Supplementary Submission to the Productivity Commission's Study into Chemicals and Plastics Regulation made by the EPHC's NChEM Working Group

January 2008

Reducing the regulatory burden

The Environment Protection and Heritage Standing Committee (EPHSC) submission to the Productivity Commission highlighted the environmental gap in chemicals management in Australia. This supplementary submission aims to expand briefly on how implementing the regulatory reforms proposed under the National framework for Chemicals Environmental Management (NChEM) would result in increased regulatory efficiency and a net reduction in regulation, thus reducing the regulatory burden. Chemical case studies are also provided to demonstrate how system and process improvements under NChEM will achieve improved chemical environmental management outcomes.

Achieving an efficient national system for chemicals environmental management

NChEM proposes a **simple, linked and nationally consistent regulatory system** for managing the environmental risks of industrial chemicals. Key elements of the legislative model proposed under NChEM (discussed in greater detail in the EPHSC submission) are:

- Increased NICNAS powers to specify mandatory environmental controls arising from their risk assessment processes. For a chemical of high environmental concern this could include banning, phasing out, or strictly controlling its use, if NICNAS' risk assessment process identifies an unacceptable risk of environmental harm. *(This would replace the current system whereby NICNAS simply makes 'recommendations' on environmental management actions, which - being often unclear, non-specific or voluntary - may then be implemented in jurisdictions inconsistently, in an ad hoc manner or not at all)*.
- Automatic consistent adoption of any environmental controls arising from NICNAS' risk assessments across all States and Territories.
- Use of existing State/Territory regulatory tools (e.g. licensing) where feasible. This would ensure regulatory efficiency and consistency with existing environmental protection frameworks. There may be some streamlining and modification to ensure the tools available are consistent and appropriate across Australia.
- Provision for jurisdictional exemption, but only under exceptional circumstances.

There are several viable options for a legislative mechanism to achieve this outcome and the most cost-efficient and compatible approach would be agreed following a determination by governments to adopt such a regulatory model.

It is clear that while implementing NChEM's proposed regulatory model will require up-front legislative modifications, in **net** terms it will result in **less regulation**. To clarify:

- Firstly, it is evident that there will be an initial set-up cost to Australian governments to amend legislation and reflect these changes operationally in the relevant government agencies. As for all regulatory changes, there may also be a limited up-front cost to industry to understand and adapt to the new regulatory framework, although the focus on using existing State and Territory regulatory tools, with which industry are familiar, will minimise any real costs.
- Following its establishment, the improved regulatory framework is expected to result in **significant long term cost savings and a reduced administrative burden**, above all as a result of reduced industry compliance costs and enhanced government administrative efficiencies. These long term benefits are explained further below:
    - As many industry submissions to the Commission's Study have indicated, a significant cost to industry of the current regulatory framework is the inconsistent

and fragmented approach to managing chemicals across jurisdictions. The NChEM model provides regulatory certainty and clarity to industry and ensures national consistency, which will result in reduced compliance and operating costs for industry.

- A reduced administrative burden to governments over the long term is expected because a direct and clear link to the NICNAS/Commonwealth level chemical assessment system would be created, resulting in more efficient State and Territory level management action and enhanced national coordination in implementing environmental controls and managing environmental risks. Any Regulatory Impact Statement (RIS) or impact assessment process deemed necessary (e.g. for significant chemical controls such as a chemical ban) would only need to be undertaken once, at the national level, leading to additional administrative cost and time savings.
- Less tangible, but equally important, are the additional cost savings to the broader community that may be expected from more efficient and jurisdictionally consistent action on high risk chemicals and a more pre-emptive response to preventing and managing detrimental chemical impacts on human health and the environment that can otherwise be costly to remedy after the event.

- It is not essential that any new primary legislation is introduced in order to achieve the proposed regulatory objectives (though legislative modifications would be required) and hence it is possible to maintain a 'one in, one out' approach and satisfy governments' red tape reduction agenda.
- Based on current trends, a 'without NChEM' or 'business as usual' scenario would be expected, in contrast, to result in a spiralling of the inefficient, inconsistent and ad hoc cross-jurisdictional regulatory approaches we have seen to date for industrial chemicals environmental management. That is, a 'without NChEM' scenario would over time continue to increase the costs to industries operating nationally and the administrative burden on Australian governments. This might encompass a steadily increasing burden of ad hoc regulation on different individual chemicals and issues and increasingly divergent legislative responses across jurisdictions (especially since jurisdictions might be expected to continue to take a reactive approach to chemical issues in response to local domestic incidents or international developments due to the ongoing absence of a strong national driver).

In summary, NChEM's proposed regulatory model will streamline and increase the efficiency of Australia's chemicals environmental management regulatory framework, thereby reducing 'red tape' and generating long term net cost savings to the Australian economy.