

# Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS  
GPO Box 123, Hobart, TAS 7001 Australia  
Ph +61 3 6233 3464 Fax +61 3 6234 1572  
Email [Premier@dpac.tas.gov.au](mailto:Premier@dpac.tas.gov.au) Web [www.premiertas.gov.au](http://www.premiertas.gov.au)



Mr P Belin  
Assistant Commissioner  
Productivity Commission  
Locked Bag 2  
Collins Street  
EAST MELBOURNE VIC 8003

20 MAY 2008

Dear Mr Belin

I refer to your circular dated 20 March 2008 inviting written submissions in response to the Productivity Commission's Draft Report on Chemicals and Plastics Regulation and attach the Tasmanian Government's response to the recommendations.

The Government strongly supports the Commission's observations regarding the potential benefits of improved national consistency in the regulation of chemicals and plastics. Where appropriate, a nationally consistent approach will enhance the efficiency and effectiveness of the regulatory frameworks.

Thank you for the opportunity to comment on the Draft Report.

Yours sincerely

Paul Lennon  
**Premier**

# **TASMANIAN GOVERNMENT RESPONSE TO THE DRAFT REPORT ON CHEMICALS AND PLASTICS REGULATION**

**May 2008**

## **General Comments:**

The Tasmanian Government strongly supports the Commission's observations regarding the potential benefits of improved national consistency in the regulation of chemicals and plastics. Where appropriate, a nationally consistent approach will enhance efficiency and the effectiveness of the regulatory frameworks and would therefore be supported.

The Government primarily supports the views of the Productivity Commission that it is best practice to separate the hazard and risk assessment functions for the control of chemicals from the responsibilities for policy and risk management standard setting (see comments under Recommendation 5.1). The Government also supports the observation of the Productivity Commission that consolidation of common aspects of chemical assessment could deliver additional economies of scale and scope, improve consistency in assessment methodology and outcomes and facilitate a more efficient national approach to adopting international developments in hazard and risk assessment methodology as well as international knowledge.

However, the preferred institutional arrangements outlined at Table 1 on page XXXII and, in particular, the proposed arrangements for Hazard and Risk Assessment for Chemicals of Security Concern do not appear to be consistent with the best practice model outlined by the Productivity Commission. The proposed arrangements combine both the hazard/risk assessment functions with the policy setting responsibilities of the Attorney General's Department and create an additional 'authority' charged with assessing a component of the risks associated with chemical use in Australia. The Commission may wish to consider clarifying this apparent inconsistency in the final report.

## **3. National policy formulation and system governance**

### *Draft Recommendation 3.1*

The Tasmania Government does not have any concerns with the establishment of a Standing Committee on Chemicals under the Australian Health Ministers' Conference (AHMC).

## **4. National hazard and risk assessment**

### *Draft Recommendations 4.1 and 4.2*

There would appear to be some inconsistency between recommendations 4.1 and 4.2. On the one hand, it is proposed that the role of the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) should be limited to scientific assessments. On the other hand, its assessments are to be subject to cost benefit analysis (CBA). There is merit in ensuring that assessments that are likely to result in significant costs across the community should be subject to a CBA. It should be clear, however, that the complexity and required investment in a CBA reflects the likely impact of potential control measures and that long and complex CBAs should not be required for 'light touch' controls.

Further, it is not clear that the CBAs should be the responsibility of NICNAS. Making NICNAS responsible for CBAs may have the potential to compromise the perception of the Scheme as an independent, scientific assessor, by necessarily involving the Scheme in the qualitative assessment of environmental and health impacts that would typically be associated with CBAs of industrial chemical controls. A more appropriate model might see the responsibility for undertaking CBAs rest with the relevant policy and regulation-making body.

#### *Draft Recommendation 4.3*

No comment.

#### *Draft Recommendation 4.4*

The Tasmanian Government has no current concerns with this recommendation.

#### *Draft Recommendation 4.5*

Similar comments to those for draft recommendations 4.1 and 4.2. That is, the CBA role should not rest with the independent scientific assessment authority, but should be part of the policy/regulation-making process, which is separate from the product assessment process. In terms of agricultural and veterinary chemicals, CBAs would be the responsibility of the Product Safety and Integrity Committee/Department of Agriculture, Forestry and Fisheries and should only be required where assessment outcomes are likely to result in significant costs across the community.

#### *Draft Recommendation 4.6*

While achieving a national uniform control of use (CoU) system would be a difficult task, the Tasmanian Government concurs that there is certainly scope for greater consistency across state and territory CoU legislation. There seems to be no justification, from a risk management point of view, for variations between jurisdictions in the conditions imposed on users. Logical areas that would benefit from a national consistent approach include licensing, training, neighbour notification and label enforcement.

Before making more substantive comment on the proposal the Tasmanian Government requires more detail in terms of the scope of the uniformity so that the costs of implementing this policy are clearer.

The issue of exemptions being granted to cater for local needs also requires further examination. While this would provide for flexibility and allow local needs to be met, a broad exemption criterion could potentially undermine the effectiveness of a national system.

## **5. Public Health**

#### *Draft Recommendation 5.1*

The recommendation to separate responsibility for the scheduling and regulation of poisons from that of drugs has already been adopted as policy by the Tasmanian Government and is therefore supported. However the recommendations in respect of altered administration and committee arrangements for poisons scheduling are not supported.

The Productivity Commission's draft recommendation is for a model for poisons scheduling consisting of a three tier committee structure:

1. A Poisons Standing Committee, established under the AHMC, would design the Poisons Schedules and risk management register. It is noted that the Committee would be drawn from jurisdictional experts on poisons and chemicals generally rather than the state and territory chief pharmacists.
2. A Poisons Scheduling Committee of science experts would make decisions on the scheduling of individual substances. Members would be appointed by the Ministerial Council on the basis of their knowledge and experience.
3. A Poisons Scheduling Committee would be supported in its decisions both by a consultative committee of Commonwealth, state and territory governments, industry and consumer representatives and by a public consultation process.

Firstly, it is noted that the scheduling undertaken by a Poisons Scheduling Committee is not purely a technical process must be steered at all times by and linked to poisons policy and the legislative structure. Scheduling is not a simple categorisation process but is a course of action by which substances and products attract a set of controls imposed by the Tasmanian *Poisons Act 1971* (the Act). The proposed model seeks to separate the process of classification and the application of policy. Scheduling is fundamental to the operation of the Act and as it represents the making of legislation, the responsibility of the Minister, it is not considered appropriate that the central role is allocated to a purely technical committee.

Secondly, there appears to be potential for the proposed model to increase costs and administrative inefficiencies. Currently there is a two tier committee system. The National Co-ordinating Committee on Therapeutic Goods co-ordinates policy and the National Drugs and Poisons Scheduling Committee makes scheduling decisions. The proposed model would split the Scheduling Committee into two - a scientific committee and a consultative committee - separating experts from policy and the consultative framework. The formation of two committees would add an additional forum to the process, and create the risk of delays in decisions, communication difficulties and the potential for conflict as well as increased costs.

Further, it is reasonable to expect that Ministers would seek expert legislative and technical advice and guidance from departmental advisors on the appropriateness and suitability of legislation being proposed. It is therefore essential that relevant departments are closely involved in the detailed discussions involving legislative and technical issues, not only to best advise the Minister but to maximise the prospect of national consistency. It is suggested therefore that the Productivity Commission consider making provision for participation of departmental experts in considering legislation.

It is noted in the Draft Report that the current arrangements are assessed as effective but the need for further efficiencies is identified. Scheduling arrangements in Australia have been extensively reviewed and considered under the *National Competition Review of Drugs, Poisons and Controlled Substances Legislation (Galbally Review)*. The Galbally Review examined this complex subject in some depth and has made a number of positive recommendations for improvement. The Tasmanian Government, along with other state and territory governments, agreed to most of the recommendations in its response in 2005.

The recommendations of the Galbally Review should be given an opportunity to be implemented and, on that basis, where the Productivity Commission Draft Report has reiterated these recommendations, they have been supported.

#### *Draft Recommendation 5.2*

Tasmania had supported model legislation through the final report of the Galbally Review. However, such an approach has not been accepted by the majority of states and territories. The legislation covering poisons in each jurisdiction deals with a wide range of operational issues at the local level and it is unlikely that uniformity will be achieved in all respects. Variations are often necessary due to the varying wider jurisdictional legislative frameworks, resources and administrative structures. However, the majority of jurisdictions had agreed to aim for functional regulatory uniformity by 'other means'.

- *"Adopt poisons scheduling decisions made at the national level directly by reference"*

This proposal was accepted when recommended under the Galbally Review and in the new Poisons Bill that is currently being drafted Tasmania will adopt poisons scheduling recommendations by reference. However, it should be noted that the Minister will maintain the right to vary from the national model. The minimisation of variations from the schedules will depend on maintaining a decision making process that delivers outcomes that are robust in respect to both technical issues and government policy.

- *"Report any variations to nationally-agreed poisons scheduling or regulatory decisions at the state and territory level to the Australian Health Ministers' Conference."*

Such a report is already made biannually. Currently the Tasmanian Poisons List only includes two variations from the national model that deal with local regulatory issues and facilitate local enterprises.

#### *Draft Recommendation 5.3*

The Tasmanian Government has some concerns with this recommendation. The current regulatory arrangements for poisons and industrial chemicals in Tasmania are aligned in that holders of a licence to store dangerous goods that are also poisons do not need to apply for a poisons licence, thereby avoiding unnecessary duplication or administrative burden.

Tasmanian standards-based legislation for the safe handling of dangerous substances in workplaces, consistent with the dangerous substances legislation in other jurisdictions, is not intended to fulfil the same objectives as poisons regulation. Any proposal to exempt industrial users of poisons from poisons controls must take this into account.

#### *Draft Recommendation 5.4*

The Tasmanian Government notes that there may also be environmental issues associated with the release of chemicals from consumer articles, which should be considered in the development of a regulatory system for managing the impacts of these items.

#### *Draft Recommendation 5.5*

No comment.

#### *Draft Recommendation 5.6*

No comment.

#### *Draft Recommendation 5.7*

The Tasmanian Government supports this recommendation. This proposal was discussed further with an officer of the Productivity Commission. It was noted that 'deemed-to-comply' provisions will not be applicable to poisons legislation requirements. If a substance contained in a cosmetic is included in the poisons schedules it will remain subject to the controls and requirements of each jurisdiction's legislation on poisons.

#### *Draft Recommendation 5.8*

In principle the Tasmanian Government supports consideration of the development of a nationally uniform model of controls to prevent chemicals from being diverted into illicit drug manufacture. While the adoption by reference of national model regulations could reasonably be supported in principle in Tasmania, it should be noted that the relevant Minister should retain discretion to vary from the model should circumstances make that desirable in this state.

#### *Draft Recommendation 5.9*

No comment.

### **6. Workplace Safety**

#### *Draft Recommendation 6.1*

The Tasmanian Government has some concerns with this recommendation. The recent national conference for major hazard facilities in Adelaide (March 2008) demonstrated that regulation of major hazard facilities based on the 'safety case' methodology of the National Standard for the Control of Major Hazard Facilities is remarkably uniform and further layers of national regulation are unnecessary. However, there may be value in giving further consideration to a single, national regulator similar to the current arrangements for off-shore petroleum safety.

#### *Draft Recommendation 6.2*

The Tasmanian Government has no concerns with this recommendation and Tasmania's current dangerous substances legislation is being prepared with this in mind.

#### *Draft Recommendation 6.3*

No comment.

#### *Draft Recommendation 6.4*

Draft recommendation 6.4 is not specific to the regulation of chemicals and plastics. Any new body to replace the Australian Safety and Compensation Council would need to be able to demonstrate expertise in the wide range of workplace health and safety, explosives, other dangerous substances and workers compensation matters. It is unlikely that a body of five to nine members could encompass the complexity of the tasks involved and reliance upon advisory bodies would contribute to lengthy processes that have been criticised in the past for delaying reforms.



## **7. Transport Safety**

### *Draft Recommendations 7.1 and 7.2*

The Australian Dangerous Goods (ADG) Code is supported and the Tasmanian Government considers that it would be easier for states and territories to reference the Code in dangerous substances legislation. However, it should be noted that national model legislation is cumbersome, complex, extremely long and difficult for stakeholders to understand and has, in some instances, omitted important provisions covered by previous model regulations.

### *Draft Recommendation 7.3*

The Tasmanian Government is about to regulate explosives in the Dangerous Substances (Safe Handling) Regulations based upon referencing the Australian Explosives Code and AS2187 – The Storage and Handling of Explosives. This draft recommendation does not take into consideration the previous recommendation about the ADG Code for transport. For draft recommendation 7.3 to work, the ADG Code would have to excise any provisions relating to the transport of explosives. This would have the effect of further fragmenting regulation of dangerous substances.

### *Draft Recommendation 7.4*

No comment.

## **8. Environment Protection**

### *Draft Recommendation 8.1*

The Tasmanian Government notes that the objective of the Tasmanian *Dangerous Substances (Safe Handling) Act 2005* includes preventing harm to the environment. If a national standard were to be developed for the environment risk management of chemicals, such a code or standard could be referenced or adopted through amendment to the dangerous substances regulations or according to the provision for Ministerial approval of recognised codes, standards etc.

There is some uncertainty with respect to the authority of the proposed environmental standards-setting body. It is not clear from the Draft Report whether this independent body would have the authority to make standards in its own right, or if this authority would rest with the Environment Protection and Heritage Council, in which case the new body would have an advisory rather than a statutory role. It seems unusual that the body would have a role in drafting regulations for adoption by jurisdictions.

The environmental standards-setting body could have a role in drafting standards that could be adopted uniformly across jurisdictions. However, the role of developing regulations, or model legislation, for instance, is a government policy role, rather than one for an independent body.

The Draft Report suggests that the new body would be funded by jurisdictions. There could be a case made for the standards-setting body to be funded from assessment fees.

## **9. National Security**

### *Draft Recommendation 9.1*

This recommendation refers to improving national consistency by tasking the Commonwealth Government with the responsibility for conducting security checks for access to ammonium nitrate. Whilst the principle of national uniformity is supported, care should be taken to ensure that consistency in the administration of the checks is not confused with the need for consistency in the minimum probity standards required for issuing permits or consistency in the application of the discretion normally associated with character checks.

State regulators are currently required to have regard to the suitability of the character of the applicant for a permit to handle security-sensitive ammonium nitrate (SSAN). Tasking the Commonwealth Government with the responsibility for conducting background checks for access to ammonium nitrate will not assist with reducing inefficiencies arising from interjurisdictional inconsistencies unless there is national agreement on how regulators apply their discretion with regard to assessing 'good character'. Care should be taken in finalising recommendations to ensure that the intended benefits in reducing the administrative burden on industry will actually be realised.

### *Draft Recommendation 9.2*

The Tasmanian Government does not have any concerns with draft recommendation 9.2 that seeks to make improvements to the administration of SSAN checks and licences. However, some care would need to be taken in developing a single transport plan for companies transporting SSAN nationally to ensure that it reflects local risks.

### *Draft Recommendation 9.3*

The Council of Australian Governments' Review of Hazardous Materials Steering Committee is currently finalising recommendations regarding a framework for the ongoing assessment of the security risks associated with priority chemicals. The need for additional controls, including any regulatory changes, should be informed by this assessment of security risks.

### *Draft Recommendation 9.4*

No comment.