



**CHEMICALS AND PLASTICS
LEADERSHIP GROUP**

C/o PACIA
PO Box 211,
RICHMOND VIC 3121

Regulation of the chemicals and plastics industry

**Chemicals and Plastics Leadership
Group**

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1 Overview

The Chemicals and Plastics industry Leadership Group (CPLG) is the leading industry-based coalition representing the industrial, agricultural, personal care products, cosmetics, hygiene products, disinfectants, specialty chemicals and paint industries.

The CPLG was initially appointed by the former Industry Minister Ian Macfarlane in December 2002 for a two year period to oversight the implementation of the Government's response to the industry's Action Agenda Report Underpinning Australia's Industrial Growth. Subsequently, the then-Minister agreed that the CPLG should continue its work in providing leadership for the chemicals sector. CPLG is now administered by the Plastics and Chemicals Industries Association (PACIA), ACCORD and CropLife.

The CPLG's long standing key regulatory reform goal is

“A revised and streamlined regulatory system that is more timely, accountable and cost effective and that is consistent with national and international best practice, particularly enabling the rapid use of overseas technology to facilitate growth of chemicals and plastics manufacturing parties”.

The CPLG welcomes the recommendations for regulatory reform outlined in the Productivity Commission's (PC) draft research report on *Chemicals and Plastics Regulation*¹. The CPLG considers the PC's draft recommendations to be broadly consistent with the recommendations outlined in this report. However, CPLG is concerned that the PC has not fully addressed the fundamental issue of institutional reform and that the reform process is still at risk of a piecemeal approach without recommendations to resolve this core concern.

This report has been prepared by CPLG, with assistance from Deloitte Economics, as a submission to the PC's draft report and to the Chemicals and Plastics Ministerial Taskforce and Senior Officials Working Group.

The report outlines why CPLG considers that the current regulatory framework is unnecessarily burdensome on companies in the chemicals and plastics industry. This is largely attributable to the inconsistency and replication of requirements at the international, national and state/territory level.

Key messages to emerge from this analysis include:

- Regulation of the chemicals and plastics industry would be improved by a more nationally consistent management framework to replace the current approach, which is inconsistent and represents an impediment to innovation, economic activity, and regulatory compliance
- Regulatory reform in this sector is consistent with national strategic priorities which highlight the need for more efficient and effective regulation
- While the need for change has been previously recognised, and a number of recommendations for reform have been made, this reform process has stalled in recent years
- The current context for reform provides the platform and mechanisms to achieve results, for example:

¹ Productivity Commission 2008, *Chemicals and Plastics Regulation*, Draft Research Report, Canberra

- a new reform-focussed federal government
- a national commitment to the new COAG Reform Agenda
- the establishment of the COAG Business Regulation and Competition Working Group (BRCWG)
- the release of the PC's draft report
- the meeting of the Ministerial Taskforce for Chemicals and Plastics and the Senior Officials Working Group (SOWG)
- the Commonwealth Government's commitment in the 2008-09 Budget to National Partnership Payments to facilitate reforms and/or reward the achievement of reform-based performance benchmarks, with business regulation and competition being a key area of reform.

The CPLG challenges the Ministerial Taskforce to ensure that the current momentum in the reform process is maintained, in order to deliver the benefits better regulation can offer industry, government, and the broader community.

The CPLG has developed five recommendations to accelerate the current reform process. These are:

1. Reducing systemic inconsistency
2. Lowering the costs of compliance
3. Improving the quality of regulation
4. Clarifying accountability for delivering on reform commitments
5. Reforming institutions.

This report begins by outlining the history of reform in the sector. The next section sets out the case for change, describing the current regulatory regime and the impacts of this system on Australian industry. Finally, the CPLG's five recommendations for reform are set out in the third section.

2 The case for change

This section outlines the case for reform of the current regulatory regime in the chemicals and plastics sector.

It highlights the complexity and potential for inconsistency in application of legislation, and notes the costs to industry which arise from this.

The challenge for reform is highlighted through a summary of the reform process over the past 12 years and the achievements and limitations of this process. This section concludes with a discussion of the current context for reform.

2.1 Industry overview

The products of Australia's chemicals and plastics manufacturers, processors and importers are essential to economic activity across a number of sectors, from manufacturing inputs through to products on supermarket shelves.

Australia's chemicals and plastics industry involves a wide range of industrial, agricultural/veterinary, household cleaning products, personal care products, cosmetics, and food related chemicals and chemical mixtures, across the supply chain from manufacture, processing, importing, distribution, transport, storage, retail and consumption.

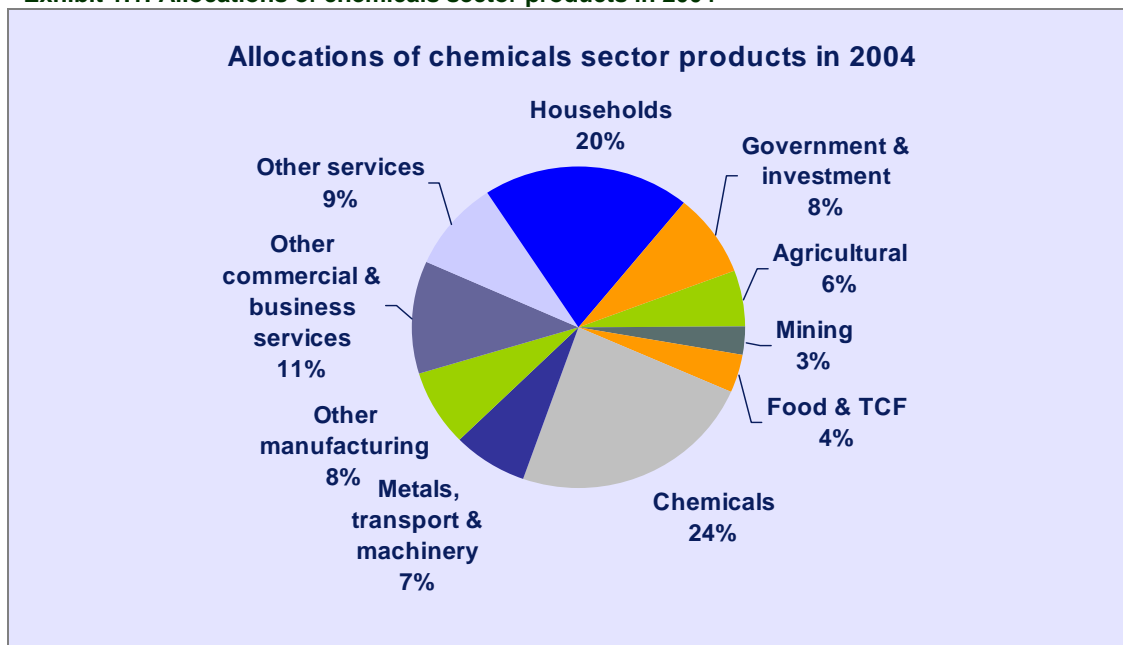
The National Institute of Economic and Industry Research² (see attachment to this CPLG Submission May 2008) estimated that, in 2004:

- \$2.3 billion of chemicals sector product was used by the agricultural sector
- \$3 billion of chemicals sector product was used as inputs into the metals, transport and machinery sector
- \$4.8 billion of chemicals sector product was used by the wholesale, retail and business services sector
- the construction sector spent \$1.3 billion on chemical products used for direct construction materials
- Australian households spent \$8.6 billion on chemicals sector products.

It has been estimated that 70 per cent of chemical and plastics output was used by other manufacturing sectors as essential inputs to their activities. It is clear that impacts on chemicals and plastics will flow on to the broader economy

² National Institute of Economic and Industry Research, 2006, *A report on the economic and social contribution of the plastics and chemicals industries to Victoria and Australia*, A Report for the Department of Innovation, Industry and Regional Development; Plastics and Chemicals Industries Association (PACIA); and ACCORD Australasia.

Exhibit 1.1: Allocations of chemicals sector products in 2004



Source: National Institute of Economic and Industry Research, 2006

Even by itself, the sector is a substantial contributor to the Australian economy. The combined turnover of chemicals and plastic producers was over \$30.5 billion in 2004-05, and 82,400 were employed by these companies.

2.2 The current regulatory framework

The sector is regulated to maintain public health and safety, OHS, environmental standards, and national security in a complex matrix which involves multiple agencies, jurisdictions, and all levels of government. One result of this is that there are substantial variations in application of regulation and inconsistencies in approach across jurisdictions.

The Australian regulatory framework for managing chemicals extends over three levels of government. The lines of responsibility across the three levels are not clearly defined, however in general:

- Commonwealth agencies are generally focused on the governance of hazard and risk assessment, implementation of international agreements and international trade
- the state/territory agencies are generally focused on control-of-use aspects
- local government involvement is varied, however is generally focused on planning and waste disposal issues.

In effect, as in many areas, the effectiveness of national frameworks is dependent on implementation by sub-national jurisdictions.

Within this system, there are four broad areas of responsibility, nominally covering groups of chemicals according to use category (agvets, industrial and domestic chemicals, therapeutic goods, and food and contaminants). In practice, industry frequently finds that the regulations

covering chemicals and chemical mixtures entail dealing with a large number of agencies in both the federal and state/territory governments.

2.2.1 Fragmentation, inconsistency and overlap

Even if there is clear policy direction at the national level, the federal structure by its nature necessitates that regulation of OHS, environmental safety, waste management, and other areas relevant to this sector are implemented by state or territory agencies. As a result there is an inherent risk of inconsistency in approach across these jurisdictions.

Figures 2.1 and 2.2 illustrate the diffusion of responsibility for developing, implementing and administering legislation regulating the manufacture, importation and sale of chemicals and plastics in Australia. The large number and wide range of bodies involved increases the risk of variation between the ways each applies the rules and requirements. For chemicals and plastics companies attempting to negotiate this system – particularly if their activities span jurisdictional boundaries – the result is very frequently that it becomes necessary to comply with regulations which differ from state to state, state to territory, and between local and international operations.

Figure 2.1: Legislation regulating the chemicals and plastics sector

Federal Government	NSW	Agricultural and Vet Products (Control of Use) Act 2002 and Regulation 2004
Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994	Agricultural and Vet Chemicals (NSW) Act 1994	Controlled Substances Regulation 1996
Agricultural and Veterinary Chemicals (Administration) Act 1992	Contaminated Land Management Act 1997	Environment Protection (Waste Management) Policy 1994
Agricultural and Veterinary Chemicals Act 1994	Drug Misuse and Trafficking Act 1985	FPA (National Pollutant Inventory) Measure
Agricultural and Veterinary Chemicals Code Act 1994	Drug Misuse and Trafficking Regulation 2006	Tasmania
Charter of the United Nations Act 1945	Environmentally Hazardous Chemicals Act 1985	Agricultural and Vet Chemicals (Control of Use) Act 1995
Chemical Weapons (Prohibition) Act 1994	Explosives Act 2003	Environment Management and Pollution Control Act 1994
Comprehensive Nuclear Test-Ban Treaty Act 1998	Explosives Regulation 2005	Dangerous Goods Act 1998
Customs Act 1901	National Environment Protection Council (NSW) Act 1995	Poisons Act 1971
Environment Protection (Sea Dumping) Act 1981	Occupational Health and Safety Act 2000	Security-Sensitive Dangerous Substances Act 2005
Hazardous Waste (Regulation of Exports and Imports) Act 1989	Occupational Health and Safety Regulation 2001	Workplace Health and Safety Act 1998
Industrial Chemicals (Notification & Assessment) Act 1989	Pesticides Act 1999	Victoria
Maritime Transport and Offshore Facilities Security Act 2003	Poisons and Therapeutic Goods Act 1966	Agricultural and Vet Chemicals (Control of Use) Act 1992
National Environment Protection Council Act 1994	Poisons and Therapeutic Goods Regulation 2002	Dangerous Goods (Explosives) Regulation 2000
National Environment Protection Measures (Implementation) Act 1998	Road and Rail Transport (Dangerous Goods) Act 1997	Dangerous Goods (HCDG) Regulation 2005
National Transport Commission Act 2003	Road and Rail Transport (DG) Regulation 1998, 1999	Dangerous Goods Act 1985
National Water Commission Act 2004	Waste Avoidance and Resource Recovery Act 2001	DG (Storage and Handling) Regulation 2000
Occupational Health and Safety Act 1991	Waste Recycling and Processing Corporation Act 2001	Drugs, Poisons and Controlled Substances Act 1981 and Regulation 2006
OHS (Safety Standards) Regulation 1994	Queensland	Environment Protection Act 1970
Product Stewardship (Oil) Act 2000	Agricultural and Veterinary Chemicals (QLD) Act 1994	Health Act 1958
Road Transport Reform (Dangerous Goods) Act 1995	Dangerous Goods Safety Management Act 2001	Drugs, Poisons and Controlled Substances Act 1981 and Regulation 2006
Therapeutic Goods Act 1989	Dangerous Goods Safety Management Regulation 2001	National Environment Protection Council (Vic) Act 1995
Water Efficiency Labelling and Standards Act 2005	Environmental Protection (Waste Management) Act 1994	Other policies regarding Air/Water e.g. SEPPs
	Drugs Misuse Act 1986	Occupational Health and Safety Act 2004
	Environmental Protection Act 1994	Occupational Health and Safety Regulation 2007
	Environmental Protection Regulation 1998	Pollution of Waters by Oils and Noxious Substances Act 1986
	Explosives Act 1999	Western Australia
	Health Act 1937	Dangerous Goods (Transport) Act 1998
	Health (Drugs and Poisons) Regulation 1996	Dangerous Goods Safety Act 1961
	Transport Operation (Road Use Management—Dangerous Goods) Act 1995	Environment Protection Act 1986
ACT	Workplace Health and Safety Act and Regulation 1997	Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulation 1992
Criminal Code 2002,	South Australia	Explosives and Dangerous Goods Regulation 1963
Dangerous Substances Act 2004	OHS and Welfare Act 1986 and Regulation 1998	Health (Pesticides) Regulation 1956
Drugs of Dependence Act 1989	Dangerous Substances Act 1979 and Regulation 2002	Misuse of Drugs Act 1981 and
Environment Protection Act 1997	Explosives Act 1936 and Regulation 1996	Occupational Health and Safety Regulation 2007
Occupational Health and Safety Act 1989	Explosives (Security Sensitive Substances) Regulation 2006	Occupational Safety and Health Act 1984
Poisons and Drugs Act 1978	Dangerous Substances and Major Hazard Facilities Bill 2006	Occupational Safety and Health Regulation 1996
Northern Territory	Environment Protection Act 1993	Poisons Act 1964
Dangerous Goods Act	Explosives Act 1999	Pollution of Waters by Oils and Noxious Substances Act 1986
Environment Protection and Biodiversity Conservation Act 1999	Health (Drugs and Poisons) Regulation 1996	Road Transport Reform (DG) Regs 1997
Hazardous Waste Act	Health Act 1937	
Poisons and Dangerous Drugs Act	Transport Operation (Road Use Management—Dangerous Goods) Act 1995	
Work Health Act	Workplace Health and Safety Act and Regulation 1997	
Agricultural and vet chemicals (control of use) Act (NT) 2004		

Source: ACCORD, PACIA, Deloitte Economics

Figure 2.2: Agencies and bodies responsible for developing and/or implementing regulations in the chemicals and plastics sector

<p>Federal Government</p> <p>Department of Health and Ageing <i>Food Standards Australia New Zealand</i> <i>Gene Technology Regulator</i> <i>National Drugs and Poisons Scheduling Committee (NDPSC)</i> <i>National Industrial Chemicals Notification and Assessment Scheme</i> <i>Office of Chemical Safety</i> <i>Therapeutic Goods Administration</i> Department of Agriculture, Fisheries and Forestry AQIS <i>Australian Pesticides & Veterinary Medicines Authority</i> Attorney General's Department Department of Education, Employment and Workplace Relations <i>Office of Australian Safety and Compensation Council</i> Australian Customs Service Comcare Department of Foreign Affairs and Trade (ASNO) Department of Infrastructure, Transport, Regional Development and Local Government Department of the Environment, Water, Heritage and the Arts National Transport Commission</p> <p>ACT</p> <p>ACT Police Department of Health Department of Territory and Municipal Services Workcover ACT</p>	<p>Northern Territory</p> <p>Department of the Environment and Water Resources Department of Health Department of Primary Industry, Fisheries and Mines NT WorkSafe</p> <p>NSW</p> <p>WorkCover NSW Department of Environment and Climate Change (DECC) <i>Environmental Protection Agency</i> Department of Health Department of Primary Industries NSW Police</p> <p>Queensland</p> <p>Department of Emergency Services (Chemical Hazards and Emergency Management Services) Department of Employment and Industrial Relations (Workplace Health and Safety) Department of Health Department of Natural Resources, Mines and Energy Department of Primary Industries and Fisheries Environmental Protection Agency Local Government Queensland Police Queensland Transport</p> <p>South Australia</p> <p>Department of Health Environment Protection Authority Primary Industries and Resources SA</p>	<p>SA Police SafeWork South Australia</p> <p>Tasmania</p> <p>The Department of Tourism, Arts and the Environment (DTAE) Department of Justice (Workplace Standards Tasmania) Department of Human Services Department of Primary Industries and Water</p> <p>Western Australia</p> <p>Department of Consumer and Employment Protection Department of Environment and Conservation WA Police Department of Agriculture Department of Health</p> <p>Victoria</p> <p>Department of Human Services (Health) Department of Primary Industries Department of Sustainability and Environment Environment Protection Authority Victoria Police WorkSafe Victoria</p> <p>COAG Ministerial Councils</p> <p>Australia and New Zealand Food Regulation Ministerial Council Australian Health Ministers' Conference Australian Transport Council Ministerial Council on Consumer Affairs Ministerial Council on Drug Strategy Primary Industries Ministerial Council</p>
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Source: ACCORD, PACIA, Deloitte Economics

For example, in spite of efforts to harmonise across the country, the regulation of Major Hazard Facilities continues to vary substantially. This remains a graphic example of how, despite the intended outcome, nationally consistent standards can result in system inconsistency. The area overlaps two COAG regulatory “hot spots” – regulation of OHS, and of the chemicals and plastics sector.

The former National Occupational Health and Safety Commission (NOHSC) established a National Standard for OHS regulation in 1996, however the date of adoption across the states has differed – Victoria implemented the national standards in 2000, Queensland in 2001, and WA in 2008. It is anticipated that NSW will adopt the national system in 2008, while Tasmania and SA currently have no implementation plans.

Even though National Standards were adopted, inconsistencies remain, with the states varying in areas including:

- definition of MHF, and discretionary powers with regard to MHF definition
- scope of regulations (with the result that different inclusions vary complexity and the cost of developing a safety case)
- nature of regulations (prescriptive vs. performance-based)
- administration by different lead agencies leads to differences in focus in implementation
- differences in definition of major incident (leading to different capture between jurisdictions)
- differential fees and charges (\$0 - \$400k) which lead to individual state competitive disadvantages.

2.2.2 The costs of inefficient regulation

The complexity and lack of clarity within the current chemicals and plastics regulatory framework results in unnecessary costs, both to the regulated industry, and to the Australian economy in general.

The regulatory costs incurred by chemicals and plastics businesses include:

- the cost of understanding and complying with the regulation
- opportunity costs such as lost opportunities, delays in business decisions, impediments to innovation and disincentives to new entrants (especially for SMEs).

As noted above, 70 per cent of chemicals and plastics production in Australia is used as an input into other manufacturing sectors. Given the extent to which the chemicals and plastics industry is embedded in the broader Australian economy, there are substantial and wide ranging flow-on impacts including higher costs of inputs and reduced export competitiveness for local companies and for new product lines.

There is a lack of cost data on the extent of the regulatory burden on chemicals and plastics industry in Australia. The Productivity Commission, in its draft research report on *Chemicals and Plastics Regulation*³, stated that, “in light of the limited quantitative evidence on costs, the Commission supplemented its analysis with a qualitative assessment of whether existing regulations have lead to unnecessarily high administration and compliance costs”.

The Productivity Commission’s 2006 research paper on the *Potential Benefits of the National Reform Agenda* estimated that Australian compliance costs could be as high as 4 per cent of GDP each year⁴. In 2004, Australian production of chemicals directly contributed around \$31 billion to the national economy⁵. Based on the Productivity Commission’s estimate, the chemicals and plastics industry compliance burden could be in the order of \$1.3 billion annually.

ACCORD conducted a survey of its members to estimate the opportunity costs of the current regulatory framework. The survey found that the missed opportunities as a result of excessive regulation have been worth around \$400 million in recent years to their sector alone.⁶

Regulation of the chemicals and plastics industry would be improved by a more nationally consistent management framework to replace the current approach, which is inconsistent and represents an impediment to innovation, economic activity, and regulatory compliance.

³ Productivity Commission 2008, *Chemicals and Plastics Regulation*, Draft Research Report, Canberra

⁴ Productivity Commission, 2006, *Potential benefits of the National Reform Agenda*, Report to the Council of Australian Governments.

⁵ Based on the 2006 National Institute of Economic and Industry Research report, which notes that in 2004, output of the Victorian chemicals sector was \$12 billion, 39.6 per cent of national level.

⁶ Report of ACCORD industry survey on the impacts and costs of regulation, 2008.

2.3 The challenge of regulatory reform

Despite a considerable number of reviews and taskforces, the reform process has been sporadic and protracted.

2.3.1 Chemicals and plastics regulatory reform to-date

The recognition that reform of unnecessarily complex and costly regulation in the chemicals and plastics sector is required is not new. A number of initiatives and processes have occurred over the past decade, including:

- **1996** The Small Business Deregulation Task Force (the Bell report) recommended that the Productivity Commission inquire into and report by December 1997 on the most efficient and effective institutional and regulatory arrangements for industrial, agricultural and veterinary chemicals.
- **1999-2004** *Chemicals and Plastics Action Agenda*. The area of regulation reform is identified as a high priority for industry and endorsed by the then-Government.
- **2001** *Final report of the Review of Drugs, Poisons and Controlled Substances Legislation* presented to AHMC. The Galbally Review examines Australian, states and territories legislation regulating medicines and poisons; its recommendations for reform measures to increase national uniformity are awaiting implementation.
- **2005** *Chemicals and Plastics Action Agenda, evaluation*. Key achievements included the reform of the regulation of industrial chemicals of low regulatory concern (LRCC). Evaluation of the AA found a number of critical factors in its success.
- **January 2006** Report of the Taskforce on Reducing Regulatory Burdens on Business, *Rethinking Regulation*, made six recommendations regarding the regulation of chemicals and plastics, including a proposal that COAG establish a high-level taskforce to oversee an independent public review of chemicals and plastics regulation.
- **February 2006** COAG announces that chemicals and plastics regulation is a priority cross-jurisdictional 'hot spot' and agreed to establish a ministerial taskforce, with each jurisdiction nominating one responsible Minister, to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation.
- **July 2007** Then-Treasurer Peter Costello and Industry Minister Ian Macfarlane announce Productivity Commission study to identify measures that could be introduced to achieve a streamlined and harmonised system of national chemicals and plastics regulation and any alternatives to regulation.
- **March 2008** The Productivity Commission released draft research report, *Chemicals and Plastics Regulation*, with 29 recommendations to build a governance framework that enhances national uniformity⁷.
- **March 2008** COAG agreed to “significant progress to be made in accelerating the five remaining COAG hotspots” including chemicals and plastics, to be monitored by the Business Regulation and Competition Working Group.
- **March 2008** OECD Report finds that Australia has the least harmonised regulation among the 30 countries profiled.

⁷ Productivity Commission 2008, *Chemicals and Plastics Regulation*, Draft Research Report, Canberra

- **May 2008** Commonwealth Budget announces National Partnership Payments to facilitate reforms and/or reward the achievement of reform-based performance benchmarks, with business regulation and competition being a key area of reform.

2.3.2 Assessment of the reform process to-date

Achievements

Some progress in reform was made through the Action Agenda process, in particular the development of a category of Low Regulatory Concern Chemicals for industrial chemicals. The momentum for reform seen during the development of the Action Agenda was the result of a number of factors including:

- strong industry commitment and effective leadership
- a whole-of-government approach
- the role of NICNAS as a regulatory reform champion
- the effective working relationship with DITR (now DIISR).

Exhibit 2.1: Case study – national harmonisation of road transport legislation

There are a few early examples from other sectors where reform processes based on inter-governmental cooperation, such as COAG, have been the mechanism for what (so far) seems to be increased national regulatory consistency.

An example of this process is road transport legislation, which has in the past been a case study of the potential for a federal system to result in regulatory confusion. The development of harmonious national legislation for the transport of dangerous goods has been notably successful. Prior to reform, the national Dangerous Goods Code had been adopted under each state and territory's dangerous goods legislation; however, there were substantial variations in the handling duties and obligations between the jurisdictions. To improve the situation, model legislation which could be adopted into state and territory law was developed in a consultative process between the National Road Transport Commission, the Commonwealth Department, state/territory regulatory authorities and industry.

In 1995, the Australian Government released the 6th edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG6), which set out mandatory technical requirements and guidelines for the land transport of dangerous goods, was supported by a template Act & Regulations, and where financial incentives was provided to the states to encourage uniform approaches.

Sadly this successful process has not been followed in the implementation of ADG7, and we have seen a move from development of template legislation and also a lack of incentives for jurisdictions. The model for ADG6 is strongly supported by CPLG as successful in achieving the nationally consistent outcomes sought.

Limitations

In the years following the Chemicals and Plastics Action Agenda, the impetus for reform substantially stalled. While the sector was identified in 2006 as one of COAG's regulatory "hotspots," the complexity of the regulatory framework and a lack of strong incentives for action has been an impediment to progress.

Over recent years the COAG processes have not been an effective driver of reform, with COAG only meeting once during the 18 month period of July 2006 to December 2007 and

the Ministerial Taskforce (agreed to in February 2006) only met for the first time in April 2008.

An ongoing challenge to efforts for achieving national consistency in regulation, however, is to ensure that all levels of government have clear accountabilities and have adequate incentives (whether financial or otherwise) to adopt uniform approaches to regulatory reforms.

While the need for change has been recognised, and a number of recommendations for reform have been made, the reform process has progressed at a sluggish pace.

2.3.3 The current context for reform

Regulatory reform and reducing compliance costs and regulatory burden in general is a central plank of microeconomic policy at all levels of government.

COAG Reform Agenda

The National Competition Policy Reforms led to improved productivity and pricing during the decade from 1995 – 2005. Reforms in six key infrastructure sectors are thought to have generated a permanent increase in Australia's GDP of around 2.5 per cent.

In 2006 COAG adopted a new National Reform Agenda to continue the national reform process of the National Competition Policy. Regulatory reform is a key pillar of the National Reform Agenda.

The Productivity Commission has estimated that the suite of regulatory reforms proposed as part of the National Reform Agenda have the potential to reduce regulatory burdens by up to 20 per cent. Reducing the compliance burden for the chemicals and plastics industry by this 20 per cent could be worth \$250 million to the national economy each year.

The *Taskforce on Reducing Regulatory Burdens on Business*⁸ released its report in January 2006. Its purpose was to identify actions to address areas of Australian Government regulation that are 'unnecessarily burdensome, complex, redundant, or duplicate regulations in other jurisdictions'. The Taskforce recommended wide-ranging reforms across the Australian system and has provided the impetus for a number of issues to be placed on the COAG agenda.

A key election platform of the new federal Government was a commitment to lift productivity growth by reducing business regulation. The federal Government has created a new Department of Finance and Deregulation; this indicates the high priority placed on this issue at the Commonwealth as well as at state and territory levels.

In March 2008 COAG agreed to "significant progress to be made in accelerating the five remaining COAG hotspots" including chemicals and plastics and the Business Regulation and Competition Working Group published an implementation plan for reform. COAG has committed to agree to action in response to the PC recommendations by October 2008.

CPLG welcomes the recent announcement in the Commonwealth Budget for the establishment of National Partnership Payments to facilitate reforms and/or reward the achievement of reform-based performance benchmarks appear.

Best Practice Regulation

Under the National Reform Agenda initiatives agreed by COAG in April 2007, all jurisdictions committed to maximising the efficiency of regulation, including through establishing gatekeeper mechanisms, improving the quality of impact analysis, better measurement of compliance costs and undertaking annual reviews to reduce the burden of regulation. The *COAG Guide to Best Practice Regulation*⁹ includes a commitment to the conduct of risk analysis when determining the appropriate level of regulation.

In response to the recommendations identified by the *Taskforce on Reducing Regulatory Burdens on Business*, the Commonwealth Government endorsed the following six principles of good regulatory process.

⁸ Regulation Taskforce 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, Canberra, January.

⁹ COAG, 2007, *Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies*, October.

1. Governments should not act to address 'problems' until a case for action has been clearly established. This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all 'problems' will justify (additional) government action.
2. A range of feasible policy options - including self-regulatory and co-regulatory approaches - need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework.
3. Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
4. Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
5. Mechanisms are needed to ensure that regulation remains relevant and effective over time.
6. There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

Policies to reduce the compliance burden of regulation

State and territory based regulatory reform programs including the Victorian and South Australian commitments to reduce the burden of regulation on business by 25 per cent are consistent with the CPLG's recommendations to reduce the compliance cost of regulation.

For example, Victoria has adopted a policy, *Reducing the Regulatory Burden*¹⁰, which aims to reduce the administrative and compliance costs of regulation for business by 25 per cent over five years from July 2006, through a range of measures including:

- Ensuring the administrative burden of any new regulation is met by an 'offsetting simplification' in the same or related area
- Undertaking a program of reviews to identify actions required
- Incentive payments to reward outcomes which reduce the regulatory burden.

Regulatory reform in the chemicals and plastics sector is consistent with national strategic priorities which highlight the need for more efficient and effective regulation

The Ministerial Taskforce should ensure that momentum in the reform process is accelerated and then maintained, in order to deliver the benefits better regulation can offer industry, government, and the broader community.

¹⁰ Victorian Department of Treasury and Finance, 2006, *Reducing the Regulatory Burden The Victorian Government's Plan to Reduce Red Tape*.

3 Recommendations for change

3.1 Framework for the recommendations

The five recommendations presented in this chapter will improve the regulatory system by reducing inconsistency, improving quality, and provide a methodology for the next steps in the reform process.

Recommendation 1 – Reducing systemic inconsistency.

Recommendation 2 – Lowering the costs of compliance.

Recommendation 3 – Improving the quality of regulation.

Recommendation 4 – Clarifying accountability for reform commitments.

Recommendation 5 – Reforming institutions.

Objectives

The overarching aim of regulation reform in the chemicals and plastics industry is to bring regulation into line with best practice policy approaches which seek to reduce the burden of suboptimal frameworks.

Key objectives for an improved system would be to achieve:

1. Minimum level of regulatory intervention via a risk management system
2. Simple and effective regulatory system, including all processes, guidelines and requirements
3. Streamlined administration and compliance processes
4. National consistency of requirements
5. International harmonisation and mutual recognition, including greater integration into APEC region.

Consistency with draft recommendations of the Productivity Commission

The recommendations made by the CPLG are consistent with best practice regulatory principles, and are considered to be consistent with the Productivity Commission's draft recommendations.

Exhibit 3.1: Comparing CPLG and Productivity Commission recommendations

CPLG Recommendation	Example of comparative Productivity Commission Recommendation
Reducing systemic inconsistency	<ul style="list-style-type: none"> • Consistency of policy settings (Recommendation 3.1) • Uniformly adopt regulatory controls through template or model legislation (Recommendation 5.2)
Lowering the costs of compliance	<ul style="list-style-type: none"> • Add 'deemed-to-comply provisions to the Trade Practice regulations (Recommendation 5.7) • Remove major inconsistencies in reporting requirements of security sensitive ammonium nitrate regulations (Recommendation 9.2)
Improving the quality of regulation	<ul style="list-style-type: none"> • Effectiveness and efficiency of the overall regulatory system (Recommendation 3.1) • Objectives of NICNAS and National Registration Scheme should be to maximise net community benefit (Recommendations 4.1 and 4.5)
Clarifying accountability for delivering on reform commitments	<ul style="list-style-type: none"> • Establish Standing Committee on Chemicals (Recommendation 3.1) • Establish Poisons Standing Committee (Recommendation 5.1)
Reforming institutions	<ul style="list-style-type: none"> • Role of NICNAS (Recommendations 4.2 and 4.3) • Relationship between NICNAS and ACCC (Recommendation 5.5)

Timelines for reform

In order to maximise the potential for results, it is essential to gain commitment to the process for the next steps of reform. The CPLG proposes that, in its final report, the PC should recommend a specific timetable for a COAG reform process, based on the timelines presented in this report.

As a step towards ensuring that impetus is built up and then maintained, the recommendations from this paper are built around clear implementation timelines that can be utilised by the Ministerial Taskforce in forming its recommendations to COAG.

The CPLG was encouraged by COAG's commitment in March 2008 that the Ministerial Taskforce on chemicals and plastics regulation would have its inaugural meeting in April 2008 and report back to COAG on actions in response to the PC recommendations by October 2008.

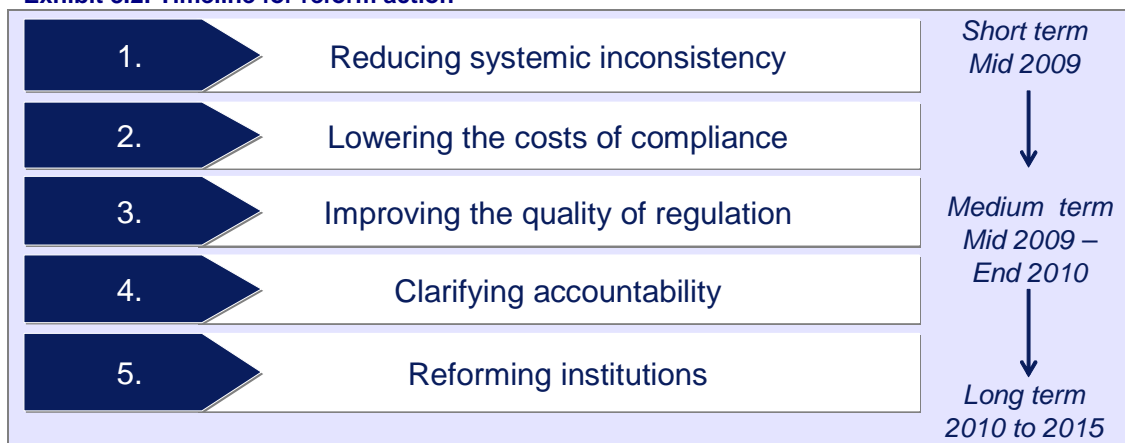
The CPLG presented at the meeting of the Ministerial Taskforce on 8 April 2008 and was pleased by the commitment to delivering a comprehensive reform program within an ambitious time frame.

The CPLG was also pleased to note the establishment of the Senior Officials Working Group (SOWG). CPLG is happy with the intent of the SOWG initial work program, to recommend

some early harvest reforms that do not need to await finalisation of the PC’s report; however, the CPLG is concerned about the limited nature of some of the proposed early actions.

In addition, the CPLG wants to ensure that the current focus on immediate priorities and “quick wins” does not come at the expense of fundamental structural reform, which is likely to be harder to achieve, but absolutely essential to the long term sustainability of the chemicals and plastics sector.

Exhibit 3.2: Timeline for reform action



As Exhibit 3.2 shows, the immediate focus of these recommendations is on relatively short term actions, which are preliminary steps in – and form the foundations of – the longer term reform process.

3.2 Recommendations

Recommendation 1 - Reducing systemic inconsistency

Given the nature of the regulatory framework for the sector – with implementation by individual state agencies – there is the potential for significant variation in application.

Therefore, consistency in approach is key to both reducing the costs of compliance with regulation, and also helping to ensure the regulatory approach is efficient and effective.

An important part of a nationally consistent regulatory framework will be to ensure that the models considered should be built on sound template or mirror legislation. Ensuring state and territory compliance with the national framework may require incentive mechanisms, and ongoing monitoring (and enforcement) is likely to be needed.

This consistency will minimise administrative burden and disincentives to compliance. It will support clearer and responsible agencies, which can help to streamline the system and make it easier to navigate. It will address current concerns about system overlap by reducing instances where the same products or same manufacturing operations have to deal with multiple regulatory agencies.

The most practical means of working towards a more consistent approach is through the existing COAG processes for reform in the chemicals and plastics sector.

Drawing on the PC study and other activity, the Ministerial Taskforce should assess a range of possible regulatory models which will deliver increased consistency, and develop

recommendations to streamline and harmonise the system, reporting back to COAG with a clear timeline for implementation milestones.

Recommendation 2 - Lowering the cost of compliance

A key implication of the current inconsistency across jurisdictions is the level of administrative complexity and the associated costs of compliance. This may consequently prove to be a disincentive to compliance, particularly for small to medium operators and new entrants to the sector.

The challenges of navigating the system, and the costs of compliance, arise particularly where the Australian regime needs to interface with international frameworks. As an underlying principle to reduce replication, Australian variation from international standards should be minimised unless there are very compelling reasons. In addition, agencies across jurisdictions should place greater emphasis on recognising other jurisdictions' regulatory frameworks, thus reducing the current level of replication and variation in approach.

To this end, we recommend that all jurisdictions should be required to undertake a high level review of existing arrangements, and identify opportunities to streamline approaches, consistent with the PC's recommendations. In many cases, it would be possible to leverage off existing reforms at federal and state/territory level. Similarly, low risk chemicals should be regarded as the "first targets" of such efforts to consolidate and reduce regulation, taking advantage of activity already occurring in the area.

This high level review is not, in itself, an onerous task and an important signal for the ongoing reform process. We consider that this should be an immediate priority of the Ministerial Taskforce and could begin prior to the release of the PC's final report. This would allow for an immediate action to be undertaken – post COAG agreement in October 2008.

Recommendation 3 - Improved quality of regulation

At times, the current regime can be overly prescriptive, poorly targeted and excessively complex. There are some imbalances between the two fundamental regulatory goals:

- to ensure health, safety, security and environmental outcomes,
- while having the minimum impact on economic activity.

As outlined above, regulation of the chemicals and plastics industry can have a substantial economic cost. Improving the quality of regulation is, therefore, a major component of minimising unnecessary costs in the sector.

It is especially important to ensure that the level of regulation is proportionate to the level of risk to public health and safety, environment, and OHS standards – that is, that effectiveness is matched by efficiency.

In the current system regulation of the chemicals and plastics industry is unnecessarily complex and poorly targeted, relative to the risks. Focusing regulation on the areas where it is needed will improve system efficiency.

In order to do this, approaches to improving regulation quality in other sectors should be applied to the chemicals and plastics regulatory regime. For example, developing and rigorously applying best practice regulation guidelines, including the adoption of robust regulatory impact statement practices, will be fundamental to improving the quality of regulation in this area.

The PC has identified that there is a need for an ongoing forum to assess the effectiveness and efficiency of the overall chemicals-specific regulatory system and that requirements determined by regulators should be supported by analysis of the associated costs and benefits.

The Ministerial Taskforce should be charged with the responsibility for determining the extent to which regulators implement these best practice approaches. This role should be an ongoing responsibility of the permanent national policy making body, such as the Standing Committee on Chemicals recommended by the PC.

This process will need reinforcement from industry stakeholders to ensure action is taken and maintained.

While measures to improve the quality of regulation should begin immediately, it is understood that the systemic and cultural change required will necessarily take some time.

Recommendation 4 – Clarifying accountability for delivering on reform commitments

As outlined above, experience suggests that effective reform requires sustained energy and focused effort. The CPLG believes that providing responsible parties with specific accountability for delivering on reform commitments is a key factor to the success of reform programs.

In the past, as the 2005 evaluation of the Chemicals and Plastics Action Agenda found, regulatory reform in the sector has been successful largely due to two main factors. First, there was across-the-board commitment to reform, which involved effective industry leadership and a whole of Government approach. Importantly, NICNAS played a “champion” role, and acted as a sponsor for the reform process. The second factor was not only the emphasis on a focussed approach, with all parties coordinating their concerns and recommendations, but direct reporting obligations of the then Parliamentary Secretary responsible for NICNAS back to Cabinet.

This process had some success, notably the reform of the regulation of industrial chemicals of low regulatory concern (LRCC). In recent years, however, the reform process has substantially stalled, and the absence of a clear sponsor or champion has contributed to this.

Currently, policy and oversight arrangements in the chemicals and plastics sector are spread amongst a number of agencies. Establishing a clearly defined coordinating and overseeing body which can maintain reform impetus, provide advocacy where needed, and ensure that efforts are mutually constructive will be a valuable step forward. Often, this is best provided by a body which can take responsibility for this role, for coordinating reform efforts, ensuring advocacy in decision-making forums, and making sure that the process remains “front of mind.” In the absence of such a driver, there is a risk that reform efforts will lose momentum and flounder.

The CPLG was heartened by the recent announcement of the Chair of the Ministerial Taskforce, the Hon Dr Craig Emerson MP (Minister for Small Business, Independent Contractors and the Service Economy, and Minister Assisting the Finance Minister on Deregulation). Dr Emerson, in his paper *Lifting productivity growth by reducing business regulation*¹¹ outlined the new federal government’s commitment to regulation reform.

The PC’s recommendation to establish a Standing Committee on Chemicals to provide an ongoing forum is welcome. However, as the recommendation currently stands, the structure of the Standing Committee fails to deliver on a clear line of Ministerial accountability and

¹¹ Emerson, Dr 2007, *Lifting productivity growth by reducing business regulation*, April

transparency. CPLG recommends that a Standing Committee, comprised of senior officials, should be reinforced with a specific allocation of responsibility to an individual Minister, such as the Chair of the COAG Business Regulation and Competition Working Group. The Minister would be responsible for the ongoing identification of reform opportunities, prioritisation of issues to address, and reporting on delivery of recommended actions.

As highlighted earlier, the use of incentive mechanisms (whether financial or otherwise) to gain the effective, and ongoing, participation across all levels of government would be an important tool. The Commonwealth Government's new National Partnership Payments system may be appropriate for this use.

Agreement to such an oversight body should be a priority action for the Ministerial Taskforce, and we see no reason why this could not be in place by the middle of 2009.

Recommendation 5 - Institutional reform

As outlined above, the current structure of the regulatory regime in the chemicals and plastics sector – with administration of responsibility of multiple institutions, which often have overly specific, overlapping roles – has considerable potential for inconsistency in application.

In order to deliver effective regulation of the chemicals and plastics sector, it is necessary to increase consistency. Ultimately, more extensive structural reform may be necessary in order to create a robust regime for regulation of the sector, and an integrated national policy for chemicals management may be required.

At this stage the PC has not recommended substantial institutional reform. The CPLG recommends that the PC's final report include a recommendation to review the effectiveness of the regulatory framework in five years, with consideration to be given to institutional reform of agencies currently governing the sector.

An integrated national policy for chemicals management should include measures to streamline, simplify and consolidate regulating agencies. Separate institutional arrangements for Agvets have proven effective and should be maintained. In the case of industrial and domestic chemicals, further investigation is required.

In the medium term, the centralised champion of reform in the sector should consider models for streamlining and consolidating all agencies whether Federal, State or Territory or local government involved in the regulation of chemicals. Some potential approaches to grouping these implementing agencies might be by theme, by function, or by sector of use.

For example, in the United Kingdom, the government has established a Better Regulation Executive, within the Department of Business Enterprise and Regulatory Reform. The purpose of the BRE is to lead the regulatory reform agenda across government. A key action that the BRE has undertaken is a review and rationalisation of the number of regulatory agencies. The new Commonwealth Department of Finance and Deregulation offers an opportunity to follow the UK's example and pursue a more centralised approach to reform.

This consideration of future approaches should be a medium - long term proposition, from 2010 on.

Appendix A - Overseas approaches to regulatory reform

In addition to national movement to reduce unnecessary regulatory burden in the chemicals and plastics sector, there have also been international efforts to increase harmony and reduce gaps and replication between countries' regulatory regimes in this area. This has included multilateral work towards a global system of standards, notably the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The GHS classifies chemicals by hazard type, and focuses on international alignment of safety information and labelling. It is also intended to provide a basis for national and regional regulators to develop harmonized approaches to chemicals. As well as these global developments, many countries have committed to bilateral agreements which include provisions for chemicals and plastics. For example, Australia's 1997 mutual recognition arrangement with New Zealand ensures that goods allowed to be sold in one country are equally acceptable in the other. This does not apply across the board, however, and for some categories (including therapeutic goods, hazardous substances, industrial chemicals and dangerous goods) mutual recognition does not necessarily apply.

A number of reform programs have aimed to increase alignment between global regulatory systems for chemicals and plastics.

In 1995, the Inter-Organisation Program for the Sound Management of Chemicals (IOMC) was established; incorporating seven international organisations, plus the UN Development Program and the World Bank are observing bodies. The IOMC is the major mechanism for initiating, facilitating and coordinating international action to improve chemicals management.

In 1998, the IOMC first produced its set of guidelines for Key Elements of a National Program for Chemicals Management and Safety, which provided guidance for national governments in developing a chemicals management approach which was consistent with globally standardised approaches.

More recently, the IOMC, UNEP, and the International Federation of Classification Societies (IFCS) in 2006 endorsed the Strategic Approach to International Chemicals Management (SAICM), which aims to reduce risk, improve information, governance, capacity-building and technical cooperation, and to minimise illegal international traffic. The SAICM implementation plan sets out work areas and activities to be undertaken by the governments and organisations involved.

In addition to these multilateral frameworks for managing the international flows of chemicals, there are also a range of approaches for managing chemicals within countries and/or regions.

European Union

The EU approach to chemicals and plastics management differs substantially between the framework for industrial chemicals, and that applying to cosmetics.

Broadly, the industrial chemical management system is chemical entity-based, and operates primarily through hazard classification and labelling. The new REACH scheme (effective June 2007) is based on two key principles: to remove the obligation for undertaking risk assessment from public authorities, re-placing responsibility on manufacturers, importers and

formulators; and to reduce the number of new chemicals requiring notification and testing (and so improve the efficiency of assessment).¹²

The European cosmetics sector, has recently reached agreement regarding regulation of the cosmetics industry. The focus of the new regulation is on increasing alignment between EU national frameworks, and between EU and international regimes, as well as moving towards a *risk assessment* rather than a *hazard based* approach.¹³

United States

Four US Federal agencies regulate chemicals in four key categories:

The **Occupational Safety and Health Administration (OSHA)** governs hazards from exposure to chemicals for workers in most industries.

The **Consumer Product Safety Commission (CPSC)** assesses and manages the risks from chemicals in consumer products and foods; the **Food and Drug Administration** regulates those from human and animal drugs and cosmetics.

The **Environmental Protection Agency** regulates those chemicals which do not fall under the authority of these three agencies.

Additionally, State bodies have responsibilities in regulation and enforcement of industrial and agricultural chemical safety standards.

The coordinating mechanisms for this network are overseen by working groups based in the EPA, which also work with the State Department to manage US involvement in international chemical regulation.

There is a clearly risk assessment based approach – the most stringent notification requirements only apply to listed chemicals. Manufacturers of industrial chemicals or chemical mixtures are required to maintain records of data sufficient for the EPA to carry out assessment if necessary, but these only need to be reported when there is a substantial risk. The requirements for substantial risk information are supplemented by voluntary submissions containing information relevant to risk assessment.

United Kingdom

In the UK, improving the quality of regulation has been the subject of an extensive, and apparently very successful, program of reform. The Better Regulation Executive (BRE) was established as to lead and champion the reform initiatives. Its work has two key aspects: the promulgation of Simplification Plans (reducing red tape) and Better Regulation (ensuring higher quality regulatory design).

The BRE's role includes guidance and support in ensuring best practice regulation, reducing the burden of current regulatory requirements, and oversight of inspection and enforcement arrangements. It is currently coordinating a multi-sector initiative aiming to identify regulation which, whether in design, implementation or enforcement, results in overlapping or conflicting requirements. Its remit covers the public, private and voluntary sectors as well as European issues.¹⁴

The production of Simplification Plans aimed to reduce red tape, through an initiative which involved identifying over 700 simplification measures across 20 Government departments and agencies. In December 2007, the Better Regulation Executive (BRE) reported that this

¹² European Commission Environment Directorate General, 2007, *REACH in brief*

¹³ CEC, 2008, *Impact assessment report on simplification of the **Cosmetics Directive***, Commission staff working paper, SEC (2008)117.

¹⁴ <http://bre.berr.gov.uk/regulation/index.asp>

program had saved businesses and third sector organisations over £800 million associated with administrative costs of regulation during that year.¹⁵

More recently, the executive's focus has shifted to ensuring higher quality, better targeted regulation, to be achieved using a risk-based approach. In January 2008, a Risk and Regulation Advisory Council was established to provide better quality regulation and regulatory processes. The RRAC is intended to implement a vision of policy which explicitly makes regulation proportionate to an assessed public risk.¹⁶

From the perspective of the UK chemicals and plastics industry, reform towards a risk assessment basis for regulation has been a priority for a number of years. The industry recognises that in the long term this will likely need significant institutional reform and a move towards centralised policy and regulation in the sector.

These reforms fit into an overarching agenda, which seeks to increase joined up government, minimising the replication and inconsistency caused by multiple jurisdictions or sectors addressing the same issue from different angles.

¹⁵ Department for Business, Enterprise and Regulatory Reform, 2007, *Delivering Simplification Plans*.

¹⁶ For further discussion, see Better Regulation Commission, 2008, *Public Risk – the Next Frontier for Better Regulation*.