



Victorian Trades Hall Council

Submission to NICNAS Cost Recovery Impact Statement Discussion Paper August 2010

Introductory comments

The Victorian Trades Hall Council (VTHC) welcomes the opportunity to provide comment to NICNAS on the discussion paper for the Cost Recovery Impact Statement released in June 2010. This submission has been prepared by Ms Renata Musolino, from the VTHC OHS Unit. While the submission is a VTHC submission, Ms Musolino represents the ACTU on the NICNAS CEF and a number of NICNAS working groups.

The VTHC is an umbrella organisation, and represents over 50 affiliated union organisations in Victoria (including some divisions of unions which have maintained separate affiliation), representing approximately 400,000 Victorian union members.

Occupational Health and Safety (OHS) and the protection of workers rights is a core function of unions. The benefit of the efforts of unions is not limited to those who are members of unions but has led to improvements in the work environment which are enjoyed by all workers. The VTHC and affiliates have significant knowledge and experience in assessing the effectiveness of the operation of both Victorian and Australian OHS and other legislation and in the improvements which need to be made to provide workers with the highest standards of OHS rights and protections.

The Australian union movement was involved in early discussions in preparation for the establishment NICNAS in 1990 after the development of the NICNAS Act in 1989. Prior to that time, there was no notification and/or assessment scheme for industrial chemicals in Australia: industry was able to introduce and manufacture whatever chemicals it needed. When the government of the day sought to introduce the scheme, there was, not surprisingly, a level of resistance from industry. It was, however, welcomed by unions and the community, which believed that Australia - its workers, the community and the environment – needed to be protected from the hazards of industrial chemicals.

NICNAS' stated mission is: *'the integrated regulation of industrial chemicals **for the protection of human health and the environment through scientific excellence and regulatory efficiency to deliver the safe and sustainable use of chemicals**'.*

In order to facilitate the introduction of the scheme, and to minimise cost to industry, the government established the AICS, and notified industry that any industrial chemical either

actually *in use* or planned to be *used or introduced* within a set time, could be listed on AICS. Any chemical listed on AICS could continue to be used, even those without an adequate assessment. Any new chemicals introduced after AICS closed would need to be notified and assessed.

For those chemicals on AICS, a review of Existing Chemicals would occur, with the naming of “Priority” Existing Chemicals - the aim of which was to eventually assess existing chemicals, doing those of most concern first. The program has, however, not been as effective as it could/should have been, with the vast majority of the chemicals on AICS remaining either unassessed or with insufficient information. This has not satisfied community, including union, expectations. A review of this part of the scheme has been done, following considerable consultation with stakeholders and the general community, but the many of the recommendations have not yet been implemented. . It is clear that the assessment of existing industrial chemicals must be accelerated, and this must be funded.

However, a number of changes were made in order to remove disincentives to industry seeking to introduce *safer chemicals* – these reforms include LRCC and polymers of low concern.

From its inception, government had the intention to eventually make the activities of NICNAS fully cost-recovered from the users of industrial chemicals – the industry. Fees and charges were initially set to recover 50 per cent of NICNAS’s costs. There were a number of changes and eventually, in 2004, the scheme moved to full cost recovery. The two forms in which cost-recovery is achieved is through fee-for-service and by a levy imposed on registered companies. This is a government decision, which has been consistent across both Labour and Coalition governments.

It is to be expected that the industry and its representatives, in their submissions to the CRIS, will argue that at least some of the activities of NICNAS, such as the review of ‘existing chemicals’, or consultation with parties other than industry, should be funded by government as these relate to the ‘public good’. However, it must be remembered that prior to and immediately post the introduction of NICNAS, industry had a ‘free run’. The responsibility of ensuring that industrial chemicals do not pose an unacceptable risk to the Australian community and environment is industry’s.

1. It is also to be expected that industry would wish to minimise its costs, including the cost of notifying and assessing new chemicals.

This submission will not address all of the questions posed in the discussion paper, as many of these are specific to industry, but comments on some of the broader questions raised both in the paper and in the stakeholder workshops.

At the stakeholder consultation forums held in July, the following were among the points made by industry:

1. the fees and charges ‘stifle’ competition and therefore newer, innovative, ‘cutting edge’ chemicals do not get introduced
2. why should Australia review/assess chemicals which have already been assessed overseas? Why doesn’t Australia simply accept these assessments?

3. why should chemicals that have been safely used in Australia for decades now require assessment?

The VTHC responds to the above points in the following way:

1. following consultation with industry and also with other 'stakeholders', government has sought to remove or at least minimise disincentives to the introduction of safe, more innovative chemicals through the LRCC reforms. It continues to monitor the effectiveness of the reforms. Of interest, however, are the preliminary findings of a review of the scheme, which include that industry has under-utilised the LRCC reforms, and that these are poorly understood.
2. Australia must assess new chemicals in order to ensure that the manner in which they are planned to be used here does not put our community nor our environment at risk. It must be remembered that in many cases the Australian environment, our and our flora and fauna, differ significantly from that of other countries. NICNAS has and is continuing to work with other countries to be able to utilise assessments done under other schemes, and has made positive progress with Canada. However, it is unreasonable for industry to expect the Australian government to blindly accept an assessment, particularly when the detail of that assessment is not made available. Even if an assessment has been done by a country industry would judge to be comparable to ours, we cannot just close our eyes and accept that assessment without investigation. NICNAS must only accept overseas assessments for chemicals if it can examine them and ensure that all aspects relevant to Australia and how that chemical is to be used, are addressed, gaps identified, and so on, to ensure that the chemicals do not pose a risk to us. This is the least that Australian citizens and our government would expect.
3. Simply because a chemical has been used for decades does not mean it is not posing a risk to workers, the community or the environment.

Part A – Periodic Review

Registration fees and charges

During the stakeholder workshop, the issue of the three tiers was raised, and there was discussion regarding the appropriateness/suitability of the tiers.

While obviously not directly affected, the VTHC makes the following comments:

1. Tier 1 is large – it may be advantageous to split this tier into two (1a and 1b) – the fees would remain as they are for lower tier, ie an administration fee only would be payable, but a charge, as well as the administration fee would be charged for the higher tier.
There could also be consideration of introducing an 'exemption' to the payment of the administration fee for those very small companies for which the total value of the chemicals introduced is less than the fee.
2. Tier 3 is also very large. The range could for this tier should be defined (ie \$5million - \$x million) and a Tier 4 be introduced to be \$x + 1 million

Question 1 – What services do Tier 1 registrants require from NICNAS?

The VTHC does not seek to answer this question – rather to point out that it is necessary for all companies to be registered with NICNAS, particularly taking into account not only inflation, but also the possibility of small companies growing.

Other Issues

Reform activities

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

The discussion paper makes the point that much of NICNAS reform activities have been, to date, funded from 'reserves of undrawn appropriations' but this has now resulted in a proposed/actual deficit.

Many of the reform activities that NICNAS has carried out have ultimately been of benefit to the industry and while the VTHC supports these activities (it is crucial that the scheme be effective and that industry comply), NICNAS also needs to ensure that it undertakes reform activities designed to ensure protection of human health and the environment. Examples of these types of reform activities include reforms to the ECR Program, AICS, and nanomaterials.

Qu 13 - If some of the reform activities are clearly specific to a particular industry sector, then it may be possible and appropriate to impose a special levy on that sector. However, arguments of 'ability to pay' must not prevent reform activities proceeding.

Question 15 - What is the best manner in which the cost of regulatory impact assessments can be recovered? Should these costs be incorporated into the fee when it relates to a fee for service activity?

Should the cost of regulatory impact analyses be included as an overhead cost and therefore funded from the registration levy?

RIS are government requirements – and it is perhaps in this area that industry may have a point in suggesting that these should be funded by government. However, given the decision of government that all NICNAS activities be fully cost-recovered, whichever mechanism is the least complex should be adopted.

Investment in training and new assessment methodologies

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

This is an important and necessary activity for NICNAS, particularly given oft repeated industry views regarding the acceptance of overseas assessments. If NICNAS is to maintain and improve its capabilities it must ensure that there is adequate investment in training and new assessment methodologies. It will pay off in the end by enabling NICNAS to be active participants in international activities and in it being able to secure on-going reciprocal arrangements with other schemes.

Resources for maintaining integrity of the Scheme

Question 19 - What factors should influence the amount of compliance effort spent on a particular activity?

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

Ensuring compliance is a crucial aspect of the success and effectiveness of any regulatory regime. There is already concern regarding the level of 'cross-subsidization' being

experienced with some aspects of the scheme and by some levels of industry. The higher the level of non-compliance, the higher level of another sort of 'cross-subsidization' – that is by complying companies of non-complying companies. Ensuring companies comply will not only improve the income to NICNAS, but enhance the effectiveness and also the public confidence in the organisation.

It must be recognised that the higher the level of awareness can be achieved, not only within the industry, but also within the general community, the higher the level of compliance will be achieved with the requirements of the scheme. Consequently, NICNAS should seek to expand both the level and type of outreach activities – and constantly evaluate how to improve the effectiveness of these activities.

Part B – Accelerated Assessment of Existing Industrial Chemicals

As noted above, this is one of the most important of NICNAS's activities from the point of view of unions and workers represented by the VTHC, and also, from our work on the NICNAS CEF, to the public health and environmental community groups.

As explained in the discussion paper, the AICS includes those chemical substances that were reported by industry to be 'in use' in Australia between 1977 – 1990, and this meant that approximately 38,000 chemicals were 'grandfathered' as 'existing chemicals'. Of these, there have been only approximately 150 assessed.

The Productivity Commission Report *Chemicals and Plastics Regulation, Research Report, 2008*, which assessed the effectiveness of chemicals and plastics regulations in addressing human health and safety and environmental issues, identified this as an area which undermined the effectiveness of a national chemical assessment regime. The PC recommended that *NICNAS should implement a program to greatly accelerate the assessment of existing chemicals* – a recommendation which is totally consistent with the outcomes of the Australia-wide public consultation. Therefore there is a clear mandate from both the Australian Government and the broad Australian community for this program to proceed. Industry has benefitted from unlimited use of existing chemicals on the AICS for 20 years since NICNAS was implemented, and decades before that – it is now time for the Australian community to be protected.

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 industry and its representatives have been slow and resistant to providing such information. Therefore, legislative mechanisms to allow this information to be provided to NICNAS, is essential.

It is urgent that this area be addressed, and NICNAS is working towards this through the preparation of a prioritising program, and the VTHC fully supports the acceleration of the ECR through appropriate cost recovery mechanisms.

It should be noted that elsewhere in the world there is also work going on to ensure that all chemicals in use are properly assessed: the Canadians have done a prioritisation of their 23,000 chemicals, and in the EU, the REACH requirements are such that, by removing the distinction between 'new' and 'existing', industry will be required to register each chemical it wishes to continue using, providing adequate information for a proper assessment. It should also be noted that there is increasing public concern with the thousands of unassessed chemicals in countries other than Australia.

The Age reprinted a *Washington Post* article 'US regulators out of the loop on chemical risk' in which it's stated that 'Under current laws, the US government has little or no information about the health risks posed by most of the 80,000 chemicals on the US market.' <http://www.theage.com.au/world/us-regulators-out-of-the-loop-on-chemical-risk-20100802-1139o.html>

Question 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?

The identified regulatory gap must be addressed in a manner that is going to provide the quickest and most reliable results. The 'gap' was identified some time ago, and for the benefit of workers, the public and the environment, NICNAS must proceed and be fully supported. This includes proceeding with the pilot studies planned - such as a screening/prioritisation of a sub-set of AICS.

In addition to the identified benefits, a major benefit for our constituency is the potential reduction of hazardous industrial chemicals in workplaces. This will lead to a reduction in the work-related diseases suffered by Australian workers.

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

The VTHC will not make any specific comments with regard to the most equitable manner in which to raise funds to support the necessary work NICNAS will have to undertake in order for it to implement the PC recommendations, other than to say that whatever mechanisms are utilised, it is important that NICNAS be adequately funded.

Any consideration of whether or not 'downstream users' are also asked to contribute should not be allowed to delay the program – there are issues to do with identification of such users, for example. In reality, this may be irrelevant, as any costs would inevitably be passed on to these companies anyway.

While industry has acknowledged that the decision to proceed with an accelerated program has been made by Government, comments have been made that the *form and manner* in which this will proceed has not been decided. Industry has raised concerns with the 'significant internal costs' that the program will generate. However, much of the information should be available to industry (while it isn't to our regulators) and thus industry needs only to secure this information from its overseas suppliers (etc).

The VTHC notes with some disbelief that included in the feedback recorded from the stakeholder consultations held in Sydney and Melbourne was the following:

'Should a grant be sought from unions?'

Industry has benefitted and profited from the on-going use of existing chemicals with little or no assessment – and workers, the community and the environment that has had to bear the risk. It is industry that has to pay. That industry should even suggest that workers themselves (as this is who funds unions) should subsidise this work is ludicrous.

Finally, the VTHC again stresses that, while NICNAS should continue to work closely with other countries, and take full advantage of any prioritisation work and assessments done, it is not in any way acceptable for Australia to simply accept assessments on the basis of say-so.