Queensland Government Submission in response to the Productivity Commission Issues Paper "*Chemicals and Plastics Regulation*"

December 2007

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Summary

The Queensland Government welcomes the opportunity of providing this submission to the Productivity Commission's study into chemical and plastic regulation in Australia.

Queensland understands the integral part that chemicals and plastics play in the economy of Australia and the need for appropriate regulation of all aspects of chemicals management to ensure a balance between industrial productivity and risks to human health and the environment. Industry, government and the community need to share the management of these risks appropriately and efficiently. The current framework for chemicals management is relatively effective, however there are some gaps, inefficiencies and inconsistencies that require attention.

Queensland's major concern regarding plastics and chemical regulation centres on the lack of policy coordination at the national level. Currently there is no mechanism or central federal agency responsible for coordinating policy across the multiple agencies administering various aspects of chemical and plastic regulation. A coordinated approach to policy development should be considered as one of the first steps taken in addressing the proliferation of, and inconsistency in, chemicals and plastic regulation.

Another concern is the exclusion of flammables and combustibles from the scope of the review. These chemicals form the greatest proportion of chemicals in use within Australian society and present the intrinsic hazards of fire and explosion. As the outcomes of this review will have a flow-on effect to fuel chemicals, it is essential that they are included in the scope of this study.

Queensland also proposes the adoption of agreed national standards for each area of chemicals regulation (OHS, public safety, food safety etc). This is similar to the framework for national standards developed under the auspices of the Australian Safety and Compensation Council. These standards if consistently implemented in each jurisdiction will contribute to alleviating the cumulative compliance burden, cross-jurisdictional complexities, and inconsistent enforcement of existing regulations.

The Queensland Government will continue to support the national consistency agenda and will actively cooperate with other state and territory governments and the federal government to harmonise regulatory requirements across the areas being examined.

Part 1 - Introduction

The regulation of chemicals and plastics across Australia has become problematic. While the system of regulation of different attributes of chemicals in a federation will lead inevitably to some overlap and duplication, the extent to which it has been allowed to grow in Australia is now counter-productive. The *Rethinking Regulation* report by the Taskforce on Reducing the Regulatory Burden on Business maintains that:

> *"The chemicals and plastics sector is regulated by a complex web of legislation. In 1998 it was estimated that there were 144 pieces of Commonwealth, state and territory legislation governing the sector.*

Numerous submissions, reviews, and reports, including a number currently before the Productivity Commission, advocate that the sheer volume and duplication of chemical and plastics regulation has added significantly to compliance costs, especially for multi-state employers. As noted in *Rethinking Regulation*:

> *"Quantifying the excessive burdens stemming from all this regulation is difficult, partly because some compliance activities are unavoidable or would have been undertaken by business anyway. However, even the more conservative survey-based estimates put gross compliance costs at tens of billions of dollars annually, suggesting considerable scope for gains from reform. This assessment has been reinforced by the evidence of costs faced by many individual companies presented to the Taskforce."*

Although the Queensland Government acknowledges compliance costs to business within the plastics and chemicals sector in Australia are substantial, the importance of ensuring outcomes for occupational health and safety, public health and the environment should be regarded as the primary concern of regulators. This was identified in *Rethinking Regulation*:

> *The purpose of regulation is to ensure an appropriate balance between the benefits to society, such as increased agricultural and industrial productivity, and the risks to human health and the environment associated with exposure to potentially harmful substances".*

The Queensland Government is also aware of the problems for trade, especially export trade, that may result from residues of agricultural and veterinary chemicals in food. Trade disruption may occur even when the risks to health have been fully assessed and found to be minimal.

From a Queensland perspective, the chemicals and plastics industry represents a relatively small proportion of the whole working population with exposure to chemicals. That is a situation which may not necessarily be mirrored in other States that have large chemical manufacturing bases.

This opens the response to include those workplaces and consumers that are the users of chemical and plastic products, where arguably, the greater concerns lie. When considering the impact of the chemicals and plastic industry in terms of public health or environmental consequences, it becomes impossible to restrict consideration only to the "product manufacturing" aspects. This is because these products have been spread into a very wide workplace community and therefore public health or environmental impact concerns arise.

As indicated in the Productivity Commission's paper, there is overlap between the regulatory responsibilities of agencies depending on just where a chemical happens to be at a particular point in time. A chemical can be subject simultaneously to regulation by three or four different agencies.

For example, a farmer wishing to use a chemical for the control of noxious weeds on a rural property would be subject to regulatory requirements relating to it's:

- safe and allowable use (*Chemical Usage (Agricultural and Veterinary) Control Act 1988 and Regulation 1999, Agricultural Chemicals Distribution Control Act 1966 & Regulation 1998*),
- safe use in the workplace (*Workplace Health and Safety Act 1995 and Regulation 1997*),
- storage and transport (*Dangerous Goods Safety Management Act 2002*); and
- possible environmental impacts (*Environmental Protection Act 1994 and Regulation 1998, Environmental Protection (Water) Policy 1997*.

As is the case for all other jurisdictions, Queensland has its own arrangements for the regulation, administration, policy development and enforcement of chemicals and plastics across the areas of occupational health and safety, the environment, public/food safety and security sensitive ammonium nitrate. In addition, local government authorities carry enforcement responsibilities for chemicals and also exercise some planning approval powers potentially affecting chemical facilities or small businesses using chemicals.

Part 2 - Broader issues for consideration

From a whole-of-government perspective there are a number of broad issues that affect plastics and chemical regulation and this review. These include:

- the lack of policy coordination at the national level for chemicals management
- alternatives to traditional regulation
- limitations on jurisdictional variations
- reducing the regulatory burden; and
- the specific exclusion of flammables and combustibles

Lack of policy coordination at the national level

At the national level various regulatory authorities play a role in how the industry is currently regulated. The lack of policy coordination of chemicals management at the national level highlights Queensland's concern about the complex web which has developed in our collective by the sometimes uncoordinated desire to control the use and fate of chemicals throughout Australia.

At the national level there is no single lead agency responsible for chemicals management or policy development in relation to chemicals and plastics. This is inconsistent with the harmonisation agenda being driven by the Federal Government to alleviate the cumulative compliance burden, cross-jurisdictional complexities and inconsistent enforcement of regulations in various areas (agricultural and veterinary chemicals, industrials, therapeutics, food safety).

Alternatives to 'traditional' regulation

Queensland recognises the value in using various types of regulation (from prescriptive to self-regulation). For example, with co- or self- regulation approaches jurisdictions can "learn" from each other's best practice, however it needs to be recognised that there are limits to what can be achieved through co- or self- regulation in some circumstances.

While there may be some precedents for limited co-regulation working in industry sectors which have resources, superior expertise etc., this is confined to only a small part of the overall industry. Downstream users of products from the chemical and plastics sector would have to be excluded from such considerations.

The capacity for an industry to maintain a coherent self-regulatory scheme on a voluntary non-commercial basis for a period long enough to have any impact is doubtful. Government regulation is likely the only option available, considering that government regulation also will be applied efficiently and equitably to all workplaces.

Reducing the regulatory burden

The issues paper discusses the option of resolving inconsistencies by reducing the number of regulators at the jurisdictional level and having a 'mega-regulator' at each jurisdictional level. Mega-regulators at a jurisdictional level do not seem likely to reduce the regulatory burden, but would seem only to reduce the number of nodes for contact. There is still likely a need for environmental legislation, for workplace safety legislation, for public health legislation, transport regulation etc. That model will simply reduce the number of jurisdictional operators, not the number of regulations. The topics tend to be too large for any single organisation to field adequate expertise.

Limits on jurisdictional variation

Sometimes there are good reasons for variations in State and Territory regulations and sometimes not. Differences that result from responses to specific crises or events should be able to be resolved. However, there are not good grounds for preserving the structural elements of State's individual regulation of chemicals. Workers in Queensland will be affected in exactly the same way in terms of their health as will those in Canberra or Hobart. Dangerous goods stored in Queensland will cause much the same environmental damage as those stored in Perth under similar circumstances if released in a fire or through fire water. Asbestos exposure from poor removal techniques causes the same kinds of lung damage whether in Brisbane or Adelaide.

For these reasons, the States' individual regulatory approaches and in fact their administrations are duplications. For example, there are a few safety issues which are geography specific such as crocodile farming or working in cold (snow).

In contrast, the use of pesticides, and the resulting problems, can be quite different from one State to another because of the nature of the crops, weeds, diseases and other pests. For example, control of weeds in sugar cane or rodents in banana plantations are mainly matters for the wet tropics. Further, control of residues and contaminants in runoff in the vicinity of the Great Barrier Reef is a concern unique to Queensland.

Any opportunities identified by the Commission to improve uniformity of regulation should be embraced; however jurisdictions should retain the ability to limited variation for local conditions (e.g. unique land conditions) and to respond to local industry and community needs.

Concern over the scope of the study

It should be noted that the Queensland Government is concerned at the limited scope of the Productivity Commission's study.

In its selection of ANZSIC categories, the Issues Paper focuses on chemical manufacturing industries (Subdivision 18 'Basic Chemical and Chemical Product Manufacturing' and Sub-division 19 'Polymer Product and Rubber Product Manufacturing') but excludes fuel chemicals (Subdivision 17 'Petroleum and Coal Product Manufacturing'). These chemicals form the greatest proportion of chemicals in use within Australian society and, being flammable and combustible, present the intrinsic hazards of fire and explosion. This concern has been mirrored by a number of submissions already lodged with the Productivity Commission such as that of the NICNAS Community Engagement Forum.

Furthermore, the Issues Paper ignores industries that use or handle chemicals downstream from manufacture (e.g. Classes 3321 Petroleum Product Wholesaling, 3323 Industrial and Agricultural Chemical Product Wholesaling, 4000 Fuel Retailing, and 5309 Other Warehousing and Storage Services (which includes bulk petroleum storage services)). In Queensland, the manufacturing of chemicals is minor in scale relative to the handling and use of chemicals for downstream industrial and consumer activities. From the perspective of regulation for safety, chemicals manufacturing cannot be disentangled from downstream handling and use.

Part 3 - Occupational health and safety

Queensland's OHS legislation and current OHS practices align closely to national and international requirements. In addition, over the past few years there has been a significant amount of effort between the states and territories and the commonwealth to harmonise OHS requirements. This is particularly important for businesses operating across borders that are required to adhere to multiple regulations and administrative processes, causing excessive compliance cost even though the objective of the regulations across the States is fundamentally the same.

Queensland's legislation gives effect to the nationally agreed standards for the control of hazardous substances and the storage and handling of dangerous goods. In addition, Queensland's *Dangerous Goods Safety Management Act 2001* (DGSM Act) gives effect to the nationally agreed standard for the control of major hazard facilities (MHFs). The current application of the Australian Safety and Compensation Council (ASCC) codes for material safety data sheets and labels are also applied through the Queensland legislation.

The transport of dangerous goods in Queensland is covered by *Transport Operations (Road Use Management) Act 1995* and the *Transport Operations (Road Use Management - Dangerous Goods) Regulation 1998*. This legislation adopts the national Australian Dangerous Goods Code and as such gives alignment to the United Nations classification and transport requirements for dangerous goods. The DGSM Act also uses the classification of dangerous goods contained in the Australian Dangerous Goods Code to provide guidance on the compatibility of dangerous goods at a workplace.

The Queensland government believes that the major impediment to consistent regulation of chemicals across Australian jurisdictions is the inconsistent take-up of national occupational health and safety standards. For example, despite a commitment by jurisdictions in the early 1990s to national uniformity in the regulation of chemicals, progress towards achieving this has been slow and inconsistent. While three national standards (as mentioned above) relating to management of industrial chemical hazards were produced in the mid to late 1990s as the basis for legislation, not all jurisdictions have yet adopted them.

Problems associated with the implementation of national standards in the field of OHS include:

- the length of time taken to develop standards;
- the need in some jurisdictions to undergo a mandatory period of further consultation and preparation of further jurisdiction-specific regulation impact statements;
- the need that may arise in a particular jurisdiction for urgent action in advance of the declaration of a national standard or update;
- resource constraints;
- differing drafting protocols in each jurisdiction, so that parliamentary counsel interpret or draft regulations that may depart from the standard's meaning or intent;

- inconsistent obligations on employers, manufacturers, suppliers, designers and installers in the various OHS Acts;
- overlapping regulation in the jurisdictions of issues dealt with under national standards and codes, for example, different aspects of the regulation of dangerous goods and MHFs are the responsibility of different portfolios.

Many, if not most, of these problems should be alleviated by the Council of Australian Governments (COAG)'s February 2006 decision to progress national harmonisation of occupational health and safety through the ASCC. In response, all jurisdictions have supported the harmonisation of principal occupational health and safety duties and the development of a new National OHS Standards Framework (the National Framework).

The aim of the National Framework is to improve the development and consistent uptake of national standards. The framework consists of six agreed components:

- national standards focussed on safety requirements (specified as outcomes where possible) as the basis for jurisdictional regulations
- a core (or "core elements") document containing the key principles found in OHS Acts to be used as the common framework for developing and reviewing national standards
- national codes of practice that provide more focussed practical guidance on how to meet an outcome
- guidance material
- regulatory interpretative documents, and
- a hand book that documents the principles and processes of the national standards framework.

The *Core Elements Document* will provide the foundation for the development of national standards and codes by specifying key principles, duties, definitions and administrative arrangements that should be reflected in all OHS Acts – thus identifying areas in principal OHS Acts that should be harmonised.

Under the Framework, national occupational health and safety standards will be presented as a series of outcome statements supported by national codes of practice which focus on practical guidance for duty holders, particularly for small to medium sized businesses. It is also proposed to support national standards with regulatory interpretative material, such as the current Enforcement Notes used in Queensland. This will ensure the consistent enforcement of national standards by inspectors around the country.

Draft national standard for workplace hazardous chemicals

The ASCC has also developed a draft *National Standard for the Control of Workplace Hazardous Chemicals* that offers a new approach to how dangerous goods and hazardous chemicals are regulated in Australia by consolidating workplace hazardous substances and dangerous goods into a combined framework. In the framework, mixtures and articles can be classified as "hazardous chemicals", a term that includes both health hazards and physical hazards.

The proposed standard is based on the United Nations Globally Harmonised System of Classification and Labelling Chemicals (GHS), a single internationally agreed system which was developed under the auspices of the United Nations, which provides a single internationally agreed system for the classification and labelling of chemicals. The GHS includes harmonised criteria for the classification of physical hazards (such as flammability), health hazards (such as carcinogenicity) and environmental hazards. These internationally-developed criteria are used to evaluate the hazards of both substances and mixtures.

The GHS is intended to cover all hazardous chemical substances, dilute solutions and mixtures and address how labels and safety data sheets should be used to convey information about their hazards, and how to protect people from these effects. The system is expected to:

- enhance the protection of people and the environment by providing an internationally comprehensive system for chemical hazard communication;
- provide a recognised framework for those countries without an existing system;
- reduce the need for duplicative testing and evaluation of chemicals; and
- facilitate international trade in chemicals whose hazards have been properly assessed and identified on an international basis.

Industry stakeholders have raised concerns that there will be large costs to its members if Australia were to progress with regulatory recommendations based on the GHS prior to its adoption by a major chemical trading partner. Queensland supports the view that the timeframe for implementation of the new framework and the GHS is critical, and that GHS implementation should only occur once our major chemical trading partners have implemented the GHS.

The intent of the National Standard, which is expected to be declared in 2008, is to streamline and reduce the regulatory burden of chemical legislation in Australian workplaces and establish national uniformity. It will reduce the administrative burden on obligation holders by removing the need to undertaken separate risk assessments, registers and training records for the chemicals that are classified as both a dangerous goods and a hazardous substance. As reiterated previously, the uniform uptake of national standards is just as important as the standards themselves.

Part 4 - Public safety

In Queensland, the regulation of major hazard facilities (MHFs) resides with the Department of Emergency Services, whereas, in other Australian jurisdictions, this function is rests with the occupational health and safety authority. The rationale for Queensland's approach lies in the balance between protecting public safety and protecting worker safety.

Because a major focus of MHF regulation is the prevention of high consequence offsite impacts, the issue of public safety takes on more importance. By contrast, in industrial enterprises below MHF thresholds, worker safety takes on the higher profile.

Queensland provides for public safety by taking an advanced integrated approach to the provision of emergency services (such as fire, ambulance and disaster management) which embraces all hazards, natural and technological, with an emphasis on prevention and mitigation. MHF regulation within this context is strengthened by being able to draw directly on emergency management systems and processes.

This difference in approach by Queensland highlights the principle that national uniformity in chemicals regulation should not be so restrictive as to inhibit jurisdictions from taking innovative approaches which take advantage of their regulatory structure.

In addition, it should be noted that the forthcoming review by ASCC of the national standard for the control of MHFs provides an opportunity to further protect public safety in Australia by adopting the Seveso II approach, the second generation model developed by the European Community for regulating safety at major chemical facilities.

Part 5 - Environment

The Commission should acknowledge that states and territories have experienced significant gaps in chemicals environmental management. Thousands of chemicals are registered for use but many of them have never been thoroughly environmentally assessed. In other words, the long-term implication for chemicals in the environment is not well considered in the risk assessment process currently in use. There appears to be inadequate control in the different phases of chemicals use post registration, especially for the industrial chemicals (controlled by the NICNAS). The APVMA system is more comprehensive and effective.

Considering these gaps, in May 2003 the Environment Protection and Heritage Council (EPHC) established a National Chemicals Working Group of State and Territory Environment Agencies to develop a National Chemicals Environmental Management (NChEM) framework. The discussion paper on the proposed NChEM framework was released for consultation in mid-2006. Key industry, community and environment groups broadly supported the NChEM package. Within the Queensland Government, development and implementation of NChEM has been discussed through the Inter-Departmental Hazardous Substances Coordinating Committee.

At the 15th EPHC meeting on 2 June 2007 the Queensland Environment Minister signed the NChEM Ministerial Agreement. The Ministerial Agreement on Principles for Better Environmental Management of Chemicals has now come into force as all Australian Environment Ministers have signed the Agreement.

The NChEM Ministerial Agreement is a commitment to an overarching framework for environmentally sustainable chemicals management. The Ministerial Agreement outlines a staged approach to implementing NChEM and includes principles for chemicals environmental management including:

- improving information and consultation with national chemical regulators;
- improving coordination of chemicals management;
- using best practice approaches when undertaking environmental risk assessments of chemicals;
- improving mechanisms to collect information on the environmental impacts of chemicals; and
- streamlining environmental regulation of higher risk chemicals.

The Chair of the NChEM Working Group has met with the Productivity Commission (PC) on the review of chemicals and plastics regulation. It is understood that most of the NChEM related documentation has been submitted to the Productivity Commission.

It is our view that full and comprehensive implementation of NChEM would significantly enhance environmental protection in relation to chemicals use. Implementation of NChEM is vital to resolving environmental issues in relation to chemicals. The Commission should acknowledge the significance and importance of NChEM in their findings and strongly support full implementation of NChEM in all States/ Territories.

Part 6 - Food safety

The regulatory regime for pesticides, veterinary drugs and fertilizers is very complex. Over the last 20 years there have been numerous inquiries into the use of chemicals that have unfortunately glossed over much of the detail. For example, the Australian Government has a dual system of standards for residues of pesticides and veterinary drugs in food – one issued by the Australian Pesticides and (APVMA) and one issued by Food Standards Australia and New Zealand (FSANZ). This is despite a number of inquiries and recommendations for a single set.

The current regulatory regime has been ineffective in preventing the disposal of toxic industrial wastes as fertilizer on farmland, of concern for environmental contamination and for public health because of contamination of crops and food-producing livestock. Control of industrial wastes is vested in the respective states environmental authorities. However, if a waste is converted to a ‘beneficial’ product it is no longer under environmental control as a waste. Fertilizers became convenient ‘beneficial’ products for some industrial waste recyclers.

Inconsistency in regulation

In some cases APVMA issues permits or registers agvet chemical products that, if used according to label instructions, will produce food commodities in breach of the Food Standards Code. Although this has been known for about 10 years, no real attempt has been made to correct this anomalous situation.

Risk based approach to regulation

In some areas, for example food safety, a risk-based approach to regulation is not acceptable. In the regulation of agvet chemicals (pesticides and veterinary drugs) the user and the consumer should be exposed to doses that are 'no more than necessary' and that are also safe (pass the risk assessment test). In most cases the no-more-than-necessary dose is far less than the risk-based dose. It would not be acceptable to relax the requirements for pesticides and veterinary drugs to a risk-based approach. The no-more-than-necessary approach also alleviates potential cumulative exposure (from more than one chemical) and potential aggregate exposure (from more than one pathway, e.g. occupational exposure and residues in food).

Low regulatory concern chemicals

Little progress has been made with agvet chemicals suggested as 'low regulatory concern' chemicals because the authorities have not acknowledged the problems and addressed them. A relatively safe material produced in one way with starting materials and contaminants under control may no longer be safe if manufactured by another process with starting materials from another source. There should be specifications for purity and maximum levels of impurities in the low regulatory concern chemical. Materials meeting the specifications could then be accepted as essentially safe and be regulated accordingly as a group.

The process so far has been to declare a chemical as safe while overlooking its impurity profile. Progress will be achieved when the matter is examined systematically, with the problems of variable composition and contaminants being dealt with.

Exemption of agvet chemicals from the Trans-Tasman Mutual Recognition Arrangement (TTMRA)

The Queensland Government continues to support the retention of the permanent exemption of agvet chemicals from the scope of the TTMRA. It is not possible to have conditions of registration or product label content (instructions for use) that is equally valid in both Australia and New Zealand.

The existence of label approvals for control of disease organisms or pests not present in one of the countries would encourage prophylactic use of chemicals in that country, with consequent interference with pest and disease surveillance programs. Removal of the permanent exemption for agvet chemicals would undermine the integrity of each country’s agvet chemical risk management system.

Greater cooperation and harmonization of regulation of agvet chemical products is supported provided any alignment of standards and requirements for registration does not compromise rigorous scientific risk assessment. Sharing adverse event experience is useful. Regulatory decisions may be able to be recognised for specific types of products such as veterinary chemical products for companion animals.

Part 7 - Public health

Public health issues associated with the use of chemicals in non-occupational settings include:

- limited knowledge within the community regarding the correct procedures to be used when handling chemicals
- the correct procedures for the disposal of empty or partially used containers
- the hazards of mixing incompatible chemicals
- the effects on neighbours of home owners spraying pesticides along dividing fence lines or other areas in their yards

Regulation of chemicals

Assessment of chemicals by NICNAS determines if a chemical can be used in Australia. However, the recommendations resulting from the risk assessments are not binding unless the recommendations are specified in other legislative regimes. Some chemicals, for example sulphuric acid, are covered by a number of State legislative provisions as they are classified as poisons, hazardous substances and dangerous goods.

The regulation of chemical usage in non-occupational settings is difficult as governments are generally reluctant to intrude into a person's home unless it is a significant issue. As well, unless a complaint is made, it is difficult to predict how, when and what types of chemicals will be used by home owners. Chemical risks to non-occupational users are partly managed by limiting the quantities that can be readily purchased by these users.

The control mechanism over chemicals used in the non-occupational (primarily in the domestic and domestic agricultural and veterinary) setting is through the scheduling process. Decisions relating to the appropriate controls over access to domestic chemicals are contained in the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP) which are adopted into State and Territory public health legislation by reference. This provides a nationally consistent set of controls over chemicals of this type.

Provision of information to users

The provision of information and education to non-occupational users is generally poor as information is normally provided during specific media campaigns that are run on an irregular basis. Information is becoming more readily available via the internet, but the quality of information ultimately depends on the source.

Any information to be provided to potential users needs to be in a form suitable for the intended audience and needs to consider the level of knowledge of the audience and whether particular sub-groups, for example Indigenous users, have particular requirements regarding how the information is presented.

Part 8 - Security Sensitive Ammonium Nitrate (SSAN)

In 2004 COAG agreed to a set of principles for the control of Security Sensitive Ammonium Nitrates in Australia.

The following issues are relevant:

- the principles were agreed following broad consultation with industry;
- Ammonium Nitrate (AN) is used extensively and predominantly in the explosives industry, not in agricultural use (approximately 98% use in explosives);
- AN is well known as an explosives ingredient and has been used in Australia and elsewhere illegally to produce explosive effects;
- AN has high potential for devastating consequences, e.g. Oklahoma City bombing;
- the principles adopted in controlling SSAN in effect mirrored existing explosives controls and included cradle-to-grave type controls;
- the principles raised the bar, to some extent, with respect to security measures for explosives and hence the principles included increasing security for all explosives;
- while the SSAN principles were based around security, the safety aspects associated with its explosive properties could not be ignored;
- as a security measure the principles required national agreement and national implementation to ensure effectiveness.

The following questions were raised in the Productivity Commission Issues Paper:

(a) *Could the development of the agreed principles for SSAN regulation have been improved?*

The principles were developed in a consultative fashion and were based on existing controls on similar products of security concern, i.e. explosives. The development could have been improved, consistent with the fairly tight time-frame at the time, by taking the agreed principles further into model-regulation form, so that licensing, obligations and accountabilities could have been consistent. At the completion of the nationally agreed principles, there was insufficient national follow-up on implementation issues, and hence States/ Territories were left to do their own thing.

In Queensland, for example, as SSAN was an explosive problem and was to be regulated/controlled in a similar manner to explosive, SSAN was declared an explosive under the *Explosives Act 1999*. Other states considered SSAN was only one of a number of security sensitive substances and developed new Legislation under various names; High Consequence Dangerous Goods, Security Sensitive Chemicals, Security Sensitive Materials, etc. One state, even three years past the COAG target date for implementation, still has not introduced any legislative controls over SSAN. Such varied implementation of national principles for controlling SSAN impacts significantly on industry and understandably engenders frustration and a basis for complaints.

(b) *Are the security measures required by the agreed principles commensurate with the security risk posed by ammonium nitrate products?*

In Australia, regulation of ammonium nitrate products could be seen as relatively easy and low cost. As ammonium nitrate was essentially all used in explosives (98%) the industry was already well aware of what product security required and how to implement such controls. The relatively small quantity used in agriculture was always going to present the more difficult situations, and as it eventually turned out, there was a significant move to alternative products not of security concern. The industry was pro-active in this area and facilitated the move to alternatives.

The security risk associated with ammonium nitrate is high as seen all around the world. The quantities used and handled in Australia are extremely high (over 1 million tonnes per annum in Queensland) and on any cost/benefit analysis, the controls would be considered essential for community safety. It can be appreciated that in some other countries, the use of ammonium nitrate is not as heavily biased towards explosives use, and hence implementation costs could be far more significant, both economically and politically.

Ammonium nitrate is manufactured and imported by explosives companies, for explosives manufacture and use. Its previous accessibility by the general community is considered to represent a high risk when assessed against its significant explosive potential, and its history of misuse both here in Australia and elsewhere. The national controls on SSAN are considered both reasonable and essential in order to offer a continued high level of safety to the Australian community.

(c) *What impacts have the individual state and territory legislation for SSAN had on business operations? Can the benefits and costs be quantified?*

In Queensland the national SSAN principles were adopted under the *Explosives Act 1999*, in effect declaring SSAN products to be explosives. As such, industry has had to undergo licensing for activities such as manufacture, import, transport, storage, sale, use and export. While licence costs are minimal (maximum $500 per annum), it is appreciated that administrative, monitoring and recording costs could be significant (industry would need to quantify here). It was not difficult to educate the major industries as they were already well familiar with security controls on explosive type products.

In Queensland, a number of industry presentations were provided around the state during 2004-05. In most cases, where requirements were clarified with smaller agricultural / horticultural users, there was general acceptance of the ‘relatively simple’ controls and requirements expected of them. As indicated earlier, many of the AN users moved to alternative products and hence were not adversely affected.

(d) *What grounds are there for variations across the jurisdictions in the regulation of SSAN?*

While there will certainly be differences in quantities used and handled around the country, there are no perceived, legitimate reasons for variations in licensing, obligations and/or accountabilities in implementing the SSAN principles.

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?

The SSAN principles were adopted in Queensland on the COAG agreed target date of 1 November 2004. Western Australia has still not adopted the SSAN principles into legislation and hence the overall security objective has not been achieved. Security can only be effectively achieved when all jurisdictions have implemented the controls. Three years down the track, this has yet to be achieved.

(e) *Could less stringent regulations or other policy measures be introduced to control access to SSAN without compromising the security objectives?*

While other policy measures are being considered for security sensitive chemicals other than SSAN, e.g. awareness, education, reporting, the security objectives are far less significant.

Given the size and consequence of the SSAN risk and the very heavily biased use in explosives, any move away from a tight legislative control on SSAN products would seriously compromise the targeted security objectives. Some other countries are adopting alternate policy measures to control access to SSAN, however, they are not facing the same set of circumstances applying in Australia, and hence do not have ready recourse to the favourable option of stringent regulation in controlling SSAN.

Part 9 - Government as a user of chemicals

The majority of feedback provided in this submission relates to the difficulties encountered in chemical management from a regulatory perspective. However, it should also be noted that agencies within the Queensland government are users of chemical products in the fields of building and road construction, pest, weed and livestock control, crop production, and in a number of research areas

Although this submission mainly focuses on over regulation or the overlap of regulation of chemicals across jurisdictions in Australia, it should be noted that there are instances where gaps in the regulatory environment have been identified such as volatile organic compounds (VOCs). This is particularly relevant for Queensland departments involved in construction and refurbishment activities. There is a need for more information and clarity to enable an understanding of the residual risks to persons after the building/manufacturing process has been completed.

VOCs are emitted from surface coatings and consumer products through the evaporation of solvents when a product is applied. VOCs impact on both ambient air quality and indoor air quality. While material safety data sheets are used extensively by industry to undertake risk assessments on particular chemicals, there are insufficient standards and guidelines for indoor air quality issues relating to chemical exposure from building materials and furnishing/fittings. Detailed guidelines and exposure standards that relate to the general population (occupant and environmental health) are required. These need to consider additive and synergistic responses to both individual chemicals and cocktails of chemicals.

Part 10 - Conclusion and recommendations

The Queensland Government will continue to support efficient regulation and will continue efforts with all other jurisdictions to harmonise regulatory requirements across the areas being examined.

The Commission will clearly need to examine the current regulatory and management frameworks with a view to ensuring these systems are appropriately linked and coordinated at the national level. Providing a national policy setting framework will:

- reduce complexity;
- minimisation of duplication by government agencies in the regulation development process, leading to the more efficient use of resources by government;
- reduce administrative and compliance costs for employers who work in more than one jurisdiction;
- the facilitation of consistent regulation and practices being adopted by jurisdictions which contribute to an equitable operating environment for industry.

All states and territories would require input into the framework. In addition, any international developments will need to closely monitored and implemented where necessary to ensure Australia keeps pace with these movements.

To provide a positive way forward in addressing the issues of chemicals and plastics regulation in Australia, our recommendations are as follows:

- that the scope of the Productivity Commission study be expanded to include fuel chemicals (ANZSIC Sub-division 17) and to include downstream handling and use of chemicals as well as their manufacture;

- that a coordinated national policy approach be established across all areas of chemicals regulation (occupational health and safety, public health, public safety, food safety, the environment, and security sensitive ammonium nitrate), addressing all aspects of the life cycle of all hazardous chemicals (including fuel chemicals);

- that agreed national standards for each area of regulation be developed (but not to a lower standard than already exists in Queensland) and be consistently implemented in all jurisdictions to achieve harmonisation without inhibiting the ability of jurisdictions to take innovative approaches which take advantage of their regulatory structure;

- that COAG be the responsible body to ensure national uniformity in the adoption of these standards across jurisdictions;

- that the Globally Harmonised System of Classification and Labelling of Chemicals be adopted nationally in a timeframe congruent with its adoption by Australia's major chemical trading partners and with adequate resourcing at the national level to address implementation challenges;

- that Australia continue to remain abreast of international developments in chemicals management and technologies to ensure that it keeps pace with these developments;

- that NChEM be fully implemented in all states and territories as this framework would address most of the environmental issues related to chemicals; and

- that the SSAN regulatory approach agreed to at COAG be implemented promptly by all jurisdictions in order to achieve national uniformity to support the overall security objective.