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NICNAS Review

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NICNAS Review Team

### **NATIONAL INDUSTRY CHEMICALS NOTIFICATION AND ASSESSMENT SCHEME (NICNAS) REFORMS: CONSULTATION PAPER 3**

The Australian Paint Manufacturers' Federation (APMF) appreciates the opportunity to comment on Consultation Paper 3 (CP3). The APMF represents the surface coatings industry in Australia. Surface coating manufacturers turn over approximately \$2.5 billion per annum and around 90% of all surface coatings used in Australia are currently manufactured here.

Rebalancing the regulatory requirements of assessment efforts to be more proportionate to the risks should encourage innovation and investment. A reduced regulatory burden (and associated cost) will also encourage industry to introduce newer and safer chemicals.

The APMF supports all of the key aims of the reform package, which are stated as follows:

- rebalancing pre and post-market regulatory requirements to match the indicative risk profile of a new chemical;
- streamlining the existing risk assessment process for new and existing industrial chemicals;
- the greater utilisation of international assessment materials; and
- the use of more appropriate compliance tools.

Our comments on the key issues dealt with by CP3 now follow:

- **Relationship between NICNAS and Risk Managers**

The APMF acknowledges that Australia is best served by a single national agency where chemical hazard and risk assessments can be performed by a dedicated team of technical experts.

The key advantage to this approach is that it avoids duplication of regulatory effort.

It is also noted that the NICNAS Reforms are being implemented in a way that is harmonised with other relevant reform activities.

The proposed reforms will also give NICNAS the ability to place conditions on the use of industrial chemicals in circumstances where other regulators are unable to impose the required controls through their respective legislative frameworks. *"For example, under the reforms, NICNAS will have the power to refuse to issue a certificate or remove a chemical from the AICS where risk managers have advised that the risks cannot be managed through their frameworks. NICNAS will also have the power to apply controls such as introduction volumes, sites of use and the permitted duration of introduction (duration of the certificate) where other regulators cannot impose controls to adequately mitigate an identified risk"*.

Whilst the concept of NICNAS imposing controls as detailed in the paper may be warranted and necessary it would be expected that NICNAS would consult with industry before applying any new controls or measures.

- **Commercial-In-Confidence**

Consultation with our members indicates that the confidential section of the AICS be retained, in preference to adopting the use of masked names to protect chemical identity approved as confidential commercial information.

- **Use of International Information and Assessments**

The APMF agrees that accepted international pathways for the adoption of international risk assessment should include:

- New Substance assessments conducted under the Canadian Environmental Protection Act (CEPA) by Environment and Climate Change Canada/Health Canada;
- Opinions from the European Scientific Committee on Consumer Safety (SCCS) that have been subsequently adopted by the European Commission;
- Risk assessments conducted under the OECD Parallel Process in which Australia has been involved as a secondary jurisdiction;
- Risk assessments conducted by an EU Member State Authority or ECHA, as reviewed by the ECHA Risk Assessment Committee, in the context of restrictions under the REACH Regulation; and
- Risk assessments conducted by applicants for authorisation, as reviewed by the ECHA Risk Assessment Committee, in the context of authorisation under the REACH Regulation.

The approach outlined for the future adoption of other international risk assessments (by use of legislative instruments, rather than having these outlined/prescribed in primary legislation) is supported. A clear example is a reformed US EPA.

As suggested in CP3, the APMF supports NICNAS to build on its current bilateral relationship with the US EPA to further explore the extent to which assessment materials from US EPA could be adopted by NICNAS in the future.

- **Nanotechnology**

A concern for our industry would be where emerging terminology for nanotechnology standards has the potential to integrate common, everyday paint and coatings products under the umbrella of "nanomaterials", resulting in unwarranted regulations requiring continuous reporting, labelling and even restrictions on end-use applications. This outcome can be avoided by providing sound, science-based recommendations to the standards development community.

The APMF supports the position that NICNAS continues to regulate industrial nanomaterials within the existing framework operational for conventional industrial chemicals. This approach is consistent with the recent OECD recommendation that its "member countries apply existing international and national chemical regulatory frameworks to manage the risks associated with manufactured nanomaterials".

- **Proposed Compliance Tools**

The APMF supports the continued use of the current range of NICNAS compliance activities. CP3 also highlights using the *Regulatory Power (Standard Provisions) Act 2014* as the template for the future NICNAS compliance framework. New compliance measures, including the use of civil penalties, infringement notices and enforceable undertakings will provide NICNAS with a graduated response to non-compliance.

This proportionate approach to non-compliance is well suited to the proposed new risk-based framework for the regulation of industrial chemicals.

- **Suggestions for Early Implementation**

Every effort should be made to introduce the early harvest reforms identified from the stakeholders during Consultation Paper 1. Our priorities would be as follows:

- Exempt PLCs from notification;
- Change the PLC criteria (to increase the number of polymers that are exempt from notification);
- Simplify the annual reporting obligations for new chemicals exempt from notification;
- Change the definition of a new synthetic polymer to more closely align with international approaches;
- Shorten timeframes for assessing new chemicals under the Approved Foreign Scheme categories;
- Remove the requirement to provide annual reports for permits and self-assessed assessment certificates;
- Remove the requirement to provide a final statement of the value of relevant industrial chemicals actually introduced in a year.

The APMF acknowledges that if any of these early reforms are agreed by Government, many of them would require changes to legislation and be dependent on the passing of amendments to the current ICNA Act and/or the making of amendments to delegated legislation.

- **Transition Arrangements**

The APMF agrees that the initial six month transition period was insufficient and supports the proposed 12-month period of time to achieve transition to the new arrangements.

The APMF also supports the proposal that companies currently introducing chemicals, under exemptions or permits, be given a 12-month period (to 1 July 2019) to re-categorise the chemicals, as per page 59 of the CP3.

The surface coating sector is also one of the largest users of NICNAS assessment services. Hence, the APMF is committed to supporting NICNAS to achieve the best reform package possible.

A rebalanced and more streamlined Scheme, supported by greater use of appropriate international assessments, will enable Australia to be more innovative and thus be able to retain industry and jobs in Australia, whilst also ensuring that our workers, the public and our unique environment are protected.

Should you require any additional information or clarification, please contact me direct on: (02) 9876-1411.

Yours sincerely

A handwritten signature in black ink that reads "R Phillips". The signature is written in a cursive, slightly stylized font.

Richard Phillips  
Executive Director