
OVERVIEW

Key points

- Chemicals and plastics contribute to our wellbeing, but some can pose substantial risks to health and the environment. Government intervention to manage risks is warranted where benefits materially exceed costs.
- Chemicals regulations are generally grafted onto (differing) state and territory Acts that deal with public health, workplace safety, transport safety, environment protection and national security.
- Current regimes are broadly effective in managing risks to health and safety, but are less effective in managing risks to the environment and national security. Efficiency can be improved through national uniformity in most areas.
- The Commission proposes building a governance framework that enhances national uniformity by addressing failures at four levels.
- *Level 1 — policy development and regime oversight.* A national function through ministerial councils supported by intergovernmental agreements:
 - chemicals policy coordination should be supported by an officer-level, cross-council standing committee on chemicals.
- *Level 2 — assessment of chemical hazards and risks.* An Australian Government science-based function undertaken under statutory independence:
 - the industrial chemicals agency should undertake assessments, not set risk management standards.
- *Level 3 — risk management standards setting.* A national function by expert-member agencies operating within the policy frameworks of the ministerial councils:
 - poisons scheduling should be separated from drugs
 - maximum residue levels for domestically produced foods that are set by APVMA should be automatically included in the food standards code, with right of change by FSANZ and the Australia and NZ Food Regulation Ministerial Council
 - while replacement of the workplace safety agency (ASCC) by an independent agency is supported, it should not be a tripartite representative body
 - the effectiveness of new model regulations for transport needs to be monitored
 - an environmental risk management standards body should be established
 - risk management of chemicals of security concern (including ammonium nitrate) should adopt the Commission's governance framework.
- *Level 4 — administration and enforcement.* Generally jurisdiction specific:
 - all standards should be adopted in a uniform or nationally consistent manner by administering agencies
 - control of use of agvet chemicals should be consolidated under the APVMA but delivered through service level agreements by the states and territories.
- Australia should defer adopting the Globally Harmonised System of Classification and Labelling of chemicals until the benefits from trade can be demonstrated.

Overview

This study examines Australia’s system of regulating chemicals and plastics. In particular, it:

- examines the four main areas of public policy concern that relate to the hazardous nature of some chemicals — public health; workplace (including agricultural and veterinary (agvet) and transport) safety; environment protection; and national security
- assesses the efficiency and effectiveness of current institutional and regulatory frameworks
- proposes a redesigned regulatory structure, including options to enhance national uniformity and consistency.

The Commission finds that the current institutional and regulatory arrangements are broadly *effective* in managing the risks to health and safety, but are less effective in managing risks to the environment and national security. *Efficiency* could be enhanced by: national uniformity in some regulatory areas; by reducing costs and delays in obtaining regulatory approvals; and by attaining economies of scale in regulatory administration.

Chemicals regulation is not a strong unifying theme in its own right, as it is one of many issues in the broader areas of health, safety, environment and national security. Some parts of the regulatory framework are functioning well, and under the Commission’s proposals would serve as foundation blocks for building a more coherent and efficient approach. The Commission has proposed a suite of inter-related reforms for the less well-functioning parts of the framework. These reforms would also serve to reduce and simplify the regulatory burden on businesses.

More substantial and timely reform will require firm commitment by government leaders, incentives to governments to undertake the changes, and arrangements that enable them to collectively achieve greater national efficiency, while responding to their own electoral accountabilities.

Background

In 2005-06, the chemicals and plastics industry accounted for about 9 per cent of manufacturing value added in Australia and about 1 per cent of gross domestic product (ABS 2007a, 2007b). About one third of the industry's economic activity was attributable to basic chemicals, and a similar proportion to plastic products. In 2001-02, nearly three quarters of its output was used as an input in other sectors (ABS 2006b). The products range from basic industrial chemicals to agricultural pesticides, household cleaners and cosmetics. This study does not cover petroleum and coal products (including the refining and manufacture of fuels), or medicinal and pharmaceutical products.

There are several grounds for government policy intervention in this industry. There are significant externalities and information asymmetries concerning the risks associated with the hazardous (toxic, flammable, corrosive or explosive) nature of some of the chemicals or products which contain them. There is also a public good argument that protection of public health, the environment and national security is underprovided by the private sector.

The policy settings for government regulation of the chemicals industry are mostly determined by ministerial councils. The Commonwealth undertakes most hazard and risk assessment, implements international agreements and regulates international trade. The states and territories typically focus on control of use. Their regulatory regimes cover: public health; occupational health and safety; the transport and storage of dangerous goods; the use of agvet chemicals; disposal; and environment protection. Local government involvement varies considerably, but is usually limited to planning and waste disposal issues. Under various initiatives, some aspects of the management of chemical risk are self-regulated or coregulated by industry.

The regulation of chemicals and plastics has long been the subject of concerns about inconsistencies, complexity and fragmentation (box 1). As a result, it became one of COAG's top ten national 'hotspots' in the National Reform Agenda, a Ministerial Taskforce on Chemicals and Plastics Regulation was formed, and the Commission was asked to undertake this study. The taskforce has already developed a range of 'early harvest' reforms — informed in part by the Commission's draft report — which have been endorsed by COAG. The taskforce will be using this final report to further develop its reform proposals.

Effectiveness and efficiency

The terms of reference for this study request the Commission to document and investigate the current system of regulation of chemicals and plastics in Australia and its divergence from accepted international standards, and report on its effectiveness and efficiency.

Box 1 Participants views

Duplication and inconsistencies in the regulatory framework were sources of concern for many industry participants:

One of the greatest impediments to Australia efficiently maintaining the health and dynamism of its chemical and plastic industries is the existence of multiple regulatory authorities. This existing system, which can at best be described as duplicative, often gives rise to inequalities between businesses across State borders, and adds to business processes and costs where businesses operate in multiple States. (Chamber of Commerce and Industry of Western Australia, sub. 23, p. 2)

There is substantial duplication of legislation and other requirements across not only state and federal government, but also within states. There is also difficulty with consistency between states. (Australian Vinyls Corporation, sub. 6, p. 1)

Essentially the chemical regulators exist in silos. There appears to be very little cross-utilisation of skills, resources, opinions and views or mechanisms and facilities ... [and] ... little action to improve consistency between and within different legislators. (3M Australia, sub. 34, p. 5)

There is significant scope at the national level for the regulation of pesticides to become more streamlined through the vertical integration of Commonwealth and state and territory regulatory regimes. (Croplife, sub. 35, p. 16)

... often variations in State and Territory Regulation may result from an attempt to convert an **inappropriate national product** like the COAG Principles on SSAN or an ASCC National Standard into regulation ... if we are to eliminate variation in state and territory regulation, then we need to change our national development processes, so we prepare national legislation that can either be adopted by template by the states, or simply have the states administer the national legislation. (PACIA, sub. 33, p. 5)

Other stakeholders have raised concerns about gaps in the regulatory framework:

The major concern I have about Australia's regulatory system for chemicals and plastics is the lack of attention to human health impacts and the resultant disregard that is displayed. (Australian Chemical Trauma Alliance, sub. 9, p. 1)

... there is currently no statutory mechanism to require the States and Territories to implement a NICNAS environmental risk assessment recommendation, or to implement it consistently across jurisdictions. (EPHSC sub. 20, attachment 2, p. 1)

... it is generally acknowledged that many of the perceived gaps in Australian environmental regulation of chemicals will be resolved through better inter and intra-governmental information sharing and collaboration involving NICNAS, federal and state OH&S agencies and federal and state environment agencies. (ACCORD Australasia, sub. 42, p. 13)

The Commission has identified only a limited number of direct assessments of the effectiveness of the chemicals regime in achieving the required health, safety, environment and national security outcomes. Indirectly, inferences can be drawn from an array of available statistics on public health outcomes and reported work safety incidents. Environmental outcome measures are generally restricted to location-specific research, although ‘state of the environment’ reporting is progressively improving. There is little publicly available data on national security outcomes, and little inference can be drawn as to the contribution made by the regulation of security sensitive ammonium nitrate.

The efficiency of current regulations is assessed by considering the potential for alternatives — including reliance on generic regulations — to achieve greater community wellbeing. Overall, there is a paucity of comprehensive and accurate data on administration and compliance costs, and much of the evidence on opportunity costs for firms from delays, impediments to innovation and barriers to entry is anecdotal. There are some claims that new and safer products are not entering Australia due to the high regulatory costs, thus denying consumers and the environment the benefits that would result. The current arrangements are also claimed to reduce competition between suppliers.

The paucity of hard evidence is not unexpected. In the main, firms do not set up their accounts to record the incremental costs imposed by specific regulations, or to net out the costs of activities they would have undertaken irrespective of the regulatory requirements. Similarly, it is difficult to calculate the excess burden of inefficient regulation because there is no clear benchmark of best practice for comparison.

National and international uniformity

The study was required to identify ‘options to enhance national uniformity and consistency’ and investigate the costs and benefits of diverging from international standards. This presumption in favour of a national system carries through to the terms of reference of the COAG Ministerial Taskforce on Chemicals and Plastics Regulation, which has been requested to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation.

A case can be made for national uniformity in setting broad policies, undertaking hazard and risk assessments and setting risk management standards and codes.

- A single policy framework recognises the reality of our single national economy: inter-jurisdictional businesses, workers, training bodies and government

authorities avoid the costs associated with multiple regimes, and compliance can be enhanced.

- A uniform national system can be more easily integrated into emerging international arrangements — such as the United Nations’ Globally Harmonised System of Classification and Labelling of Chemicals (GHS) — and facilitate international trade.
- There is little need for technical standards to vary across the jurisdictions — chemical hazards and assessment methodologies are universal and, although risks can vary by location and use, appropriate flexibility can be incorporated into a national regime.
- Interstate trade is more efficient when there is a uniform approach to the transport, labelling and control of use of chemicals and products.
- Given the specialised nature of the skills needed for formulating policy, undertaking chemical assessments and setting standards, national agencies can harness economies of scale and scope.
- Without uniformity, national security could be compromised by inadequacies of regulation or administration in one or more of the jurisdictions.

Importantly, the states have constitutional sovereignty over much of this regulatory landscape, and a national system requires their support. States and territories attach importance to their ability to respond quickly to local incidents and to manage risks in accordance with local exposure pathways and environmental conditions. These features work in favour of them administering regulation. Further, specific chemical regulations may need to vary, given that they are grafted on to the differing, generic legislative rootstocks of the individual states and territories.

The reform program must recognise that there are costs in developing and adopting nationally agreed standards, and that uniformity may not always have a net benefit, let alone be achievable. But in this area of regulation it should be the default option, with a robust case needed to explain why variations, other than those necessary to accommodate institutional differences, are required.

Assessing the regulatory framework

This study assesses the effectiveness and efficiency of the current arrangements, and the extent of national uniformity from the perspective of the four main functions of: policy formulation; chemical assessment; standards setting; and standards administration. A summary of the Commission’s approach is set out in box 2.

Strategic policy and system oversight

While COAG has established the ministerial taskforce to give focus and momentum to the reform of chemicals regulation, ongoing policy and oversighting activities will continue to be the responsibility of specific ministerial councils. These councils vary in their governance and their use of template and model legislation as means for developing national frameworks. The effectiveness and efficiency of these councils varies considerably.

Box 2 The Commission's proposed institutional and regulatory approach

- *Formulation of strategic policy and oversight of the institutional and regulatory arrangements* — a national function, to be undertaken by ministerial councils underpinned by intergovernmental agreements.
- *Assessment of the hazards and risks of chemicals* — a national, science-based function to be undertaken under statutory independence.
- *Risk-management standard setting* — a national function to be undertaken by independent statutory agencies within the policy frameworks of the ministerial councils.
- *Administration of agreed standards and monitoring of their impact* — jurisdiction-specific functions to be undertaken by their own agencies or delegated to other bodies such as national regulators.

The Australian Transport Council is one of the more effective of the councils. It oversees a jointly-funded independent statutory authority, there is a well developed intergovernmental agreement and all members are committed to implementing nationally uniform codes. This includes the Australian Dangerous Goods Code (ADG Code) — which itself is aligned with a United Nations code. Given that the ADG Code is mainly administered by work safety authorities, transport policy makers liaise with their workplace relations counterparts through a number of forums.

The Workplace Relations Ministers' Council (WRMC) — supported by the Australian Safety Compensation Council (ASCC) — has extensive responsibilities in chemicals regulation, including workplace-related chemicals policy, hazardous substances, the storage and handling of dangerous goods and explosives. The Commission notes COAG's commitment to replace the ASCC with an independent statutory body, underpinned by a strong intergovernmental agreement, and to achieve national uniformity in OHS regulation generally. This bodes well for the future development and application of workplace standards — including those

relating to chemicals — but the retention of tripartite representation on the new body and its influence on policy is still a concern.

Under the Primary Industries Ministerial Council, the ‘conferral’ of some powers to the Commonwealth by the states and territories has resulted in an effective single national regulator and a uniform approach to the management of agvet chemicals (the Agvet Code), up to the point of retail sale.

The impact of chemicals on the environment has been identified by an intergovernmental working party as a significant gap in the regulatory framework. Under the direction of the ministerial Environment Protection and Heritage Council (EPHC), the National Chemical Environmental Management framework (NChEM) has been developed, and the Council has signed off on a set of principles.

Australian governments are developing a framework for considering whether additional regulations are needed for chemicals of security concern. The recommendations arising from this study will be an input into their considerations.

At a broader level, there is a need for ongoing consideration of chemicals and plastics regulation that cuts across all of the specific areas of responsibility of the individual ministerial councils. To this end, the Commission is proposing the creation of a Standing Committee on Chemicals that would support the coordination of chemicals policy across the different regulatory silos and make recommendations to appropriate ministerial councils (table 1). The Department of Innovation, Industry, Science and Research is well placed to provide secretariat functions, but committee membership would be drawn from the standing committees of all relevant Ministerial Councils.

Hazard and risk assessment

Industrial chemicals are assessed by the National Industrial Chemical Notification and Assessment Scheme (NICNAS). It also provides (mainly) non-binding risk management recommendations regarding public health, workplace safety, and environment matters that feed into the work of national standard-setting bodies — such as the National Drugs and Poisons Schedule Committee — and to the states and territories. Adoption is voluntary, often inconsistent and tardy, and there is little by way of feedback to NICNAS. This reduces both effectiveness and efficiency and creates uncertainty for industry. The Commission is recommending that all relevant standard setting bodies be required to respond to specific NICNAS recommendations within specified time frames, and further that NICNAS be required to maintain a public schedule of these responses.

Table 1 The Commission's preferred institutional arrangements for key chemicals regulation frameworks^{a,b}

<i>Issue</i>	<i>Poisons scheduling</i>	<i>Workplace safety</i>	<i>Transport of dangerous goods</i>	<i>Agricultural and veterinary products</i>	<i>Chemicals in the environment</i>	<i>Chemicals of security concern (CSC)</i>
<i>Policy oversight</i>	Australian Health Ministers' Conference	Workplace Relations Ministers' Council	Australian Transport Council	Primary Industries Ministerial Council	Environment Protection and Heritage Council	Attorney General and nominated state and territory ministers
	NNTGC	ASCC (to be replaced)	NTC	PSIC	EPHCSC and NEPC	As needed
	Intergovernmental Agreement (IGA) required	Review effectiveness and efficiency of new body, including effect of tripartite structure, within six years	Review effectiveness of new model regulations	Negotiate national approach to control of use New IGA and conferral of powers required	IGA required — include formal voting	IGA required — include formal voting SSAN to be re-evaluated under new CSC framework
	Standing Committee on Chemicals (supports coordinated policy development and makes recommendations to policy oversight bodies)					
<i>Hazard and risk assessment</i>	NICNAS and OCS	Employers must do own risk assessment. Some reference to NICNAS/APVMA.	UN modified by NTC consultation and CAP decisions	APVMA (with OCS and DEWHA)	NICNAS and APVMA (with OCS and DEWHA)	Assessment in conjunction with security agencies
<i>Standard setting and risk management</i>	Establish separate poisons scheduling committee	Nationally uniform OHS regulations for chemicals	National Transport Commission retains administration of ADG7 for now	Add control-of-use standard setting to APVMA's roles	Establish independent standard-setting body	Risk-based measures to be developed for individual chemicals of security concern
<i>Administration and enforcement</i>	S&Ts to reference all scheduling decisions and regulations	S&Ts adopt model codes and standards in uniform or nationally consistent manner	No change to current arrangements	S&Ts administer and enforce control-of-use regs. through service level agreements	S&Ts would adopt national standards and enforce them	S&Ts uniformly adopt any agreed controls & use AusCheck for security checks

^a Other ministerial councils and policy frameworks not shown include those for food safety, therapeutic goods, drug strategy and consumer products. ^b Acronyms in this table are defined in the list of abbreviations at the front of the report.

The Australian Pesticides and Veterinary Medicines Authority (APVMA) assesses agvet chemical products and decides on their subsequent registration. It covers risks to health, environment and trade, and reviews product efficacy. APVMA differs from NICNAS in that it combines risk assessment with risk management and standard setting. The effectiveness of the agvet arrangements is enhanced by state and territory implementation — via the template Agvet Code — and their commitment to the National Registration Scheme. However, less desirably, the states and territories can also have their own, differing, control-of-use regulations.

Firms incur significant costs in having chemicals assessed, whether by NICNAS or APVMA. The costs include the expensive data requirements (which often duplicate international assessments), delays and the risk averse approach adopted by the assessment agencies. The small size of the Australian market restricts the ability of firms to recoup these costs. Accordingly, some firms claim that they are deterred from introducing new chemicals that may be more beneficial to users and the environment than the chemicals currently used.

The delays and data costs of assessments could be reduced through the greater recognition of appropriate overseas schemes, and more extensive utilisation of international data and modelling tools. Neither NICNAS nor APVMA is currently explicitly required by their legislation to manage risk within a cost–benefit framework. The Commission is recommending such a requirement to help ensure assessment costs, including data requirements imposed on applicants, are commensurate with the risks.

The effectiveness of the industrial chemicals and agvet schemes is limited given that all existing chemicals were grandfathered, without modern assessment, at the inception of the schemes. These constitute the vast majority of chemicals ‘approved’ for use in Australia. NICNAS and APVMA have programs for assessing existing chemicals, with review priorities determined on the basis of perceived health and environmental risks. So far only a tiny fraction of existing chemicals have been assessed. Initiatives to greatly accelerate the pace of review under both programs are warranted. In particular, NICNAS should improve its engagement with international existing chemical review programs, and make greater use of modelling tools.

The procedures for assessing and registering low regulatory concern chemicals are inefficient. They are time consuming and demanding and, as a result, industrial and agvet sectors are reluctant to introduce some chemicals, despite their potential benefits. However, both agencies recognise this. Much needed reform of the agvet system that will expedite the assessment process for agvet chemicals of low regulatory concern is underway. And NICNAS is scheduled to review the

effectiveness and efficiency of its own program. This is welcomed but must involve adequate stakeholder consultation if it is to address industry's concerns.

The processes for assessing chemicals in consumer articles are ineffective. The ACCC and NICNAS should enter into a formal arrangement and establish a program to actively assess consumer articles of concern.

Under the Commission's proposed approach (box 2), chemical assessment (essentially a science-based function) should be a statutorily independent process conducted at the national level, which utilises (rather than reproduces) high-integrity international data whenever possible. This raises the issue of whether the industrial (NICNAS) and agvet (APVMA) chemical assessment functions should be amalgamated. While this would achieve some economies of scale and scope, efficiencies can also be achieved through greater use of contracting out and competitive tendering. The immediate priority should be to strengthen NICNAS's capabilities, and rationalise agvet control-of-use regulation under the APVMA. In the longer term, the creation of a single chemical assessment agency that would meet the needs of all standard setting bodies, including the APVMA, should be considered.

Risk management standards

A range of approaches is used when translating policy and assessments into risk management standards, with some of the standards being more effective and efficient than others, and some falling well short of national uniformity.

The National Transport Commission (NTC) is responsible for developing legislation and technical regulations for the transport of dangerous goods, drawing on a United Nations code. The Commonwealth previously enacted template legislation that was referenced by some jurisdictions or used as a model by others. The individual jurisdictions then administer the regulatory package — mainly through their workplace safety agencies. Between major regulatory revisions, a Competent Authorities Panel of jurisdictional (mainly workplace safety) regulators helps maintain national uniformity.

However, with the seventh edition of the ADG Code coming into effect in 2008, the Commonwealth is no longer maintaining the supporting template legislation. Instead, it has issued model legislation developed by the NTC to guide jurisdictions in developing their own legislation. Industry has expressed concern about the potential for this to result in less legislative consistency than under the template approach. The Commission's preferred approach is for the continued adoption of a single code, and consistency of legislation to the extent possible. While COAG has

announced its commitment to implement the ADG package consistently, the effectiveness of the ‘model’ approach should be closely monitored.

National workplace safety model standards are developed by the tripartite Australian Safety and Compensation Council (ASCC), which, as noted, is soon to be replaced by a statutorily independent body. The states and territories have consistently implemented some standards (such as for labelling), but not others (such as the storage and handling of workplace dangerous goods). The disparate implementation is inefficient, all the more so given the significant bureaucratic and industry resources employed in developing the common standards.

The ASCC is currently developing a single set of standards to regulate all workplace chemicals. If implemented uniformly, this would simplify regulatory compliance for employers undertaking risk assessments for chemicals that are currently classified as both hazardous substances and dangerous goods. Elements of the proposed system would be based on the GHS.

So far, no country has fully implemented the GHS, although New Zealand is the most advanced. Of Australia’s other major trading partners, the EU is planning to begin implementing a GHS-based system this year. Under current conditions, implementing the GHS in Australia would impose significant costs on industry without offsetting trade benefits. As other countries implement the system, it is likely that the costs of implementation will fall and the trade benefits increase. Australia’s implementation of the GHS should be delayed until it can be demonstrated that the system would deliver a net benefit.

A case has been put to the Commission to transfer responsibility for the regulatory package governing the transport of dangerous goods to the ASCC. While there may be some institutional benefits, this would involve moving from the very effective transport framework, and the potential loss of transport expertise and profile within the standard-setting agency. On balance, retention within the transport purview is favoured at this stage, until the new independent workplace agency has demonstrated its effectiveness.

When NICNAS or APVMA assess a chemical to be a poison, it is referred to the National Drugs and Poisons Schedule Committee for a decision. Although there is no obligation on state and territory governments to follow the recommendations of the Committee, or to be accountable for their variations, poisons regulation is broadly consistent across jurisdictions. Efficiency would be improved by not only having scheduling decisions adopted by reference — as is currently being considered by the Australian Health Ministers’ Conference — but the associated regulatory controls as well. The Commission supports the proposed separation of the scheduling of poisons from drugs (medicines), but has some concerns about

scheduling decisions being made by the Secretary of the Department of Health and Ageing.

The APVMA sets maximum chemical residue limits (MRLs) in food (taking into account dietary impacts) as a way of monitoring good agricultural practice. It also makes a recommendation to Food Standards Australia New Zealand (FSANZ), which undertakes its own processes before incorporating a MRL in the Food Standards Code (for health reasons). This has been taking a year or more to occur, leaving farmers faced with the dilemma of being able to use the agvet chemical concerned, but not being legally able to sell the relevant produce during this time. A more efficient solution would be for the agvet MRL (for domestic produce) to be automatically adopted in the 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 transparent cost–benefit analysis. Based on the Commission’s draft report, COAG has agreed to adopt this reform.

Some participants have argued for additional regulation to address concerns about the environmental consequences of chemicals not used, stored or disposed of properly, and EPHC has referred this issue to the Ministerial Taskforce, which this study will inform. The case for amending legislation to require the states and territories to implement NICNAS’s environmental recommendations is not supported. The proposal lacks the appropriate governance and regulatory checks needed in a national system of regulation, and would inappropriately extend NICNAS’s role into risk management, when it should be focusing on risk assessment. The Commission recommends instead that a new environmental standard-setting body be created that would report to the EPHC.

Risk management administration

The administration of risk management is primarily a state/territory function. Governance models within jurisdictions vary considerably.

In Victoria, many chemical regulatory functions including OHS, transport and major hazard facilities are brought together under WorkSafe Victoria, which also has a memorandum of understanding with the Environment Protection Agency to coordinate some inspection and enforcement activity. By contrast, multiple agencies have responsibility for administering these regulations in Queensland. New South Wales regulates the control of use of agvet products through its environment portfolio, whereas Victoria administers their use under its Department of Primary Industries. In Western Australia, a pesticides advisory committee coordinates policy across agencies.

In terms of public health, the assessment, control-of-use and product safety regimes all appear to be generally effective in achieving a high standard of protection of people from the toxic characteristics of chemicals. However, regulatory inconsistencies between jurisdictions in this area can also limit overall effectiveness. As noted earlier, effectiveness could be enhanced by poisons scheduling decisions being automatically adopted by reference by the states and territories. Nationally uniform storage and supply controls for illicit drug precursors would enhance efficiency.

Australian workplace safety standards are generally high. The hazardous substances regulations developed by the ASCC are adopted reasonably consistently by the states and territories (less so for dangerous goods), and the transport code is essentially nationally uniform and consistent with UN practice.

A national framework for managing the environmental risks of chemicals has the potential to result in significant improvements in administrative effectiveness and some efficiency gains.

States and territories currently adopt their own control-of-use regimes for agvet chemicals. This is proving ineffective and inefficient. Control of use should be consolidated under the APVMA, but delivered through service level agreements by the states and territories.

Despite national agreement in 2004 to a common set of principles for regulating security sensitive ammonium nitrate, there is an inconsistent patchwork of regulation across the nation. The impact this has had on effectiveness is ambiguous. However, it has led to some inefficiencies. The Commission supports moves towards mutual recognition of licences across jurisdictions. A single national system for background checking, a national database containing security clearance information, and agreement on the criteria for determining eligibility for access would facilitate this. When the new Chemicals of Security Concern framework has been developed, SSAN regulations should be reassessed, with a view to establishing a uniform, risk-based approach.

Most jurisdictions have adopted or are introducing legislation to regulate major hazard facilities. But despite drawing on a national standard, regulatory requirements differ. For example, in its regulations, New South Wales has introduced security arrangements different from the national standard. As a result of the variation, the compliance costs faced by operators vary, depending on where their plant is located. A separate review of the regulation of major hazard facilities is underway and should address these issues.

Box 3 Reforming regulation to deliver community benefits

This study has made a range of recommendations aimed at improving the effectiveness and efficiency with which chemicals and plastics are regulated in Australia. Implementing these recommendations should generate net benefits for the community in a number of ways.

More effective regulation

Reforms that should improve regulatory outcomes in cost-effective ways include:

- accelerating NICNAS assessment of existing chemicals and establishing a risk-based approach to prioritising chemical assessments by both NICNAS and APVMA to help identify chemicals of concern
- establishing time limits within which national standard setting bodies are required to respond to NICNAS recommendations and reporting on those responses to improve timeliness and transparency
- bringing control of use of agvet chemicals under APVMA control to achieve closer adherence to permitted use of those chemicals
- developing closer cooperation between the ACCC and NICNAS regarding chemicals in consumer articles to help address public concerns proactively
- making standards such as the ADG Code available at avoidable cost (including being free on the internet) to improve compliance
- implementing a nationally uniform approach to security checks for access to SSAN to remove gaps and reduce 'forum shopping'.

National approaches will help effectiveness and efficiency

Further commitment to national frameworks for developing and implementing consistent regulatory policy would improve efficiency and effectiveness. Examples include:

- direct referencing by state and territory governments of poisons scheduling decisions and uniform adoption of associated regulatory controls
- development of illicit drug precursor regulations by the Ministerial Council on Drug Strategy for adoption by reference by the states and territories
- transferring responsibility for control of use of agvet chemicals from jurisdictional authorities to the APVMA
- establishing an independent national standard-setting body as part of the management of the environmental impacts of chemicals
- greater harmonisation of the existing disparate state and territory SSAN regulations and the subsequent review of these regulations within the proposed Chemicals of Security Concern framework.

(Continued next page)

Box 3 (continued)

Lower compliance costs

Many of the Commission's proposed reforms would lower compliance costs for firms without compromising effectiveness. Costs would be reduced by the wider and more consistent adoption by the states and territories of technical standards produced by national standard setting bodies, such as the ASCC and the NTC.

Other cost-reduction measures include:

- statutory requirements for NICNAS and APVMA to ensure that the costs of chemical assessments (including data requirements) are commensurate with the risks
- wider recognition of approved foreign schemes to reduce assessment costs
- statutory time limits on technical screening of applications by NICNAS to expedite decision making
- removing overlaps between poisons and workplace substances regulations to reduce costs
- reviewing the regulation of major hazard facilities to achieve greater national consistency to assist firms operating in multiple jurisdictions.

But some further reviews will be required

As part of best-practice regulation, further reviews will be necessary in the future to verify the effectiveness and efficiency of reforms currently being implemented. These include:

- assessing whether to implement GHS-based systems of regulating workplace chemicals once key trading partners have commenced implementation
- examining the effectiveness and efficiency of the proposed new national body for developing OHS regulation, including the impact of its tripartite structure
- reviewing whether agvet chemical labels approved by APVMA for products that are also workplace hazardous chemicals are sufficient for workplace purposes
- assessing the proposed governance arrangements for poisons scheduling two years after their commencement
- reviewing, in an independent public manner, the level of consistency with which jurisdictions have adopted the ADG7 transport package in its 'model' form
- undertaking an integrated review of explosives legislation, regulations and the Australian Explosives Code to deliver national consistency.

Undertaking reform

The Commission notes, and in the main supports, the ongoing series of reforms being pursued by agencies, and collectively by jurisdictions, to remove unnecessary burdens, reduce delays in regulatory approvals, and undertake other efficiency enhancing reforms. However, many of these reforms are taking too long to implement, the *par exemplar* being the long recognised need to separate poisons scheduling from drugs scheduling.

Each of the reforms proposed in this report should produce a net benefit and also contribute to a more integrated regulatory structure (box 3). It is recognised that chemicals and plastics regulation is not a strong unifying theme in its own right, but is one of many concerns in the broader areas of: public health; workplace (including agvet and transport) safety; environment protection; and national security. While chemicals regulations will often be grafted onto underlying, and differing, legislative rootstocks, the Commission strongly supports the adoption of uniform operational codes in each of those areas. National uniformity of the regulations themselves should also be possible, and is supported, in many instances. The agreement of all states and territories, and the support of other stakeholders, is essential to achieving these reforms. In this respect, COAG's recent strong commitment to national uniformity in many aspects of chemicals and plastics regulation is a welcome development.

There are many implementation issues to be addressed, including how reforms in one component of the overall framework affect the need for, and timing of, reforms in others. By way of example, the timing of Australia's adoption of the GHS will influence when to merge hazardous substances and dangerous goods regulations. There are transition costs involved in undertaking the reforms, and these may need to be recognised so as to facilitate adjustment, drawing down a dividend from the greater national effectiveness and efficiency where that occurs.

Finally, as part of good regulatory practice, reviews of current and proposed reforms will be needed in the future. In some cases, the Commission has endorsed reforms in progress that are less than ideal, but which, nevertheless, are either an improvement over current arrangements and/or have only been achievable with the considerable good will of all parties involved. Suggesting that these should be modified would be counterproductive at this stage, but they should be reviewed as soon as is practicable after implementation, with a view to aligning them with the Commission's governance and operational principles.