

Australian Paint Manufacturers' Federation Inc. Submission in response to the Productivity Commission's Study into Chemicals and Plastics Regulation

Summary

The Australian Paint Manufacturers' Federation (APMF) would like to draw the Commissions' attention to the following concerns the APMF has with regard to the present regulation of the Australian chemicals and plastics industry.

These concerns are related specifically to the ability of the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) in meeting the objectives set for it in the Industrial Chemicals (Notification and Assessment) Act, and expected of it by companies in the paint and ink manufacturing sector.

In this submission the APMF also draws attention to defects in the effectiveness of an alternative regulatory instrument, namely the Standard for the Uniform Scheduling of Drugs and Poisons.

Background

Since the inception of NICNAS in July 1990, the APMF has viewed NICNAS as the principal means of regulation of the introduction and use of industrial chemicals.

The establishing legislation (the Industrial Chemicals Notification and Assessment) Act 1989 lists its objectives as follows:

"Object of Act

3. *The object of this Act is to provide for a national system of notification and assessment of industrial chemicals for the purposes of:*
 - a) *aiding in the protection of the Australian people and the environment by finding out the risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of the chemicals; and*
 - b) *providing information, and making recommendations, about the chemicals to Commonwealth, State and Territory bodies with responsibilities for the regulation of industrial chemicals; and of giving effect to Australia's obligations under international agreements relating to the regulation of chemicals; and*

c) *giving effect to Australia's obligations under international agreements relating to the regulation of chemicals; and*

d) *collecting statistics in relation to the chemicals;*

being a system under which information about the properties and effects of the chemicals is obtained from importers and manufacturers of the chemicals”.

In response to this objective assessment reports are prepared which review and make recommendations in regard to:

“Contents of assessment report for an existing chemical

60 (B) An assessment report must include a summary of health, safety and environmental matters in relation to each of the following matters:

a) *the content of a Material Safety Data Sheet in respect of the chemical*

b) *the precautions and restrictions to be observed during the importation, manufacture, handling, storage, use or disposal of the chemical to protect persons exposed to the chemical;*

c) *controls to limit emissions of the chemical into the environment, including permissible concentrations in emissions of the chemical into the air or water from a manufacturing plant or other facility;*

d) *the packaging, labeling, handling or storage of the chemical;*

e) *the measures to be employed in emergencies involving the chemical to minimise hazard to persons and damage to the environment;*

f) *the uses of the chemical;*

g) *the means of disposal of the chemical;*

h) *the circumstances (if any) in which secondary notification of the chemical is required;*

i) *any prescribed matter”*

Effectiveness of NICNAS as a Regulatory Instrument

It has been the understanding of the APMF since the introduction of the low regulatory control amendments to the NICNAS legislation, that NICNAS provided, through the annotation of the Australian Inventory of Chemical Substances (AICS), an effective tool for the control of the introduction and use of industrial chemicals.

In late 2004, the APMF decided, after considerable debate, that the Federal Government should be asked to provide a legislative underpinning for an industry ban on those remaining paint products in which lead was still a component. These products were principally heavy duty protective coatings, automotive OEM and refinish paints and certain line marking paints.

The health concerns of the industry were:

- the exposure of workers in the handling of the product in the warehouse and during transportation
- exposure during the manufacturing process
- exposure during application of the finished product
- contamination of the environment during degradation of painted products

On this basis the APMF approached the then Director, NICNAS and was advised by the Director on 8 February 2005 as follows:

"I assure you of NICNAS's cooperation on this matter and am pleased to advise that I have spoken to the National Occupational Health and Safety Commission (NOHSC) and have obtained their cooperation as well".

In a subsequent letter of 8 April 2005, the Director further advised:

"I am writing as a follow up to our meeting with you and some of your members and the Australian Safety and Compensation Council on 17 March 2005. As I indicated NICNAS is supportive of the voluntary phase-out of the use of lead in industrial paints and surface coatings being initiated by APMF. All measures to reduce the exposure of workers and the public to lead are to be commended.

As discussed at the meeting, I propose that NICNAS take a formal role in the reduction strategy proposed by APMF. This will allow an effective mechanism to promote a co-regulatory approach to reduce industrial exposure to lead. Importantly it also will ensure an appropriate legislative framework to come into force at the end of the proposed voluntary phase out period(s).

To achieve this we discussed NICNAS declaring lead in industrial paints and surface coatings as a Priority Existing Chemical (PEC) and that the assessment would primarily focus on the risk reduction elements required to eliminate all non-essential uses of lead in industrial paints/surface coatings. These risk reduction elements would essentially consist of the APMF's voluntary phase out program. This approach allows us to look at all introduction of lead based industrial paints/surface coatings and hence would apply both to domestic and import activities".

In due course a lead elimination timetable was agreed between NICNAS and the APMF. Details are given in the APMF's letter to the Director NICNAS, on 6 October 2005 (annexure 'A').

The relevant lead compounds used in surface coatings and inks were gazetted as Priority Existing Chemicals in the Chemical Gazette on 3 January 2006.

In due course the PEC report was prepared and published. The report endorsed the elimination timetable agreed between NICNAS and the APMF.

The PEC report also recommended that the Australian Safety and Compensation Council amend Schedule 2 of the National Model Regulations for the Control of Workplace Hazardous Substances to include a prohibition on the use of lead containing industrial surface coatings and inks.

Objections to Use of AICS

Unfortunately in July 2007, before the PEC recommendations could be signed off, the chemical industry associations PACIA and ACCORD lodged formal objections to the AICS. In subsequent letters to the APMF explaining the reasons for their objections the associations explained their reasons as follows:

PACIA:
(Inter alia)

"The proposal is inconsistent with the recommendations of the Existing Chemicals Review - a process in which APMF, PACIA, NICNAS and other stakeholders have participated and to which all parties have provided their support. We have taken up this matter with NICNAS because we are concerned that, by attempting to use the AICS to achieve this ban, NICNAS is acting outside its policy mandate and could set a precedent for action against other chemical products that would be contrary to the interests of the whole of the chemical industry.

The proposed variation to the AICS would place yet another level of regulatory complexity on the chemicals and plastics sector just as the time when the Productivity Commission is about to begin a study into regulation of the industry. Such additional complexity is also contrary to the recommendations of the Banks Report on Rethinking Regulation”.

ACCORD:
(inter alia)

“It is the view of the ACCORD secretariat and other peak representative industry bodies that the proposal to use the AICS in the manner recommended by APMF is a significant divergence from existing NICNAS procedures and one which has major implications across the entire regulated industry. I fully concur with this view”.

Effect of Objections

The effect of the objections is that the proposed control of the introduction and use of the lead based paints concerned, through the annotation of the AICS, is unlikely to proceed.

Australian paint manufacturers will have spent hundreds of thousands of dollars reformulating their products to remove the lead salts concerned.

If the annotation does not proceed imports containing lead will, however, continue to come into the country to meet existing orders and, because they will be generally cheaper, will take market share from those companies who have taken the morally high ground to eliminate lead from their products.

Australian workers, the Australian public and the environment will suffer.

Effectiveness of the other Regulatory Instruments

It should be noted that other avenues for the control of lead in paint were explored prior to the APMF’s approach to NICNAS in February 2005.

In response to an approach by the APMF, the National Occupational Health and Safety Commission advised the APMF on 19 April 2004:

“Regulatory Instrument to the Content of Lead in Paint

As per our discussions, attempting to restrict the use of lead based paint through provisions of the Model Regulations or its Schedules is both complex and slow from a legislative perspective. A restriction of the use of lead based paint through the provisions of the Model Regulations or its Schedules may be possible, but would require agreement to develop such an instrument through NOHSC

committee process and the National Occupational Health & Safety Commission, the development of a suitable instrument, in consultation with our stakeholders (State and Territory jurisdictions, employer and employee representatives and the public, and endorsement by NOHSC's committees and Workplace Relations Ministers, prior to declaration by the National Commission. Therefore, the development of an instrument to restrict the use of lead based paint would firstly require agreement from the National Commission as a priority, followed by a protracted development and declaration process.

The development of an industry code of practice for the safe use/manufacture/disposal of lead based paint was discussed in detail. The development of such a code, containing current information on industry best practice and appropriate OHS information, whilst not being a legislative document, would have some status amongst paint users as an instrument for the safe use/manufacture/disposal of lead based paint in Australia”.

The APMF's approach to the NSW WorkCover Authority was, however rebuffed with the following comments from their Chief Executive Officer.

“While WorkCover supports this initiative, the reduction or elimination of lead in paint is an issue that requires a national approach. Further, WorkCover advocates consultation with relevant industry stakeholders prior to any industry code being introduced.

I understand that you have discussed your proposal with John Watson, WorkCover's General Manager – Occupational Health and Safety, and that Mr Watson agreed to explore options for pursuing the matter through the National Occupational Health and Safety Commission. The Commission's Chemical Standards Sub-Committee is the most appropriate mechanism for this approach”.

The latter suggestion had, of course, already been tried and rejected by the then National Occupational Health & Safety Commission.

Subsequent to the advice of the PACIA / ACCORD August 2007 objections, the APMF again contacted State Departments of Health to assess their ability to provide the controls sought by the APMF on the importation and use of lead containing industrial paints.

The legislative avenue in mind was the “Uniform Paint Standard” being Appendix I of the *Standard for the Uniform Scheduling of Drugs and Poisons*. This was the avenue originally explored in 2004. The responses from the State Governments have again confirmed the inadequacies of controlling the importation and use of paints in this manner.

The following comments are relevant:

- **Victoria: Department of Human Services**

The Manager, Drugs and Poisons, Department of Human Services reported:

“The Drugs, Poisons and Controlled Substances Act. 1981 does not adopt Appendix I Uniform Paint Standard of the Standard for the Uniform Scheduling of Drugs and Poisons”.

- **WA: Department of Health**

The Chief Pharmacist advised verbally the while sales would be controlled as a result of WA’s adoption by reference of the Uniform Paint Standard, he was “doubtful” that “use” of lead based industrial paints would be controlled.

The APMF is waiting on a written confirmation of this position.

- **SA: Drug and Alcohol Services**

The Director, Scientific Services, Public Health advised:

“Under the regulation 5 of the South Australian Controlled Substances (Poisons) Regulations 1996, the Uniform Paint Standard as modified by Schedule A of the regulations is incorporated into the regulations. There is no reference to Appendix I in Schedule A of the regulations. Any amendments to Appendix I would come into operation in South Australia based on the effective date of the SUSDP”.

The Director has also advised the APMF verbally that the regulation of industrial products through his Department is not appropriate either from a monitoring or policing perspective (telephone conversation 28 September 2007)

- **QLD Health**

The Manager, Drugs and Poisons Policy and Regulation, has advised that

“at this point the Appendix I: The Uniform Paint Standard is not picked up but will be adapted under the Health Legislation Bill in 2-3 months time”.

- **Tasmania: Department of Health and Human Services**

The Senior Pharmacist has advised:

“As the appendix is adopted by reference there would be no delay in the adoption of any amendment and any change would become effective on the recommended date”.

- **Northern Territory**

The Chief Poisons officer has stated that her Department is “*not geared up to deal with industrial products*” and that there is a need for legislation which “*has consistency over jurisdictions*”. She ventured the opinion that it might be “*better if done through NICNAS*” . (telephone conversation 2 October 2007)

Effectiveness of State Legislation

The conclusion which must be drawn from the above responses from the State Governments is that controlling the use of industrial paints through State Poisons legislation is problematic at best.

The major problems are:

- State legislation does not cover on imports
- State uptake of Appendix I of the SUSDP – the Uniform Paint Standard is inconsistent, while, in the case of Victoria, Appendix I is not called up at all.
- Enforcement of the restrictions in industrial applications would be extremely difficult under existing state poisons legislation

Need for Effective Federal Legislation

The purpose of reviewing the APMF’s experiences in attempting to introduce Australia wide restrictions on the importation, distribution and use of lead containing paints, is to illustrate the need for an overhaul of the existing regulatory controls in this area.

The APMF does not have a strong view as to whether such controls should be exercised through NICNAS and AICS annotation or through some other vehicle. However, it recognises the advantages which flow from the fact that NICNAS has established itself as the principal regulatory authority for the chemical industry and one with which paint and ink manufacturers have now established an effective working relationship.

What is essential, however, is that action be taken as soon as possible to address the concerns identified by the APMF in this submission, and that this be done in a transparent process with all stakeholders having the opportunity of providing input so that whatever regulation results is in all respects applicable and enforceable across Australia.

What is also essential is that the amended or new legislation has force in all states and territories, applies equally to imported as well as Australian made product and if all possible is adopted reciprocally by Australian and New Zealand.

The APMF notes that while the current NICNAS system may not be perfect it has been accepted by industry and the benefits of change must clearly outweigh the inconvenience of introducing a new system.

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8 October 2007

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