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22 October 2007

Mr Mike Woods
Commissioner
Chemicals and Plastics Regulation Study
Productivity Commission
Locked Bag 2
Collins St
East Melbourne, VIC 8003

Dear Mr Woods

Productivity Commission Study into Chemicals and Plastics Regulation

The Plastics and Chemicals Industries Association (PACIA) is very pleased to make this submission to the important study of chemicals and plastics regulation in Australia (PC Study). PACIA is the peak national body for the Australian chemicals and plastics sectors. It represents some 250 members across all sectors of the chemicals and plastics supply chain, including manufacturers, processors, importers, distributors and transport and storage operators. Chemicals and plastics producers had a combined turnover of $30.5 billion in 2004-05, and directly employed more than 82,400 Australians. They represent roughly 10 percent of all national manufacturing output and employment. PACIA actively supports its members in their efforts to ensure that the plastics and chemicals industries are leaders in health, safety, security and environmental performance improvement through the implementation of the Responsible Care® and Plascare™ programs.

PACIA has greatly appreciated the opportunity to meet with various Commissioners and staff involved with this important PC Study on Thursday 23rd August and Tuesday 2nd October, and we look forward to ongoing input and consultation throughout the Study.

As you are aware, PACIA works actively and closely with governments in the development of legislation impacting on our industry. PACIA strongly supports the Council of Australian Governments (COAG) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies (COAG Principles) and promotes that they should be rigorously applied in the consideration of any regulatory response.

These Principles state that regulatory solutions should:

- be the minimum required to achieve the stated objectives;
- adopt a risk management approach to forming and administering regulation;
- minimize the impact on competition;
- be compatible with international standards and practices;
- cause no restriction to international trade;
- be developed in consultation with the groups most affected and be subject to regular review;
- be flexible, not prescriptive and be compatible with the business operating environment
- standardize the exercise of bureaucratic discretion; and
- have a clear delineation of regulatory responsibilities and effective and transparent accountability mechanisms.

At our first meeting on 23rd August, you requested that we provide you with copies of some existing submissions PACIA has made to various Government agencies and enquiries, in order to highlight for you some of PACIA's concerns regarding the regulatory framework governing the chemicals and plastics sector. That pre-submission was provided to you on 29th August, and we trust the material and links to PACIA submissions have been of some assistance:

Following the release of the Productivity Commission Issues Paper on Chemicals and Plastics Regulation, we have worked closely with our member companies in an effort to obtain detailed examples and insights from a cross section of the industry impacted by the regulatory environment over this sector.

As you are aware, gathering together information on the incremental costs which result from the complexity and regulatory burden has been found very difficult by our members, and we look forward to working further with the Commission to provide you with further detail.

Subsequent material and submissions will be provided to the Commission when they become available.

Any queries regarding this letter may be directed to me (03-9426 3812 or mcatchpole@pacia.org.au) or to Margaret Donnan (03-9426 3805 or mdonnan@pacia.org.au).

Sincerely

Unsigned for electronic transmission

Michael Catchpole
Chief Executive

PACIA's Response to the Productivity Commission Issues Paper (September 2007)

PACIA, as the peak national body for the Australian chemicals and plastics sectors and as a member of the Chemicals and Plastics Leadership Group (CPLG) has long had a strong focus on improving the regulatory environment for our sector. PACIA's vision is for a vibrant and sustainable chemicals and plastics industry in Australia, valued and respected by its customers, employees, the community, government and shareholders. To underpin that vision for the industry, PACIA is seeking a regulatory environment which will achieve the public health, occupational health and safety, environmental and security outcomes sought by Governments, our industry and the community, while simultaneously supporting the productivity, competitiveness and efficiency of the industry.

It is vital that the Australian regulatory system be brought into line with existing Government policies for minimum effective regulation to maximise our sector's potential for sustained growth.

PACIA notes the **CPLG's priorities for regulation reform** as outlined in the Final Report to Government of August 2004, and which are still current are as follows:

- Future regulatory reform action should focus on developing a program to systematically review regulations impacting on the chemicals and plastics industry i.e. the 144 pieces of Commonwealth, State and Territory legislation which currently regulates the chemical industry.
- That there be further expansion of the COAG Principles to cover all regulatory standards including quasi-regulation.
- Compliance with COAG principles should be matched by compliance with principles of good governance and administration such as those promoted in the Australian National Audit Office's (ANAO) Public Sector Governance Better Practice Guide.
- All agencies should continue to investigate opportunities for introducing low regulatory concern reforms as well as enhancing the reform processes currently in place.
- That the Productivity Commission (PC) conducts a review to identify opportunities for efficiency improvements, productivity dividends and the adoption of best practice within the regulatory system.

PACIA is pleased to note this PC Study will inform the work of the Ministerial Taskforce established by COAG to "***develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation"***.

PACIA is very pleased to note the very broad definition of "regulation" being taken by the Commission as shown in Box 2 of the Issues Paper. PACIA in this submission will endeavour to deal with all categories of regulation, namely

- Acts of Parliament
- Subordinate legislation
- Co-regulation
- Quasi-regulation
- Self-regulation

PACIA was very pleased to note that the concerns regarding the regulatory environment for C&P sector raised previously by the industry, were raised most recently by the Regulation Taskforce (2006) and included

- The volume and complexity of existing regulations
- Duplication and inconsistency between commonwealth, state and territory regulatory regimes
- Timeliness and cost of regulatory processes
- Inadequate recognition of international standards and approval processes
- Overly prescriptive regulation of labelling.

PACIA notes the Issues Paper reproduces in Figure 1 the "*Summary of chemical regulation by the National Taskforce on Chemical Management and Regulation*".

PACIA would argue in fact the picture is more complex than that represented in Figure 1, and in fact two further vertical columns need to be included – one for Chemicals of Security Concern (CSC), and another for Chemicals which are Drug Precursors.

At present, CSCs have a lead agency through the Department of the Prime Minister and Cabinet. Precursor Chemicals on the other hand have a lead agency through the Department of the Attorney General.

Given these two additional columns in the framework are dealing with the risk and threat of illegal diversion of legitimate chemicals (which may be industrial or may be agvets or even therapeutics), PACIA will argue that those two columns should in fact be merged into one nationally consistent process moving forward.

Recommendation:

- **PACIA recommends that the development of control frameworks for chemicals of security concern and precursor chemicals should be integrated so as to achieve the optimum outcome in preventing illegal acts, while having minimal impact on the impacted industry.**

A PACIA member which is a Victorian major hazard facility (MHF), chemical manufacturing company in 2002, developed a powerpoint presentation which is useful in displaying the growth in regulations which applied to its business from the 1970's to 2002. The specific slides can be accessed via the link

http://www.pacia.org.au/_uploaditems/docs/2.regulatoryburden_oct07.pdf

PACIA will consider the questions as listed in the Issues Paper. For convenience, the questions have been numbered. The original two fundamental questions will be considered at the conclusion of this submission.

The Case for Change

Q3 - Why has it been so difficult to achieve fundamental reform of chemicals and plastics regulation despite advice from numerous reviews and government efforts to address the concerns?

Q4 - What specific barriers to reform should the Commission focus on in order to raise the likely effectiveness of its recommendations?

In large part, PACIA believes the failure to achieve fundamental reform reflects the huge complexity of the task, which is compounded by our multiple levels of Governments and political processes.

To assist the Commission in scoping the magnitude of the problem, PACIA has endeavoured to identify the range of chemical regulators at federal, state and territory and local government levels. This task has not yet been completed because of the complexity, but the current draft Table in Attachment 10, reveals in excess of ***50 different regulators*** impacting on the chemicals and plastics sector.

As an example, the structure of Government in Queensland for regulating the chemicals industry is particularly fragmented which adds to the burden on industry in that state. To elaborate,

- Major Hazard Facilities and Dangerous Goods legislation is under CHEM Services in the Department of Emergency Services
- Class 3 Dangerous Goods (Flammable Liquids) licensing is carried out by local government
- Hazardous Substances are regulated by Workplace Health and Safety in the Department of Employment and Industrial Relations
- Explosives and security sensitive ammonium nitrate are regulated by the Department of Natural Resources, Mines and Energy

- Transport of Dangerous Goods is regulated through Queensland Transport.

In must be noted that in several other states, e.g. Victoria through WorkSafe Victoria, these areas are all regulated through **one** Department, as distinct from 4 State government agencies plus local government.

In Queensland, in addition to these agencies dealing with health and safety, the chemicals industry is also regulated through the Department of Health for drugs and poisons, the EPA for environmentally relevant activities and hazardous waste management, QLD Police for drug misuse legislation (dealing with diversion of legitimate industrial chemicals into illicit drug manufacture) and the Department of Primary Industries and Fisheries for agricultural and veterinary chemicals.

The complexity and burden of this breadth of administration must be recognised and addressed.

To achieve fundamental reforms over all levels of government require ***sustained political commitment over a prolonged period of time.***

The regulatory environment of this sector cannot be addressed via short term effort. PACIA has highlighted the inability of some regulators to give effect to one new National Standard eg in Attachment 2 which deals with the National Standard for Control of MHF. The Attachment shows currently NSW, WA, SA and TAS have not made regulations covering MHF, some ***11 years*** after the national standard was declared by NOHSC.

In the past, reform agendas are often deflected by new political priorities. For this review to achieve fundamental reform, PACIA would argue it is vital to secure enduring COAG support for the process.

The reality is that without sustained ongoing COAG support and political commitment, the different interests, priorities and funding in jurisdictions will continue to drive parochial differences. Too often, regulatory developments covering this sector are reactive and are not driven by sound policy. That needs to change.

Q5 - Given the criticisms of the existing system, are there grounds for preserving structural elements of the status quo (for example, are there good reasons for variations in State and Territory regulations)?

There will always be particular reasons which drive political imperatives and resultant variations in State and Territory regulations – but PACIA would argue they are ***not good or justifiable reasons.***

For example, a major incident like the Longford gas plant fire and explosion drove Victoria's MHF regulation development – but surely we should not wait for each jurisdiction to have a major tragedy, before each develops appropriate regulation.

PACIA would also argue that often variations in State and Territory Regulation may result from an attempt to convert an ***inappropriate national product*** like the COAG Principles on SSAN or an ASCC National Standard into regulation. PACIA will argue throughout this submission, that if we are to eliminate variation in State and Territory regulation, then we need to change our national development processes, so we prepare national legislation that can either be adopted by template by the states, or simply have the states administer the national legislation.

PACIA notes the importance also of incentives in Attachment 5 which deals with the various models for regulating transport of dangerous goods.

Recommendation

- **PACIA recommends that national legislation be developed for all key areas of chemicals and plastics regulation, to support either template adoption by the jurisdictions or administration by the states and territories on behalf of the Commonwealth. Furthermore, the importance of incentives and monitoring of performance of regulators must be recognised.**

The need for effectiveness

Q6 - What are the problems that chemicals and plastics regulation address?

Q7 - Is there a need to make more extensive use of a risk-based approach to regulation in parts of the system? How can such an approach be integrated with the future adoption of the hazard-based Globally Harmonised System (see later)?

Q8 - Is the burden of regulation commensurate with the problems caused by chemicals and plastics?

Q9 - Is the regulatory system sufficiently flexible to incorporate and respond to changing knowledge and understanding of issues over time?

It is clear that the chemicals and plastics sectors present inherent risks to health, safety and the environment – which need to be controlled. It is important that those controls are scientifically based, and are not driven by perception. Further it is important that the regulatory controls comply with COAG Principles and Guidelines for National Standard Setting and Regulatory Action.

Much of our legislative framework is already risk based and it is very important that that be maintained and extended.

PACIA would argue that it is quite inappropriate that the **burden** of regulation be commensurate with the problems caused! It is appropriate that regulatory controls be commensurate with the risk – and that the level of intervention by the regulator be commensurate with the hazard and risk – but certainly not that the **regulatory burden** be linked to the risk.

PACIA would argue the complexity and burden of the regulatory environment undermines compliance – not enhances it!

It is also important to remember the benefits that the plastics and chemicals industries provide to society for our sustainability, such as water treatment and transport, health products, safety devices, energy efficient machines etc.

The chemical industry is vital to Australia's economic well being and is an integral part of Australian manufacturing. Findings from a Victorian study show that the chemical industry is strategically more significant than tourism and mining, and not far behind the food sector.

In terms of flexibility of the regulatory system, PACIA would suggest the system is very flexible – but at times our regulators are not. For example, the 2001 NOHSC National Standard for Storage and Handling of Dangerous Goods changed our regulatory approach from a very prescriptive regulation to a more performance based, risk management approach.

In Queensland, as identified earlier, the licencing of flammable and combustible dangerous goods is carried out by local government, not the dangerous goods regulator. Because it is more complex to administer a performance based regime than a prescriptive regime, the outcome in QLD tends to be that local government requires strict prescriptive compliance with the Australian Standard (AS1940), despite the performance based nature of the regulations.

This is an adverse impact which results from the fragmentation of administration of chemicals regulations in Queensland.

Q11 - Could regulatory objectives be stated more clearly?

Q12 - Do you consider that the current regulatory regime is effective in addressing issues in relation to:

. ***• public health and safety***
. ***• OHS***

. ***• the environmental outcomes***
• security sensitive ammonium nitrate (SSAN)?

Q13 - Have governments achieved the right balance between these issues? That is, are they devoting too many or too little resources to any?

Q14 - What, if any, examples are there of outcomes of regulation that are contrary to the stated goal? For example, does the fact that the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) only makes recommendations relating to risk assessment and management undermine the value of its assessments?

Q15 - Are there cases where regulations are in direct conflict (in complying with one regulation, you are breaching another)?

Q16 - Have responses to major adverse outcomes led to ongoing regulatory or operational short-term responses, or have they led to structural change that has improved the efficiency and effectiveness of the regulatory system?

PACIA believes it is impossible to generalise on the effectiveness of the regulatory environments addressing issues in relation to public health and safety, OHS, environmental outcomes and SSAN. Often specific aspects are done well and effectively in specific jurisdictions.

A number of Attachments deal with issues of regulatory environments addressing

- Att 1 - Environmental regulation including NChEM
- Att 2 – MHF
- Att 3 - Illicit Drugs
- Att 4 – NICNAS Issues
- Att 5 - Transport of Dangerous Goods
- Att 6 - Climate Change and Regulation
- Att 7 – NPI
- Att 8 - Water Treatment Industry
- Att 9 - SSAN
- Att 10 – Table of Chemical Regulators by jurisdiction

These attachments address many of these issues.

In terms of responses to major adverse outcomes, we typically see short or long term, **local** regulatory and operational action – such as in response to the WA Bellvue fire or the Coode Island fire in Victoria.

However there have been a few responses to a major adverse outcome, which led to structural change that improved the efficiency and effectiveness of the regulatory system.

Some years ago, in response to a major industrial dispute at a Melbourne chemical company over uncontrolled use of a probable human carcinogen, the then Department of Labour developed short term regulations to take over administration of carcinogens in workplaces, which had been regulated at that time by Health Department legislation. Some years earlier, the majority of scientific and inspectorial resources dealing with Occupational Health issues had moved from the Department of Health to Labour – but administration of carcinogen warrants had remained in the Health Department. The change following the industrial dispute corrected that structural problem in government.

Furthermore, to ensure the issue was appropriately addressed nationally, the matter was referred to NOHSC who proceeded to develop the National Model Regulations on Hazardous Substances Part 2 – Scheduled Carcinogenic Substances. Those national regulations were subsequently adopted in all jurisdictions. This improved the effectiveness of the national regulatory system covering carcinogens.

Q17 - Do regulators make sufficient effort to measure and monitor the effectiveness of the regulations they impose?

In terms of regulators efforts to measure and monitor the effectiveness of regulations they impose, PACIA would commend the ongoing efforts of WorkSafe Victoria – in the current review on the implementation of the OHS Act 2004, and also on several reviews of stakeholder feedback on the effectiveness of the MHF Regulations 2000.

Q18 - Can you identify specific gaps, overlaps or variations in the regulatory structure that make regulations less effective (for example, do variations in the regulation of SSAN undermine the effectiveness of regulations in this area)?

PACIA wishes to highlight the Attachments dealing with both SSAN and also MHF – both of which identify the negative impacts as a result of the inconsistencies. Clearly, the whole security objective of COAG in June 2004 was to rapidly put in place sound security controls over SSAN. The fact that SSAN still remains unregulated in WA currently, undermines completely the controls in the other states.

Q19 - Is there a gap in the existing regulatory system with respect to the environmental impacts of chemicals and plastics? If so, do you see the National Framework for Chemical Environmental Management (NChEM) proposals as a good way to fill that gap?

Q20 - Do you consider that the current processes for assessing existing industrial chemicals (see attachment B) represent a gap in the existing regulatory structure? If so, what new ways are there to prioritise (or categorise) chemicals and identify those chemicals that warrant risk assessment, and who (industry or government) should bear the primary responsibility, and cost, for carrying out those assessments?

Q21 - Does the focus of some parts of the regulatory system on individual chemicals rather than products represent a gap in the system? If so, what should be done to cover that gap?

Q22 - What measures should be adopted to streamline data requirements and assessment processes so that, for example, information and data relating to the same chemical do not have to be provided to multiple agencies (for example developing a common national chemicals database)?

The Commission is referred to the various Attachments to deal with these questions.

Alternatives to government regulation

Q23 - How well existing self- and co-regulatory have approaches to regulation worked? Are they used appropriately?

Q24 - What net impacts have self- and co-regulatory approaches had on the plastics and chemicals industry over and above government regulations, and at what cost?

Q25 - Is there scope to strengthen current self-regulatory measures or further develop new voluntary and self-regulatory frameworks (including covenants between industry and regulators)?

Q26 - Are there any overseas self- or co-regulatory models that are worth examining?

Overview

Voluntary, self and co-regulatory approaches can in appropriate cases avoid or minimise the need for regulation and also enhance and improve the objectives of regulation. Where the regulatory intervention develops a compliance threshold, voluntary, self and co-regulatory programs can deliver outcomes beyond the minimum compliance. A key benefit of these alternative models is their ability to stay ahead of potential market failures and improve industry competitiveness by developing best practice models before regulatory intervention is even considered necessary.

The key strengths of industry leadership coupled with strong, dynamic government and community partnerships provide a platform beyond a simple regulatory model. These outcomes are able to improve the competitiveness of participating organisations with their capacity to deliver best practice as opposed to only minimum compliance.

Importantly, these approaches are developed and implemented at a national level. This automatically delivers a nationally consistent structure with benefits for industry in reduced compliance burden and a service to government of aggregating industry experience and developing best practice approaches.

PACIA and PACIA member companies have significant experience participating in and developing complementary frameworks to regulation.

Within the scope of voluntary, self and co-regulatory approaches, there is a range of mechanisms which are currently working very effectively, for example:

- Focussed voluntary arrangements between industry and government, such as the Victorian Sustainability Covenant model and the PACIA/EPA Victoria Covenant
- Self regulatory frameworks - PACIA currently operates a number of self regulatory arrangements within the chemicals and plastics sector
- Co-regulatory arrangements, such as the National Packaging Covenant, to which PACIA is a foundation signatory.

Voluntary Arrangements

The Victorian Sustainability Covenant provides an excellent leadership model for voluntary partnerships between industry and government, in this case EPA Victoria. Covenants are statutory agreements (under the Environment Protection Act) however they are entered into voluntarily and developed by consensus between the parties.

Covenants provide a framework for PACIA and EPA to work together toward industry sustainability by:

- increasing resource efficiency at member companies
- reducing the impact of products and services throughout their life cycle

The scope and application of Covenant's vary considerable, and PACIA was the first industry association to enter into a Covenant in 2004 and was the second signatory to the covenant program. The covenant partnership has achieved:

- Significant waste, water and energy savings through covenant projects delivered in partnership with member companies
- Increased industry capability and awareness to implement sustainable business practices, and emerging issues such as life cycle management
- A strategic and integrated approach within PACIA to sustainability policy, program and practices advocated to the industry
- Internal resources for PACIA to deliver activities in partnership with EPA Victoria and other stakeholders.

Covenants provide a public forum for organisations to partner with EPA Victoria, and the commitment was made between the two organization's chief executives, PACIA Board, and the Victorian Environment Minister. PACIA's Covenant activities have been strongly supported by direct funding from EPA Victoria, which is sourced from the Victorian levy on industrial waste to landfill. Linking funding resources to the commitments and objectives of the Covenant has been fundamental to providing resources for PACIA to deliver projects, which provide both strategic program development and on the ground results.

The projects and programs developed under the Covenant are largely seen as leading edge and well beyond compliance. PACIA and EPA staff work cooperatively to identify prospective projects, and PACIA develops an annual work plan which is integrated with PACIA's standard planning process. Regular reviews occur for each program and project, and the entire Covenant progress is

reviewed annually. This provides both organisations the flexibility to pursue opportunities within an overarching framework.

Self Regulatory Arrangements

PACIA has also significant experience in the development of self regulatory frameworks for the industry. These arrangements, while also voluntary in nature, are typically developed to establish a leadership performance standard or to confirm expectations in the absence of regulation or government policy. PACIA and industry partners operate several flagship programs including:

- Responsible Care program
- PACIA Carrier Accreditation Scheme for transporters of Dangerous Goods
- PACIA / SIA Code of Practice for Supply Diversion into Illicit Drug Manufacture
- Product Stewardship Guide and Commitment for Degradable Plastics
- Vinyl Council Product Stewardship Agreement

Examples of some of these programs follow:

Responsible Care program

Responsible Care is an initiative of the International Council of Chemical Associations (ICCA) to improve the health, safety and environmental performance of its operations and to increase community involvement and awareness of the industry.

Responsibility for managing Responsible Care within Australia lies with PACIA, which is approved by the ICCA Board as a Responsible Care® Association. PACIA develops the Responsible Care initiative within Australia, consistent with the principles, procedures, and the initiative's fundamental features covered by the Responsible Care® Global Charter, while also reflecting the national culture, legal system and other expectations of its Member companies participating in the Responsible Care program.

PACIA strongly promotes compliance with Responsible Care to all PACIA member companies manufacturing, importing and distributing chemicals. Commitment to the program is evidenced through a company CEO signing Responsible Care Guiding Principles.

Responsible Care is a HSE Management system, consistent with international approaches, including the ISO Quality, Environmental and OH&S series and the national major hazards facilities Standard and Code. The Responsible Care system consists of Codes, guidance notes and checklists for implementation of good HSE practices, covering all aspects of the life cycle of the chemical, as follows:

- Community Right to Know
- Manufacturing Process Safety
- Environment Protection
- Storage and Transport Safety
- Employee Health and Safety
- Product Stewardship

Company self assessment of the HSE system against each Code is collected from members to track Code compliance; one Code is self assessed every four months in a rolling 2 year cycle. An External Verification program cycle uses third party auditor desktop verification of approximately 30-50% of one Code.

Externally, performance is measured through annual Safety Surveys of Responsible Care companies who report lost time and medical treatment related injury and illness, site incidents, and transport incidents. Internal and external measures are publicly reported to a range of stakeholders and published on the PACIA website. The program provides a platform for community engagement, establishing and operating state based community – industry networks in New South Wales, Victoria, and Western Australia.

PACIA supports Responsible Care companies through information, networking, and training activities, including specific chemicals handling training - from warehousing and transport to labelling, MSDS, risk assessment and emergency response.

PACIA / SIA Code of Practice for Supply Diversion into Illicit Drug Manufacture

This Code of Practice was first developed by PACIA and SIA in partnership with law enforcement bodies back in 1994, and is aimed to provide a best practice guide for companies to address prevention of diversion of legitimate industrial chemicals into the illicit drug manufacture. The Code is updated regularly to reflect latest law enforcement information on trends in illicit drug manufacture, and has been most recently updated in October 2007. Compliance with the Code is voluntary; however the requirements of the Code have been legislated to varying degrees in some jurisdictions.

Chemicals deemed to be of significant interest for diversion purposes are typically submitted to PACIA by law enforcement with justification for their inclusion into the Code. Listed chemicals in the code attract controls proportionate to the level of risk for diversion and are categorised into three lists. Category I lists attract stringent industry controls, such as the requirement companies request End User Declarations from customers seeking to purchase the listed chemicals, and to subsequently forward these declarations to law enforcement in order to analyse potential diversion risks.

Cash sales are prohibited for Category I chemicals, and supply of these products is required to be delayed for 24 hours. Category II chemicals attract less stringent controls, with Category III chemicals listed for precautionary purposes only.

PACIA work closely with the Australian Crime Commission to update the Code annually, and generally support inclusions of chemicals where justified by the Commission. To support and promote the aims of the Code, PACIA takes part in National Awareness Raising programs with the ACC and other supporting law enforcement and Government Departments.

Product Stewardship Guide and Commitment for Degradable Plastics

PACIA has recently developed a product stewardship program for degradable plastics in partnership with the Australian Government Department of the Environment and Water Resources.

The program responded to early signals of concern about confusing product performance claims for new degradable materials. Industry leaders wanted to ensure that sound decision making for design and labeling was guided by accurate information, in line with consumer law requirements. Early engagement and consultation with the Australian Competition and Consumer Commission was instructive in developing the program.

The program has also been implemented to support the development of Australian Standards for degradable plastics and provide a framework for their use. With many new standards coming into existence, the PACIA program delivers a means of characterizing their purpose and providing a framework for their use.

The program has three components:

- A central document “Using Degradable Plastics in Australia” – A Product Stewardship Guide and Commitment”. This performs three functions:
  - informs users of degradable plastic materials what they are buying and using and how degradable plastics should perform
  - For organisations involved with designing, manufacturing and marketing products it provides information on: sound whole-of-life design; Industry definitions and terms and answers to frequently asked questions
  - It is also a commitment by leading material suppliers and product manufacturers that they will: use clear and accurate labelling and contribute to the Degradable Plastics Reference Group.
- A verification system for claims made about products has been implemented to independently confirm the supporting evidence needed for a company to claim they hold certification to a relevant Standard.

- The Degradable Plastics Reference Group which will update the guide, assist with developing Australian Standards and liaise with other groups including plastic recyclers and composters.

The program is the first of its type in the world that PACIA and DEW are aware of. PACIA is now working with industry associations in New Zealand and Canada to develop and implement similar programs in those countries based on this Australian model.

Vinyl Council Product Stewardship Agreement

Launched in October 2002, the Poly vinyl chloride (PVC) industry's voluntary Product Stewardship Program has been in place for five years. Under the Program, Signatories commit to meet certain obligations to address issues associated with the life cycle of PVC. The Program provides a vehicle for government and industry to work together to characterise issues and develop appropriate solutions. Representatives of both State and Federal governments as well as industry constitute the Program's Steering Group.

The program has developed voluntary targets, codes of practice and/or standards for industry to meet to reduce emissions, phase out certain heavy metal additives, share research, characterise and quantify waste streams and commence development of infrastructure and systems to reduce and recover waste. Industry's progress in meeting these is reportedly publicly on an annual basis, although government representatives are kept informed more frequently through quarterly meetings and reports.

The Program signatories are drawn from the supply chain, meaning that the suppliers to the industry and upstream and downstream manufacturers work together to characterise and address an issue.

Co-regulatory arrangements

National Packaging Covenant

Co-regulatory models also play an important role to improve the efficiency of regulatory outcomes and recognize participants. PACIA has extensive experience with co-regulatory models, a good example being the National Packaging Covenant (NPC) which is designed to reduce the whole-of-life environmental impact of retail consumer packaging. This is comprised of a voluntary agreement by industry to develop and implement action plans and make financial contributions to fund enabling projects. It is matched by a regulatory underpinning *National Environment Protection Measure* to deliver a level playing field. A collective Council with representation from industry, Federal, State and Local governments as well as the community manages the NPC.

How Well Have Alternative Models Worked?

It is PACIA's experience that well considered and consensus based frameworks provide an important role in reducing the impact of externalities and market failure. Such frameworks can support and improve intended regulatory outcomes by

- providing a leadership example or beyond business as usual outcomes in excess of a minimum standard
- effectively engaging stakeholders and related groups, including improving communication between and within industry to enhance outcomes
- addressing a potential future market failure
- delivering lower or lowest cost outcomes ahead of regulatory impost
- developing technical capability and knowledge

Leadership
Voluntary industry and self regulatory initiatives allow companies and Associations to take a leadership role and can go beyond what might be a minimum standard approach. The Sustainability Covenant and PACIA's Responsible Care program are examples of this.

Responsible Care provides the platform for Product Stewardship and the industry – through community dialogue, and engagement with Governments, local, State and Federal, views commitment to Responsible Care as an important component of the continued licence to operate. The Responsible Care brand and the commitment by a significant proportion of the Australian chemicals industry, provides leverage to positively influence the external stakeholder audience. Responsible Care, as a global initiative, enhances the image of the industry both in the market place and in the wider community.

The Vinyl Council's Product Stewardship Program has delivered greater industry "buy-in" because of the leadership role industry plays in developing solutions and agreeing commitments.

The Sustainability Covenant has provided an opportunity for companies to initiate projects which might be technically risky or not otherwise able to be resourced by the company. The Covenant's focus on leading edge or broad impact programs has created a pull through effect, progressively drawing in a greater number of companies.

Stakeholders and Communication

Communication and information sharing is often an important feature of voluntary, self and co-regulatory models, compared with direct regulation. Companies are willing to be identified as participants in leading programs, and participate in event, publications and networks. For example, Responsible Care provides an information-sharing forum for industry to develop a sustainable business, essential today for long term competitiveness. Identifying leading case studies is an important component of the Sustainability Covenant. These activities create a virtual cycle for the take up and implementation of alternative models.

The National Packaging Covenant has significantly improved the networking and flow of information between and within industry and government organisations. An example is the development of the PACIA Annual Plastics Recycling Survey. Close work with State governments has resulted in PACIA's independent report being the central, authoritative source for Australia with tailored information now provided to States in a suitable reporting format.

Communication and stakeholder engagement through voluntary programs can lead to more rapid and effective responses by government and industry.

For the most part, the Illicit Drug Code has been an excellent example of how industry, Government and law enforcement can best work in partnership.

The Code is intended to give industry clear guidelines on how to best assist law enforcement in preventing illicit diversion, and is updated regularly to reflect changing concerns of law enforcement quickly. Voluntary codes of this nature are unencumbered by the often-lengthy regulatory process, and the Code of Practice is highly regarded for this reason.

Stakeholder participation increases transparency and also accountability in voluntary programs. The following comments on the voluntary PVC Product Stewardship Program were recorded in the Vinyl Council's Stakeholder Research conducted earlier this year by Fenton Communications who interviewed a range of VCA's external stakeholders:

- Participation on the technical steering committee was seen as being highly valuable and government representatives were keen to see that aspect of the relationship maintained and fostered.
- The Program commitment document and annual reports were seen as valuable information documents.

One government stakeholder commented: "The technical steering group has been a very valuable source of information. There's good representation on the committee and they have a good international speakers and industry representation. It's a valuable way of communicating with stakeholders."

Market failure and lowest cost

Industry self regulatory arrangements can be developed so as to be workable and can be implemented in a practical way and at lower cost both for the business and the regulator. As an example, Responsible Care provides an integrated management system to improve health, safety and environment performance, all critical to a business operation. Effective HSE management provides economic returns in accident and incident reduction and reduced waste management costs. Internally, Responsible Care is a comprehensive audit tool, compatible with ISO health and safety systems, and consistent with HSE regulatory frameworks. Regulation costs money in drafting, implementation, operations, review and updating. Effective self-regulation can avoid or reduce the net cost.

The alternative to the national Packaging Covenant model is State by State legislation, inherently more costly and less efficient for both government and industry. The benefit of NPC model is that it enables organizations to go beyond the collection of used packaging for business as usual recycling.

The degradable plastics product stewardship program allowed industry leaders to work with federal environment and fair trading departments and set the standard for industry performance and behaviours where risk of poor behaviour of a minority may have impacted on the majority. This highlights that alternative arrangements can be put in place very rapidly in response to an emerging issue, risk or market failure, and can be responsive to changes in circumstance.

The Vinyl Council has identified that the voluntary approach product stewardship provided a "level playing field" for all applications of the material to address a particular issue such as the phasing out of lead-based stabilisers or development of recycling programs under a common timeframe. The program has helped the industry transition more smoothly with less market disruption than under some regulatory approaches, and costs are largely borne by industry (as there are no regulatory implementation costs for government).

Technical capability

Industry self-regulation can also work alongside, support and be the avenue for the use of Australian Standards in various applications. An example of this is the degradable plastics program. The program has also been implemented to support the development of Australian Standards for degradable plastics and provide a framework for their use. Australian Standards for degradable plastics have commenced and to date have put in place one part of a five part standards framework. With so many new standards coming into existence, the PACIA program delivers a means of characterizing their purpose and providing a framework for their use. The other Standard supported by this program is AS/NZS ISO 14021: Self declared environmental claims. The Australian Competition and Consumer Commission upholds this standard as part of its consumer law and trade practices responsibilities. The PACIA program provides industry with a structure, means and network to avoid difficulty in understanding and therefore complying with AS/NZS ISO 14021.

The National Packaging Covenant has increased the technical capability of the industry. PACIA member companies have worked with their customers to recycle polypropylene (PP) and polystyrene (PS) packaging otherwise destined for landfill. Technical trials funded by the NPC have enabled the development of new PP and PS recycled raw materials and applications.

The Vinyl Council's stakeholder research has found that the technical steering committee was singled out as a Council initiative that is highly appreciated by participants and one which the Council might consider expanding to a wider range of stakeholders (now underway). Further, the program provides a recognition of industry expertise/technical know-how in developing solutions, and that options or alternative strategies can be recognised and accepted - it does not have to be a "one-size fits all" approach.

Appropriateness of Voluntary Codes

The potential lack of critical mass and participation is a valid criticism of industry based schemes and their impact. For example, the Sustainability Covenant has taken 2 to 3 years to build engagement and participation to include a broader industry base. Funding and resources provided

by EPA Victoria through landfill levies has been critical to build an effective participation program, and one which ultimately reduces the need for intervention by EPA Victoria. Responsible Care develops a critical mass by its condition of membership for all PACIA member companies manufacturing, importing and distributing chemicals, and the development of programs to support that buy-in.

Industry alternative frameworks have on occasion been adapted or used by others in a way not necessarily intended by the program. For example, the Illicit Drug Code has been adopted into legislation in some state jurisdictions to varying degrees. PACIA and its' members have publicly supported legislating the Code, to the extent requirements are consistent across jurisdictions, consistent with the Code itself, and bear no additional cost burden on the companies required to comply. Unfortunately, this has not been the case

New South Wales regulated the Code in 2006, adopting the categories of chemicals as prescribed in the code and their accompanying controls. Western Australia however legislated some requirements of the Code in 2004 in the *Misuse of Drugs Act* and supporting regulations. Disappointingly, the Categories of chemicals were legislated inconsistently with the Code with Ammonia gas attracting more stringent and burdensome controls than it had under the voluntary code.

Victoria has recently adopted precursor regulation, however has not picked up any industry controls. That said, the jurisdiction has recently advised that the industry control provisions of the Code will be included in regulation at a later date. Queensland has recently released the *Drugs Misuse Amendment Bill* 2007 for comment. PACIA is currently analysing the Bill, which unfortunately has categories of chemicals which are quite inconsistent with the Code.

To date, no regulator has carried out a Regulatory Impact Analysis to justify the costs and benefits of the requirements.

This has presented industry with a situation whereby compliance with the requirements of the Code is mandatory in some States, and is strictly voluntary in others. The complexity is compounded by those requirements, where adopted in legislation, being inconsistent across state lines. A case study is presented below on the difficulties this presented for one of our member companies.

While the Code continues to be used as a starting point for the regulation of its' requirements, one of the negative aspects of having a voluntary scheme is that it is has been adopted into legislation with no analysis of the cost implications on industry. This has compromised to an extent the effectiveness of a voluntary system. While our voluntary process has meant the expedient inclusion of chemicals deemed to be of law enforcement concern, it has also paved the way for regulators to adopt these chemicals into legislation without due consideration of the implications mandatory inclusion will entail.

Industry therefore becomes more reluctant to endorse the inclusion of chemicals into a voluntary scheme when it is likely they will be adopted into mandatory legislation without a consultative process to examine the costs of doing so. This undermines compliance, and faith in voluntary schemes.

What are the Net Impacts and at What Cost?

It is PACIA's view that where alternative frameworks have been appropriately and successfully implement, the cost burden to industry, the community and government is lowered. However, it is also acknowledged that no comprehensive cost benefit analysis of the examples provided in this submission has been undertaken.

It is valuable to note two categories of cost analysis types relating to voluntary, self and co-regulation:

1. Approaches that have responded to existing or likely market failure,

2. Approaches that have predicted potential issues and have acted in advance or market failure

The benefits of alternative frameworks can be especially difficult to measure, as they:

- involve multiple stakeholders and co-beneficiaries
- are often in-direct
- represent an avoided future cost, or an avoided potential cost such as
  - increased future staffing
  - the need to prepare regulation
  - the need to respond to future regulation
- represent issues which are emerging or not fully described
- may stimulate other activities which are difficult to measure such as technology diffusion

Implementation of alternative frameworks can result in direct costs for companies and Associations such as:

- development and stakeholder consultation costs
- administrative costs to monitor and comply with code requirements (such as for Responsible Care and the Illicit Drug Code), including training costs for staff and supply chain partners and record keeping costs
- implementation costs
- reporting, auditing and verification costs
- marketing and communication costs
- supporting program costs, such as training extensions.

The inclusion of voluntary codes into regulation, such as the Illicit Drug Code also presents a cost impact. In the case of the Illicit Drug Code, regulatory impact assessments have not been undertaken to describe these costs, and the inconsistent implementation by States has significantly added to costs, particularly for national companies. The inconsistency thus undermines compliance by adding complexity. While it is difficult to quantify the lost opportunity cost inherent in this situation, it demonstrates to some extent the anti-competitive outcome that inconsistent adoption of voluntary schemes can result in.

Case Study

Western Australia legislated some provisions of the Illicit Drug code in 2004. However, that state made a decision to alter the nationally agreed categories of a number of chemicals it scheduled. As an example, the legislation categorized ammonia gas as a Category I chemical with all the attached obligations. The Code categorises ammonia gas as a Category II chemical, and thus this alteration presented significant change and issues for the companies who deal with ammonia gas on a national level.

Clearly ammonia gas has widespread use in refrigeration processes, and practical aspects of dealing with repeat and regular orders from account customers means that provision of End User Declarations on each and every supply is a very unnecessary and burdensome requirement. Furthermore the requirement to delay supply for 24 hours has significant unintended consequences in some situations (such as dealing with refrigeration breakdowns etc), yet the regulations have no exemption power to allow discretion in application.

One PACIA member deals with approximately 260 orders for ammonia each year. That company has a centralized national call centre which deals with supply in all states. The cost of having very different processes in only one state has made business operation complex, and contributed to the additional cost of training staff.

PACIA is currently waiting on this company to provide us with detailed compliance costs related to this issue, and will forward these at a later time.

Scope to Strengthen Schemes

It should be acknowledged that alternative regulatory models will clearly not be applicable or appropriate in many circumstances. These include the need to establish an unambiguous

performance standard, to deal with immediate risk or where the potential for significant free rider effects exist.

However, voluntary, self and co-regulatory schemes are very successful when:

- The program benefits and costs are described, and the program is adequately resourced by industry and also government, recognizing that cost savings for all parties are expected
- The programs are flexible, and deliver lowest cost outcomes
- Programs include safety net provisions where appropriate to avoid commercial disadvantage
- Programs allow rapid response to a real issue and support those associations and companies keen to take a leadership role
- The arrangement includes a mechanism to assess performance and measure outcomes, such as through independent third party auditing or stakeholder review
- The program delivers an opportunity to reduce regulatory reporting or red tape
- The program is "owned" and regularly reviewed by the relevant federal and state agencies as well as the industry association and its members and stakeholders, and the arrangements have a profile and recognition within government and community.

Voluntary codes are rarely subjected to a quantitative cost benefits analysis, though overall net benefits are expected for industry, government and community. Industry codes, such as Responsible Care can require substantial commitment from industry and also deliver savings to government through avoided regulatory effort, and enhanced outcomes for communities. A model approach to assess costs and benefits for voluntary schemes would be valuable; however this should not replace an RIS in the case of a Code being adopted into regulation.

Where voluntary schemes or programs are to be adopted into legislation, a formal process at a national level is necessary to ensure consistency, and to undertake a comprehensive, informed and consultative cost-benefit analysis in order to examine, inform and justify to industry the costs involved beyond the benefits of the voluntary scheme.

The involvement of government is critical to the success of voluntary industry codes. The development of the Product Stewardship guide for degradable plastics is an excellent example of industry and government cooperation and leadership. The experience of the PACIA/SIA Illicit Drug Code highlights the need for effective participation by state and federal agencies in voluntary programs.

Alternative models have the potential to achieve an overall "lowest" cost outcome. The Victorian Sustainability Covenant model is a very flexible approach that places primary emphasis on reducing the environmental impacts of a product or service over its entire life cycle. This approach recognizes that while the regulation may focus on the manufacturing site, the potential for greatest environment improvement may lie elsewhere in the product chain or during the product's use phase. Covenant projects are showing that the environmental improvement expenditure is more effectively spent at the point of impact or the externality, which may not be wholly the manufacturing site. EPA Victoria's new licensing powers have the potential to provide "off-sets" for companies where voluntary life cycle reduction initiatives exist, and this approach is highly commended, though is yet to commence in practice. Actually implementation of this will require significant capability in life cycle assessment techniques by the regulator and within industry and community support of life cycle approaches.

In some cases, there is a need for safety net regulations or alternative mechanisms to support industry programs, because voluntary agreements may commercially disadvantage those engaged in the agreement (such as local versus overseas manufacturers). The PVC industry has attempted to work through Australian Standards to underpin the changes resulting from the voluntary program; but in other instances, signatories are at commercial risk from implementing the life cycle improvement commitments because of trade exposure to non-signatory product that does not have to meet the criteria and the resultant costs involved. The National Packaging Covenant is a co-regulatory model, with underpinning legislation implemented by each state. The effectiveness of the Covenant, and therefore the value to voluntary signatories, was significantly increased when the respective state agencies utilised the underpinning powers against non-signatories.

Voluntary programs can at times be deficient in performance monitoring or external review, however appropriately targeted review mechanisms can increase the value of voluntary programs. The external audit program adopted by the industry has recently strengthened the Australian Responsible Care program. This provides a 3rd party assessment of the completion of codes by companies and aggregated results are reported publicly by PACIA.

PACIA and EPA, to ensure projects align with the Covenant objectives, will review the second PACIA Sustainability Covenant annually and an external review of the first Covenant processes was recently completed. Performance monitoring increases the cost of program, both to industry participants and the program administrator, therefore should be appropriately targeted and scoped to critical issues.

An opportunity to strengthen the value of alternative frameworks is the potential for regulatory or reporting to be reduced for voluntary program participants; in recognition of not just participation, but performance and outcomes. As regulation and mandatory programs now move to encompass less obvious market failures, such as resource efficiency under Victoria's EREP program, leading companies are still finding they have reporting obligations or commitments under these new programs. This is despite participating in voluntary industry or government programs for the same effect. In the case of the Victorian EREP Regulation, PACIA has member companies who, on an on going basis, have participated in voluntary programs to reduce water and energy use and waste generation. The onus will be on these companies to initiate the process to seek exemption from the new mandatory EREP program.

Are there any overseas self- or co-regulatory models that are worth examining?

PACIA will provide the Commission with further information and background on international and overseas programs relevant to the industry.

Responsible Care is an initiative of the International Council of Chemical Associations (ICCA) and responsibility for managing Responsible Care within Australia lies with PACIA, which is approved by the ICCA Board as a Responsible Care® Association. PACIA develops the Responsible Care initiative within Australia, consistent with the principles, procedures, and the initiative's fundamental features covered by the Responsible Care® Global Charter, while also reflecting the national culture, legal system and other expectations of its Member companies participating in the Responsible Care program.

Vinyl 2010 - the European PVC industry's voluntary commitment which has been recognised by the European Commission and the UN.

The UK Chemical Industries Association has established agreed performance measures and industry wide goals with the UK EPA, and performance is reported through CIA's sustainability report.

Access to information

Q26 - Is the quality and quantity of information supplied to the public on public health, workplace safety and environmental outcomes of chemicals in Australia appropriate for effectively managing risks?

Both the NICNAS review of the Existing Chemicals program and the NChEM process have made recommendations on these matters. PACIA looks forward to working closely with the regulators and community to give effect to the identified enhancements.

Q27 - What are the best ways to enhance public understanding of the potential risks from chemicals and plastics (such as improved education, training and awareness-raising activities, and generation and dissemination initiatives)? Is the National Pollutant Inventory a useful and cost-effective tool?

Q28 - Do regulators have sufficient access to technical information to be effective? If not, what improvements can be made in managing the flow of technical information between regulators?

The Attachment on MHF and also Environmental regulation identify difficulties and gaps, and also proposed solutions. Much can be done by more exchange between industry and government, and also between government agencies. For example, PACIA is aware that WorkSafe Victoria's Hazard Management Division provides training and support to MHF regulators in other jurisdictions.

Consultation

Q30 - Are the current consultation processes that underpin chemicals regulation and decision-making in Australia adequate? If not, why not, and are there strategies to support more active participation by interested parties?

PACIA notes there is a huge variation in consultation processes that underpin chemicals regulation and decision making. They range from the extensive and effective consultation seen in the development of the Victorian OHS Regulations 2007, the national consultation and information sessions on NChEM and the NICNAS Existing Chemicals review – through to the ASCC consultation process on the draft Workplace Hazardous Chemicals Framework and GHS, which held no public information sessions during the public comment process, although two sessions were subsequently arranged, at the request of industry, only days before closure of extended public comment.

PACIA wishes to also highlight industry's concern at the failure to undertake cost benefit consideration processes in some jurisdictions altogether – and certainly on some topics. This issue is highlighted in the attachment on illicit drug controls.

The need for efficiency

PACIA refers again to the draft Table of Regulators which in some small way highlights the inefficiency and complexity in the system.

Q33 - How substantial are the barriers to entry caused by the existing regulatory system? What reforms would address these barriers while still maintaining an appropriate degree of protection for public health and the environment?

Q34 - Are there specific areas of overlap in the regulations that are burdensome and inefficient?

Q35 - Are you able to provide any estimates of the costs caused by gaps, overlaps or inconsistencies in the regulatory framework?

Q36 - Do you have any evidence of excessive costs imposed by chemicals and plastics regulations? Can you estimate, however approximately, the costs imposed by these regulations on your firm or industry?

Q37 - Can you identify cases where the regulatory environment has altered the way a business would otherwise operate (for example, making a decision about where to locate a major hazard facility)?

Q38 - Are you able to articulate alternative regulations that would meet the same objectives, but that would reduce or eliminate the costs you have identified?

The attached Case studies deal with these issues of inefficiency and highlight the barriers to entry of safer products into Australia.

It is particularly important that our regulatory environment facilitates – not hinders, the introduction of safer chemicals into Australia.

Furthermore, it is vital that we address the inconsistencies and overlaps, so we remove the burden of repeat work for different regulators for no beneficial outcome.

The need for coordination within and across jurisdictions

Q39 - Where are the greatest inconsistencies in regulation: between the Australian Government and the states and territories, between the states and territories, or within jurisdictions, that warrant reform?

The inconsistencies occur in all cases as stated. Depending on the particular company's locations, the greatest burden may change form between federal to state or across state borders. All areas need to be addressed.

Q40 - What advantages have there been in taking different regulatory approaches to chemicals and plastics in different jurisdictions? Can you provide examples of these advantages?

PACIA has provided examples earlier of the benefits of the Sustainability Covenant arrangement between PACIA and the Victorian EPA. This concept could readily be extended to other jurisdictions – or to address other issues.

Q41 - What existing institutional frameworks or coordination mechanisms within or across jurisdictions are working well? Conversely, which ones are less effective, and how could they be improved?

As discussed in the Attachment on transport of dangerous goods, PACIA believes national legislation, which could be adopted by template is a reliable and efficient mechanism to drive uniform regulatory framework across states. PACIA believes we have many many examples of the inconsistencies which emerge when the states and territories have endeavoured to give effect to other instruments, like Principles or Model Regulations or National Standards. A template approach to legislation would be very much more efficient also in supporting implementation of new legislation.

The model of the Competent Authorities Panel for transport of dangerous goods is also a model to support consistent administration which is worth close examination.

Q42 - Taking account of all the costs and benefits involved, should inconsistencies be reduced by having fewer regulators at any jurisdictional level (in the extreme case, having a 'mega regulator' at each jurisdictional level)?

While PACIA is not promoting a "mega regulator", the issues of fragmentation as shown in particular in QLD and across many jurisdictions is highlighted for action.

Q43 - What elements of chemicals and plastics regulation can most appropriately be dealt with through uniform national approaches (for example, should the Agvet code be extended to include control of use)?

PACIA struggles to identify ***any elements*** of chemicals and plastics regulation which could ***not*** be appropriately dealt with through uniform national approaches.

PACIA particularly notes and supports the principles for improved regulatory environment for the agvet sector proposed by Croplife Australia. CropLife proposes that there is significant scope at the national level for the regulation of agricultural chemicals to become more streamlined through the vertical integration of Commonwealth and state and territory regulatory regimes.

Q44 - More generally, given the different roles, responsibilities and powers of the different levels of government in Australia, what would be the most efficient and effective regulatory framework, how would this be achieved, and how quickly should it be implemented?

In order to assist the work of the PC Study, PACIA and other members of CPLG, propose to commission research to provide us with detailed analysis of regulatory options for an improved national framework for the regulation of the chemicals and plastics.

It is intended that the proposed research will investigate and recommend national structural models for better regulation of chemicals and plastics that will lead to *minimum effective regulation* of industry operations and products in Australia and thereby enhance the industries:

- domestic operating environment and national economic contribution,
- international competitiveness and export potential,
- innovation potential and long-term environmental/economic sustainability; and,
- integration within the Asia-Pacific region, to fully capitalise on the opportunities arising from the region's continued economic expansion.

Once the research has concluded, we will provide additional comments to the PC Study. We expect that the results of the research will be available in January 2008 and that we will be in a position to provide further advice regarding our recommendations for change towards the end of January 2008.

Implementation and administration of regulation

Q45 - Is fragmentation of regulations across and within jurisdictions hampering the effectiveness and efficiency of regulation in Australia — including securing staff to enforce regulations?

Q46 - Is there scope to build economies of scale by merging parts of the regulatory structure so that better use is made of the limited resource pool?

Q47 - Are some parts of the regulatory system more acutely impacted than others by lack of institutional experience and institutional memory?

Q48 - Are government regulators having problems retaining expert staff? If so, what can be done to address the problem?

These issues are covered to some extent in Attachment 2 on MHF and also in Attachment 1 on Environmental regulation.

PACIA has suggested the need to reduce fragmentation in many cases – while also noting that "mega regulators" can bring just as many problems as a very small regulator.

As discussed in Attachment 2, with a complex technical issue like MHF, where a critical mass of expertise is required in the regulator in order to administer the regime – and certainly to retain staff, PACIA believes it will be necessary to pool resources – either through merging parts of the regulatory structure – or through service agreements between agencies.

PACIA has highlighted the impact of resource shortages on business – where companies may be forced into situations of technical non compliance, because the regulator lacks resources to assess industry submissions in a timely fashion and either approve or reject them.

Delays in regulatory decision making –which often result from lack of technical or policy confidence in the regulator - can result in significant financial loss and loss of opportunity for industry. This is particularly the case with approvals for expansions or location of new facilities.

PACIA promotes the value of staff exchanges between regulators and industry to broaden experience from both parties, and to assist in the "on site" operational training of regulators.

In terms of issues relating to loss of corporate memory or lack of institutional experience, PACIA promotes the vital importance of regulators have transparent documented policies and decision making criteria.

For example, in the case of NICNAS, PACIA has strongly promoted the publication of a Manual of Decisions and a Record of Policy Register – to assist both industry and the regulator to avoid repeating previous work – and providing enduring certainty.

Industry is always concerned to ensure that there is not a shift in policy or standards over time – and this is a transparent mechanism to provide certainty.

The NICNAS Handbook for example is a very valuable document – but it would assist industry if changes to the handbook were publicised, for example by notation in the Chemical Gazette.

Some regulators have very open and transparent decision making processes – for example, the entire Safety Case Assessment Framework used by WorkSafe Victoria for making MHF licence decisions, is published on the website.

Q58 - Are the current regulations effectively enforced? How is this monitored? Do the powers of regulators give them sufficient scope to effectively enforce the regulations they are responsible for? Is the mix of education, information and penalties appropriate?

Good regulators seek to achieve compliance with regulations through a strategic mix of education, information and guidance, promotion, enforcement and where necessary penalties.

The balance of those elements varies greatly across jurisdictions and agencies – and even within agencies – and generally reflects the level of maturity of the particular group of regulators.

Q59 - Would greater economies of scale, through merged functions or regulators (within or between jurisdictions), make compliance any more effective?

Attachment 10 – the draft Table of Chemical Regulators, can be used to identify that many common areas and common objectives are addressed by multiple regulators. For example controls to prevent loss of containment of dangerous goods and to minimise impact of the spills, are required under both dangerous goods and environmental protection legislation.

Q60 - To the extent that there is non compliance, is there evidence of how much of this is deliberate, and how much is due to lack of knowledge or understanding (possibly because of complexity of the system)?

This is very difficult to answer – but PACIA promotes the importance of ensuring the system is clear and simple, to support compliance wherever possible. PACIA believes it is vital that we address the complexity which undermines compliance, and makes it more difficult and costly.

PACIA notes that one task of the NChEM Process is to “develop a manual of environmental controls, to assist chemical assessors, national regulators and stakeholders understand the current tools that are in place and how they are used”. This task merely serves to highlight the broad diversity of environmental legislation in the states and territories which lead to this task being necessary. Clearly, this diversity and complexity does not aid national companies in their efforts to comply.

Q61 - Does the compliance regime take sufficient account of the market mechanisms that play a part in reducing the risk of adverse events (such as large companies needing to protect their brand and to be seen as ‘good corporate citizens’, and that failure to comply with regulatory obligations may void insurance coverage)? Does compliance effectively target rogue operators?

The current regime does not take this into account. It is the companies wanting to protect brand or be good corporate citizens who go to extreme efforts to ensure they comply with the excessively complex and burdensome regimes. This results in these companies doing more, when it does not

provide “more” compliance. The rogue operators are not impacted by the thought of bad brand, as this is typically not an issue for them, therefore the complex system does not effectively target these rogue operators.

It is interesting to note that WorkSafe Victoria is currently starting to segment the market by company size, and develop appropriate intervention strategies for small, medium and large companies. It is possible that this new approach may seek to make better use of market mechanisms.

Leveraging international linkages

The Globally Harmonised System for Classification and Labelling of Chemicals (GHS)

General

The GHS has developed on the premise of a single, globally harmonized system for classification of chemicals and hazard communication (labels and safety data sheets). The genesis of the GHS will be well known to the Commission and will not be further elaborated in this submission.

The challenge for the GHS is that it attempts to address classification and labelling for all chemical sectors (transport, industrial/workplace chemicals, industrial formulated products, agricultural chemical products, and household consumer products) under a single approach. Moreover, it attempts to do so for both developing nations, which may have limited or no schemes, and developed nations with sophisticated chemicals management regimes.

Whilst many governments are actively considering how GHS may be implemented in national schemes, no major economy has yet fully implemented the GHS across all chemical sectors. Indeed, governments and industry are now focusing attention on the practical aspects of how the GHS might be implemented at the national level, while keeping in mind the key considerations of enhancing national schemes and gaining the benefits of trade facilitation.

Hazard-based approaches to labelling in the transport sector and for bulk commodity industrial chemicals in international and national trade and in the workplace sector are non-contentious except where regulators maintain or promote unique Australian requirements such as inner package labelling. The central issues relate to timing (including transition periods and what occurs during transition periods), the scope of implementation of hazard classes and categories, and how to achieve consistency in chemical classifications. This latter point is not to be underestimated.

The GHS remains a ‘work-in-progress’ and will need to evolve in recognition of problems that arise in both practical application, and to reflect changes that arise in the implementation that occurs in the major chemical trading nations – otherwise the official GHS text and documentation will loose relevance.

In its 27 June 2007 announcement, the European Commission proposed a hazard-based approach across all chemical sectors. In Australia and countries such as the United States, Canada, Japan and others, the contemporary regulatory approach for consumer products and agricultural chemical products (pesticides) has been for consideration product labelling within a risk analysis framework.

A simplified risk analysis framework, including potential application of the GHS, can be represented as follows.

Simplified risk-analysis framework identifying potential application of GHS

Risk Analysis:

Risk Assessment:

- **hazard identification**
- **hazard characterization**

} **GHS hazard classifcation**

- **exposure assessment**
- **risk characterisation**

Risk Management

Risk Communication: **may include appropriate hazard elements**

In such more sophisticated approaches, GHS hazard classification has a potential role in hazard identification and hazard characterisation.

Notwithstanding the pros and cons of hazard versus risk-based labelling, there is a clear divide in how regulatory philosophies approach communication with end-users in the various sectors. The current European Commission proposals are very different in approach from current practices in countries such as Australia, United States, Canada, Japan and others.

The emergence of 'brands' of GHS

Europe: Without debating the merits of the proposals, the European Commission has proposed that its scope of GHS Implementation will not include a number of GHS hazard categories but will include a number of hazards not currently included in the scope of the GHS.

During a panel question time at the April 2007 ChemCon Conference in Singapore, a representative of the European Commission responded to a question as to whether a chemical classified and labelled to all GHS endpoints (i.e. more protective than the Commission's proposals) would be acceptable in the EU – the response was that only chemicals classified and labelled to the European adoption of GHS would be acceptable.

PACIA understands that this European Commission position is also the interpretation of Australian government representatives to the UNSCEGHS.

New Zealand: The Environmental Risk Management Authority (ERMA) has been attempting to implement an early 2003 version of the GHS. ERMA has made a number of changes and additions to hazard classifications and used codification not adopted up in the GHS official text or in proposals by any other country.

Adoption of the lowest classification toxicity categories means that ERMA regulates chemicals, as hazardous substances, that may be or of similarly toxicity to common food items. For example, GHS Acute Oral Toxicity Category 5 classifies substances with LD_{50} values of 2000mg/kg to 5000mg/kg. This classification picks up chemicals such as sodium chloride (table salt) with an acute chloride oral LD_{50} in rat approximately 3000mg/kg and sodium carbonate (baking soda) with acute oral LD_{50} in mouse approximately 3360mg/kg. These low-end classifications are not included in the European Commission's proposals.

New Zealand's scheme is not currently harmonised with any other country and is commonly referred to as a 'GHS-based' scheme rather than a 'GHS implemented' scheme.

In 2006, ERMA pragmatically provided 'alternative compliance measures' under its Group Standards to allow the transfer of substances and mixtures to its Hazardous Substances and New Organisms Act 1996 (HSNO). The alternate compliance measures provide for acceptance of:

> *"the relevant current labelling requirements of Australia, USA, Canada, the European Union or any other country as approved by the Authority, as if the substances were for sale or supply in those countries"*

Example of text in a Group Standard is at http://www.ermanz.govt.nz/appfiles/orgctrl/pdf/HSR002525Con.pdf*, page 8*

These alternate compliance measures are due to expire on 31 December 2010 but in reality these will need to be extended as even the European Commission's proposals do not contain mandatory GHS labelling of mixtures until 2015. Additionally, for consumer products and others where New Zealand's major trading partners will adopt risk-based approaches to labelling there are no current provisions under HSNO for this to occur.

The New Zealand experience has highlighted the significant problems that can occur with small economies trying to implement schemes in isolation before major trading partners and not benefiting from the substantial work that is still to be done in the major chemical trading nations. This is not a model for Australia to emulate.

North America: there is no detailed information yet available on GHS implementation in North America.

The consequence of different 'brands' of GHS

The emergence of different customised brands of GHS, without mutual recognition of GHS in other economies has the potential to strongly work against a stated objective of GHS with regard to trade facilitation. This is a key issue for Australian industry.

What will be the costs and benefits of implementing the GHS in Australia?

United Kingdom Health and Safety Executive

In July 2007, the UK HSE commenced a consultation of GHS implementation in the United Kingdom (http://www.hse.gov.uk/consult/condocs/cd213.htm) to allow it to inform the considerations of the European Parliament and Council. The consultation closes on 2 November 2007

The HSE Initial Regulatory Impact Assessment (RAI) notes the context of GHS for the United Kingdom.

> *"5. The current EU classification and labelling system for supply and use of chemicals is mature, well developed, and widely understood. It is unlikely the EU (and therefore the UK) will experience significant benefits for human health or environmental protection from implementation of the United Nations Global Harmonised System of Classification and Labelling of Chemicals (GHS), compared with the current EU classification and labelling system. It is countries that as yet do not have a regime in place to control the supply and use of hazardous chemicals, that are expected to benefit the most from the UN GHS, and for them it will be a significant step forward in the safer management of chemicals.*
>
> *6. The principal economic benefit of the GHS for the EU, and therefore the UK, is considered to be the facilitation of international trade, over the longer term, due to the lowering of technical barriers to trade….." (underlining added)*
>
> *UK Initial Regulatory Impact Assessment on the Proposed European Regulation on the Classification, Labelling and Packaging of Substances and Mixtures (Based on the UN Globally Harmonised System. Consultative Document 213 - Annex B, July 2007* http://www.hse.gov.uk/consult/condocs/cd213ria.pdf

The RAI includes cost estimates for the introduction of the GHS at between £95,680,000 and £215,680,000. At current exchanges rates this equates to A$218 million to A$492 million.

Australia has a developed and sophisticated regulatory regime for chemicals management that is comparable to other developed countries. The current schemes include world best practice in chemicals classification, labelling and information provided through material safety data sheets.

The contribution of the GHS to *Australia's National Interest* will be best served through trade facilitation and efficiencies that may be achieved through harmonized international approaches to classification, labelling and safety data sheets.

ASCC Regulatory Impact Assessment

The ASCC 2006/2007 consultation on the Draft National Standard and Codes of Practice for the Control of Workplace Hazardous Chemicals included key elements of:

- use of the Globally Harmonised System for Classification and labelling of Chemicals (GHS) as the primary tool for classification, labelling and safety data sheets in the workplace sector; and
- consolidating the requirements for workplace hazardous substances and dangerous goods into a consolidated framework

The detail of the overlapping considerations were extremely complex as recognised in government and industry submissions. Copies of the submissions to the consultation are at: http://www.ascc.gov.au/ascc/AboutUs/PublicComment/ClosedComment/Public+Submissions/PublicSubmissions-ControlofWorkplaceHazardousChemicals.htm

The detail of some submissions is worth noting, for example WorkCover NSW (150 pages), PACIA (55 pages), ACCORD (50 pages). The complexity is also reflected in the nature of the draft Regulation Impact Statement (146 pages).

Consultation meetings for the Regulatory Impact Analysis were conducted in early 2006. This was at a time when no major economy in the world had released a detailed GHS proposal. Further, no analysis of the detail of potential GHS implementation impacts had been conducted by industry or governments at this time – indeed much of this detail continues to emerge.

It will not be possible, nor would it be appropriate, to complete an analysis of costs and benefits, even for the industrial chemicals sector; until Australia's major trading partners have released detailed proposals for GHS implementation.

Who are Australia's major trading partners for chemicals and plastics?

Industry has recommended that regulatory agencies be informed on trade considerations by the Department of Foreign Affairs and Trade (DFAT) and Department of Industry, Resources and Tourism (DITR).

There are different trade classification systems and there is critical need for agreement on classification and data sets. For example, data can been analysed under the Australia New Zealand Standard Industrial Classification (ANZSIC) codes or by trade using a harmonised tariff system – the two are not directly comparable but appear to yield similar relativities.
PACIA has undertaken an analysis using the ANZIC codes.

Major Sources of Australian Chemicals & Plastics imports and destinations of exports (2005-06)

	Source of Imports	$m	%	Exports Destination	$m	%
1	United States	3,088	21.02	New Zealand	804	21.72
2	China	1,553	10.57	China	307	8.30
3	Japan	1,020	6.95	United States	295	7.97
4	Germany	810	5.51	Indonesia	166	4.50
5	United Kingdom	698	4.75	Japan	143	3.87
6	New Zealand	513	3.49	Korea, Republic of	136	3.68
7	Korea, Republic of	476	3.24	Hong Kong	135	3.67
8	Malaysia	427	2.91	India	124	3.37
9	France	419	2.85	Thailand	110	2.97
10	Taiwan	361	2.46	Finland	105	2.86
11	Thailand	325	2.22	Singapore	84	2.27
12	Singapore	302	2.06	United Kingdom	77	2.10
13	Italy	288	1.97	Malaysia	77	2.10
14	Netherlands	197	1.34	Papua New	72	1.95

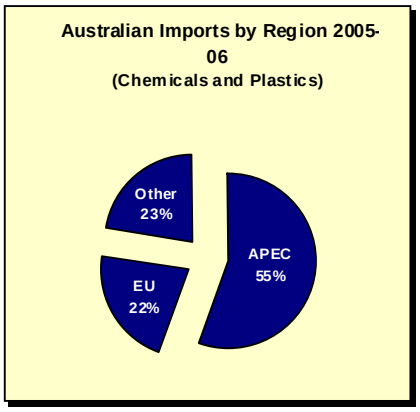
				Guinea		
15	Belgium	183	1.25	Taiwan	67	1.82
16	Qatar	170	1.16	Viet Nam	57	1.57
17	Indonesia	167	1.14	Philippines	51	1.39
18	Ireland	159	1.08	South Africa	45	1.24
19	India	153	1.05	Netherlands	41	1.11
20	Spain	151	1.03	Pakistan	39	1.06
	Other	3,225	21.95	Other	759	20.49
	Top 10	**9,370**	**63.76%**	**Top 10**	**2,330**	**62.91**
	Top 20	**11,469**	**78.05%**	**Top 20**	**2,945**	**79.51**
	Total	**14,694**	**100.00 %**	**Total**	**3,704**	**100.00**

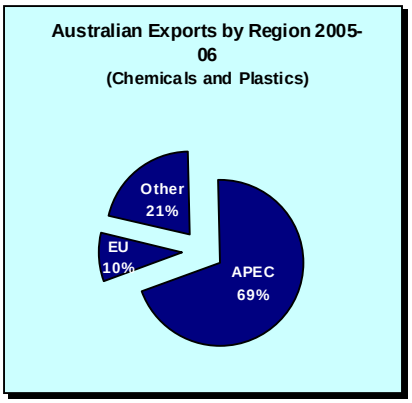
The United States is Australia's largest single country sources of imports at 21.02% and accepts 7.97% of Australia's exports. New Zealand accounts for 3.94% of imports but is Australia's largest export destination at 21.72%

Further analysis of the data identifies that:

- Australia was 0.86% of global trade in chemicals and plastics in 2005-2006
- Australia is a net chemicals importer with imports exceeding exports by a ratio of 4:1
- the 27 countries of the European Union contribute, in total, 21.88% of imports and accept 9.52% of Australia's exports
- North America (Canada, USA and Mexico) accounts for a total of 21.96% of imports and accepts 9.05% of exports (note: Australian chemicals trade with Canada and Mexico is relatively minor at this time)
- The 21 member economies of the Asia Pacific Economic Cooperation (APEC) contribute 55.36% of imports and accept 69.16% of Australia's exports

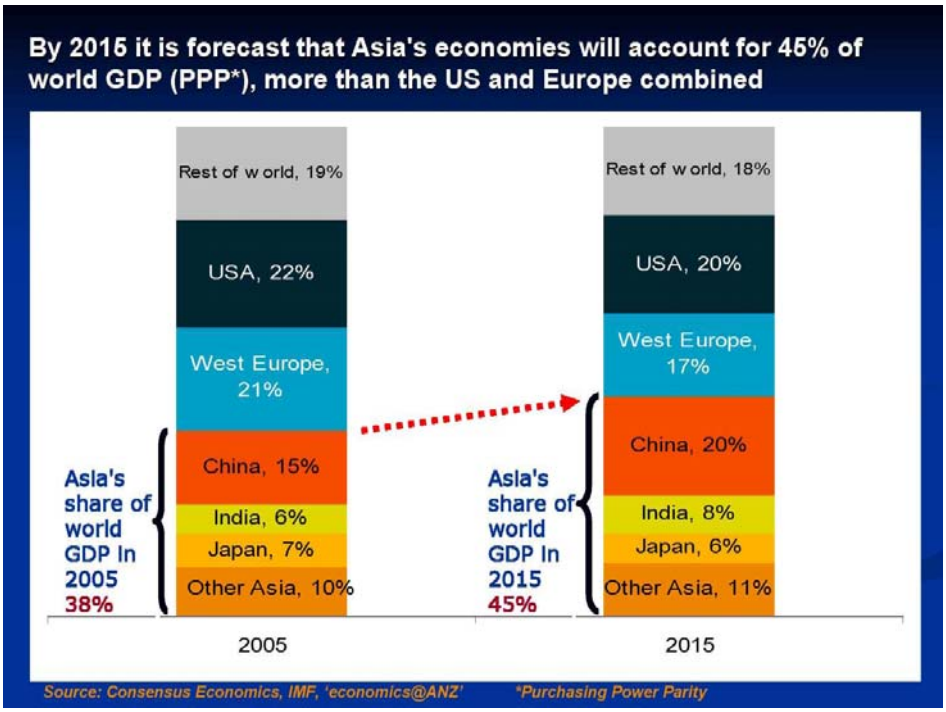
Australian Imports and Exports by Region 2005-2006





There is also important need for analysis of export and import trends in the chemicals and plastics sectors to position Australia for future market opportunities and trade efficiencies.

GDP Growth 2005-2015



PACIA strongly supports industry recommendations to regulatory agencies that information be sourced from DFAT and DITR to establish the context and trends of Australia's trade in chemicals and plastics. This information must inform policy consideration such as whether Australia should align with any individual or regional trading partner(s). It may be that Australia's does not directly align with any individual trading partner but optimises benefits to consider the full range of trade considerations.

What should influence decisions about the timing of the implementation of the GHS? Should Australia wait until the system has been implemented by our major trading partners, or aim to be a leader in adopting the new system?

Australia represents less than 1% of the world's chemicals trade and is a net chemicals importer. Given Australia's trade profile, it is critical that any consideration of GHS implementation locally be informed by developments from our major trading partners. Ongoing dialogue and consultation with trading partners is crucial to *Australia's National Interest.*

The benefits to any country implementing the GHS will be realised only with a high level of co-ordination and harmonization within the affected sectors in major trading partners. No nation can meaningfully implement the GHS in isolation. Consistent approaches to GHS implementation among Australia's trading partners are crucial to realise the benefits of a harmonized system. For Australia, failure to recognise this key imperative could lead to much effort for no gain or negative outcomes and bring the national application of GHS into disrepute.

Australia has a unique opportunity to gain benefits of GHS classification and approaches to communication through labelling and safety data sheets if it phases GHS implementation to follow behind that adopted in major economies and trading partners such as the European Union, North America and other APEC economies. PACIA and ACCORD made specific recommendations to the 2006/2007 ASCC consultation in this regard. If Australia extended the transition periods for mandatory adoption of GHS by 2 years from whatever becomes an agreed international benchmark then this would allow Australia to benefit from:

- GHS classifications that are undertaken in the major chemical trading nations
- Resolution of major GHS implementation issues
- Avoidance of duplication and inconsistencies

- Avoidance of potential significant costs of 'reworking' as the GHS evolves during implementation

Is there a need for more extensive use of a risk-based approach to regulation in parts of the system? How can such an approach be integrated with future adoption of the hazard based Globally Harmonised System

GHS labelling implications for industrial "products" need special consideration. *Products* are different from *raw materials* and bulk commodity chemicals in trade and use in manufacture as the former have *defined uses*.

An example might be a cleaning product used that is used in the workplace by janitorial staff (and requires labelling as an industrial chemical). If the product contains ethanol (ethyl alcohol – also present in all alcoholic beverages) at a concentration of >0.3% then the label, according to the GHS, may be required to bear the following information and pictogram:

Signal Word: DANGER

Pictogram: Exploding Human (Health Effects)

Label Statements: May damage fertility or the unborn child (state specific effect if known) (state route of exposure if it is conclusively proven that no other routes of exposure cause the hazard)

The above example identifies the inadequacy of only considering hazard for *defined use* products and how this may lead to miscommunication of relevant information to users.

Recommendations on the Globally Harmonised System for Classification and labelling of Chemicals (GHS)

Australia has the opportunity to maximise the benefits and minimise the costs of the GHS through its implementation strategy. PACIA strongly recommends that the Productivity Commission supports the following recommendations:

- the Department of Foreign Affairs and Trade (DFAT) and the Department of Industry Tourism and Resources (DITR) provide advice to Australian government regulators of the chemicals and plastics industry on Australia's trade profile and emerging trends
- DFAT and DITR be actively engage in the development of Australian implementation strategies for the GHS
- further considerations on Australian GHS implementation to be informed by developments in Australia's major trading partners
- acknowledgement be given that *Australia's National Interest* will be best served through trade facilitation and efficiencies that timely and appropriate GHS implementation may offer
- Australia maintain an active role in the APEC Chemicals Dialogue to promote trade facilitation from GHS implementation within the 21 APEC economies
- acknowledgement be given that Australia's currently developed regulatory regime for chemicals and plastics is comparable to those in other developed countries
- the Productivity Commission endorses the principle that Australia adopt GHS implementation transition periods that are beyond major chemical trading economies thereby allowing efficiencies and cost-effective benefits to be realised
- the Productivity Commission supports the development of an Australian government/ industry workplan that:
  - involves government and industry in a partnership approach
  - addresses the individual chemical sector needs and issues
  - is progressively informed by international developments

- recognises and provides input on Australian views to international fora, such as the APEC Chemicals Dialogue and the UN Sub-committee of Experts on the GHS
- ensures efficiency, avoids duplication, enhances trade, and promotes consistency with international progress such as in the area of GHS classifications
- explores opportunities for mutual recognition *(vs full harmonisation)*
- provides for broad training, outreach and awareness raising

To what extent can chemical risks and hazards be treated generically across different countries, and what are the Australian-specific circumstances or conditions that justify separate risk assessment and management (for example, do agricultural chemicals need to be tested in Australian conditions)?

The GHS identifies hazards as properties arising from the intrinsic properties of chemical elements, compounds and mixtures thereof, whether natural or synthetic. Hazard properties are independent of factors such as geographic location.

All regulatory approaches (hazard-based or risk-based) consider the hazard properties of chemicals, compounds and mixtures.

Risk analysis is a framework for higher level consideration for identification and characterisation of hazards, exposure assessment, risk characterization, risk management and risk communication. A simplified risk-analysis framework was identified earlier in this submission.

Chemical hazard properties, based on accepted testing methodologies, have the potential to be universally used around the world – because the intrinsic properties do not change. Where the use of a chemical, compound or mixture is the same or similar in one location to another location then it may be valid to fully accept a risk assessment developed under with comparable standards.

There are currently other non-science factors that may impose on the ability for transmittance of information from one country to another. Such factors may include intellectual property rights, treatment of commercial-business-information, the nature of reports that may be prepared by regulatory agencies, and other factors. Despite any philosophical desire for increased sharing of information, the fundamental incentive for innovation through intellectual property rights, including as defined under the World Trade Organisation, must be respected.

Regulation of Security Sensitive Ammonium Nitrate

The chemical industry is committed to achieving enhanced levels of security and control over all aspects of the chemical supply chain to minimise the risk of legitimate industrial products being diverted for illicit use. PACIA and its member companies have a long history of working very closely with both federal and state agencies to achieve enhanced security controls. This work has historically focused on areas of chemical weapon precursors, chemical precursors, illicit drug precursors, explosives and in recent years, security sensitive ammonium nitrate (SSAN).

PACIA has been very pleased over the last four years to proactively develop specific industry guidance on security issues. In 2003, PACIA developed the first Edition of its Responsible Care Site and Supply Chain Security Guidance to assist the industry. PACIA is currently updating and reviewing the document to publish the fourth Edition.

In addition, prior to the June 2004 COAG decisions regarding SSAN, PACIA developed a draft industry Code of Practice for Secure Distribution of Security Sensitive Ammonium Nitrate which subsequently was largely adopted into the national SSAN Transport Guidelines.

The three policy aims of the COAG Principles on SSAN, set out below, were strongly supported by industry:

- A nationally-consistent, effective and integrated approach to control access to security sensitive ammonium nitrate to those with legitimate need

- To ensure accountability at all stages of the ammonium nitrate supply chain, in order to address security and safety concerns
- To establish a framework for control which may be applicable for other materials of security concern

Sadly, those policy aims were not met in the regulation and administration of SSAN.

From an industry perspective, there have been a number of issues:

- There have been delays in making this priority security legislation
- There are significant inconsistencies between the states, eg
    - Terminology
    - Licence Requirements
    - Mutual Recognition
    - Different approaches to control
- This has been a very inefficient process for all stakeholders.

The National Security Division of the Department of the Prime Minister and Cabinet, in September 2006, requested PACIA's advice on details regarding industry's difficulties in implementing SSAN requirements in the different jurisdictions across Australia. PACIA's response, which was developed with the Australian Explosives Industry and Safety Group can be accessed via the link below:

http://www.pacia.org.au/_uploaditems/docs/2.paciasub_regs_ssan_%20sept06.pdf

PACIA has greatly valued the opportunity to continue working closely with the National Security Division over the last 12 months in the development of the broader framework over chemicals of security concern. Our submission on the Discussion Paper can be accessed below.

http://www.pacia.org.au/_uploaditems/docs/2.paciasub_chemicals_securityconcern_1mar07.pdf

The issues associated when one State proposes to go in a completely different direction on security can be seen in these submissions to the Victorian Department of Justice below. A successful outcome was achieved with this legislative proposal as a result of intervention by the Minister for Police, following correspondence from PACIA. The final legislation is consistent with the priorities and approaches being developed through the COAG work on Hazardous Materials.

http://www.pacia.org.au/_uploaditems/docs/2.terrorism_cpcps_regsfeb05.pdf

PACIA will deal with the specific question in the Issues Paper relating to the regulation of SSAN.

Q 75 - *Could the development of the agreed principles for SSAN regulation have been improved?*

PACIA and its member companies have given and will continue to give their unconditional support to achieving the outcomes required by the COAG Principles for the Regulation of Security Sensitive Ammonium Nitrate. However members have major concerns about the quantity of compliance work which has to be done up to 8 separate times to comply with different laws and Regulations in the various jurisdictions and we strongly recommends that the SSAN model **NOT** be used to regulate other materials identified by the COAG Review of Hazardous Materials. Furthermore we consider that the differences in regulatory requirements are counter-productive inasmuch as they consume scarce skilled compliance resources performing the same tasks in different ways to meet jurisdiction specific requirements. In our view these resources would be more effectively utilised if the one set of regulations applied consistently Australia wide.

The development of the COAG Principles for SSAN through the Department of the Prime Minister and Cabinet (PM&C) was done in almost complete isolation of the affected industry. Industry was not able to see any of the draft documents as they were developed, nor were they able to provide any input on practical or technical business implications of the approach under consideration. Even when a number of peak industry associations were invited to meet with PM&C to discuss the

recommendations to go to COAG, industry was not provided the draft documents under consideration.

On the other hand, in relation to the development of the controls for chemicals of security concern, PACIA has been very pleased to be engaged and consulted in the process since September 2006. PACIA has found the ability of industry to input issues, concerns and possible solutions into the development of the draft COAG paper a much more valuable and constructive process.

The willingness to not only engage in a consultative and open process with peak industry groups, but also to engage actively in formal public comment processes, is a much more transparent and inclusive process.

However, even if the development of the Principles for SSAN had been done differently, PACIA would argue that "***COAG Principles***" is the wrong product or legislative tool, with which to achieve the objective of "a nationally-consistent, effective and integrated approach" as set out in those Principles.

PACIA would contend that the COAG Principles on SSAN (like the NOHSC National Standard on Control of MHF as set out in Attachment 2) which then must go through a legislative development process in each jurisdiction to produce legislation is extremely unlikely to produce consistent outcomes.

PACIA would argue it is vital that a further step needs to be taken in the national development process – to develop ***national legislation*** which can then be either ***adopted by template*** in the jurisdictions and administered by the jurisdictions, or ***administered as national legislation***.

PACIA would also promote the need for incentives to drive the states and territories to adopt template legislation in consistent timeframes. The Transport Case Study in Attachment 5 discusses these issues further.

PACIA notes the direction in the June 2004 COAG Principles regarding upgrading explosives regulations to a similar standard in terms of security has been addressed by jurisdictions even more slowly that the SSAN Principles.

Given the failure of this mechanism to achieve the outcome sought, ***PACIA recommends the need to***

- ***Develop legislation nationally***
- ***Offer incentives to encourage prompt and consistent adoption***
- ***Monitor the actions taken by jurisdictions***
- ***Establish a nationally coordinated mechanism to support consistent administration.***

Q 76 - Are the security measures required by the agreed principles commensurate with the security risk posed by ammonium nitrate products?

It is somewhat difficult for industry to comment on this question given the security risk posed by SSAN is best assessed by ASIO and other intelligence agencies, rather than by industry.

However the security measures "required" as a result of the way the COAG Principles have been given effect in state and territory legislation, unfortunately vary significantly between the jurisdictions. The resulting burden on industry as a result of the inconsistencies achieves no security benefits yet causes considerable costs.

PACIA would promote an ongoing centralised collaborative process between industry and Government to determine the best ways to achieve the security outcomes sought by COAG, industry and the community.

Q 77 - What impacts have the individual state and territory legislation for SSAN had on business operations? Can the benefits and costs be quantified?

PACIA works closely with the Australian Explosives Industry and Safety Group (AEISG) on dealing with security controls and we commend their detailed input to this study with identified costs and benefits.

Attachment 9 highlights the range of impacts on both business operations and also on the security objectives. In particular, the lack of mutual recognition of licences, security plans and security clearances across Australia and the different state by state approach to security clearances have been found particularly burdensome. The requirements in some jurisdictions for controls based on consequence, rather than risk has resulted in significant cost burdens in those jurisdictions.

Q78 - What grounds are there for variations across the jurisdictions in the regulation of SSAN? How extensive are these variations, and what impact have these variations had on the overall security objective, and on the costs to business of complying with the regulations?

PACIA cannot identify any grounds for variations across the jurisdictions, and believes those variations have been responsible for undermining the credibility of the whole regime. National security is not an area where one can tolerate any variations.

Q79 - Could less stringent regulations or other policy measures be introduced to control access to SSAN without compromising the security objectives?

Again, similar to Q76 this is difficult for industry to comment. However, PACIA would suggest that a common understanding of the security objective, outcomes and expectations between industry and Government (ie not by State – but one national Government view) would have made the process much easier, and most likely less stringent in many jurisdictions, yet more effective overall.

Conclusion

In conclusion, PACIA has significant concerns about the complexity, duplication and inconsistency within the chemical regulatory regimes at all levels of government which impact on the chemicals and plastics sector.

PACIA has indicated throughout this submission that the regulatory environment, not only impacts on the efficiency and effectiveness of the sector, but also adversely impacts on the health, safety, security and environmental outcomes sought by the industry, government and community.

PACIA is very keen to continue to work closely with the Commissioners. As you are aware, gathering together information on the incremental costs which result from the complexity and regulatory burden has been found very difficult by our members, and PACIA looks forward to working further with the Commission to provide you with the necessary information and detail.

It is vital that the Australian regulatory system be brought into line with existing Government policies for minimum effective regulation to maximise our sector's potential for sustained growth.

PACIA is pleased to note this PC Study will inform the work of the Ministerial Taskforce established by COAG to "***develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation"***. We look forward to assisting the Commission and the Ministerial Taskforce to achieve that outcome.