

**Submission to the
NICNAS Cost Recovery Impact Statement
by the
Community Engagement Forum (CEF)**

August 2010

The Community Engagement Forum

The Community Engagement Forum was established in 2003 to provide NICNAS with equitable representation of the environment, public and worker health sectors in their role as the regulator of industrial chemicals.

Since that time the CEF has produced the Community Engagement Charter and associated Framework designed to guide all NICNAS major works and engagements. The CEF publishes a quarterly E-bulletin and provides representation to a range of internal working groups and steering committee's. It has also produced a summary of the ECR National Engagement Strategy and numerous submissions to NICNAS on major projects and reviews requiring public submissions. The CEF also provides essential feedback to NICNAS on public interest issues of concern and is the mechanism by which NICNAS provides basic participatory democracy through enhanced engagement with the "third sector" in Australian society.

The CEF is well placed to provide comment to this NICNAS CRIS for the benefit of the Australian public interest and therefore thanks NICNAS for the opportunity to be able to contribute to this important piece of regulatory work..

Foreword

The focus of this submission is to provide in principle support for the full cost recovery of the regulatory framework for the safe and sustainable use of industrial chemicals in Australia as chartered under the ICNA ACT 1989.

Of particular interest to the CEF are the aspects of this CRIS that relate to the additional stakeholder outreach, greater breadth of reform programs, extra new chemical assessment products, enhanced international engagement, and additional compliance activities that NICNAS has identified and undertaken as part of their work over the last 5 years.

Of great importance to the CEF is the aspect of this CRIS that relates to the cost of a new program of work agreed by COAG: the accelerated assessment of existing industrial chemicals (Recommendation 4.6 of the PC Report into Chemicals and Plastics Regulation, July 2008).

This project is of national and international significance to the Australian public interest and the CEF have been actively involved in this project since 2004, so as to ensure equitable representation for the environment, public and worker health.

The CEF see the EC review as a critical piece of work to ensure the reputation and integrity of Australian industrial chemicals regulation and to address the major data gaps in knowledge about the 38000 chemicals that are available for use in Australia for which little or no assessment data has been provided.

Acceleration of the ECR

It is no surprise to NICNAS or industry that the profits made by chemical corporations in Australia and their global partners are relatively large and make up a percentage of the Australian GDP. For example Orica alone reported a \$220.4 million profit for 2009.

These profits must partially be attributed to the use of chemicals on the AICS. Some 38000 of these listed chemicals have not been assessed for environmental or public health impacts. This situation poses an ethical question/dilemma for the Australian Government over the protection of the public interest, environmental protection and public health.

In 2006 NICNAS conducted a national community engagement strategy on the proposal to review the existing chemicals on the AICS. (Promoting safer chemical use: towards better regulation of chemicals in Australia) This proposal received widespread public support and was approved by the Parliamentary Secretary for Health and Ageing in December 2006.

Therefore there is a clear mandate within both the Australian Government and the broad Australian community for this project to proceed in recognition of the benefit industry has held for more than 20 years in relation to the use of existing chemicals on the AICS.

It is also clear that the chemical industry record large profits in Australia and globally and are therefore in a position to support the full cost recovery of this project through the model that COAG has proposed to accelerate this critical reform work.

Therefore the CEF supports the acceleration of the ECR through the cost mechanisms provided in this CRIS.

It is clear that industry intends to utilise “old chemicals” on the AICS, within a “carbon constrained environment” and the rapidly emerging nanotechnology industry will further place strain on regulators as the industry takes off faster than the regulatory oversight can meet those needs and expectations for consumer, environmental, worker and public health protection.

Critical volume and use data has been absent on the AICS and this has left Australian authorities without basic exposure data vital to any

credible scientific chemical assessment. Whilst this information has been provided in other jurisdictions around the world, the Australian Chemical Corporations and their representatives have been slow and reluctant to provide such information. Therefore, legislative mechanisms to ensure this information is provided to NICNAS, is essential.

Other activities

12. What factors should be considered in determining the level of reform activity NICNAS undertakes?

Human health and environmental protection are intrinsic values that underpin any chemical regulatory framework and therefore must drive the decisions around funding priority reform work, well before any reduced regulatory burdens to industry and NICNAS.

A public interest imperative should determine the level of NICNAS reform work and should be a standing agenda item for the CEF to consider when NICNAS makes these decisions. The IGCC has been tasked to consider NICNAS's work against key performance indicators and therefore utilisation of the CEF (as an equivalent advisor) should be standard practice to ensure equitable public interest consideration of NICNAS priority reform work.

In addition, emerging issues/concerns from other jurisdictions must also inform NICNAS priority reform works so as to keep in line with World's Best Practice Standards for chemical regulation and to utilise these other knowledge sources and foster good working relations.

The ECR review is clearly a broad community and government mandated project that addresses historical failures to adequately regulate existing chemicals in Australia and therefore must remain a priority project for NICNAS.

Nanotechnology is an increasing area of community concern due largely to similar issues raised by the ECR...that being a lack of basic scientific assessment data of nano-materials, use and exposure data and subsequent major data gaps in knowledge on health and environmental impacts. Therefore a review of nanotechnology regulation is critical to the

integrity of NICNAS as a scientific assessor and chemicals regulator and must be funded as a priority piece of work.

Additionally the outcomes of the evaluation of LRCC project have not been finalised, with the public interest aspect of this review project yet to be completed. This project is very important to finalise so as to ensure that the claimed benefits for not only industry but the public interest can be measured and confirmed. Without the full evaluation against public interest values the review is incomplete and cannot meet the community expectations that were identified during the scoping of the project many years ago.

Critical use information particularly from downstream users of LRCC's needs to inform this project as there are parallel issues and information needs crossing into other major NICNAS reviews (ie ECR) that would greatly benefit these other reviews and improve NICNAS's capabilities immensely. Therefore the finalisation of this project is a priority for funding.

The CEF also supports the continued reform work around hard surface disinfectants and changes to the regulation of cosmetics which are both critical public interest issues. With rising levels of chemical residues in the environment and our bodies from the use of personal care products and the growing body of scientific evidence in relation to endocrine disruption and other chronic health impacts globally, the scientific assessment of the ingredient chemicals in domestic consumer products requires enhanced regulatory oversight.

These review projects are critical to the overall integrity of NICNAS as a chemical assessment and regulatory agency as they provide fundamental information and evaluation data required for chemical assessments and also represents basic capacity building work for NICNAS that will benefit industry and the Australian public interest in the long term. The CEF supports the continued funding of these priority reviews through the cost recovery mechanisms outlined in this CRIS.

16. What is an adequate level of reserves for NICNAS to enable the organisation to continue its business?

The CEF supports an increase in the level of reserves for NICNAS so as to ensure that the agency can function independent of registration and other fee fluctuations.

18. What factors should be considered when determining the appropriate level of investment in training and new assessment technologies?

It is essential that NICNAS be funded to provide International Best Practice Regulatory Standards. Increasing knowledge around international risk assessment methodologies and best practice techniques should be guaranteed funding as this training is essential to ensure that Australia remains up to date with their global colleagues and to deliver best practice assessments and regulation for the protection of Australian human health and the environment.

Again the intrinsic values of human health and environmental protection should underpin decisions relating to investing in training, ahead of the cost impacts to industry and government.

Investing in training and new technologies also represents a basic capacity building investment for NICNAS that although requiring initial costs up front will benefit regulatory effectiveness broadly and will run across agencies and issues into the future. Therefore consideration should be given to the related benefits across different fields/works that training can provide. Is the training of value to other NICNAS works/reforms/related regulatory functions?

20. What factors should be considered when determining the level and type of outreach activities undertaken?

Engagement with stakeholders is essential to the effectiveness of chemicals regulation. The National Community Engagement Strategy for the ECR revealed the effectiveness of such stakeholder led engagement to NICNAS and provided a rare opportunity for the public to provide information about how chemicals are assessed and regulated in Australia from a coal face and grassroots perspective. OH&S and local government impacts of existing chemicals were identified through this engagement process that may not have been otherwise.

Where the regulatory impact has broad downstream use impacts (as is often the case) enhanced stakeholder engagement is essential. The benefits of outreach activities through increased capacity building and relations with down stream users cannot be overstated. The initial costs related to such work are always paid back tenfold as the benefits are long term, ongoing and form critical assessment information components for many NICNAS projects.

The benefits of outreach activities, especially involving evaluation of projects, also provides NICNAS and industry with a level of confidence and mandate in their work. It is an important part of meeting community expectations of the regulator and enshrined in the functions and work of the Community Engagement Forum. Therefore consideration of outreach activities should take guidance from the CEF as a representative and consultative body.

26. Are there any other issues with the NICNAS fees and charges you would like to see addressed in the CRIS?

While the CEF recognises the outcomes of the COAG decisions relating to the Productivity Commission Report on the Regulation of the Chemicals and Plastics Industry, a number of issues remain of serious concern to the CEF.

Best Practice Chemicals Regulation requires engaging with those stakeholders who are impacted by that regulation. Principles of openness, accountability, transparency, procedural fairness and natural justice should underpin government regulation. The industry of chemicals manufacture and formulations which provides great benefits to humanity, equally poses profound, long term and unknown risks to life on the planet. Ensuring these risks are safely managed or eliminated requires the involvement of all stakeholders both industry and community.

In this public interest context it is fundamental that NICNAS be funded to engage with all stakeholders of chemical regulation and not be limited in the functions they require to contribute to best practice industrial chemical regulation for Australia.

While the CEF supports a rigorous scientific assessment ethic for the agency, capacity building this scientific knowledge base inherently requires the participation of all stakeholders and this means adequate funds are needed to ensure NICNAS can engage with down stream users,

peak environmental, public and worker health representatives and NGO's, research institutes and academia and equivalent international authorities.

Peak industry bodies are well placed to provide such forums for their members and colleagues and do so on a regular basis. NICNAS engages in many of these forums for beneficial industry outcomes, yet there is no apparent public interest equivalent. Therefore NICNAS and industry as corporate members of a whole Australian community, have a regulatory responsibility to provide balance in the regulation of industrial chemicals through enhanced participation opportunities for the environment, public and worker health sectors of our Australian community. Funding for these objectives must be a part of the basic structure for NICNAS regulatory functions and included in any CRIS.

27. What are your views on the benefits of addressing the regulatory gap through prioritisation and undertaking this project within a reasonable period of time? Can you see any additional benefits other than those identified?

There is a clear and obvious public interest imperative to redress the historical failure of industrial chemicals regulation that allowed 38000 chemicals to be in use in Australia without sufficient if any assessment data.

The CEF supports all of the reasons outlined in the CRIS paper relating to the prioritisation of AICS.

In addition to this list the CEF would add that it has become apparent from industry perspectives that *“under a carbon constrained environment”* industry will have to revisit the use of some of those *“older chemicals on the AICS list”*.

Therefore the prioritisation of the AICS list is related to climate change impacts, global chemicals markets and emerging issues of concern such as nanotechnology, whereby old chemicals on the AICS list may get *“a new life”*

It also makes sense that this project be accelerated so as to keep Australia up to date in the rapidly changing global context of chemicals regulation particularly with Australia's international commitments to global chemicals management through SAICAM, IPCC, REACH etc and how this relates to the priority assessment of those chemicals on AICS.

The CEF has been reassured that NICNAS is providing quality assessment of overseas schemes so as to be sure they are relevant and suitable to an Australian context. The review of the Canadian model for screening existing chemicals, highlighted just how easily overseas frameworks can be out of sync with an Australian context by revealing serious OH&S and other regulatory disparities.

Industry calls for greater use of overseas assessments must be qualified with adequate considerations for an Australian context and NICNAS must be adequately funded to ensure they can provide rigorous assessments of overseas schemes.

While the CEF supports the acceleration of the prioritisation for screening AICS, we would like to ensure that the whole ECR project is implemented in its entirety as many of the recommendations are fundamentally linked to each other and provide considerable and essential capacity building values to the work of NICNAS in general and ultimately for the improved regulation of industrial chemicals in Australia.

28. What is the most equitable manner to raise funds to support prioritisation of chemicals on the inventory?

As industry has been the main beneficiary of the absence of chemical assessments for AICS, and through the increased and often unreported costs to the environment and public health sector that the absence of assessment data has caused, full cost recovery from industry is warranted and justified.

Community outrage over issues such as BPA and phthalates in children's and consumer products has highlighted some of the burdens carried by the public purse in terms of health and environmental costs through lack of chemical assessments. Some scientists would argue that the growing epidemic of childhood cancers and general cancers globally and the growth of the petro and chemical industries can be mapped to show a correlation.

Furthermore there can be no public confidence in our authority's ability to ensure the safe disposal, through the full life cycle of a chemical on AICS, without exposure data. When the Waste Control hazardous chemical facility blew up in Western Australia the health of the

surrounding community and environment was severely impacted, yet authorities could not provide adequate health and safety advice on the incineration of the mixtures of waste chemicals partly because there was no original assessment data on the chemicals stored at the site in the first place.

Similarly, the Australian environment agencies (as do all other relevant agencies) rely on chemical assessment advice from NICNAS. When it is not there a void in knowledge exists that is a burden carried and often hidden in the public health and environment sector. This can have detrimental impacts to health through exposures from industrial pollution sources, domestic products and particularly for OH&S.

Without basic assessment data on a chemicals use, volume and exposure, Australian authorities cannot ensure public health and environmental protection.