

**REGULATION IMPACT STATEMENT FOR CONSIDERATION OF  
THE RATIFICATION OF  
THE ROTTERDAM CONVENTION ON THE  
PRIOR INFORMED CONSENT (PIC) PROCEDURE FOR CERTAIN  
HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL  
TRADE**

*FINAL  
23 JULY 2003*

**Introduction**

The Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention) is the result of decades of work at the international level to develop effective systems for countries to assess the risks and avert the negative consequences of inadequate chemicals management on health, the environment and trade. The Rotterdam Convention allows the continuation of trade in chemicals, without mandating bans or phase-outs of chemicals.

Australia is, to varying degrees, an importer, exporter and user of the pesticides and industrial chemicals covered by the Prior Informed Consent (PIC) Procedure.

Ratification of the Convention would help protect Australian health and environment interests and enable us to promote our long-term trade interests in a more transparent global system.

**1. Problem**

In recent decades, the movement of chemicals in world trade has been faster than the flow of information about their risks. The consequences of inadequate management of chemicals can include serious negative impacts on human health, the environment and trade. Governments and other organisations have been working to develop worldwide systems to transmit information that will allow risks to be recognised and addressed before these impacts occur. While Australia and many other developed countries have established substantial procedures to ensure chemical safety within their borders, many developing countries still lack the capacity to assess chemical risks and enforce regulations, resulting in significant risks to human health and the environment both within and beyond their borders.

In this context, the voluntary Prior Informed Consent (PIC) Procedure that commenced in 1989, was designed as an information exchange regime to help countries make informed decisions on whether they wished to receive future shipments of certain hazardous industrial chemicals and pesticides. It provided a mechanism to communicate these decisions to other participating countries, which were then expected to abide by those decisions.

Although this original PIC procedure was regarded as a successful model, it was considered by the international community to lack sufficient force. It was assessed that mandatory controls would provide greater surety and commitment from participating countries to achieve these aims. Accordingly, negotiations on an internationally legally binding

instrument commenced. The Convention was adopted and opened for signature at a Diplomatic Conference held in Rotterdam in September 1998.

To date, 73 countries have signed the Convention. As it was expected to be several years before the Convention entered into force, an interim PIC Procedure was adopted by Signatories to the Convention. This interim procedure mirrors that contained in the Convention itself and is administered by the United Nations Food and Agriculture Organization (FAO) and the United Nations Environment Programme (UNEP).

Chemicals on Annex III of the Convention meet the criteria of the Convention, which include being banned or severely restricted in at least two countries in different PIC regions (or one country for a severely hazardous pesticide formulation) because of their hazards to human health and/or the environment. These chemicals incur exporting obligations. Annex III currently lists 17 pesticides, five severely hazardous pesticide formulations and five industrial chemicals<sup>1</sup>. Once the Convention enters into force, it is expected that chemicals added during the interim PIC procedure will also be formally incorporated into Annex III<sup>2</sup>. See [Appendix 1](#) for a list of Annex III chemicals and those added during the interim phase.

## 2. Objective

The objective of the Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous pesticide and industrial chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics. The Convention provides for a national decision-making process on the import of these chemicals, and disseminates those decisions to Parties. It also provides for importing Parties to receive information on a chemical being exported from a country that has banned or severely restricted it on human health and/or environment grounds.

Australia's objectives in participating in the negotiations for the Convention were to:

- promote and protect Australia's environment, health and trade interests by ensuring that our particular national circumstances were taken into account;
- increase Australia's access to all available information on hazardous chemicals, as covered by the Convention;
- enhance Australia's international standing and global prospects for a sustainable environment by participating in an inter-governmental regime that encourages and assists countries to adopt and maintain sound chemical management processes; and
- ensure the sound application of scientific criteria in the making of recommendations to the Parties, as an active participant.

The Australian Government demonstrated its commitment by signing the Convention on 6 July 1999 and by participation in the interim PIC Procedure. Participating in the voluntary PIC procedure since 1992, Australia has contributed actively and constructively to addressing problems of chemical management at the international level.

---

<sup>1</sup> The Convention does not apply to narcotic drugs and psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals (including human and veterinary drugs), chemicals used as food additives, food, or small quantities of chemicals (not likely to affect human health or the environment) which are imported for research, analysis or personal use.

<sup>2</sup> Annexes II and IV describe the criteria that must be considered in determining if a pesticide, severely hazardous pesticide formulation or an industrial chemical should be included on Annex III. Annex V lists the information that must be sent by an exporting country when it has banned or severely restricted a chemical on human health and environment grounds.

The interim PIC procedure will cease after the Convention enters into force and Australian participation will cease if the Government does not ratify. The Australian Government is now asked to consider ratification of the Convention.

### 3. Options

Australia has a robust chemicals management infrastructure. The import, manufacture and use of pesticides and industrial chemicals (the categories relevant to the Convention) are covered by national assessment or registration schemes and State and Territory government controls.

Currently, industrial chemicals are assessed through the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) established under the *Industrial Chemicals (Notification and Assessment) Act 1989*. NICNAS is located in the Office of Chemical Safety, within the Commonwealth Department of Health and Ageing.

Pesticides are assessed and registered under the National Registration Scheme for Agricultural and Veterinary Chemicals (NRS). The NRS is administered by the National Registration Authority for Agricultural and Veterinary Chemicals (NRA)<sup>3</sup> established under the *Agricultural and Veterinary Chemicals (Administration) Act 1992*. The NRA is a statutory authority operating within the Commonwealth Department of Agriculture, Fisheries and Forestry.

As a participant in the current interim PIC procedure that will operate until the Convention enters into force, Australia has provided importing responses<sup>4</sup> for chemicals and also made a number of notifications<sup>5</sup> of final regulatory action. It has not implemented any export obligations.

An Australian delegation has participated in each of the Intergovernmental Negotiating Committee meetings held since signing the Convention and an Australian representative is a member of the interim technical committee that is considering the addition of chemicals during the interim procedure.

Participation in these Committees has enabled Australia to have significant input to the recommendations for future operation of the Conference of Parties and the technical committee, in line with Australian objectives and the sound application of scientific criteria in considering the addition of chemicals.

Ratification of the Convention would allow Australia to continue to play a role in the operation of the Convention and contribute to the discussions and decisions on the addition of chemicals to Annex III.

To date, 42 countries have ratified the Convention. The Convention will enter into force with 50 ratifications; this is expected to occur late in 2003.

## 4. Impact analysis of Australian ratification

### 4.1 Who is affected by the problem and the proposed solution?

Those groups that are likely to be affected include:

- Producers and exporters of chemicals or of mixtures and preparations containing those chemicals that are listed in the Rotterdam Convention, through an obligation to seek export authorisation;

---

<sup>3</sup> To be known as the Australian Pesticides and Veterinary Medicines Authority (APVMA).

<sup>4</sup> An "importing response" is where Parties provide details on their conditions for future import of Annex III chemicals.

<sup>5</sup> A "notification" is made to the PIC Secretariat to report a "final regulatory action". A "final regulatory action" is an action taken by a Party that does not require subsequent regulatory action by that Party, the purpose of which is to ban or severely restrict a chemical in order to protect human health and/or the environment.

- Producers and exporters of chemicals or of mixtures and preparations containing those chemicals on which Australia has imposed severe restrictions or bans domestically (which have led to Australian notifications of those chemicals), through an obligation to provide export notifications;
- Users (within industry) of chemicals and products containing chemicals subject to the PIC procedure, who may benefit from enhanced chemical management;
- Australian Commonwealth Government departments and agencies implementing the Convention including the following assessors and regulators:
  - Department of the Environment and Heritage (DEH);
  - Department of Agriculture, Fisheries and Forestry – Australia (AFFA);
  - National Registration Authority for Agricultural and Veterinary Chemicals (NRA);
  - Department of Health and Ageing:
    - National Industrial Chemicals Notification and Assessment Scheme (NICNAS) in the Office of Chemical Safety (OCS);
    - Other areas of the Office of Chemical Safety in the TGA Group of Regulators;
  - Australian Customs Service (ACS);
  - National Occupational Health & Safety Commission (NOHSC);
- State and Territory government agencies that are responsible for chemical management; and
- The general public who would benefit from any improvements in chemical management in Australia.

## **4.2 Benefits and costs of ratification**

### **4.2.1 Benefits**

Australian ratification would augment Australia's existing controls on hazardous chemicals, improving the efficiency of our chemical management infrastructure. Australia would benefit from the PIC Convention procedures, which provide basic information and the means for obtaining further information needed to make health and environmental decisions concerning the future use of the identified chemicals without mandating bans or phase-outs of chemicals. Benefits would flow to users of chemicals and the general public.

The PIC Convention would assist Australia by highlighting those chemicals on which other countries have taken action, thus providing a basis for Australia to prioritise assessment work and resources on those chemicals of potentially greatest risk, particularly for industrial chemicals. The volume of industrial chemicals in the global marketplace is significant. Currently there are 40,000 chemicals listed on Australian Inventory of Chemical Substances (AICS) and many of them have not been assessed in Australia as they were on the market prior to the implementation of legislation in 1990 (*Industrial Chemicals (Notification and Assessment) Act 1989*). NICNAS assesses these 'existing chemicals' on a priority basis in response to concerns about their health and environmental effects.

Participation by Australia would also help to ensure that chemicals added to the Convention meet the criteria for listing, especially those concerning the scientific rigor of the risk evaluations that led to the notifications.

Benefits to industry include increased surety for exporters by providing prior information on which countries would or would not receive imports and access to a direct contact point for exporters requiring assistance with those exports.

Ratification would help to protect, reinforce and maintain Australia's reputation as a 'clean and green' country. Conversely, failure to ratify may have a negative impact on Australia's export markets, should participating trading partners point to Australia's decision to 'opt out' of an international treaty, whose primary aim is to protect human health and the environment.

By sharing information about hazardous chemicals in international trade, Australia would assist developing countries that are considering importing chemicals to make informed decisions and manage the risks associated with their use. Such improved chemical management and usage would benefit all countries and their neighbours.

The Convention should also prevent the stockpiling of hazardous chemicals in Australia's neighbouring Pacific Island Nations in the future and would, thus, reduce the necessity for Australia to implement projects to assist these nations in disposing of their unwanted chemicals.

The community would benefit, as the flow-on effects of information exchange about the adverse effects of hazardous chemicals both locally and globally would help minimise their impact on the environment and human health.

#### **4.2.2 Costs**

##### ***Industry***

Importers of chemicals under the Convention would be unaffected by ratification and would incur no additional costs, as there would be no changes to the domestic regulatory scheme.

The sector of industry that would be affected by ratification would be exporters due to the resources needed to acquire familiarity with the Convention and to understand Convention obligations. Exporters would need to be familiar with the chemicals listed on Annex III of the Convention, as well as those chemicals that were the subject of an Australian notification to the Convention Secretariat.

However, based on information supplied by industry it is expected that few companies will be exporting chemicals currently covered by the Convention, as many of these are no longer used in Australia.

It is expected that exporters would incur only their own internal resource costs of complying with the export obligations because, at this stage, the Australian Government does not propose charging industry for providing export authorisations.

Exporters would incur the following internal resource costs:

- All exporters of pesticides, industrial chemicals and mixtures and preparations containing them would need to establish procedures to determine whether an export authorisation is necessary (i.e. whether their exports contain any chemicals covered by the Convention). The initial costs to exporters for this familiarisation are expected to range from approximately \$500 per company for major exporters (with many chemicals and preparations), down to \$50 for companies exporting a simple range of chemicals.

- Exporters of chemicals covered by the Convention would be required to apply for export authorisation and to ensure that their exports meet the requirements of the Convention. To minimise costs for regular exporters, export authorisations for Annex III chemicals may be granted for a calendar year. The internal cost to exporters to apply for an authorisation and to ensure that exports are accompanied by the required information are estimated at approximately:
  - \$100 for an individual export authorisation (covering an export of an Annex III chemical);
  - \$100 for an initial annual export authorisation (covering exports of Annex III chemicals within a calendar year);
    - approximately \$20 to check a country’s importing response and add the authorisation number; and
    - \$50 for each renewal of an annual authorisation (reflecting the cost of collecting and providing data on exports made under the previous authorisation).

The option of individual export authorisation (for every export of an Annex III chemical) would support those exporters requiring assistance or who seldom export.

For the export of a chemical that is severely restricted or banned in Australia, and is subject to an Australian notification to the PIC Secretariat, the cost to the exporter will be approximately \$250 per annum, as the exporter would have to meet additional requirements for information in seeking export authorisation.

### ***Commonwealth Government***

The Commonwealth Government's initial costs following ratification in the first year will total approximately \$0.503 million. It is expected that the average ongoing costs in each subsequent year would decrease, to \$0.494 million. These costs would be absorbed by agencies associated with domestic implementation of the Convention, including through existing cost recovery programs in the case of DoHA, an explanation of which follows below. Table 1 provides a breakdown of costs to agencies, which include the annual assessed contribution to support the activities of the Convention at entry into force, additional costs for domestic implementation and participation in international activities. Where Australia is one of the Parties notifying a chemical that is being considered for inclusion on Annex III, assessment agencies would incur additional costs in preparing the technical document required under the Convention (which are not included in Table 1). The technical work required for industrial chemicals would be part of the national assessment activity.

**Table 1: Commonwealth Government costs**

<b>Item</b>	<b>DEH</b>	<b>AFFA</b>	<b>DoHA</b>	<b>Total</b>
<b>Administration</b>				
Staffing (ASL)	0.5	0.48 <sup>a</sup>	1 <sup>b</sup>	<b>1.98</b>

ASL costs (salary and associated admin)	\$54,000	\$37,000	\$105,000	<b>\$196,000</b>
Other administration costs <sup>c</sup>	\$0	\$20,000	\$53,000	<b>\$73,000</b>
<b>Program</b>				
One-off implementation costs (2003/04-2006/07)	N/A	\$120,000 <sup>d</sup>	\$74,000 <sup>e</sup>	<b>\$94,000</b>
Legal costs	N/A	\$42,000	\$18,000 <sup>f</sup>	<b>\$60,000</b>
<b>Annual Contributions</b>	\$80,000	N/A	N/A	<b>\$80,000</b>
<b>TOTAL (first year)</b>	<b>\$134,000</b>	<b>\$119,000</b>	<b>\$250,000</b>	<b>\$503,000</b>
Average annual ongoing costs of implementation (2004/05-2006/07)	<b>\$141,000</b>	<b>\$195,000<sup>g</sup></b>	<b>\$158,000</b>	<b>\$494,000</b>

<sup>a</sup> In subsequent years (04/05-06/07) ASL will be 1.43 and salary will incorporate annual increase.

<sup>b</sup> 0.5 ASL/year (NICNAS) and 0.5 ASL/year (OCS) Canberra.

<sup>c</sup> Includes travel costs for attendance at international meetings.

<sup>d</sup> Includes costs for industry awareness raising in 2003/04 (\$20,000); and costs to establish a database for exporters in 2004/05 (\$100,000).

<sup>e</sup> Includes costs for NICNAS for IT systems (\$50,000) and costs for PIC awareness raising project with industry (\$24,000).

<sup>f</sup> One off costs to NICNAS to fund changes to legislation and drafting of initial regulations.

<sup>g</sup> Average ongoing annual cost based on: 2004/05 salary (\$114,000), database (one-off cost of \$100,000), legal updates (\$12,000), public awareness (\$5,000) associated with new chemicals and other administrative costs (\$20,000) (TOTAL \$251,000); 2005/06 salary (\$118,000), updating legal costs (\$12,000), database (\$10,000), public awareness (\$5,000) and other administrative costs (\$20,000) (TOTAL \$165,000); 2006/07 as for 2005/06 but increased salary (\$121,000) (TOTAL \$168,000).

### **Explanation of DoHA (OCS Canberra and NICNAS) funding sources for PIC-related activities**

NICNAS has operated on a full cost recovery basis since 1997. Cost recovery is achieved through company registration fees and charges and fees and administrative charges for new chemical assessments. Company registration monies fund the assessment of existing chemicals, client awareness and education activities, 50% of the costs of compliance activities and the administration of company registration itself. The remaining 50% of compliance activities is funded by an appropriation from the Commonwealth Government.

The impact on cost recovery of implementation of PIC is as follows:

#### One-off costs

\$ 50,000 IT costs to amend existing database will be funded through the current company registration fees. There will be no increase in fees to industry and will be absorbed by NICNAS under its existing IT/reform budget.

\$18, 000 Costs for amending the legislation is not cost recovered under current NICNAS cost recovery arrangement and is a Departmental appropriation expense.



\$24, 000 Costs associated with PIC awareness raising with industry will come from within the current NICNAS communication program funded from company registration.

#### Ongoing costs

\$78,000 Funding for ongoing staff costs for NICNAS will be partially covered by current Government appropriation and partly under the current Existing Chemicals Program (25:75 split). The Priority Existing Chemicals Program, a component of the Existing Chemicals Program will be used more strategically to identify chemicals for assessment activities and could include chemicals being considered under the PIC Convention.

\$10,000 Funding for attendance at technical meetings/Conference of the Parties will be met from appropriation funds. Meeting attendance will be shared between OCS Canberra and NICNAS

\$70,000 Funding for ongoing staff costs for OCS Canberra will be met from Government appropriation funds provided for technical policy support for international chemical negotiation matters

#### ***State and Territory Governments***

For pesticides, the State and Territory governments would incur no to minimal costs because the obligations under the Convention do not affect their regulations. For industrial chemicals, the State and Territory governments would continue to liaise with NICNAS about restrictions on individual chemicals in their jurisdictions.

#### **4.3 Effects of ratification on existing regulations and on the roles of existing regulatory authorities?**

The legislative changes necessary to implement the obligations under the Convention would be minor amendments to Commonwealth agricultural and veterinary chemicals legislation and amendments to the IC(NA) Act, and new regulations under the Customs and the IC(NA) Act. These are outlined below:

#### ***Agricultural and Veterinary Chemical Legislation***

- Section 69c of the *Agricultural and Veterinary Chemicals (Administration) Act (1992)* allows regulations to the Act to prohibit the importation into, manufacture in, or exportation from Australia of the constituent or product, either absolutely or subject to such conditions or restrictions as are prescribed, where the active constituent for a proposed or existing chemical product is the subject of a prescribed international agreement or arrangement. The Convention would be so prescribed and the relevant chemicals listed in the Regulations<sup>6</sup>.

---

<sup>6</sup> A regulation prescribing conditions or restrictions for the purposes of subsection (1) must not be made unless:  
(a) a relevant agency has published in the *Gazette*, and in any other manner that it thinks appropriate, a notice:  
(i) identifying the agreement or arrangement;  
(ii) listing the name or names by which the constituent or product is known to the public;  
and

- Amendment to require exporters to seek export authorisation for Annex III chemicals from the pesticide Designated National Authority (DNA) before issuance of export permit by the NRA.
- Amendments to require exporters to seek export authorisation for specified Australian notified chemicals.
- Amendments to require the NRA to formally advise Pesticide DNA of all regulatory actions.

Future amendments to the Regulations would be required when Annex III is amended, after entry into force, to list any chemicals added (or removed).

### ***Industrial Chemicals (Notification and Assessment) Act 1989***

The IC(NA) Act covers industrial chemicals and contains provisions to give force to international conventions. Legislative amendments are required to allow practical implementation of the Convention. Amendments, in particular, to enable the Minister to provide information to the Secretariat relating to final regulatory actions and enable the exchange of information required under Article 14 are required. Amendments are also required to allow domestic information gathering powers for the purposes of the Convention.

- New regulations will need to be made under section 106 of the IC(NA) Act to implement the requirements of the Convention, in particular, in relation to import and export requirements under the Convention.
- The current regulations would be updated to list the Convention as a prescribed international arrangement on entry into force.

### ***Customs (Prohibited Exports) Regulations 1958***

A new regulation would be introduced for pesticides to:

- indicate that permissions are required for specified chemicals (Annex III chemicals); and
- indicate that specified information has to be provided to the Australian designated national authority (AFFA) before export authorisation can be issued for a pesticide chemical that has been notified by Australia.

## **5. Consultation**

### **5.1 Who are the main affected parties?**

The main affected parties are the general public, industry (exporters), Commonwealth and State Governments.

Since Australia signed the Convention, the Commonwealth Government has conducted extensive consultations in relation to the possible ratification of the Convention by Australia, including with Commonwealth Government departments, State and Territory Governments, non-government organisations and peak industry bodies. Views were also sought throughout

---

(iii) requiring all persons who manufacture the constituent or product in, import the constituent or product into, or export the constituent or product from, Australia to give to the agency information in the approved form about movements of the constituent or product into or out of Australia; and  
 (b) a period of 30 days has elapsed since the notice was published.

the negotiations of the Convention text and prior to signature. The Convention text is in close accord with Australian objectives for the text negotiations, which reflected the input from stakeholders prior to completion of the text. Ongoing intergovernmental negotiations for the Convention have been conducted through PIC Intergovernmental Negotiating Committee meetings. An Australian delegation led by one of the core government agencies attended each of these meetings. Prior to each of these meetings, stakeholder views were sought and taken into consideration in the development of Australia's negotiating position.

With regard to ratification, public submissions were sought across the spectrum (through media releases, website material and gazette notices).

Australia's international negotiations were conducted under a whole-of-Government approach facilitated by consistent and regular interaction and meetings of a core group of interagency representatives. The group comprised representatives from: Environment and Heritage; Agriculture, Fisheries and Forestry; Health and Ageing; National Industrial Chemicals Notification and Assessment Scheme; Industry, Tourism and Resources; Attorney-General's; Prime Minister and Cabinet; AusAID; and Foreign Affairs and Trade. These core agencies also cooperated to conduct extensive consultations with stakeholders.

As part of the domestic treaty-making requirements, a formal process for public consultation was held from July to October 2002 (concurrently with that for the Stockholm Convention) and included:

- a press release in July 2002 calling for submissions on possible Australian ratification of the Convention;
- background papers for stakeholders, including State and Territory governments, in July 2002;
- information on the DFAT website with links from other Government agency websites (AFFA, DEH, NICNAS);
- notices in the 'Chemical Gazette' and the 'Agricultural And Veterinary Chemicals Gazette' in August 2002 seeking views on possible Australian ratification of the Convention; and
- face-to-face meetings with NGOs and industry, including group question and answer sessions and one-to-one meetings; and teleconferences with States and Territories.

## **5.2 What are the views of those parties?**

### ***Industry, Non-government Organisations and Individuals***

Minerals Council of Australia advised it had no concerns with the Convention.

Avcare said that it supported ratification of the Convention, provided the Australian agricultural and veterinary medicine industry was fully consulted on any proposed additional chemical under the Convention, or any other issue that may impact on the agricultural and veterinary chemical industries in Australia arising from the treaty. Avcare advised that it was the peak body for the agricultural and veterinary chemical industry in Australia and its members sponsor 90% (based on dollar value) of all agricultural and veterinary chemicals sold in Australia and that all members had been consulted on this issue.

The Plastics and Chemicals Industries Association (PACIA) said they commended the approach to consultation that had been shown and noted that it had undertaken a consultative

process with its members. It said that the industry supported the principles of the Convention to “promote shared responsibility and co-operative efforts among Parties in international trade of certain hazardous chemicals in order to protect human health and environment”. It said it strongly supported the commitment by the Commonwealth Government to keep domestic costs associated with domestic implementation as low as possible and that any cost recovery would be undertaken in a manner consistent with the Cost Recovery Guidelines. It said that the DNA for Australia should be a ‘policy body’ such as DEH or AFFA, it would not support regulatory agencies such as the NRA or NICNAS taking on the role of a DNA. It also supported the concept of a single DNA; otherwise it said it believed that Australia’s interests would be best served by AFFA as the pesticides DNA and EA as the industrial chemicals DNA.

PACIA also said that changes to the IC(NA) Act and all amendments to legislation, even if minor, should be made in a manner consistent with the COAG principles including significant stakeholder consultation.

The National Farmers’ Federation (NFF) supported ratification of the Convention and said that in relation to pesticides, the Australian regulatory system represented a rigorous and robust framework that drew upon the best available science on which to assess products to ensure they do not have unacceptable adverse impacts on public health, occupational health and safety, trade or the environment. It said that the regulations enforced within Australia took specific account of Australian conditions and were readily defensible within global trading markets. NFF said that on that basis, the existing system was well placed to underpin Australia’s obligations under the Convention.

NFF supported Australia’s engagement in the expert group which assesses nominations against the criteria for listing, thereby helping to ensure that all decisions triggering a nomination are made on the basis of comprehensive risk evaluation focusing upon human health and the environment concerns. It supported measures to ensure that when traded, chemicals listed under Annex III or notified by the exporting Party were accompanied by information relevant to risks and/or hazards to human health or the environment.

Greenpeace, the National Toxics Network, the World Wide Fund for Nature and the Australian Conservation Foundation all said (in identical submissions) that by requiring signatory countries to advise of exports of potentially hazardous chemicals, particularly those that were banned or severely restricted, a valuable source of information about hazardous chemicals and their use would be compiled. They said that this information would allow for a more informed prioritisation of global or regional action on hazardous substances. They noted that it would be in Australia’s interests to be a Party at the first Conference of Parties to ensure active participation in decision-making processes in the Convention.

They said that the Convention would foster a broader product stewardship approach with participation in it ensuring a ‘holistic’ approach to addressing the hazards of banned and restricted chemicals, whether they were pesticides or industrial chemicals. They said this would reduce duplication in chemical registration and ensure that all departments involved in chemical regulation were kept informed of changes in registration status and scientific assessment of hazardous chemicals. They noted that the speedy entry into force of the Convention would help address chemical management problems that individual countries could not manage alone.

Medicines Australia said that, having consulted widely with its membership, it had no concerns with Australia’s proposed ratification of the Convention. It said that members had

not perceived that there would be any costs to the prescription medicines sector as the chemicals involved were not used in the industry.

Mr John Ardley said that he was strongly in favour of the ratification of the Convention. He said that, while to some extent he thought Government Regulation (of pesticide control) in Australia was good, appropriate pest control application had a long way to go.

Professor Ian D. Rae said that Australia had participated in the preparation of this treaty and had acted in the interim as if it were already in force. He said that it would be inconsistent for Australia not to ratify the Convention. He said Australia already has in place good mechanisms for assessing and regulating the use of chemical substances. He noted that not to ratify, while continuing to proscribe and/or restrict the use of certain substances in Australia, could expose Australia to unfair claims that it was erecting non-trade barriers to imports and that having its national systems accepted, as being consistent with international practice could be important in the future.

Professor Rae said that information provided by Parties wishing to export chemicals to Australia would augment the data-gathering and assessment functions that already exist and Australia should take the opportunity to get all the information it can. He said that while Australia's chemical industry was not a major exporter, there was some export, especially of pesticides, and so there would be costs involved for them. In addition, he said, some costs would accrue to the Commonwealth, especially if Australia were to propose listing of further substances in Annex III. He suggested that these costs would be relatively small and not inconsistent with the benefits gained.

### **State and Territory Governments**

The Victorian Government said that it recognised the requirement for international cooperation to deal with these chemicals, given their transboundary nature and that it was committed to protecting the environment from the impacts of hazardous chemicals and to working with other jurisdictions, including the Commonwealth, to achieve this end. It said that where implementation of Australia's obligations under the Convention required action by States and Territories, it was essential that national consultative processes be used to ensure their support and commitment.

The Queensland Government said that it supported ratification of the Convention in principle, subject to the Commonwealth responding to its concerns. Queensland noted that Australia currently participated in international chemical trading in hazardous chemicals and pesticides under interim guidelines consistent with the PIC Convention and its ratification would formalise existing procedures without significant impact on Queensland industry. It advised that extending the number of chemicals of the Convention would have the potential to impact on Queensland industry and proposed the establishment of a consultative forum agreed to by all jurisdictions to consider chemical listing proposals. The Commonwealth responded in writing with assurances of the institution of appropriate consultation mechanisms. No further comments were received by the proposed deadline of 30 May.

The WA Government noted that Australia's chemical regulatory system is one of the best in the world. It said that ratification of the Convention will lead to improved provision of information between signatory countries and that any measure to improve the flow of information would be a benefit to safety and health, and a long-term benefit to the community.

The other States and territories raised no concerns about the Convention.

## **6. Conclusion and recommended option**

Ratification of the Rotterdam Convention is recommended.

Ratification is consistent with the Government's existing commitment to promote sound chemicals management and environmental sustainability and will provide a valuable international forum for Australia to advance its interests in chemical safety.

Ratification of the Convention would indicate Australia's continuing agreement with the Convention's objectives, that is to enable participating countries to make informed decisions as to whether or not they wish to import a chemical that has been banned or severely restricted by another country because of its health and/or environmental risks.

If Australia did not ratify, it would lose the benefit of taking part in a focussed information exchange program including receiving notice of chemicals banned or severely restricted by other countries being sent to Australia. To redress this by other means may be less efficient and more costly. Australia would also lose access to a source of information useful in making health and environmental decisions concerning future import of certain hazardous industrial chemicals.

Ratification would help to protect, reinforce and maintain Australia's reputation as a 'clean and green' country. Further, by not ratifying, Australia would lose influence over the development of PIC processes, which could constrain future choices about the use of pesticides and access to certain markets.

## **7. Implementation and review**

### **7.1 How will the preferred option be implemented?**

The Prior Informed Consent procedure covers industrial chemicals and pesticides, including severely hazardous pesticide formulations<sup>7</sup>. The information below outlines the obligations under the Convention, and details how each would be implemented.

#### **7.1.1 Government agencies involved in implementation**

Under Article 4 of the Convention, Australia would be required to identify one or more Designated National Authority (DNA) to act as an international focal point for PIC activity and to communicate domestic decisions regarding PIC chemicals to the Convention Secretariat.

The arrangements for the DNAs would be consistent with the existing arrangements that have been in place under the interim voluntary PIC procedure that is:

- the Department of Agriculture, Fisheries and Forestry - Australia administering DNA obligations for pesticides; and
- the Department of Environment and Heritage administering the DNA obligations for industrial chemicals.

The agencies that would be responsible for key elements of domestic implementation would be:

- Department of Agriculture Forestry and Fisheries - Australia for pesticides; and

---

<sup>7</sup> "severely hazardous pesticide formulations" can only be notified by developing countries and/or countries with economies in transition but incur obligations for all parties.

- National Industrial Chemicals Notification and Assessment Scheme (NICNAS) for industrial chemicals.

Other agencies contribute to Australia's participation in the interim PIC procedure and would participate following Australia's ratification, and are as follows:

- the Australian Customs Service would enforce export border controls for pesticides; and
- the Department of Health and Ageing (DoHA) through its Office of Chemical Safety (OCS), National Occupational Health & Safety Commission (NOHSC), Department of Foreign Affairs and Trade (DFAT) and Attorney-General's would provide input to documentation for chemicals under consideration for adding to Annex III, including those chemicals that Australia has notified, together with input to briefing for meetings.

The implementation mechanisms described below are those that would be the least administratively and cost burdensome on both industry and the implementing agencies. It would also provide the lowest possible regulatory burden.

### **7.1.2 Overview of implementation**

#### ***Pesticide chemicals***

For pesticides, the obligations of the Convention would be implemented by minor amendments to the agricultural and veterinary chemicals legislation. AFFA would undertake an extensive communications strategy and provide training on the Convention obligations. It would have a significant role in advising exporters on Convention requirements.

Companies exporting pesticides covered by the Convention would obtain permission from AFFA and be provided with a permit number to be reported to Customs. This requirement would be implemented through amendments to the *Customs (Prohibited Exports) Regulations 1958*.

#### ***Industrial chemicals***

For industrial chemicals, the obligations of the Convention would be implemented through the IC(NA) Act and its regulations. NICNAS would publicise the Convention through its existing lines of communication with the industrial chemicals sector and would have a significant role in advising and guiding exporters on Convention requirements. Companies exporting industrial chemicals covered by the Convention would obtain authorisation from NICNAS.

NICNAS would conduct an awareness raising campaign. As part of its compliance program, NICNAS would conduct audits on data provided by ACS.

### **7.1.3 Implementation of Australian notification of final regulatory action - (Article 5)**

Under the Convention, Parties are required to notify the PIC Secretariat if they make a final regulatory action, which bans or severely restricts a pesticide or industrial chemical on the grounds of human health or the environment<sup>8</sup>. This includes circumstances where a chemical

---

<sup>8</sup> The Convention defines a "banned chemical" as a chemical all uses of which within one or more categories (pesticide or industrial chemical) that have been prohibited by final regulatory action, in order to protect human health or the environment.

has been refused approval for first time use or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that that such action has been taken in order to protect human health or the environment. The notification must be made within 90 days of the regulatory action taking effect and triggers obligations for that Party to provide export notification on that chemical to importing countries annually prior to export.

### ***Pesticides***

Notification by Australia would depend on final regulatory action taken by the NRA that either cancelled the registration of a pesticide or severely restricted its use.

Possible notification would trigger consultation with stakeholders. In determining if a notification were required, AFFA as the pesticide DNA would take into account any responses received from stakeholders.

### ***Industrial chemicals***

Notification by Australia would depend on the total effect of actions taken by State, Territory and Commonwealth authorities on an individual industrial chemical, under the legislation relevant to each jurisdiction and associated stakeholder consultation. All such actions would be taken into account by NICNAS in deciding whether or not an industrial chemical was considered to be banned or severely restricted nationally and thus to be notified to the Convention Secretariat. Withdrawn chemicals would be considered separately. The proposed amendments to the IC(NA) Act would give the Minister the power to notify the Secretariat of final regulatory actions, enable NICNAS to facilitate the exchange of information required under the Convention and allow NICNAS to gather domestic information required in the information exchange and notification requirements. NICNAS would provide advice to the DEH as the industrial chemicals DNA to provide a notification to the Convention Secretariat.

Regulations under the IC(NA) Act would be made, listing chemicals subject to export notification requirements, and exporting companies would be required to obtain authorisation from NICNAS.

#### **7.1.4 Implementation of import obligations (Article 10)**

When a chemical is added to Annex III, all countries must make a decision on whether they will accept future imports of the chemical. These decisions are import responses and must be given within nine months of being requested. Import responses can be altered at any time.

Providing an importing response to the Convention Secretariat is an administrative action and would be made by the relevant DNA.

### ***Pesticides***

The Australian importing response for a pesticide would be made by the DNA for pesticides (AFFA). The response would reflect the controls of the NRS already in place domestically.

### ***Industrial chemicals***

Australia's importing response for industrial chemicals would generally reflect the current regulatory status of that chemical in Australia. Where appropriate, a NICNAS assessment would be carried out to determine the risk posed in Australia, and this assessment would

---

The Convention defines a "severely restricted chemical" as a chemical virtually all use of which within one or more categories has been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed.



include full consultation with stakeholders and the development of recommendations relevant to the importing response.

The need for assessment would be determined at the time a chemical was identified for possible inclusion in the Convention. Proposed decisions on future import would be publicised in the *Chemical Gazette* and through other communication strategies to ensure wide dissemination.

### **7.1.5 Implementation of exports obligations (Articles 11-13)**

Each exporting Party is required to ensure that exporters are aware of and comply with the requirements of the Convention. (Article 11 1b)

Under the Convention, there are obligations concerning exports to Parties to the Convention. Obligations relate to:

- Export of Annex III listed chemicals. The major requirement for Annex III chemicals is that all exporting countries comply with the import response of importing countries given under Article 10 (see 7.1.4). (The Convention sets out procedures to be followed by exporting countries when a country does not supply an importing response); and
- Export of chemicals notified by the exporting Party to the PIC Secretariat as severely restricted or banned in that country. The major requirement for chemicals that have been notified as severely restricted or banned in Australia is annual export notification of the chemical to each importing country prior to export. The information required (outlined in Annex V of the Convention) is sent via the exporting DNA and provides the importing DNA with details on the import and a summary of the information provided by the Party in its notification of final regulatory action. This obligation to make yearly export notifications applies until such time as the chemical is listed in Annex III and all processes relating to importing responses are finalised. The obligation applies only to the notifying country.

Information required for exports of both groups of chemicals includes:

- inclusion of the appropriate code number/s from the World Customs Organization Harmonised System Customs Code (where assigned) on shipping documentation;
- adequate labelling, with information regarding risks and/or hazards to human health or the environment, to meet relevant international standards; and
- (if the chemical is to be used for occupational purposes) a safety data sheet in an internationally recognised format, with up to date information, in one of the official languages of the importing Party if practicable to be sent to the importer.

#### ***Pesticides***

Amendments to the Agricultural and Veterinary Chemicals legislation would describe the requirements and procedures to obtain export authorisation.

In addition, a schedule listing the controlled chemicals would be promulgated under the *Customs (Prohibited Exports) Regulations 1958*, which would allow exporters to determine if an export permission is required from the DNA prior to export. A schedule of chemicals would distinguish between the Annex III chemicals and those relating to Australian pesticides notifications. A notice describing the relevant chemicals would be placed in the *Agricultural and Veterinary Chemicals Gazette*.

#### ***Industrial chemicals***

Regulations under section 106 of the IC(NA) Act would set out the requirements for exporters. Regulations would place a primary obligation on exporters to only export an industrial chemical listed in Annex III to a country in accord with the decisions of that country; and to provide export notifications for chemicals notified by Australia (but not

contained in Annex III). There would be an initial awareness-raising campaign for the Convention aimed at relevant sectors of industry. Companies contacting NICNAS would be given information about their obligations and assistance where needed. Formal notices regarding the Convention would be included in the *Chemical Gazette*.

#### **7.1.6 Implementation of exports authorisations for Annex III chemicals (Articles 11 & 13)**

Where appropriate, export authorisation may be granted to an exporter to cover all exports of Annex III chemicals for one calendar year i.e. annual authorisation.

- To apply for an annual authorisation, the exporter would be required to make a declaration that it would meet all Convention obligations, including complying with importing conditions and supplying required supporting information, together with supplying a summary of export data to the authorising officer.
- The annual renewal of export authorisation would be subject to this supply of export data and compliance with the Convention obligations.
- Penalties would apply for non-compliance.
- No export would be authorised contrary to the requirements of the Convention.

An export authorisation would also be available for individual exports, which may be appropriate for those exporters that only export infrequently or require assistance i.e. single use authorisation.

A database or linkage to international information may be established to enable exporters of chemicals included in the Annex III list to easily ascertain countries' importing conditions.

#### **7.1.7 Implementation of arrangements for export of those chemicals that have uses in both the pesticide and industrial chemical categories ("dual use" chemicals)**

Where a chemical can be used either as a pesticide or industrial chemical, and has been listed in Annex III in only one category, exporters of the chemical will need to know the intended use in the importing Party, to ensure the import is meeting the importing Party requirements. In addition, export authorisation may be necessary for all exports of the chemical, irrespective of its listing under the Convention.

#### **7.1.8 Implementation of exports authorisations for chemicals notified by Australia (Article 12)**

An exporter of a chemical notified to the PIC secretariat by Australia would need to apply for an export authorisation before export and supply specified information on the export and the chemical – a proforma would be developed to assist the exporter. The Australian DNA would forward this information to the DNA of the importing Party before the export would be authorised. Annual authorisation may not be available because of the requirement to provide information before each export.

During the interim PIC procedure, Australia has notified to the PIC secretariat a number of chemicals that are not already included on Annex III<sup>9</sup>. Until such time as these chemicals are

---

<sup>9</sup> Pesticides: Methazole, Monocrotophos, Parathion (parathion-ethyl), Tribufos.

Industrial chemicals: Amphibole forms of asbestos, excluding crocidolite: Amosite/Mysorite, Actinolite, Anthophyllite, Tremolite.

listed on Annex III and all importing response processes finalised, export notification may be required should the chemicals be exported from Australia<sup>10</sup>.

---

<sup>10</sup> It is expected that Monocrotophos and amphibole forms of Asbestos will be included on Annex III at the first Conference of the Parties. However, Parties will have nine months to provide their importing response that would then have to be disseminated to all Parties.

## **7.2 Is the preferred option clear, consistent, comprehensible and accessible to users? Is it sufficiently flexible to adapt to various situations and circumstances?**

The major impact of ratification would be complying with export obligations. The export authorisation scheme has been designed to impose the least regulatory burden possible on exporters whilst fulfilling Australia's obligations under the Convention. The method of implementation outlined allows flexibility in the level of control imposed on exporters by providing for individual or multiple exports, depending on the knowledge of the exporter.

Voluntary registration of companies exporting PIC chemicals is considered less desirable because not all affected companies would have access to government assistance and the bulk of compliance activity would then occur in retrospect. Any method of implementation that would increase the possibility of shipments occurring in breach of the Convention would not be appropriate.

## **7.3 What is the impact on business, including small business, and how will compliance and paper burden costs be minimised?**

The impact on exporters would be minimal as the number of expected exports of Annex III chemicals, domestically banned or severely restricted chemicals and mixtures containing them is expected to be low, and the number of companies involved similarly low.

Assistance to industry would be available from the implementing agencies to educate and facilitate new procedures. These activities would reduce the time exporters need to spend on understanding and complying with the obligations of the Convention. This will be especially useful for small business. It is also likely that proposed reforms within NICNAS would in future strengthen its links with small businesses trading in industrial chemicals.

Initially, applications for export authorisation would be in hard copy, with information available on the implementing agencies' web sites.

Compliance and paper burden costs would be minimised by:

- Providing a proforma for the exporter to complete for export authorisation of Australian notified chemicals;
- Assisting exporters to determine importing country requirements for exports. This would include phone advice, establishing a web site and links, and possibly later a database;
- Including an option of an annual export authorisation for Annex III chemicals; and
- Providing education and training so exporters understand the Convention obligations and export authorisation processes.

The method of implementation proposed would support all industry affected by Convention requirements and allow for some compliance activities to occur at the time of export. It would minimise the compliance burden whilst providing a satisfactory assurance that Australia's exports are complying with the requirements of the Convention. The adequacy of these measures will be assessed as part of routine review of export procedures.

## **7.4 How will the effectiveness of the preferred option be assessed? How frequently?**

A review of the export procedures would be carried out two years after they come into effect, by seeking the views of exporters and implementing agencies (AFFA, DEH, NICNAS and ACS). The effectiveness of implementation outlined would also be evaluated at this stage.

The objective of the Convention is to improve the management of certain hazardous chemicals through shared responsibility and cooperation between countries. It is particularly relevant to the needs of developing countries or countries with economies in transition, which do not have a regulatory system in place to control the entry of unwanted hazardous chemicals. If these and other Parties find the Convention meets their needs in preventing the import of unwanted hazardous chemicals, the Convention would be achieving its objective.

**7.5 Is there a built-in provision to review or revoke the regulation after it has been in place for a certain length of time?**

It is possible that Australia's interests may not be met by the Convention in the future, whether as a result of national developments, or changes to the Convention, including resolution of technical matters under the Convention, such as limits for R&D chemicals that have not been addressed to date. Article 28 of the Convention provides for withdrawal from it by a Party at any time after three years from the date of entry into force for that Party. Should Australia have concerns over these issues or the chemicals proposed for inclusion in the Convention in the future, the Government could consider withdrawing from the Convention.

The regulations enacted to meet Convention obligations cannot be revoked whilst Australia remains a Party to the Convention. If Australia should withdraw from the Convention, then the legislation would be revoked.