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23 June 2006

NICNAS Existing Chemicals Program Review
GPO Box 58
SYDNEY NSW 2001

Dear Dr Hartley

**Existing Chemicals Program Review – PACIA comments on the Discussion Paper
*'Promoting safer chemical use: towards better regulation of chemicals in Australia'***

PACIA welcomes the opportunity to provide comment on the NICNAS Discussion Paper *'Promoting safer chemical use: towards better regulation of chemicals in Australia'*.

PACIA is the peak body representing the plastics and chemicals sectors in Australia. The sectors have a combined annual turnover of \$24 billion and directly employ more than 81,000 Australians. The products and activities of these sectors also have a further indirect bearing on the employment of most Australians. This is due to PACIA companies being integral to commodities supply for process or components manufacture to many other Australian industries. In particular PACIA companies are involved in direct supply to the automotive, mining, agriculture, construction, furnishings, packaging, paper, and forestry and information technology industries. PACIA members represent the entire supply chain including the manufacture, processing, importation, transportation and trading of plastics and chemicals. Companies range in size from large multinationals to small one and two person operations in both sectors. Compliance with NICNAS regulatory programs, including the Existing Chemicals program, is a significant component of the work of our Member companies throughout Australia.

Many of the proposals made in the Discussion Paper are for sound, common sense improvements to the scheme and PACIA supports their prompt implementation. However, there are several specific proposals which are of concern to the chemical industry both in terms of their potential cost impact and addition to the regulatory burden and complexity on the industry.

For example, proposals in the Discussion Paper to expand NICNAS legislative powers may duplicate legislative powers which already exist under relevant state and territory legislation.

This is contrary to the Government's commitment to **reduce** the regulatory burden on the chemicals and plastics industry, and to develop a streamlined and harmonised system of national chemicals and plastics regulation. As you are aware, the Government has identified the chemicals and plastics industry as a "hot spot" for regulatory reform in the Report of the Taskforce on Reducing Regulatory Burden on Business "Rethinking Regulation" (The Banks Report).

This report and the COAG Communiqué of 10 February 2006 acknowledges that the chemicals and plastics sector is regulated by a complex web of regulation, which is in urgent need of reform. PACIA is very keen that this NICNAS review enhances these desired reforms, and does not add to the "complex web" of regulation.

PACIA is also concerned at the proposal to “*Examine and introduce..*” post market surveillance for industrial chemicals. The proposal to **introduce** such a scheme is presented in the absence of any prior assessment of the effectiveness of existing surveillance schemes, options and without cost-benefit information. While the Discussion Paper acknowledges the need to “*scope the nature, source and quality of surveillance, monitoring and post market data already collected prior to any final decision on a national reporting scheme*”, the tone of the Discussion Paper and the language used unfortunately has created an expectation with stakeholders that such a system is inevitable and **must** be introduced.

It is important to complete a thorough analysis before making any recommendation regarding the introduction of any system.

The proposal to engage downstream users is a little simplistic in its construction, and again raises an expectation without understanding the issues surrounding the resources required to establish and maintain such a system and the costs and benefits that would flow from it. The need for significant analysis before making any proposal in this regard is quite clear.

PACIA believes there is an urgent need to closely re-examine a number of the proposals in the Discussion Paper.

PACIA is committed to legislation being reviewed and developed using the COAG principles as drivers. Key principles which must be considered in this review are that legislation is

- Nationally consistent
- Risk based
- Minimum necessary to achieve outcome
- Prevent duplication
- Minimum impact
- Reduce regulation complexity

Several of the proposals in the Discussion Paper are not consistent with these COAG Principles.

PACIA has appreciated being actively involved in this review process, and we look forward to a continued role in working with NICNAS to discuss these issues and develop a more streamlined and effective existing chemicals program which will deliver better outcomes for us all.

Specific comments on each proposal are appended to this letter. If you wish to discuss any of the issues raised in the submission, please contact Stephen Holland on (02) 9410 9857 or by email at sholland@pacia.org.au

Yours sincerely

(Unsigned for electronic transmission)

Michael Catchpole
Chief Executive

Copy: Bob Graf
NICNAS Team Leader, Reform

PACIA comment - NICNAS Public Discussion Paper ‘Promoting safer chemical use: towards better regulation of chemicals in Australia’, April 2006.

1. INPUTS

Proposal 1

To ensure that the concerns of stakeholders are captured by NICNAS, improve communications by:

- developing and publishing a layperson’s guide to the Existing Chemicals Assessment Program
- improving the NICNAS website, particularly for the community
- conducting seminars and education programs
- publishing a ‘Who’s who and what do they do?’ guide for the various government agencies, eg. on the website
- developing and publishing an information flow diagram for existing chemicals
- enhancing the response to enquiries, including development and publication of a procedure for their analysis
- producing a bulletin on the progress of existing chemical assessments and issues
- publishing more topical information from international sources on the website

COMMENT - Improved communication is welcomed through these initiatives. Industry believes this should be implemented within existing NICNAS funding arrangements, including the seminars and education program, with no additional costs incurred.

Proposal 2

Increase the frequency of calls for public nominations of chemicals for assessment to, eg. every two years.

COMMENT - Given the lapse since the last public call, there is a need to establish a timetable for public nominations. This should be developed in consultation with major stakeholders.

It is noted that the extensive screening proposed in proposals 3 and 4 (below) is viewed as comprehensive and will, in any case, enable the creation of a priority listing for assessment.

Proposal 3

Screen AICS-listed chemicals for possible assessment, with priority given to nonassessed chemicals on:

- (i) the NICNAS High Volume Industrial Chemicals List (HVICL), which NICNAS compiles on a regular basis, and
- (ii) 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).

Proposal 4

For the remaining chemicals, give priority in screening to those in use with:

- carcinogenicity, mutagenicity, reproductive toxicity (CMR) hazards, and/or
- persistence, bioaccumulation and toxicity (PBT) characteristics.

Proposal 5

To develop criteria for the AICS screening process, taking into account factors such as volume, use, hazard and exposure potential. This will be done in consultation with stakeholders, and with the development and use of 'tools' such as structure-activity relationship modelling.

COMMENT - There is a need to develop appropriate criteria for the screening process, in consultation with major stakeholders. Industry welcomes the opportunity to be consulted, particularly as real life 'use' experience can be provided to NICNAS in this matter.

Industry expects that this development will fall within existing funding arrangements. To maximize internal efficiency, NICNAS must ensure the maximum use of available data from authorised sources, including overseas agencies, avoiding duplication of resources.

The proposed use of SAR modeling will require detailed analysis on an agreed methodology, including discussion and analysis of costs (eg. competency and training of personnel in this area) and benefits, prior to any consideration of this system.

Surveillance, monitoring and post-market reporting for industrial chemicals

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.

COMMENT – See also comment in covering letter on this proposal. The Discussion Paper presents this proposal in the absence of any prior assessment of the effectiveness of existing surveillance schemes, and without cost-benefit information on developing and implementing a system for surveillance, monitoring, and post market reporting for industrial chemicals.

The need for such a system is not established nor defined in the Discussion Paper; the assessment of other alternative mechanisms, such as by using established reporting through, for example, workplace chemicals legislation, is similarly not available.

However, the tone of the Discussion Paper and the language used creates the expectation with stakeholders that such a system is inevitable and must be introduced. Given the potential impact of this proposal, a detailed analysis of the problem, the issues, the options, the costs and benefits is required prior to any consideration of the proposal can be made.

Industry therefore considers a feasibility study – to scope the nature, source, and quality of surveillance and post-market data already collected - is essential, in order to fully consider the costs and benefits of this Proposal.

2. PROCESSES

Proposal 7

Develop and modify NICNAS administrative processes to filter out and redirect non-NICNAS matters and determine the level of response and/or assessment required. Publish the filtering process to enhance transparency in the decision making processes.

COMMENT - Improvements in internal administrative processes to enable a focus on relevant issues are welcomed.

Screening and selection of chemicals

Proposal 8

In consultation with stakeholders, develop scientifically-based criteria for the screening of chemicals for identification and prioritisation for assessment. Publish the screening process and screening decisions on the NICNAS website to aid in enhancing the transparency of the decision-making processes.

COMMENT - Industry welcomes the opportunity to provide input to the development of screening criteria for identification and assessment.

Proposal 9

Establish a technical working party to revise the PEC selection criteria and procedures. The revised criteria would be published on the NICNAS website and subject to further public comment and stakeholder engagement according to an agreed timetable.

COMMENT - As above, industry is pleased to participate on the Technical Working Party. It is noted the Proposal should refer to “revised DRAFT criteria”.

Enhanced information gathering processes

Proposal 10

Amend the legislation to broaden the information-gathering powers of NICNAS for all types of assessments and related processes.

See comments made in relation to Recs 18 & 19, as this related to a potential broadening of NICNAS legislative base.

Proposal 11

Engage downstream users on a chemical-specific basis, ie. identify relevant downstream users at the beginning of each chemical assessment.

COMMENT - See also comment in covering letter on this proposal. This recommendation requires a more detailed analysis of the issues, for example, how could NICNAS reach the relevant downstream users in a cost effective manner, given the supply chain length can make this problematic and therefore potentially costly to attempt. Further analysis of the feasibility and proposed methodology is required at this stage.

Simplified secondary notification

Proposal 12

Streamline the secondary notification process for existing chemicals originally assessed as new chemicals:

- using the new chemicals assessment process with its shorter timeframes, or
- using the proposed new model with its filtering and screening processes and range of assessment types for prioritisation for assessment

COMMENT - A more flexible process for Secondary Notification, producing a reduction in timelines, is welcomed. However, PACIA members are keen to understand more about the proposed new model, so they can provide practical input and comment on the detail.

Engagement and awareness

Proposal 13

Broaden the NICNAS MOU arrangement with states and territories to improve the relationship with agencies not directly represented on the MOU committee, and Clarify the roles of NICNAS and the state and territory agencies, eg. publish a 'Who's who and what do they do?' guide on the website.

Proposal 14

Clarify the roles of the various Federal agencies and existing networks, and establish the appropriate forums to ensure proper regulation of industrial chemicals at the national level.

Proposal 15

Provide more international information to stakeholders to enhance awareness of current chemical issues, with a view to enhancing the flow of information to NICNAS.

Proposal 16

Develop bilateral arrangements for existing chemicals with other major trading countries.

COMMENT – These proposals support greater engagement with other parties, and increased awareness.

Regarding Proposal 13 – MOU arrangement with states and territories: where negotiations include discussion of confidential business information, industry needs to be consulted on this process, and States and Territories need to be bound by the same confidentiality requirements as NICNAS.

Regarding Proposal 16 - Industry actively encourages the development of bilateral arrangements between Australia and its major chemical trading countries, including the European Union, the United States and countries in the Asia Pacific region. This should include, as a primary focus, the adoption of overseas Assessment Reports from agreed sources, with a view to AICS listing of chemicals under these arrangements.

OUTPUTS

New types of assessment options

Proposal 17

Develop three levels of assessment or 'product', namely:

- a product for information only
- an advisory assessment, containing advice or guidance – proposed when advice or guidance is to be included with the information, and

- assessment reports of various types – likely to contain advice and which may contain recommendations of a regulatory nature.

COMMENT - It is important to define each ‘product’ in terms of the legal implications associated with each type, clarifying that both information and guidance ‘products’ do not have any legal status.

Recommendations in the Assessment Report, given that the recommendations can be given effect in a regulatory framework (for example, at state level), these should be accompanied by a Regulatory Impact Statement, consistent with COAG Principles for regulatory development.

Enhanced controls

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.

See related comment below.

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.

COMMENT - See also comment in covering letter on this proposal. For example, proposals in the Discussion Paper to expand NICNAS legislative powers may duplicate legislative powers which already exist under relevant state and territory legislation.

This is contrary to the Government’s commitment to reduce the regulatory burden on the chemicals and plastics industry, and to develop a streamlined and harmonised system of national chemicals and plastics regulation. As you are aware, the Government has identified the chemicals and plastics industry as a ‘hot spot’ for regulatory reform in the Report of the Taskforce on Reducing Regulatory Burden on Business “Rethinking Regulation” (The Banks Report).

This report and the COAG Communiqué of 10 February 2006 acknowledges that the chemicals and plastics sector is regulated by a complex web of regulation, which is in urgent need of reform.

The proposal in the Discussion Paper raises the potential for further over-regulation of the industry, and therefore requires a much more thorough examination than currently provided in the Discussion Paper.

In several areas, including proposed new powers to ban or recall chemicals, NICNAS may duplicate existing powers under relevant state and territory health and safety legislation. It is unclear therefore whether this proposal would be accompanied by a related NICNAS recommendation that the States and Territories lose their current powers in this regard. PACIA notes however the environmental framework does not generally have the same powers at State level, and hence this issue is currently being reviewed under the EPHC banner. Any duplication of powers which already exist at state level would be contrary to the Government's commitment to reduce the regulatory burden on the chemicals and plastics industry, and to develop a streamlined and harmonised system of national chemicals and plastics regulation.

Proposals 18 and 19 suggest a considerable expansion of regulation for the industry under the NICNAS program and, as with other Recommendations, are made in the absence of preliminary or detailed regulatory impact information, necessary to consider in developing a position on these Recommendations. As such, they can be interpreted as resulting in an increased cost burden on industry.

This Recommendation requires detailed analysis of the many issues associated with amending the scope of NICNAS's powers, in line with the objectives and aims of the Banks Report and in line with the COAG Principles.

Improved uptake of recommendations

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.

COMMENT - Improved phrasing of recommendations and greater stakeholder consultation is welcomed. It is noted that, consistent with comment on Recommendation 19 – uptake of OHS related recommendations is the purview of state OHS authorities, and not NICNAS – unless it is proposed by NICNAS that those existing state powers be revoked.