



26 July 2015

General Manager
Competition, Small Business and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: competition@treasury.gov.au

Dear Sir/Madam,

PACIA Response to Harper Review of National Competition Policy

The Australian chemicals and plastics industry is the **second largest manufacturing sector** in Australia. Our industry **employs more than 60,000 people**, with every job also creating five more in related supply chains. The industry **contributes \$11.6 billion** to gross domestic product, and **supplies inputs to 112 of Australia's 114 industries**. PACIA is the peak national body representing companies large and small across the chemicals and plastics supply chain.

This industry is an essential building block for Australia's modern economy. However the industry is at a crossroads, with significant roadblocks threatening its future and its critical contribution to Australia. Action is needed right now to halt contraction and reposition the industry as strong, resilient and able to add significantly more value to all sectors of the Australian economy.

PACIA is committed to working with all levels of Government and other stakeholders to achieve these outcomes. Currently, regulatory and institutional roadblocks impinge upon the capacity of the industry to innovate, invest and grow. We welcome many of the recommendations arising from the review of National Competition Policy, and note that they are likely to result in improvements in operating conditions for the industry.

A number of these roadblocks have been expressly addressed by the review of Australia's National Competition Policy. Maximising the benefit of the Panel's proposed recommendations will require a careful and considered implementation by the Government. This submission outlines those key areas of interest to our members where we encourage the Government to:

- Urgently adopt recommendations and move towards implementation;
- Carefully consider recommendations in collaboration and cooperation with key industry stakeholders; and
- Further consult with industry to consider how specific and potentially detrimental impacts on the chemicals and plastics sector may be mitigated.

We look forward to working with all governments to implement the outcomes of the review in a manner that maximises the anticipated benefit to all stakeholders.

Should you have any comments or questions in relation to this submission, please feel free to contact me.

A handwritten signature in blue ink, appearing to read "Ben Stapley".

Ben Stapley
Director – Policy and Regulation
Plastics and Chemicals Industries Association

COMMENTS ON SPECIFIC REVIEW FINDINGS AND RECOMMENDATIONS

PACIA has focused its response to areas of the review that are of particular interest to our membership. Our submission should be read in conjunction with submissions that PACIA has previously made throughout the review process. For brevity, we have not included background material previously included in earlier submissions.

A. Limited incentive for investment and innovation in Australia due to the IP system.

An effective system to protect intellectual property (IP) generated by individuals and corporations is an important consideration of any policy response to encourage investment and innovation in new, advanced and emerging technologies. PACIA notes that research by the Productivity Commission confirms that the rights and protections provided by the IP system in Australia provides only limited incentive for investment an innovation. While there may be some incentive for specialty chemicals, Industry's broader experience is that the regulatory system as a whole inhibits innovation and reduced productivity within multiple sectors across the economy.

For example, opportunities to introduce new chemistry are hindered by an IP system that does not outweigh the burden associated with pre-market approvals. This is exacerbated by Australia's small market size – particularly for specialty chemicals. Small markets can mean that proportionally greater returns in intellectual property are required for businesses to invest in introducing a new technology. This forces industries to rely on older technologies that do not deliver productivity or competition benefits.

Managing IP raises complex issues when dealing with chemicals management. Innovative new chemical products represent a significant investment time, effort and resources by the companies that develop them. However, there is a corresponding public interest in ensuring that any potential new chemical does not present an unacceptable risk to users, consumers or the environment. This means that some IP and commercially sensitive information should ordinarily be provided to regulators for their consideration and independent assessment.

However, there is a commensurate obligation on regulators to carefully protect information that they receive and to not disclose it to competitors. Striking an appropriate balance between public and private interests differs due to legislative requirements of the regulators involved and the products being considered. Some sections of industry continue to express concern that some approaches to confidential commercial information by some regulators do not strike an appropriate balance. PACIA is aware of several major global chemical innovators that have decided not to introduce new technologies in Australia because of the risk that sensitive commercial information would not be appropriately protected by the regulator.

As such, PACIA would support a broader review of the system for managing IP in Australia, but would urge the Government to ensure that the scope for any such review expressly include the impacts of data protection arrangements by pre-market chemicals regulators such as the National Industrial Chemicals Notification Scheme and the Australian Pesticides and Veterinary Medicines Authority.

B. Recognising International Standards and Assessments

Chemicals regulation in Australia is complex and expensive. It is riddled with duplication, redundancy and inconsistency. Much of the work conducted by Australian regulators duplicates assessments that may have already been conducted by regulators in other major economies.

Australia needs a system for regulating chemicals that encourages industry to adopt the latest technologies. This will result in increased productivity, greater efficiency as well as potential improvements in workplace safety, consumer safety and environment protection. Australia's current system inhibits adoption of new technology.

Broadly, Australia adopts chemicals and chemistry technologies that have already been specifically developed for overseas markets. In circumstances where similar uses are proposed in Australia consequent risks to users, consumers and the environment can also be expected to be broadly similar. As Australian regulators (including the APVMA and NICNAS) already collaborate with overseas regulators – including through forums under the OECD and WHO – greater recognition of the outcomes of assessments made by other regulators is possible in Australia. For this reason, PACIA welcomed commitments made by the Government in October 2014 to better recognise international standards and risk assessments made by other regulators and are seeking to ensure that Australia's regulators fully implement this commitment in a way that neither prejudices Australia's ability to make domestic decisions about the best way to manage risks in Australia, but also to minimise the barrier to market entry for chemistry innovation and investment.

This is an important step towards delivering *better* regulation that is as pro-competitive as possible, while still maintaining protections for users, consumers and the environment.

C. A Reinvigorated Regulation Review Program

PACIA notes the Panel's view that regulation review against the National Competition Principles has flagged. While there has been significant review of chemicals regulation in Australia, this has for the most part not occurred in a structured or considered manner and has not delivered the improvements in efficiency and reductions in regulatory burden being sought by the industry.

PACIA would support all governments within six months committing to embarking upon a structured round of regulatory reviews (Recommendation 8). However, all governments will need to provide clear guidance to regulators that reviews must assess the regulator's performance against National Competition Principles. From industry's perspective, it would not be acceptable for Government to exclude current reviews from the requirements of a reinvigorated review program unless an existing review is already looking at performance against the National Competition Principles.

When considering whether a particular regulatory scheme offers benefits that outweigh its costs to the community as a whole, consideration of the opportunity costs to business must also be taken into account.

Similarly, national coordination will be essential to delivering consistency across regulatory schemes. PACIA supports the recommendation by the Panel that national coordination on the review process is preferred. Indeed, for businesses and industries operating across State and Territory borders, national coordination is essential to delivering consistent and appropriate reform.

D. Energy and Gas

PACIA welcomes the recommendation that the Australian Government should undertake a detailed review of competition in the gas sector (Recommendation 19). PACIA notes that parts of this activity have already commenced with the Energy White Paper recommending an ACCC study to investigate competition in the wholesale gas market.

PACIA would not agree that reform in the gas sector has mirrored that in the electricity sector. To a large extent, reform has lagged that in the electricity sector.

PACIA encourages the Government to recognise the broader economic and competitiveness opportunity of how strengthened gas policy might help improve Australia's economic productivity and competitiveness. Natural gas is a core, non-substitutable input to the chemicals industry. Rather than simply being a source of energy, the chemistry industry converts natural gas into value added products used through Australian supply chains. Access to gas through fair, transparent and predictable markets is essential to ensure that these critical businesses can continue.

The Government's investigations into Australia's gas market should also consider the impact on supply that has occurred as a result of moratoriums in NSW and Victoria. These continue to have significant impacts on established large energy users through damage to market competition.

E. Application of Competition Law to Government activities in trade or commerce.

PACIA welcomes and supports the recommendation that National Competition Policy be applicable to government trade and commerce activities (Recommendation 24). PACIA notes that as a matter of policy, some regulators exclusively deal with select government providers or agencies when seeking to procure risk assessment services. PACIA urges Government to accept and implement this recommendation.

Where activities are able to be provided by the private sector, procurement by governments, departments and agencies should not be limited to existing government services and should instead be offered on a competitive basis. This would not preclude Government from providing services where they offer value for money.

While the discussion by the panel refers to the impact that governments can have on competition when engaged in trade or commerce with market participants, this should not be interpreted to exclude market participants within Government Departments.

PACIA has observed that competitive sourcing of health and environment risk assessment services by the Australian Pesticides and Veterinary Medicines Authority has resulted in significant improvements in assessment cost, timing and predictability for that regulator.

F. Misuse of Market Power

PACIA welcomes discussion regarding the mis-use of market power (Recommendation 25). In a small economy with a relatively large proportion of large industry players in many sectors, unilateral action by a company may have a detrimental impact on competition.

However, industry is keen to work with governments to seek clarity about when prohibitions on anti-competitive conduct by individual organisations will trigger a compliance reaction from the regulator consistent with competition policy.

Clear guidance with respect to conduct that is pro-competitive and conduct that is anti-competitive will be essential to provide business with sufficient certainty. PACIA notes that Panel expects that redrafting existing provisions so that they are based on the *effect* of conduct – rather than the intent behind a particular conduct is expected to substantially simplify the legislative test.

G. ACCC Authorisation and Notification

PACIA and its members engage in a range of stewardship activities that may have an impact on markets. Previously, some of these activities have required authorisation by the ACCC to confirm that the benefits associated with the activity outweigh the anti-competitive cost to consumers of the conduct.

Reducing the regulatory burden associated with securing an ACCC authorisation is supported by PACIA. Ensuring that only a single authorisation is required to permit a particular business arrangement or conduct is supported.

CONCLUSION

PACIA welcomes the opportunity to provide its views to the Government following the Panel's review of Australia's National Competition Policy. For those key areas of interest to our members, our general view is that the recommendations will provide additional benefit to the Australian community. Should the Government agree to implement the recommendations made through this review process, we look forward to collaborating to deliver genuine outcomes for Australia's productivity, consumers and industry stakeholders.

The chemicals and plastics industry in Australia is committed to delivering chemistry solutions that can assist businesses meet emerging global challenges of scarcity, food security, resource use efficiency, climate change and productivity. Providing policy settings that deliver an economy that is competitive, fair, accountable and transparent is central to enabling our members to continue to invest, innovate and deliver new solutions for Australian businesses. Thorough implementation of an enhanced National Competition Policy will be central to achieving this.