ACCORD

Advocate for the Consumer, Cosmetic, Hygiene and Specialty Products Industry

Mr. Mike Woods
Commissioner
Chemicals and Plastics Regulation Study
Productivity Commission
Locked Bag 2
Collins St
EAST MELBOURNE VIC 8003

Dear Mr Woods

ACCORD Australasia is pleased to provide comments on the Productivity Commission (PC) 2008 Chemicals and Plastics Regulation, Draft Research Report (Draft Report).

The PC is to be congratulated on the Draft Report as it indicates that industry's concerns with the failure of the current regulatory system to deliver efficient and effective outcomes have been taken seriously. The considered response and draft recommendations affirms that industry's case for change has been listened to and understood. ACCORD is also heartened by the recognition and support to the concerns of the chemical industry by COAG and its Regulation and Competition Working Group and Ministerial Task Force on Chemicals and Plastics.

ACCORD is less heartened by the response of some regulatory agencies at the Commonwealth, state and territory level in their less than satisfactory response to requests for ***early harvest*** reforms. These early harvest reforms are a sign of good faith by the COAG Ministerial Task Force that it is genuine in its desire to address industry's case for change. The lack of a positive and enthusiastic response by the regulatory agencies to proposals put forward as industry priorities indicates that much is still needed to be done. Contrast this to the response of the APVMA which appears to be embracing reform through its positive response to reform proposals.

ACCORD in its initial submission argued that the fundamental structure of the regulatory infrastructure for chemicals required change if Australia was to continue to have a chemicals industry. However, we also believed that much could be achieved in the short to medium term through the rigid application of existing government processes. We therefore re-iterate our position regarding the need for government policy makers and regulatory agencies, regardless of their regulatory structure, to apply existing government policy in all their dealings with industry, in particular the:

- adoption and commitment to COAG Principles by all regulatory agencies from which ever jurisdiction be it federal, state or local involved in chemicals regulation
- adoption and application of risk assessment and management to regulatory decision making
- commitment to cultural change and adoption of whole-of-government reform strategies by regulatory agencies
- development of centralised policy making body
- proper understanding of respective roles and responsibilities of all decision makers within

the regulatory framework; and

- mutual recognition of assessments and adoption of international risk based approaches to product labelling.

ACCORD as the peak national industry association that represents the manufacturers and marketers of formulated consumer, cosmetic, hygiene and specialty products, their raw material suppliers, and service providers has a specific and direct interest in the PC study on chemicals and plastics regulation and has already made a number of significant contributions to this work. ACCORD's responses to the individual PC draft recommendations are attached. While we are in support of the majority of recommendations we have provided additional comments for those draft recommendations which we believe require further consideration and/or amendment. This is particularly relevant for Draft Recommendations 3.1; 4.1; 4.2; 4.3; 4.4; 5.1; 5.2; 5.3; 5.4; 5.6; 5.7; 5.8; 6.2; 6.3; 6.4; 7.1; 7.2; 7.4; 8.1 and 9.4.

The chemical industry is a diverse grouping. Its products and services are fundamental to the economic and social well being of all Australians. The global chemicals industry is intensely competitive. The Australian based chemical industry is seeking a level playing field to enable it to compete effectively in the global economy. A more efficient and effective regulatory system will deliver benefits to the entire community. Lower costs will stimulate growth, create better employment opportunities and foster enhanced competitiveness and innovation.

Overview on regulation and pressures on our sector

While our case for change has in the main been supported by the findings and draft recommendations of the PC study – we remain aware that not all stakeholders are as convinced of the need for change as others.

To highlight the critical need for reform, we present our case again through illustration of the burden faced by the chemical manufacturing sector in Australia. The products manufactured and marketed by the Australian formulated products industry are – for the most part – downstream products of the chemical raw materials industry. Our industry's products, and the ingredients which comprise them, are subject to significant and specific regulatory regimes and requirements within Australia.

This regulation extends also to products within the sector that Australian consumers would consider outside of the 'chemicals industry' because they are marketed as 'natural' products and comprised of 'natural' or 'plant-derived' ingredients.

The primary thrust of chemicals regulation is the protection of public health and the environment. ACCORD supports these important objectives. We endorse the need for efficient regulation that is set at the **minimum effective level** of intervention necessary to manage risks while at the same time promoting innovation and business activity.

While the principal national regulator for our sector and the ingredients in industry products is currently NICNAS (National Industrial Chemicals Notification and Assessment Scheme), ACCORD members are still subject to intervention from an array of state and territory agencies and their regulatory requirements such as OHS and transport, storage and handling of dangerous goods as well as other Commonwealth agencies, including the TGA, APVMA, ACCC, FSANZ, NDPSC and possibly, in the near future, A-G's for chemicals (and chemical products) of security concern.

The existing regulatory regimes and frameworks, as they impact on our sector and the broader chemicals industry, are:

- complex and confusing,
- fragmented and inconsistent;
  and as a result are,
- costly to:
  - businesses (in terms of the direct costs of red-tape compliance burdens plus the indirect costs of lost investment and innovation opportunities),
  - governments (in terms of their administration and duplication); and,
  - consumers (in terms of increased prices due to the ever increasing need to pass on these cost burdens).

These specific problems, and the opportunities they present for reform, have been recognised as requiring action by Australia's governments, but we note reticence on the part of regulatory agencies and jurisdictions to embrace reform.

COAG has targeted chemicals and plastic regulation as a regulatory *hotspot* for which this PC study is an integral component.

While ACCORD has been hopeful that these national initiatives will restart stalled reforms of the past to simplify chemicals regulation and eliminate inconsistencies across Australia's jurisdictions, companies operating in our sector are also subject to the 'standard' regulatory burdens which currently impact on all Australian-based business operations.

This is particularly the case for our industry's manufacturing members, which continue to face challenging business operating pressures, including:

- a high Australian dollar, which impacts on the export competitiveness of Australian manufacturers;
- high crude oil prices, which have the direct impacts of increasing the price of many chemical raw materials, as many of these are derived from petro-chemical supply chains;
- high global demand for many raw materials from the booming manufacturing economies of China and India, which also increases global prices of raw materials used by local manufacturers (e.g. palm oil and derivatives used for soap and cosmetic manufacturing);
- direct competition from imported manufactured goods and in particular the growth in imports from China and India; and
- difficulties with recruiting skilled staff, especially with necessary experience in chemistry or formulation technology.

These pressures are listed here – not to suggest that they may require specific interventionist or protectionist policies, as for the most part they simply reflect the normal operation of global or local markets – but to highlight the important role Australia's governments can play in removing unnecessary regulatory burdens on affected manufacturing businesses.

Chemicals and plastics regulation reform

ACCORD has long advocated the need for reforms to simplify and streamline the current Australian system of chemicals regulation.

In response to the PC study request for quantitative data of the burden faced by industry, late last year ACCORD conducted a survey of member companies to better quantify the impacts of NICNAS regulation on the industry.

The findings of this survey were as follows:

- Eighty-nine percent (89%) of ACCORD industry and regulatory consultant members responded to the ACCORD Industry Survey.

- Ninety-two percent (92%) of survey participants having experience with NICNAS reported negative impacts from this association.
- Ninety-three percent (93%) of respondents who have experienced difficulties with NICNAS reported that products / formulations from their worldwide portfolio are unavailable in Australia due to Australian regulatory factors.
- Products are formulated/re-formulated to avoid dealing with NICNAS.
- The current regulatory system is a barrier to innovation.
- The consequences of regulatory burden reported by members show that Australia is placed at a disadvantage with regard to commercial opportunity, compared to the major EU and US markets.
- Costs, data and time factors are individually cited in over fifty percent (50%) of cases as causes of regulatory burden.
- Based on financial estimates provided by a reasonably representative sample of ACCORD member companies, it is estimated that the lost opportunity cost to the industry represented by ACCORD for the last few years (in terms of products being unavailable on the Australian market) is $400 million
- The current regulatory system is biased against innovation and product introduction by SMEs (companies with a turnover of less than $10 million)
- Thirty-six percent (36%) of non-SMEs were still prepared to pursue Australian market entry for a chemical/product despite saying that the data requests in Australia were too great, compared to five percent (5%) of SMEs
- Sixteen percent (16%) of non-SMEs were still prepared to pursue Australian market entry despite saying that regulatory costs in Australia were too high, compared to nil for SMEs
- In around fifty percent (50%) of cases where a company has the opportunity to self assess through the LRCC initiative, they choose not to do so, for reasons such as onerous auditing requirements.
- In general, with the various LRCC reforms, at the time of introduction of the chemical the regulatory burden is reduced, but annual reporting has significantly increased the ongoing regulatory compliance and red-tape burden for industry.
- Irrelevant data is often requested and it is frequently considered that the level of assessment is greater than the level of risk.
- An average of thirty-eight percent (38%) of assessments required unique Australian data.
- There would be advantage in streamlining and co-ordinating the activities of the different regulatory agencies, especially in terms of determining which agency is actually responsible for any given product or situation.

These findings illustrate the opportunities for reform of NICNAS requirements, and as such the PC has crafted a series of draft recommendations to address these concerns which industry supports. ACCORD is disappointed however that NICNAS is still maintaining a cautious approach to reform and that many of the unfinished reforms from earlier work are yet to be addressed. This issue will be addressed later in this submission.

A key finding to note from this survey is the negative impact on smaller enterprises.

The volume and complexity of regulation often requires commitment of dedicated resources within companies. For larger companies this often takes the form of in-house regulatory compliance experts. Smaller companies are often at a disadvantage dealing with this complexity because their finances do not allow for the recruitment of the in-house experts employed by larger companies.

Case study: the regulatory burden on Australian chemical manufacturers

The scope of the regulatory burden
*To better understand the full scope of regulation applying to Australian manufacturing businesses it is helpful to remember that these businesses take **raw material inputs** and subject them to a **manufacturing process** to **fabricate a product for sale**.*

Regulation is applied at all stages on the inputs, the process itself and the outputs or finished products.

*For our sector, regulation applying to **manufacturing inputs** includes:*

- *raw material regulatory approvals, via NICNAS, for ingredients not already on the Australian Inventory of Chemical Substances (AICS)*
- *transport of raw materials*
- *storage of raw materials*
- *placarding and hazard communication*
- *packaging specifications (for both the packaging of the raw materials and the packaging that will be used for the finished product)*
- *water use restrictions/conditions, for the use of water in products and manufacturing (e.g. state water savings plans, if applicable)*
- *energy use conditions, for the use of energy in manufacturing*
- *record keeping and control measures for specific ingredients covered by regulation as either chemical weapons pre-cursors or illicit drug pre-cursors*
- *customs and excise requirements, e.g. fuel tax application, credits and recordkeeping for raw materials deemed to be 'fuels'*
- *any additional raw material requirements if ingredients are for use in TGA regulated products*

*Regulation applying to operation of the actual **manufacturing process/plant** includes:*

- *fire safety requirements and compliance*
- *OHS requirements and compliance, including:*
    - *training requirements for hazardous operations, e.g. confined space entry, working from heights, forklift safety, manual handling, heavy machinery use, chemical handling*
    - *health testing/monitoring of employees using certain chemicals*
    - *workplace air quality monitoring*
    - *building/process standards for operations*
    - *personal protective equipment*
    - *occupational noise control*
    - *workers' compensation*
    - *accident reporting/investigation*
    - *first-aid service provision*
- *employee and industrial relations requirements and compliance*
- *environmental requirements and compliance, including:*
    - *environmental licensing for operations*
    - *environmental planning requirements*
    - *air and water emissions requirements*
    - *noise requirements*
    - *waste requirements/licences*
    - *hazardous materials requirements*
    - *annual reporting for the National Pollutant Inventory*
    - *reporting for greenhouse (Greenhouse Challenge)*
    - *emergency preparedness*

- *Dangerous Goods requirements and compliance*
- *Hazardous Substances requirements and compliance*
- *if applicable, Major Hazard Facility requirements and compliance*
- *if applicable, Good Manufacturing Practice rules, requirements and auditing for products regulated by the TGA (e.g. medical disinfectants)*
- *general Australian business, corporations, taxation and insurance law relating to*
- *the manufacturers' Australian business operations*

*Regulation applying to the **manufactured product/s** includes:*

- *trade practices law*
- *consumer product safety requirements*
- *trade measurement requirements*
- *if for export, specific requirements of the export destination*
- *Dangerous Goods requirements for labelling, packaging, transport and storage, if applicable*
- *Poison scheduling requirements for labelling and packaging, if applicable*
- *ACCC labelling requirements, if a cosmetic/personal care product, including full ingredients disclosure*
- *product regulation requirements, if the product is covered under the scope of either the Therapeutic Goods Act (because it makes therapeutic claims or is deemed to do so, in the case of some disinfectants) or the Agvet Chemicals legislation (because it controls or repels pests or is deemed to be an agvet product, eg. dairy sanitisers)*

This list is meant to illustrate the range, volume and complexity of regulation, rather than being comprehensive list of all applicable regulation. The issue here is not that this regulation exists in these particular areas. Much of this regulation is essential. It aims to protect health, safety and the environment and these objectives are fully supported by industry. However, what greatly concerns industry are the following aspects of the current regulatory system:

- *the poor design of much of this regulation, with either:*
  - *a higher level of intervention than is commensurate for the actual level of risk that the regulation seeks to manage,*
  - *overly prescriptive requirements and interventions that impact negatively on business flexibility, or;*
  - *application of unjustified, unique Australian requirements that impact two way trade in manufactured goods (both of products and raw materials and create inconsistency with other major economies*
- *the high level of inefficient duplication across Australia's jurisdictions*
- *the high level of inconsistency of requirements between Australia's jurisdictions.*

Regulatory fragmentation and national inconsistency

The fragmentation and inconsistency inherent in Australia's current system of regulation impacting on industry has again been highlighted as a critical issue by the Business Council of Australia:

> *"The result is an economy that is subject to nine regulatory regimes, with eight states and territories each seeking to regulate in their own way, overlaid and in some cases duplicated by national regulation imposed at the Commonwealth level. From a business perspective, Australia is not one market, it is nine." (March 2008)*

Businesses operating multiple sites across Australia experience understandable frustration at the inefficiency of needing to understand and comply with different rules and requirements that are meant to achieve the same outcome.

Unique Australian requirements

With business supply chains becoming more global, issues of unjustified unique Australian regulatory requirements need to be addressed. These act against the integration of Australian businesses into these global supply chains and have negative implications for Australian export manufacturers as well as importers of new technologies that could be of use to Australian business and manufacturing.

ACCORD's member survey of impacts of NICNAS regulation, highlighted that an estimated 38 percent of assessments required unique Australian data for chemicals and ingredients already in commerce in other major economies.

Another example, which will impact many Australian manufacturers, relates to Australia's unique classification of Combustible Liquids under Australian Standard 1940, which will be referenced and thereby enforced through Australian Dangerous Goods Code 7 (ADG7) once this is adopted by the states in the near future.

Combustible Liquids are regulated in Australia for storage and handling as well as road and rail transport by bulk. Globally, Combustible Liquids are not routinely regulated. In Australia, regulation extends to Combustible Liquids Class C1 (flashpoint up to 150°C) and the open-ended Class C2 (flashpoint greater than 150°C).

This unique treatment of combustible liquids imposes an additional compliance burden on Australian manufacturing and distribution operations.

And yet the development of the ADG7 Code was part of an international process to align with UN polices and practices. When Australia participates in international fora of technical experts and then deviates from the international standard with no justification, such as removing Clause 3.4.9 from the UN DG Chapter 3.4 which effectively regulates limited quantities of consumer use dangerous goods, the question must be asked – what is, the benefit to Australian industry and/or the Australian taxpayer of such participation.

The way forward

As we have noted implementation of the PC's draft recommendations will be a major step forward in alleviating the frustrations of the burdensome nature of Australia's regulatory environment. We understand that the Ministerial Task Force is keen to progress reform in this area and the Senior Officials Working Group (SOWG) has been tasked with providing a list of priority reforms which could be implemented in the short term without adverse consequences to the longer term reform proposals put forward by the PC.

From the information provided to industry with regard to the early actions for ratification for the July COAG meeting we remain concerned that industry's case for change will be not result in demonstrated benefits to Australian industry.

It is unusual to be in the position of responding to a draft report as well as looking to implementing recommendations prior to a formal position being put by governments or COAG. While ACCORD welcomes this move we remain cautious that the long term reform agenda should not be undermined and that the PC study will not end up as other reform processes – that is, some short term achievements at the expense of long term substantial gains.

Further consideration for NICNAS reforms

For example, NICNAS in 2005 undertook to deliver a signifant reform program to industry through implementation of LRCC. Much was achieved initially but as the industry survey indicates, industry is no longer taking up many of the reform initiatives. With regard to cosmetic reforms

under LRCC a range of initiatives were introduced. The major reform was the streamlining of a number of products at the cosmetic/therapeutic interface such as the cosmetic treatment of antiperspirants, anti dandruff shampoos and some anti acne products. These reforms were welcomed by industry but achieved at a significant cost:

- Australia now has a unique definition of cosmetic and it is no longer consistent with that used in the Trade Practices Act;
- With regard to the treatment of cosmetics, NICNAS is now a products based scheme for this group of products and not just a notification and assessment scheme for chemical entities;
- the cosmetic standard has introduced a higher burden on certain products for testing than existed previously under the TGA's Excluded Goods Order;
- commonly used cosmetic ingredients which are listed on the ARTG and in commercial use have not been transferred to the AICS and are now not able to be used by industry without new assessment despite assurances that there would be a process for the transfer of these ingredients as part of the reform process;
- failure to establish a cosmetic advisory group to provide advice on cosmetic regulatory issues; and
- no advice to industry on the management of cosmetic claims - despite industry seeking engagement with NICNAS since November 2007.

Industry has raised these issues with NICNAS on a number of occasions. We would have thought that COAG's call for early ratification of reform measures would have provided NICNAS with an ideal opportunity to address these concerns in a proactive and positive way.

In its draft report the PC makes a number of comments regarding NICNAS's operations – these have not been framed as recommendations as such, but could be taken as indications of additional areas for reform. ACCORD supports the PC's consideration regarding the need for statutory time frames to apply to all NICNAS assessment processes. ACCORD notes that while statutory time frames exist for assessments undertaken as priority existing chemicals (PECs), currently some reviews have still not reported their findings some 5 years after commencement.

The issue of confidentiality provisions is of concern to ACCORD members. In the past ACCORD sought legal advice in relation to amongst other things, NICNAS's power regarding confidentiality of information. The advice provided to ACCORD was that the application fee NICNAS charges for an applicant to claim confidentiality was considered very high. At that time it was $609 and was thought to be unusual that the character of confidentiality was made dependent upon whether a fee was paid or not.

Further it was advised that it was objectionable that an official was given the power to determine a critical right of a person such as confidentiality as such matters are usually reserved for the courts. Finally the advice indicated that the ICNA powers regarding treatment of confidentiality may be in conflict with that of the requirements under the *Privacy Act 1988*. While this was a matter ACCORD had intended to take up with NICNAS given that the PC has raised it as an issue in its draft report we have taken the opportunity to raise some additional matters which the PC may want to take into consideration prior to finalising its comments on this matter.

Consolidation of chemical assessment regimes

The PC discusses the possibility of consolidating the risk assessment functions of NICNAS and the APVMA as a longer term consideration. ACCORD notes that in the PC's discussion of national hazard and risk assessment in Chapter 4, there is no consideration given to the consolidation of exposure assessments undertaken by the ASCC with that of the proposed new scientific assessment body. ACCORD suggests that consideration be given to the ASCC's work

in relation to exposure standards for workplace chemicals. ACCORD believes that there would be benefits from consolidating this area of work within a scientific assessment body rather than a policy and standards setting body such as the ASCC.

ACCORD welcomes the opportunity to provide comment on the initial findings of the PC study and its draft recommendations. We recommend that the PC in its final report provide COAG and the Ministerial Task Force with an implementation strategy for achieving a national reform program to deliver on the government's promise of a streamlined and harmonised system of national chemicals and plastics regulation.

Should you wish to discuss further any of the matters raised in this submission please do not hesitate to contact me on 02 9281 2322.

Yours sincerely

Bronwyn Capanna
Executive Director

6 May 2008

PC Draft Recommendation	ACCORD response
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: o 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 o address emerging issues, such as nanotechnology o oversee the consistent application of chemicals hazard and risk-assessment methodologies o make recommendations for specific actions by individual ministerial councils.	ACCORD partially supports Draft Recommendation 3.1 ACCORD believes that a long term ongoing whole-of-government and COAG commitment is required to achieve significant reform for chemicals regulation in Australia. In our submission we argued that fundamental change in the way chemicals are regulated in Australia was required and this can only be achieved by championing a reform process. ACCORD is unsure whether the Health Ministers would be such a champion given their other priorities and the COAG reform agenda for health. COAG's continued oversight for at least a five year period is required to ensure that real reform is achieved on a long term basis and that reforms are not cherry picked and implemented by regulators as has been common past practice in response to major inquiries established by previous governments. Given the reticence to date by regulatory agencies to implement a reform program of consequence it is essential that COAG continues to be the main oversight body with the Business Regulation and Competition Working Group charged with delivering **a streamlined and harmonised system of national chemicals and plastics regulation.** To date, despite the direction given by the Ministerial Task Force for some tangible results, the regulatory agencies have been loath to implement even those recommendations arising from the Banks Review and endorsed by Government some two years ago. There has been no progress to date and while the PC recommendations if implemented would be a quantum leap forward, industry remains skeptical that much of significance will be achieved in the absence of strong oversight and accountability through regular reporting against agreement reform outcomes. The establishment of an influential and committed oversight body which champions reform would be a positive step in taking forward a program

	of work with a long term strategic view of how chemicals and plastics should be managed in Australia over the next 10 to 20 years.
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.	ACCORD supports Draft Recommendation 4.1 ACCORD notes that NICNAS's revenue and staffing have increased significantly since the introduction of mandatory registration. NICNAS indicated an accumulated reserve for 2007-08 of around $3M. The majority of NICNAS's funding now comes from registration fees and not from its notification and assessment of new chemical entities. The accumulated revenue from registration fees supports a large range of activities some of which are clearly in the public interest and as such should be funded by Government. In the absence of any rigorous exercise of cost benefit analysis industry will continue to pay for services from which they receive little benefit. As ACCORD's industry survey on NICNAS operations indicates, there is a large degree of dissatisfaction with NICNAS's operations and industry has the right to expect improved efficiency and effectiveness in its day to day operations. We note that net benefit considerations have been a requirement since 1996 as part of the government's decision to require regulation impact assessments for all regulatory decisions including quasi-regulation. It is clear that more direction is required as to how regulatory agencies would quantify this in a meaningful way. Regulatory agencies appear to be devoid of any understanding of how industry operates and how their decisions may adversely impact on the day to day operations of business. This view regarding bureaucracies' failure to understand the impacts of its decision making on the regulated sector has been recently formally recognised by the Scottish Government which now requires bureaucrats to engage directly with business in the making of their regulations. More rigorous analysis of the costs and benefits of NICNAS activities

	may lead to a more streamlined and efficient system which is seen to deliver benefits to the regulated industry while also maintaining public health and safety objectives. For example industry has raised concerns for some time with the compliance burden which annual reporting poses. NICNAS has accumulated reports and amassed significant data for a number of years now but there has been no analysis of the chemicals which are brought in under these exemption categories. An analysis of the data would demonstrate if there is a net benefit from the collection of this data. ACCORD believes that a simpler approach would be to require notification of chemicals which meet the exemption requirements. If an issue arises in relation to the notified chemical NICNAS will have the necessary information required in order to take the appropriate action. A simple notification system is more cost effective and reduces the compliance burden but could still deliver the same health and safety outcomes. In the absence of any analysis and reporting on the benefits of annual reporting, industry must question why this requirement continues. We note that the *Agricultural and Veterinary Chemicals Act 1994* recognises *et a*l: *(c) that the furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and of a domestic industry for manufacturing and formulating such products, are essential for the well-being of the economy and require a system for regulating such products that is cost-effective, efficient, predictable, adaptive and responsive; and* ACCORD supports a similar recognition of the value of the chemical industry which could be an additional object in the ICNA Act to promote the growth and sustainability of the chemical industry for Australia.

Draft Recommendation 4.2 The role of NICNAS should be limited to the scientific assessment of the hazards and risks of industrial chemicals.	ACCORD supports Draft Recommendation 4.2 Clearly defining the role of NICNAS as the scientific assessment body and removing its limited regulatory powers would allow NICNAS to focus and improve on its main role as the scientific assessment body for the notification and assessment of chemical entities. The ICNA Act requires a fundamental re-write as we note that the legislation in its current form has not enabled the full implementation of the many of the LRCC reforms. The scientific body should be able to adopt international practices and have the ability to mutually recognise regulatory assessments from recognised comparable bodies as well as be able to recognise and/or adopt international standards, for example many regulatory agencies have adopted the International Fragrance Associations (IFRA) Code of Practice for the manufacture and handling of fragrance materials. In Australia industry is required to notify and assess all new chemical entities even if they are included in the IFRA Code and used widely in comparable countries. Adoption of the IFRA Code would allow Australian industry to harmonise with international practices and not be at a disadvantage with many of its competitors.
Draft Recommendation 4.3 A technical advisory committee should be established within NICNAS, as a statutory requirement.	ACCORD supports Draft Recommendation 4.3 A stronger internal governance structure achieved by formalization of existing and proposed new consultative mechanisms would improve the consistency of decision making as well as allowing the decisions to be less risk averse.
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	ACCORD supports Draft Recommendation 4.4 ACCORD supports a risk management approach to regulating chemicals. NICNAS to date has maintained a strong focus on assessment of new chemicals, even when they pose low risk (e.g. high molecular weight polymers, low volume chemicals). Broadening their focus to include existing chemicals where they pose a higher level of risk than new chemicals and reducing the regulatory requirements for

○ 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.	low risk new chemicals is in line with good risk management principles. All three suggestions put forward by the PC (screening, using simulation techniques and recognition of assessment schemes in a range of different countries), would help to speed up the process of existing chemicals review, if they are implemented by NICNAS with the risk management approach in mind. Currently NICNAS reviews and to some extent re-assesses substances approved in Canada, submitted to NICNAS under the 'approved foreign scheme' rather than mutually recognising the decision of a competent authority. If this risk averse appoach is also carried out for the existing chemicals review, then this review process will achieve little over a considerable period. ACCORD is of the view that if an assessment has been performed by a competent authority in a country with equivalent and/or comparable regulatory controls then it should be accepted without further assessment. ACCORD notes that a review of existing chemicals is in the public interest and as such ACCORD supports the PC recommendation for budget funding of the existing chemicals review. We note from the experience of the Canadian Government that to undertake an exercise of this magnitude requires significant resources above that which NICNAS currently receives in registration fees from industry. There is a broader public interest, as many chemicals used in every day products may fall into this review program.
Draft Recommendation 4.5 An objective of the National Registration Scheme for agricultural and veterinary chemicals should be to maximise net community benefit, and its assessment requirements and outcomes should be supported by analysis of the associated costs and benefits.	ACCORD supports Draft Recommendation 4.5

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: o the new national regime contains appropriate exemption provisions and is administered at state and territory level, to allow adequate flexibility to address local issues o there is a commensurate reduction in regulatory burden at state and territory level.	ACCORD supports Draft Recommendation 4.6
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: o 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 o 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.	ACCORD partially supports Draft Recommendation 5.1 and urges COAG to make the implementation of ACCORD's revised recommendation one of its early priorities. ACCORD has been arguing for a considerable period of time that all jurisdictions should commit to separate the scheduling of chemicals from that of medicines and should implement the decisions of the National Drugs and Poisons Schedule Committee (NDPSC) without variation and nationally harmonise those consequences that are linked to scheduling e.g. storage requirements, licensing arrangements. The one area where ACCORD has some reservations with the PC's Draft Recommendation 5.1 is the proposal that the Poisons' Standing Committee be a decision making body. We believe that it should be an advisory body to the decision maker who is a delegate of the Secretary of the Department of Health and Ageing. Additionally currently industry has direct representation on the NDPSC. Under the new proposal of expert representation industry would need to be assured that the relevant experts had sufficient expertise and knowledge in industry issues and that strong consultation mechanisms were put in place to ensure appropriate industry engagement in the decision making process.

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.	ACCORD supports Draft Recommendation 5.2 and urges COAG to make implementation of this recommendation one of its early priorities. ACCORD supports uniform adoption of regulatory decisions and urges COAG to implement processes to achieve this as soon as possible. To date direct referencing by the states and territories of Commonwealth powers appears to be more successful in reaching uniformity in a timely and consistent manner than either the model or template legislation approach. Further it is not just uniform adoption of scheduling decisions but also uniform implementation of consequential decision which may arise for scheduling decisions such as storage and handling for S5 and S6 products and licensing for S7 products as advised previously to the PC in our original submission. There needs to be strong oversight of jurisdictional adoption of decisions made at the national level with strong justification for opt out of national decisions and financial penalties applied for non conformance. This monitoring system could be developed through the appointment of an independent statutory officer holder under the auspices of the COAG Reform Council. The Statutory Office Holder would have the power to penalise jurisdictions for non conformity to agreed outcomes as well as naming and shaming regulatory agencies failing to deliver on COAG's agreed reform agenda. This principle of penalising agencies for any non conformity with scheduling decisions should be applied to all variations from agreed national decisions including standards, model and/or template legislation.
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.	ACCORD supports Draft Recommendation 5.3 ACCORD recommends that industrial workplace requirements reciprocate through acceptance of scheduling of poisons in a domestic setting.

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.	ACCORD supports Draft Recommendation 5.4 ACCORD does however seek assurances from the PC that what is meant by the broadly based hazard identification system is based on hazard identification of consumer products and not chemical entities and as such the recommendation may require some amendment to remove any ambiguity and to fit within a risk management framework.
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.	ACCORD supports Draft Recommendation 5.5
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.	ACCORD supports Draft Recommendation 5.6 and urges COAG to implement this recommendation as one of its priorities.
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.	ACCORD supports Draft Recommendation 5.7 and urges COAG to implement this recommendation as one if its priorities.
Draft Recommendation 5.8 The Ministerial Council on Drug Strategy should develop illicit drug	ACCORD supports Draft Recommendation 5.8 Again, ACCORD seeks assurance that the expert body is appropriately

precursor regulations for adoption by reference by all jurisdictions. The associated risk-based schedule of chemicals and apparatus subject to the regulations should be maintained by a committee of experts overseen by the Ministerial Council, and also be adopted by reference in each jurisdiction.	qualified to represent the interests of industry and that appropriate industry stakeholder engagement strategies are adopted.
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.	ACCORD supports Draft Recommendation 5.9
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: o 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 o 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.	ACCORD supports Draft Recommendation 6.1
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	ACCORD supports Draft Recommendation 6.2 and urges COAG to agree to this recommendation as one of its priorities. ACCORD also believes that until 2015, Australia should be actively working towards the version of GHS that will be acceptable to our major

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.	trading partners, rather than amending UN GHS to incorporate old Australian regulations without good justification. ASCC must prove its case for any additions to the UN GHS, with sound cost/benefit analysis. Australia should work towards a truly unified and seamless workplace hazardous chemical management system, rather than having separate workplace hazardous chemicals and workplace dangerous goods regulations written into one standard, as it is in the Draft National Standard for the Control of Workplace Hazardous Chemicals released in September 2006. This standard is an attempt by ASCC to implement GHS. However, as it stands, it advocates adoption of GHS criteria which will regulate a wider range of products as hazardous chemicals, while still maintaining GHS incompatible aspects of the existing system. This shows the risk averse attitude of ASCC, where they are loath to lessen any existing regulatory burden even when it is only to bring it in line with international standards (e.g. combustible liquids), while at the same time eager to adopt more rigorous parts of the international standards. Products that are exempted from hazard labeling, such as cosmetics, therapeutic goods, food and agricultural chemicals when packed and sold as end use product, will be subjected to hazard labeling according to the *Draft National Code of Practice for the Labelling of Workplace Hazardous Chemicals* if it is related to work activity. This is neither logical nor practical. The decision to apply hazard labeling or risk based labeling should be made with the safety of the end user in mind, which should include the end user's understanding of hazard and risk based communication. Phrases such as *"Avoids contact with eyes. If in contact with eye wash with plenty of water."* is likely to mean more to a consultant at a makeup counter using a face cream or to a masseuse using massage oil, than an exclamation mark pictogram, word "WARNING" and all related hazard and precautionary statements, which is likely to cause unnecessary panic. Similarly, consumer products are only exempt from hazard labeling, where it is **reasonably foreseeable** that the hazardous chemical will not be used in the workplace in quantities greater than would be

	expected during **normal household consumer use**, or in a manner inconsistent with intended household consumer use, or in a manner that is other than **incidental to the main work activities** of the workplace. There are a number of issues with inclusion of consumer products for hazard based labeling. Firstly, the use of such vague terms does not help the industry in determining the requirements of the code. Secondly, whether a dish washing detergent is supplied in 500ml bottle or 5L bottle, the person using the product is likely to understand risk based labeling better, simply because of the technical nature of hazard based labels. Risk based labeling would also allow statements for manual handling warnings for 5L bottle if it is considered necessary, while hazard based labeling would not. Third and lastly, there are current national and international discussions on how to implement GHS for consumer products. By trying to implement GHS for consumer products without proper consideration of these discussions and organizations involved in these discussions, ASCC is undermining international efforts at harmonization and ignoring the role of responsible regulatory bodies such as the NDPSC. At this point in time, a positive step forwards in the adoption of GHS in Australia, is to take a step back to examine what we want to achieve from adoption of GHS. We should be aiming to achieve; • An internationally recognized and utilised system of classification and labeling, adopted uniformly throughout Australia, and • A single workplace hazardous chemicals system. These aims can be achieved by; • Actively engaging in international and national discussions on GHS, including discussions on the scope of GHS implementation, • Being open and innovative, • Letting go of idiosyncratic “Australia only” regulations such as combustible liquids, and • Adopting the approach of implementing minimum regulation to ensure public safe (this can be done by adopting minimum required building blocks of 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.	ACCORD supports Draft Recommendation 6.3 ACCORD recommends that the new system also recognise labels approved by the TGA and ACCC for consumer products.
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.	ACCORD supports Draft Recommendation 6.4 Further ACCORD notes that the Government has initiated a review of OHS legislation with a view to achieving harmonisation within the next five years. ACCORD supports the introduction of a national OHS system over a harmonised system as experience has shown model or template legation does not achieved the desired outcome of adopting national consistency in a timely manner. However the work of the review team to develop a national model OHS regulatory system will be of enormous benefit in moving towards a national OHS system in the longer term. The Statutory Office Holder as referred to 5.2 could also have oversight responsibility for monitoring deviation from nationally agreed to OHS decisions including legislation, regulation and codes of practice with powers to penalise and name and shame.
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	ACCORD supports Recommendation 7.1 and urges COAG to implement this recommendation as one of its priorities. ACCORD has identified some additional issues which should be brought to the attention of the NTC prior to jurisdictional adoption. Firstly, the 7th Australian Dangerous Goods Code (ADG7) should be a template, not a model regulation. Inconsistent adoption by the states

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.	and territories of the model legislation is more likely than template legislation. Nationally consistent Australian Dangerous Goods regulation is vital for seamless movement of goods across state and territory borders. Other than the move from template to model regulation, ACCORD is concerned with two areas of ADG7. These are: • Inner package labelling, and • Removal of Limited Quantities Exemption. By regulating inner package labelling which is not visible during transport, ADG7 crosses the line from regulating transport of dangerous goods to regulating storage and handling of dangerous goods, which is now the responsibility of the ASCC. This is an inappropriate use of the ADG7 and it undermines the responsibilities of the ASCC. Any concerns over the identification of the product in case of an accident can be addressed by having inner labels compliant with appropriate labelling standards (e.g. workplace hazardous substance, SUSDP). ADG7 has omitted (<Reserved>) clause 3.4.9 from UN Chapter 3.4. *"3.4.9 Limited quantities of dangerous goods for personal or household use, that are packaged and distributed in a form intended or suitable for sale through retail agencies, may furthermore be exempted from marking of the UN number on the packaging and from the requirements for a dangerous goods transport document."* No clear and tangible justification has been given for omitting this clause. NTC must prove their case if they wish to move away from internationally accepted standards and add regulatory burden to Australian industry. NTC has gone against the COAG *Principles of the Best Practice Regulation* by introducing these changes without establishing a case for the need of these changes, not consulting the affected stakeholders and moving away from internationally accepted standards.

	These changes have now been implemented by Western Australia, and other states and territories are likely to follow suit. This will lead to increased cost of labeling by the consumer goods and cosmetics industry, which will lead to increased cost of goods.
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.	ACCORD supports Draft Recommendation 7.2 ACCORD notes though that in supporting the PC draft recommendation the NTC is required to improve its stakeholder involvement in its policy development process. The NTC should take on board stakeholder concerns and give cost/benefit justifications for all of their final decisions, especially where they deviate from the UN model regulations. ACCORD does not support responsibility for policy and governance arrangements for the transport of dangerous goods referred to another body. The NTC is Australia's premier transport authority and as such should continue to have responsibility for all aspects of transport within a national transport system. ACCORD supports the development of national transport system for the movement of dangerous goods through the referral of powers by the states and territories to the Commonwealth. A national system has many benefits including improved compliance and lower costs as there is only one system and not nine.
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.	ACCORD supports Draft Recommendation 7.4. ACCORD believes that ready availability of the Code will increase the understanding and compliance to the Australian Dangerous Goods Code. As a matter of principle all documents which are used as regulatory tools and/or guidance should be freely available including the SUSDP.

8. Environment protection	
Draft recommendation 8.1 The Environment Protection and Heritage Council (EPHC) Chemicals Working Group should continue to assess the need for a national framework for the management of chemicals in the environment. If this work demonstrates that such a framework would improve effectiveness and efficiency, the Commonwealth, state and territory governments should negotiate an intergovernmental agreement to create an independent standard-setting body reporting to the EPHC. o 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. o 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.	ACCORD supports Draft Recommendation 8.1 and the processes it outlines. As highlighted in our submission to the Commission, the case put by the EPHC Working Group for NChem has not been compelling in terms of quantifying tangible environmental problems relating to chemicals – most examples presented were either legacy issues or matters which were (or could be addressed) through more effective use of existing controls and regulations. ACCORD recommends that the Commission highlight the need for the EPHC Working Group to clearly demonstrate in a quantifiable manner that the costs of any proposed standard-setting body would not be greater than the expected benefits.
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.	ACCORD supports Draft Recommendation 9.1
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: o removing major inconsistencies in reporting requirements	ACCORD supports Draft Recommendation 9.2

○ 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.	
Draft Recommendation 9.3 State and territory governments should not add any additional security sensitive chemicals to the current security sensitive ammonium nitrate regulations.	ACCORD supports Draft Recommendation 9.3
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.	ACCORD supports Draft Recommendation 9.4 noting the current high level of industry engagement in the design of this policy framework. It is recommended that the Commission reiterate the need for ongoing engagement with relevant industry bodies to address this specific risk. There are two main reasons why this will be critical. Firstly, criminal activities, such as deployment of chemicals for terrorist acts are difficult to predict with certainty. Clearly, terrorists and other criminals want to use the element of surprise and this means the 'threat' is often hard to pin down. Command and control type approaches are unlikely to be effective in these cases. Flexibility is needed and this means the framework must have as its centerpiece a strongly engaged and alert industry. Secondly, industry involvement is critical to ensuring that the level of intervention required does not impose undue and unwarranted costs or impediments to legitimate and important commercial activity.