

**DISCUSSION PAPER:
PROPOSAL FOR REVISED NICNAS CONSULTATIVE ARRANGEMENTS**

The National Toxics Network (NTN) appreciates the opportunity to provide comment on the 'Discussion Paper - Proposal for revised NICNAS consultative arrangements 2014.

NTN is an important Australian focal point for the International POP's Elimination Network (IPEN). NTN has had a long history of involvement working to improve the regulation of industrial chemicals in Australia to ensure the best regulatory outcomes for the protection of the environment and public health from exposure to industrial chemicals.

NTN has a long history of providing quality civil society representation on federal government regulatory committee's such as the NICNAS Technical Advisory Group, Community Engagement Forum and the APVMA Community Consultative Committee.

Civic engagement and public participation in policy and decision-making has been recognised as a fundamental human right. As such it has been incorporated into many international agreements relating to the environment and chemical regulation and policy. These include *The Rio Declaration on Environment and Development*, the *Aarhus Convention*, the *Bahia Declaration*, *The Stockholm, Rotterdam and Basel Conventions* and the *Strategic Approach to International Chemicals Management*.

The NICNAS Community Engagement Forum (CEF) was established as a direct recommendation of an earlier NICNAS reform, the Low Regulatory Concern Chemicals (LRCC) program, whereby community comment was sought on the introduction of reduced regulatory burdens for using chemicals considered of 'low concern'.

The feedback received through this program showed that while the community supported the introduction of reforms to encourage the increased use of safer chemicals by manufacturers and industry, these regulatory concessions needed to be balanced with action to address the backlog of existing un-assessed chemicals in use as well as the historical absence of active engagement with civil society.

NTN welcomed the establishment of the CEF in 2003/4 and has made considerable contributions over the years such as the Community Engagement Charter, Community Engagement Framework and National Public Engagement Strategy.

NTN offers the following comments in relation to the Discussion Paper.

Redefining the CEF

NTN supports the continued work of the CEF and has been disturbed by the apparent suspension of the committee since the election of the Abbott government. This has undermined the ability of our sectors to continue to be actively engaged with the ongoing major reform work that the CEF has been involved with such as the ECR, IMAP, NAG, CAG.

NTN is also concerned at the redefinition of the CEF as an 'expert committee' as outlined in the analysis section one page 10 and, rejects this assertion that the CEF is or should be an expert committee.

Clearly, the Terms of Reference for the CEF do not include the term 'expert' anywhere and the membership clearly defines the CEF as representational as shown in attachment E. It is unclear to us why the authors of this discussion appear to be attempting to redefine the CEF from the outset without any evidence placing the whole discussion paper in a position of wrongheadedness.

We view it as an attempt to remove legitimate community representation and replace it with so-called 'experts', which will skew the direction towards further non-independent industry representation.

NTN therefore upholds that the CEF is, and should remain a representational committee and we reject any attempt to redefine or alter this premise.

The success of the CEF has been demonstrated over many years due exactly to the proven and effective representation it provides the Federal government and Australia civil society and should be allowed to continue to do so.

Single committee vs separate committee

NTN believes that the definition of 'civil society' or 'community' does not implicitly include the interest's of industrial corporations. Clearly the role of multinational chemical corporations such as those historically involved in the IGCC, is to secure profits for their shareholders. This role is at odds with the representation of civil society and their best interests.

NTN is of the view that civil society representation is best served through a dedicated representational civil society committee as is recognised by many equivalent international engagement models such as the Canadian Roundtable on Environment and Economy which formed the basis of the NICNAS Community Engagement Charter and forums such as SAICM and as detailed in Article 9.5 of the Stockholm Convention.

Civil society representatives should not have to compete with already well resourced and influential industrial corporate representatives at the very few opportunities that are provided to engage with regulators on critical public interest matters such as worker and public health and the environmental impacts of industrial chemical regulation.

The annual joint IGCC and CEF meetings have provided adequate opportunity for engagement between industry, civil society and government , often demonstrating the disdain that the corporate sector holds towards the interests of civil society and environmental protection and their unwillingness to uphold the rights of civil society.

NTN cannot support the view that NICNAS is unable to reach consensus decisions between the committees simply because we reject the assertion that corporate industrial interests, as represented on the IGCC, should be held equal to the interests of civil society and protection of the environment.

The role of NICNAS as a regulator is clearly defined: ***“NICNAS regulates industrial chemicals for the protection of people at work, the public and the environment. It operates under the Australian Government Industrial Chemicals (Notification and Assessment) Act 1989.”***

The purpose of the committee

NTN is disappointed that the intended purpose of the committee is to provide advice to the Director alone. The success of the CEF has always been achieved through the valuable contribution made by NICNAS staff who were able to hear directly from each sector and facilitate a more informed and collegiate approach to resolving issues of concern. Such a focus on the Director of NICNAS suggests a political motivation.

Furthermore, as the Director is also a member of the committee it seems absurd that the Director would on the one hand be actively involved in generation of the committee’s advice while also at the same time be receiving that same advice to themselves. In effect the purpose as stated gives the Director excessive representation through their involvement as a committee member and then as the Director of the Agency receiving that committee advice. This is not in the interests of best practice regulation for Australia and could be perceived as undue political influence.

As such NTN does not support the “purpose of the committee” as it is currently defined.

Draft Role and Functions for proposed NICNAS representative strategic consultative committee

The new Terms of Reference (roles and functions) in effect removes the CEF from existence and undermines the work undertaken over many years to improve NICNAS’s engagement with civil society and Australia’s commitment to civil society engagement mechanisms that are contained in international chemicals management conventions as outlined earlier.

Therefore the proposed TOR are not supported by NTN.

We are particularly concerned by the absence of a clear statement to support the fundamental principle of “Community Right to Know” or acknowledgement of the Community Engagement Charter, Framework or Public Engagement Strategies that NICNAS has supported for the past 10 years at least.

The Structure of the Committee

NTN does not support the structure of the committee as defined in the discussion paper.

As stated above, representation of corporate industrial interests is not defined as a CSO and yet four positions are being offered to industry. It is acknowledged that industry is a stakeholder affected by the regulation of industrial chemicals and therefore should be offered one position of representation for their sector as has

been offered to the civil society sectors of public health, worker health and the environment.

The discussion paper has failed to provide a justifiable argument that industry interests require more representation than CSO's and therefore NTN requests that equitable representation be offered to legitimate stakeholders such as:

- 2 representatives for industry interests
- 2 representatives for public health interests
- 2 representatives for worker health interests
- 2 representatives for environmental interests

Terms of Appointment

NTN strongly rejects the proposal that the Minister approve the organisations to be represented. Such decisions should not in anyway be linked to political influence and will undermine the confidence of the Australian community and reputation of the Australian government.

Independent bodies already exist to identify peak CSO's within Australia and have been working effectively for many years.

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