South Australian Government Submission

The Productivity Commission's Chemicals and Plastics Regulation Draft Research Report

INTRODUCTION

The South Australian Government welcomes the opportunity to provide this submission to the Productivity Commission's Chemicals and Plastics Regulation Draft Research Report.

The South Australian Government also acknowledges the value of the Draft Report and its recommendations in assisting the COAG Ministerial Taskforce on Chemicals and Plastics Regulation to determine priorities for reform.

GENERAL COMMENTS

South Australia agrees with the Commission's assessment that the current institutional and regulatory arrangements for chemicals and plastics are broadly effective in managing the risks to health and safety, but are less effective in managing risks to the environment and national security.

It is also agreed that efficiency could be enhanced by national uniformity in some regulatory areas, by reducing costs and delays in obtaining regulatory approvals, and by attaining economies of scale in areas such as risk assessment.

The recommendations in the draft report address the deficiencies in the current system and aim to fill the 'gaps'. While South Australia agrees with the broad intent of the majority of the recommendations, in a number of cases they could be improved with the addition of greater detail about their application and scope. It is also difficult to assess the benefits to industry from individual recommendations as no assessments of the cost savings have been undertaken. The Productivity Commission is encouraged to conduct these assessments for inclusion in the final report, or at the very least provide a precise description of the likely net benefits, as such information would facilitate implementation of the recommendations.

In framing its responses, South Australia has been guided by the following broad principles:

- Support for national consistency and greater harmonisation between jurisdictions through adoption of agreed national standards wherever possible;
- At the same time retain the ability for limited and justifiable variation to account for local conditions and to respond to local industry and community needs;
- National standards will not be adopted at a level that is lower than the standards currently applying in South Australia; and
- The benefits arising from greater national consistency must be weighed up against any additional regulatory burdens imposed within South Australia by adopting national standards.

It is acknowledged that chemicals regulation imposes significant compliance costs on businesses within the chemicals and plastics industry in Australia and every

effort must be made to minimise these costs. However, the primacy of ensuring outcomes for public health, occupational health and safety, the environment and national security is also recognised.

As part of its red tape reduction program, South Australia is currently implementing a number of initiatives to reduce unnecessary administrative and other compliance burdens associated with state-based chemicals regulation. These include:

- A review of dangerous goods and explosives licensing to:
    - Identify opportunities for rationalising the number of licences, or applications for licences, required;
    - Map business processes with a view to identifying opportunities to streamline administrative processes; and
    - Recommend an administrative structure that is cost effective for business customers.

  This project will assist in framing business-efficient dangerous substances licensing regulations, which are currently under legislative review.
- A rationalisation of processes for licenses issued under the *Controlled Substances Act 1984* by removing licensing requirements for manufacturers and wholesalers of Schedule 5 and Schedule 6 (substances with low and moderate potential for causing harm).

Savings associated with the above initiatives are to be costed towards the South Australian Government’s red tape reduction target of $150 million in net savings to business by July 2008, using the Business Cost Calculator.

South Australia would also like to note progress in a number of additional areas within its jurisdiction relating to workplace safety:

- South Australia is well into the process of regulatory reform for chemicals in relation to explosives, other classes of dangerous goods, Major Hazard Facilities and security sensitive substances;
- In relation to dangerous goods, South Australia has been in continuous and vigorous dialogue with the National Transport Council in relation to nationally uniform land transport legislation and a nationally approved code;
- In relation to explosives, South Australia participates in, and has hosted, meetings of the Australian Forum of Explosives Regulators, for the purpose of developing a national code for the transport of explosives;
- South Australia is also accepting of the concept, through this Forum, of a single body to approve the importation, storage, sale, manufacture and use of new explosives products in Australia;
- In relation to security sensitive substances, South Australia participated directly in the development of the national guidance material for security sensitive ammonium nitrate (SSAN), and introduced legislation in line with the guidance material, and is participating in the COAG Review of Security Sensitive Chemicals.

COMMENTS ON SPECIFIC RECOMMENDATIONS

DRAFT RECOMMENDATION 3.1

Subsequent to the COAG Ministerial Taskforce on Chemicals and Plastics Regulation having completed its reference, the Commonwealth, states and territories should establish, under the Australian Health Ministers' Conference, a Standing Committee on Chemicals, comprising representatives of all ministerial councils that have responsibility for chemicals regulation. It would:

- *provide an ongoing forum for assessing:*
  - *The consistency of chemicals-specific policy settings across the various areas of concern, including public health, workplace and on-farm safety, transport safety, environment protection and national security.*
  - *The effectiveness and efficiency of the overall chemicals-specific regulatory system.*
- *address emerging issues, such as nanotechnology;*
- *oversee the consistent application of chemicals hazard and risk-assessment methodologies; and*
- *make recommendations for specific actions by individual ministerial councils.*

South Australian Government view:

- The concept of a Standing Committee on Chemicals is supported in principle because coordination and policy framework oversight across communities of interest is likely to be the only effective mechanism to achieve cohesion considering the highly fragmented nature of current regulation.
- The Australian Health Ministers' Council is considered to be an appropriate lead committee because in the first instance, the intent of chemical regulation must be to minimise adverse human health impacts.
- South Australia agrees that centralised coordination is essential to ensure that the range of policy strategies and relevant reform efforts currently being considered by multiple stakeholders and Ministerial Councils are identified, thereby avoiding duplication. Examples of such strategies and reform efforts are the COAG Skills Recognition Taskforce (mutual recognition of licensed pesticide operators) and the COAG Taskforce (hazardous substances of security concern).
- However, it is important that the membership of the Standing Committee adequately represents all the communities of interest in the regulation of chemicals including public health mandates and principles and that there are clear lines of communications between Councils. This could be facilitated by a 'Heads of Agreement'.
- The Standing Committee should also be required to build on existing arrangements wherever possible, and be aware that different risks in different

regions and/or areas of concern mean that uniform approaches may not always be needed to deliver uniform outcomes.

- Nationally consistent policy setting and application of chemical assessment methodologies have obvious benefits for regulators including:
  - the availability of 'in principle' national standards for jurisdictions to follow will streamline current legislation (in accordance with the requirements of individual State/Territory government policies); and
  - consistent valid scientific methodologies will reduce resources required to identify and critically analyse different assessment methods that may be utilised.

- However there are some costs associated with the proposed governance arrangements. Effectively, an additional central body will add another level of consultation at the national level. This may increase "red tape" and slow down legislative processes in the long term.

- Acknowledging that there is still potential for 'friction' between the various communities of interest (e.g. national security, health, and environment) under the proposed model, the arrangements should be subject to a sunset clause or review after a reasonable period of time, say five years.

DRAFT RECOMMENDATION 4.1

An objective of NICNAS should be to maximise net community benefit, and its assessment requirements and outcomes should be supported by analysis of the associated costs and benefits.

South Australian Government view:

- South Australia supports the objective of maximising net community benefit as a general policy objective.

- However further clarification is required from the Productivity Commission as to how this objective might be applied to the technical assessments currently undertaken by NICNAS.

- A rigorous assessment of net community benefit would need to consider the costs and risks to human health and the environment from the impacts of chemicals, as well as the costs and benefits from the use of the chemical.

- Human health and environmental cost assessments are very difficult to conduct and assigning monetary values can be problematic. These issues are acknowledged by the Australian Government Office of Best Practice Regulation in its Best Practice Regulation Handbook.

- South Australia also notes that as NICAS currently recovers its costs from the chemicals industry, it could be expected that the cost of conducting this additional assessment would also be recovered from industry. This approach

may therefore result in higher fees to recover the costs of expanded NICNAS assessments, which is unlikely to be supported by industry unless there is a reduction in existing assessments.

DRAFT RECOMMENDATION 4.2

The role of NICNAS should be limited to the scientific assessment of the hazards and risks of industrial chemicals.

South Australian Government view:

- Allowing NICNAS to focus on the scientific assessment of industrial chemicals is supported by South Australia because it is likely that this will improve efficiency and accelerate prioritising and performing outstanding assessments of existing chemicals. This has obvious public health benefits and benefits to industry through improved timeliness and reduced compliance costs.
- However, South Australia is concerned that removing NICNAS' regulatory powers will create 'gaps' in regulation that increase risk to public health.
- For example, the Commission recommends removing NICNAS' power to annotate the AICS. It alleges that well established frameworks exist for setting restrictions on chemicals for public health (poisons) reasons and the power has rarely been used.
- South Australia believes however, that the mechanism that allows annotation of the AICS is valuable, providing the following benefits:
  - a flexible overarching national regulatory tool that protects public health and safety that cannot be replicated simply by a single agency. For example, recently proposed annotations that facilitate the gradual phasing out of lead in paint by prohibiting the manufacture of paints for certain applications prioritised by public exposure risk; and
  - a unique method to restrict chemicals to specific uses without introducing new legislation. For example, recent recommendations to transfer regulatory responsibility for household and commercial grade disinfectants from TGA to NICNAS.

DRAFT RECOMMENDATION 4.3

A technical advisory committee should be established with NICNAS, as a statutory requirement.

South Australian Government view:

- A technical advisory committee for NICNAS is supported by South Australia conditional on it following public health principles and having a balanced representation of stakeholder interests i.e. similar to the APVMA advisory board comprising of stakeholders representing; State/Territory regulators, industry, primary producers, toxicologists, consumers, public health and OHS.

DRAFT RECOMMENDATION 4.4

NICNAS should implement a program to greatly accelerate the assessment of existing chemicals that:

- *screens all existing chemicals to develop a list of high priority chemicals for assessment;*
- *makes greater use of simulation techniques based on the hazards of chemical analogues; and*
- *Urgently reviews the scope for recognising the assessment schemes of a range of other countries as 'approved foreign schemes'. Priorities should be the schemes operated by Canada, European Union and the United States.*

South Australian Government view:

- South Australia supports the recommended strategies to accelerate the prioritisation and assessment of existing chemicals because it anticipates that greater public health benefits would be achieved with a reduction in the number of unassessed industrial chemicals while at the same time delivering very real benefits to industry through reduced assessment costs.
- In addition, increased numbers of contemporary assessment reports and risk assessment outcomes would be available for public advisory purposes, and regulatory and policy decision-making.
- Currently NICNAS prioritises assessment of existing industrial chemicals in a reactive rather than proactive manner. South Australia believes that greater use of simulations and the recognition of assessments from approved countries would facilitate proactive protection of public health before incidents or adverse effects occur. This however, would have to be conditional on appropriate adjustment of international assessments where Australian environmental conditions or context of use impacts on outcomes.

DRAFT RECOMMENDATION 4.5

An objective of the National Registration Scheme for agricultural and veterinary chemicals should be to maximise net community benefit, and its assessment requirements and outcomes should be supported by analysis of the associated costs and benefits.

South Australian Government view:

- See response to Recommendation 4.1

DRAFT RECOMMENDATION 4.6

The National Registration Scheme for agricultural and veterinary chemicals should be extended to cover regulation of agricultural and veterinary chemical use after the point of retail sale, provided:

- *the new national regime contains appropriate exemptions provisions and is administered at state and territory level, to allow adequate flexibility to address local issues; and*
- *there is a commensurate reduction in regulatory burden at state and territory level.*

South Australian Government view:

- In its draft Report, the Commission uses jurisdictional differences between state and territory regulations on pesticide use to illustrate the need for nationally consistent risk management outcomes that could be provided by APVMA.
- South Australia strongly supports the principle of uniform control of use.
- Extending the APMVA legislation to include agricultural and veterinary chemical use after the point of sale is one option for achieving uniformity.
- In South Australia, Primary Industries and Resources is responsible for control of use legislation specifically to give effect to the APVMA risk assessments expressed through instructions on approved labels and permits. The legislation applies to all users from home gardeners to licensed aerial sprayers and pest control operators.
- Whether uniform control of use delivers the Productivity Commission's desired outcomes will be dependent on what elements of 'use' are included and the degree of flexibility that is allowed, for example for users to deviate from label directions.
- Labels are composed of directions that must be followed (mandatory) to manage risks to health, environment etc (i.e. enforce the APVMA risk assessments) and directions that provide guidance (advisory, not mandatory) on the most effective ways to use the product. South Australian control of use legislation focuses on enforcement of mandatory instructions. If the national model proposes to enforce all label instructions more APVMA off-label permits will be required (i.e. permission to do what would otherwise be illegal) leading to;
    - Higher costs to producers (e.g. permit application costs, data generation costs);
    - Delayed access to chemicals leading to crop loss; and
    - Creation of offences for which compliance generates little or no benefit to the general community.
- Based on experience in this area of regulation, South Australia would note that reaching national agreement on the details and consequential legislation

changes at State and Territory level has proved problematic and resolution resource intensive. This needs to be balanced against the achievement of efficiency gains which the Commission recognises as ‘unclear’.

- The outcome sought by this draft recommendation can also be achieved through an alternative option as follows:
  - Identify the elements of “control of use” that must be standardised as a priority (the draft report identifies standardising legal interpretation of labels and licensing/training in particular);
  - States and Territories agree to negotiate common positions/models on these matters (would need to be done for any method of implementation); and
  - Apply these nationally agreed positions/models uniformly within existing State and Territory control of use legislation.
- This approach has potential advantages of:
  - No need to change Commonwealth legislation – the existing Ministerial agreements which set up the National Registration Scheme for agricultural and veterinary chemicals could be an appropriate vehicle for codifying the standardised elements of “control of use”.
  - Simpler, faster changes to State and Territory legislation.
  - Preserves the simple distinction (point of sale) between Commonwealth and State and Territory responsibilities for the National Registration Scheme for the benefit of stakeholders. The draft proposal for the States and Territories to administer control of use on behalf of the Commonwealth reduces clarity of roles and responsibilities.
  - Existing State and Territory based control of use legislation provides a simpler vehicle to link with other State and Territory legislation that deals with the adverse effects of chemical use, e.g. public health, environment and OHS.
- Department of Health through general poisons legislation is responsible for licensing pesticide operators (i.e. aerial sprayers, ground sprayers and pest controllers) to ensure that appropriate skill levels are maintained to protect public health from the potential misuse of pesticides.
- These pieces of legislation are administered in concert. For example, the poisons regulations recognise the need to follow APVMA approved label instructions, and the control of use regulations recognise licensing.
- National standards for training and licensing obligations are strongly supported by South Australia, conditional on there being appropriate representation from all risk sectors on any national policy-setting body.

- In a holistic chemical risk management sense, control of use legislation applied to the chemical user is an intermediate control point. Users contravening label instructions may also be in breach of public health, environmental and/or OHS legislation if the use practice negatively impacts in these areas. Consequently effective chemical risk management requires appropriate links to a range of government agencies. In seeking to gain from national harmonisation, attention to preserving links to legislation beyond the chemical user is necessary.

- For example, public health/health protection agencies have the expertise and regulatory tools to be the appropriate agency to best advise and effectively manage health risks to the general public (including highly susceptible populations such as children, pregnant women, elderly and persons experiencing 'multiple chemical sensitivities') from non-occupational exposure to agricultural/veterinary chemicals (e.g. pesticides) used in public spaces, homes and farms.

DRAFT RECOMMENDATION 5.1

The Australian Health Ministers' Conference should agree to separate responsibility for the scheduling and regulation of poisons from that of drugs. An intergovernmental agreement should be prepared between the Commonwealth, state and territory governments to:

- *establish a Poisons Standing Committee under the Australian Health Ministers' Advisory Council to design the poisons schedules and the attached regulatory controls, and oversee the poisons regulatory process at all levels of government; and*
- *establish a Poisons Scheduling Committee of science experts under the Poisons Standing Committee, appointed by the Ministerial Council on the basis of their knowledge and experience, rather than on who they represent to make decisions about the appropriate scheduling of poisons.*

South Australian Government view:

- The separation of responsibility for scheduling and regulation of poisons from therapeutic drugs is strongly supported by South Australia because it anticipates that this would;

  - enable a stronger focus and potentially more resources to be dedicated to poisons assessments; and

  - encourage greater efficiency and more detailed consultation on regulatory recommendations in an arena where therapeutic substances currently dominate.

- A Poisons Scheduling Committee comprising of scientific experts that have advisory and decision-making powers is supported by South Australia. Support is conditional on there being; appropriate public health representation

on any national policy-setting body, each jurisdiction having equal representation (as indicated in the Galbally Report (2000) recommendation 7 – so that decisions would be decided by a majority vote of members providing it also includes a majority of jurisdictions), and expert members having an understanding of regulation to ensure that the regulatory impact of scheduling decisions is adequately considered.

- A Poisons Standing Committee established under AHMAC is supported by South Australia, conditional on clarity being provided about this Committee's involvement in scheduling decisions. For example, would the intent be that this Committee amends scheduling decisions made by the Poisons Scheduling Committee, therefore overriding input from States and possibly delaying the gazettal of scheduling decisions?
- It is anticipated that a strong expert component on this Committee will provide public health benefits through scientifically robust scheduling decisions.
- South Australia believes however, that there must be a protocol for coordinating scheduling decisions for chemicals that crossover between poisons and therapeutic drugs. For example, arsenic, mercury, lead compounds, iron compounds, fluoride (classified as Schedule 2,3,4,5 and 6 depending on use and concentration).

DRAFT RECOMMENDATION 5.2

State and territory governments should:

- *uniformly adopt regulatory controls through either a template or model approach;*
- *adopt poisons scheduling decisions made at the national level directly by reference; and*
- *report any variations to nationally-agreed poisons scheduling or regulatory decisions at the state and territory level to the Australian Health Ministers' Conference.*

South Australian Government view:

- National uniformity in adopting poisons regulatory controls and scheduling decisions is strongly supported by South Australia because it anticipates that this would streamline State legislation and increase industry compliance by reducing confusion, perceived burden and inconsistencies. These outcomes would have associated public health benefits.
- The Commission's recommended strategy to ensure that the proposed mechanism is flexible by providing a mechanism for reporting the need for local variations to the national poisons scheduling or regulatory decisions is also supported.

- However, current State legislative mechanisms may be able to respond more quickly to urgent poisons issues that pose significant public health risk. National scheduling decisions or regulatory changes may slow down legislative risk management amendments. It may therefore be necessary to retain a mechanism for States/Territories to respond quickly to high risk issues.

DRAFT RECOMMENDATION 5.3

State and territory governments should exempt authorised users of poisons in the industrial environment from poisons controls. Such users should be regulated by appropriate workplace substances regulations.

South Australian Government view:

- The Commission's draft report lists two cases where controls on Schedule 7 poisons are applied to industrial users despite hazards being adequately addressed by OHS regulation. This was deemed to impose unnecessary costs on industry with allegedly little benefit to public health.

- Clarification of the scope of this very broad recommendation is essential to determine the extent of the reform being proposed. It is important to recognise that the intent of poisons controls that regulate industrial chemicals extends beyond the typical workplace.

- In South Australia, public health regulators use poisons controls to restrict the availability of certain Schedule 7 poisons to licensed or accredited persons at the 'point of sale' which effectively occurs outside of the workplace.

- In South Australia, thirteen specifically prescribed Schedule 7 poisons that are deemed by the NDPSC to pose such a high health risk that they require additional controls are restricted for sale to licensed persons only. However, the remainder of Schedule 7 poisons may be sold for industrial purposes without additional restrictions where the poison is to be consumed by the process or is converted to a product not classified as a poison. This includes Hydrofluoric Acid and Methylcyclopentadienyl Manganese Tricarbonyl which are examples specifically highlighted by ACCORD Australasia.

- The intent of this regulation is to minimise the potential for untrained persons to access highly toxic chemicals and use them in an unsafe manner that poses a risk to the health of the general public.

- The current licensing process in South Australia is not considered to be overly burdensome and compliance costs would be similar under workplace substances regulation.

- It recognised by South Australia that workplace substances regulations can effectively ensure the safe use of chemicals by workers where OHS standards, equipment and controls are routinely implemented. For example, in

light/heavy industrial facilities. Safe use of chemicals by workers would subsequently have public health benefits.

- However, it is of concern that in '**atypical'** workplaces such as public spaces, unsecured worksites, residential homes and farming properties, non-workers including neonates, children, pregnant women, elderly and persons experiencing 'multiple chemical sensitivities' can be directly exposed to chemicals. 'Atypical' workplaces can present unique exposure risk scenarios and health and safety considerations that differ from those usually addressed by workplace substance regulation. In these instances health agencies have the expertise and regulatory tools that ensure their regulators are best placed to advise on and manage potential risks to non-employees' public health and safety posed by chemical use in an 'atypical' workplace.

- A single regulatory agency may not be able to provide the level of expertise to adequately protect the public in the areas of concern that overlap when workplace chemicals are used. Examples of areas of concern that can overlap are OH&S, public health, transport safety, environment protection and national security.

- In summary, while legislative amendment could be considered to exempt 'authorised users' of all Schedule 7 poisons (except pesticide operators) in the 'industrial environment' from public health regulation, this would require:

  - appropriate workplace regulation that ensures that poison manufacturers, wholesalers and retailers are able to determine legitimate sales for the 'industrial environment';

  - on-site record-keeping processes that can readily detect diversion or misappropriation of workplace chemicals; and

  - the development of a robust definition of 'industrial environment' that ensures that 'atypical' workplaces, where there is any risk of public exposure, do not fall through a newly created regulatory 'gap' in legislation and become unrestricted.

DRAFT RECOMMENDATION 5.4

The Ministerial Council for Consumer Affairs should initiate the development of a broadly-based hazard identification system, based on a clearing house approach, in line with the recommendations of the Productivity Commission's 2006 report on consumer product safety (PC2006, recommendation 9.1). It should be coordinated by the Australian Competition and Consumer Commission, and take account of health and safety issues around chemicals released from consumer articles.

South Australian Government view:

South Australia supports this recommendation noting that the Ministerial Council for Consumer Affairs has agreed to direct the Standing Committee of Officials of Consumer Affairs to form a working party to progress a range of recommendations (including this one) made by the Productivity Commission. The working party is to report back on progress by November 2008.

DRAFT RECOMMENDATION 5.5

The ACCC and NICNAS should negotiate formal arrangements for cooperation on issues regarding chemicals in consumer articles. These arrangements should include the establishment of a more systematic research program to identify and deal with risks of chemicals in consumer articles.

South Australian Government view:

- Formal cooperation between ACCC and NICNAS to identify and deal with risks of chemicals in consumer articles is strongly supported by South Australia. It anticipates that this would provide consistent risk assessment methodologies and greater accessibility for health regulators to research reports, data sources and scientific assessments of chemicals present in consumer articles. This would be likely to improve consumer advisory services and public health protection.
- However, it must be recognised that in addition to NICNAS and ACCC, chemicals released from imported products are also regulated by Customs and Quarantine agencies under the *Customs Act 1901* (Commonwealth) and Prohibited Imports regulations.
- It is important that regulatory approaches dealing with risks of chemicals in consumer articles are consistent and cooperative between all agencies. For example, the recent ACCC ban on lead in toys used different levels of concern than Customs legislation. Such inconsistencies can lead to confusion and compliance difficulties for industry.

DRAFT RECOMMENDATION 5.6

The Australian Government should transfer responsibility for the administration and enforcement of the Cosmetics Standard 2007 (Commonwealth) from NICNAS to the ACCC.

South Australian Government view:

- The transfer of responsibility for the national Cosmetics Standard to ACCC is supported by South Australia because this would enable a single agency to regulate the labelling, together with ensuring the validity of consumer product claims. It would also allow NICNAS to focus on scientific assessment while still providing ACCC with support by testing product compliance.

- However, there is concern that ACCC enforcement powers may be limited at the State level. This was the case with the recent permanent ban on consumer products which did not apply to unincorporated businesses such as sole traders in South Australia, therefore requiring further local product bans to be implemented.

RECOMMENDATION 5.7

The Australian Government should add 'deemed-to-comply' provisions to the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991 (Commonwealth) for fully-imported cosmetic products that meet the cosmetic labelling requirements of specified countries that produce sufficiently comparable policy outcomes.

South Australian Government view:

- The provisions to deem imported products to be compliant through the recognition of cosmetic labelling requirements of specified countries is supported conditional on:
    - current standards of public health protection being maintained; and
    - first aid instructions and safety directions on labels being consistent with existing poisons regulatory frameworks.
- In its draft report, the Commission discusses the expansion of ingredient labelling for domestic chemical products to assist people with chemical sensitivities. South Australia could support extending ingredient labelling to household chemical products because of the following public health benefits:
    - opportunity for informed consumer choice to purchase products that do not adversely effect their health;
    - reduction in subsequent healthcare costs related to uninformed exposure; and
    - assisting with health promotion activities addressing poisoning risks and harm minimisation.
- It is acknowledged that this would impose costs on industry, however, these costs could be kept to a minimum by adopting non-prescriptive regulation that would allow industry some flexibility as to how it makes the information available (e.g. on their website rather than the product itself as long as the method used does not promote social exclusion of disadvantaged social groups).

DRAFT RECOMMENDATION 5.8

The Ministerial Council on Drug Strategy should develop illicit drug precursor regulations for adoption by reference by all jurisdictions. The associated risk-based schedule of chemicals and apparatus subject to the regulations should be maintained by a committee of experts overseen by the Ministerial Council, and also be adopted by reference in each jurisdiction.

South Australian Government view:

- It would be appropriate to consider adopting by reference illicit drug precursor regulations and schedules of chemicals and apparatus developed by the Ministerial Council on Drug Strategy, provided that there was no significant reduction in the current degree of regulation.
- The national requirements of the PACIA *Code of Practice for Supply Diversion into Manufacture of Illicit Drug Manufacture* October 2007 (the PACIA Code) would be the minimum acceptable requirements.
- The Ministerial Council on Drug Strategy had involvement with development of the National Model Schedules for controlled precursors and has the appropriate expertise to oversee development of regulations and a list of illicit drug precursors subject to regulation.
- It would be appropriate for the range of illicit drug precursors for which there is regulation of sale to be the same as that under the serious drug offences legislation.

<u>DRAFT RECOMMENDATION 5.9</u>

Maximum residue limits set by the APVMA, which take account of dietary impacts using methods agreed with Food Standards Australia New Zealand (FSANZ) and the Australian Government Department of Health and Ageing should be automatically incorporated into the Australia New Zealand Food Standards Code. Any decision to the contrary by FSANZ and the Australia and New Zealand Food Regulation Ministerial Council should be based on a cost benefit analysis and be reported publicly.

South Australian Government view:

- Implementation of this recommendation has the effect of eliminating the time lag between issuing an APVMA MRL (i.e. allowing the use of a chemical on a crop or animal) and the issuing of a FSANZ MRL in the Food Standards Code (i.e. legitimising residues of the chemical in food at levels required based on good agricultural practice).

- The time lag between issuance of APVMA and FSANZ MRLs leads to an unnecessary non-compliance with the Food Standards Code for those users who use a new chemical according to APVMA instructions in this gap period. This also has implications for users in quality assurance schemes such as those required by the supermarket chains.

- South Australia therefore strongly supports the intent of this recommendation which is to harmonise the timeframe for setting MRLs in ‘control of use’ and food legislation, but conditional on:
    - the Food Regulation Ministerial Council and FSANZ retaining the ability to amend MRLs included in the Food Standards Code;
    - the process undertaken by APVMA meets the Commission’s recommendations on best-practice, for example including public consultation when setting all MRLs, which includes minor export commodity, permit and temporary MRLs; and
    - inclusion of MRLs in the Food Standards Code before they have been considered by the Ministerial Council does not set a precedent for any other amendments to the Code.

DRAFT RECOMMENDATION 6.1

As part of its review of the National Standard and Code of Practice for the Control of Major Hazard Facilities, the Australian Safety and Compensation Council should:

- *determine whether there is a case for regulation of Major Hazard Facilities beyond existing generic regulation in areas such as occupational health and safety, environmental protection and planning, based on cost-benefit analysis; and*
- *if such a case exists, identify strategies and opportunities for achieving greater consistency in the adoption and application of the Standard across jurisdictions, that what has been achieved to date.*

South Australian Government view:

- Western Australia, Queensland and Victoria have already adopted something other than 'generic' regulation while South Australia and New South Wales are moving towards promulgation of similar regulatory frameworks to those states.
- South Australia’s view is that the case of special law governing Major Hazard Facilities (MHFs) is fairly well established on an international basis.
- However it is acknowledged that there is a lack of consistency with the current MHF regulatory arrangements. A move to national consistency could be achieved under the guidance of the relevant MHF standards and codes.
- South Australia has committed to introduce legislation that will assist progress towards national consistency by providing for use of the National Standard and Code for the Control of Major Hazard Facilities.

DRAFT RECOMMENDATION 6.2

The Commonwealth, state and territory governments should replace the existing systems of regulation of workplace hazardous substances and dangerous goods with a single system of regulations for the classification, labelling, provision of material safety data sheets and risk assessment for all workplace hazardous chemicals. The new system should be based on the Globally Harmonised System of Classification and Labelling of Chemicals (GHS).

Australia should not implement the new system until our major trading partners have implemented the GHS. In this context, the European Union has announced that it intends to move to a GHS-based system in 2015.

South Australian Government view:

- South Australia supports the first part of this recommendation. The States and Territories are currently working with the ASCC on a draft national hazardous chemicals framework based on the GHS.
- In relation to the second part of the recommendation, the understanding of ASCC is that the European Union will approve the implementation of the GHS-based system at the end of 2008. The new and the old systems will operate concurrently until 2015. After this transitional period only the GHS-based system will apply.

DRAFT RECOMMENDATION 6.3

Any new system for workplace hazardous chemicals labelling should recognise labels approved by APVMA as being sufficient for workplace requirements.

South Australian Government view:

- South Australia supports the intent of this recommendation but there are some very real practical issues to be resolved before it could be implemented.
- As noted in the response to Recommendation 6.2, a draft national hazardous chemicals framework is being developed based on the GHS to ensure uniformity across the States and Territories.
- The new system will require consistent labelling requirements for chemicals used in the workplace.
- Labels currently approved by APVMA do not meet the GHS labelling requirements as they do not provide sufficient information for an employer or worker to do an adequate risk assessment for all hazards as required under OHS legislation. The ASCC Technical Working Group is therefore recommending that the APVMA labels should not be recognised in the draft national hazardous chemicals framework.

DRAFT RECOMMENDATION 6.4

In light of the agreement by the Workplace Ministers' Council (the Council) to replace the Australian Safety and Compensation Council with a new and independent national body, the Commission recommends:

- *the new body be statutorily independent and made up of five to nine members appointed by the Commonwealth Minister on the basis of their qualifications and experience, and be constituted to reflect the broader public interest, rather than represent the interests of particular stakeholders;*
- *the appointments by the Commonwealth Minister be approved by the Council;*
- *the new body have the ability to appoint advisory bodies, noting the importance of consulting with employers, unions and all jurisdictions;*
- *the Council be required to formally approve national standards and codes of practice prepared by the independent national body; and*
- *agreement by all jurisdictions to adopt, without variation, the standards and codes approved by the Council.*

South Australian Government view:

- South Australia supports the concept of an independent body to develop, facilitate, and implement a unified national approach to occupational health and safety in Australia.

DRAFT RECOMMENDATION 7.1

Jurisdictions should consistently adopt the Model Transport of Dangerous Goods Act and Regulations and should uniformly reference the Australian Dangerous Goods (ADG) Code.

In light of the risks of greater inconsistency in moving from template to model legislation for implementing the ADG7 package, the National Transport Commission should undertake a transparent public review of the consistency with which the new legislation, regulations and the ADG Code are adopted by jurisdictions.

South Australian Government view:

- South Australia supports the first part of the recommendation, which describes the agreed practice for ensuring a national system for the transport of dangerous goods in Australia.
- South Australia will be adopting the Australian Dangerous Goods Code Version 7 by amendment to the existing Dangerous Substances Regulations. Approval is anticipated before 30 June 2008, and the Code will be effective from 1 January 2009 with at least a six month transition period.

- South Australia's concerns about the development of the new legislative package are summarised in response to Recommendation 7.2 below.

DRAFT RECOMMENDATION 7.2

In view of the strong governance arrangements for implementing national transport policy, and the successful implementation of dangerous goods transport policy under those arrangements to date, the Commission considers that responsibility for policy development and monitoring should, at this stage, remain with the National Transport Commission, reporting to the Australian Transport Council.

South Australian Government view:

- South Australia supports national transport policy development being coordinated by a federal transport agency. Dangerous Goods transport is a small, specialised part of goods transport. If the National Transport Commission are unwilling or unable to continue this role, then it should revert to the federal Department of Infrastructure, Transport, Regional Development and Local Government who published the first five versions of the Australian Dangerous Goods Code prior to the National Transport Commission involvement. The Federal Department is well placed for this role as they currently;
    - represent Australia at the United Nations Committee of Experts on the Transport of Dangerous Goods,
    - provide the secretariat to the Competent Authorities Panel (CAP) of participating jurisdictions, and
    - oversight the activities of the other dangerous goods transport modal bodies, for air and maritime transport.
- Nationally dangerous goods regulators are based in a wide variety of agencies, Occupational Health and Safety administration, Transport Agencies, Environmental Protection Agencies, Mines Inspectorate and Consumer Protection. The Australian Transport Council, which has responsibility for the dangerous goods code is comprised of Ministers with portfolio responsibility for roads and transport from all nine jurisdictions. This group provides cohesion to the process as the regulators and policy makers reside in a wide variety of agencies.
- South Australia would challenge the suggestion that dangerous goods transport policy development and implementation is working well under the current arrangements noting that the new model legislation has increased from the existing 260 pages to over 500 pages, despite the fact that no new areas are to be regulated.

- Fundamentally dangerous goods transport policy is not about road law, it is about safety law, the National Transport Commission has not taken due cognizance of this. The packaging and labelling requirements of the

Australian Dangerous Goods Code are referenced and used all along the supply chain to ensure public and workplace safety. The Code, in fact, imposes relatively few transport-specific duties on transport operators and vehicle drivers, and mainly places duties on consignors, forwarders, loaders and packers as well as storage and handling.

- The proposed model law developed by the National Transport Commission has been altered to not apply at specific sites at which the aggregations of vehicles are likely to be found, for example, mine sites, transport depots, refineries and airports. However, emergency responders are still required to attend these sites in the event of a spill, fire or accident.
- This is likely to result in the development of non-uniform law to cover this public safety gap. As a basic principle, dangerous goods law must apply wherever dangerous goods are found on a vehicle.
- The problems experienced during the development of the current Code and supporting legislation could readily be overcome by having a stronger policy oversight to the process from the participating jurisdictions.

DRAFT RECOMMENDATION 7.3

The current review of the Australian Explosives Code (AEC) should be expanded to include jurisdictional legislation and regulations for explosives transport, and should lead to nationally consistent legislation and regulations and a uniformly adopted technical code.

Future revisions to the AEC should be undertaken separately from, but in parallel with, revisions to the regulation of other dangerous goods. In the longer term – if successful inter jurisdictional harmonisation of explosives transport legislation regulations and technical code is achieved – the regulation of dangerous goods and explosives should be combined.

South Australian Government view:

- South Australia agrees in-principle with harmonisation of explosives transport law across jurisdictions through reference to a nationally agreed Code of Practice.
- However, South Australia does not believe the AE Code needs to be reviewed every time the ADG Code is reviewed. The AE Code covers transport of only one class of dangerous goods, while the ADG Code covers eight. As such the ADG Code has much more subject matter to consider and needs more frequent review.
- South Australia is also not of the view that the regulation of explosives transport should be combined with other classes of dangerous goods. Explosives accidents are high consequence / low frequency events where the concept of a “response plan” is not applicable. Actions start directly from the “recovery” phase after an explosives accident.

- Other types of dangerous goods accidents however can be responded to and the effects mitigated.
- Explosives law must of necessity be much more focused on preparedness and prevention than other dangerous goods law because no response capability can be applied to mitigate an explosion.

DRAFT RECOMMENDATION 7.4

The Australian Dangerous Goods Code should be available free on the internet and at avoidable cost for hard copies. The resultant revenue loss for the National Transport Commission should be offset by increased jurisdictional contributions. Pricing of the Australian Explosives Code should also follow these principles.

South Australian Government view:

- South Australia has no objection to legislative material in electronic form being freely available and can arrange to host links to such material on its website.
- South Australia does not provide hard copy of legislation free of charge. This ensures only persons with legitimate and extended need for such material seek to obtain it.
- South Australia would be unwilling to have to increase its contributions to the NTC to cover a proportion of the (unknown) cost of providing a service that it does not provide for its own legislative material.

DRAFT RECOMMENDATION 8.1

The Environment Protection and Heritage Council (EPHC) Chemicals Working Group should continue to assess the need for a national framework for the management of chemicals in the environment.

If this work demonstrates that such a framework would improve effectiveness and efficiency, the Commonwealth, state and territory governments should negotiate an intergovernmental agreement to create an independent standard-setting body reporting to the EPHC.

- *This body would develop standards for the environmental risk management of chemicals that the states and territories would adopt by reference, and have the power to ban or phase out chemicals, subject to appropriate cost-benefit analysis.*
- *Members of the environmental risk management standard setting body should be appointed based on their qualifications and experience. The body should be constituted to reflect the broader public interest and have the ability to appoint advisory bodies as necessary.*

South Australian Government view:

- The Productivity Commission support for a national framework for management of chemicals in the environment (NChEM) is acknowledged and supported.

- South Australia notes the strong emphasis on embedding cost-benefit analyses into the assessment processes for chemical risk management. Given the difficulties in valuing environmental costs and benefits there is a potential that risks to the environment may be underestimated in evaluating regulatory costs and benefits.

- South Australia therefore suggests the Productivity Commission propose mechanisms to reflect this potential gap. Clarification is also required about the scope of and triggers for a cost benefit analysis. For example, are they likely to be required for all chemicals or just those above a particular risk and/or control threshold? Further guidance is also required on what factors would be considered as part of the cost-benefit analysis and how externalities such as biodiversity would be considered.

- Clarification is required on the proposed independent standard-setting body reporting to EPHC. The need for a mechanism to provide consistent, appropriate standards for chemical use across Australia is recognised; however there is a discrepancy between the funding mechanisms proposed for industrial chemicals to that of agricultural and veterinary chemicals.

- The Draft Report identifies that '*the new regime would be funded by jurisdictions on a cost sharing basis*' (page 222). This approach differs from the cost-recovery approach supported for the National Registration Scheme for agricultural and veterinary chemicals. Additionally, the approach differs to the recommendations of Productivity Report 15 (*Cost Recovery by Government Agencies*), which identifies that the administrative costs of regulation should be recovered (Recommendation 7.9).

DRAFT RECOMMENDATION 9.1

A nationally uniform approach to conducting security checks for access to security sensitive ammonium nitrate should be implemented, irrespective of other harmonisation measures. This process should be managed by the Australian Government, through AusCheck. The information should be shared across jurisdictions using a database that reports current refused or revoked security clearances.

South Australian Government view:

- South Australia supports in principle:

  - The concept of a national database system that would remove the need for persons working across jurisdictions having to complete the same security screening a number of times;
  - A set of common disqualifying offences relevant to national security that would make persons ineligible for unsupervised access to security sensitive substances; and
  - A national database of persons identified as ineligible for unsupervised access to security sensitive substances on the grounds of national security.
- South Australia has developed a logical and rigorous system for determining who should be security cleared for access to Security Sensitive Ammonium Nitrate (SSAN). The system is funded and a cooperative arrangement exists with South Australian Police (SAPOL) for electronic information transfer.
- South Australia will accept the security determinations of persons made by other jurisdictions and issue the necessary South Australian licences based on these clearances.
- All that is required to establish a national scheme for security checks is:
  - For the Department of Prime Minister and Cabinet to establish a software framework that the states and territories can populate with data defining persons who are currently security cleared.
  - The states and territories to ensure all data is currently correct. The data being held could also include security clearances that were revoked or denied.
  - All states and territories agreeing to administratively recognise the security clearance given in another jurisdiction.
- Under the alternative scheme that has been proposed, each jurisdictional licensing authority applies to AusCheck to facilitate and coordinate background checking. AusCheck assesses the results of the background checking to determine if the applicant should be security cleared.
- South Australia is not convinced that this model would deliver a more efficient and faster service and has identified the following issues:
  - Adoption of the scheme as proposed would necessitate amending state regulations relating to powers of the Director and appeal provisions.
  - The appeal provisions of applicants may become much more costly (i.e. through the Federal Court) or may disappear completely.
  - It would require the South Australian licensing authority to terminate current arrangements with SAPOL and create new information transfer and funding arrangements with AusCheck (i.e. there would be administrative costs incurred to effect the changes).
  - The federal authority would be the primary decision maker in terms of granting licences administered by the state.

- Decisions would be made based only on those parameters that all jurisdictions would be prepared to agree on. Caution would be needed to ensure that a 'lowest common standard' approach did not occur.
- The cost to customers of security clearances may increase significantly if the process were placed in the control of a federal authority. A guarantee against unreasonable increases would be required to manage this risk.

DRAFT RECOMMENDATION 9.2

State and territory governments should consider the following improvements for achieving greater national harmonisation of the security sensitive ammonium nitrate (SSAN) regulations:

- *removing major inconsistencies in reporting requirements;*
- *basing storage requirements on the internationally agreed physical properties of SSAN, provided security controls are met;*
- *ensuring that a single security plan can be lodged for transporting SSAN nationally;*
- *making licence durations nationally consistent; and*
- *regulatory agencies committing to, and reporting on, timeframes for assessing licence applications.*

South Australian Government view:

- South Australia has no in-principle objection to the increased harmonisation of SSAN regulations and will continue to participate in the National SSAN Working Group facilitated by the Department of Prime Minister and Cabinet.
- South Australia's notification requirements are a function of the geographical location of the jurisdiction and the fact that all ammonium nitrate manufacture in Australia takes place outside its borders. This situation results in the continuous freighting of large quantities of this security sensitive chemical across the state.
- The fundamental purpose of ammonium nitrate legislation is supply chain surveillance. South Australia interprets this to include surveillance during the transport function.
- It would be strategically and politically untenable if a vehicle transiting South Australia carrying 20 tonnes of ammonium nitrate was to disappear and the Regulator had no knowledge of its intended route, or its existence. The current reporting arrangements provide the means for conducting an investigation in the event of a transportation of ammonium nitrate going astray.
- It is also relevant to note that the nationally agreed physical properties of ammonium nitrate are such that it is reactive to the point of being a potential explosive.

- South Australia would support a requirement for a single security plan for transporting SSAN nationally, providing a copy of the plan was provided to the Regulator whenever SSAN was to be carried in this state.
- The fourth dot point can be addressed in regulatory amendment, noting that the date at which it expires is dependant on the date of issue.
- South Australia has no objection to reporting on timeframes for assessing licence applications.

DRAFT RECOMMENDATION 9.3

State and territory governments should not add any additional security sensitive chemicals to the current security sensitive ammonium nitrate regulations.

South Australian Government view:

- It is not the intention of the South Australian government to unilaterally regulate other substances of security concern. Measures to ensure national security are being managed through the COAG Review of Security Sensitive Chemicals.

DRAFT RECOMMENDATION 9.4

Australian governments should establish an agreed framework for assessing the security risks and appropriate control measures associated with chemicals of security concern. This framework should incorporate strong governance arrangements, underpinned by an intergovernmental agreement, that ensure control measures are implemented consistently across jurisdictions. Once established, this framework should be used to re-examine the controls on ammonium nitrate.

South Australian Government view:

- South Australia supports the draft "*Agreement on Australia's National Arrangements for the Management of Security Risks Associated with Chemicals*" prepared by the Department of Prime Minister and Cabinet in conjunction with the States and Territories.
- In relation to using the framework agreement to re-examine controls on ammonium nitrate, it is noted that the list of chemicals that have a potential security concern identified in the draft report prepared by the COAG Review of Hazardous Materials Steering Committee *("Report on the Control of Chemicals of Security Concern*") is a living list. That is, chemicals on the list can vary with time.
- The threat of specific chemicals is calculated as a function of feasibility of use and terrorist interest in the chemical. If intelligence indicates terrorists have lost interest in SSAN (for reasons other than the introduced regulatory regime) then regulatory controls become redundant.

- With respect to governance arrangements, South Australia supports a consensus approach to approval of measures to address security concerns.