiring additional information on new chemical notifications either minor or necessarily representing international best practice. Generally speaking “minor

amendments" are limited to editorial changes and should not include policy changes resulting in an additional burden on industry.

Further, given that some economies like the EU do not require polymer notification or assessment, and the USA only require notification and not assessment, we are at a loss to explain why additional requirements to the already burdensome polymer notification and assessment process imposed by NICNAS is considered to be international best practice.

As this matter is of significant concern to our members, we request your urgent attention and speedy response to our issues. If you or any of your staff require any clarification on any of the matters raised in this letter, please contact our Science and Technical Manager, Catherine Oh at coh@accord.asn.au or (02) 9281 2322.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bronwyn Capanna", with a long horizontal flourish extending to the right.

Bronwyn Capanna
Executive Director

4 May 2010