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

Victorian Government Response

April 2008

Introduction

The Victorian Government recognises the need to sustain reform to maintain our competitive edge and boost productivity, and regulatory reform is a central component of the Council of Australian Governments' (COAG) Reform Agenda, in which the Victoria Government plays a leading role. Victoria's COAG commitments are supported by the Government's well established best-practice regulation making and review framework.

Some key elements of the framework are:

- the *Reducing the Regulatory Burden* initiative which affirms the Victorian Government's on-going leadership in implementing the reforms that are essential to the competitiveness of the Australian economy;
- the *Victorian Guide to Regulation* (updated in April 2007) which sets out the principles and characteristics of good regulation making for all Victorian regulators;
- a transparent regulatory decision making process through mandatory public consultation on regulatory proposals;
- the Victorian Competition and Efficiency Commission (VCEC) which was established in 2004 to independently assess the adequacy of Regulatory Impact Statements and Business Impact Assessments;
- leadership in harmonisation of regulation through collaboration with other Australian governments in areas such as payroll tax and occupational health and safety; and
- the ongoing commitment to comprehensive public inquiries into regulatory matters conducted by the VCEC and the State Services Authority.

Although regulation will continue to be a necessary and important tool in achieving the Government's social, health and environmental policy objectives, ensuring that regulation is appropriate and that there is no unnecessary burden on businesses and not-for-profit organisations is a key priority.

Reducing the Regulatory Burden Initiative

The Victorian Government has made a commitment to a specific and ambitious target for cutting red tape. Under the *Reducing the Regulatory Burden* initiative, the Government is committed to reduce the administrative burden of State regulation as at 1 July 2006 by 25 per cent over five years. Significant progress has been made on a number of acts and regulations related to chemicals and plastics.

For example, there has been a net reduction of $1.68 million per annum in the administrative burden imposed by the *Agricultural and Veterinary Chemicals (Control of Use) Regulations 2007*, compared to the burdens under the *Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996*. Similarly, an estimated $2.91 million per annum reduction has been achieved in administrative burden with respect to the *Environment Protection (Scheduled Premises and Exemptions Regulations) 2007*.

Further, the 2006-07 Progress Report on the *Reducing the Regulatory Burden* initiative estimates a $2.2 million reduction in administrative burden through the *Occupational Health and Safety Regulations 2007*.

The *Reducing the Regulatory Burden* initiative complements and strengthens the Government's well established best-practice regulation making and review framework. In recognition that more can be achieved through collaboration with other Australian governments, a key element of the framework is leadership in harmonisation of regulation across the nation in areas such as payroll tax, occupational health and safety and consumer product safety.

General Comments

Chemicals and Plastics Industry in Victoria

The Chemicals and Plastics industry is significant to the Victorian economy. Including flow on effects, it accounts for 7.3 per cent of GSP and some 144,000 jobs (the sector directly employs 33,000 persons).

Australia's chemicals and plastics industry involves a wide range of industrial, agricultural/veterinary and food related chemicals and chemical mixtures. The sector's supply chain is spread across manufacturing, processing, importing, distribution, transport, storage, retail and consumption. Along the supply chain, a number of complex regulations apply. As a result, a multitude of government agencies in each state and territory and federally have significant roles and responsibilities for aspects of the regulatory environment, leading to fragmentation and inconsistency.

Multi-Agencies and Multi-Legislations

In common with the other state and territory and federal governments, a number of Victorian government agencies have a significant regulatory role with respect to chemicals and plastics, including:

- Department of Primary Industries (DPI)
- Department of Human Services (DHS)
- WorkSafe Victoria
- EPA Victoria
- Victoria Police
- Consumers Affairs Victoria

These agencies administer a multiplicity of acts and regulations, including:

- *Agriculture and Veterinary Chemicals (Control of Use) Act 1992*
- *Agriculture and Veterinary Chemicals (Control of Use) Regulations 2007*
- *Environment Protection Act 1970*
- *Environment Protection (Scheduled Premises and Exemptions Regulations) 2007*
- *State Environment Protection Policies*
- *Notifiable Chemical Orders*
- *Drugs, Poisons and Controlled Substances Act 1981*
- *Drugs, Poisons and Controlled Substances Regulations 2006*
- *Occupational Health and Safety Act 2004*
- *Occupational Health and Safety Regulations 2007*
- *Dangerous Goods Act 1985*
- *Dangerous Goods (Road Transport Reform) Regulations 1995*
- *Dangerous Goods (Storage and Handling) Regulations 2000*
- *Dangerous Goods (Explosives) Regulations 2000*
- *Fair Trading Act 1999 (product safety provisions)*

The management and regulation of chemicals and plastics – including agricultural and veterinary (agvet) chemicals – is complex and includes storage, handling, transportation and use, with several different government agencies having responsibility. For example, DPI manages the "use" of agvet chemicals but where there are human health issues as a result of a chemical product being mis-used, WorkCover and Department of Human Services would also be involved. Additionally, where there is contamination of the environment, the Environment Protection Agency would have a role along with local government.

In a number of instances, both Federal and Victorian Government agencies have responsibilities for aspects of a regulation. For example, the Australian Pesticides and Veterinary Medicines Authority is responsible for control of the importation, manufacture and supply of agricultural and veterinary chemicals up to and including retail sale in Australia, while the Victorian Government is responsible for the control of use, investigation of poor agriculture practices and residue violations in produce via the *Agriculture and Veterinary Chemicals (Control of Use) Act 1992*.

Collaboration and Consultation

Although an agency may be responsible for a particular act or regulation, other agencies are also involved in implementing it. For example, although the Victorian Department of Primary Industries (DPI) is responsible for administering the *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* and its subordinate legislation, DPI works closely with the Department of Human Services (DHS), Environment Protection Agency (EPA), Local Government (through their Environmental Health Officers, for example), Water Authorities, etc, to effectively manage the use of agricultural and veterinary chemicals throughout the state.

Collaboration across agencies is further enhanced through the Victorian Chemical Regulators Group, which is an informal group made up of the WorkSafe Victoria, DHS, EPA and DPI. The Group meets two to three times a year to share information and raise awareness of chemical issues across departments.

Compliance is encouraged through education, awareness and extension programs undertaken by (for example) DPI for agricultural and veterinary chemical use. DPI strongly encourages industry to adopt and use self-regulatory processes such as Quality Assurance programs. Through targeted auditing DPI is then able to assess whether such functions need to be changed, encouraged or an enforcement approach is required.

Industry collaboration and covenant is also an approach used to enhance the effectiveness of legislation. For example, beyond its formal regulatory powers, EPA Victoria encourages industry to reduce chemical use and wastes through voluntary programs and also through reduction targets in environment improvement plans. EPA Victoria also has the power under the *Environment Protection Act 1970* to enter into sustainability covenants that can be used to reduce the environmental impacts of chemical companies and the supply chain.

In January 2004, EPA Victoria entered into a three-year sustainability covenant with the Plastics and Chemicals Industry Association (PACIA). Outcomes of the first covenant included assisting PACIA member companies to implement programs that improved water and waste management, and a successful partnership with RMIT University to deliver sustainability training to chemicals and plastics members. EPA Victoria and PACIA are currently in the process of negotiating a second covenant.

Collaboration with Australian Jurisdictions

In addition to intra-state collaboration, Victoria also collaborates actively with other states and territories and the Commonwealth Government. For example, the Minister for Agriculture is signatory to a Ministerial Agreement which established the National Registration Scheme for Agricultural and Veterinary Chemicals in 1995. Under this Agreement, the Australian Pesticides & Veterinary Medicines Authority (APVMA) is responsible for control of the importation, manufacture and supply of agricultural and veterinary chemicals up to and including retail sale. States and territories are responsible for controlling the use of products. Like other states and territories, Victoria has representation on a range of intergovernmental committees, including:

- Primary Industries Ministerial Council - the Minister for Agriculture
- Primary Industries Standing Committee - the Secretary of DPI
- Product Safety & Integrity Committee - the Executive Director of Biosecurity Victoria (DPI)
- APVMA Registration Liaison Committee - the State Coordinator for Agricultural and Veterinary Chemicals (Chemical Standards, DPI)

Similarly, the National Chemicals Environmental Management (NChEM) framework has recently been established to improve communication and coordination between states, territories and the Commonwealth Government. NChEM has been established through the NChEM Ministerial agreement.

Support for the Ministerial Taskforce's Objective and the PC Draft Research Report

The objective of the Ministerial Taskforce for Chemicals and Plastics Regulation Reform to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation is strongly supported.

The streamlining of the numerous chemicals and plastics policy making bodies, regulators and agencies in across Australia will not only reduce the cost of doing business but will also enhance the effectiveness and efficiency of the regulations designed to protect public health, occupational health and safety, the environment and national security.

The Victorian Government broadly endorses the approach of the draft report, which is in keeping with the COAG principles of good regulation, including: regulations should deliver net community benefits, are performance-outcome based and tailored to actual risks. Priority should be given to those actions that reduce the regulatory costs on business, and attention should continue to be given to the quantification of costs and benefits in the prioritisation of actions.

Good regulatory design processes – including wide consultation – should be followed in deciding which option to adopt.

Overall, the Victorian Government is broadly supportive of the recommendations of the Productivity Commission's (PC) Draft Research Report on Chemicals and Plastics Regulations, as they will go a significant way towards achieving a streamlined and harmonised regulatory system. However, there are concerns regarding specific recommendations, as detailed below.

Specific Comments

Chapter 3: Policy Formulation and Governance

The governance framework is one of the most critical aspects of a regulatory system. The achievement of a streamlined and harmonised system of national chemicals and plastics regulation, however, should be sensitive to the needs of the different industry sectors, and will require high quality communication linkages between key stakeholders.

The concept of a Standing Committee on Chemicals is in line with the objectives of the National Chemicals Environment Management (NChEM) framework established by the Environment Protection and Heritage Council (EPHC) to increase consistency, effectiveness and efficiency of chemicals management across areas.

However, the Victorian Government is not convinced that the Australian Health Ministers' Conference (AHMC) – as recommended by the PC – is the most appropriate oversighting authority for the Standing Committee. In considering alternative oversighting authorities, it is relevant to note the following:

- The most significant developments underway to align Australia's classification, labelling and information, administrative and compliance schemes for workplace chemicals fall within the portfolio of responsibilities assigned to the Workplace Relations Ministers' Council (WRMC).
- The administration of the compliance schemes providing safe industrial chemical use has impacts well beyond the workplace. The safe use of chemicals in non workplaces is significantly influenced and led by the upstream controls established for safe workplace use.
- In addition there is a direct line of accountability from the lead agencies administering workplace chemicals through to the respective workplace relations Ministers.
- There are significant benefits to be gained in focussing the accountability for oversight directly to WRMC (where Ministers are able to directly implement changes and deliver benefits).

It is also important that issues relating to agricultural and veterinary chemical regulation need to be dealt with via direct communication links between the Committee and the Primary Industries Ministerial Council (PIMC). The valuable role that the Product Safety & Integrity Committee (PISC) performs as a policy advisor to the Primary Industries Standing Committee is acknowledged, and this role should continue. It is important that a 'chemicals silo' not be created and the continued involvement of PSIC and PIMC should ensure that decisions about agricultural and veterinary (agvet) chemicals regulation are made in the context of primary industry factors.

Chapter 4: National Hazard and Risk Assessment

Victoria's regulatory philosophy strongly aligns with the principles included in the report. Victoria takes a risk-based approach to regulatory management, including an expectation that industry should take responsibility for demonstrating that it is complying with requirements. This permits a degree of flexibility for industry without compromising public health or the environment.

With respect to mutual recognition and harmonisation with New Zealand, the Productivity Commission may be aware of the arguments put forward to maintain the permanent exemption for agricultural and veterinary (agvet) chemicals from the Trans Tasman Mutual Recognition Agreement (TTMRA), including:

- Significant differences exist between Australian and NZ agricultural environments, pest & disease risks and production systems. It is considered that removal of the permanent exemption would imply to international markets that the pest and disease incursions (eg quarantine pests) are equivalent in both countries.

- Differences exist in regards to risk management frameworks and regulatory controls which support each country's access to markets, free trade agreements and trade in primary produce generally. It is considered that Australia's and New Zealand's ability to use the differences between them to maximise market access opportunities would be limited, if the permanent exemption was removed.

These arguments could equally apply within Australia in regards to variation in production systems and also in regards to the competition in trade between states and territories. The adoption of a national use system could lead to a loss of trade differentiation between jurisdictions.

Recommendation 4.1 – that the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) should maximise net community benefit – is **broadly supported**, as the minimisation of chemical risk should be based on appropriate costs. The advantage is that chemicals are investigated or reviewed based on their significance or benefit to the community or industry.

Recommendation 4.2 – that the role of NICNAS should be limited to the scientific assessment of the hazards and risks of industrial chemicals – is **broadly supported**. Victoria also supports the governance framework outlined and agrees on the importance of separation of policy, risk assessment and risk management. This informs the structures that are proposed with national policy, science-based risk assessment undertaken independently from policy with risk management informed by both the science and policy.

Recommendation 4.3 – that a technical advisory committee should be established within NICNAS – is **supported in principle**. This brings it in line with the Australian Pesticides

and Veterinary Medicines Authority (APVMA) which also an advisory board, and should help NICNAS operate in a more strategic manner.

Recommendation 4.4 – that NICNAS should implement a program to greatly accelerate the assessment of existing chemicals – is **supported**. NICNAS as part of its reforms is currently implementing a mechanism for fast tracking assessment of chemicals considered to be analogous to previously assessed chemicals. It would reduce the costs of notification and data preparation, and result in faster assessments.

The EPHC review that led to NChEM also identified this as a priority issue. NChEM is exploring ways of prioritising existing chemicals for assessment that pose a high risk to the environment.

In relation to **Recommendation 4.5** – that the National Registration Scheme for agvet chemicals should be to maximise net community benefit – Victoria notes that draft policy development would be the responsibility of the proposed Standing Committee on Chemicals. Victoria agrees that overarching policy development should be undertaken and should include requirements to maximise net community benefits (covering protection of public health and safety, environmental health and facilitating trade) which would entail analysis of associated costs and benefits to ensure objective demonstration of the benefits and justification for the regulatory action.

With regard to **Recommendation 4.6** – that the National Registration Scheme should be extended to cover the use of agricultural and veterinary chemicals after the point of retail sale – it is noted that the PC's statement that "*The National Registration Scheme (NRS) for agricultural and veterinary (agvet) chemicals regulates all agvet chemicals and products up to the point of retail sale*" (p71) is only partially correct. The NRS also incorporates the role of States and Territories in regulation to control of use. Paragraph C of the Agreement made between the Commonwealth and States/Territories on 29 September 1995 states:

"The Commonwealth, each of the States, and the Northern Territory agreed at a meeting of the Australian Agricultural Council (predecessor to PIMC) held on 2 August 1991 to establish a National Registration Scheme to provide for the registration of agricultural and veterinary chemicals under which the Commonwealth will be responsible for the registration of agricultural and veterinary chemicals with each State and the Northern Territory remaining responsible for the control of use of such chemicals."

Clarification is sought on whether the intent of the recommendation is to exclude the consideration of occupational, health and safety (OHS) issues associated with workplace use of chemicals. If it is then this recommendation will **not be supported**.

Victoria's approach to agvet chemical control of use regulation, in relation to the flexibility provided and the onus placed on primary industries to manage agvet chemical risks, differs to that of other States and Territories. Nevertheless, Victoria is pleased to see that the PC report captures the philosophy and principles of the Victorian system.

The key features of Victoria's approach in regulating agricultural and veterinary chemical products are that the system/controls must:

- address identified/substantiated 'public' risk;
- be performance outcome based;
- incorporate sufficient flexibility to allow/encourage industry to 'raise the bar';
- incorporate an evaluation process to measure regulation effectiveness; and
- be resourced sufficiently to allow adequate compliance activities.

From some of the comments made at the PC roundtables (December 2007), it appears that industry also favours the Victorian government philosophy. Industry was noted to comment "*that they understand the philosophical side of the regulator that the Victorian regulatory approach is a more mature way to ensure long term strategic compliance*".

Victoria welcomes **Recommendation 4.6,** which states that the system should provide *"appropriate exemption provisions and is administered at state and territory level, to allow adequate flexibility to address local issues."* Regulatory approaches such as agricultural chemical control areas have been successful and Victoria would be keen to maintain such 'options' in our 'regulatory toolbox'.

The issue of resourcing a National system, is a critical issue. Victoria would expect that the Commonwealth would ensure funding was available for a national Control of Use system. Victoria appreciates that the Australian Pesticides and Veterinary Medicines Authority (APVMA) is run on cost recovery, whereby the chemical industry pays fees and levies. Such a system can result in the companies who pay higher fees and levies feeling that they have a right to make certain demands on the regulator, in regards to risks associated with their market share. This concern is negated to a degree by **Recommendation 4.5** and the development of regulatory policies by the Standing Committee and its advisory committees such as the Product Safety and Integrity Committee (PSIC).

Chapter 5: Public Health

With respect to **Recommendation 5.1** – separate responsibility for the scheduling and regulation of poisons from that of drugs – it should be noted that the Victorian legislation which regulates the availability of poisons is the *Drugs, Poisons and Controlled Substances Act 1981*. The recommendation is consistent with the recent National Competition Policy (NCP) Review of Commonwealth, State and Territory Drugs, Poisons and Controlled Substances Legislation which also recommended the separation of the medicines and poisons classification processes at the national level. This has been agreed by COAG and the necessary arrangements for implementation are being made cooperatively at national level.

The Poisons Scheduling Committee model, which has been accepted by the Australian Health Ministers' Conference, includes expert rather than representative membership and

is to be overseen by the National Coordinating Committee on Therapeutic Goods (NCCTG). Implementation is expected to occur in late 2008. However, the recommendation and narrative leading to it vary in detail from the AHMC approved model and those aspects of detail with the recommendation require further consideration.

Aspects of detail that need further consideration include the links the proposed Poisons Standing Committee will have with the proposed Standing Committee on Chemicals (Recommendation 3.1) and whether a change to the oversight of the Poisons Scheduling Committee from the NCCTG is necessary or appropriate. The draft report foreshadows further supporting committees and consultation that could make the regulatory system more complex and confusing than it currently is. As well, the proposal to separate the scheduling standard for medicines from the scheduling standard for poisons poses definition and coordination issues, as applying regulatory controls to drugs and poisons on the basis of end use is problematic. The current arrangements, whereby scheduling of drugs and poisons is provided for under the same State and Territory legislation, recognise this.

Recommendation 5.2 – that state and territory governments uniformly adopt regulatory controls – has largely been implemented, as the scheduling, labelling and packaging requirements of the national standard (the Standard for the Uniform Scheduling of Drugs and Poisons) are adopted by reference (ie, without modification) in Victoria. The national standard has been, and continues to be, revised to make it more suitable for adoption by reference with respect to controls over specific chemicals or classes of chemicals.

Victoria accepts that the decision on poisons scheduling should be made at the national level and adhered to by all states and territories. Victoria currently adheres to this for veterinary chemicals.

Although it is understood that there are few variations in regulation of chemicals between jurisdictions, it is accepted that nationally consistent regulatory controls are desirable.

Recommendation 5.3 –The recommended outcome has largely been achieved in Victoria, as the concerns referred to in the body of the PC draft report are not an issue here. In Victoria, controls over use (including in the industrial context) apply only to the more dangerous poisons. However, there is a good argument that a system of limiting access to dangerous poisons even in industry is appropriate, as workplace hazardous substances regulations do not provide such controls. The licensing of manufacturers and other wholesale suppliers of dangerous poisons provides assurance that regulatory standards with respect to highly toxic products are being observed. Requiring licences or permits for industrial users of the more dangerous poisons provides assurance that these highly toxic substances are used only where necessary and only in circumstances that protect public health and safety.

It is recognised that, if anomalies in the regulation of specific chemicals arise, they need to be resolved.

With respect to **Recommendations 5.4** – a broadly based hazard identification system – it is noted that the Standing Committee of Officials of Consumer Affairs has appointed a working party to be chaired by the Commonwealth to progress a range of non-legislative recommendations made by the PC in its 2006 report to improve the consumer product safety system. The development of a broad-based hazard identification system is one such recommendation. It is anticipated the working party will report progress to the Ministerial Council on Consumer Affairs later in the year.

In relation to **Recommendation 5.5** – that the Australian Competition and Consumer Commission (ACCC) and NICNAS should cooperate on issues regarding chemicals in consumer articles, including risk identification – it is noted that the development of a broad-based hazard identification system, as alluded to in **Recommendation 5.4**, should make it easier to identify specific areas of risk of chemicals in consumer articles. In this regard, the Australian Safety and Compensation Council and National Transport Commission will need to be included in any formal arrangements. It is noted that occupational health and safety and dangerous goods legislation influences risk controls on chemicals/consumer articles accessible to consumers.

However, environmental risks posed by chemicals in consumer articles are an important issue that is not addressed at present. No specific mention is made to environmental risk in the PC recommendation, and clarification is needed on whether environmental risks would be addressed through Recommendation 5.5.

In relation to **Recommendation 5.9**, Victoria supports in principle the removal of duplication of assessment between Food Standards Australia New Zealand (FSANZ) and APVMA and the need for removal of any time gap between registration of chemicals and maximum residual levels (MRLs) listed in the Food Standards Code (FSC), subject to approval of the APVMA assessment process by Health Ministers.

It is important to recognise that the MRL set by the APVMA reflects good agricultural practice and ensures that the lowest levels of chemicals are used to achieve the required control. The resultant MRLs are generally well below any safety limit that would be set as a 'maximum' food safety limit. The APVMA only sets MRLs for chemicals that are needed under Australian conditions. The FSC must also contain MRLs that accommodate imported foods where different agricultural conditions exist, different pests and diseases are present and either different chemicals need to be used or used at different rates.

World Trade Organisation agreements – such as the Sanitary and Phytosanitary Standards (SPSS) and bilateral trade agreements – will increasingly put pressure on our regulatory system to adopt international standards. This is likely to mean that there will be increasing instances of the recent example where an MRL set by the APVMA was increased by FSANZ to take account of imported food. This highlights the different usage of the MRL – one as a trading standard for food that protects public health (Food Standards Code) and one that is used purely as an indicator of good agricultural practice (protecting the environment, safety of operators and public health).

While automatic adoption of APVMA MRLs resolves the issue of a gap in time between when a farmer can legally use a chemical and when the product meets the legal food safety requirement, FSANZ is likely to continue to undertake its own assessments to accommodate imports and trade obligations. While there are advantages in the proposal, this issue needs further investigation as to how it would work in practice and to ensure that the FSANZ maintains the expertise required to undertake these assessments.

Chapter 6: Occupational Health and Safety

Recommendation 6.1 – greater consistency in the adoption and application of the Major Hazard Facilities Standard across jurisdictions – is **broadly supported**. Victoria has adopted the existing National Standard into legislation.

However, it should be noted that Victoria **does not agree** with the first part of the recommendation regarding cost benefit, as it would not be prepared to dilute the occupational health and safety protection contained in its Major Hazards Facilities (MHF) Regulations.

There are many potential benefits associated with MHF specific regulations, including reductions in injuries and fatalities, reduced costs of disruption and damage to plant and equipment, reduced clean-up costs and reduced damage to the environment. Facilities handling dangerous goods in large quantities have the potential for major incidents, the consequences of which may potentially rival those of some natural disasters in terms of loss of life, injury, damage to property and the environment, and disruption to community services.

While general legislative provisions in Victoria establish a good basis for control, the nature of the operations of an MHF can create hazards of a scale and type that necessitate specific regulatory controls. There is a need to ensure that the risks associated with the operation of MHFs are adequately assessed and controlled.

With respect to the fire and explosion at the Esso Longford Gas Plant in 1998, the Longford Royal Commission made the following statement in its report:

> "It has reached the conclusion that one legislative change which is both necessary and desirable is legislation requiring the operation of an MHF such as Esso's Longford facility, to conform to a safety case or safety report procedure."

Cost of MHF Regulations

In the Technical Appendix to the regulation impact statement (RIS) which accompanied the Occupational Health and Safety Regulations 2007, the MHF section notes that:

> "the initial safety case preparation cost is assumed to be $600,000 for each new site. This will encompass the cost of quantitative risk

> assessments, safety management systems, emergency plans and community consultation. For subsequent safety cases, the cost will be (between 35 and 65%) lower. Thus, for subsequent second-round safety cases, preparation costs are assumed to be $200,000.
>
> WorkSafe's Major Hazards Unit advises...that the maintenance costs (of a safety case)..are most likely reflecting the costs that a facility incurs to monitor safe operation regardless of the regulatory imposition of the safety case duty. ..WorkSafe notes that only 5 of the 49 MHFs have submitted any significant revisions in five years. .. The attribution of the cost directly related to the maintenance of the safety case is more likely to be around 25 and 35 per cent of the cost. The safety case costs are assumed to be in the order of $50,000 per year per site.
>
> …. operators of new sites pay on average $38,000 for their licence fee. … for licence renewals the average is assumed to be ..$25,000."

Benefits Associated with MHF Regulations

While the compliance cost is significant, the benefits associated with MHF Regulations are substantial, including:

- a reduction in the number of fatalities and injuries as a result of a reduction in major incidents or mitigation of their effects;
- reduced costs of disruption (both to MHFs and the community) and reduced damage to plant and equipment;
- reduction in legal and clean up costs;
- reduction in damage to property;
- reduced demand for emergency responses to major incidents; and
- reduced damage to the environment.

However, the 2000 RIS noted that, while the potential unquantified benefits of the proposed Regulations are expected to be significant, it is not possible to undertake a conventional cost-benefit analysis to quantitatively demonstrate that they outweigh the costs.

The 2000 RIS nevetherless noted that:

> "It is possible, however, to put the estimated costs in some perspective, for example, if operators of the facilities pass on the compliance costs to consumers, the average cost per Victorian would range between $1.00 and $1.58 per annum.… To the extent that Victorians value the potential benefits accruing to the proposed Regulations at more than $1.58 per year, then the benefits would exceed the costs."

Recommendation 6.2 – that existing Commonwealth, state and territory systems be replaced with a single system of regulations for the classification, labelling, provision of material safety data sheets and risk assessment for all workplace hazardous chemicals – is **supported**. Dangerous goods transport should be included in any single system of regulation. There is a high degree of inter dependency between the Globally Harmonised System of Classification and Labelling of Chemicals and the Australian Dangerous Goods classification and labelling schemes. Leaving dangerous goods transport apart from hazardous substances and dangerous goods (in storage and handling) will continue to generate inconsistency for duty holders.

Recommendation 6.3 – that any new system for workplace hazardous chemicals labelling should recognise labels approved by APVMA as being sufficient for workplace requirements – is **supported**. The APVMA, as part of their assessment of agvet chemical products, considers occupational health and safety matters. The application of a workplace hazardous chemical labelling system to agvet chemical products is unnecessary and would add another regulatory burden to agvet chemical users. Victoria **supports** an expanded set of arrangements that includes NICNAS and Australian Safety and Compensation Council as participants in the approval process.

Recommendation 6.4 – replacement of the Australian Safety and Compensation Council with a new and independent national body – is **supported in principle**. The preferred model is, however, a smaller representative body with members from the OHS jurisdictions, stakeholder groups and an independent chair rather than the model proposed by the PC.

It is also not clear if the PC has understood that national standards are the basis for legislation and as such are effectively 'model law'.

Chapter 7: Transport Safety

Recommendation 7.1 – a review of the consistency with which the new legislation, regulations and the Australian Dangerous Goods (ADG) Code are adopted by jurisdictions – is **not supported**, for the following reasons:

- Jurisdictions have advised the National Transport Commission (NTC) of the manner in which they intend to implement the model law package and the ADG Code.
- The ADG Code is the core technical document and will be adopted consistently in its entirety by reference.
- The model law as presented by NTC cannot be templated and will be adopted in a different manner in each jurisdiction.
- Legislative differences will occur as jurisdictions will use whatever legislative means that are available to them. In effect the compliance outcomes and administrative processes will be generally the same but the means of achieving those outcomes will not be uniform.

However, the recommendation could be supported if the review is part of a broader reform agenda to consolidate hazardous substances and dangerous goods (DG) storage and handling, and DG transport legislation. Any review should be focussed on the removal of barriers to template legislation. It should be noted that WRMC has an active program of engagement to deliver nationally harmonised laws in the area of chemical safety – specifically hazardous substances and dangerous goods. The program is being delivered through the Australian Safety and Compensation Council and the jurisdictions in a tripartite partnership with employers and unions.

Recommendation 7.2 – the responsibility for transport policy development and monitoring remain with the National Transport Commission – is **not supported**.

Significant efficiencies in the administration and maintenance of DG transport, hazardous substances and DG storage and handling legislative schemes are available through consolidation of oversight under WRMC.

The administration of dangerous goods safety for transport and storage and handling is primarily delivered by agencies that have a direct accountability to Workplace Relations Ministers.

The fragmentation of accountability for dangerous goods transport, on the one hand, to National Transport Commission (NTC)/Australian Transport Council (ATC) and dangerous goods storage and handling, on the other, to Australian Safety and Compensation Council (ASCC)/WRMC has resulted in a failure to properly consider the non transport consequences on industry and the community of decisions made by NTC. One significant recent example of that failure is for NTC to not consider the implications of a short transition period (now proposed to be formally only 6 months) for industry. In the past when there have been significant changes in dangerous goods law those changes have been bedded in over a period of around two years and in some cases up to five years.

A key point to note in determining the most appropriate agency to lead DG policy is to consider where the principal interventions are likely to occur and where they have the most impact in delivering the desired safety outcomes. The most significant interventions in dangerous goods transport safety do not occur through on road enforcement but through enforcement in workplaces. That enforcement is more likely to be effective if it is delivered through one head of power rather than two. Compliance is also more likely to be understood by duty holders if their duties reside in one place rather than two.

The consolidation of dangerous goods policy under one Ministerial Council and supported by one lead agency would provide immediate efficiency and reduce the level of complexity in the development of national dangerous goods policy that is inclusive, as well as balances the needs of all industry sectors and stakeholders.

The recommendation by the PC to leave DG transport with NTC is nominally premised on the proposition that the successor of ASCC needs to be given time to become operational. This recommendation does not take sufficient account of the involvement and commitment of the jurisdictions and stakeholders in the development of policy and technical standards, which is ongoing and will continue with the new body.

Recommendation 7.3 – the current review of the Australian Explosives Code should be expanded to include jurisdictional legislation – is **broadly supported**. It should be noted that the current review is a technical update only. A full policy review of the framework for storage, handling and transport of explosives should be carried out with consideration given to emerging security issues.

It should be noted that Recommendation 7.3 only deals with the transport of explosives and not the storage, handling and licensing of explosives which should also be addressed in a nationally consistent manner.

Recommendation 7.4 – the Australian Dangerous Goods Code should be available free on the internet – is **broadly supported**. It is noted that OHS standards and codes developed by OHS agencies that form part of the legislative scheme for compliance are already freely available.

Chapter 8: Environmental Impact

The **recommendation (8.1)** – that an independent standard setting body be established and reports to the Environmental Protection and Heritage Council – is **supported in principle**.

The initial NChEM submission to the PC provided regulatory model options for the environmental management of chemicals for consideration. The preferred option was a centralised decision making model with automatic State/Territory 'pick-up'. The view was that this is the most effective model that would bring consistency, certainty and timeliness to the management of environmental controls for industrial chemicals. NChEM proposed an increase to NICNAS powers to do this. The PC recommendation is an alternative that should achieve a similar outcome if it allows for states and territory engagement. NChEM will be seeking further clarification from the PC on the details of their recommendation.

Chapter 9: National Security

In general, the observations and assessments of the Productivity Commission provide a useful assessment of the controls on chemicals for national security purposes, noting that the need for such controls is relatively new and this 'sector' is therefore much less developed than similar health, environmental or safety regulation. As such, the release of the Productivity Commission's draft report during the public consultations on the draft report to COAG on chemicals of security concern is at a critical point in the further evolution of arrangements to minimise the security risk from chemicals.

It is noteworthy, however, that the report does not acknowledge differences in understanding, interpreting and managing security risks as opposed to other types of risk. Unlike safety or health risks, which are relatively stable and measurable, security risks stem from a person or persons with an active intent to cause harm and who will actively work to defeat security or protective measures. These aspects present particular challenges for governments over and beyond a latent risk from accidents involving chemicals or inadvertent misuse.

The report also does not acknowledge the potential impact on the community of a terrorist attack using precursor chemicals. Not only is the impact of such an attack relatively difficult to calculate (including psychological as well as material impact), the community's acceptance of such a risk is also likely to be much lower than other types of risk. A single occurrence of terrorism is likely to be far less acceptable than comparable environmental or safety failures. The report implicitly acknowledges some of the difficulties in measuring and treating security risk when it notes the difficulty in assessing the effectiveness of security measures in preventing such an attack. It may also be useful to acknowledge that the security threat from chemicals is less likely to be homogenous across all jurisdictions, unlike the safety or public health effects of a particular chemical.

Security Sensitive Ammonium Nitrate

A number of reviews and the public consultations on the COAG review of chemicals of security concern have all demonstrated community concern about the implementation and unintended consequences of COAG's decision to regulate security sensitive ammonium nitrate (SSAN). Victoria is, in general, supportive of measures to improve the efficiency, effectiveness and national consistency of the current regime and to minimise the burden on users of SSAN. A national uniform approach to conducting security checks and a central database appear to be key steps in alleviating duplication across jurisdictions and minimising the impost on license applicants.

This and other recommended improvements to the current SSAN regime will require further consideration and discussion between governments and should be considered by the COAG Review of Hazardous Materials Steering Committee or a sub-group of that committee.

In regard to the recommendation that no chemicals be added to the current SSAN regulations, Victoria notes that the report is silent on whether it would support the addition of further chemicals if the regime were amended to reflect recommendations 9.1 and 9.2. While the shortcomings of the current regime have been identified, it provides an avenue for governments to move quickly to address a high security threat. Although there are currently no plans to add any further chemicals, and the draft report to COAG provides that further regulation would only occur if warranted by a particularly high risk, it is sensible for governments to retain all available options to address an urgent security risk, should it arise.

Chemical Security Management Framework

The Productivity Commission's general support for the proposed framework in the draft COAG report on chemicals of security concern is noted and Victoria shares the view that the framework will address many of the identified problems in the SSAN regimes. Comments from the consultation period on the draft report are currently being considered by individual jurisdictions and the Steering Committee before finalised advice will be provided to COAG.

The governance arrangements proposed in the draft Productivity Commission report will need to be carefully considered. Noting that an inter-governmental agreement is not legally binding, no jurisdiction can be made to accept a decision that it sees as disadvantageous to its interests, even if supported by a majority of others. This, as in other inter-governmental arrangements, places the onus on officials level coordination to work towards consensus agreement with ministerial negotiation to be used in the instances where consensus is not achieved.

The proposal to bring ammonium nitrate into the security framework also has merit, but should also be considered by the COAG Steering Committee prior to finalisation of the draft report to COAG.

Conclusion

The recommendations proposed by the Productivity Commission are complex, but have the potential of achieving a streamlined and harmonised regulation system for chemicals and plastics in Australia, and the attendant benefits for industry, as well as for public health, occupational health and safety, the environment and national security. However, the complexity of the recommendations also poses the risk of them working at cross purposes when implemented.

The Victorian Government looks forward to working with other state and territory governments and the Commonwealth Government in advancing the objective of the Ministerial Taskforce on Chemicals and Plastics Regulation Reform, and will fully support the proposed Senior Officials Working Group.

The Victorian Government will leverage the work of the Ministerial Taskforce to identify, as part of the ongoing *Reducing the Regulatory Burden* initiative, any gaps and overlaps that might exist in the Victorian regulatory system that could be eliminated as part of this national approach.