



Department of Employment and Workplace Relations

Submission to the NICNAS Existing Chemicals Program Review

PART 1 – GENERAL COMMENTS TO DISCUSSION PAPER

The discussion paper on a new model for the NICNAS Existing Chemicals Assessment Program, developed to inform the Existing Chemicals Program Review proposes a number of fundamental changes to the role of NICNAS in the management and regulation of industrial chemicals. Some of the proposals, such as Enhanced Controls, are not consistent with the historical role of NICNAS in ensuring the safe use of chemicals by making risk assessment and safety information on chemicals widely available.

It is also noted that some of the proposals in the discussion paper impact directly on policy areas of other government agencies, including the Australian Pesticides and Veterinary Medicines Authority, the Department of the Environment and Heritage and the Department of Employment and Workplace Relations (DEWR). State and territory governments have primary responsibility for the control of use of chemicals, however the proposals in the discussion paper do not appear to consider the impact on existing chemicals frameworks.

There have been a number of recent or ongoing reviews into the regulation of chemicals in Australia. The Council of Australian Governments (COAG) identified chemicals and plastics regulation as one of six priority areas requiring attention across all levels of government. However the discussion paper does not include reference to these reviews or the relevant whole of government responses. There is no discussion of how current government initiatives have been considered in the proposals.

In February this year COAG established a Ministerial Taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation. DEWR recommends that the proposals for a new model for the Existing Chemicals Assessment Program be referred to this Ministerial Taskforce. DEWR encourages the development of a new model for the Existing Chemicals Assessment Program in concordance with current whole of government national chemicals policy initiatives.

DEWR supports the role of NICNAS in ensuring the safe use of chemicals by making risk assessment and safety information on chemicals widely available. DEWR also supports the role that NICNAS risk assessments have in supporting the wide range of chemicals management legislation for the protection of human health and the environment from the adverse effects of chemicals. DEWR notes that the proposals to improve the capacity of NICNAS to undertake assessments of existing chemicals do not include any discussion of the

potential challenges in the risk assessment of nanomaterials. DEWR encourages NICNAS to consider the challenges of undertaking appropriate assessments of nanomaterials to ensure that a new model for Existing Chemicals Assessment Program will have the capacity to adequately address the risk assessment challenges.

DEWR supports the proposals to improve the ability of NICNAS to provide more effective assessment of chemicals, however, DEWR does not support the Existing Chemicals Assessment Program being extended beyond the thorough scientific assessment of industrial chemicals to include enhanced powers to control industrial chemical use.

PART 2 –COMMENTS ON SPECIFIC RECOMMENDATIONS

Proposal 3 *Screen AICS-listed chemicals for possible assessment, with priority given to non-assessed chemicals on:*

1. *the NICNAS High Volume Industrial Chemicals List (HVICL), which NICNAS compiles on a regular basis, and*
2. *the Hazardous Substances Information System (HSIS), which is the list of hazardous substances compiled by the ASCC (Office of the Australian Safety and Compensation Council).*

DEWR supports the proposal and would recommend that those chemicals in HSIS that have not been assessed against the NOHSC *Approved Criteria for Classifying Hazardous Substances* [NOHSC:1008(2004)] be prioritised for assessment by NICNAS.

Proposal 6 *Examine and introduce a nationally coordinated system of surveillance, monitoring and post-market reporting for industrial chemicals which would:*

- *increase the knowledge base on industrial chemicals in use in Australia and therefore lead to safe and sustainable use*
- *provide information to assist with risk management strategies through identification of adverse impacts*
- *provide early warning of emerging patterns of health and environmental risks, and*
- *provide assistance in development of best practice surveillance, monitoring and post-market reporting activities via a feedback mechanism.*

Accurate and representative exposure and health surveillance data is vital for informing national prevention action for occupational disease. In line with this, the Office of the Australian Safety and Compensation Council (ASCC) has commenced development of a hazard exposure surveillance project which will identify mechanisms to improve surveillance data collection. NICNAS will continue to be consulted and involved as appropriate in this project.

DEWR encourages NICNAS to liaise with the Office of the ASCC in considering how a national program for the coordination of surveillance and monitoring reporting may evolve. This could include consideration of the findings from the current exposure surveillance project and existing surveillance and monitoring requirements in the workplace chemicals regulatory framework, noting that while downstream users of industrial chemicals often fall outside the NICNAS regulatory framework, they are captured by the workplace chemicals regulatory framework.

Proposal 18 *Increase NICNAS's legislative powers to ban certain high hazard/high risk industrial chemicals to aid in the protection of the Australian people and the environment.*

Proposal 19 *Legislate to increase NICNAS's powers to control the use of industrial chemicals through measures such as:*

- *restriction of use of the chemical to certain industries and/or restriction of use to certain trained persons*
- *authorisation process to allow introduction of high hazard or high risk chemicals for certain purposes, eg. research*
- *licensing powers for chemicals*
- *chemical control orders or permits to control the use, handling or disposal of a chemical*
- *use of NICNAS Registration number as a reporting and tracking tool*
- *powers to recall supply and sale of chemicals and powers to prosecute illegal supply and sale*
- *powers to regulate articles with potential to release high risk chemicals (NICNAS currently can regulate chemicals released from articles but not articles themselves)*
- *tools to enhance improved surveillance reporting, and/or*
- *infringement notices, naming and shaming and community orders.*

The proposals to increase NICNAS's legislative powers to ban, phase-out or severely restrict the use of certain industrial chemicals is not supported by DEWR.

Control of use of chemicals resides with the state and territory governments. Within these jurisdictions there are a number of different legislative mechanisms for protecting Australian people and the environment. This includes mechanisms to ban, phase-out or severely restrict the use of certain chemicals.

DEWR recommends that a new model for the Existing Chemicals Assessment Program consider and incorporate actions consistent with any outcomes of the Ministerial Taskforce established by COAG to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation.

The Government response to the recent Report on the Taskforce on Reducing Regulatory Burdens on Business (the Banks Report) is currently being prepared. DEWR recommends that any changes to the Existing Chemicals Assessment Program, particularly additional regulation, should consider and be consistent with the Government response to the Banks report, noting that the report recommended the development of an integrated national chemicals policy, and a review of regulation in the chemicals and plastics sector.

DEWR considers that developing proposals to address deficiencies in the Existing Chemicals Assessment Program prior to, and in isolation from, agreed policy outcomes from this Ministerial Taskforce is inappropriate. DEWR recommends that matters of chemical regulation identified in the review of the Existing Chemicals Assessment Program be referred to the Ministerial Taskforce, for whole of government agreement on the appropriate mechanisms and agencies to address these matters.

Additionally, as stated in the discussion paper, NICNAS aims to ensure the safe use of chemicals by making risk assessment and safety information on chemicals and their potential occupational health and safety (OHS), public health and environmental risks widely available. This information is used to support the wide range of chemicals management legislation. The separation of the assessor (NICNAS) and legislator (the state, territory and Australian Government agencies responsible for regulating chemicals) functions of government is a fundamental component of the current industrial chemicals regulatory framework. Funding of the Existing Chemicals Assessment Program is 100% cost recovered through company

registration fees. As such, the separation and independence of the assessment, which is funded by industry, and regulatory action, is essential for transparency in Australian chemicals regulation. This separation and independence removes any potential for conflicts of interest.

In conclusion, at this time, DEWR does not support the proposals to increase NICNAS's legislative powers to ban, phase-out or severely restrict the use of certain industrial chemicals. There are existing mechanisms within the regulatory framework which can already achieve legislative bans or restrictions on the use of certain industrial chemicals. DEWR would see the role of NICNAS in this area as the provider of evidenced based recommendations in support of any such legislative action to ban, phase-out or restriction, along with an economic assessment.

Proposal 20 *Improve the uptake of NICNAS recommendations by:*

- *phrasing the recommendations in assessment reports in a manner which makes the required actions more relevant, feasible and obvious to the relevant stakeholders, ie. clear 'action' statements*
- *enhancing consultation with stakeholders during the assessment process and before recommendations are finalised to ensure recommendations can be implemented, and*
- *regularly measuring the uptake of recommendations to determine whether expected outcomes are being realised, ie. enhancement of NICNAS's performance results for implementation of recommendations.*

DEWR supports the proposal to improve the uptake of NICNAS recommendations, and agrees that enhancing consultation during the assessment process and prior to finalisation is important to ensure that NICNAS's recommendations are appropriate and relevant.

However, DEWR recommends a rigorous investigation to identify the deficiencies in NICNAS recommendations that represent barriers to implementation by the government bodies responsible for regulating industrial chemicals, to inform action in this area. Improving the phrasing of recommendations, enhancing consultation and measuring uptake appear to be simplistic measures that may not lead to increased implementation of NICNAS recommendations.

As stated in the discussion document, the information derived from NICNAS assessments is used to support the wide range of chemicals management legislation. A greater appreciation of how information from NICNAS assessments is used in the development of chemicals management legislation could enable NICNAS to provide additional information in support of the recommendations and enhance implementation. DEWR recommends that NICNAS develop and frame their recommendations to meet the needs of regulators. NICNAS recommendations should represent an evidence based solution to an identified problem, consider other options for achieving the desired objective and include an economic assessment (i.e. a Regulation Impact Statement undertaken in accordance with COAG principles) of the impact of the recommendation.