



The Hon Catherine King MP  
Parliamentary Secretary for Health and Ageing.  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

31 January 2011

Dear Parliamentary Secretary

### NICNAS Legislative Amendments and Existing Chemicals Program

We are writing to you with the purpose of seeking your support for:

- increasing external examination of NICNAS processes in the development of its approach to its Existing Chemicals Program; and
- confirming that proposals for the program will be subjected to regulatory impact analysis prior to implementation of enabling legislation.

Both PACIA and ACCORD support an appropriate program to accelerate the consideration of existing chemicals. In its 20 years of operation NICNAS has published only 35 Priority Existing Chemical reports<sup>1</sup>. It was therefore appropriate for the Productivity Commission's 2008 report on chemicals and plastics regulation to make recommendations to "*greatly accelerate the assessment of existing chemicals*". The key consideration is how the program is undertaken.

We have particular concerns that:

#### 1. Projected costs are escalating and there are anomalies with advice provided to the incoming government

Within the short space of months NICNAS cost estimates of proposals escalated three fold:

- Advice to Stakeholder Workshops, 16 & 19 July 2010: up to \$21 million over 7 years
- Advice to Incoming Government (for August 2010): \$10.6 million over 5 years
- Proposals at NICNAS meeting, 9 December 2010: up to \$35 million over 10 years

Details are provided at Attachment 1 and Attachment 2.

The above estimates do not include any of the direct costs incurred by industry to participate in the proposals. As you will appreciate, alternative options to achieve the objective have significantly different cost impacts and cost timings for industry and government. Based on current understanding of proposals, it is believed that industry costs could be some multiples of the NICNAS costs.

#### 2. NICNAS proposals have been developed in isolation of robust regulatory impact analysis

During 2009 and continuing into 2010 industry representatives requested costings as proposals for the Existing Chemicals Program were developing. Industry questioned whether regulatory impact assessment was required. Industry suggested that even if regulatory impact analysis was not required that it would be helpful to use this methodology to inform the development of proposals.

<sup>1</sup> <http://www.nicnas.gov.au/Publications/CAR/PEC.asp>

PACIA and ACCORD fully support the Australian Government's regulatory impact analysis (RIA) requirements, which are intended to achieve better regulation by supporting:

- **“Sound analysis.** The case for acting in response to a perceived problem, including addressing the fundamental question of whether regulatory action is required, needs to be demonstrated. The analysis should also outline the desired objective of the response, a range of alternative options to achieve the objective, and an assessment of the impact of each option, and should be informed by effective consultation.
- **Informed decision making.** To help decision makers understand the implications of options for achieving the government's objectives, they should be informed about the likely impacts of their decision, at the time they are making that decision.
- **Transparency.** The information on which government regulatory decisions are based should be publicly available”

<http://www.finance.gov.au/obpr/proposal/gov-requirements.html>

The NICNAS proposals for its Existing Chemicals Program have not had the benefit of robust regulatory impact analysis.

We contend that the Existing Chemicals legislative amendments scheduled to be submitted to the autumn 2011 Parliamentary Session contain enabling provisions for the conduct of the NICNAS Existing Chemicals Program. As such, the purposes to which they will be used should be subject to regulatory impact analysis.

Details on best practice regulation and regulatory impact analysis requirements are provided at Attachment 3. Based on these requirements we maintain that the NICNAS proposals for *amendments to the Industrial Chemicals (Notification and Assessment) Act 1989* are neither minor, nor do they meet the description of “*minor changes*” as they do not represent “*very small initial one-off cost to business and no ongoing costs*”.

To provide some context for these considerations, we offer some broad background information:

- More than 93% of NICNAS registered companies are small to micro-businesses with turnovers of less than \$5million/year;
- On a world scale Australia is a small market for industrial chemicals with 0.6% of the global trade in chemicals;
- Australia is a net importer of chemicals with the ratio of imports to exports approaching 4 to1;
- Australian data updated by NICNAS in 2006 identified that there are 817 chemicals with annual volumes greater than 20 tonnes. By way of visualisation – 20 tonnes of bulk white sugar (with a bulk density of 880kg/m<sup>3</sup>) occupies a volume of 3metres x 3metres x 2.5metres;
- The vast majority of chemicals on the NICNAS Australian Inventory of Chemical Substances are small volume substances.

We strongly believe that proper consideration of the proposals for *amendments to the Act* must be informed through a regulatory impact analysis process.

### 3. Policy decisions?

At various times enquires have been made about the status of government policy decisions on:

- NICNAS implementation of Productivity Commission Recommendation 4.6;

- funding of the Existing Chemicals Program;
- agreement on the approach proposed by NICNAS; and
- assessment/confirmation that the proposed NICNAS approach delivers a *net benefit*.

It is not clear to us what government policy decisions have been made with regard these matters. Regrettably the available information has been again somewhat contradictory, for example, the *Advice to the Incoming Government* for August 2010 states that Ministers will need to consider the policy position in relation to recovering the cost of an accelerated NICNAS existing chemicals review program, in consultation with the Prime Minister. (This was also reiterated in separate communication from the Secretary of the Department of Health and Ageing in a letter to ACCORD dated 31 August 2010.) However the statement in the recent NICNAS Annual Report 2009/2010 (page 19) states:

*"In November 2008, COAG noted the Commonwealth response to this PC recommendation that budget funding of this activity is not consistent with current cost recovery policy for NICNAS. Therefore, the government decided to cost recover this activity and agreed to the use of the NICNAS Cost Recovery Impact Statement to develop a mechanism to recover the cost of undertaking this work."*

Your clarification and advice would be therefore most welcome.

It is important to restate that both PACIA and ACCORD support an appropriate program to accelerate the consideration of existing chemicals. How the program is conducted will have critical impact on regulatory efficiency and effectiveness.

#### **4. There are significant international developments that should guide the NICNAS approach to its existing chemicals program**

The review of the NICNAS Existing Chemicals Program commenced in 2003 and culminated in a final report in November 2006. The final report pre-dated significant international developments on management of existing chemicals, particularly in Europe and North America.

The major economies with chemical inventories include Europe, Canada and the USA. Each has established formal programs to consider the prioritisation and assessment of existing chemicals.

The concept of use of information from international systems was flagged in an April 2006 NICNAS public discussion paper on a new model for the NICNAS Existing Chemicals Program:

*"Further, the refocus of overseas assessment programs such as that occurring in the European Union will see rapid growth of available information on existing chemicals. The challenge will be how best to use this information to maximise efficiencies, reduce duplication and provide chemical safety information in a form that will be useful to stakeholders. Given these factors, the Existing Chemicals Assessment Program will need to find ways of sharing and integrating information relevant for chemicals management and ensuring its accessibility, dissemination and usefulness for different users."*<sup>2</sup>  
(underlining added)

With regard to the Productivity Commission recommendation on recognition of other schemes, NICNAS has not reported that it has undertaken such a review.

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<sup>2</sup> NICNAS (2006) Promoting safer chemical use: towards better regulation of chemicals in Australia. A discussion paper for public engagement on a new model for the NICNAS Existing Chemicals Assessment Program

The current NICNAS existing chemicals proposals heavily focus on "prioritisation" rather than "assessment". Prioritisation is not an outcome in itself that leads to improvement in health, safety or protection of the environment. Prioritisation is already occurring through the major international regulatory processes with lists such as those under the European and North American schemes.

Major international processes such as the European and North American processes have defined timelines for generation of data and information. Such data and information will be generated for the major markets. NICNAS therefore needs to align the timing of its activities with these international programs in specified economies to be able to harvest the benefits of new data and information that will benefit Australian assessment activities.

The greatest public benefit would appear to arise from adopting the outcomes of the major international programs for consideration in Australia – for instance, if the European Union has identified a substance of very high concern for authorisation then it would be reasonable to assume that the substance should be considered for assessment in Australia.

If NICNAS were not to undertake a "prioritisation" program of the type currently proposed it could still establish a candidate list of substances for assessment based on the issues identified in the international programs. Such an approach would enable an appropriate focus on assessment of existing chemicals.

We believe that this example of a different way of achieving the objective highlights the need for robust regulatory impact analysis.

Parliamentary Secretary, we believe that the ICNA Act's objective of aiding the protection of Australian people and the environment from risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of industrial chemicals would be best served through the implementation of an Existing Chemicals Program that is both efficient and effective. In this way we believe that we share common goals with the government.

We look forward to your advice on the important matters raised in this letter, and in particular your support for:

- increasing external examination of NICNAS processes in the development of its approach to its Existing Chemicals Program; and
- confirming that proposals for the program will be subjected to regulatory impact analysis prior to implementation of enabling legislation.

As we are aware that your colleague Senator The Hon Nick Sherry has an interest in this matter we have provided him with a copy of this correspondence.

PACIA and ACCORD would value the opportunity to meet with you to discuss these important matters at your earliest convenience.

Yours sincerely

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**Escalating costs and anomalies with advice provided to the incoming government**

The Department of Health and Ageing's Incoming Government Briefs<sup>3</sup> (Attachment 2) identified that:

*"NICNAS estimated the cost of recommendation 4.6 to be recovered from industry at \$10.6million over 5 years."*

Prior to the calling of the 2010 Federal Election on 17 July 2010, NICNAS conducted a Stakeholder Workshop in Melbourne on 16 July 2010. Post the Federal Election announcement, a similar workshop was conducted in Sydney on 19 July 2010. The NICNAS report of the Workshops states:

*"NICNAS costing at \$3,000,000 per annum over 6-7 years viewed as a concern, but internal costs to industry perceived to be the higher amount."*

The following scenarios were presented at a NICNAS meeting on 9 December 2010

NICNAS Existing Chemicals Program Estimates of NICNAS Costs for Options A, B and C	Option A	Option B	Option C
Cost of additional NICNAS resources required per annum over 7 years	3.2 million	3.8 million	4.6 million
Cost of additional NICNAS resources required per annum over 10 years	2.5 million	2.9 million	3.5 million

<sup>3</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/min-briefs>

## Best practice regulation and regulatory impact analysis requirements

With regard to best practice regulation making we note the following:

*"Regulations are essential for the proper functioning of society and the economy. The challenge for Government is to deliver effective and efficient regulation – regulation that is effective in addressing an identified problem and efficient in terms of delivering benefits while minimising the costs to the economy.*

*To help deliver better regulation both the Australian Government and the Council of Australian Governments (COAG) have best practice regulation making processes in place. Central to both processes is the preparation of a Regulation Impact Statement (RIS), which documents the regulatory impact analysis and the process undertaken."*

<http://www.finance.gov.au/obpr/proposal/index.html>

*"A RIS is mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements. This includes amendments to existing regulation and the rolling over of sunseting regulation."*

*Australian Government 2010, Best Practice Regulation Handbook, Canberra, p.8*

*"Regulation is any 'rule' endorsed by government where there is an expectation of compliance. It includes primary legislation and legislative instruments (both disallowable and non-disallowable) and international treaties. It also comprises other means by which governments influence businesses and the not-for-profit sector to comply but that do not form part of explicit government regulation (for example, industry codes of practice, guidance notes, industry-government agreements and accreditation schemes)."*

*Australian Government 2010, Best Practice Regulation Handbook, Canberra, p.9*

*'Minor' changes refer to those changes that do not substantially alter the existing regulatory arrangements for businesses or not-for-profit organisations, such as where there would be a very small initial one-off cost to business and no ongoing costs. 'Machinery' changes refer to consequential changes in regulation that are required as a result of a substantive regulatory decision, and for which there is limited discretion available to the decision maker.*

*Australian Government 2010, Best Practice Regulation Handbook, Canberra, p.10*

Copy to:

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