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Dear Sir/Madam

NICNAS Cost Recovery Impact Statement (CRIS) Discussion Paper

The Plastics and Chemicals Industries Association (PACIA) is the peak national body representing the chemicals and plastics industry in Australia. PACIA members include chemicals manufacturers, importers and distributors, logistics and supply chain partners, raw material suppliers, plastics fabricators and compounders, plastics and chemicals recyclers and service providers to the sector.

PACIA is pleased to provide the following submission to the review and we will welcome the opportunity to clarify or expand upon any matters raised as part of the CRIS Process. This will be critical as information on activity-based costing, other financial information, benchmarking and other information comes to hand.

Should NICNAS require any additional information from PACIA at this stage please do not hesitate to contact me on 0409 111 179.

Yours sincerely

A handwritten signature in black ink, appearing to read "G MacAlpine".

Geoff MacAlpine
Director Industry Development

PACIA submission on NICNAS Cost Recovery Impact Statement Discussion Paper

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1. Introduction

The Plastics and Chemicals Industries Association (PACIA) is the peak national body representing the chemicals and plastics industry in Australia. PACIA members include chemicals manufacturers, importers and distributors, logistics and supply chain partners, raw material suppliers, plastics fabricators and compounders, plastics and chemicals recyclers and service providers to the sector.

The chemicals and plastics industry is the third largest manufacturing industry in Australia:

- Turnover in the sector is approximately \$32.5 billion
- Industry value added is \$9.6 billion
- Wages and salaries are \$4.7 billion
- The sector directly employs approximately 85,000 people
- The sector represents between 9 and 10 per cent of total Australian manufacturing activity.

The domestic chemicals and plastics industry is not only important in its own right, it has a multiplier effect on productivity and cost saving benefits to the broader economy that would be foregone if sections of the sector moved offshore.

The industry is arguably the most diverse and broad in its reach across Australian society, environment and industry. It can be broadly categorized as follows:

- Basic Chemicals (organic and inorganic industrial chemicals, fertilisers, industrial gases, and synthetic resins)
- Specialty Chemicals (explosives, paints, rubber products, plastics, other polymers and inks)
- Consumer Chemicals (pesticides, soaps and detergents, cosmetics, personal care, medicinal and pharmaceutical)

The chemicals and plastics industry, with its supply chain relationships, R&D and skilled workforce are central to Australia's current high income economy.

The industry continues to work actively with its product and service chains to deliver solutions for the many challenges facing humanity, including climate change, water shortage, population increases, and resource constraints. It is uniquely placed to provide the solutions needed for a sustainable future.

PACIA is a significant stakeholder to this review and welcomes the opportunity to provide this submission.

2. Regulatory Principles

The PACIA Board has endorsed the following *Regulatory Principles* as the basis for PACIA's approach to regulatory proposals:

Regulatory outcomes that conform to the following **regulatory principles**:

- be science-based
- the minimum required to achieve the stated objectives;
- be efficient and effective;
- adopt a risk management approach to forming and administering regulation;
- minimise the impact on competition;
- be nationally consistent in content, implementation, interpretation and timeframes;
- be compatible with international standards and practices, where appropriate;

- not unnecessarily restrict trade;
- be developed in consultation with the groups most affected and be subject to regular review;
- be flexible, not prescriptive and be compatible with the business operating environment;
- standardise the exercise of bureaucratic discretion; and
- have a clear delineation of regulatory responsibilities and effective and transparent accountability mechanisms
- apply Regulatory Impact Analysis including clear identification of costs and benefits

3. Australian Government Cost Recovery Guidelines

PACIA broadly supports the Australian Government's Cost Recovery Guidelines¹. The Guidelines identify that the Australian Government's policy adopts the following key principles; including:

"2. Cost recovery should not be applied where it is not cost effective, where it is inconsistent with government policy objectives or where it would unduly stifle competition or industry innovation.

3. Any charges should reflect the costs of providing the product or service and should generally be imposed on a fee-for-service basis or, where efficient, as a levy.

4. Agencies should ensure that all cost recovery arrangements have clear legal authority for the imposition of charges.

5. Costs that are not directly related or integral to the provision of products or services (e.g. some policy and parliamentary servicing functions) should not be recovered. Agencies that undertake regulatory activities should generally include administration costs when determining appropriate charges.

6. Where possible, cost recovery should be undertaken on an activity (or activity group) basis rather than across the agency as a whole. Cost recovery targets on an agency-wide basis are to be discontinued. Products and services funded through the budget process form an agency's 'basic information product set' and should not be cost recovered. Commercial, additional and incremental products and services that are not funded through the budget process fall outside of an agency's 'basic product set' and may be appropriate to cost recover.

8. Portfolio Ministers should determine the most appropriate consultative mechanisms for their agencies' cost recovery arrangements, where relevant.

10. Agencies with significant cost recovery arrangements should ensure that they undertake appropriate stakeholder consultation, including with relevant departments.

11. All agencies with significant cost recovery arrangements will need to prepare Cost Recovery Impact Statements (CRIS). A CRIS will not be required where a Regulation Impact Statement (RIS) that also addresses cost recovery arrangements against these guidelines has been prepared."

¹ Commonwealth of Australia, Australian Government Cost Recovery Guidelines, Canberra, 2005

4. *Comments on the NICNAS Discussion Paper*

4.1 General

4.1.1 Compliance with the Government's Cost Recovery Guidelines

A key consideration in the review of NICNAS cost recovery arrangements is compliance with the *key principles* of the Government's Cost Recovery Guidelines (including those identified in Item 3 above).

The Discussion Paper provides no substantive analysis of NICNAS arrangements against the Government's *key principles* for cost recovery.

NICNAS is aware of industry concerns that NICNAS is seen as a barrier to innovation (introduction of new chemicals, new technologies) yet these matters are not even canvassed in the Discussion Paper. This is one of the most fundamental and critical issues for industry and indeed the Australian community – these barriers work against long term sustainability goals.

The *key principles* also identify that:

“A CRIS will not be required where a Regulation Impact Statement (RIS) that also addresses cost recovery arrangements against these guidelines has been prepared.”

Part B of the Discussion paper deals with the Accelerated Assessment of Existing Industrial Chemicals. The NICNAS facilitator at the Sydney and Melbourne CRIS stakeholder meetings identified that the direct costs to NICNAS (i.e. industry through 100% cost recovery) would be \$3m for 6 years (total \$18m). Within a week the NICNAS ISG received agenda papers identifying alternate costings of \$22.9m or \$28.5m. As PACIA has communicated to NICNAS, under current proposals, the costs for the industry component could be expected to be some multiples of the direct NICNAS costs.

NICNAS proposals for the Accelerated Assessment of Existing Industrial Chemicals have never been subject to Regulatory Impact Analysis. It is appropriate that this proposal be separated from the CRIS Review and be subject to the Government's own rigour of a regulatory impact process.

PACIA recommends that analysis of NICNAS cost recovery arrangements be undertaken against the Government's *key principles* for cost recovery and clearly communicated to stakeholders. It is the gap analysis which is the important consideration for comment by stakeholders.

4.1.2 Lack of detail hampers informed discussion

In many areas the Discussion Paper lacks sufficient information to allow informed stakeholder consideration of the matters raised. For example cross-subsidisation of new chemicals from registration funds is identified but no indication of the level of this cross-subsidisation is provided.

4.2 Comment on some specific proposals

4.2.1 Cross subsidisation

A number of proposals relate to the question of cross subsidisation; including:

- between tiers for registration
- new chemicals being subsidised by registration revenues

PACIA supports the principle that there not be cross-subsidisation between defined regulatory activities and the activity based costs should apply. PACIA contends that market intervention by regulatory schemes through cross-subsidisation is inappropriate and can distort market outcomes.

If the fees charged for Tier 1 are the activity-based costs for the registration process and provision of base information then it is noted that this group also makes no additional contribution to the NICNAS functions that are financed by the other Registration Tiers.

For the Discussion Paper question on “what services do Tier 1 registrants require from NICNAS” the answer lies with NICNAS, as a regulator, as to *what the basis for regulatory intervention with this group is*.

4.2.2 Registration of downstream users

The proposal is not supported. There has been no cost/benefit analysis of such a proposal. We understand that NICNAS has not scoped the quantum of downstream users and there has been no detailed case presented for the need of regulatory intervention.

4.2.3 Introduction of a Tier 4 for registration

The proposal is not supported. Throughout the Discussion Paper there is no analysis of the quantum of income needed for ongoing NICNAS operations. If there were to be changes to any of the Tiers then to maintain a particular level of income would necessitate changes to the other Tiers. At this time no modelling has been presented.

4.2.4 Alignment of the NICNAS registration cycle with the financial year

Companies commonly operate on either calendar year or financial year reporting. Some however operate on periods related to international reporting requirements.

Currently, the NICNAS registration cycle does not relate to any business model and hence introduces unnecessary costs.

It is recommended that if the NICNAS registration cycle is amended to a financial year that it should allow the reporting information to be based on a calendar year, financial year, or other period that a company may specify.

4.2.5 Multi-year registration cycle

PACIA has not identified any particular support for this proposal.

4.2.6 Screening fee

The proposal is not supported.

4.2.7 Electronic template rebate

This proposal remains under discussion with PACIA members. At this stage PACIA is prepared to support further consideration of this item.

4.2.8 Secondary notification preliminary review

The proposal is not supported. The advice from NICNAS is whether a regulatory application (secondary notification) is required. This type of advice from NICNAS should not be subject to additional charges.

4.2.9 Reform activities

Industry has expressed its concerns, through the Industry Government Consultative Committee, and in other fora, with regard to the time taken for NICNAS reforms, costs, efficacy, implementation issues and other matters.

There needs to be a fundamental review of NICNAS reform activities and accountability.

PACIA does not support change to this area until a review has been undertaken.

4.2.10 Office of Best Practice Regulation requirements

NICNAS needs to be in compliance with government policy. It seems incongruous that this matter is raised when the Accelerated Assessment of Existing Industrial Chemicals is progressing with no regulatory impact assessment despite the regulatory burden to industry being many tens of millions of dollars. As the Discussion Paper identifies:

“In 2006, changes were made to the government’s best practice regulation requirements which mandate a regulatory impact analysis of all regulatory and quasi-regulatory decisions. This has meant that all changes to NICNAS regulations and legislation, including those associated with reforms, require a regulatory impact analysis.

Any regulatory activity necessitates an assessment of the impact on business and individuals or the economy. A regulatory impact analysis must take into account compliance costs and competitive disadvantage to industry.”

The option for NICNAS to recover the cost of Regulatory Impact Statements from a fee-for-service model is not supported.

4.4.11 NICNAS Reserve

The NICNAS reserve has previously been defined by the Department of Health and Ageing. NICNAS has not defined a problem with the current level of reserves.

Increase of the reserve is not supported.

4.2.13 Definition of Chargeable Person

Under Item 2.2.2 above, PACIA has not supported the Registration of Downstream Users. Likewise changes to the definition of Chargeable Person are not supported.

This would significant change the scope of NICNAS and no evidence has been presented to support such a change.

4.2.14 Annual indexation of fees and charges

In the last 5 years there has not been automatic annual indexation of NICNAS fees and charges as identified in Table 1 of the Discussion Paper. The individual circumstances and requirements for funding the NICNAS Business Plan for the subsequent period have been considered by the Industry Government Consultative Committee. There is no justification for increases in NICNAS fees and charges which are outside of the funding needs to meet Business Plan requirements.

The proposal for automatic indexation is not supported.

4.2.15 Identification of fee for service activities

PACIA agrees that activities such as training should be cost-recovered.

PACIA notes Productivity Commission Recommendation 4.3 that identifies that the power for implementing the Rotterdam Convention should be removed from NICNAS.

PACIA would be pleased to work with NICNAS in considering areas where cost-recovery charges could be applied.

5. Part B Accelerated Assessment of Existing Industrial Chemicals

PACIA notes comments provided in Item 4.1 of this submission. PACIA also notes that the Discussion Paper provides no estimated quantum of costs or any details of a potential implementation plan.

No final program has been agreed.

PACIA remains supportive of a program to consider existing industrial chemicals. How that project is undertaken will have significant bearings on effectiveness and efficiency.

PACIA contends that Part B must be removed from the CRIS considerations and dealt with separately under a regulatory impact assessment process. It is not clear why NICNAS would oppose a robust and transparent process which is consistent with government policy.