

Australian Government Attorney-General's Department Criminal Justice Division

CRIMINAL JUSTICE DIVISION SUBMISSION TO THE PRODUCTIVITY COMMISSION'S STUDY INTO CHEMICALS AND PLASTICS REGULATION–DRAFT RESEARCH REPORT

The Criminal Justice Division of the Attorney-General's Department welcomes the opportunity to provide a Submission to the Productivity Commission's Study into Chemicals and Plastics Regulation–Draft Research Report.

This Submission outlines the Attorney-General's Department (AGD) views on the Productivity Commission's Study into Chemicals and Plastics Regulation–Draft Research Report. In particular, comments are directed towards Draft Recommendation 5.8.

The body of the Productivity Commission's Draft Research Report recognises the work of the National Working Group on the Prevention of the Diversion of Precursor Chemicals (Precursor Working Group) in developing a National Framework for the Control of Precursor Chemicals and Equipment. The Precursor Working Group comprises experts from Commonwealth, state and territory health, forensic, law enforcement agencies along with industry representatives of the chemicals, plastics and pharmaceutical industries. It has endorsement from the Ministerial Council on Drug Strategy (MCDS) to develop the National Control Framework. The Precursor Working Group has also been made responsible for reviewing and recommending changes to the associated Model Drug Schedules and the Plastics and Chemicals Industries Association Code of Practice for Supply Diversion into Illicit Drug Manufacture (the PACIA Code).

We note that the recommendation does not explicitly recognise the responsibility of the Precursor Working Group, as experts, for development of the National Control Framework which will require endorsement of MCDS and, in all likelihood, the Standing Committee of Attorneys-General.

AGD is of the view that the coordinated development of the National Control Framework could be assured by giving explicit recognition of the Precursor Working Group's responsibility for development and for seeking MCDS endorsement. Recognising that a process is in train and has endorsement at a national level will significantly mitigate the risk that any jurisdictional agency will endeavour to act quickly on the proposed action by developing their own regulatory structure ahead of MCDS consideration. It will also mitigate any risk that an agency could cause confusion by promoting a view that the work is yet to commence and could be better coordinated under an alternative ministerial council structure to MCDS.

If jurisdictions are motivated to undertake any separate work in this area it may contribute to and accentuate existing inconsistencies, duplication and burden on industry. This would be in direct opposition to the intended outcome of the Productivity Commission Study which is to promote adoption of a national uniform approach to regulation of chemicals and the development of a risk-based schedule of drug precursors that each jurisdiction adopts by reference.

In this regard AGD would recommend a limited rewording of the recommendation to more accurately reflect that work is being progressed by the National Working Group on the Prevention of the Diversion of Precursor Chemicals, that the Working Group will report through MCDS and that the Standing Committee of Attorneys-General is likely to have a role in endorsing a national regulatory approach for precursor chemicals and equipment. We suggest the following wording:

“The National Working Group on the Prevention of the Diversion of Precursor Chemicals, should continue development of a National Framework for the Control of Precursor Chemicals and Equipment, including regulations, for adoption by reference by all jurisdictions through the Ministerial Council on Drug Strategy and the Standing

Committee of Attorneys-General. The associated risk-based schedule of chemicals and apparatus subject to the regulations should be maintained by the National Precursor Working Group (as a committee of experts) to be overseen by the Ministerial Council on Drug Strategy, and also be adopted by reference in each jurisdiction.”

We also wish to highlight that the work on the National Control Framework is advancing at pace. AGD and the Australian Crime Commission, in consultation with the Precursor Working Group, have been developing a risk assessment tool which will be central to informing the development and review of controls. This tool will take into account considerations such as harms, industry use, intent and capability and is to comply with Australian Risk Assessment Standards (AS/NZS 4360). The application of this tool will look to ensure a consistent, risk-based approach to regulation while also taking into account both industry and law enforcement needs.

Template Approach

We also note that at the most recent meeting of the Precursor Working Group on 27 March 2008 the Productivity Commission’s Draft Report was discussed in some detail. Views were expressed that although the approach advocating template legislation would represent best practice in terms of promoting consistency and reducing the compliance burden on industry, this approach may throw up particular difficulties within jurisdictions.

It was proposed that a more practicable approach may be to establish a series of minimum standards with which jurisdictions will be required to comply leaving the detail to each jurisdiction.

This approach would allow jurisdictions to contribute to the achievement of the recommendations objectives while accommodating existing jurisdictional regulations and controls as well as drafting styles.

The concern is that if an all-or-nothing template approach is advocated this approach may be perceived by jurisdictions as unachievable. If this is the case this may promote a sense of apathy amongst jurisdictions as even if they do make incremental improvements to their controls, anything but adoption of the template would still be considered non-compliant and therefore unsatisfactory. As such, a more flexible approach would likely promote greater engagement and would allow for graduated improvements.

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