



Advocate for the Consumer, Cosmetic,
Hygiene and Specialty Products Industry

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Dear Marion

ACCORD provides the following comments in relation to the NICNAS Cost Recovery Impact Statement Discussion Paper (Discussion Paper).

ACCORD Australasia is the peak national industry association representing the manufacturers and marketers of formulated consumer, cosmetic, hygiene and specialty products, their raw material suppliers, and service providers. ACCORD members market fast-moving consumer and commercial goods primarily in Australia and New Zealand.

With an estimated annual retail product sales in the vicinity of \$10 billion, the formulated consumer, cosmetic, hygiene and specialty products industry is a significant part of the Australian economy. We directly contribute more than 14,000 full time equivalents jobs. Our industry has more than 50 manufacturing operations throughout Australia and member companies include large global consumer product manufacturers as well as small dynamic Australian-owned businesses. A current list of ACCORD member companies is provided at *Attachment 1*.

Our response is in two parts which includes general comments on NICNAS' overall performance in relation to its cost recovery operations and then specific responses to the questions posed by NICNAS which are of relevance to ACCORD members. These are found at *Attachment 2*.

Over all, ACCORD is disappointed with the Discussion Paper in that it does not contain enough information, particularly regarding NICNAS' current range of activities and the costs associated with those activities upon which to make informed comments in relation to the questions posed by NICNAS.

We trust however, that our comments will be of use in framing the draft CRIS and we look forward to its consideration at the next stage of the consultation process.

The contact officer in this instance is Dusanka Sabic, ACCORD's Director of Regulatory Reform. Please direct any questions or issues which require clarification to Ms Sabic.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bronwyn Capanna", with a long horizontal flourish extending to the right.

Bronwyn Capanna
Executive Director

04 August 2010

Members

Consumer, Cosmetic and Personal Care

Advanced Skin Technology Pty Ltd
Alberto Culver Australia
Amway of Australia Pty Ltd
Apisant Pty Ltd
AVON Products Pty Limited
Beiersdorf Australia Ltd
BrandPoint Pty Ltd
Chanel Australia
Clorox Australia Pty Ltd
Colgate-Palmolive Pty Ltd
Combe Asia-Pacific Pty Ltd
Cosmax Prestige Brands Australia Pty Ltd
Coty Australia Pty Limited
De Lorenzo Hair & Cosmetic Research Pty Ltd
Elizabeth Arden Australia
Emeis Cosmetics Pty Ltd
Estée Lauder Australia
Frostbland Pty Ltd
GlaxoSmithKline Consumer Healthcare
Helios Health & Beauty Pty Ltd
Johnson & Johnson Pacific
Kao (Australia) Marketing Pty Ltd
Kao Brands Australia Pty Ltd
Keune Australia
Kevin Murphy Business Services P/L
Kimberly Clark Australia
KPSS Australia Pty Ltd
La Biosthetique Australia
La Prairie Group
L'Oreal Australia Pty Ltd
LVMH Perfumes and Cosmetics
Mary Kay Cosmetics Pty Ltd
Natural Australian Kulture Pty Ltd
Nutrimetics Australia
NYX Pty Ltd
Procter & Gamble Australia Pty Ltd
PZ Cussons Australia Pty Ltd
Reckitt Benckiser
Revlon Australia
Sabre Corporation Pty Ltd
Scental Pacific Pty Ltd
Shiseido (Australia) Pty Ltd
The Heat Group Pty Ltd
The Purist Company Pty Ltd
Three Six Five Pty Ltd
Trimex Pty Ltd
True Solutions International Pty Limited
Ultraceuticals
Unilever Australasia

Hygiene and Specialty Products

Albright & Wilson (Aust) Ltd
Applied Australia Pty Ltd
BP Castrol Australia Pty Ltd
Callington Haven Pty Ltd
Campbell Brothers Limited
Castle Chemicals Pty Ltd
Chemetall (Australasia) Pty Ltd
Clariant (Australia) Pty Ltd
Cleveland Cleaning Supplies Pty Ltd
Deb Australia Pty Ltd
Dominant (Australia) Pty Ltd
Ecolab Pty Limited
Huntsman Corporation Australia Pty Ltd
Jalco Group Pty Limited
Lab 6 Pty Ltd
Novozymes Australia Pty Ltd
Nowra Chemical Manufacturers Pty Ltd
Peerless JAL Pty Ltd
Recochem Inc
Rohm and Haas Australia Pty Ltd
Solvay Interox Pty Ltd
Sonitron Australasia Pty Ltd
Sopura Australia Pty Ltd
Tasman Chemicals Pty Ltd
Thor Specialties Pty Limited
True Blue Chemicals Pty Ltd
Univar Australia Pty Ltd
Whiteley Corporation Pty Ltd

Associate Members**Equipment and Packaging Suppliers**

HydroNova Australia NZ Pty Ltd

Megara (Aust.) Pty Ltd

SCHÜTZ DSL (Australia) Pty Ltd

Graphic Design and Creative

Ident Pty Ltd

Legal and Business Management

FCB Lawyers

Middletons Lawyers

TressCox Lawyers

Logistics

ParcelDirect Group

Star Track Express Pty Ltd

Regulatory and Technical Consultants

Archer Emery & Associates

Competitive Advantage

Engel Hellyer & Partners Pty Ltd

Robert Forbes & Associates

Sue Akeroyd & Associates

Toxikos Pty Ltd

Specialist Laboratories and Testing

ams Laboratories

Dermatest Pty Ltd

Silliker Australia Pty Ltd

July 2010

A. General comments

ACCORD notes the four objectives stated in the Discussion Paper. ACCORD believes that the primary objective of any assessment of NICNAS' cost recovery arrangements should be to assess their conformance to the Australian Government's Cost Recovery Guidelines (July 2005). Secondary considerations include the efficiency and effectiveness of NICNAS operations regarding its service delivery against costs charged. In this sense the Discussion Paper fails. It does not provide any costs upon which to make an objective assessment as to whether NICNAS is an efficient and effective provider of services, and whether these services are value for money based on the costs required to deliver them. Activity-based costing data for all services should have been provided as a basis for stakeholder consideration and discussion.

While a major focus of the Discussion Paper is to review the scope of NICNAS activities that have changed significantly since the last CRIS, unfortunately there is very little data to identify which specific activities and the costs of these activities to make a judgement regarding the significance of the change. Data are required to demonstrate time spent on these activities and costs associated with these activities.

As far as ACCORD is aware, the only area which has activity-based costing available is in the new chemical assessment area. Data from NICNAS' Annual Reports indicates that there is a 50% reduction in activity from the last CRIS in new chemical assessment activity. ACCORD has not seen any corresponding decrease in staff numbers to reflect this decreased activity. At the stakeholder discussion in Sydney on 19 July, NICNAS indicated that the level of cross subsidisation for new chemical activities is approximately 25%. This level of cross subsidisation appears to be quite high and is of concern as it would appear to be contrary to the Government's Cost Recovery Guidelines.

Further, from data available in Annual Reports and as outlined in Table 1 of our submission (p4), while NICNAS' new chemical activity has decreased considerably, NICNAS' overall staffing and revenue levels have increased by approximately one third from that of the last CRIS' reporting period (2004-05) to the current period (2008-09), i.e. from 42 to 60 and \$6.9M to \$8.1M respectively.

It also appears somewhat disingenuous to state that the objectives of the CRIS are inter alia:

- to obtain a clear understanding of how NICNAS activities have changed since the last CRIS in 2004-05; and
- prioritise the major issues of stakeholder concern regarding efficiency and effectiveness of NICNAS operations

and then, prior to the finalisation of the consultation process, put out a new NICNAS organisational structure. A new organisational structure would surely be developed following analysis of comments to the Discussion Paper and the draft CRIS which would identify the costs of any change and how these are to be met under any new funding arrangements.

The blanket statement *It is government policy that all NICNAS activities are cost recovered* is of concern. Government cost recovery guidelines allow that costs which are not directly related or integral to the provision of agency products or services, such as policy or government business activities should not be cost recovered. The statement regarding NICNAS' cost recovery implies that regardless of this government policy, all NICNAS costs must be recovered – presumably from industry and not from government. The statement should simply be reworded to *Currently all NICNAS activities are cost recovered*.

Further, the role of a CRIS is to identify all areas of activity including those which may be deemed as government business and/or in the public interest to make an assessment as to whether the level of funding for these activities is material to NICNAS' overall budget position. We would therefore expect to see in the draft CRIS not only listed, but costed as well, all NICNAS' activities including those regarded as government business and those undertaken in the public interest.

NICNAS' enhanced international engagement is also of significant concern to industry in that this activity was previously recognised as a Government Business activity and budget funded. In 2003-04 NICNAS received \$325K for a range of government activities, the majority of which were related to NICNAS' international activities representing the Australian Government on a range of bodies such as the OECD, WHO and UN. NICNAS appears to have extended its international activities with no apparent accountability or constraint.

Industry seemingly must now pay for all of NICNAS' international activities whether the regulated sector is the beneficiary or not – in many instances the Australian Government is the beneficiary and to be consistent with its own cost recovery guidelines, therefore should pay for these activities.

We are also unsure as to the degree of additional compliance activities NICNAS undertakes and as to why this would be an issue. The introduction of Tier 1 registrants has almost doubled NICNAS' income from \$4.96M in 2003-04 (pre- Tier 1 registrations) to \$8.11M in 2008-09.

Compliance is directly related to the administration of the ICNA Act and the inclusion of Tier 1 registrants and the introduction of a fee has provided sufficient income to cover increased compliance and outreach activities to ensure that Tier 1 registrants fully understand their obligations under the Act. Tier 1 registration fees are meant to cover the administrative costs of placing new registrants on the NICNAS Company Register and maintain the Tier 1 registration process. As indicated above, it is now apparent that Tier 1 registration fees have provided a windfall to NICNAS. We are therefore at a loss to understand without data what these additional NICNAS compliance activities are and why there would be any concern regarding the funding of these activities.

Similarly with outreach activities, since NICNAS recovers the costs of many of these activities, ACCORD is not sure why this would be raised as an issue? If it is an issue, then where is the data to demonstrate this?

NICNAS has consistently run at a budget surplus since the last CRIS with the last 3 years showing a retained surplus of around \$3M/per annum. From the publicly available figures, there appears to be a significant level of over recovery - some of which should now be returned to industry.

Efficiency and effectiveness of NICNAS operations

NICNAS by its own admission has seen a significant reduction in new chemical assessment activity. The 2008-09 Annual Report notes that *NICNAS issued 153 assessment certificates and published assessment reports for each, a decrease of 22 per cent over last year. A total of 67 new chemical permits were issued, down 45 per cent on the last year (p32).*

The data in Table 1 indicates there is a consistent downward trend in new chemical activity compared to the level of activity covered in the previous CRIS for 2001 to 2004. The level of new chemical activity has decreased with new chemical permits at less than 50 per cent of the 2003-04 figure of 151 compared to the 67 in 2008-09. At 30 June 2004 there were 36 staff employed.

It is difficult to assess the level of existing chemicals activity as available data is not presented in a format which makes it possible to compare year on year activity. Certainly from information on NICNAS' website – outputs in this area have not been significant over recent years with only 1 Priority Existing Chemicals Report published in 2009 and 2010, nothing for 2008 and only one each in 2004, 2005 and 2006. The last Existing Chemicals Information sheet was placed on the NICNAS website in June 2009. The low level of activity indicates that this is an area of work which could be subject to a competitive tendering process.

Yet NICNAS staffing levels have increased significantly from 36 in 2003-04 which appears to be NICNAS' most productive year to 60 in 2008-09 which appears to have been NICNAS' least productive year. The concern in the Government Cost Recovery Guidelines that a levy does not produce efficiencies to the same extent as activity-based costs is certainly borne out by NICNAS. Since the introduction of the registration levy for Tier 1, NICNAS' revenue and staffing has increased, but its outputs based on Annual Reports and Operational Plans appears to have significantly decreased.

Table 1 Comparison of data from last CRIS to current CRIS reporting period

NICNAS Activity from 2001-02 to 2004-05 – based on data in respective Annual Reports				
	2001-02	2002-03	2003-04	2004-05*
New chemical certificates issued	164	125	189	200
New chemical permits issued	119	151	162	106
Total NICNAS staff numbers	38	37	36	42
Cost recovered revenue	\$3.928M	\$4.082M	\$4.961M	\$6.812M
Retained surpluses	\$1.118M	\$1.699M	\$2.410M	\$1.461M
NICNAS Activity from 2005-06 to 2008-09 – based on data in respective Annual Reports				
	2005-06	2006-07	2007-08	2008-09
New chemical certificates issued	202	185	197	153
New chemical permits issued	120	146	122	67
Staff numbers	45	45	45	60
Cost recovered revenue	\$8.342M	\$7.992M	\$8.100M	\$8.117M
Retained Surpluses	\$2.550M	\$3.336M	\$3.865M	\$3.618M

*In 2004-05 NICNAS revenue increased to \$6.812M as a result of the introduction of Tier 1 Registrations.

NICNAS is continually failing to meet targets it sets for itself as outlined in its annual business plans. Industry has already raised its concerns with the serious delays in achieving goals such as disinfectant and cosmetic reforms – despite these activities being well funded over the years. We note that even meeting important Government requirements such as undertaking a CRIS every five years will not be met as this CRIS was supposed to have been completed in the 2009-10 financial year and will now be 12 months late.

B. Specific comments

NICNAS registration fees and charges

1. What services do Tier 1 registrants require from NICNAS?

ACCORD does not have any member businesses in this category so we are unable to answer this specifically. However, we note in the Discussion Paper that NICNAS states it has had a number of representations from micro businesses and hobbyists stating that Tier 1 registration fees are an unreasonable burden. We are surprised that hobbyists would be captured under Tier

1 as registration only applies to persons deriving an income from the use of industrial chemicals. Therefore hobbyists should not be covered – if they are deriving an income then they would not fall under the definition of hobbyists but possibly as micro businesses.

There were good policy reasons to initiate the Tier 1 registration process as it currently stands and ACCORD does not see any reason to deviate from the current practice. Noting that there has been a significant level of over-recovery since Tier 1 registration was introduced – this could justify a return of fees to industry and/or reduction in the current rate of fees and charges applied. This would thereby lower the registration fee for Tier 1 registrants and reduce the cost burden. Changing the threshold level would be counter to Government cost recovery policy, in that all beneficiaries of the regulated sector should be subject to cost recovery where it is efficient to do so.

As a matter of course, and consistent with Government Cost Recovery Policy, Tier 1 registrants, as with all registrants, would expect to see value for money, transparency in costs associated with service delivery, timeliness of decision making and an efficient and effective service.

2. *Are there other fee structures which would provide a more equitable distribution of the funding burden?*

ACCORD supports consideration of a sliding fee scale for Tier 2 and 3 registrants. This option could be more equitable than the current Tiers 2 and 3. We support the continuation of the flat fee structure for Tier 1 but consider that a sliding scale could replace Tiers 2 and 3 and should be capped at around \$50M. Tables 3 and 4 in the Discussion Paper are not particularly meaningful. Tier 2 and 3 registrants pay additional costs to participate in the regulatory scheme through notification and assessment fees and charges. To imply inequity simply through percentage of introduced value is rather meaningless. A case has not been established.

ACCORD does not support the extension of the ICNA Act to include formulators as well as introducers for cost recovery purposes.

3. *If a higher minimum threshold value for tier 1 registration is introduced, how does NICNAS ensure the introducers who fall below this threshold are aware of their obligations under the IC(NA) Act?*

As stated above – ACCORD does not support a move away from the current threshold level for Tier 1. Given the obvious over-recovery which has occurred since its introduction and further cost savings to be made with the introduction of electronic payment and processing when this comes on line, NICNAS should be able to reduce its administration fee. A minimum threshold level may impose additional administrative costs on NICNAS adding to the loss of income from those deemed under the threshold. However, if late payers are the majority under this threshold – then the cost of recouping debtors' fees may be greater than the lost income. Further analysis of the data should be undertaken to determine the costs and benefits in relation to changing the minimum threshold level. As a matter of principle however, ACCORD does not support any move away from the current process.

Late Penalty Fees

4. *Is the application of a late penalty fee a deterrent to late payment of fees?*

ACCORD member businesses have advised that a late fee is an adequate deterrent for the majority of introducers.

5. *What other mechanisms could be used to encourage registration payments to be made on*

time?

ACCORD member businesses hold differing views as to whether adopting positive strategies such as by offering financial incentives through reduced fees to pay on time could be used to encourage on time payment. Some members believe this would act as a positive incentive to encourage on time payment, while others believe that the costs associated with such an initiative would not be effective and increase NICNAS' administrative costs. Another option put forward for NICNAS' consideration is the offer of quarterly payment options to facilitate on time payment. However, overall, we believe that the late penalty fee combined with an effective debt recovery programme is the simplest and best options. It has been suggested that to improve late payer performance, NICNAS could identify persistent late payers and indicate that late payers would be subject to audit.

Multi-year registration cycle

6. *Would the introduction of an optional multi-year registration cycle be beneficial to industry and why? If so what would be the optimal period per cycle, e.g. 2 years, 3 years?*

ACCORD does not support the introduction of a multi-year registration cycle as we cannot see that this would improve the efficiency of fee collection and could possibly add to NICNAS' administrative costs. Further, ACCORD believes that this option is not possible to NICNAS under the *Financial Management and Accountability Act 1997* which dictates how finances are to be administered by Commonwealth agencies. Our understanding is that finances have to be acquitted each financial year and that there is no allowance for the concept of credit under the Act – hence NICNAS could not accept payment for future years, particularly when registrations may vary between Tiers and recalculations are required to be done on an annual basis which may require refunds to industry. NICNAS has already indicated that the provision of refunds is *administratively burdensome*, therefore we have to question the viability of this option. As member companies budget on an annual cycle, they see little benefit in a multi-year registration cycle. The view has been put forward that this feature is an unnecessary complication for all parties.

Align the NICNAS registration cycle with the financial year

7. *Would the alignment of the NICNAS registration cycle with the financial year be beneficial? Please supply supporting information.*

ACCORD members support changing the registration year to more closely align with their business budgeting cycle. However, views as to whether the registration year should be based on a calendar or financial year are evenly divided.

New Chemical Fees and Charges

Cross subsidisation of new chemical activities from registration funds

8. *What issues would need to be considered in relation to the appropriateness and extent of cross subsidisation of new chemical assessments, and what approaches could be taken to manage these?*

As a matter of principle, ACCORD agrees with the Cost Recovery Guidelines in that cross subsidisation of cost recovered activities should not occur. The CRIS undertaken in 2004-05 identified a small level of cross subsidisation of new chemical activities with the highest amount of \$97K in 2002-03 (6.4% of total new chemical revenue) and the lowest being only \$5K in 2003-04 (0.24%). If NICNAS' overall level of activity for new chemical assessments is examined – there was a high level of output in both certificates and permits issued with a small degree of variation in the year on year workload, as reflected in the percentage of costs attributable to the level of

cross subsidisation. Since 2006 there has been a noticeable downward trend in the finalisation of new chemical permits with some variation in certificates. The Annual Reports indicate that not only has assessment activity decreased, but also the number of new applications received and accepted by NICNAS for new chemicals not on AICS, has dropped significantly. This decline in numbers has been an apparent trend since 2006-07, for example: in 2006-07 358 notifications were received; in 2007-08, 288 notifications were received and in 2008-09 only 227 notifications were received. NICNAS has had sufficient warning that new chemical activity is declining and appropriate staffing adjustments should have been made to avoid any cross subsidisation.

In the past, industry had good access to cost data from NICNAS through its participation on the Industry Government Consultative Committee (IGCC) of its activity-based costing for all areas of activity. There is no such transparency now and it is difficult to say what level of cross subsidisation exists and if it is material or not. As noted previously, NICNAS does not appear to have made any adjustment to the decrease in new chemical assessment activity so we expect that the level of cross subsidisation to be quite high. As mentioned, at the Sydney stakeholder discussions, NICNAS indicated that the level of cross subsidisation for new chemical activities is around 25%. This figure is quite high, but not surprising given the decline in activity but continuation of staff numbers.

Data needs to be provided in the draft CRIS to determine if cross subsidisation exists and what is the level before an assessment can be made as to its appropriateness. As no details are currently provided to industry we can only speculate as to what costs are charged to industry for notification and assessment of new chemicals. Industry believes that as is the case in New Zealand, only direct costs associated with the assessment process should be charged to industry. Further, benchmarking is required to determine assessment performance for comparable work by comparable agencies. Australia has the highest costs for new chemical assessments and this is a barrier to entry for new products. This point was made at the stakeholder consultations and NICNAS should undertake strategies to reduce its costs comparable to those of our major trading partners. An efficient and effective way of doing this is to recognise assessments from comparable jurisdictions without the need for reassessment and to align the regulatory treatment of polymers with that of the EU and USA.

Screening fee

9. *Should the funding mechanism for screening submissions be changed? What are the advantages and disadvantages of a non-refundable screening fee for new chemical assessments as an incentive to achieving better quality submissions?*

ACCORD does not support the introduction of a screening fee. We support enhanced efficiencies in the screening process which would benefit both industry and NICNAS. ACCORD understands that when the new screening arrangement was introduced in 2007, following industry consultation, NICNAS advised that it would evaluate the screening trial and discuss the results with industry on how to proceed. The Productivity Commission (PC) in its report on chemicals and plastics regulation also noted that the NICNAS screening process was new and that at that time in 2008, it was too early to tell if this would be a success or not.

It is now some 2 years since the PC provided its report and industry has not seen any analysis to date. A statement such as *a refund policy is administratively burdensome* does not constitute analysis, nor is it particularly helpful. NICNAS needs to provide adequate cost data to demonstrate that the system is efficient or inefficient – rather than merely *burdensome*.

We do not understand why NICNAS has advised that the PC recommendation 4.5 regarding the introduction of a statutory time frame is outside the scope of this review. Given that the PC recommended a timeframe – perhaps it would be better if NICNAS evaluated its current process

and then looked to see if imposing a timeframe as a pilot would make a difference. This is not just about funding for services – it is about the most efficient and effective delivery of services at an optimal cost. Industry requires certainty of decision making – a statutory time frame would impose a deadline on NICNAS as well as industry.

There is an absence of a discussion regarding whether NICNAS should be penalised if it fails to perform in accordance with its statutory timeframes. This has been introduced by some regulatory agencies. ACCORD would like to see a discussion about improving performance through imposing penalties on NICNAS for failing to deliver against statutory timeframes in the draft CRIS. NICNAS' own business plan has a performance measure which is to only achieve 96% of its statutory timeframe for new chemical assessments. This is unacceptable to industry which has argued that the performance indicator should be 100% of NICNAS new chemical assessments achieved within its statutory time frame. The statutory time frames already take into account differing timeframes for the range of assessments on offer – so there is no reason why NICNAS should not be required and/or penalised if it consistently fails to meet this requirement.

10. *What are the advantages and disadvantages of industry receiving a rebate of up to 15% of the new chemical application fee when submissions are made using an agreed electronic template?*

The advantages in receiving a 15% rebate would appear obvious – a reduction in fees. However, industry has advised that as with a number of NICNAS rebates such as for modular assessment, it is very rare that industry receives the full rebate. This is demonstrated here by the example which NICNAS has given that a typical rebate is approximately 5%. It is disappointing that NICNAS has made no effort to address this and would rather just increase fees and charges to industry.

When the electronic template was first introduced in 2002-03 financial year, the NICNAS Annual Report for that period reported that it had received 27 notifications using the new template and this had led to significant time savings in the NICNAS assessment process. ACCORD has always supported the use of electronic templates as a cost and time saving measure for both industry and NICNAS. If this is not the case, then a detailed analysis of where the failure is occurring should be provided and remedial action taken to improve the quality of responses by industry and/or review NICNAS' internal processes, as the failure may be on NICNAS' internal processes rather than industry's failure to adequately fill in the forms. The templates have always been held up as a successful reform measure which industry would like to see continued, not discontinued.

Secondary notification preliminary review

11. *What are the advantages and disadvantages of changing the mechanism for recovering the cost of the preliminary review of changed circumstances (of an assessed new chemical) and making a decision on whether a secondary notification is warranted? Should this be a fee for service?*

ACCORD is not certain what information NICNAS is seeking in regard to this issue. However, ACCORD does not support the introduction of a fee for service regarding secondary notification for those chemicals on AICS. In general, as there is no individual beneficiary or the establishment of an exclusive right through secondary notification requirements, it is unclear how NICNAS could charge for such a service. Indeed, the imposition of such a fee could act as a disincentive to notify NICNAS of a changed circumstance.

Other Issues

Reform activities

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

Rate of return and the capacity of an organisation to deliver real and meaningful reform in a timely fashion should be essential criteria for determining the possible success of any reform measure. Reform processes need to be analysed in a clear and consistent manner utilising the impact assessment process to determine if benefits are able to be realised and who are the main beneficiaries, as well as total costs associated with any change. All too often industry has had to bear the cost of "reform" with little by way of tangible benefits. For example, the Low Regulatory Concern Chemicals (LRCC) reform process is not delivering the expected outcomes to industry. An independent evaluation of the LRCC identified a number of options to improve efficiency, but these have not been implemented. As a general principle, ACCORD does not support the regulatory agency being responsible for policy elements of reform proposals. The impact assessment should be undertaken by the responsible policy body and the regulatory agency should be responsible for implementing the agreed reform proposal in a timely and cost effective manner.

13. *What are the implications of NICNAS charging a special levy or a fee to a particular industry sector where the reform activities are specific to that sector only? e.g., cosmetics and disinfectants.*

We do not support the concept of a special levy regarding reform activities. As advised previously, the relevant policy area within the Department of Health and Ageing should undertake all the policy development work associated with any reform proposal and NICNAS should implement the agreed to reforms.

From the 2006-07 to 2009-10 financial years, NICNAS has allocated approximately \$2.7M for reform activities with a further \$613K allocated for the current financial year. In the 2008-09 financial year, the NICNAS Annual Report identified a cost saving to industry for the reform under Approved Foreign Scheme. This is estimated to be \$11K for 2008-09 with no identifiable cost savings in the preceding two years. Industry has funded this reform proposal from as early as 2001-02. We have only been able to identify costs attributable to the last three financial years from 2006-07. The costs for the three year period are \$328K with a saving to industry of \$11K in 2008-09. This is not a very good rate of return.

The implementation of the reform under the Canadian Approved Foreign Scheme is complex and timely, with NICNAS still undertaking a hazard assessment of the Canadian hazard assessment rather than accepting the Canadian assessment as comparable to Australian requirements. This duplication of assessment activity means that potential reform benefits such as lower assessment costs and improved time to market are lost. In hindsight, it would have been better to return the \$328K back to industry through lower overall fees and charges.

On a cost effective basis – there is little to show by way of reform to industry due to the risk averse way in which NICNAS approaches reform for low risk products. NICNAS' cost structure could be significantly reduced if it concentrated on its core activity of notification and assessment work.

Office of Best Practice Regulation Requirements

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?*

ACCORD considers that activities such as CRIS and RIS requirements are part of Government business and should be undertaken by the policy body within the department rather than the statutory authority with vested interest. We therefore do not support industry cost recovery for this activity.

NICNAS Reserve

16. *What is an adequate level of reserves for NICNAS to enable the organisation to continue its business?*

ACCORD believes that the Department of Finance and Deregulation should provide guidance to regulatory agencies on the appropriate level of reserves rather than leave it to individual agencies to make a determination particularly in the absence of any broad ranging whole-of-government approach.

17. *What strategies could be used to improve the predictability of NICNAS annual income?*

ACCORD is unaware that NICNAS has issues regarding the predictability of its income. With the introduction of Tier 1 registration, NICNAS' income stream appears to be quite robust. As has already been identified by NICNAS, it has sustained a considerable drop in new chemicals income yet it still retains a high level of revenue surplus as reported in its budget statements over the last three years. Industry has concerns that with the introduction of Tier 1 registration fees, NICNAS' has become a less efficient organisation, is engaged in a large number of activities not core to its role as a regulatory agency and is consistently over-recovering from industry.

Investment in training and new assessment methodologies

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

Return on investment should be the key determining factor.

Resources for maintaining integrity of the Scheme

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

The identification of risk and return on investment should be the determine factors.

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

The identified need could be based on a number of factors such as: evidence of market failure; introduction of new products types; stakeholder demand; NICNAS need for stakeholder liason and feedback.

ANAO Recommendation

21. *Are there any specific items you would like to see included in a document outlining NICNAS' cost recovery policy and procedures?*

ACCORD supports the ANAO's recommendation for increased transparency in the management of NICNAS' cost recovery operations through the development of a consolidated document outlining cost recovery policy and procedures. The document should contain the following information:

- A list of NICNAS activities including core and non core regulatory activities, government business and those undertaken in the public interest
- Analysis of NICNAS' international activity and relationship to core activities and/or government business
- Activity based costing for all NICNAS activities
- Performance indicators for assessment activities should be identified
- Benchmarking performance against comparable agencies and/or product types.

Definition of Chargeable Person

22. *Is there a reason to expand the definition of a chargeable person to include down stream users of industrial chemicals? What factors should be considered in coming to this view?*

ACCORD does not support expanding the definition of chargeable person to include down-stream users. ACCORD would rather see reform efforts going into implementing the PC recommendations and/or a proper review of the ICNA Act.

Annual indexation of fees and charges

23. *What factors should influence the indexation model for adjusting fees and charges?*

ACCORD does not support automatic indexation. Any indexation should be done following assessment of the circumstances for each financial year. ACCORD would like to see the Department of Finance and Deregulation provide guidance to regulatory agencies regarding indexation and the appropriateness of any particular indexation model.

24. *What are the implications of introducing an automatic annual adjustment?*

ACCORD does not support an automatic upward annual adjustment. Costs need to be scrutinised on a yearly basis. Industry expects that efficiencies can be made through the introduction of new technology and other reforms which have been foreshadowed over the years. This is expected to bring down some costs which should be reflected in a lowering of fees, particularly administrative fees. Automatic indexation would do little to encourage cost saving initiatives. ACCORD supports an efficiency dividend applied to all cost recovered agencies in the same way that Government departments are required to make savings through efficiency measures. Currently there are no incentives for cost recovered agencies to reduce costs. The CRIS process while enabling a level of public scrutiny does not provide any incentives for a regulatory agency to improve its efficiency and effectiveness similar to that which private sector organisations are required to deliver.

Identification of fee for service activities

25. *What do you believe is the most equitable manner in which to cost recover these activities? Should it be through a fee for service or a levy?*

As with policy development for reform activities, RIS, CRIS and other government business reporting requirements should be undertaken by the relevant policy area within the Department of Health and Ageing and should be budget funded.

Other unidentified issues

26. *Are there any other issues with the NICNAS fees and charges you would like to see addressed in the CRIS?*

As identified above, ACCORD would like to see all of NICNAS' activities identified and a discussion as to whether these are core or non core regulatory activities, government business or in the public interest. Detailed activity-based costing should be available for each activity. The

CRIS should also include benchmarking data on NICNAS past performance as well as that with other agencies undertaking comparable assessment tasks. These should not be restricted to other regulatory agencies but may include academia, research institutes or other bodies which undertake evidence based scientific assessments. The CRIS should include a discussion as to whether some or all of NICNAS' fee for services are contestable. Further, ACCORD would like to see a discussion as to whether penalties should be imposed on NICNAS such as reduced assessment costs if NICNAS fails to meet its statutory timeframes.

The PC recommended that current risk-management functions of NICNAS which are not integral to its primary function of administering a chemical assessment scheme should be removed. ACCORD supports this and the draft CRIS should identify all of these activities. Further, the PC made a specific recommendation regarding NICNAS' future role as a scientific assessment body and removing a number of functions such as administering the Cosmetic Standard and removing responsibility for implementing the Rotterdam Convention. These recommendations should have been implemented immediately as they would have delivered immediate cost savings to industry.

Accelerated assessment of existing industrial chemicals

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?*

ACCORD does not support the contention that there is a regulatory gap for the management of industrial chemicals in Australia. If anything, there is overregulation with an inappropriate focus on low risk chemicals which has increased the regulatory burden for chemicals of low concern disproportionately to their regulatory treatment in comparable jurisdictions.

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

This is a project very much in the public interest as identified by the PC in its report and subsequent recommendation for an acceleration of the programme through budget funding. ACCORD does not support industry cost recovered funds being directed towards this process, particularly in the absence of any cost impact assessment on industry and identification of tangible benefits which could not be derived from adopting recommendations being developed in the EU, USA, Japan, New Zealand and Canada from similar exercises.

ACCORD is uncertain if NICNAS has the legal basis for cost recovery either through a levy or fee for service basis. Currently, the regulations may prescribe fees and charges for a range of assessment activities or through the legislation for a chargeable person in relation to a registration charge. We are therefore uncertain as to which section of the Act provides NICNAS with the legal basis to collect fees for a particular task such as prioritisation of existing chemicals.

The imposition of a special levy to fund an accelerated prioritisation programme amounts to a new tax on business to meet a social benefit and cannot be supported by industry.

The funding of social objectives should be met through budget funding. Imposing a levy on NICNAS registrants penalises some but not all participants in the chemical industry – hence there is no equity in the process. The cost estimates for the next 7 years of some \$20M for NICNAS does not consider the additional cost burden on industry to provide the data nor whether such an exercise is even feasible. Much more work is required to be undertaken regarding the magnitude of the project and what meaningful outcomes/benefits can be identified. The absence of any cost benefit analysis for this project is a major concern to industry. A CRIS does not assess the available options nor the cost benefit of these options, but only whether the cost recovery is

consistent with Government policy. It is therefore inappropriate to develop a CRIS in the absence of any rigorous cost benefit analysis for this project.