National Chemicals Environmental Management - A Framework for Sustainable Use of Chemicals in Australia (NChEM)

A Submission on behalf of the Environment Protection and Heritage Standing Committee to the Productivity Commission study into current arrangements for the regulation of chemicals and plastics in Australia.

CONTENTS

EXECUTIVE SUMMARY

The Environment Protection and Heritage Council (EPHC), comprising Environment Ministers from all Australian states and territories and the Australian Government, has recently endorsed a framework to streamline and simplify the management of chemical risks to the environment whilst maintaining positive environmental outcomes - the **N**ational **Ch**emicals **E**nvironmental **M**anagement framework - NChEM.

EPHC undertook an in depth review of current Australian chemical management systems, with a focus on the intersection between chemical management regimes and the environment. EPHC's initial chemical scoping started from a 'whole of system' approach and included representatives from the primary industries, public health and occupational health and safety sectors, in order to better consider the place of environmental management within the broad system. The NChEM framework, however, relates only to environmental management and reform actions currently underway are restricted to this segment.

The EPHC NChEM Working Group has already provided to the Productivity Commission an extensive range of background materials (including the report of the EPHC National Chemicals Taskforce into ecologically sustainable management of chemicals in Australia, reports on stakeholder consultations undertaken by the Taskforce and the EPHC Chemicals Working Group, the NChEM Discussion Paper and stakeholder consultation roundtable papers and outcomes summaries). These materials, and the Taskforce Report in particular, include information and conclusions drawn on:

- Existing institutional arrangements;
- Forces of change (Australian and international drivers); and
- Features of a best practice chemicals management system and a summary of Australia's progress against these features.

The NChEM reforms flow from these considerations and have particularly been shaped by the identified best practice principles. NChEM has already delivered significant outcomes such as a new national chemical information gateway and a national chemical reference guide and is ready to deliver more.

This submission focuses on NChEM current efforts and in particular on regulatory options being considered to improve the environmental management of industrial chemicals. The submission: outlines the NChEM framework; provides detailed information about the preferred regulatory reform option; notes other regulatory reform models considered and their pros and cons; and highlights those areas where management gaps and inefficiencies continue to exist and where further system reforms, beyond just the environment, could be beneficial for governments, industry and consumers. All elements of NChEM have involved extensive consultation with industry and community groups, as well as government agencies at all levels involved in chemicals management and decision-making.

Any future recommendations for chemical reform arising from the Productivity Commission's considerations should encompass:

- Delivery of improvements to the national industrial chemical management system that create a simple, linked and streamlined system between chemical assessment, decision making, risk management action and information feedback;
- Recognition of the place for an improved environmental management framework within the industrial chemical management system, that plugs the gap identified by the EPHC National Chemicals Taskforce; and
- Provision for NChEM to continue its program of reform initiatives.

The following summarises key points for the Productivity Commission's attention.

The Environment and chemical management systems

- Australia has a complex chemicals management system across various sectors (agriculture, occupational health and safety, industrial, therapeutics, environment) which needs to interact with international requirements. At the same time we are fairly well served by existing chemical management systems, with frameworks in place for managing the risks that may arise to public health and worker health and safety.
- Risks to the environment from chemicals are not as comprehensively managed, although the agricultural and veterinary chemicals are dealt with carefully as they are designed for direct release into the environment. There has been a need to develop better linkages between the national industrial chemicals regulator (NICNAS – the National Industrial Chemicals Notification and Assessment Scheme) and environment agencies because the current interactions can result in regulatory uncertainty and inconsistency for industry and consumers, as well as little feedback on implementation of NICNAS chemical control recommendations.
- Actions to address the above gap have been designed and agreed to by EPHC and are now being implemented under the NChEM Ministerial Agreement (***Attachment 1***). The current focus of NChEM actions is on effective environmental management of **industrial chemicals** across four key action areas: 1) assessment of chemicals; 2) environmental management and controls for identified chemical risks; 3) information flow and feedback; and 4) strategic priority setting for early risk identification and management. The benefits of these reforms are outlined in the attached detailed submission.
- NChEM also involved refinements to the agricultural and veterinary (agvet) chemicals system, including the production of a best practice manual for environmental risk assessment of agvet chemicals.
- NChEM replaces the current ad hoc, state by state and often duplicative actions we now take on chemical issues and the environment with one nationally consistent approach to assessments, regulation, managing and using information and setting priorities for the environment.
- It is vital to get our environmental risk management settings right for chemicals 'up-front' so that we can avoid the costs of chemical "clean-ups" in future.
    - Jurisdictions around Australia have expended up to $27 million in collecting and disposing of unwanted and deregistered farm chemicals under the ChemCollect program – however consideration of chemical disposal issues by chemical assessors is limited.
    - In NSW $167 million has so far been committed to cleaning up chemically contaminated groundwater emanating from the Orica site in Botany and this represents only one of numerous site contamination costs; and it is estimated that it will cost $180 million to clean up chemical contamination of Rhodes Peninsula.

[Additional information on the costs and issues associated with chemical problems across jurisdictions could be provided to the Productivity Commission on request. Also, an analysis of the costs and benefits to governments, industry and the community of NChEM is currently being conducted in line with the Office of Best Practice Regulation's procedures and guidelines.]

NChEM Actions to Date

- Some key NChEM actions include:

- The early integration of state and territory environment agency input into chemical assessments, so that environmental risks can be better identified and practical, and cost-effective risk management strategies agreed where required. This model has been successfully trialled with NICNAS over the last year, and NICNAS is now considering its potential for broader application (e.g. to public health agencies).
- The development of environmental risk assessment manuals that for the first time create transparency for industry and consumers. These manuals explain in detail how assessments are undertaken, why data are needed and how data are interpreted. They are now being considered by the national regulators for both industrial and agvet chemicals as possible templates for other non-environmental components of chemical assessments (e.g. public and occupational health).
- Working with NICNAS and industry and community stakeholders to design information gathering and reporting systems that are efficient and effective and that can support evidence-based decision making about the environment and chemicals. This will also enhance capacity to respond quickly to early warnings of chemical impacts.
- Working with NICNAS and industry and community stakeholders to integrate environmental considerations into priority setting mechanisms for both specific chemicals and broader chemical policy issues, to reduce existing duplication and uncertainties and build capacity for proactive chemicals management across Australia.

Regulatory framework

- The control of chemical risks to the environment should be managed on a nationally agreed and consistent basis. To this end EPHC is designing a regulatory model to achieve a clear, direct and efficient link between NICNAS risk assessment recommendations for the environment and their consistent implementation by the States and Territories. This will streamline and harmonise environmental management and regulation of industrial chemicals nationally. The model has the following features:
  - Any controls identified by NICNAS (and specified in its final assessment reports) as necessary to prevent environmental harm would be clearly identified as mandatory environmental controls and would be written as mandatory action statements. NICNAS would make national decisions, not 'recommendations';
  - A legislative scheme would be enacted that ensured NICNAS environmental control decisions would automatically apply as law in State and Territory jurisdictions;
  - States and Territories would implement the identified mandatory controls without amendment or any further review process, giving consistency and certainty to industry and the community (i.e. this would eliminate the need for States and Territories to review each recommendation and develop and enact separate and potentially variable legislative or other instruments to implement each recommendation);
  - Agreement and input to the development of environmental controls would occur through upfront jurisdictional environment agency input during the environmental risk assessment process. Before finalisation, draft controls would be subject to public consultation (as per current system); and
  - NICNAS' environmental controls would be informed by the best available science and be risk based, and could cover setting conditions on the

import, manufacture, use, packaging, storage, handling, labelling or disposal of industrial chemicals. They should also cover phase-out or banning of industrial chemicals where an assessment identifies that a chemical has unacceptable adverse effects on the environment and where that risk cannot be appropriately mitigated through management controls.

- A national approach to protect the environment is best facilitated by having a national industrial chemical regulator with clear decision making authority and which possesses a full suite of powers and tools, linked to State and Territory environmental regulation and management systems. This is already the model for agricultural and veterinary chemicals, in large part, but not for industrial chemicals. The national industrial chemical regulator requires powers to:
    - Educate, inform, promote, obtain information, issue public advisories, acknowledge industry self-regulation, implement co-regulatory approaches such as requiring compliance with industry codes of practice, put conditions on use/restrictions on chemicals and require chemical phase-outs or bans for very high risk chemicals where risks cannot otherwise be managed.
- The existing disconnect between the environment and the industrial chemicals management regime needs to be overcome. A linked or 'joined-up' national approach on the environment will need to be an element within any broader cross-sectoral chemical regime that may eventuate from COAG considerations. The NChEM model has been designed to link into whatever national structures may be agreed.
- Beneficial outcomes are already flowing from NChEM reforms and further streamlining improvements have been agreed by Ministers and with stakeholders that will deliver against COAG's national reform agenda. These reforms should be acknowledged and allowed to take their course rather than risk stakeholder confusion by any potentially duplicative further review.

Broader system gaps to address

- In the course of considering improvements to environmental management, EPH SC has identified a number of existing gaps and inefficiencies in Australia's chemical management regimes that are beyond the scope of Environment Ministers to address and which would benefit from Productivity Commission/COAG consideration as follows:
    - Responsibility for system-wide chemicals policy is unclear (eg who is responsible for developing agreed system-wide policy positions on, for example: how persistent chemicals should be managed; whether vulnerable sub-groups of the population require special consideration; the feasibility of "green" chemistry);
    - Householders/consumers – the focus of existing management and regulatory regimes is on industry. Chemical information from regulators to the public is sporadic and often inconsistent. Significant issues are emerging in relation to household chemical use, such as potential impacts arising from the use of certain flame retardants used in household furnishings and electrical equipment;
    - Labelling – there are major inconsistencies and system gaps. Consumers can see full ingredient listings on labels for hand creams but not for their household cleaners, nor can they ascertain what chemicals may be in their furnishings, carpets etc. In most cases consumers are unable to make well-informed choices about the chemicals they use; and
    - Identifying and managing risks from articles containing industrial chemicals is a major system gap. NICNAS is responsible for chemicals

only. Responsibility for ensuring imported articles (such as certain blankets or painted children's toys) are safe from a chemical contamination perspective is unclear and patchy.

Reform principles

The following underlying principles should also inform any consideration of chemical management reform:

- All chemicals have the potential to be hazardous, depending on dose, and there will always be a need to manage risks to workers, the public and the environment that can flow from the exposures that may result from their use. A streamlined and efficient chemical management regime will always need to include provision for quick, strong regulatory action where required to protect people and the environment from harm.
- Management of risks requires the availability of a full spectrum of tools including voluntary industry led measures, education and training initiatives, information gathering and capability building initiatives through to regulations for national standard setting, defining specific chemical uses and allowing for chemical recalls and phase-outs/bans where it is identified that risks cannot be appropriately managed.
- Chemicals cross a variety of very different sectors (industrial settings, agricultural settings, homes, public places) and link to a multitude of varying government and industry agendas and settings (trade, public health, worker health, consumer protection, industry development and competitiveness, protection of the environment from contamination/pollution etc). The needs of each of these sectors differ. Chemical management and regulatory regimes need to be flexible and designed to be responsive to these differences – 'one size' is unlikely to fit all.
- Many elements of the existing regulatory and management systems work well and have effectively supported a thriving chemical industry in Australia while keeping people and the environment safe. Reform should focus on building on effective systems where possible while responding to real gaps and problems (this has been the NChEM approach). Many 'problems' raised by stakeholders can often most simply and effectively be addressed by adjustments to existing policy settings rather than radical system make-over. Costly, inefficient and unnecessary reform-for-reform's sake should be avoided.
- It is imperative to ensure that management regimes are appropriately resourced and funding mechanisms are matched to regulatory and management approaches and powers if desired safety outcomes are to be achieved.
- The place of economic/regulatory impact considerations within national management regimes needs careful consideration and clear delineation in order to avoid inefficiencies and duplicative, time consuming and costly processes for both industry and governments. Complex impact assessment requirements, additional to risk assessment processes, can unnecessarily delay decision making and have major negative flow on effects for industry and the broader community in terms of timely access to chemicals or the timely prevention of harm.

SUBMISSION TO THE PRODUCTIVITY COMMISSION ON BEHALF OF THE ENVIRONMENT PROTECTION AND HERITAGE STANDING COMMITTEE (EPH SC)

Overview

At its June 2007 meeting the EPHC agreed to the **N**ational **Ch**emicals **E**nvironmental **M**anagement framework - NChEM. NChEM has two key objectives: to improve environmental outcomes in chemical management; and to establish a more streamlined, transparent and nationally consistent approach to environmental chemicals management. NChEM will therefore deliver regulatory reforms in line with COAG's National Reform Agenda. Specifically, NChEM will deliver *"system reforms that will help to reduce unnecessary red tape while maintaining or improving protection for the environment."*

This submission covers the following:

Part A: Outlines the NChEM framework, the benefits it brings and its consistency with COAG reform objectives;

Part B: Provides detailed information about the preferred regulatory reform option, developed after extensive consultation with industry and community groups, including discussion of the powers required by the national regulator for a simple and centralised management model to be effective; and notes other regulatory reform models considered and their pros and cons;

Part C: Highlights those areas where management gaps and inefficiencies continue to exist and where further system reforms, beyond just the environment, could be beneficial for governments, industry and consumers.

PART A: NChEM

Background

The National Chemicals Taskforce on Chemicals Management and Regulation

NChEM has its origin in a regulatory reform process initiated by EPHC in 2002. At this time EPHC established the National Taskforce on Chemicals Management and Regulation (the Taskforce). The establishment of the Taskforce was impelled by three key problems:

- Gaps in the assessment processes for some groups of chemicals
    - For example, there are some 40,000 industrial chemicals available for use in Australia, of which around 38,000 are 'existing' chemicals (introduced pre-1990). The vast majority of existing chemicals have never been subject to modern risk assessment;
- The absence of appropriate linkages between different levels of government in some cases, particularly in relation to the management of industrial chemicals; and
- Discontinuities in the management of chemicals during their lifecycles.

The Taskforce undertook a review of the chemical management frameworks used in Australia and investigated the issues associated with, and the potential need for, a national approach to ecologically sustainable chemicals management and regulation.

The Taskforce consisted of representatives from a number of Ministerial Councils including Environment, Health, Primary Industries and Occupational Health and Safety. The Taskforce analysed the range of chemical management frameworks and tools currently operating in Australia, drawing on recent reviews and reports by industry, science and governments. The

Taskforce consulted widely with industry, community groups and regulators to identify priority areas for reform.

Taskforce findings

The Taskforce found that there was a need for greater consideration of environment parameters in managing chemicals across all sectors (industrial, medicines, pesticides, food and domestic uses). The Taskforce noted that risk-management frameworks were already in place for public health, occupational health and safety and agriculture. However, no comparable national framework existed to provide guidance on environmental priorities, objectives and management processes to ensure appropriate environmental management of chemicals. EPHC therefore agreed that there was a need to develop a national chemicals management framework that would identify the environmental issues to be considered when assessing and managing chemicals. The Taskforce concluded that an effective chemicals management framework would need to consider environmental impacts at the 'front end' of the system. Without reform, Australia's chemicals management system would continue to concentrate community and industry resources around 'end of pipe' activities, typified by the complex and expensive work required to clean up chemically contaminated sites.

Additional issues highlighted by the Taskforce included:

- Promotion of timely action on emerging chemical risks;
- The need for consistent implementation of national assessment decisions to ensure effective management of chemical risks;
- The need to consider environmental monitoring and investigation to better understand possible impacts and opportunities for early intervention;
- The importance of keeping pace with international chemicals management developments; and
- Consideration of ways to better inform/involve the public in chemicals decision-making.

The EPHC Chemicals Working Group

To take the work of the Taskforce forward, EPHC established the EPHC Chemicals Working Group (the Working Group). It consisted of the Australian Government Department of the Environment and Heritage (now Department of the Environment and Water Resources – DEW) and all State and Territory environment agencies, and was chaired by the Director General of the NSW Department of Environment and Conservation (now Department of Environment and Climate Change – DECC). It worked closely with community and industry stakeholders, including the peak chemical industry associations, PACIA, ACCORD and Croplife.

The Working Group's first action was to tackle the problem of stakeholder knowledge gaps in relation to existing information about chemicals and the environment. To this end, the Working Group produced two internet-based resources on chemicals: the National Chemicals Information Gateway and the National Chemicals Reference Guide. A third project - currently being finalised in NSW and that will be presented to other jurisdictions for consideration - is development of a household chemicals education program model. However, the core objective of the Working Group was the development of a framework for National Chemicals Environmental Management (NChEM).

Endorsement of NChEM

At its meeting of 2 June 2007 Environment Ministers considered and endorsed NChEM. Specifically, Environment Ministers:

- Endorsed the components of NChEM, *noting that work to streamline and harmonise industrial chemicals will be submitted to the COAG Ministerial Taskforce at a later time for consideration within its broad cross-portfolio agenda*;
- Signed the Ministerial Agreement on *Principles for Better Environmental Management* to demonstrate their ongoing commitment to improving environmental aspects of chemicals management systems;
- Agreed to the *Chemicals Action Plan for the Environment* which identifies specific actions that can be undertaken now. This includes the immediate release of two draft Environmental Risk Assessment Manuals (one for industrial chemicals, and one for agricultural and veterinary chemicals). Ministers also agreed to initiate activities to better coordinate and collaborate across jurisdictions, portfolios and agencies; and
- Agreed to a one year trial of a stakeholder advisory group to work on implementation of the *Action Plan.*

The endorsement of NChEM was a significant milestone. It demonstrates an unprecedented cross-jurisdictional commitment to improving the management of the environmental risks and impacts of chemicals in Australia. The governmental commitment to NChEM reflects the high level of support expressed by community and industry groups for reform of Australia's chemical regulation system.

What is NChEM?

The NChEM package agreed to by Ministers is at ***Attachment 1***.

In summary:

NChEM is a set of four linked action areas to improve the environmental management of chemicals in Australia, focusing on industrial chemicals.

NChEM aims to streamline the environmental 'voice' in chemicals decision making so that better environmental protection outcomes can be achieved more efficiently. It does this by:

- Enhancing chemical **assessment** processes so that environmental issues are identified and managed up-front rather than at the costly clean-up stage. For example:
    - A new tool – Environmental Risk Assessment Manuals released for public consultation and currently being trialled by risk assessors.
    - A coordinated role for all environment agencies - a chance to make sure environment issues get properly considered and feature, where necessary, in the chemical control decisions of the national regulator (NICNAS). This change will enable on-the-ground regulators of industrial chemicals to participate in strategic decision making with regard to industrial chemicals management. They will have input into which chemicals are assessed, and be able to ensure that proposed controls are practicable and informed by 'real-world' criteria.
- Improving the capture of chemical impact **information** so it is used effectively in decision making. For example:
    - Environment agencies will submit relevant information into adverse impact reporting schemes. Regulators, industry and the community

can use the information collected to consider emerging impact trends when decisions about chemicals are made.

- Developing a national chemicals monitoring database that identifies available monitoring information.

- **Prioritising** actions so that governments, industry and stakeholders can make better use of resources to achieve results. For example:
  - a new process (to be managed by EPHC's NChEM Working Group, and including effective industry and broader public input and consultation) to identify and prioritise chemical issues so that agreement can be reached on what might need to be done, when and how. This will help move chemicals management from a reactive to a proactive footing.

NChEM also proposes consistent approaches across all States and Territories to **regulate and manage** industrial chemicals, linked directly to NICNAS decisions, in order to streamline the controls that industry faces (refer to Part B). *Regulatory simplification/streamlining proposals will be submitted to the COAG Ministerial Taskforce on Chemicals and Plastics and finalisation will be dependent on COAG outcomes.*

NChEM will also consider how best to provide a central and easily accessible mechanism for the provision of information on all environmental controls governing each industrial chemical. The existing Australian Inventory of Chemical Substances (AICS), a web-based inventory administered by NICNAS, is being considered as one possible location for this information.

Anticipated Outcomes:

- There will be much better coordination amongst environment agencies and national chemical regulators - this will allow us to rationalise our chemical efforts and avoid duplication (clear roles and responsibilities and new pathways to take issues forward)
- Chemical controls (for industrial chemicals) that are needed to protect the environment will be clearly identified and articulated. Controls will be decided by NICNAS following input from State and Territory environment agencies.
  - Recommendations for controls are currently weak, unclear and often impractical.
- States, Territories and the Australian Government will implement controls as consistently as possible across Australia (in the first instance this will occur on the basis of a policy commitment – in future the preferred regulatory model could be implemented if this is consistent with COAG outcomes). NChEM will streamline environmental management of chemicals so that eight variable State and Territory approaches on higher risk chemicals become one. This will resolve the current problem of controls being pursued on an ad hoc, State by State basis with no consistency of content, approach or timing and no certainty for the community or industry.
- Policy priorities will be set proactively and strategically across the environment portfolio instead of each jurisdiction reacting to problems identified by others.
- More generally – the overall aim of NChEM – across all its action areas (assessments, information and feedback loops, priority chemicals and environmental risk management controls) – is to replace the current ad hoc, state by state, and often duplicative actions now taken on chemical issues with one nationally consistent approach
  - one agreed approach to assessments;

- one agreed approach to managing and using information;
- one process for setting agreed chemical priorities; and
- in future, one centralised national approach to regulation.

NChEM and COAG's regulatory reform agenda

In January 2006 the Australian Government released *Rethinking Regulation, the Report of the Taskforce on Reducing Regulatory Burdens on Business* undertaken by Gary Banks (referred to hereafter as the Banks Report).[1] In February 2006 COAG decided to establish a ministerial taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation.

Banks argues that adherence to six key principles by governments when developing regulatory frameworks will deliver sound regulatory outcomes. A detailed outline of the regulatory reform proposals considered under NChEM is addressed in Part B of this submission. (It should be noted that EPHC has undertaken to delay finalisation of its preferred regulatory reform approach until the Productivity Commission has reported, and its report has been considered by the COAG Ministerial Taskforce on Chemicals and Plastics).

NChEM will deliver reforms in line with COAG objectives and the Banks Report, as indicated in Table 1 below.

Table 1: NChEM: Meeting the principles of best practice regulation

Principle 1. Government should not act to address problems through regulation unless a case for action has been clearly established. This should include evaluating and explaining why existing measures are not sufficient to deal with the issue.
Stakeholders have long called for reform of Australia's chemical management framework. In 2001 industry released "The Chemicals and Plastics Action Agenda" explicitly calling for the development of a national chemicals policy. The Chemicals and Plastics Leadership Group's (established to carry the Action Agenda forward) final report in 2004 also sought regulatory consistency and the linking of Australia's systems with international processes. Governments have also recognised that only national reform will deliver a cohesive regulatory framework, and have pursued this through the EPHC process since 2002, resulting in the NChEM framework. NChEM seeks to utilise existing systems where possible so reform is integrated with and linked to current practices. This minimises industry and community disruption and maximises opportunities to work with existing strengths to improve outcomes.
Principle 2. A range of feasible policy options - including self-regulatory and co-regulatory approaches - need to be assessed within a cost-benefit framework (including an analysis of compliance costs and, where relevant, risk).
Environment agencies are involved in many partnership initiatives with industry to foster good practice outside regulation (e.g. Sustainability Compacts and Covenants and cleaner production initiatives). NChEM proposes to continue this approach. Low-risk chemicals will continue to be addressed via mechanisms such as co- and self-regulation (e.g. industry-driven Codes of Practice). By streamlining current systems; reducing fragmentation; and delivering simplicity and consistency, NChEM will make it simpler and more cost-effective for industry to fulfill its obligations to manage chemical risks. The EPHC Working Group has commissioned two costs and benefits analyses for NChEM;

[1] Gary Banks et al *Rethinking Regulation, the Report of the Taskforce on Reducing Regulatory Burden on Business* etc

one addressing costs and benefits to government and the other addressing impacts on the community and industry. ACCORD, PACIA and individual chemical companies are assisting with the latter analysis. The conclusions reached in these analyses will inform the final regulatory reform proposals. To date, company representatives indicate NChEM is unlikely to have significant cost impacts on industry, and efficiencies resulting from improved national consistency will benefit all parties.
Principle 3. Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
NChEM will deliver appreciable benefits to government, industry and the community. NChEM will give Australians confidence that potentially harmful high-risk industrial chemicals are subject to appropriate and consistent environmental controls. It will improve communication on chemical policy issues; allow governments to focus on priority areas; facilitate the strategic allocation of resources; create capacity to respond to emerging issues in a coordinated manner; and establish consistency of chemical controls. NChEM will reduce red-tape and establish a more transparent regulatory system. The net result is an improved operating context for industry. NChEM will reduce the regulatory burden imposed by the fragmentation and inconsistency that previously prevailed, so delivering potential cost-benefits. Under NChEM, industry obtains a strategic role in the policy-setting framework, and thus gains increased capacity to undertake long-term planning. NChEM will also help Australia meet its international obligations to ensure the sound management of chemicals (e.g. reporting under the Stockholm Treaty for Persistent Organic Pollutants and the Strategic Approach to International Chemicals Management). Analysis of the costs and benefits to governments, industry and the community of NChEM is now underway, in line with Office of Best Practice Regulation guidelines.
Principle 4. Mechanisms such as sunset clauses or periodic reviews need to be built into legislation to ensure that regulation remains relevant and effective over time.
Legislation required to implement a reformed environmental regulatory regime for industrial chemicals will only be finalised after Productivity Commission and COAG review processes are completed, and will take account of good regulatory practice.
Principle 5. Effective guidance should be provided to regulators and regulated parties to ensure that the policy intent of the regulation is clear, as well as what is needed to be compliant.
NChEM will give regulators and regulated parties a clearer sense of the objectives pursued via NChEM policies, and the measures required by industry to comply with related regulations. For example, through NChEM, stakeholders will have access to 'how to' guides to environmental chemical risk assessments, thus improving the flow of information between regulators and regulated parties. NChEM will also set clear mandatory controls for high-risk chemicals, thus establishing a 'level playing field' for industry (under the current regime NICNAS makes 'recommendations', which some companies see as controls and others view as issues for voluntary consideration). This will create clearer policy intent and compliance specificity.
Principle 6. There needs to be effective consultation with regulated parties at the key stages of regulation-making and administration.
The NChEM Working Group has undertaken substantial consultation with all stakeholders. Peak chemicals and plastics industry bodies (PACIA, ACCORD and Croplife) have worked with EPHC to develop the detail of reform proposals. In early 2007, they and several chemical company representatives participated in stakeholder 'roundtables' on NChEM key Action Areas. They worked through key issues, i.e:

- possible regulatory mechanisms to establish a nationally consistent regime for industrial chemicals (i.e. better linkage between NICNAS and States /Territories);
- information needs and sharing (providing better feedback to national assessment agencies to assist their decision-making; providing transparency to stakeholders);
- identifying and addressing priority and emerging chemical issues; and
- integrating NChEM with other areas and reform processes (e.g. the COAG Ministerial Taskforce review of Chemicals and Plastics and the NICNAS review of its existing chemicals program).

Industry representatives have committed to continuing to work closely with NChEM. EPHC has established a small advisory group to assist with NChEM implementation (including further development of any regulatory proposals) which includes representatives of ACCORD, PACIA and Croplife, and three community/environment group representatives.

NChEM as a reform model

There are elements of NChEM that, while currently focused on delivering environmental improvements, have the potential to be applied across the wider chemical management regime if they prove to be effective. Some NChEM reform proposals have already been applied in other contexts. For example, the APVMA (the national agricultural and veterinary chemicals regulatory body) is reviewing the NChEM environmental risk assessment manuals with a view to standardising its own assessment guides along the NChEM 'template'. Health agencies have also indicated their interest in drawing on the NChEM template when conducting human health assessments. This example shows how the NChEM model is contributing to improved transparency and simplicity. Wider application of the NChEM approach could lead to greater consistency across the chemical management system as a whole.

Aspects of NChEM that could be adapted to bring simplicity, consistency and transparency to chemicals and plastics management more broadly include:

- Using as templates the publicly available environmental risk assessment manuals, explaining how assessments are done and why information is needed and how it is used;
- Using as templates the publicly available environmental control manuals, setting out the management and legislative tools available to Commonwealth, State and Territory jurisdictions and how, where and why they are applied. These could be expanded to include industry and community initiatives such as education and awareness raising, codes of practice and co- and self-regulatory initiatives (eg Chemcollect and Chemclear, Agsafe initiatives with agvet chemical suppliers);
- A model for a single national approach to chemical regulation, based on a uniform legislative link between national regulators and States and Territories, that results in consistent and timely national management actions (and reduces current multiple jurisdictional regulatory variations);
- Proposals for improved consultation and coordination between agencies with chemical responsibilities and national chemical assessment agencies that reduce interagency and inter-jurisdictional complexities;
- Proposals for information sharing between jurisdictions and national agencies so that decisions are better informed, data are effectively and efficiently gathered and utilised, and resources are not duplicated; and
- Proposals for effectively gaining stakeholder input into identifying chemical priority and emerging issues.

Stakeholder views and next steps

There is widespread stakeholder support for NChEM, with stakeholders at the most recent multi-party forums (the roundtable discussions undertaken in March-May 2007) reiterating their support for:

- The overall approach and direction of NChEM, particularly with regards to prioritising reforms of the industrial chemicals management system;
- Integrating NChEM proposals as far as possible within existing schemes and structures;
- NChEM's commitment to ensuring that the management framework it establishes is in line with regulatory 'best practice' as set out in the Banks report and COAG principles and guidelines; and
- Ongoing involvement in the NChEM process, with their input coordinated over the next 12 months via the NChEM Stakeholder Advisory Group.

In addition to helping guide the implementation of the NChEM Chemicals Action Plan for the Environment, stakeholders have indicated a desire to:

- See some individual chemical issues addressed at the same time as system-reform takes place, such as the environmental aspects of the Globally Harmonised System of Classification and Labelling (GHS – an international scheme for consistent classification and labelling of hazardous substances and dangerous goods);
- See continued recognition that human health is closely linked to the environment through a variety of exposure pathways and for public health measures to be better addressed in current systems; and
- Ensure NChEM integrates with current reform processes e.g. NICNAS' existing chemical reform initiatives and those arising from the current Productivity Commission study.

PART B: REGULATORY MODELS FOR THE ENVIRONMENTAL MANAGEMENT OF CHEMICALS

In order to streamline environmental controls for chemicals, EPHC has considered the question of how to effectively link environmental risk management recommendations made by NICNAS in its assessments of new and existing industrial chemicals, with State and Territory environmental protection and chemicals environmental management systems. A summary of issues and the preferred approach is set out below. More detailed discussion of the preferred model and other options is at ***Attachment 2***.

The problem

The Commonwealth *Industrial Chemicals (Notification and Assessment) Act 1989* (the IC Act) provides for the assessment of both new and 'priority existing' chemicals. NICNAS assessments may address occupational health and safety (OH&S), public health and environment matters[2] and assessment reports may contain risk management recommendations on OH&S, public health and environmental management as well as the

[2] NICNAS assesses the environmental impacts of industrial chemicals based on advice from the Australian Government Department of the Environment and Water Resources (DEW). This arrangement is formalised through a service level agreement between DEW and NICNAS.

use, packaging, handling, labelling, storage, and disposal of the chemical. Assessments can be done in full (i.e. covering all issues), or cover only one area (such as public health).[3]

No 'action' mechanism

There are systems in place to facilitate the adoption of the OH&S and public health recommendations and their implementation at a State and Territory level with some consistency. However, in the IC Act **there is currently no statutory or non-statutory mechanism to require the States and Territories to implement a NICNAS environmental risk assessment recommendation, or to implement such a recommendation consistently across jurisdictions**. This was identified by the EPHC Chemicals Working Group as a significant gap in the industrial chemicals regulatory/management system and leads to a number of undesirable outcomes.

Of key concern is the unnecessary compliance burden on industry and cost and administrative burden to governments that currently results from the inconsistent and differing regulatory regimes across the State and Territory jurisdictions and the resulting uncertainty about *whether, how* and *when* NICNAS environmental recommendations will be implemented by the States and Territories.

A related concern arising from this inefficient regulatory framework is that inaction or time delays in adoption of environmental controls sought by the national industrial chemicals regulator, NICNAS, increases the risk of environmental harm and can decrease public confidence in both the chemical industry and the ability of governments to protect health and the environment. NICNAS has explicitly addressed this issue in its review of the Existing Chemicals Program and notes that "the effectiveness of NICNAS assessments depends upon adoption of recommendations to manage, reduce or mitigate risk"[4]. The problem is exacerbated by the lack of a formal or comprehensive process for identifying all businesses that may be impacted by a control recommendation (including those chemical use businesses further down the supply chain from the initial chemical importer/manufacturer) and providing advice to those businesses and the broader community on what needs to be done to comply with any new requirements, and why.

Content concerns

The problem also extends to the framing and appropriateness of the environmental recommendations (as they appear in NICNAS final risk assessment reports) because this impacts on the ease with which they can be readily and consistently 'picked up' and adopted at the State and Territory level. If controls are essential for preventing harm, they need to be identified as such and written in clear and enforceable language.

Work to address the problem

The EPHC Chemicals Working Group has undertaken substantial stakeholder consultation on NChEM over several years. This has included specific consultation on regulatory and non-regulatory options to address the above problem in order to determine the views of governments, industry and the community regarding appropriate environmental regulation of chemicals. Consultation processes undertaken over the last year have included:

- A call for submissions on the NChEM July 2006 Discussion Paper;
- A series of public forums around Australia to discuss the Discussion Paper concepts and proposals;

[3] NICNAS considered the variety of its assessment products in its recent Existing Chemicals Program Review and is currently implementing the outcomes of this Review, consequently the contents of NICNAS assessment reports may become more varied in the future.

[4] NICNAS Annual Report 2005-2006, p57

- Meetings with and presentations to government agencies (Australian, State and Territory), industry associations, individual companies, environment and community groups;
- Distribution of 'thought-starter'/issues papers on specific topics to facilitate in-depth stakeholder engagement and policy design contribution;
- Three stakeholder 'roundtables' on NChEM key Action Areas, including a roundtable specifically focused on regulatory (or 'legislative link') options; and
- Trial of a small and focused committee to advise on NChEM development and implementation, consisting of three environment and community group representatives and three major industry associations in addition to EPHC Working Group members. This is being continued for a further 12 months.

Content

With stakeholder support, EPHC has already moved to address the problem of poorly framed environmental recommendations in NICNAS reports, and expects that a wider range of more specific and action-based recommendations on environmental management of industrial chemicals will be made in assessment reports in the future due to measures being progressed under NChEM including:

- Improved coordination and involvement of State/Territory environment agencies in risk assessments so that NICNAS recommendations are relevant and appropriate regarding State/Territory environmental management regimes and framed in collaboration with States and Territories; and
- Improved environmental risk assessment processes.

This fixes part of the problem. A linking scheme to mandate consistent application of recommendations is still required.

Mechanism: the approach

The EPHC has identified overarching principles to guide development of a regulatory link. These principles are broadly supported and were identified through stakeholder submissions and during extensive stakeholder consultations:

- Reduce unnecessary red tape;
- Aim for consistency across jurisdictions;
- Reduce regulatory time delays in adoption of environmental controls deemed appropriate by the national industrial chemicals regulator (NICNAS);
- Ensure clear delineation of Commonwealth and State/Territory Government regulatory responsibilities in chemicals environmental management;
- Make link as simple as possible and limit regulatory complexity and duplication;
- Use existing systems and processes where efficient, effective and feasible; and
- Develop and implement a module that is compatible with (i.e. able to 'plug in' to) any system or regulatory reform agenda that is ultimately determined by COAG.

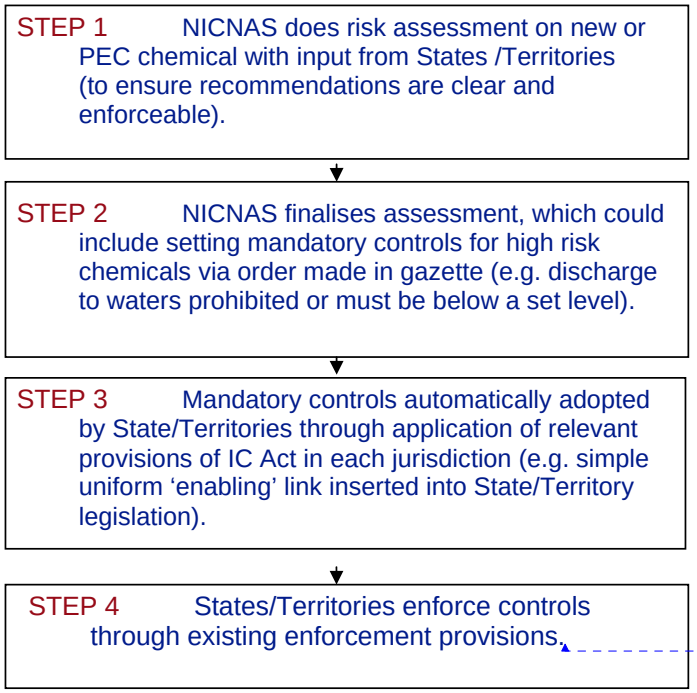
Preferred reform option: Option 1

The simplest, most streamlined and effective mechanism to bring consistency, certainty and timeliness to the management of environment related controls for industrial chemicals is a centralised decision making model with automatic State/Territory 'pick-up'.

The main features of this model are summarized in Diagram 1. Diagram 2 shows how the preferred approach fits within the industrial chemical risk assessment regime.

***Diagram 1*: Option 1 - How would it work?**

Formatted: Font: (Default) Arial, 12 pt, Bold



Formatted: Font: (Default) Arial

The features of this model would be:

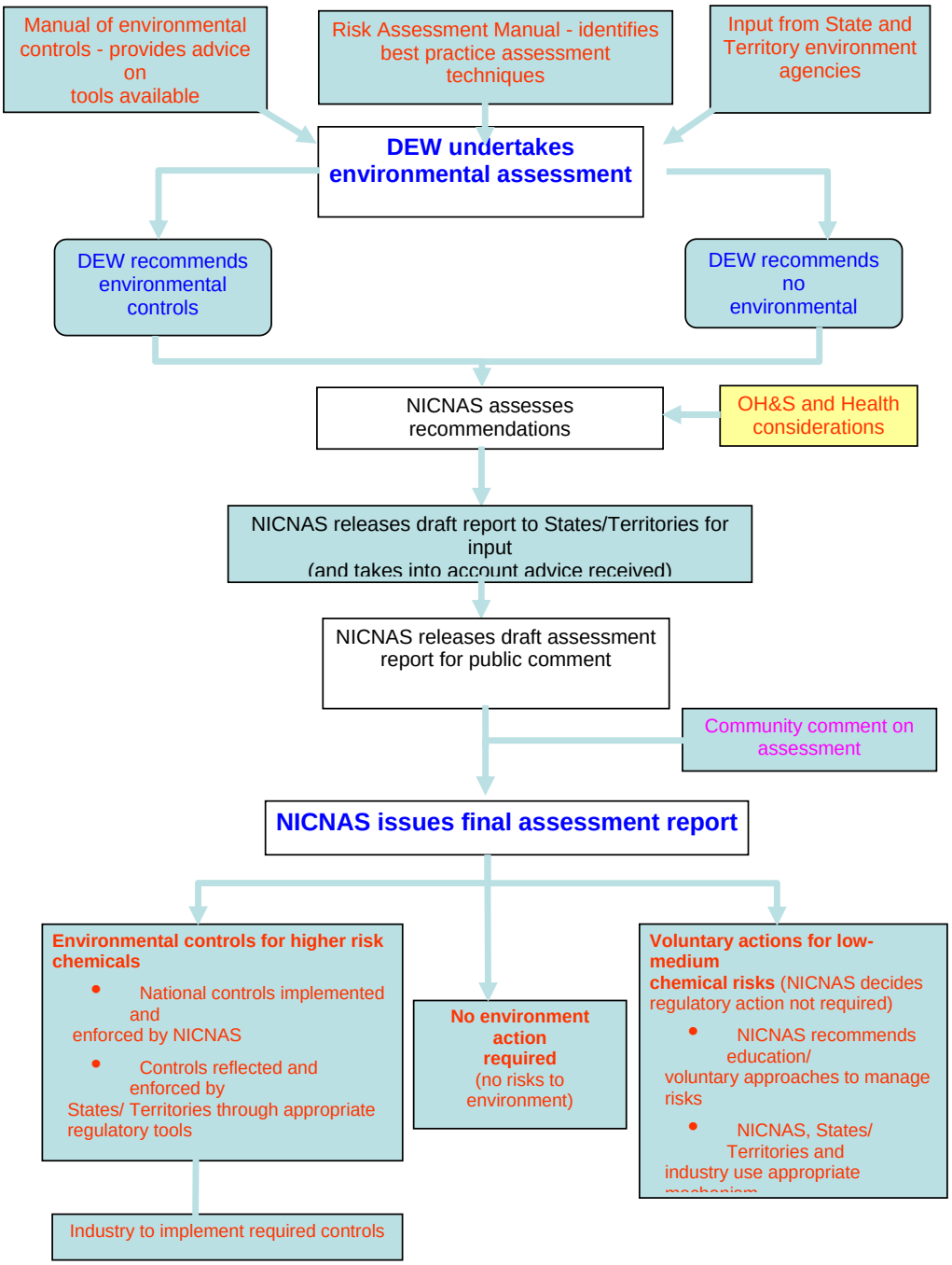
- Any controls identified by NICNAS (and specified in its final assessment reports) as necessary to prevent environmental harm would be clearly identified as mandatory environmental controls and would be written as mandatory action statements.
- A legislative scheme would be enacted that made NICNAS environmental controls automatically apply as law in State and Territory jurisdictions as a result of a national cooperative law scheme.
- This legislative scheme could be achieved by (a) new mirror or consistent ('applied') legislation; or (b) adoption of relevant IC Act provisions into existing State and Territory legislation.
- States and Territories would implement the identified mandatory controls without amendment or any further review process (i.e. this would eliminate the need for States and Territories to review each recommendation and develop and enact a legislative or other instrument to implement each recommendation).
- Agreement and input to development of these environmental controls would have occurred through early and direct environment agency contribution (from States and

Territories as well as the Australian Government Department of the Environment and Water Resources) during the environmental risk assessment process, noting that developing and finalising recommendations is a 'public' process with community, industry and government involvement (any further 'review' step to consider whether and how to adopt identified necessary controls would be a duplication of process).

- NICNAS' recommended environmental controls would be informed by the best available science and matched to the agreed risk, and would be able to cover any necessary aspects of the chemical life cycle including setting conditions on the import, manufacture, use, packaging, storage, handling, labelling and disposal of industrial chemicals. It could also include banning (or phasing-out) the import, manufacture or use of a chemical where an assessment identifies unacceptable adverse effects on the environment that are not able to be mitigated effectively through management or other controls.
- There would be provision for jurisdictional exemptions from mandatory implementation of controls on a case by case basis where necessary. Exemption circumstances would require clear, transparent criteria and processes (e.g. limited to research uses and certain volume thresholds/limits and/or possibly time-limited). All stakeholders (including industry) agreed that some form of exemption mechanism would be needed, but wanted the exemption process to be sensible and clearly prescribed.
- There would be a mechanism in place to ensure affected industries are informed of environmental controls in a timely, efficient and comprehensive way. This should involve a centralised and easily accessible repository ('one stop shop') for industry, the community and governments to find information about environmental management controls for industrial chemicals.

This model of centralised national decision making, supported by State/Territory implementation and enforcement, is consistent with existing cross-government approaches, for example in water reform, and in agricultural and veterinary chemicals.

Diagram 2: **How the preferred approach would operate within the industrial chemical risk assessment regime**



Advantages

- Mechanism is simple, consistent, automatic and certain.
- Would result in a uniform (or very consistent) national scheme for chemicals environmental management, which would ameliorate the regulatory duplication, inconsistency and overlap identified in the Banks Report as a key issue in the chemicals sector for those high risk chemicals where environmental controls are deemed by NICNAS as necessary to manage that risk.
- NICNAS environmental risk management recommendations identified as necessary to prevent or minimise environmental harm would be implemented Australia-wide, thus improving certainty about regulatory outcomes for businesses operating across jurisdictions.
- NICNAS recommendations would be implemented in a timely manner, generating efficiencies for business and ensuring environmental protection outcomes are achieved for the broader community.
- Linking environmental risk assessment outcomes directly with mandatory environmental controls improves regulatory clarity and efficiency.
- A simpler mechanism should assist to deliver environmental outcomes at least cost to industry, community and governments.

Disadvantages

- Effectiveness is reliant on establishing new mechanisms to ensure that the decisions being drafted by the national regulator are clear and actionable. (NChEM is already addressing this).
- Some stakeholders are uncertain - while some industry stakeholders are keen to see a simple, streamlined system of environmental controls, others consider that a model that more closely reflects the existing public health or OH&S systems might be preferable due to their familiarity *(although the health and OH&S systems already differ from each other)*.
    - *Industry views on this matter could be clarified by the Productivity Commission as industry has previously raised concerns about the lack of consistency/uniformity delivered by the OH&S and public health systems.*
    - *It is also unclear how support by some industry for an OH&S and public health system model fits with calls for timely, simple, efficient and consistent regulatory action, given that these models currently include bodies separate to NICNAS that, in effect, undertake "second reviews" of NICNAS assessment recommendations, potentially adding to costs, bureaucracy, time delays and creating potential for inconsistencies.*
- Could be viewed as diminution of State/Territory decision-making sovereignty.

The preferred approach would also contribute to Australian governments meeting their commitments to reduce unnecessary red tape and achieve better regulation outcomes. In particular this approach aligns most closely with the Banks Report recommendations for the chemicals and plastic sector, by most efficiently addressing the existing regulatory inconsistencies and duplication between jurisdictions in chemicals regulation which it identified as a priority issue.

Any management/legislative model chosen needs to allow for a mix of regulatory, co-regulatory or self-regulatory approaches on a chemical by chemical basis. For example where there is a low to medium risk of environmental harm there should be capacity to manage a chemical by policy approaches such as education/information campaigns or

self/co-regulatory approaches such as industry-driven Codes of Practice. On the other hand, there will be cases where regulation is necessary (e.g. mandatory controls on use) because of an unacceptably high risk of environmental harm.

Other options considered under NChEM

In addition to the preferred option discussed above, three other options to establish a linked national regime to manage industrial chemicals were discussed with stakeholders during NChEM consultations.

These options are described in detail in ***Attachment 2*** and are summarised below:

- **Option 2** - proposes that NICNAS environmental assessment recommendations are referred to a new and separate review Committee for reconsideration and decision. If agreed, decisions are adopted in all States and Territories via nationally cooperative legislation;
- **Option 3** - proposes that States and Territories act independently of the national regulator and develop their own legislative mechanisms to enable adoption of NICNAS recommended environmental controls in all jurisdictions; and
- **Option 4 -** proposes that jurisdictions make a formal policy commitment to consistent adoption of all NICNAS environmental assessment recommendations, in the absence of a legislated framework.

Addressing the remaining gap: Management powers

One national regulatory approach for the environment is best facilitated by having a national regulator with decision making authority and which possesses a full suite of powers and tools. This is already the model for agricultural and veterinary chemicals, in large part, but not for industrial chemicals. For a comprehensive and fully integrated system where one single national regulatory body 'sets the rules' when action is needed, the national industrial chemical regulator requires powers to:

- educate, inform, promote, obtain information, issue public advisories, acknowledge industry self-regulation, implement co-regulatory approaches such as requiring compliance with industry codes of practice, put conditions on use/restrictions on chemicals and require chemical phase-outs or bans for very high risk chemicals where risks cannot otherwise be managed.

The types of environmental control decisions envisaged for NICNAS are outlined in the box below.

Potential recommended environmental controls needing to be accommodated within the preferred legislative/regulatory model

- Restrictions on permissible concentrations/prohibition on discharges to sewers/ waterways/drains
- Restrictions/prohibition on discharges to air
- Requirement to meet specified indoor or ambient air standards/limits
- Requirement to contain/capture/treat contaminants
- Tailings dam requirements
- Requirement to meet on site disposal/handling/storage specifications
- Spill management requirements for example:
  - Bunding
  - Other structural, materials or process requirements
- Waste management or disposal requirements for example:
  - Restriction of disposal to landfills with leachate capture systems
  - Treatment processes of handling specified
  - Mandated technologies
  - Requirements for recycling or resource recovery
- Ban of chemical
- Phase-out or recall of chemical currently in use
- Requirement for substitution where alternative exists/available
- Restriction on use of chemical (concentrations/applications etc.)
- Placing limit on total volume of use across industry/nationally
- Requirement for testing of ecotoxicological risk modelling assumptions *(e.g. whether a chemical is really removed via STP processes*)
- Requirement for ongoing post-assessment monitoring of chemical
- Requirement for industry to report on impacts, monitoring outcomes or levels of use.
- Requirements relating to labelling, packaging, storage or handling during supply chain activities
- Requirement to implement consumer education/awareness program

The powers of NICNAS are currently limited and in some cases unclear and untested. In order to facilitate the operation of the preferred regulatory model, the following issues in relation to NICNAS powers will need to be considered:

- Changes will be needed to convert NICNAS 'recommendations' on environmental controls to mandatory 'decisions';
- NICNAS needs to be able to promote action at both ends of the regulatory spectrum - from industry self-regulatory environmental management approaches for low risk chemicals to banning or phasing out a chemical if a high risk of environmental harm is identified in an environmental risk assessment; and
- The extent of NICNAS' ability to regulate downstream chemical use, beyond initial use by an industry importer or manufacturer, requires clarification.

Economic Impact Assessment

There are some fundamental considerations that must underlie the design and operation of any new regulatory approach. Of particular interested to stakeholders is **the place of economic impact assessment considerations within environmental regulatory/controls decision-making and implementation.**

A key consideration for the development of a national, cooperative legislative approach to streamline and harmonise the implementation of NICNAS environmental risk assessment recommendations is determining the regulatory decision-making requirements for implementing significant chemical controls (such as chemical bans, phase-outs or strict restrictions on use) where these are identified as necessary to prevent environmental harm. In particular, *whether* and *when* a formal cost-benefit analysis (CBA) or Regulatory Impact Statement (RIS) may be triggered or required is a key consideration for governments in terms of the cost and efficiency of proposed NChEM regulatory reforms and was raised by stakeholders (particularly industry stakeholders) as a concern. Key issues include *what* would trigger a RIS or CBA requirement (i.e. would a RIS/CBA be required for every NICNAS environmental recommendation or only certain *major* environmental controls?) and *when* would any RIS or CBA occur (i.e. would a RIS/CBA be undertaken at the Commonwealth level and/or at the State level before implementation of the recommended control? Would it be required during or after the NICNAS assessment process if undertaken at Commonwealth level?).

This issue was discussed during legislative links roundtable consultations with stakeholders. Stakeholder views included:

- Some industry representatives wanted a formal RIS or CBA to be undertaken for every decision with potential business impacts so that business cost/benefit implications could be assessed and industry input facilitated.
- There was a feeling that a RIS/CBA requirement at the State level could lead to significant time delays in implementing recommended environmental controls.
- There was some concern that an increase in requirements for and frequency of formal RIS/CBAs could be inappropriately used to hamper the making of 'hard' decisions and impact on the efficient running of the chemical management regime.
- Government representatives noted that for the implementation of standard OH&S recommendations arising from NICNAS assessment reports and for poisons scheduling decisions, there is no requirement for a full RIS/CBA for every decision.

Roundtable participants/stakeholders agreed that:

- A RIS/CBA may be appropriate for significant regulatory decisions (e.g. chemical bans) but not for standard environment protection regulatory controls (e.g. emission limits, waste disposal practices etc).
- If required, any RIS/CBA requirement for NICNAS environmental controls *if deemed necessary*, should be undertaken once only at the Commonwealth level and not individually by each State and Territory.

PART C: OTHER GAPS AND INEFFICIENCIES REQUIRING CONSIDERATION

During the development of the NChEM framework, a number of significant issues that appear to be gaps and inefficiencies within the existing Australian management regimes for chemicals have been identified by EPHC and a wide range of stakeholders. Where such issues related to the environment, they have been incorporated into the NChEM package and are either being addressed now or are on the Working Group's agenda for future consideration. However, in some cases the identified issues have been beyond the scope of Environment Ministers to address. These matters are outlined below for the Productivity Commission's consideration.

Policy responsibility

Responsibility for system-wide chemical policy is unclear. No single agency, Minister or Ministerial Council at either Australian Government or State and Territory level has a designated policy leadership or oversight role in relation to chemicals. This can result in a system that is reactive rather than proactive in identifying and managing chemical issues and can result in inconsistencies of approach between sectors.

For example, in the absence of an Australia-wide policy position on how highly persistent but not bioaccumulative chemicals should be considered within assessment regimes there is potential for one regulator to adopt a cautious/restrictive view and another to take a more permissive use approach. This can create inequalities for industry and uncertainties for consumers. Similarly, there is no combined policy approach to look at possible barriers and strategies to facilitate the introduction and uptake of green chemistry in Australia.

Other policy issues that may benefit from a national approach include:

- Sustainable chemicals management – there would be value in identifying common sustainability objectives, strategies and actions to be achieved across all chemical types and sectors and throughout the life cycle of chemicals, perhaps using the internationally agreed Strategic Approach to International Chemicals Management, to which Australia is a signatory, as an appropriate starting point for discussion;
- Assessing major overseas chemical policy developments – major chemical reforms overseas are highly likely to impact on Australian chemicals management and there would be benefit in a clearly articulated national approach to considering and acting on such developments in order to ensure that Australia "keeps pace" with international counterparts. We need to be able to both maximise our potential to influence international developments and minimise the risk of chemical market exclusion if regulatory and policy settings are not aligned with trading partners;
- Considering the feasibility of introduction and uptake of green chemistry - there is no combined policy approach to look at possible opportunities, benefits/costs or barriers to green chemistry in Australia; and
- Agreeing on provisions for confidentiality and right to know – this is important because many non-regulatory approaches to chemicals management seek to rely on disclosure of information to consumers. At the same time there is a common perception amongst community stakeholders that much information about chemicals (eg details about testing, formulations, assessments, sales and usage data) is treated as commercially confidential, and that this confidentiality limits community access to the information necessary to inform choices and to participate in decision-making.

Responsibility for consumers/householders

The focus of existing management and regulatory regimes is largely on industry. The provision of information on chemicals from Australian Government, State and Territory regulators to householders is sporadic, uncertain and sometimes inconsistent. However, in many cases the national industrial and agvet chemicals regulators are assessing chemicals that will ultimately end up in the hands of householders. Significant issues are emerging in relation to household chemical use, such as potential impacts arising from the use of certain flame retardants used in household furnishings and electrical equipment.

There is also a need to consider ways of enhancing informed public input into decision-making about chemicals. There is a need to build capacity amongst the broader community to make better decisions about their own use of chemicals and enable them to participate effectively in chemicals decision-making by government and industry.

Chemical labelling

There are major inconsistencies and system gaps in relation to labels on industrial chemicals or articles containing industrial chemicals. For example, consumers can see full ingredient listings on labels for some cosmetics such as hand creams but not for their household cleaners. Nor can they ascertain what chemicals may be in their furnishings, carpets etc.

A key to better understanding and managing chemical risks is the provision of adequate information to consumers to enable them to assess and make decisions about their own exposures. Current systems do not enable this to occur.

Industry should consider the value/benefits it can obtain from a more open and informative relationship with consumers. Much consumer concern about chemicals could be overcome by the simple provision of ingredient listings in product/merchandise labels. This would be particularly beneficial for those consumers with particular chemical sensitivities/vulnerabilities who may otherwise lobby to restrict chemicals in products.

Labelling would also facilitate better management of chemicals by industry and governments in those instances where problems may arise with particular products/articles. For example a chemical may be identified as a concern in a particular toothpaste or household cleaner, but it is then difficult to identify whether it is likely to be a problem across a broader spectrum of products when there is no information on the label and no mechanism for identifying whether articles being imported contain those chemicals.

Articles containing industrial chemicals

Identifying and managing risks from articles containing industrial chemicals is a major system gap. NICNAS is responsible for chemicals only. Responsibilities for ensuring imported articles (such as blankets) are safe are incomplete, under-resourced, scattered across agencies and portfolios and have generally been applied reactively. When combined with the lack of labelling/information requirements in Australia this results in a significant gap in our ability to ensure that consumers, the general public and the environment are safe.

There appears to be a lack of quality assurance processes/procedures to identify chemical ingredients and whether national/international product standards are being met.

Information and knowledge issues

There is a need for coordinated collection and dissemination of readily available information to support better decisions about chemicals (e.g. existing toxicity data, use data, adverse experiences and ingredients) in addition to integrated research/monitoring/testing programs for investigating chemical impacts on health and the environment. EPHC is collaborating with

NICNAS to identify existing information that needs to be collected and how it could be disseminated and utilised in decision-making.

However, there remain significant knowledge gaps. In particular, there is a need to know more about:

- Basic toxicity, exposures and use patterns for those chemical that have never been assessed of the 40,000 industrial chemicals currently available for use in Australia (approximately 38,000);
  - For example, we only have very limited information about what chemicals are used where and in what volumes[5]. This has implications for our ability to identity and manage risks.;
- Chemical mixtures and their potential long-term impacts on children/foetuses, the nervous/endocrine/immune systems, and Australian flora and fauna;
- Safer chemicals and non-chemical alternatives;
- How chemicals interact with other health stressors such as climate change, antibiotic resistance and the spread of infectious diseases.

There is also a need for better mechanisms for the rapid dissemination of the latest research findings and guidance on how this should be translated into policy.

Public health and the environment

There is strong concern from some community groups that population health and environment related health issues are not sufficiently integrated into or taken account of within chemical management systems.

Other matters with broad application

There are a range of matters remaining on the NChEM/EPHC agenda for future progression that intersect with other elements of chemicals management. These include:

- ***Pharmaceuticals***

  The impacts of pharmaceuticals (prescription and over the counter drugs) and therapeutic products on the environment are largely uncharted. Research studies have uncovered causal links between synthetic oestrogens and endocrine disruption in wild fish. The potential impacts of other pharmaceuticals is an issue of emerging concern.

  Although only a limited sub-population is directly exposed to therapeutic substances, they can be excreted or washed from the skin following ingestion or use, and find their way into groundwater, surface water and drinking water supplies via wastewater and sewage systems. Unused drugs are also sometimes flushed down the toilet despite the availability of unwanted medication collections. Over the last decade, scientists have detected pharmaceuticals and cosmetic/therapeutic products in groundwater, surface water and rivers in Europe, Japan, North America and Australia.

  Unlike in the USA and Europe, in Australia there is no standard requirement to include environmental considerations when assessing chemicals in pharmaceuticals, nor chemicals in cosmetics and personal products with therapeutic claims.

[5] Annual reporting requirements only apply to a limited number of chemicals. For further information see http://www.nicnas.gov.au/Industry/Reporting_Annually.asp

- ***Post assessment information***

  Systematic monitoring and feedback by industry applicants and/or jurisdictions after a chemical has been assessed and is in use is not currently incorporated into the assessment system, but could help to confirm the validity of usage assumptions and support a more considered and evidence based approach to managing chemicals in the future.

  Existing feedback mechanisms that facilitate the flow of information on chemical controls and impacts from jurisdictions, industry and community back to the national chemical regulators are limited. In particular, the chemicals regulators cannot easily request further information from manufacturers and users about how a chemical behaves in the environment once the chemical has been approved for use, unless a chemical is placed under formal review. This presents a gap in the information that is available to assessors to enable them to verify that the data provided and assumptions made in the original assessment of a chemical are supported by real experience with the chemical when it is used in products and processes.

  Consequently, chemical assessment conclusions are rarely tested or confirmed against actual use patterns and experience, for example whether management controls for a chemical are consistently providing the expected outcomes across States and Territories. In addition, current impact reporting mechanisms for State and Territory agencies, industry and the public do not adequately capture all the impacts and concerns about chemicals in particular, those relating to the end of a chemical's life cycle (e.g. contaminants in fertiliser, biosolids, compost and recycled products). In the absence of informative feedback it is more difficult for the chemicals regulators to decide whether further assessment or amendment to controls is needed, or to identify new issues of concern.

- ***Chemical "cross-over" issues***

  In some instances a chemical may be originally assessed under one chemical management system based on particular usage patterns, volumes and exposure pathways. If any of these variables change, chemical impacts may 'cross-over' into other uses/settings beyond those originally anticipated and any potential impacts on, for example, public health and the environment are unlikely to be monitored for or identified early enough to enable least cost risk management actions.

  For example, the anti-bacterial chemical triclosan's use has greatly expanded beyond its original uses, which were largely as a therapeutic product (primarily for use in health settings). Because of its anti-bacterial properties, the chemical is now incorporated into a vast range of household items (e.g. cleaning cloths, chopping boards, toothpastes). However, there is no requirement which triggers further regulatory consideration of additional potential impacts, for example, on consumer health and on the environment as a result of triclosan use and discharges from households to sewage treatment plants and waterways.

- ***Management and destruction of obsolete chemicals***

  There is a need to improve Australia's management and destruction of obsolete chemicals including household articles containing chemicals of concern. Destruction capacity needs to be built and more information is needed regarding the location and quantities of chemical stockpiles.

ATTACHMENT 2

REGULATORY MODELS FOR MANAGING THE ENVIRONMENTAL RISKS OF INDUSTRIAL CHEMICALS

This attachment focuses on the question of how to effectively link environmental risk management recommendations made by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) in its assessments of new and existing industrial chemicals, with State and Territory environmental protection and chemicals environmental management systems. It also contains discussion of stakeholder views.

Problem: Current regulatory framework

The Commonwealth *Industrial Chemicals (Notification and Assessment) Act 1989* (referred to in this paper as the 'IC Act') provides for the assessment of both new and 'priority existing' chemicals. NICNAS assessments may address occupational health and safety (OH&S), public health and environment matters[6] and assessment reports may contain risk management recommendations on OH&S, public health and environmental management as well as the use, packaging, handling, labelling, storage, and disposal of the chemical. Assessments can be done in full (i.e. covering all issues), or cover only one area (such as public health).[7]

There are systems in place to facilitate the adoption of the OH&S and public health recommendations and their implementation at a State and Territory level. However, in the IC Act **there is currently no statutory mechanism to require the States and Territories to implement a NICNAS environmental risk assessment recommendation, or to implement it consistently across jurisdictions**. This was identified by the EPHC Chemicals Working Group (now the NChEM Working Group) as a significant gap in the industrial chemicals regulatory/management system and results in a range of negative impacts.

Of key concern is the unnecessary compliance burden on industry and cost and administrative burden to governments that currently results from the inconsistent and differing regulatory regimes across the State and Territory jurisdictions and the resulting uncertainty about *whether, how* and *when* NICNAS environmental recommendations will actually be implemented by the States and Territories.

The compliance burden on business resulting from the duplication and inconsistency of governments' regulatory regimes in Australia was identified as a significant issue for business and a key area for reform in the 2006 Productivity Commission study *"Rethinking Regulation – Report of the Taskforce on Reducing Regulatory Burdens on Business" (referred to throughout this paper as the 'Banks Report')*[8] and that in terms of national chemicals policy "achieving national uniformity (or even national consistency) is essential to the competitiveness of the industry"[9].

The obvious concomitant concern arising from this inefficient regulatory framework is that inaction or time delays in adoption of environmental controls deemed appropriate by the national regulator, NICNAS, increases the risk of environmental harm due to the

[6] NICNAS assesses the environmental impacts of industrial chemicals based on advice from the Australian Government Department of the Environment and Water Resources (DEW). This arrangement is formalised through a service level agreement between DEW and NICNAS.

[7] NICNAS considered the variety of its assessment products in its recent Existing Chemicals Program Review and is currently implementing the outcomes of this Review, consequently the contents of NICNAS assessment reports may become more varied in the future.

[8] Banks Report, p62

[9] Banks Report, p63

inappropriate regulation/control of high risk chemicals. Indeed NICNAS notes that "the effectiveness of NICNAS assessments depends upon adoption of recommendations to manage, reduce or mitigate risk"[10]. The problem is worsened by the lack of a formal process for providing comprehensive advice to affected industries and the broader community on the implementation of NICNAS environmental recommendations.

As noted above, there are currently systems in place to facilitate implementation of NICNAS' OH&S and public health recommendations. For comparison, the treatment of OH&S, public health and environment risk assessment recommendations following release of NICNAS final assessment reports is briefly summarised below:

- ***Public health recommendations*** flow through to poisons scheduling decisions made by the National Drugs and Poisons Schedule Committee (NDPSC). Where NICNAS makes recommendations relating to poisons scheduling for public health reasons, the NDPSC will review that recommendation and make a decision regarding inclusion and classification of a chemical in the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP), States and Territories generally adopt these scheduling decisions into relevant jurisdictional legislation relating to poisons, drugs or controlled substances. Jurisdictional legislation may pick up scheduling decisions automatically or by gazettal or another mechanism.
- ***Occupational health and safety recommendations*** are framed in accordance with nationally agreed standards and codes of practice. The Hazardous Substances Regulatory Package provides the framework for the legislative control of hazardous substances in the workplace. This national framework includes the List of Designated Hazardous Substances and Approved Criteria for Classifying Hazardous Substances, which include hazard classification categories and their associated risk and safety phrases. For example, a chemical could be classified as very toxic, toxic, harmful, corrosive, irritant etc, and will then attract a related risk and safety phrase that may prescribe its consequent labelling, use etc in the workplace. NICNAS recommendations are written to reflect this national approach (eg "It is recommended that…in addition to the current classification…limonene also be classified as a skin sensitiser with the risk phrase R43 May cause sensitisation by skin contact".[11]). The National Dangerous Goods Framework aims to ensure the effective control of the storage and handling of dangerous goods, and incorporates the principles of hazard identification, risk assessment and risk control.
- ***Environmental management recommendations*** are not systematically taken up. In contrast to public health and OH&S recommendations there is no established process to consider and adopt environmental recommendations and it is left to the State and Territory jurisdictions to determine whether and how to implement each environmental recommendation. Many general environmental management, pollution and waste control measures, such as bunding and storage requirements, may already be implemented under existing State and Territory environment protection tools such as environment protection licensing, however other recommendations may not be adopted or addressed via existing mechanisms or tools. General environment protection controls may differ across the States and Territories. As a result, under the current system environment recommendations are implemented on an ad hoc basis by State/Territory agencies, which results in unnecessary complexity of controls, inefficiencies and uncertainty for stakeholders.

An overview of existing environmental controls in the States and Territories is provided in ***Appendix A***.

[10] NICNAS Annual Report 2005-2006, p57
[11] NICNAS Limonene Priority Existing Chemical Assessment Report No 22, May 2002, p89

NICNAS assessments and environmental matters under the IC Act

Any consideration of how to streamline the uptake of environmental risk management recommendations requires an understanding of the scope of NICNAS powers and responsibilities regarding assessments under the IC Act, in particular in relation to environment matters. Sections 32 and 33 of the IC Act *(reproduced in part in **Appendix B** for reference)* set out the requirements for assessments of new chemicals by NICNAS and similar provisions apply to priority existing chemicals under sections 60A and 60B of the Act[12]. Sections 33 and 60B stipulate that the relevant NICNAS assessment reports *"must include…a summary of…environmental matters considered in the assessment and such recommendations as may reasonably be made in relation to* [the matters listed and any other prescribed matter]". The matters explicitly referred to in these provisions may cover setting conditions on the import, manufacture, uses, emissions limits, packaging, storage, handling, labelling and disposal of industrial chemicals.

Environmental management recommendations for industrial chemicals

The EPHC has identified the lack of a formal regulatory link to enable the implementation of NICNAS' environmental recommendations as the core of the problem and a major gap in the industrial chemicals management system. However, the problem also extends to the framing and appropriateness of the recommendations relating to the environment, as they appear in NICNAS final risk assessment reports because this impacts on the ease with which they can be readily and consistently 'picked up' and adopted at the State and Territory level.

A review of NICNAS assessment recommendations relevant to the environment (including recommended disposal practices) indicates recommendations are typically not specific and are not expressed as actionable statements. Assessment reports may also include recommendations that do not reflect actual State/Territory chemical management practice (e.g. many recommend incineration as a disposal measure even though States/Territories no longer consider standard incineration as a best practice disposal technique). This means recommended actions may not marry with State/Territory environment control regimes and this hinders the ability of jurisdictions to implement the recommendations.

To date most environment recommendations in NICNAS assessment reports for priority existing chemicals (PECs) have related to controlling discharges to drains/waterways, containing spills and disposal practices. For new chemicals, most environmental recommendations in NICNAS assessment reports relate to disposal. *(Some examples of relevant NICNAS assessment recommendations drawn from recent PEC assessment reports are provided in **Appendix C**).*

It is expected that a wider range of more specific and action-based recommendations on environmental management of industrial chemicals will be made in assessment reports in the future due to measures being progressed under NChEM including:

- improved framing of the environmental recommendations made in final assessment reports;
- improved coordination and involvement of State/Territory environment agencies in risk assessments so that NICNAS recommendations are relevant and appropriate regarding State/Territory environmental management regimes; and
- improved environmental risk assessment processes.

[12] Note: NICNAS is currently implementing the outcomes of its Existing Chemicals Program Review. This could result in amendments to the IC Act provisions relating to NICNAS assessments.

Objectives and guiding principles

The EPH SC has identified key objectives for its consideration of environment related chemical regulatory reform to resolve the gaps in the current system discussed above. The primary objective of action is **to achieve a clear, direct and efficient link between NICNAS risk assessment recommendations for the environment and their consistent implementation by the States and Territories, in order to streamline and harmonise environmental management and regulation of industrial chemicals nationally**.

Additional objectives are:

- to provide benefits to industry in the form of a reduced compliance burden, by providing regulatory certainty and, if possible, by achieving regulatory uniformity (or consistency) across jurisdictions.
- to provide benefits to the community by minimising the risk of environmental harm through more appropriate and timely environmental management of high risk chemicals.

The EPHC has also identified overarching principles to guide development of a regulatory link. These principles are broadly supported and were identified through stakeholder submissions and during extensive stakeholder consultations:

- Reduce unnecessary red tape;
- Aim for uniformity across jurisdictions;
- Reduce regulatory time delays in adoption of environmental controls deemed appropriate by national regulator (NICNAS).
- Ensure clear delineation of Commonwealth and State/Territory Government regulatory responsibilities in chemicals environmental management.
- Make link as simple as possible and limit regulatory complexity and duplication.
- Use existing systems and processes where efficient, effective and feasible.
- Be a module that is compatible with (i.e. able to 'plug in' to) any system or regulatory reform agenda that is ultimately determined by COAG.

The principles outlined above also recognise the current focus of Australian governments on reducing the regulatory burden and improving regulatory efficiency, including the outcomes of the Banks Report.

Preferred option

Following extensive consultation and analysis of a wide range of possible approaches, **Option 1** (see below) has been identified as the preferred approach to resolve the problem/gap discussed above.

The preferred approach would generate a simple, consistent, automatic and mandatory legislative link that would result in State and Territory regulatory uniformity (or a high level of consistency) and would improve regulatory clarity and certainty regarding how NICNAS environmental assessment recommendations will be implemented in all jurisdictions, thus meeting industry calls for regulatory certainty and uniformity.

The preferred approach *(discussed further below as **Option 1)*** provides the most efficient and clear approach to achieve Environment Ministers objectives of streamlining and harmonising the implementation of recommended NICNAS environmental risk assessment controls for industrial chemicals. This approach would also contribute to Australian governments meeting their commitments to reduce unnecessary red tape and achieve better

regulation outcomes. In particular this approach aligns most closely with the Banks Report recommendations for the chemicals and plastic sector, by most efficiently addressing the existing regulatory inconsistencies and duplication between jurisdictions in chemicals regulation which was identified as a priority issue in the Banks Report.

Analysis of options

Summary

The feasible options for the regulatory link identified by the EPHC as being necessary are discussed below. These Options were canvassed with stakeholders during NChEM consultations. The four key Options are broadly distinguished as follows *(noting that for each of Options 1 to 3 there may be more than one possible mechanism in terms of legislative design*):

- **Option 1** – Environmental controls are mandated at the national level as an outcome of industrial chemical assessments by NICNAS and are automatically adopted in all States and Territories as a result of nationally cooperative legislation;
- **Option 2** – NICNAS environmental assessment recommendations are referred to a new and separate review Committee for reconsideration and decision. If agreed, decisions are adopted in all States and Territories via nationally cooperative legislation;
- **Option 3** – States and Territories act independently of the national regulator and develop their own legislative mechanisms to enable adoption of NICNAS recommended environmental controls in all jurisdictions; and
- **Option 4** – Jurisdictions make a formal policy commitment to consistent adoption of all NICNAS environmental assessment recommendations, in the absence of a legislated framework.

All of the identified Options should allow for the use of co-regulatory or self-regulatory approaches on a chemical by chemical basis. For example where there is a low or medium risk of environmental harm NICNAS may recommend policy approaches such as education/information campaigns or self/co-regulatory approaches such as industry driven Codes of Practice. There will be cases where regulation is necessary because of an unacceptably high risk of environmental harm.

Detailed discussion of options considered with stakeholders

Option 1

Environmental controls are mandated at the national level as an outcome of industrial chemical assessments by NICNAS and are automatically adopted in all States and Territories as a result of nationally cooperative legislation.

Under this Option, States and Territories would have consistent or mirror legislation in place that enabled the automatic adoption of the environmental controls specified by NICNAS by virtue of a direct link to the IC Act.

Key features of this approach would include:

- Any controls identified by NICNAS (and specified in its final assessment reports) as necessary to prevent environmental harm would be clearly identified as mandatory environmental controls and would be written as mandatory action statements
- A legislative scheme would be enacted that made NICNAS environmental controls automatically apply as law in State and Territory jurisdictions as a result of a national cooperative law scheme.

- This legislative scheme could be achieved by (a) new mirror or consistent ('applied') legislation; or (b) adoption of relevant IC Act provisions into existing State/Territory legislation.
- States and Territories would implement the identified mandatory controls without amendment or any further review process (i.e. this would eliminate the need for States and Territories to review each recommendation and develop and enact a legislative instrument to implement each recommendation).
- Agreement and input to development of these environmental controls would have occurred through early and direct environment agency contribution (from States and Territories as well as the Australian Government Department of the Environment and Water Resources) during the environmental risk assessment process, noting that developing and finalising recommendations is a 'public' process with community, industry and government involvement (any further 'review' step to consider whether and how to adopt identified necessary controls would be a duplication of process).
- NICNAS' recommended environmental controls could cover setting conditions on the import, manufacture, use, packaging, storage, handling, labelling and disposal of industrial chemicals and banning (or phasing-out) the import, manufacture or use of a chemical where an assessment identifies unacceptable adverse effects on the environment
- There would be provision for jurisdictional exemptions from mandatory implementation of controls on a case by case basis where necessary. Exemption circumstances would require clear, transparent criteria and processes (e.g. limited to research uses and certain volume thresholds/limits and/or possibly time-limited). All stakeholders (including industry) agreed that some form of exemption mechanism would be needed, but wanted the exemption process to be sensible and clearly prescribed.
- There would be a mechanism in place to ensure affected industries are informed of environmental controls in a timely, efficient and comprehensive way. This should involve a centralised and easily accessible repository ('one stop shop') for industry, the community and governments to find information about environmental management controls for industrial chemicals.

Advantages

- Mechanism is simple, consistent, automatic and certain.
- Option 1 would result in a uniform (or very consistent) national scheme for chemicals environmental management, which would ameliorate the regulatory duplication, inconsistency and overlap identified in the Banks Report as a key issue in the chemicals sector for those high risk chemicals where environmental controls are deemed by NICNAS as necessary to manage that risk..
- All NICNAS environmental risk management recommendations identified as necessary to prevent or minimise environmental harm would be implemented Australia-wide, thus improving certainty about regulatory outcomes for businesses operating across jurisdictions.
- NICNAS recommendations would be implemented in a timely manner, generating efficiencies for business and ensuring environmental protection outcomes are achieved for the broader community.
- Linking environmental risk assessment outcomes directly with mandatory environmental controls improves regulatory clarity and efficiency.
- A simpler mechanism should assist to deliver environmental outcomes at least cost to industry, community and governments.

Disadvantages

- Effectiveness is reliant on establishing new mechanisms to ensure that the decisions being drafted by the national regulator are clear and actionable. (NChEM is already addressing this).
- Some stakeholders are uncertain - while some industry stakeholders are keen to see a simple, streamlined system of environmental controls, others consider that a model that more closely reflects the existing public health or OH&S systems might be preferable due to their familiarity *(although the health and OH&S systems already differ from each other)*.
    - *Industry views on this matter could be clarified by the Productivity Commission as industry has previously consistently raised concerns about the lack of consistency/uniformity delivered by the OH&S and public health systems.*
    - *It is also unclear how support by some industry for an OH&S and public health system model fits with calls for timely, simple, efficient and consistent regulatory action, given that these models currently include bodies separate to NICNAS that, in effect, undertake "second reviews" of NICNAS assessment recommendations, potentially adding to costs, bureaucracy, time delays and creating potential for inconsistencies.*
- Could be viewed as diminution of State/Territory decision-making sovereignty.

The preferred approach would also contribute to Australian governments meeting their commitments to reduce unnecessary red tape and achieve better regulation outcomes. In particular this approach aligns most closely with the Banks Report recommendations for the chemicals and plastic sector, by most efficiently addressing the existing regulatory inconsistencies and duplication between jurisdictions in chemicals regulation which it identified as a priority issue.

Any management/legislative model chosen needs to allow for a mix of regulatory, co-regulatory or self-regulatory approaches on a chemical by chemical basis. For example where there is a low to medium risk of environmental harm there should be capacity to manage a chemical by policy approaches such as education/information campaigns or self/co-regulatory approaches such as industry-driven Codes of Practice. On the other hand, there will be cases where regulation is necessary (e.g. mandatory controls on use) because of an unacceptably high risk of environmental harm.

Option 2

NICNAS environmental assessment recommendations are referred to a new and separate review Committee for reconsideration and decision. If agreed, decisions are adopted in all States and Territories via nationally cooperative legislation.

This Option would involve a new intermediate step between the release of NICNAS environmental recommendations and their implementation in States and Territories. This would involve a third party review process to decide on appropriate State/Territory action. States and Territories would then adopt/implement these decisions consistently as a result of mirror or complementary applying legislation.

Key features of this approach would include:

- NICNAS would continue to provide environmental **recommendations** in its final assessment reports.
- There would be a new intermediate review step to facilitate implementation of the environmental recommendations.
- This review step would be enacted by a new Commonwealth 'industrial chemicals environmental management' Act administered within the Australian Government's environment portfolio (e.g. by DEW) which would establish a new review Committee.
- The Committee's role would be to review and 'approve' the implementation of NICNAS environmental recommendations - responsible for determining the *how, whether or when* the recommended environmental controls should be implemented and other decision-making factors (for example costs and benefits of the recommended control).
- Decisions/environmental controls made by the Committee under the Act would then be applied or mirrored by State and Territory legislation to give legal effect to the implementation of the environmental controls in all jurisdictions.
- State and Territory legislation would automatically adopt the national committee decisions with no additional State/Territory level review required.

Discussion points

There are several possible mechanisms by which an intermediate step could operate. A review committee would almost certainly comprise representatives from all jurisdictions' environment agencies/departments and might also include additional members from related government agencies (such as health departments, the national regulator). Industry and community stakeholders were of the view that any such Committee needed to include, independent ecotoxicological experts and/or industry and community representatives. Issues to consider would include manageability, access to assessment information and potential duplication of efforts if assessment are to be "reconsidered".

Advantages

- This approach could result in a uniform (or very consistent) cooperative legislation scheme across the States and Territories.
- Adoption of NICNAS environmental recommendations would be streamlined and mandated without IC Act changes or changes to NICNAS processes.
- A new Commonwealth Act could be targeted and tailored specifically for adoption of NICNAS environmental recommendations.
- Creates an additional opportunity for decision-making review, thus allowing for other considerations that may not have been considered by NICNAS to be taken into account in the review and approval process.

Disadvantages

- There is no certainty for the national industrial chemicals regulator about implementation of environmental recommendations.
- This approach adds regulatory and bureaucratic complexity due to the creation of a new Commonwealth Act and new 'review' committee to activate NICNAS recommendations.
- Introduces a "second" review of a NICNAS review but with no guarantee of access to complete information sets (noting information available to NICNAS in conducting its

reviews/assessments may be commercially protected and not available to other parties.)

- Significant time delays are likely. Business has often criticised the systems for NICNAS public health and OH&S recommendations (with similar third party review/implementation steps) due to the time delay between release of assessments and adoption of recommended controls.
- There is a greater likelihood of jurisdictional variations and thus regulatory inconsistencies between jurisdictions (again much criticised by industry in other current systems).

Option 3

States and Territories act independently of the national regulator and develop their own legislative mechanisms to enable adoption of NICNAS recommended environmental controls in all jurisdictions.

Under this Option States and Territories would introduce new uniform legislation or alternatively introduce consistent provisions into relevant existing legislation. NICNAS environmental recommendations would be adopted via the new State/Territory legislative provisions rather than through a Commonwealth Government level mechanism. Commonwealth regulatory changes could also occur but would not be essential.

Key features of this approach would include:

- NICNAS would continue to make environmental recommendations through its assessment processes.
- States and Territories would implement all environmental recommendations consistently either (a) via *new* uniform State and Territory industrial chemicals environmental management legislation developed either through a model/ mirror legislation or applied law approach; or (b) by drafting model provisions to 'slot into' relevant *existing* State and Territory environmental/chemicals management legislation.
- The new State/Territory Act or provisions would make implementation of NICNAS environmental recommendations mandatory in the jurisdiction.
- Changes to Commonwealth legislation would not be required. Minor amendments to the IC Act designed to ensure the clarity of recommendations made by NICNAS could facilitate the operation of the State/Territory scheme.

Advantages

- Option 3(a) *(but probably not Option 3(b))* could achieve a high level of consistency in industrial chemicals environmental management across the States and Territories.
- States/Territories could implement this Option as a 'stand alone' regulatory approach with no need for major legislative changes or regulatory action at the Commonwealth level.
- From the perspectives of administrative simplicity and government decision-making processes, Option 3(b) may be more easily progressed because it only involves drafting a new set of provisions rather than an entire Act; it uses and builds on existing legislation and environmental protection frameworks; and Commonwealth legislative changes would not be required.

Disadvantages

- To operate effectively this approach would rely on NICNAS recommendations being clear, action-based and adequately addressing all environmental controls, but there would be no mechanism to require this.
- This approach may require wide-ranging repeal of, or amendments to, existing State and Territory environmental protection, waste management and/or chemicals management legislation.
- This approach is more likely lead to regulatory inconsistencies within or between jurisdictions.
- In some jurisdictions Option 3(b) may be problematic if their identified existing Act had limited scope and was not structured so as to provide a suitable framework for simply 'slotting in' the model provisions (e.g. offence/penalty clauses not aligned).

Option 4

Jurisdictions make a formal policy commitment to consistent adoption of all NICNAS environmental assessment recommendations, in the absence of a legislated framework.

Option 4 involves a policy and administrative process rather than a legislative approach. This Option essentially represents the status quo. Following Environment Ministers ratification in June 2007 of the NChEM Ministerial Agreement and *Chemicals Action Plan for the Environment* a number of short term policy measures are being implemented including an agreement along the above lines as a short term measure until such time as a regulatory model is developed and implemented.

Key features of this approach include:

- Environment Ministers formally agree to implement every NICNAS environmental management recommendation and to do so consistently.
- Implementation of recommendations would follow agreement between jurisdictions on the specific mandatory environment controls arising from NICNAS final assessment reports.

Advantages

- No new legislation or legislative amendments would be required.
- Only reasonably minor additional government actions required.

Disadvantages

- There would continue to be significant time delays between release of NICNAS final assessment reports and the implementation of any recommended environmental controls.
- The level of consistency across jurisdictions could continue to be significantly limited by the tools available in each jurisdiction to manage the environmental impacts of chemicals and because this approach would not in itself generate legally enforceable requirements. There may also be a higher rate of inconsistency in environmental chemical controls across jurisdictions.

- While it would be possible to achieve broadly consistent outcomes, industries operating in several states would still need to understand and comply with several different legislative regimes.
- This approach represents a missed opportunity to achieve a more streamlined process and harmonised regulatory system for industrial chemicals environmental management across jurisdictions.

Some examples of existing legislative schemes are at **Appendix D.**

Facilitating streamlined regulation: NICNAS powers and responsibilities

Option 1 has been identified as the most efficient regulatory approach to the issues discussed earlier in this paper because it offers major benefits to industry and the broader community in terms of regulatory simplicity, uniformity, certainty and timeliness and provides a comprehensive and fully integrated system where one single national regulatory body 'sets the rules' when action is needed.

Option 1 relies on NICNAS environmental risk assessment 'recommendations' being automatically adopted by all jurisdictions as a result of amendments to the IC Act that enhance and clarify NICNAS powers under the Act and a cooperative law scheme where States and Territories adopt or apply the IC Act (or relevant provisions) to make the implementation of NICNAS recommendations mandatory in their jurisdiction. Therefore development of an appropriate response to the regulatory gap discussed earlier in the paper should include a consideration of NICNAS powers under the IC Act.

In the approach proposed under Option 1 any controls identified by NICNAS (and specified in its final assessment reports) as necessary to prevent environmental harm would no longer simply be 'recommendations', but would be clearly identified as mandatory environmental controls. This may require a change in terminology in the Act (for example to refer to them as 'controls' or 'directions' rather than 'recommendations') and/or establishment of a mechanism that clearly notified them as mandatory controls and indicated their application (for example by creating a Schedule of environmental controls or establishing a formal notification mechanism such as an internet-based database).

To achieve effective environmental outcomes, an improved regulatory approach to industrial chemicals environmental management should be able to cater for the full range of possible environmental issues that might arise in risk assessment reports i.e. NICNAS should be able to make a range of types of risk management 'recommendation' to cater for a wide variety of desired environmental outcomes. NICNAS needs to be able to promote action at both ends of the regulatory spectrum - from industry self-regulatory environmental management approaches for low risk chemicals to banning or phasing out a chemical if a high risk of environmental harm is identified in an environmental risk assessment. There are also other considerations that need to be explicitly taken into account in the preparation of appropriate recommendations for the environment, for example where NICNAS environmental recommendations relate to premises, different environmental management tools may be necessary for licensed versus non-licensed premises and this needs to be comprehensively taken into account.

To this end, NICNAS must have a full suite of powers/tools explicitly provided for under its legislation, as do the majority of other nation regulatory bodies. The type of environmental controls that powers would need to cover are outlined in the text box on the following page.

For a comprehensive and fully integrated system where one single national regulatory body 'sets the rules' when action is needed, the national industrial chemical regulator requires powers to:

- educate, inform, promote, obtain information, issue public advisories, acknowledge industry self-regulation, implement co-regulatory approaches such as requiring compliance with industry codes of practice, put conditions on use/restrictions on chemicals and require chemical phase-outs or bans for very high risk chemicals where risks cannot otherwise be managed.

The powers of NICNAS are currently limited and in some cases unclear and untested.

In the case where a significant risk of environmental harm has been identified and a ban or phase-out of an existing chemical is necessary NICNAS currently has no direct ability to act. As part of having a full suite of regulatory powers, there should be explicit provision under the Act for national chemical bans/phase-outs.

Potential recommended environmental controls

- Restrictions on permissible concentrations/prohibition on discharges to sewers/ waterways/drains
- Restrictions/prohibition on discharges to air
- Requirement to meet specified indoor or ambient air standards/limits
- Requirement to contain/capture/treat contaminants
- Tailings dam requirements
- Requirement to meet on site disposal/handling/storage specifications
- Spill management requirements for example:
  - Bunding
  - Other structural, materials or process requirements
- Waste management or disposal requirements for example:
  - Restriction of disposal to landfills with leachate capture systems
  - Treatment processes of handling specified
  - Mandated technologies
  - Requirements for recycling or resource recovery
- Ban of chemical
- Phase-out or recall of chemical currently in use
- Requirement for substitution where alternative exists/available
- Restriction on use of chemical (concentrations/applications etc.)
- Placing limit on total volume of use across industry/nationally
- Requirement for testing of ecotoxicological risk modelling assumptions *(e.g. whether a chemical is really removed via STP processes*)
- Requirement for ongoing post-assessment monitoring of chemical
- Requirement for industry to report on impacts, monitoring outcomes or levels of use.
- Requirements relating to labelling, packaging, storage or handling during supply chain activities
- Requirement to implement consumer education/awareness program

Cross-cutting issues

Some fundamental considerations for the design and operation of a new regulatory approach underlie all proposed Options. Some key considerations identified by the EPHC and discussed during consultations with stakeholders are outlined below.

1. *The place of impact assessment considerations within environmental regulatory/controls decision-making and implementation*

A key consideration for the development of a national cooperative legislation approach to streamline and harmonise the implementation of NICNAS environmental risk assessment recommendations is determining the regulatory decision-making requirements for implementing significant chemical controls (such as chemical bans, phase-outs or strict restrictions on use) where these are identified as necessary to prevent environmental harm. In particular, *whether* and *when* a formal cost-benefit analysis (CBA) or Regulatory Impact Statement (RIS) may be triggered or required is a key consideration for governments in terms of the cost and efficiency of proposed NChEM regulatory reforms and was raised by stakeholders (particularly industry stakeholders) as a key concern.

Key issues include *what* would trigger a RIS or CBA requirement (i.e. would a RIS/CBA be required for every NICNAS environmental recommendation or only certain *major* environmental controls?) and *when* would any RIS or CBA occur (i.e. would a RIS/CBA be undertaken at the Commonwealth level and/or at the State level before implementation of the recommended control? Would it be required during or after the NICNAS assessment process if Commonwealth level?).

This issue was discussed during roundtable consultations with stakeholders. Stakeholder views included:

- Some industry representatives wanted a formal RIS or CBA to be undertaken for every decision with potential business impacts so that business cost/benefit implications could be assessed and industry input facilitated.
- There was a feeling that a RIS/CBA requirement at the State level could lead to significant time delays in implementing recommended environmental controls.
- There was some concern that an increase in requirements for and frequency of formal RIS/CBAs could be inappropriately used to hamper the making of “hard” decisions and impact on the efficient running of the chemical management regime.
- Government representatives noted that for the implementation of standard OH&S recommendations arising from NICNAS assessment reports and for poisons scheduling decisions, there is no requirement for a full RIS/CBA for every decision.

Roundtable participants/stakeholders agreed that:

- A RIS/CBA may be appropriate for significant regulatory decisions (e.g. chemical bans) but not for standard environment protection regulatory controls (e.g. emission limits, waste disposal practices etc).
- If required, any RIS/CBA requirement for NICNAS environmental controls *if deemed necessary*, should be undertaken once only at the Commonwealth level and not individually by each State and Territory.

2. *Application of jurisdictional exemption provisions*

In developing a nationally cooperative scheme to harmonise and streamline environmental management of industrial chemicals, a key issue is the scope for jurisdictional exemptions or ‘opt out’ provisions in certain circumstances, what those circumstances should be and how exemptions should be determined. This issue was discussed during legislative links

roundtable consultations with stakeholders. Roundtable participants/stakeholders agreed that jurisdictional exemptions were necessary but should only be permitted for very specific, defined circumstances and would require clear, transparent criteria and processes (e.g. limited to research uses and certain volume thresholds/limits and/or possibly time-limited).

3. *Timely provision of information on environmental controls*

To support regulatory efficiency in industrial chemicals environmental management, a mechanism is needed to ensure affected industries are informed of environmental controls in a timely, efficient and comprehensive way. This needs to include small and non-licensed users. This process should involve a central and easily accessible repository ('one stop shop') for industry, the community and governments to find information about environmental management controls for industrial chemicals. It could also be useful to develop an agreed and transparent process for actively disseminating information on controls to affected companies.

APPENDIX A

OVERVIEW OF EXISTING ENVIRONMENTAL CONTROLS IN THE STATES AND TERRITORIES

Tool	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Order (to prevent/minimise a chemical's adverse effects on the environment)	No such mechanism.	Yes	No such mechanism.	No such mechanism.	No such mechanism.	No such mechanism.	Yes	No such mechanism.
Licence	Environmental Authorisations to permit the conduct of an activity (& hence ensure pollution control)	1. Chemical licences. 2. Environment protection licences for pollution control	Environment protection licence for pollution control.	Environment protection licence for pollution control.	Environment protection licence for pollution control.	No licensing powers.	Pollution control and waste discharge licences.	Environment protection licences for pollution control (can include controls on chemical handling & discharges).
Regulation - for chemicals management	Ability to introduce such regulations	Power needs to be expanded to cover specific aspects of chemicals management	Power needs to be expanded to cover specific aspects of chemicals management	Power needs to be expanded to cover specific aspects of chemicals management	Power needs to be expanded to cover specific aspects of chemicals management	Power needs to be expanded to cover specific aspects of chemicals management.	Rarely used as can only be made for a notifiable (high risk) chemical. Use order power instead.	Ability to introduce regulations to prohibit or regulate the use of a chemical.
Environmental Protection Policy	Have power to develop policies.	Have power to issue policies but none made to date and not enforceable.	Have power to develop environment Protection Objectives and these are enforceable.	Have power and some policies are in place of relevance to chemicals. Policies are enforceable.	Have power to develop Environment Protection Policies (EPPs). Policies are enforceable	Have power to issue policies but not enforceable without relevant legislation.	Have power. These are strategic in nature but to date none manage chemicals. They cannot be directly	Have power. Policies are aimed at setting higher order environmental objectives, but have managed sulphur dioxide emissions.

Tool	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
							enforced.	Policies are enforceable.
Enforceable code of practice	No power	No power	Not enforceable but compliance with code of practice may satisfy general environmental duty.	No power	Compliance with specific requirements in a Code of practice may be enforceable by issuing Environment Protection Orders.	No power	Codes only enforceable if compliance with the code is mandated in a licence.	Subsidiary regulations not directly enforceable. Compliance with code of practice may satisfy due diligence obligation.
Extended Producer Responsibility scheme	No power	Yes, mainly for waste. Current power could cover chemical wastes. Need to broaden power to cover chemicals life cycle issues.	No power	Power mainly used for waste management.	Limited powers. Mainly for waste management	No power	Limited powers to implement such schemes at present.	No powers at present, but preparing EPR powers for waste management.
Notices/ directions	Power to issue notices and orders relating to pollution and other environmental offences.	Power to issue penalty notices and directions relating to pollution and other environmental offences.	Power to issue notices and directions relating to pollution and other environmental offences.	Power to issue directions and notices.	Power to issue notices and directions relating to pollution and other environmental offences	Power to issue notices and directions relating to pollution and other environmental offences	Power to issue notices and directions relating to pollution.	Power to issue notices and directions relating to pollution and other environmental offences.

APPENDIX B

NICNAS ASSESSMENTS AND ENVIRONMENTAL MATTERS UNDER THE IC ACT

Any consideration of how to streamline the uptake of environmental risk management recommendations requires an understanding of the scope of NICNAS powers and role regarding assessment recommendations under the IC Act, in particular in relation to environment matters. Sections 32 and 33 of the IC Act reproduced in part on the following page ***(see text Box)*** apply to assessments of new chemicals by NICNAS. Similar provisions apply to priority existing chemicals under sections 60A and 60B of the Act.

Extracts from the Commonwealth
Industrial Chemicals (Notification and Assessment) Act 1989

s32 "Nature of … assessment

(1)Where an assessment of an application under section 23 for an industrial chemical is being made the officer preparing the report **must determine the risk (if any) of** adverse health effects, safety effects or **adverse environmental effects that could be caused by**:

(a) …the **importation**; or
(b) …the **manufacture**; or
(c) the **use, storage, handling or disposal; of the chemical.**

(2)For the purpose of making a determination under subsection (1) in relation to an industrial chemical, **account is to be taken of each of the following matters**:

(a) the properties of the chemical;
(b) any use to which the chemical is intended to be, or is reasonably likely to be, put;
(ba) any adverse effects on the environment or persons that the chemical has the intrinsic capacity to cause;
(bb) the extent to which the environment, persons in a particular occupation or the public will be exposed to the chemical;
(c) any risk to the health or safety of persons who because of their occupation are engaged, or likely to be engaged, in the manufacture, handling, storage, use or disposal of the chemical;
(d) any risk to the health or safety of likely consumers handling or using the chemical or any product containing the chemical;
(e) any risk to the environment arising from the use of the chemical or from the discharge of waste products resulting from the manufacture or use of the chemical;
(f) the extent to which any risk referred to in this subsection is capable of being reduced by compliance with:
  (i) appropriate procedures relating to the manufacture, handling, storage, use or disposal of the chemical;
  (ii) special requirements in the packaging or labelling of the chemical;
  (iii) procedures relating to the control of, or the discharge into the environment of, the chemical or waste products resulting from the manufacture or use of the chemical;
(g) any other relevant information available to the Director."

s33 "Contents of … assessment report

An assessment report (other than… (self-assessment)) **must include** a Material Safety Data Sheet, **a summary of** health, safety and **environmental matters considered in the assessment and such recommendations as may reasonably be made in relation to each of the following…**:

(a) the precautions and restrictions to be observed during the importation, manufacture, handling, storage, use or disposal of the chemical to protect persons exposed…;
(b) controls to limit emissions of the chemical into the environment, including permissible concentrations in emissions of the chemical into the air or water from a manufacturing plant or other facility;
(c) the packaging, labelling, handling or storage of the chemical;
(d) the measures to be employed in emergencies involving the chemical to minimise hazard to persons and damage to the environment;
(e) the uses of the chemical;
(f) the means of disposal of the chemical;
(g) the circumstances …… in which secondary notification of the chemical is required;
(h) any prescribed matter."

APPENDIX C

NICNAS RISK ASSESSMENT RECOMMENDATIONS FOR THE ENVIRONMENT

Examples of relevant NICNAS assessment recommendations relevant drawn from recent PEC assessment reports relevant to the environment are provided in the table below.

Chemical	**Year**	**Environment related recommendations in selected Priority Existing Chemicals reports**
Formaldehyde	2006	It is recommended that NEPC take the data and findings of this report into consideration when setting an ambient air standard for formaldehyde. Evaluation of the available data in this report indicates that an ambient air standard in the order of 80 ppb (sampling over a short duration) would be warranted. It is recommended that the Australian Government Department of the Environment and Heritage *(now Water Resources)* update the National Pollutant Inventory (NPI) Fact Sheet for formaldehyde in accordance with the findings of this report.
Methylcyclopentadienyl Manganese Tricarbonyl (MMT)	2002	Should be sent to licensed waste disposal contractors in accordance with State and Territory requirements. No specific waste disposal guidelines, standards or management issues were identified for MMT or Mn wastes. Due to the toxicity of MMT, care should be exercised in disposing of contaminated wastes to avoid pollution of the environment.
Tetrachloroethylene	2001	Industries using tetrachloroethylene should limit as much as possible release of the chemical to the atmosphere, and the chemical should not be released to drains and waterways. Disposal should be through a licensed waste contractor.
Hydrofluoric acid	2001	***Anhydrous hydrofluoric acid*** Do not allow chemical to enter drains and waterways or surrounding soil. Extracted air contaminated with large amounts of fumes should be scrubbed prior to release to the atmosphere. Where possible, upturn leaky containers to allow gas rather than liquid to be released. Contain leaks with sand, earth or other absorbent material. Dilute with water and neutralise with lime. Keep waste out of drains and waterways. ***Hydrofluoric acid solution*** Do not allow chemical to enter drains and waterways. Contain spills with sand, earth or other absorbent material. Dilute with water, and where possible, neutralise with lime.
N-Vinyl-2-pyrrolidine	2000	Spills should be contained with absorbent material such as earth, sand or similar inert material, and disposed of to licensed landfill or incinerated. Do not allow product to enter drains or waterways.

APPENDIX D

NATIONAL COOPERATIVE LEGISLATION SCHEMES: SOME EXISTING MODELS

1. National regulatory framework for agricultural and veterinary chemicals

The Commonwealth *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994* (the 'Agvet Code Act') establish a national scheme for the assessment and registration of agricultural and veterinary ('agvet') products by the Australian Pesticides and Veterinary Medicines Authority (APVMA) *(formerly the National Registration Authority)*. This gives the APVMA regulatory powers to control the importation, manufacture, packaging, labelling, distribution, sale and registration of agvet chemicals and chemical products.

The APVMA operates within the Australian Government Agriculture, Fisheries and Forestry portfolio. All new agvet products must be assessed and registered by the APVMA before they can be sold, supplied, distributed or used in Australia. The APVMA also has a program to review existing registered pesticides and manages quality assurance programs that monitor the ongoing safety and performance of registered products. The Primary Industry Ministers' Council seeks advice from its Product Safety and Integrity Committee (PSIC) on key issues relating to the management and implementation of the National Registration Scheme. Membership of PSIC includes representatives from Australian, State and Territory Government primary industry or agriculture departments, the CSIRO and the APVMA as well as other Ministerial Councils with an interest in the management of agvet chemicals, including the EPHC. The APVMA also chairs an agvet Registration Liaison Committee comprising State, Territory and Commonwealth agencies, which deals with the operational aspects of the National Registration Scheme.

To enable the Agvet Code to have national coverage each State and the Northern Territory has complementary legislation which applies the Agvet Code to their jurisdiction *(the Australian Capital Territory is covered by the Commonwealth Act)*.

2. National Food Standards Code

Food Standards Australia New Zealand (FSANZ) established under the Commonwealth *Food Standards Australia New Zealand Act 1991* ('FSANZ Act'), sets national standards for composition, residue limits, testing, packaging, storage and labelling of food and assesses the human health risk of food additives before they are allowed to be used. National standards developed by FSANZ in accordance with the requirements of the FSANZ Act are incorporated into the Food Standards Code. The Act provides for consultative mechanisms with the States and Territories. In terms of chemicals management, the Food Standards Code establishes the maximum permitted levels of food additives that may be present in food, regulates the addition of vitamins and minerals, controls the labelling of food products and provides general food standards covering the maximum residue limits for contaminants and natural toxicants, including various agvet chemicals and heavy metals. Changes to the standards or the development of new standards in the national Food Standards Code are subject to rigorous scientific and regulatory impact assessment (RIS) processes and ultimately require Ministerial Council sign-off.

Each State and Territory has a 'Food Act' which adopts or allows for the application of the Food Standards Code in their jurisdiction. This legislation is generally administered by jurisdictions' health departments. State/Territory legislation adopts the Code either automatically or via gazettal or other means. It is the responsibility of States and Territories to enforce and regulate the standards contained in the Code in their jurisdiction.

3. Adoption of NICNAS public health assessment recommendations via national poisons scheduling

An example of how a review committee mechanism could function is the process of poisons scheduling via the National Drugs and Poisons Schedule Committee (NDPSC). Part of the NDPSC's role is to consider NICNAS public health assessment recommendations and decide whether to adopt relevant national standards (to subsequently be given legal effect through State and Territory legislation) for those industrial chemicals via poisons scheduling.

Background

The NDPSC is a statutory committee of the Therapeutic Goods Administration (TGA), established under the Commonwealth *Therapeutic Goods Act 1989*, and functions within the Australian Government Department of Health and Ageing. The NDPSC decides the classification of a substance for the purpose of including it in the national Standard for Uniform Scheduling of Drugs and Poisons (SUSDP). The SUSDP is developed with the aim of promoting nationally uniform scheduling, labelling and packaging of drugs, poisons and other controlled substances. The SUSDP classifies drugs and poisons into eight Schedules according to their use, potential to cause harm and safety issues. The SUSDP covers drugs and medicines (assessed and registered by the TGA[13]), agvet products (registered by the APVMA), prohibited substances and industrial chemicals used in household products (which would have been assessed by NICNAS).

The NDPSC comprises a nominated representative from the Commonwealth and each of the States and Territories. As determined by the Minister, it may also include representatives from the TGA, APVMA, New Zealand (NZ) Medsafe, NZ Environmental Risk Management Authority, scientific experts, an industry representative, a consumer representative and a representative of practising pharmacists.

Operation

Scheduling decisions of the NDPSC require the support of the majority of jurisdictions. The decisions of the NDPSC in relation to the SUSDP have no force in Commonwealth law but promote national regulatory consistency by generating a national standard for States and Territories to adopt/incorporate into their relevant drugs, poisons or controlled substances legislation. Most States and Territories have legislation specifically dealing with the regulation and control of therapeutic goods, drugs, poisons and/or controlled substances (except Queensland which has a specific Regulation under its *Health Act 1937*). This legislation is generally administered by jurisdictional health departments. Jurisdictional legislation may pick up NDPSC scheduling decisions automatically, or by gazettal or other means. For example under the NSW *Poisons and Therapeutic Goods Act 1966*, a NSW Poisons Advisory Committee reviews and may adopt (with or without modification) an SUSDP classification by listing the substance in the NSW Poisons List. A similar system operates under Victoria's *Drugs Poisons and Controlled Substances Act 1981*. On the other hand under the South Australian *Controlled Substances Act 1984*, the *Controlled Substances (Poisons) Regulations 1996* (s5) incorporate the SUSDP into the Regulations "as modified by Schedule A" of the Regulations (Schedule A includes specific exceptions to the SUSDP adoption) so adoption is automatic and not subject to an additional State review step.

[13] The TGA is responsible for the assessment and registration of therapeutic goods. After the assessment process products are entered into the Australian Register of Therapeutic Goods (ARTG). The ARTG is established under the *Therapeutic Goods Act 1989* for the purpose of documenting and evaluating the impacts of therapeutic goods on human health. All therapeutic products must be entered in the ARTG before being supplied in Australia. All manufacturers of therapeutic goods are also required to be licensed under the *Therapeutic Goods Act 1989.*

Issues

It could be argued that the NDPSC review process adds time delays and administrative bureaucracy (i.e. government costs) to the process of adopting and implementing each NICNAS recommendation. Bureaucratic inefficiency (in terms of both time and administrative burden) can also result because, in some jurisidctions, there are two review steps after the initial NICNAS assessment and before the recommended control on the chemical is actually implemented.

In addition, as a result of jurisdictional review mechanisms (as opposed to automatic jurisdictional adoption) and provisions in jurisdictional legislation allowing for variation to, or opting out of, the adoption of a national poisons classification, there is some (limited) inconsistency across the State and Territory jurisdictions in how NICNAS public health recommendations as they relate to poisons scheduling are implemented.

4. Adoption of NICNAS OH&S assessment recommendations

NICNAS has an MOU with the Office of the Australian Safety and Compensation Council that facilitates the application of OH&S policy to NICNAS assessments and NICNAS actively collaborates with the Australian Safety and Compensation Council (ASCC) to promote the adoption of its OH&S related recommendations into national standards developed by the ASCC. NICNAS applies the ASCC classification, labelling and MSDS codes to its chemical risk assessments and OH&S recommendations to facilitate their nationally consistent implementation. State and Territory adoption of its OH&S findings is facilitated through NICNAS' MOU Group with States and Territories.

Background

The ASCC has declared a number of standards and codes of practice which form the basis of a national regulatory approach for the control of workplace dangerous goods and hazardous substances. The ASCC (formerly the National Occupational Health and Safety Commission (NOHSC)) has functions conferred on it under the Commonwealth's *Australian Workplace Safety Standards Act 2005*. A key function of the ASCC is to support the achievement of nationally consistent regulation by developing and declaring national standards, codes of practice and other guidance material as a model for laws in the States and Territories.

The *Hazardous Substances Regulatory Package* provides a framework for the legislative control of hazardous substances used in the workplace. The regulatory package consists of Model Regulations, National Standards, Codes of Practice and other guidance material. The key document is the *National Model Regulations for the Control of Workplace Hazardous Substances [NOHSC: 1005(1994)]* which have been adopted by all States and Territories. Another key document is the *Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008(2004)]* which provides criteria for classifying substances as 'hazardous'. The classification used by the *Approved Criteria* is based on the health effects (i.e. toxicology) of the substance.

The *National Dangerous Goods Framework* is designed to enable a nationally consistent regulatory approach to the control of workplace dangerous goods. The *Dangerous Goods Framework* is performance-based, incorporating the principles of hazard identification, risk assessment and risk control. The intent of the Framework is to ensure the effective control of the storage and handling of dangerous goods (Classes 2, 3, 4, 5, 6.1, 8, 9, Combustible Liquids and Goods Too Dangerous to Be Transported) so as to protect the safety and health of workers and the public as well as the protection of property and the environment. The Framework is comprised of two key documents: the *National Standard for the Storage and Handling of Workplace Dangerous Goods (NOHSC: 1015 (2001))* which sets out requirements for effective control of the storage and handling of dangerous goods and the *National Code of Practice for the Storage and Handing of Dangerous Goods [NOHSC:2017*

(2001)] which provides advice on compliance for those who have duties under the National Standard. These have been adopted by all States and Territories.

The ASCC has developed a range of other national model regulations, standards, codes of practice and guidance documents dealing with hazardous substances management including for the preparation of MSDSs, labelling of workplaces substances and for control of specific hazardous substances.

The ASCC standards and codes of practice are produced as guidance or advisory documents to form the basis for nationally consistent regulation by States and Territories under their principal OH&S Acts and are not themselves legally enforceable instruments unless the States and Territories adopt them under their jurisdictional legislation, noting that jurisdictions have adopted the key standards in these regulatory packages.

Operation

NICNAS and the Office of the Australian Safety and Compensation Council have an MOU that facilitates the application of OH&S policy to NICNAS assessments. As a result OH&S assessments and any ensuing OH&S recommendations are framed so as to be consistent with the national OH&S framework. The ASCC recognises NICNAS as a competent national authority to apply their workplace model regulations and codes of practice, including hazard classification, labelling and MSDS Codes of Practice. *[NICNAS Annual Report 2005-2006, p23]*

Consistent implementation of NICNAS OH&S recommendations is facilitated via the NICNAS and States and Territories MOU Group signed in 1991. This MOU was signed "with the intention of formally recording arrangements to facilitate the operation of the [IC Act] and States and Territories legislation relating to industrial chemicals. Under the MOU, each State and Territory is to consider and wherever possible implement each recommendation in an assessment report published by [NICNAS] and to inform the Director of any consequential action taken in respect of any recommendations." *[NICNAS Annual Report 2004-2005, p 102]*

Most States and Territories have legislation either specifically dealing with the regulation and control of hazardous substances and/or dangerous goods or regulate and control these substances through their primary OH&S Act. This legislation is generally administered by jurisdictional 'Workcover' agencies or departments responsible for worker health and safety. Jurisdictional legislation may automatically adopt the national ASCC-developed Codes of Practice/guidance documents, or pick these up following review/approval by the jurisdictional 'Workcover agency'/a statutory committee or by other means.

Issues

Industry stakeholders and governments have criticised the time delays involved between release of NICNAS assessment reports and adoption of the OH&S findings where these relate to recommended changes to the nationally agreed standards or codes in operation.

In addition there is potential for inconsistency across jurisdictions as jurisdictional legislation allows for non-adoption of the national codes or adoption of the codes in part or as amended.

Environment Protection and Heritage Council

Incorporating NEPC National Environment Protection Council

Principles for Better Environmental Management of Chemicals

Ministerial Agreement

NChEM National Framework for Chemicals Environmental Management

June 2007

A publication of the Environment Protection and Heritage Council

An arrangement made between environment ministers:

The Hon Malcolm Turnbull MP, Minister for the Environment and Water Resources, Australian Government;

The Hon Phil Koperberg MP, Minister for Climate Change, Environment and Water, New South Wales;

The Hon John Thwaites MP, Minister for Water, Environment and Climate Change, Victoria;

The Hon Lindy Nelson-Carr MP, Minister for Environment and Multiculturalism, Queensland;

The Hon David Templeman MLA, Minister for the Environment; Climate Change; Peel,Western Australia;

The Hon Gail Gago MLC, Minister for Environment and Conservation, South Australia;

The Hon Paula Wriedt MHA, Minister for Tourism, Arts and the Environment , Tasmania;

Mr Jon Stanhope MLA, Minister for the Environment, Water and Climate Change, Australian Capital Territory; and

Ms Marion Scrymgour MLA, Minister for Natural Resources, Environment and Heritage, Northern Territory.

The Environment Protection and Heritage Council believe the sound management of chemicals throughout their life-cycle is essential if we are to achieve sustainable development, including improvements to the environment and human health.

Environment Ministers are resolved to continue working with industry, the community and governments to promote safe and sustainable production and use of chemicals in Australia.

To this effect, Environment Ministers endorse a national approach for better managing the environmental impacts of chemicals – **NChEM – N**ational **Ch**emicals **E**nvironmental **M**anagement.

NChEM will consist of the following linked action areas:

1. **Environmental Risk Assessment –** strengthening our ability to assess chemical risks by enhancing consultative mechanisms among national chemical assessment agencies and state and territory environment agencies.
2. **Environmental Controls –** improving approaches to and consistency in environmental regulation and management of chemicals.
3. **Feedback of Information –** improving our understanding of chemical impacts and the feedback of information to the national assessment agencies.
4. **Prioritising Action –** establishing an inclusive and transparent process to identify and deal with higher concern chemical issues.

Environment Ministers agree to a staged approach to development and implementation of **NChEM**, with a focus on industrial chemicals and some refinements to agricultural and veterinary chemicals. The package of actions to implement the staged approach is set out in the **Chemicals Action Plan for the Environment** attached to this agreement.

Environment Ministers agree to the following principles to guide Environment Agencies:

i. improve information and consultation links with national chemical regulators (industrial chemical and agvet*)* so that environmental considerations are clearly, consistently and comprehensively articulated

ii. improve coordination with national chemical regulators *(industrial chemical and agvet)* so that environmental considerations are integrated in decision making on the management of chemicals

iii. improve coordination and enhance synergies with State, Territory and Australian Government counterparts with chemicals management responsibilities

iv. use best practice approaches when undertaking environmental risk assessments of chemicals and make the methodology transparent to the community and industry

v. raise industry and community confidence in the effective and efficient environmental management of chemicals

vi. improve and target mechanisms to collect information on the environmental impacts of chemicals so that governments, industries and the community can make more informed decisions about chemicals and the environment, noting any linkages with health and trade issues

vii. prioritise using a transparent and inclusive process, environmental chemical issues that require consistent national action

viii. streamline the environmental regulation of higher risk chemicals to deliver sound and effective outcomes for the environment, industry and the public without unnecessary red tape.

Environment Ministers support COAG's National Reform Agenda and commit to working with COAG to bring system reforms that will help to reduce unnecessary red tape while maintaining or improving protection for the environment.

The Environment Protection and Heritage Council commits to improve, simplify and increase the effectiveness of all elements of NChEM over time as any changes may be needed.

This Agreement should be read in conjunction with the package of actions to improve environmental chemical outcomes, the Chemicals Action Plan for the Environment.

The Environment Protection and Heritage Council notes the Strategic Approach to International Chemicals Management, to which Australia is a party, and notes that NChEM is one means of translating environmental elements of SAICM objectives into action in the domestic Australian management of the environment and chemicals.

Notes:

1. This Agreement will come into force upon its signature by the last of the Environment Ministers who signs this Agreement;

2. Environment Ministers will be advised by the EPHC Chemicals Working Group, via EPH Standing Committee on the development and delivery of the Chemicals Action Plan for the Environment.

In WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties on the second day of June two thousand and seven.

The Hon Malcolm Turnbull MP
Minister for the Environment and Water Resources
(Australian Government)

The Hon Gail Gago MLC
Minister for Environment and Conservation
(South Australia)

The Hon Phil Koperberg MP
Minister for Climate Change, Environment and Water
(New South Wales)

The Hon Paula Wriedt MHA
Minister for the Tourism, Arts and the Environment
(Tasmania)

The Hon John Thwaites MP
Minister for Water, Environment and Climate Change
(Victoria)

Mr Jon Stanhope MLA
Minister for the Environment, Water and Climate Change
(Australian Capital Territory)

The Hon Lindy Nelson-Carr MP
Minister for the Environment and Multiculturism
(Queensland)

Ms Marion Scrymgour MLA
Minister for Natural Resources, Environment and Heritage
(Northern Territory)

The Hon David Templeman MLA
Minister for the Environment; Climate Change; Peel
(Western Australia)