DEWR Submission to the Productivity Commission Study into Chemicals and Plastics Regulation

Background

1. The Department of Employment and Workplace Relations (DEWR) supports the activities of the Australian Safety and Compensation Council (ASCC) by providing advice on occupational health and safety (OHS) and workers' compensation matters, and the review, development and implementation of national standards and codes of practice.

2. Through a partnership of governments, unions and industry, the ASCC leads and coordinates national efforts to prevent workplace death, injury and disease in Australia and aims to improve national workers' compensation arrangements and the return to work of injured employees. The ASCC is comprised of representatives from the Commonwealth, states and territories, the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions.

3. DEWR also provides policy advice to the Australian government on OHS and workers' compensation, both in relation to national issues, and in respect of the Commonwealth OHS jurisdiction. DEWR also represents the Australian government in relation to OHS and workers' compensation matters dealt with by international organisations such as the Organisation for Economic Cooperation and Development (OECD) and International Labour Organisation (ILO).

OHS regulation in Australia

4. OHS in Australia is regulated by state, territory and Commonwealth laws. In general, each jurisdiction has a principal OHS act, that imposes general duties of care on employers, persons in control of workplaces, designers and others. The general duties are supplemented by more detailed requirements contained in regulations.

5. One of the ASCC's key roles is to help achieve nationally consistent OHS regulation by producing national standards as a model for regulations in the jurisdictions. The ASCC also develops national codes of practice. National OHS standards and codes of practice are not legally enforceable unless the state, territory and Commonwealth governments adopt them as regulations or codes of practice under their principal OHS Acts. For more information, click here http://www.ascc.gov.au/ascc/HealthSafety/OHSstandards/.

6. In addition to principal OHS acts, there are other principal acts and regulations that deal with OHS issues. For example, in some jurisdictions, OHS in the mining industry is regulated by a combination of general OHS laws and mining specific legislation. Another example is the dangerous goods and major hazard facilities regulations in Queensland which are administered under the Dangerous Goods Safety Management Act through the Department of Emergency Services, while other workplace chemicals-related regulations are administered under the Workplace Health and Safety Act by the Department of Employment and Industrial Relations.

7. Regulation of chemicals in Australia is a complex arrangement covering multiple but often overlapping sectors, including transport, workplace, domestic and agricultural and veterinary chemicals sectors. For example, agricultural chemicals are used on farms, which are workplaces and chemical products marketed for domestic use are used in workplaces. In the workplace, regulation of chemicals utilises distinct approaches for hazardous substances and dangerous goods.

Hazardous Substances and Dangerous Goods

8. Dangerous goods are substances, mixtures or articles that present physicochemical hazards such as flammability, explosivity and corrosivity, plus acute toxicity. Chemicals that pose a hazard to the health of workers are generally termed hazardous substances, and include hazards such as carcinogens and skin and eye irritants.

9. The ASCC develops chemicals related policy for hazardous substances and dangerous goods, incorporating national and international material, and has declared national standards and codes of practice, along with guidance material. For more information, click here http://www.ascc.gov.au/NR/exeres/4AC369D3-E9C7-40E6-B930-D4716794A970.htm.

10. The Hazardous Substances Regulatory Framework consists of National Model Regulations and supporting documents. The Hazardous Substances Regulatory Package forms a blueprint for the legislative control of hazardous substances used in the workplace. For more information, click here http://www.ascc.gov.au/ascc/HealthSafety/HazardsSafetyIssues/HazardousSubstances/HazardousSubstancesRegulatoryPackage.htm.

11. The National Standard and Code of Practice for the Storage and Handling of Workplace Dangerous Goods are designed to enable a nationally consistent regulatory approach to the storage and handling of workplace dangerous goods. For more information, click here http://www.ascc.gov.au/ascc/HealthSafety/HazardsSafetyIssues/HazardousSubstances/NationalDangerousGoodsFramework.htm.

12. There is a significant level of consistency in regulations for workplace chemicals across Australia. All Australian jurisdictions have regulations in place for hazardous substances, based on the National Model Regulations, and most have regulations in place for the storage and handling of dangerous goods, based on the ASCC's Dangerous Goods national standard.

13. Other ASCC national documents on workplace chemicals include national standards for; major hazard facilities, carcinogens, inorganic lead, synthetic mineral fibres and exposure standards for atmospheric contaminants (including asbestos). Each national standard has a national code of practice or dedicated guidance material on how to meet regulatory obligations prescribed in the corresponding standard. In addition, there are national codes of practice and/or guidance for: asbestos; ethylene oxide sterilisation/fumigation; and timber preservatives and treated timber.

14. The ASCC is currently reviewing the national framework for hazardous substances and dangerous goods. Draft documents for the new framework, including a draft regulation impact statement (RIS), were released for public comment from late 2006 until March 2007. DEWR, on behalf of the ASCC, is currently considering the comments received from the public comment process and will be re-drafting the documents in light of these comments in the coming months. Draft documents and links to public submissions can be accessed here http://www.ascc.gov.au/ascc/AboutUs/PublicComment/ClosedComment/DraftNationalStandardandCodesofPracticefortheControlofWorkplaceHazardousChemicals.htm.

15. The hazard classification and communication elements of the framework will be built around the United Nations' Globally Harmonised System of Classification and Labelling of Chemicals (GHS). DEWR is the lead Commonwealth agency in the implementation of the GHS for chemicals in the workplace, and is facilitating the national implementation of the GHS in other sectors.

16. The GHS provides a convenient tool to assist in the integration of the currently separate frameworks for workplace hazardous substances and dangerous goods, thereby providing a simplified system. In doing so, there is the opportunity to align the hazard classification and hazard communication (label and material safety data sheet) requirements with Australia's global trading partners.

17. As part of the workplace chemicals framework review, the ASCC is also considering international approaches to GHS implementation. The European Commission released a draft proposal for GHS implementation in June 2007 and comparisons of this and the current and proposed Australian frameworks are available on the ASCC website. The decision to align (and the extent to which this may occur) the proposed Australian workplace chemicals framework with Europe is a decision for the ASCC and ultimately the Workplace Relations Ministers' Council to make. To access documents comparing the Australian and European proposals, click here http://www.ascc.gov.au/ascc/HealthSafety/HazardsSafetyIssues/HazardousSubstances/ComparisonofproposalsforrevisionofexistingAustralianandEuropeanchemicalsclassificationandhazardcommu.htm.

Background to the GHS

18. The GHS is a single internationally agreed system of classification and labelling of chemicals, which was developed under the auspices of the United Nations. It is intended to cover all hazardous chemicals, either in their pure form, as dilute solutions or in mixtures. Human and veterinary pharmaceuticals, food additives, pesticide residues in food and cosmetics are not covered by the GHS in terms of labelling at the point of intentional intake/administration. However, these chemicals would be covered during their manufacture, transport, storage and use in a workplace setting (eg where a pharmaceutical is administered to a patient by a worker). For more information on the GHS, click here http://www.ascc.gov.au/ascc/HealthSafety/HazardsSafetyIssues/HazardousSubstances/GloballyHarmonisedSystemofClassificationandLabellingofChemicalsGHS.htm.

19. The GHS includes harmonised criteria for the classification of physical hazards (such as flammability), health hazards (such as carcinogenicity) and environmental hazards (currently limited to aquatic toxicity). The GHS is also intended to address how labels and safety data sheets should be used to convey information about their hazards, and how to protect people from these effects. Specific hazard communication elements apply to each particular hazard class and category within the GHS. The label elements include signal words, pictograms, hazard statements and precautionary statements.

20. The objectives of harmonisation using the GHS were to:
    (a) enhance the protection of human health and the environment by providing an internationally comprehensible system for hazard communication;
    (b) provide a recognised framework for those countries without an existing system;
    (c) reduce the need for testing and evaluation of chemicals; and
    (d) facilitate international trade in chemicals whose hazards have been properly assessed and identified on an international basis.

21. The World Summit on Sustainable Development (WSSD), in its Plan of Implementation adopted in Johannesburg on 4 September 2002, encouraged countries to implement the new GHS as soon as possible with a view to having the system fully operational by 2008. International organisations at a high level are involved in the development of the GHS and a large number of countries, including our major trading partners, are considering its implementation from 2008.

22. A general principle of the GHS is that test data already generated for the classification of chemicals under existing schemes should be accepted and be sufficient to classify according to the GHS criteria, thereby avoiding duplicative testing and the unnecessary use of animals. However, an issue faced by competent authorities is that sufficient test data may not be available for older chemicals to support either the existing classifications according to contemporary standards, or classification according to GHS criteria.

23. Adoption of the GHS into regulatory systems is non-mandatory, therefore any decision on whether or how the GHS is implemented in each regulatory sector is a matter for consideration by the relevant competent authority. However, a basic tenet of the GHS is that where a hazard class or category is adopted into a regulatory system, all of the hazard communication elements associated with that hazard class or category would also be adopted.

24. The GHS document can be accessed from the UN website http://www.unece.org/trans/danger/publi/ghs/ghs_rev01/01files_e.html.

Implementation of the GHS in Australia

25. The impetus for implementation of the GHS in Australia includes an announcement by the then trade minister, the Hon Mark Vaile MP, during a meeting of APEC Trade ministers in 2002, where he announced an agreement to implement the GHS by 2006, because of possible savings for APEC economies. To access Minister Vaile's media release, click here http://www.trademinister.gov.au/releases/2002/mvt052_02.html.

26. The Department of Transport and Regional Services (DOTARS) has effectively been involved in GHS implementation in the transport sector due to its involvement in the United Nations Sub Committee of Experts on the Transport of Dangerous Goods (UNSCETDG). The classification and labelling of chemicals imported to and exported from Australia are also based on international UN systems aligned to the GHS via transport requirements.

27. Other Australian Government agencies, such as the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Pesticides and Veterinary Medicines Authority (AVPMA) (pesticides and veterinary medicines) and the Department of Health and Ageing (DoHA) (consumer chemicals) have begun consideration of if or how the GHS could be implemented in their current systems. The manner and extent to which GHS will be incorporated into existing chemical regulatory systems should be determined following consideration of all costs and benefits of such a decision in accordance with established Australian government processes and requirements (eg Office of Best Practice Regulation (OBPR) and COAG guidelines).

Issues resulting from multiple chemical regulatory agencies

28. Each OHS jurisdiction's responsibility for the regulation of "workplace chemicals" and the implementation of the GHS for this chemical sector in Australia is complicated by
    (a) the multiple regulatory and assessment regimes that are traditionally based on market sectors and intended use (i.e. pharmaceuticals, industrial chemicals, workplace chemicals, agricultural and veterinary chemicals, domestic chemicals (poisons) and food additives); and
    (b) practical considerations relating to how chemicals are packaged, bought, sold and used in the marketplace.

29. In many cases the same chemical can have use across more than one market sector, triggering multiple regulatory requirements, including different hazard communication elements such as labels and hazard classification, for the same substance. As the lifecycle of a chemical involves various stages such as manufacture, transport, retail sale, use and disposal, the chemical will be a workplace chemical at some stage of its lifecycle. In fact, it is likely that a chemical will spend most of its lifecycle in a workplace.

30. A critical aspect to consistent adoption of the GHS across the various chemical sectors in Australia is how the GHS, a hazard based system, can be integrated into risk based systems. Currently the systems for labelling domestic and agricultural and veterinary chemicals are based on the 'risk' that the chemicals pose when used according to label instructions, but also contain 'hazard' information (e.g. toxic if swallowed, will irritate eyes and skin, etc) identical to that used for the labelling of workplace chemicals.

31. Although farms are considered to be workplaces in all Australian states and territories, labelling for agricultural and veterinary chemicals utilises a risk based approach with respect to occupational health and safety information. This is different to all other workplaces, where hazardous substances and dangerous goods must be labelled in accordance with state and territory regulations that are based on the ASCC's hazard based approach. While this divergence of approach has the potential to create confusion for workers on farms, it also imposes further regulatory burden on businesses which are required to comply with multiple and different labelling systems.

32. Similar confusion may exist where consumer products are used in workplaces, where such substances are likely to be labelled for domestic users and not to meet workplace requirements.

33. The GHS contains information on how its classification and labelling information can be incorporated into existing systems that use 'risk-based' approaches to labelling of chemicals.

34. To fully realise the considerable benefits of the GHS, consistent adoption across all regulatory sectors in Australia is desirable.

35. The land transport of chemicals within Australia is regulated in accordance with the Australian Dangerous Goods Code (ADG Code). A revised version of the ADG Code has recently been published (http://ntc.gov.au/ViewPage.aspx?page=A022113024004706250), is expected to commence at the beginning of 2008 and becomes mandatory at the beginning of 2009. The revised ADG Code recognises the GHS in terms of inner package labelling requirements. Once the GHS has been implemented into the workplace chemicals sector, a consistent approach to classification and labelling will exist between the transport and workplace sectors. A chemical being imported into Australia that is labelled in accordance with transport requirements will therefore not require relabelling once it reaches a workplace, thus removing a significant burden for businesses.

Banks Review

36. As noted in the Productivity Commission's Issues paper (page 3), the Report of the Taskforce on Reducing Regulatory Burdens on Business, *Rethinking Regulation*, made six recommendations regarding chemicals and plastics regulation. The proposed integration of the workplace dangerous goods and hazardous substances frameworks, utilising the GHS as the primary hazard classification and hazard communication tool, is consistent with recommendations 4.57 and 4.58.

37. Any decisions on GHS implementation in other regulatory sectors should take account of, and be consistent with, the recommendations from the Banks review, in particular recommendation 4.57, which states that "The Australian Government should ensure that any 'uniquely Australian' variation of international standards or agreements relating to regulations in the chemicals and plastics sector is contingent on a demonstration of net public benefit".

38. On the basis that all chemicals spend a significant portion of their life-cycle in workplaces, DEWR supports efforts to develop a more integrated approach to chemical regulation. DEWR should be included in any review process, as workplace chemicals can have significant impacts on occupational health and safety. Harmonised arrangements for hazard classification and communication across all sectors have the potential to improve health and safety outcomes, including non-workplace uses, and reduce regulatory burden. DEWR sees the timely and consistent implementation of GHS across all chemical sectors as a key objective.

Trans-Tasman Mutual Recognition Arrangement (TTMRA)

39. The achievement of mutual recognition for chemicals under the Chemicals Cooperation Program requires both Australia and New Zealand to work together to identify and progress elements for harmonisation of regulation. There are two aspects necessary to progress TTMRA for chemicals, namely the assessment and notification of chemicals prior to entry into either country, and consistent implementation of the GHS.

40. DEWR is the lead agency for the Chemicals Cooperation Program (CCP) and has developed a chemical work-plan to support the CCP. The work-plan includes GHS implementation, workplace hazardous substances and dangerous goods, labelling, inner labelling of dangerous goods, material safety data sheets, notification and assessment of industrial chemicals and sale and use of explosives.

41. New Zealand is more advanced in implementing the GHS than Australia and already has in place the Hazardous Substances and New Organisms (HSNO) legislation, which is based on the original version of the GHS that was published in 2003. The New Zealand Code of Practice on Safety Data Sheets was designed to be compatible with the ASCC code.

42. GHS implementation in the transport and workplace sectors in Australia will align Australia with New Zealand.

43. The Environmental Risk Management Authority, New Zealand, currently accepts Australian chemical labels until the end of 2010, by which time New Zealand anticipates that Australia will have implemented the GHS and chemical labelling requirements will be largely consistent for both countries.

Consistency in application of regulatory impact assessment requirements

44. In supporting the ASCC, DEWR prepares or commissions regulatory impact assessments for the ASCC's consideration. In accordance with OBPR and COAG requirements, the ASCC takes account of regulatory impact assessments for its decisions that have a regulatory impact on chemicals (for example, prior to declaration of national exposure standards, or national OHS standards and codes of practice).

45. However, there appears to be some lack of consistency in the extent to which decisions that may have a significant regulatory impact are informed by a regulatory impact assessment. An example is decisions that may be made in other areas that result in restrictions on the import, sale and use of chemicals.

46. DEWR considers that this Productivity Commission study provides an opportunity to clarify the application of OBPR and COAG requirements across all chemical sectors.

Summary and conclusions

47. DEWR recognises the significant regulatory burdens that exist as a result of multiple and overlapping regulatory systems for chemicals. A reduction in regulatory burdens on business in the chemicals sector could be achieved through consistent and timely introduction of the GHS across all of the regulatory sectors.

48. While DEWR recognises that the decision and manner in which the GHS is implemented into regulatory systems is a matter for the responsible competent authority, DEWR strongly recommends that all relevant agencies actively pursue implementation of the GHS into their regulatory systems. Consideration should be given to harmonising the classification and labelling systems for OHS across all chemical sectors in Australia, ie utilising a hazard based approach reflecting hazard information that satisfies OHS laws for all sectors that provide such information.

49. Any decisions to implement the GHS should take account of, and be consistent with, the recommendations from the Banks review and the goals of the TTMRA. Australian or sector specific variations to implementation of the GHS should be justified, and any regulatory changes be subject to OBPR and COAG guidelines and procedures.

50. As Australia's policy agency for OHS, and the lead agency for GHS implementation in Australia, DEWR should be included in the development of regulatory decisions that impact on occupational health and safety in other sectors.

51. DEWR is also seeking clarity on the consistency of application of the OBPR's requirements for undertaking regulatory impact assessments where decisions on chemicals with significant regulatory impact are being made.