



National Transport Commission

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Chemicals & Plastics Regulation Study  
Productivity Commission  
LB2 Collins Street East  
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Dear Sir / Madam

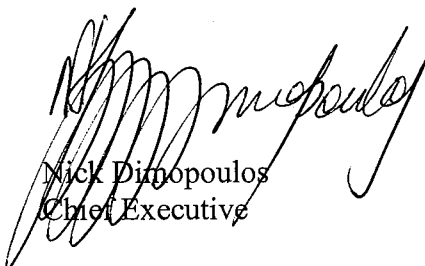
## CHEMICALS & PLASTICS REGULATION STUDY

Please find the attached National Transport Commission ("NTC") submission on the Chemicals & Plastics Regulation study being conducted by the Productivity Commission. We would like to advise that our submission is primarily directed towards the development and administration of the Australian Dangerous Goods Code, which covers some, but not all chemicals contained by the terms of reference. Likewise, some of the chemicals that are contained within the terms of reference are not covered by the Australian Dangerous Goods Code.

We appreciate the opportunity to comment on this important topic, and believe that there are a number of opportunities for productive reform of the current system of dangerous goods regulation. In particular, we believe that there is potential for regulatory streamlining to produce the efficiencies for industry, government and the community, as well as the potential for improvements to safety.

If you would also like to extend the offer for any further verbal briefing you believe may be necessary to elaborate on the contents of the submission, please contact Tim Eaton, General Manager Safety and Environment on (03) 9236 5000 or email [teaton@ntc.gov.au](mailto:teaton@ntc.gov.au).

Yours sincerely



Nick Dimopoulos  
Chief Executive

## Appendix 1: NTC Submission of the National Transport Commission to Chemicals & Plastics Regulation Study

### Background

#### 1. The Role of the National Transport Commission

The National Transport Commission (NTC) is an independent statutory body created under the *National Transport Commission Act 2003* (Cth). Its mandate is to progress regulatory and operational reform for road, rail and inter-modal transport in order to deliver and sustain uniform or nationally consistent outcomes.

The NTC fulfils this role through the development of model legislation which jurisdictions implement.

Authority for legislative reforms is obtained through voting by the Australian Transport Council (ATC) of Commonwealth, State and Territory Transport Ministers.

The NTC also coordinates and monitors implementation of approved reforms.

The NTC has prepared the 7th edition of the Australian Dangerous Goods Code ("The Code") and of the supporting model Act and Regulations. The Code and model legislation has been approved by the Australian Transport Council and is planned for implementation by jurisdictions in 2008

In developing national model legislation, the NTC establishes advisory bodies drawing on the experience of the relevant authorities. In the case of The Code, this function was fulfilled by forming a Steering Group comprising road and rail regulators, and industry experts.

#### 2. Development of the Australian Dangerous Goods Code

The current version of The Code (6<sup>th</sup> Edition) was produced in 1998. The transport sector and regulatory environment have both seen subject to significant changes since this time including the following:

- Growth in the international and domestic freight task requiring better management of the risks and costs associated with trans-border flows of goods.
- Management of the flow of goods along the logistics chain (rather than taking a modal specific regulatory perspective). One of the main drivers for updating The Code is harmonisation with other international codes based on UN Model Regulations and used to regulate the transport of dangerous goods by sea and air. These include:

- the *International Maritime Dangerous Goods Code*;
  - the *International Air Transport Association Dangerous Goods Regulations*; and
  - the *International Civil Aviation Organisation's Dangerous Goods Instructions*.
- Substantial revision of the *Model Regulations on the Transport of Dangerous Goods* prepared by the United Nations to reflect, amongst other things, technological innovation. This revision process is reflected in the 7<sup>th</sup> Edition of The Code which adopts the structure, format and concepts of the 14th edition of the United Nations Model Regulations while retaining Australian specific requirements where appropriate.
- The 7<sup>th</sup> edition of The Code also includes:
    - instructions for the transport of infectious substances;
    - amendments stockpiled since the production of the Sixth Edition of The Code; and
    - an information guide to the new Code;
- However, the 7<sup>th</sup> Edition of The Code does not:
    - Apply to the transport of radio-active or explosive substances (except in very limited circumstances); or
    - Provide detailed security provisions for the handling of dangerous goods.
- The model legislation approved by the Australian Transport Council to implement the 7<sup>th</sup> edition of The Code includes:
    - for the first time, a single model Act and Regulations governing the road and rail transport of dangerous goods;
    - the necessary administrative powers, mutual recognition provisions and review mechanisms; and
    - provisions necessary for the effective management of compliance with the laws (derived from the NTC's Road transport Reform (Compliance and Enforcement) Bill).

### **3. Coordination, maintenance and day to day operation of the ADGC**

The legislative scheme giving effect to the 6<sup>th</sup> edition of The Code gave statutory recognition to the body known as the Competent Authorities Panel. The panel's responsibilities<sup>1</sup> include the issuing of determinations, approvals and similar administrative functions under a scheme to facilitate mutual recognition of decision relevant to the transportation of dangerous goods between States and Territories. NTC has participated in CAP meetings as an observer and is confident that it fulfils its statutory function very well. While the interface with industry and transparency of decision making can be improved, these improvements can probably be made through administrative rather than legislative changes.

While technical expertise is required to continue to fulfil the statutory role of CAP, it is equally important to have a legal/policy professionals involved in a forum to develop statutory policy in this area. This is currently done by ad-hoc working groups, but a more formalised (perhaps statutory) group comprising officers with some expertise in occupational safety policy along the whole logistics chain, would help raise the level of policy intervention.

In relation to the ongoing effective and efficient operation and maintenance of The Code and underpinning legislation, a number of points are relevant:

1. The Code is based largely on adopting relevant United Nations Model Regulations. The UN updates its codes on an irregular but frequent basis, and often also issues corrigenda to the substantive documents. This means that the Australian regulatory scheme is vulnerable to lagging behind international best practice, and to inconsistencies between the domestic and import/export sectors.
2. The Code is administered by the various States and Territories while Commonwealth fulfils a secretariat role. The distributed decision making process and the lack of a transparent well coordinated national system may lead to significant lost opportunities for rationalisation and compliance cost savings for responsible operators
3. Furthermore, under the current arrangement, bodies associated with the use of dangerous goods need to incur the expense of maintaining separate liaison processes with this group of regulators. This imposition might be able to be avoided if the regulation of dangerous goods policy was better integrated with the mainstream regulatory system of workplace management.

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<sup>1</sup> These responsibilities are established by complementary statutes in each participating jurisdiction under both the 6th and 7th editions of The Code

#### **4. Ministerial Council oversight and capacity of competent authorities**

Currently, the responsibility for high-level decisions affecting the for The Code's content and maintenance lies with the Australian Transport Council (ATC).<sup>2</sup> The Council is comprised of Ministers with portfolio responsibility for roads and transport from all of the nine jurisdictions. However, other than in Queensland, dangerous goods regulators are based in Occupational Health and Safety or Environment administrations.<sup>3</sup> The Commonwealth Department of Transport and Regional Services (DOTARS) occupies a unique position, in that it does not have any day to day operational role in administering any legislation, but represents Australia on the United Nations committees that draft the Model Regulations. Therefore, the overwhelming majority of governmental staff responsible for the administration of legislation relevant to the transport of dangerous goods lies in departments other than that of the minister responsible for endorsing the relevant NTC reforms.

It may also be reasonable to investigate the general adequacy of the resources of the bodies that administer dangerous goods legislation (whether or not limited to transportation of these goods) given they are accountable for the day-to-day regulatory oversight of large, economically significant industries with substantial risk management responsibilities. If there is a significant asymmetry of capacity between industry and government it may be that a more appropriate regulatory arrangements would and indeed should allow for better industry self management. The NTC submits that this issue ought be explicitly considered by the inquiry.

#### **5. Location and relevance of ADGC duties**

The content of the 7<sup>th</sup> edition of The Code mainly places duties on industry participants from the non-transport sectors of a dangerous goods' lifecycle (for example, consigners, forwarders, loaders and packers as well as storage and handling). The Code, in fact, imposes relatively few transport-specific duties on transport operators and vehicle drivers.

While the inclusion of duties on the above parties in transport legislation is defensible on the principle that they influence downstream safety, there are equally compelling arguments that militate in favour of their integration with those contained in mainstream occupational health and safety legislation. This would not only allowing for the repeal of consistent but potentially redundant duties currently contained in the national reform legislation but lead to significant regulatory efficiencies.<sup>4</sup> To maintain the current arrangements hampers expeditious and responsive reform (given the necessity for a transport reform body to coordinate non-transport agencies under the

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<sup>2</sup> As set out above at 1, the ATC votes on NTC reform proposals.

<sup>3</sup> The full list of regulators is contained in Appendix 2

<sup>4</sup> In practice, as well as OH&S agencies administering the legislation implementing the sixth edition of The Code, the NTC understands most jurisdictions are intending to implement the the seventh edition of The Code under their omnibus workplace health and safety statutes.

governance of a Ministerial transport council) and imposes considerable and avoidable burden on regulators.

This also highlights regulatory inconsistency which could lead to compromises in safety, particularly if aspects of the two schemes do not align due to inadvertent conflict between legislative intent or administration.

## **6. Relationship between the ADGC and the Australian Explosives Code**

The NTC has not been requested by the ATC to develop any national reform relevant to the treatment of explosives to date. Notwithstanding this fact, our involvement in the preparation of the legislation implementing the 7th edition of The Code has led to the identification of regulatory overlap and anomalies that may be relevant to the productivity Commission's consideration of this issue.

While explosive materials are addressed by the UN Model regulations, they are dealt with in Australia by legislative arrangements separate from those that implement the UN Model regulations in the transport sector. The Australian Explosives Code occupies a similar role as the ADG Code and is the subject of legislation independent from that implementing the ADG Code in each jurisdiction. The basis for this singular treatment is not known to the NTC other than perhaps the fact they have been predominantly used by the mining sector, which has itself been the subject of specific regulatory schema.

The regulation of explosives is, by virtue of its historically distinct treatment, subject to similar concerns as those expressed in 5 (above). However, there is also the added complication of potential inconsistency between the Explosives and Dangerous Goods Codes stemming from their independent administration and maintenance, in that the operative Code in Australia may be expressing the model regulations as they existed *at different points in time*. Thus for example, the 7th edition of The Code is based on the 14<sup>th</sup> and 15<sup>th</sup> Edition of the UN Model regulations, but the current Explosives Code is based on the 11<sup>th</sup> Edition, and was last updated and published in 2000. Notably however, the coordinating body for explosives reform, the Australian Forum of Explosives Regulators (AFER) which reports through the Australian Safety and Compensation Council to the Workplace Relations Ministers' Council.

It is suggested that to improve regulatory consistency in may be worth investigating whether these two Codes (the Australian Explosives Code and the Australian Dangerous Goods Code) could be combined into one document administered by a body based in the workplace safety regulatory environment.

## **7. NTC proposal**

The fragmented and overlapping regulation of the chemicals and plastics insofar as each is captured under The Code and Australian Explosives Codes, as well as under

mainstream OH&S legislation and regulators is a source of considerable concern to the NTC.

It is the NTC's view that the existing arrangements hamper effective regulation, compliance and uptake of technological developments.

One means of addressing these structural deficiencies may be through the establishment of a body located in the workplace services or Occupational Health and Safety field responsible for the coordination of all regulatory aspects of the lifecycle of dangerous goods, from manufacture through to final use in a seamless fashion.

The NTC therefore proposes that the responsibility for the maintenance of The Code in the future be taken over by a body that is located under the Hazardous Substances Regulatory Framework. As mentioned above at 6, there may be benefit in locating the maintenance of Australian Explosives Code here as well. The potential benefits of such an arrangement would primarily be that a consolidation of regulatory obligations would lead to fewer interfaces between industry and regulators, more streamlined and consolidated knowledge base in government leading to lower costs for government and industry.

## Appendix 2: Competent Authorities by jurisdiction

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<p><b>NEW SOUTH WALES</b>  (Premises-based activities such as packaging approvals, labelling and classification)  State Coordinator, Dangerous Goods, Substances Team  WorkCover NSW  Level 3, 92-100 Donnison Street  GOSFORD NSW 2250</p> <p>(All other matters)  Manager, Dangerous Goods  Department of Environment and Conservation  59 Goulburn Street  SYDNEY NSW 2000</p> <p>Web: <a href="http://www.environment.nsw.gov.au/prdg/index.htm">www.environment.nsw.gov.au/prdg/index.htm</a>  Email: <a href="mailto:d.goods@environment.nsw.gov.au">d.goods@environment.nsw.gov.au</a></p>	02 4321 5191           02 9995 5555  or  131 555	02 4325 4736           02 9995 5918
<p><b>NORTHERN TERRITORY</b>  Chief Inspector of Dangerous Goods  Dept. of Management and Business  PO Box 4160  DARWIN NT 0801  Email: <a href="mailto:ntworksafe.deet@nt.gov.au">ntworksafe.deet@nt.gov.au</a></p>	08 8999 5010  or  1800 019 115	08 8999 5141
<p><b>QUEENSLAND</b>  Director-General  Department of Transport  Land Transport &amp; Safety  Transport House 230 Brunswick Street, FORTITUDE VALLEY QLD 4006  PO Box 673, FORTITUDE VALLEY QLD 4006</p> <p>Rail Transport (Rail Safety Accreditation)</p> <p>Goods Unit) Road Transport (Dangerous</p> <p>Web: <a href="http://www.transport.qld.gov.au/dangerousgoods">www.transport.qld.gov.au/dangerousgoods</a></p>	           07 3253 4225  07 3320 4446	           07 3253 4233  07 3253 4453
<p><b>SOUTH AUSTRALIA</b>  Manager Dangerous Substances  Safework SA  Dept of Premier and Cabinet  GPO Box 465  ADELAIDE SA 5001  Web: <a href="http://www.safework.sa.gov.au">www.safework.sa.gov.au</a></p>	08 8303 0401	08 8303 0444



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<p><b>VICTORIA</b>  The Manager  Dangerous Goods Unit  Victorian WorkCover Authority  Level 18, 222 Exhibition Street  MELBOURNE VIC 3000</p> <p>Web: <a href="http://www.workcover.vic.gov.au/vwa/home.nsf/pages/so_dangerousgoods">www.workcover.vic.gov.au/vwa/home.nsf/pages/so_dangerousgoods</a>  Email: <a href="mailto:adrian_simonetta@workcover.vic.gov.au">adrian_simonetta@workcover.vic.gov.au</a></p>	<p>03 9641 1551</p>	<p>03 9641 1552</p>
<p><b>WESTERN AUSTRALIA</b>  Chief Inspector  Dangerous Goods Safety Branch  Department of Industry and Resources  100 Plain Street  EAST PERTH WA 6004</p> <p>Web: <a href="http://www.doir.wa.gov.au">www.doir.wa.gov.au</a>  Email: <a href="mailto:edg@doir.wa.gov.au">edg@doir.wa.gov.au</a></p>	<p>08 9222 3333</p>	<p>08 9325 2280</p>