Queensland Government response to the Productivity Commission draft research report on "*Chemicals and Plastics Regulation*"

July 2008

Introduction

The Queensland Government is committed to reducing the compliance burden in the regulation of chemicals and plastics while maintaining appropriate occupational health and safety, public health and environmental protections.

From a Queensland perspective, the chemicals and plastics industry represents a relatively small proportion of the whole working population with exposure to chemicals. That is a situation which may not necessarily be mirrored in other jurisdictions that have large chemical manufacturing bases. Nonetheless, Queensland has its own arrangements for the regulation, administration, policy development and enforcement of chemicals and plastics across the areas of OHS, the environment, public/food safety and security sensitive ammonium nitrate.

The Queensland Government broadly supports the draft report and recommendations and the consistency they will bring to policy formulation, regulatory approach and implementation. While the recommendations of the draft report essentially reflect the position articulated in the Queensland government submission, there are a number of areas that require further clarification or input.

General Comments

Consultation and coordination in Queensland

There a number of mechanisms in place in Queensland to facilitate a more coordinated and consistent approach to the regulation of hazardous materials in Queensland. The Inter-Departmental Hazardous Substances Coordinating Committee (IDHSCC) was formed by the Department of Emergency Services (DES) to provide and coordinate policy input for the safe management of hazardous materials in Queensland.

The committee facilitates a whole-of-Government approach to the safe management of hazardous materials by providing a forum where:

- information relating to the safe management of hazardous materials can be shared and exchanged;
- the hazardous materials policies and procedures of Queensland Government Agencies can be coordinated;
- legislation pertaining to hazardous materials can be reviewed;
- change at community, industry and Government level can be monitored for issues that may affect the safe management of hazardous materials;
- community consultation, education and awareness strategies pertaining to hazardous materials can be facilitated; and
- a whole-of-Government response can be co-ordinated to address emerging issues.

Members of the committee are drawn from those agencies that are responsible for regulating the safe management of hazardous materials, including the Department of Employment and Industrial Relations, Queensland Transport, Rail Safety Unit

(Queensland Transport), Department of Natural Resources Mines and Energy, Queensland Health, Department of Primary Industries and Fisheries and the Environmental Protection Agency. Additionally, there are representatives from the Department of Premier and Cabinet, Port of Brisbane, Queensland Rail, Local Government Association of Queensland and Queensland Police Service on the committee who are not regulators, but have interest in the safe storage and handling of dangerous goods or hazardous materials.

A committee representing relevant regulatory agencies (the Department of Emergency Services, the Department of Employment and Industrial Relations and the Department of Mines and Energy) is currently identifying options to streamline the regulatory and administrative regimes for dangerous goods and hazardous substances. This is particularly relevant for the adoption of the draft *National Standard for the Control of Workplace Hazardous Chemicals* which consolidates workplace hazardous substances and dangerous goods into a combined framework.

Rationalisation of safety laws in Queensland

As noted the draft report (page 147), Queensland's current framework for the administration and regulation of dangerous goods and hazardous substances is complex and involves various agencies and local government. The framework is difficult for obligation holders to navigate and creates jurisdictional overlap between agencies, particularly for receiving incident notifications and carrying out audits and incident investigations at chemical facilities.

Current responsibility for dangerous goods falls within the Emergency Services portfolio while responsibility for hazardous substances resides in the Employment and Industrial Relations portfolio. Queensland is the only jurisdiction that separates responsibility for dangerous goods and hazardous substances across two portfolios. The Queensland Government has identified that the split portfolio arrangements and separation of chemical regulation into dangerous goods and hazardous substances has caused duplication and fragmentation. Active steps are currently being taken to correct this situation, again from a whole-of-government perspective.

In addition, the Service Delivery and Performance Commission (SDPC) is examining the current administration of workplace health and safety regulation in the Queensland Government, including those relating to dangerous goods and hazardous substances. Safety laws are currently administered across a range of government agencies resulting in overlap, fragmented policy and legislative development, potential duplication of service and wastage of resources, "grey" areas where jurisdiction is uncertain and the potential for gaps in jurisdiction with serious consequences for incident response. Queensland supports a more streamlined approach to the administration of safety laws in Queensland and the need for any reform to be nationally consistent.

Quality staff for regulators

The Issues Paper asked a series of questions (page 22) which are central in Australia to both the short term and long term solutions of the over-complexity of chemicals regulation. These were questions related firstly to the resource pool of individuals capable of maintaining such a complex regulatory structure, and secondly to the lack of institutional experience and institutional memory (which is increasingly exacerbated by demonstrated, and sometimes expected, norms of mobility) and lastly to problems of government regulators retaining expert staff.

The Draft Research Report appears not to have addressed or reported back on this matter directly. However they are critical matters for agencies throughout Australia particularly in the areas of chemicals in public health, occupational health, dangerous goods, transport and environment.

Consideration should be given to including further information in the final report that addresses (i) how Australia as a whole, with its trend of increasing shortage of (very) skilled labour, might address such concerns; and (ii) are the changes recommended able to provide sufficient gains that would allow for pooling of quality staff or expertise, or reduce the policy load which is currently demanded.

While trans-national organisations will welcome and benefit from more uniform approaches, no individual jurisdiction can expect great reduction in its regulatory load, because all jurisdictions will have to continue to regulate across all areas. Indeed, the load on the regulators will actually increase in the short-term to implement uniformity as there will be greater interconnectedness of regulation. It is noted that the "key points" on OHS (page 139 of Draft Report) leaves open the statement that the single system of hazardous chemical regulation should reduce costs to firms, however not commenting on any benefit to regulators.

Costs and Benefits

Costs and benefits are mentioned repeatedly in the draft report. Estimating real costs and benefits is very difficult and caution should be exercised on the value of cost-benefit analyses.

The really important, but difficult-to-measure outcomes may well be ignored while the whole analysis is built around less important but easy-to-measure costs and direct consequences.

In other words, we need to ensure we need that we also build in the tools as part of the policy change package to ensure that the new system actually delivers the outcome which the whole community needs in terms of safe use of chemicals, rather than the simpler economic view of "*ensuring that the new system delivers net benefits to the community*".

Quality and rigour of APVMA assessments

The third paragraph on page 78 reports that 'a common concern pertained to the quality of product efficacy testing' which is 'undertaken by state governments for APVMA'. Assessment of product efficacy data (not efficacy testing) was retained by the states when the National Registration Scheme was established, in recognition of the fact that the required expertise resides in the state departments of primary industries. The suggestion that APVMA reviewers are more competent than state based reviewers is inaccurate.

The states have field based experts (entomologists, plant pathologists, agronomists etc) that have intimate knowledge of host and pest and disease biology and their interaction with the environment. Desk-based evaluators at the APVMA are extremely unlikely to have significant expertise in conducting or evaluating efficacy trials.

It is acknowledged that there is a lack of appropriate situation specific guidelines for conducting efficacy reviews and without such guidelines there is considerable inconsistency in the review outcomes for similar products. Improving the quality of efficacy review outcomes is a function of APVMA guidance rather than a reflection on the quality of the efficacy reviewers.

It must also be remembered that efficacy data has to be principally generated within Australia so that it matches local conditions. This is in contrast to other areas of assessment such as toxicology that are relevant to a product regardless of where the product is to be registered. Other countries such as the US do not require efficacy data to be assessed such that there is limited ability to use data generated in other countries for Australian registrations. Consequently, it appears that the chemical industry spends less money on generating efficacy data for Australian uses than it does on other types of data. This is clearly reflected on the number of registration applications rejected or modified on efficacy grounds.

Trade and market access

The report mentions risks to health and safety and the environment and national security. However there seems to be little if any reference to trade and market access. The principal purpose of Queensland control of use legislation is to protect trade and market access and was introduced following the organochlorine reside crisis in the beef industry in the mid 1980s. Key point 2 on page xxiv of the report should be expanded to cover this aspect of regulation.

Risk Management Administration

On page xxxvi the report states: *States and territories currently adopt their own control-of-use regimes for agvet chemicals. The Commission considers that this should be rolled into APVMA's Agvet Code and adopted by reference.*

The Agvet Code is not the APVMA's Code. The Agvet Code is the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth). The schedule is adopted by common enabling legislation in each jurisdiction and is then the Agvet Code of the jurisdiction. The Code, in a Queensland context, is the Agvet Code of Queensland.

On page 88, Table 4.4 shows 'major differences between state and territory regulations on pesticide use'. In relation to 'Record keeping', the entry for Queensland should be altered to indicate that record keeping is only required for commercial applicators and where label instructions require record keeping under legislation administered by the Department of Primary Industries and Fisheries, although this legislation is under review and may change to require all pesticide users to keep records.

COAG Ministerial Taskforce

Also relevant to the work of the Productivity Commission study was the inaugural meeting of the COAG Ministerial Taskforce on Chemicals and Plastics in early April 2008. The Queensland Government supports the COAG Ministerial Taskforce and its work in developing a streamlined and harmonised system of national chemicals and plastics regulation.

As part of ensuring issues relevant to Queensland's chemicals and plastics sector are considered in Queensland's representation on the ministerial taskforce, an interdepartmental reference group has been established. The reference group comprises representatives from across various agencies including the:

- Department of Primary Industries and Fisheries
- Department of Public Works
- Department of Health
- Department of Mines and Energy
- Department of Transport
- Department of Main Roads,
- Department of Employment and Industrial Relations
- Department of Emergency Services, and the
- Environmental Protection Agency.

Members advise on the cross-jurisdictional chemicals and plastics regulatory reform agenda and are responsible for providing advice on issues being considered and activities being progressed by the Taskforce.

The Senior Officer's Working Group established under the ministerial taskforce has already commenced consideration of reform priorities (short, medium and long term) and priorities by sub-sectors designed to have an immediate effect on regulatory burdens in the sector. The Queensland Government will closely examine linkages between the reform proposals recommended by the COAG Ministerial Taskforce and the current review of the Department of Employment and Industrial Relations by the Queensland SPDC.

Conclusion

The Queensland Government will monitor the final outcomes of the Productivity Commission study and examine any recommendations to address overlaps or opportunities to reduce the regulatory burden. In addition, the Queensland Government will continue to support the national consistency agenda and will actively cooperate with other state and territory governments and the federal government to harmonise regulatory requirements across the areas being examined.

Queensland Government response on draft recommendations

Draft recommendations	Queensland Government comments
3. National policy formulation and system governance	
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: o 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 o 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 – make recommendations for specific actions by individual ministerial councils.	While the establishment of a new body to oversee and coordinate policy development is supported, the Queensland Government is concerned this adds another layer of bureaucracy and may not deliver any confidence in efficiencies of effective management of chemicals or the proliferation of, and inconsistency in, chemicals and plastic regulation. In particular, there are concerns over the size of the committee, considering the large number of Ministerial Councils that will need to be represented. In addition, this could result in further delays in the reform agenda as any recommendations still would require approval by first Ministers. For the past six years COAG has been undertaking reviews of chemicals (SSAN, Radiological, Biological, Security Sensitive Chemicals) – it is recommended the Standing Committee on Chemicals be established under and report directly to COAG. The approvals process for national principles, policies and controls would be more efficient. Should this option not be considered appropriate, Queensland would prefer the committee to report directly to the Workplace Relations Ministerial Council. This council is considered more appropriate than the Australia Health Ministers' Conference as most agencies with a responsibility (or a coordination role) for chemicals management fall within a workplace relations portfolio. Furthermore controls implemented for chemicals in the workplace often flow through to consumer or product safety. In addition, it would be useful if mechanisms for interaction with various Ministerial Councils are made clear in the recommendation.

4. National hazard and risk assessment	
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.	Supported. The extent of cost benefit analysis (CBA) needs clarification (i.e. whether individual control mechanism needs to be assessed). CBA of significant measures like banning and phasing out of chemicals is supported.
DRAFT RECOMMENDATION 4.2 The role of NICNAS should be limited to the scientific assessment of the hazards and risks of industrial chemicals.	Supported.
DRAFT RECOMMENDATION 4.3 A technical advisory committee should be established within NICNAS, as a statutory requirement.	Supported.
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 – 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, the European Union and the United States. The incremental cost of this program, which is in the broader public interest, should be met from budget funding.	Supported.
DRAFT RECOMMENDATION 4.5 An objective of the National Registration Scheme for agricultural and	The extent of cost benefit analysis (CBA) needs clarification (i.e. whether individual control mechanism needs to be assessed).

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.	
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 exemption provisions and is administered at state and territory level, to allow adequate flexibility to address local issues – there is a commensurate reduction in regulatory burden at state and territory level.	The National Registration Scheme for agricultural and veterinary chemicals (NRS) already covers regulation of agricultural and veterinary (agvet) chemicals after the point of retail sale. Under the NRS, control of use of agricultural and veterinary chemicals is the responsibility of the States. The NRS was formed by a Ministerial agreement between the Commonwealth and States to regulate agricultural and veterinary chemicals. The NRS is not just the APVMA. Inaccuracies relating to this occur on pages: - XXIV (second point under 'Level 4') - 45 (dot points 7, 9, 10) - 71 (opening sentences in 'Scope', 'Institutional Arrangements') 86 (opening sentence under 'National Registration Scheme and control-of-use regulations')

5. Public Health	
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 – 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.	While Queensland supports the separation of responsibility for the scheduling of drugs and poisons, there are a number of issues with the structure and representation on the proposed committees. The separation of the responsibility for the scheduling of drugs and poisons is currently underway. The current committee for scheduling poisons consists of people with scientific and regulatory expertise. This type of committee structure is supported as it allows substances to be allocated to a poison's schedule based on their health effects and any regulatory requirements during a single process. The scheduling of poisons based only on scientific assessment would lead to less uniformity as each jurisdiction would need to determine if there were any regulatory reasons to vary the regulatory controls for a particular substance due to the schedule it was allocated to by the scientific experts.
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 – report any variations to nationally-agreed poisons scheduling or regulatory decisions at the state and territory level to the Australian Health Ministers' Conference.	Supported. As for 5.1, the scheduling process needs to consider any regulatory requirements if they are to be adopted uniformly.

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.	The Queensland Government, through the Department of Employment and Industrial Relations already regulates the use of some industrial poisons such as hydrofluoric acid (under OHS hazardous substances regulation). Further discussion is required as some activities, for example the laying of strychnine baits near residential areas, may have public health implications not covered by OHS legislation. "Authorised users" is too vague. The term could include people operating under a pesticide permit in an industrial environment. The recommendation should be aimed at the specific licences or authorisations intended. In addition, the definition of poison (page XXI) excludes pharmaceutical ingredients but is silent about veterinary drug ingredients.
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 (PC 2006, 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.	Environmental issues should be incorporated in the hazard identification system.

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 the risks of chemicals in consumer articles.	Supported, however appropriate legislation would be required to define responsibilities of ACCC and NICNAS.
DRAFT RECOMMENDATION 5.6 The Australian Government should transfer responsibility for the administration and enforcement of the Cosmetics Standard 2007 (Cwlth) from NICNAS to the ACCC.	Supported.
DRAFT RECOMMENDATION 5.7 The Australian Government should add 'deemed-to-comply' provisions to the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991 (Cwlth) for fully-imported cosmetic products that meet the cosmetic labelling requirements of specified countries that have labelling requirements that produce sufficiently comparable policy outcomes.	Supported.
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	Supported.

regulations should be maintained by a committee of experts overseen by the Ministerial Council, and also be adopted by reference in each jurisdiction.	
DRAFT RECOMMENDATION 5.9 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.	Supported. The Queensland government's aim is to have a single set of Maximum residue limits (MRLs) that will serve the purposes of public health, agricultural production and trade. It is suggested that the Commonwealth government vigorously and urgently pursue this aim. A single set of MRLs was recommended in the Blair Review in 1998 but is still not implemented.

6. Workplace Safety	
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 – if such a case exists, identify strategies and opportunities for achieving greater consistency in the adoption and application of the Standard across jurisdictions, than what has been achieved to date.	The Queensland Government is of the view that there is a strong case for the MHF regulatory model to go beyond generic regulation in areas such as occupational health and safety and for environmental protection. A major driver for higher order regulation of MHFs is the elevated potential for offsite impact in the event of a major accident. This has implications for community safety as well as worker safety and environmental protection. The safety regime that underpins MHF regulation entails a comprehensive systems approach to management of safety at a facility which aims to ensure that all safety issues are identified and managed. This approach is more effective than generic approaches because it is more in-depth and avoids the possibility of site-specific factors being overlooked. This has been borne out by Queensland's experience with 4 years of regulating MHFs to such a regime. The potential significance of offsite effects is highlighted by events such as the Longford explosion in Victoria. A more recent example is the explosion at the Buncefield fuel terminal (United Kingdom, 2005) which destroyed adjacent office buildings, caused property damage up to 3 km away, and resulted in loss of employment for several thousand workers. Further consideration should be given to where jurisdictions can gain efficiencies and opportunities such as resource sharing and joint training particularly in light of difficulties to attract and retain quality staff in this specialised area. This could be achieved through formal cooperative arrangements between jurisdictions. Without technical expertise regulators struggle to achieve credibility, particularly with large chemical business.

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.	Supported. Industry stakeholders have raised concerns that there will be large costs to its members if Australia were to progress with regulatory recommendations based on the GHS prior to its adoption by a major chemical trading partner. Queensland supports the view that the timeframe for implementation of the new framework and the GHS is critical, and that GHS implementation should only occur once our major chemical trading partners have implemented the GHS. It appears that timeframe for implementation of the GHS in Europe may be incorrect (noted as 2015 in Recommendation 6.2). The United Nations Economic Commission for Europe reports the EU is expected to adopt into force the GHS-implementing Regulation in 2008. It is also relevant to note that Australia's current classification and labelling systems is not compatible with the USA. This situation will continue until the USA moves to a compatible system or towards the GHS.
DRAFT RECOMMENDATION 6.3 Any new system for workplace hazardous chemicals labelling should recognise labels approved by APVMA as being sufficient for workplace requirements.	While Queensland supports the recommendation, current AgVet labelling requirements do not meet OHS requirements in Queensland. Queensland notes that all Agvet chemicals undergo assessment by APVMA which includes occupational health and safety requirements. While APMVA labelling contains instructions for product use and lists risk and safety phrases, not all hazard information is included, or is as comprehensive as that for OHS requirements. In addition, it should be noted that APVMA registers pesticides and veterinary drugs and does not have jurisdiction over the other workplace hazardous chemicals.

DRAFT RECOMMENDATION 6.4 In light of the agreement by the Workplace Relations 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 – agreement by all jurisdictions to adopt, without variation, the standards and codes approved by the Council.	While Queensland supports the development of harmonised OHS laws, there are a number of issues with the structure and representation on the national body as proposed. The proposed model does away with current representation of States, Territories, the Commonwealth, employers and workers; to a body with up to nine members drawn from OHS and workers' compensation experts and the insurance, financial and legal professions. Queensland considers that this is an issue for resolution by the Workplace Relations Ministers' Council and notes that tripartite representation is essential in achieving improved OHS outcomes.
7. Transport safety	

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.	Supported. The adoption of ADG7 (by reference) is ongoing and Queensland expects to have enabling legislation in place in late 2008. Although Western Australia has implemented ADG7, there have been numerous changes since to the NTC model legislation that has required the NTC to seek further endorsement from the Australian Transport Council. The majority of the delays in adoption can be attributed to the inability to finalise the model legislation.
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.	Administration for most dangerous goods safety (particularly in relation to transport and storage) is principally delivered by agencies that fall under the scope of workplace relations. This is a matter for further discussion between the Commonwealth and the States and Territories.

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 interjurisdictional harmonisation of explosives transport legislation regulations and technical code is achieved — the regulation of dangerous goods and explosives transport should be combined.	Supported. The current review of the Australian Explosives Code (AEC) has been finalised with a public discussion paper released for comment in March 2008. It is proposed that the AEC – Third Edition will be issued in September/October 2008, prior to implementation of the ADG Code – Seventh Edition. When both are implemented, they will be in harmony nationally and internationally. A review of jurisdictional legislation and regulations for explosives transport to achieve national consistency is supported as a project separate from the AEC review. The current reviews of the ADG Code and the AEC are being/have been done in parallel on this occasion, and should continue to be done so. In the longer term, amalgamation of the two codes is feasible, however this will not necessarily be beneficial to the relevant industries – the resultant code would be significantly larger and more complex. Amalgamation could also include the code for transporting radioactives.
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.	Supported. Similarly OHS standards and codes are freely available in Queensland in an effort to increase and improve compliance with regulatory requirements.

8. Environment protection	
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.	Supported. The working relationship between the proposed independent standard setting body and the existing NChEM Working Group needs to be clarified. "continue to assess the need" appears to indicate that NChEM has not commenced. Comment should be made that NChEM has been established as the framework and that the recommendation should be for the Working Group to support the continued development and implementation of NChEM in a nationally consistent manner.
9. National security	
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.	Supported.

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 – regulatory agencies committing to, and reporting on, timeframes for assessing licence applications.	Supported. There is reference to 'internationally agreed physical properties of SSAN'. Further information is required to clarify who has agreed such international properties and what are the agreed properties. Although industry may have agreed on certain properties, these aren't necessarily agreed by other parties including regulators.
DRAFT RECOMMENDATION 9.3 State and territory governments should not add any additional security sensitive chemicals to the current security sensitive ammonium nitrate regulations.	This is a matter for further discussion between the Commonwealth and States and Territories.
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.	Supported.

Inaccuracies

In addition to general comments, the Queensland Government has identified a number of inaccuracies that require clarification or amendment before publication of the Commission's final report.

Appendix D – Major Hazardous Facilities - Page 294

The statement on cost recovery for Major Hazardous Facilities regulation requires correction: "The commission understands that the Queensland Government is reviewing its fee structure and might introduce some form of cost recovery".

This should be rephrased to "The Queensland Government may examine the possibility of some form of partial cost recovery in the future, though no consideration has as yet been given to this to date".

Chapter 9 – Key Points, Second Dot Point (Page 225)

'The principles have not met their policy aims'. It would be more correct to qualify this statement to 'The principles have not met all of their policy aims' as the majority of the significant policy aims have indeed been met.

Box 6.2 'Examples of inconsistency in dangerous goods regulations'

The final item in this box refers to the system of premises classification used by Queensland under its Dangerous Goods Safety Management legislation. It states that 'other jurisdictions…do not classify…premises in this way'.

This item is misleading in that it implies that Queensland classifies premises in a manner that is completely out of step with other jurisdictions.

The premises classification system in Queensland ('dangerous goods locations', 'large dangerous goods locations') uses the quantity thresholds established for placarding and for emergency manifests respectively under the 'National Standard for the Storage and Handling of Workplace Dangerous Goods' [NOHSC:1015(2001)]. The obligations on premises occupiers under the *Dangerous Goods Safety Management Regulation* align with the obligations under the National Standard.

As such, the Queensland system aligns with the National Standard. The terminology (dangerous goods location/large dangerous goods location) provides greater precision and clarity to the legislation. The complete classification system under the legislation (Major Hazard Facilities, Large Dangerous Goods Locations, Dangerous Goods Locations) creates a comprehensive spectrum of premises types for regulatory purposes.

Box 9.1 – International approaches to regulating ammonium nitrate (Page 228)

Last paragraph indicates NZ has not introduced controls on ammonium nitrate due to relatively low usage. However, it continues, the Government has introduced controls (stringent) on other essential elements of an explosives device – such as detonators and primers (sic).

There is an inference that this is somehow different, when in fact all jurisdictions, both nationally and internationally, have such controls (stringent) in place.

Implementation of the agreed principles (Page 231)

This paragraph states '…states and territories were given flexibility to interpret the requirements of the agreed principles…'.

This is not the case – COAG agreed to implement the principles as outlined and agreed. The word 'interpret' should be replaced by the word 'implement' for accuracy.

Table 9.2 – Summary of SSAN licensing of activities by jurisdiction

While agreeing there are significant differences between jurisdictions in licensing of SSAN activities, this table and indeed this section, is less than accurate. It is suggested, for example, that separate licences are required in Queensland for possession, use, storage, transport and disposal of SSAN. This is not the case. An agricultural user of SSAN requires only one licence to undertake all of the above activities.

Table 9.3 – Summary of SSAN licensing charges by jurisdiction (Page 236)

This table is not complete and is inaccurate and hence its relevance is questioned. The figures included for Queensland are for five (5) year licences.

The Queensland fee for an ASIO check is $19.00 not $42.10.

Storage and handling arrangements (Page 242)

The draft report quotes extracts from submissions from PACIA and AEISG in relation to the properties and/or regulation of SSAN without qualifying their validity. Some additional comments in this area are required.

The whole basis of the SSAN principles is to impose controls because of the 'perceived catastrophic consequences of an extremely improbable event?'. Security measures/controls cause increases in costs, which inevitably are not met by industry but by consumers.