



## CHEMICALS AND PLASTICS LEADERSHIP GROUP

C/o PACIA  
PO Box 211,  
RICHMOND VIC 3121

Mr Mike Woods  
Commissioner  
Chemicals and Plastics Regulation Study  
Productivity Commission  
Locked Bag 2  
Collins St  
East Melbourne, VIC 8003

Dear Mr Woods

The Chemicals and Plastics Leadership Group (CPLG) is pleased to make this submission to the important study of chemicals and plastics regulation in Australia (PC Study). The CPLG is the leading industry-based taskforce representing the industrial, agricultural, domestic and specialty chemicals and paint industries and their respective industry associations.

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*.

The initial Chemicals and Plastics Action Agenda report provided to Minister Macfarlane in March 2001 made 26 recommendations designed to improve the industry's competitiveness in the following four areas:

- investment;
- regulatory reform;
- a skilled workforce; and
- innovation.

The former Australian Government responded to industry's initial report in November 2002.

Our mutually agreed vision for the industry arising from the Chemicals and Plastics Action Agenda process is to be a sustainable, dynamic and innovative industry underpinning Australia's industrial growth and capturing significant domestic and export markets. This cannot happen without a significant reduction in the regulatory burden and compliance costs faced by industry, particularly in the area of Australian specific requirements which take us out of alignment with our major trading partners and reduce our competitiveness.

The CPLG valued the opportunity to work closely with the then Australian Government on the development and subsequent implementation of the initial Chemicals and Plastics Action Agenda's recommendations.

The CPLG delivered its Final Report to the then Australian Government in August 2004.

While the CPLG was originally appointed for a two year period, in anticipation of the Government's response to industry's Final Report, the Minister agreed that the CPLG should continue its work in providing leadership for the chemicals sector and working with the Australian Government to ensure that the response to the Final Report, when available, is fully implemented.

One of the CPLG's key aims has been for a Productivity Commission study of the chemicals and plastics sector. It is pleasing to note that our recommendation to the Banks Review seeking its support for the immediate implementation of the comprehensive regulatory review of the chemicals sector with a view to enhance its efficiency and competitiveness has been accepted by the Council of Australian Governments (COAG).

The CPLG acknowledges that some progress has already been made in the area of regulatory reform through the cooperative efforts of industry and regulatory agencies. This progress is most evident in the passage through the Australian Parliament in June 2004 of the *Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill 2004*. This legislation was a significant outcome of the Chemicals and Plastics Action Agenda and addressed a number of the issues raised by industry regarding regulation of low-concern and non-hazardous polymers and chemicals.

However, the CPLG notes that progress to date by regulatory agencies to implement regulatory best practice and risk management has been *ad hoc* and piecemeal. To overcome this, our Final Report recommended that the Productivity Commission be directed to undertake a review of the operations of the Australian Pesticides and Veterinary Medicines Authority (APVMA), the Therapeutic Goods Administration (TGA) and the National Industrial Chemicals and Notification Assessment Scheme (NICNAS) to identify opportunities for efficiency improvements, productivity targets and the adoption of best practice with a view to an integrated approach to the management of chemicals in Australia.

For the benefit of the PC Study the report and recommendations of the CPLG's Regulatory Reform Working Group which formed part of the CPLG's Final Report to the Australian Government is at Attachment 1.

The **CPLG's priorities for regulation reform** as outlined in the Final Report and which are still unfortunately current are as follows:

- Future regulatory reform action should focus on developing a program to systematically review regulations impacting on the chemicals and plastics industry i.e. the 144 pieces of Commonwealth, State and Territory legislation which currently regulates the chemical industry.
- That there be further expansion of the COAG Principles to cover all regulatory standards including quasi-regulation.
- Compliance with COAG principles should be matched by compliance with principles of good governance and administration such as those promoted in the

Australian National Audit Office's (ANAO) Public Sector Governance Better Practice Guide.

- All agencies should continue to investigate opportunities for introducing low regulatory concern reforms as well as enhancing the reform processes currently in place.
- That the Productivity Commission (PC) conducts a review to identify opportunities for efficiency improvements, productivity dividends and the adoption of best practice within the regulatory system.

The chemicals and plastics industry is vital to Australia's economic well being and is an integral part of Australian manufacturing. Findings from a Victorian study show that the industry is strategically more significant than tourism and mining, and not far behind the food sector. Each of these sectors receives considerable government and public support. Our sector does not.

It is vital that the Australian regulatory system be brought into line with existing Government policies for minimum effective regulation to maximise our sector's potential for sustained growth.

We expect that individual industry associations as well as companies will provide case studies of grievances with respective regulatory schemes. For example, we note that while there was initial enthusiasm for the NICNAS LRCC reforms we now find that the impetus for reform appears to have diminished and there is little or no advantage to be offered to industry in the take up of some of the much sought after reforms. There is an urgent need to refocus the agency on its primary role as a notification and assessment scheme for chemical entities.

There is a growing concern by industry that despite the Government's commitment to reduce unnecessary red tape, regulatory agencies have a zero tolerance for risk - rather than managing risks through a proper risk management framework - the focus is on eliminating risk altogether placing a much higher burden on industry than is justified.

Given the growth and vitality of the Asia Pacific region within the last decade, we must ensure that Australian industry remains competitive and is able to leverage off the growth by the Asian economies and not be dwarfed by it. To achieve this, Australian industry must remain competitive. Our regulatory costs for market entry into Australia for notification and assessment of new entities, appears to be the highest in the world. Australia is approximately 1% of global trade. Regulatory agencies do not accept evidence of safe commercial practice and persist in requiring unique Australian data requirements.

This attitude of zero tolerance to risk and second guessing of internationally accepted assessments which could be mutually recognised by Australian authorities must change.

The PC study is of vital importance to our sector. In order to assist the work of the PC Study we have commissioned research and have engaged Insight Economics of Deloitte Touche Tohmatsu to provide us with detailed analysis of regulatory options for an improved national framework for the regulation of the chemicals and plastics.

Further to the roundtable meetings which were conducted in early December 2007, the PC has sought particular advice in relation to the following matters:

- data on the effectiveness and efficiency of the current chemicals and plastics regulatory system;
- institutional arrangements that could improve the efficiency and effectiveness of chemicals and plastics regulatory frameworks;
- opinions on the GHS, including the timing of Australia's implementation of the system; and
- the existence of 'gaps' in the chemicals and plastics regulatory system (for example, in environmental regulation).

It is intended that our commissioned research will investigate and recommend national structural models for better regulation of chemicals and plastics that will lead to *minimum effective regulation* of industry operations and products in Australia and thereby enhance the industry's:

- domestic operating environment and national economic contribution;
- international competitiveness and export potential;
- innovation potential and long-term environmental/economic sustainability; and,
- integration within the Asia-Pacific region, to fully capitalise on the opportunities arising from region's continued economic expansion.

Once our study has concluded, we would like to take the opportunity to present the findings to the PC Study and make available the Final Report. We expect that initial results of our commissioned research will be available in late January 2008 and that we will be in a position to provide further advice regarding our recommendations for change following this. In the meantime, we have encouraged our Consultants, David Charles and David Graham of Insight Economics to engage with the PC Study team and we expect that they will arrange to meet shortly.

I trust you will these comments are of value to the work of the PC Study.

Yours sincerely

*Authorised for electronic transmission*

Bronwyn Capanna  
**Executive Director**  
ACCORD Australasia on behalf of  
Chemicals and Plastics Leadership Group

8 January 2008

## Report of the CPLG's Regulatory Reform Working Group

The Regulatory Reform Working Group was responsible for the implementation of the Action Agenda Recommendations 1 through 10 and provided ongoing advice to the CPLG on any additional activities to achieve the industry's goal of 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 the growth of chemicals and plastics manufacturing opportunities.

The Regulatory Reform Working Group also served as a forum to develop regulatory reform policy and recommendations for consideration by the CPLG.

The Parliamentary Secretary to the Minister for Health and Ageing, the Hon Trish Worth MP, agreed to assist by coordinating the Government's work with industry across all relevant regulatory bodies.

### Regulatory Reform Working Group Members:

Bronwyn Capanna (Chair)	ACSPA (now ACCORD)
Sylvia Kidziak AM	SL Engineering
Barbara Gibson	Orica Limited
Mike Craft	RWR Veterinary Products

## CPLG Response to Recommendations 1-10

### Recommendation 1

***Regulatory approaches to be brought into line with the 1997 Council of Australian Governments (COAG) Principles and Guidelines.***

#### Government response

*The Government recommits itself to ensuring all departments and agencies strictly adhere to the 1997 COAG Principles and Guidelines. The Office of Regulation Review (ORR) will be responsible for advising departments and agencies of their role and responsibilities when considering legislative and regulatory reform.*

## Background – The COAG Principles and Guidelines

The COAG Principles and Guidelines<sup>1</sup> were recently revised at the June 2004 COAG meeting<sup>2</sup> and are the primary national policy instrument governing the quality of regulations established by standard-setting bodies throughout Australia.

<sup>1</sup> *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies, COAG, 2004.* Departments and agencies of the Australian Government must follow the specific requirements of the complementary 1998 *A Guide to Regulation* published by the Office of Regulation Review.

<sup>2</sup> These changes further enhance the application of the principles of good regulatory practice to decisions of COAG, Ministerial Councils, intergovernmental standard-setting bodies, and bodies established by government to deal with national regulatory problems.

They establish the key principle of “*working from an initial presumption against new or increased regulation*” and ensuring that “*regulatory measures and instruments should be the minimum to achieve the pre-determined and desired outcomes*”.

The principles and features of good regulation as defined by COAG are as follows:

<b>Principles for developing good regulation</b>	<b>Features of good regulation</b>
Minimise the impact of regulation	Minimise burden on the public
Minimise the impact on competition	Minimise administrative burden
Be outcomes based	<i>Regulatory Impact Assessment</i>
Be compatible with international standards and practices	Accountability
Cause no restriction of international trade	Performance-based regulations
Have regular review	Compliance strategies
Be flexible, not prescriptive	Consideration of secondary effects
Standardise the exercise of bureaucratic discretion	Standards in appendices
	Plain language
	Reasonable date of effect
	Consultation and advertising

The centrepiece of the COAG Principles and Guidelines is the requirement for Regulatory Impact Assessment and Regulatory Impact Statements.

The Government’s commitment to strict adherence by departments and agencies to COAG principles has been welcomed by the industry and CPLG is pleased to note progress to date, especially in terms of the activities of the Office of Regulation Review (ORR).

**Status**

The June 2003 Joint Government/Industry Progress Report<sup>3</sup> noted the following:

*“Based on feedback to the CPLG from industry, some agencies are still struggling with identifying the relevance of the ‘Guide to Regulation’ and when to develop a regulatory impact statement (RIS), particularly in the area of quasi-regulation. For example CPLG is aware that ACSPA have specifically questioned via APVMA, AFFA and ORR the lack of a regulatory impact statement in the development of the Adverse Experience Reporting Program for Agricultural Chemical Products by APVMA and labelling proposals, and indeed have been advised that APVMA have never undertaken a RIS.”*

Since this report, agency compliance has improved and, despite initial reticence, APVMA has prepared and issued RISs for the two regulatory initiatives mentioned above. The involvement and oversight of the ORR was vital to achieving this outcome.

<sup>3</sup> *Government and Industry Progress Report to the Minister for Industry, Tourism and Resources, Chemicals and Plastics Action Agenda, Regulatory Reform Initiatives – 1 June 2003*, presented by the Hon Trish Worth and Mr Mike Dwyer.

However, agency compliance with the COAG Principles and Guidelines goes beyond simply meeting the requirement to prepare a RIS. There is always a concern that an agency 'hell bent' on introducing new regulation can just go through the motions of regulatory impact assessment, using the RIS as no more than a 'justification' for predetermined action, rather than as a policy development tool that helps to flesh out, refine and simplify the regulatory proposal. To achieve this, the RIS process needs to be viewed by agencies as a best practice tool.

The June 2003 Progress Report identified two options for improving agency understanding of the positive operational role of the COAG principles:

- placement of specific individuals in agencies to champion the RIS process; and
- development of sector specific protocols with ORR.

Recognising the resource implications of placement of specific individuals in agencies, CPLG, through the Chair of the Regulatory Reform Working Group, canvassed the sector protocol option with the ORR. It was felt that at this stage such an approach may not be appropriate and could be too restrictive.

#### **Further steps**

A number of the other recommendations address the issue of appropriate mechanisms to meet the Government's commitment on COAG compliance (see Recommendation 2).

While there has been positive progress so far, the CPLG notes these actions help improve future rather than existing regulation.

As highlighted in the original Chemicals and Plastics Industry Action Agenda report, the industry is regulated by 144 separate pieces of Commonwealth and State legislation.

#### **The CPLG recommends that future regulatory reform action focus on developing a program to systematically review regulations impacting on the chemicals and plastics industry.**

This is consistent with the general recommendations of the 2003 Senate Small Business Employment Report<sup>4</sup>:

*"The Committee recommended that the Commonwealth and State and Territory governments and local councils each undertake an ongoing program of systematic review of regulations affecting business.*

*The review would assess whether regulations are still necessary and whether they are achieving their objectives as simply and as efficiently as possible, and identify the need for any changes to regulations or administrative requirements.*

Particular attention could be given to areas where regulatory requirements, including administrative arrangements, unnecessarily burden business, for example through poor drafting, duplication, unnecessarily rigid requirements or the interaction with other regulatory requirements. Reviews could also consider

---

<sup>4</sup> As reported in "Mechanisms for Improving the Quality of Regulations: Australia in an International Context", Staff Working Paper, Steven Argy, Matthew Johnson, Productivity Commission, July 2003

whether the regulations are being administered in [a] way that minimises the compliance burden. (p. 117)

*The [Senate] Committee also considered there is a need for a standing cross-jurisdictional regulation review and reform body that would focus on reducing regulatory burden."*

The CPLG considers the establishment of an ongoing review program of existing regulation specifically impacting on the chemicals and plastics industry a high priority with potential for significant benefit. This potential is demonstrated by the excellent *ad hoc* regulatory review initiatives already introduced, such as the NICNAS Low Regulatory Concern Chemicals process. A formal, systematic review program could uncover significant areas for regulatory reform, and develop a process to which priority issues can be referred eg where unjustifiable national inconsistency exists.

The CPLG also welcomes COAG's recent explicit expansion of the COAG Principles and Guidelines to national standard setting bodies, especially ministerial councils. Standards established by Standards Australia are often written into regulations and become prescriptive requirements for specific products, activities and/or industry sectors. Changes in such standards can have significant economic and administrative impacts and should be subject to proper impact assessment consistent with other forms of regulation and quasi-regulation.

The CPLG also notes the direction of the Workplace Relations' Ministers' Council that health and safety agencies are no longer to mandate Australian Standards by referencing these in regulation.

**We recommend that there be further expansion of the COAG principles to cover any remaining regulatory standards established by Standards Australia.**

#### **Recommendation 2**

***That mechanisms be put in place to ensure that all agencies regulating the chemicals and plastics industry comply with the 1997 COAG principles and that annual compliance audits be conducted.***

#### **Government response**

*The Government agrees with the recommendations and the ORR will monitor both agency compliance with the 1997 COAG Principles and Guidelines as well as their obligations with respect to Regulatory Impacts Statements (RISs) and publish results annually. In this respect, the ORR's role applies to all Commonwealth departments and agencies, including those agencies that deal with the chemicals and plastics sector. Additionally, the ORR's role will be expanded to include monitoring of the timeliness of RISs and the compliance details for each agency for any proposal having a significant impact regardless of its regulatory form. The ORR will provide advice to industry, through the CPLG, about the compliance and monitoring regime.*

---

#### **Status**

The positive role of the ORR in achieving improved compliance with RIS preparation has already been noted. In this regard, the CPLG acknowledges importance of the Government's commitment to expand role of the ORR.



### **Further steps**

Feedback from industry to the CPLG indicates that the process for consultation on RISs can be improved.

CPLG anticipates the ORR will monitor this aspect of the RIS process and provide guidance to agencies on how to better conform with best practice.

The focus of Recommendations 1 and 2 is on improving the quality of regulations. This is vital, but only one part of the regulatory reform equation.

An analogy comparing regulation design to a motor car may help illustrate the other side of this issue.

Let's assume the reforms implemented through the Action Agenda thus far are the equivalent of producing a better designed car. And, given the vital role of chemical and plastic products in Australia's local car manufacturing industry, let's consider a Holden in this case. Applying this analogy to NICNAS, then reforms to date could be considered the equivalent of moving from a Barina to a base level Commodore.

While our ultimate quality goal is for regulation across the agencies to reach the standard of a Caprice, things appear to be progressing down the right track – regulatory quality in some areas appears to be improving.

However, just looking good in the showroom isn't, at the end of the day, much use. The real test occurs on the road, and ultimately the car's performance is determined not only by its capabilities, but by the quality of the driver.

Even the best regulation and regulatory system can be trashed by bad 'driving', by poor administration. And just as a high performance car is wasted on a mediocre driver, then good regulation will become sub-optimal in the hands of a mediocre administrator.

CPLG believes that as part of the drive for better regulation, the reform agenda must also focus on continued improvement in agency governance, administration and adoption of best practice management.

While the detail for achieving this will be considered in more detail in the next recommendation, CPLG believes well governed and professional managed agencies are as vital to our industry's future as is adherence to principles of good regulation.

**Compliance with the COAG principles should be matched by compliance with principles of good governance and administration such as those promoted in the Australian National Audit Office's (ANAO) *Public Sector Governance Better Practice Guide*<sup>5</sup>.**

### **Recommendation 3**

***Carry out a review of the APVMA, TGA and NICNAS, comparing their approaches to consultative/control mechanisms to identify a common efficient structure.***

---

<sup>5</sup> *Public Sector Governance Volume 1 Better Practice Guide: Framework, Processes and Practices*, Australian National Audit Office, July 2003

### **Government response**

*The Government has considered this issue and as a result, in November 2001 the Government relocated NICNAS to the Department of Health and Ageing. Hence, NICNAS, TGA and the public health assessment of agricultural and veterinary chemicals rests within one structure. However, in an effort to develop a more efficient regulatory system, the Government believes there is merit in individual regulatory agencies being encouraged to identify best practice approaches in use amongst counterpart agencies. If it is found that such approaches are relevant, regulatory agencies should consider the applicability of such approaches for further enhancing the efficiency of their regulatory approaches.*

---

### **Status**

The CPLG has welcomed the Government's broadening of this recommendation to look not just at specific mechanisms relating to consultation and control but at all aspects of regulatory best practice.

Initiatives undertaken so far that are likely to lead to improvements are:

- establishment of the Office of Chemical Safety,
- establishment of the Science Forum; and
- reinvigation of the Chemicals Clearing House.

Industry also notes improvements in consultation and the inclusion of industry representation on committees developing regulatory policy relating to chemicals and plastics.

To date, however, the process of sharing, disseminating and adopting better approaches for administration and regulatory decision making has been *ad hoc* and piecemeal.

The Government's decision to relocate NICNAS within the Department of Health and Ageing is one way of encouraging inter-agency cross fertilisation of better practice ideas.

However, just as company mergers and acquisitions do not guarantee the new entity will actually implement the best operational practices of both parties, consolidation and/or co-location of agencies does not guarantee agencies will pick and choose the best approaches. There is always a significant risk that when smaller but more efficient agency is relocated into a larger agency or department, the dominant power relationship will mean it has to adapt to the methods of its new host. And as result, best practice may go out the window.

At this stage it is too early to conclusively say whether the NICNAS relocation has been positive, negative or neutral in this regard. The CPLG believes that the potential benefits of consolidation relate more to gaining economies of scale and, as a result, cost-efficiencies. This will be addressed in more detail later.

### **Further steps**

As noted above, progress to date with best practice identification and implementation has been *ad hoc* and piecemeal. The CPLG acknowledges that agencies face daily

operational demands and challenges that make it difficult to give sufficient attention to identifying best practice from counterpart agencies.

To overcome this, **the CPLG recommends that the Productivity Commission be commissioned to undertake a review of the operations of APVMA, TGA and NICNAS to identify opportunities for efficiency improvements, productivity targets and the adoption of best practice.**

This review will greatly assist the individual agencies and provide them with a 'road map' for achieving effective regulatory reforms and operational efficiencies.

It will assist the Government by helping it ensure the optimum use of agency resources to achieve desired policy outcomes.

The review will also assist the ORR in its monitoring of RIS and regulatory quality compliance and provide an opportunity for benchmarking agency performance against recent Australian Government policy on public administration governance, most notably the ANAO's *Public Sector Governance Better Practice Guide*.

A Productivity Commission inquiry was one of the options proposed to industry by the Allen Consulting report<sup>6</sup> as a means of further progressing the regulatory reform agenda.

The CPLG notes that TGA and NICNAS will be the subject of a Cost Recovery Compliance Review by the Productivity Commission in 2004/05 and that APVMA's host agency, the Department of Agriculture, Fisheries and Forestry, will be reviewed in 2007/08.

**The CPLG recommends that the review of the Department of Agriculture, Fisheries and Forestry be brought forward and rolled into a broader review of agency operations commencing in 2005.**

**The CPLG will work with the Government in the short term to define the inquiry's terms of reference.**

#### **Recommendation 4**

***Relevant regulatory bodies be required to alter their assessment processes to ensure:***

- 1. recognition of data from overseas sources that test to accepted international standards;***
- 2. recognition of chemical approvals from approved countries including substances "grandfathered" in those countries; and,***
- 3. consistency with international definitions and/or classifications***

#### **Government response**

*The Government has committed itself to reducing unnecessary regulation and will actively participate in international harmonisation efforts, including industry consultation, with respect to chemical regulation and risk management. Specifically in relation to recommendation 4:*

---

<sup>6</sup> *Alternative Models for the Regulation of Chemicals and Plastic Industry*, The Allen Consulting Group, June 2003

- i. *The Government is continually working towards the development and recognition of internationally acceptable standards for agricultural chemicals and industrial chemicals through international bodies such as the OECD and for veterinary chemicals through the VICH. Any data generated to international standards for industrial chemicals is accepted by Australian assessment schemes. For agricultural and veterinary chemicals, data generated to international standards is generally accepted for human toxicology, worker exposure and environmental chemistry and toxicology, and industry is encouraged to lodge submissions in internationally accepted formats as outlined by the OECD.*
- ii. *The Government has legislated provisions for the approval of overseas industrial chemical schemes of equivalent standards. The major overseas schemes of the EU and the US are presently the subject of a major review, and additional data generation respectively, in order to assess and address the problems presented by 'grandfathered chemicals' which have not been adequately tested for safety. Hence recognition of unassessed 'grandfathered' chemicals is not acceptable on the grounds that it would expose Australia to unacceptable risks and lower our regulatory standards and hence inhibiting our opportunity to harmonise with comparable regulators overseas. In respect to industrial chemicals, it would also specifically breach the objectives of the Industrial Chemicals Notification and Assessment Act 1989 in terms of protection of workers, the public and the environment. This would also breach the objectives of the Agricultural and Veterinary Chemicals Code Act 1994 in relation to protection of workers, the public, the environment and trade. The Government, via NICNAS, is committed to continuing to work with industry to ensure the most efficient regulatory system is in place for industrial chemicals, that is, a system that does not inhibit the introduction of new and safer chemicals. The Government will consider and develop options for access to adequately assessed and/or tested chemical presenting low regulatory concern*
- iii. *The Government has initiated national consultation in 2002 with a view to considering the benefits of implementing aspects of the Globally Harmonised System (GHS) for hazard classification and labelling of chemicals.*

*The Government will also consult with the proposed CPLG to assist in providing advice on whole-of-government and cross-portfolio issues concerning industrial chemicals such as the GHS.*

---

### **Status**

The CPLG notes the following achievements which aim to improve and streamline the regulatory assessment process:

- NICNAS LRCC initiative and the recent passing by Parliament of the *Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill 2004*
- Elements of the *Agricultural and Veterinary Legislation Amendment Act 2003*
- NOHSC's decision to integrate the dangerous goods and hazardous substances regulatory frameworks into one
- Commitment to the Global Harmonised Classification and Labelling for industrial chemicals

For the most part, these are significant and tangible achievements which introduce the concept of risk-resource management into regulatory assessment.

The CPLG particularly welcomes the recent NICNAS LRCC reforms which have the effect of immediately 'excluding' various low concern categories from unnecessary and bureaucratic requirements.

This will be particularly beneficial for cutting the 'red tape' burden for small business, as the low concern product markets can contain significant numbers of smaller firms. The CPLG commends NICNAS's management and staff on the both the speed and professional manner with which the reforms were developed and introduced.

Industry feedback to the CPLG indicates that, despite its similar intent, experience with the equivalent APVMA LRCC reforms is that these have failed to deliver on the promise of cutting red tape and applying agency resources to maximum benefit.

The CPLG notes that the APVMA reforms create a *process* by which categories of products can be 'excluded' from normal regulatory assessment through industry initiated action. It is also noted that this process can be more complex (and potentially more costly) for companies than simply continuing to meet the requirements associated with normal product registration.

For example, while the decision to register a product is an administrative decision delegated to the APVMA under legislation, decisions under the new LRCC process are delegated to the responsible Minister (in this case the Parliamentary Secretary). The complexity of the APVMA reforms negatively impacts on the ability of companies to achieve streamlined approval for low risk products.

The CPLG also notes the initiation of the NICNAS and TGA review of the policy framework for regulating products at the cosmetic/therapeutic good interface. While the draft recommendations of this review are not yet available, it is hoped that through adherence to the guiding principles specified for the review and policies and principles of regulatory reform discussed in this Report, tangible benefits and efficiency improvements in the priority product categories will be delivered.

In meeting with the CPLG in December 2003, Minister Macfarlane and Ms Worth both commented on the importance of the GHS implementation. The CPLG was informed that the classification and labelling elements would be looked at separately and that the ramifications of labelling issues would be considered by NOHSC (for workplace) and by the scheduling committee (for domestic products).

### **Further steps**

The CPLG believes LRCC reforms are a vital plank of the regulatory reform agenda. When well designed and properly implemented, they provide the agency with the additional benefit of freeing itself up to focus its financial and human resources on the issues of real concern, the problems of real economic, social and environmental impact, and the products and chemicals of highest risk. They can greatly improve agency efficiency and effectiveness.

LRCC reforms go back to the first principle of the COAG principles and guidelines – they ask “is regulation needed?” and, if so, “what form is most appropriate?”

**The CPLG recommends that all agencies continue to investigate opportunities for introducing low regulatory concern reforms as well as enhancing the reforms currently in place.**

**The CPLG recommends that NOHSC consult with industry on policy development, implementation plans and timetables for GHS for industrial chemicals and NDPSC in consultation with industry, consider ramifications of classification and labelling of GHS for domestic and agricultural/veterinary products.**

#### **Recommendation 5**

***The development of a National Chemicals Policy. That policy to include a nationally consistent mutual commitment to:***

- 1. Environmental quality***
- 2. Workplace and consumer health and safety***
- 3. An internationally competitive chemicals industry***
- 4. Consumer education.***

#### **Government response**

*The Environmental Protection and Heritage Council (EPHC) has recently approved the establishment of a National Taskforce on Chemical Management and Regulation. The Taskforce will scope issues associated with the need for a national approach to ecologically sustainable chemicals management and regulation. Chaired by the NSW DEC Director General, it will draw on membership from representatives from different EPHC jurisdictions and representatives from each Primary Industries Ministerial Council, Australian Health Ministers Council, Workplace Relations Ministers Council. It will report its scoping work in February 2003 and the CPLG will be tasked to provide input and a submission into this process. Additionally, the Government believes the industry should continue to work with all parties to improve the environmental performance of the chemicals and plastics industry. Government is committed to ensuring development of nationally accepted chemicals policies. For agvet chemicals policy this mechanism is already in place through the AVCPC, established under the Primary Industry Ministerial Council. One of the major achievements of this arrangement has been the National Strategy for the Management of Agvet Chemicals, which was launched in 1998. Progress in implementing this strategy is currently being reviewed by the AVCPC using a risk-based performance assessment approach.*

---

#### **Status**

The June 2003 Joint Government/Industry Progress Report<sup>7</sup> noted that EPHC had finalised its report. The CPLG has met with the Chair of the EPHC Taskforce to consider the implications of the report's recommendations and the ongoing work program. The CPLG notes the launch in April 2004 of the National Chemical Information Gateway.

---

<sup>7</sup> *Government and Industry Progress Report to the Minister for Industry, Tourism and Resources, Chemicals and Plastics Action Agenda, Regulatory Reform Initiatives – 1 June 2003*, presented by the Hon Trish Worth and Mr Mike Dwyer.

However, the primary focus of EPHC activities is on just one of the four elements of the Action Agenda recommendation for a National Chemicals Policy.

The Allen Consulting Group report<sup>8</sup> commissioned by ACCI, ACSPA, APMF and PACIA also considers the national policy framework for chemicals and plastics.

Greater national uniformity (or even national consistency) is essential to the long term viability and competitiveness of the industry.

Secondary ramifications of scheduling action recommended by the NDPSC to remove substances from the domestic market, has seen unintended and significant disruption to commercial business practices because specific States and Territories legislation cross reference licensing and permits to Schedule 7 of the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP). Despite the identification of such State by State differences and acknowledgement of the difficulties caused, no mechanism or forum exists through which priority review and nationally uniform (consistent) recommendations could be developed.

#### **Further steps**

The CPLG notes that while there has been significant progress in some aspects of reforming the regulatory system, the approach so far has been incremental and is generally being implemented on an agency-by-agency basis. Further, there needs to be an emphasis placed as well on State and Territory regulations.

From industry's perspective, the Allen Consulting Group report takes things to the next level.

It canvasses options for progressing national policy development, from establishing a dedicated council of Australian government ministers, to intergovernmental agreements, to holding a national forum.

The Allen report was commissioned to recommend mechanisms to restart stalled efforts for greater national uniformity of regulation impacting on the products and operations of chemicals and plastics companies.

The CPLG also notes the significant and related policy development currently taking place for trans-tasman harmonisation and the proposed establishment of a joint Australia/New Zealand therapeutic goods agency.

The CPLG believes that as an essential pre-step to further progress of a national policy framework for the reform of chemicals and plastics regulation and to achieve its goal of a revised, streamlined and nationally uniform (consistent) regulatory system, the various sectors of the chemicals and plastics industry must jointly consider and agree

- A map of the existing regulatory system,
- Priority areas for reform,
- Preferred option/program for achieving such reform, and
- Proposed timetable.

---

<sup>8</sup> *Alternative Models for the Regulation of Chemicals and Plastic Industry*, The Allen Consulting Group, June 2003

The CPLG therefore proposes to facilitate an Industry Forum to be held in early 2005.

### **Recommendation 6**

***Regulatory agencies that use cost recovery be subject to enforceable productivity targets.***

#### **Government response**

*Many issues associated with cost recovery will be considered by the Government in finalising its response to the Productivity Commission (PC's) Report on Cost recovery. Specifically with regard to this recommendation, the Government will need to await the development of the final response to the PC report before responding. It is important to note that the Government agrees with the Commission's recommendations that all cost recovery arrangements should have clear legal authority. Also, that revenue from cost recovery should be transparently identified in budget documentation and agency reporting. The Commission proposes detailed cost recovery guidelines for reviewing existing arrangements and test new cost recovery proposals. It considers that guidelines will enable Commonwealth agencies to decide on the appropriateness of cost recovery for their activities and the best approach to implementation of cost recovery. The Government will now commence a process of examining in detail the proposed guidelines in consultation with affected agencies. This process will inform, over the coming months, the preparation of the Government's final response to the Commission's report.*

---

#### **Status**

As noted under Recommendation 3, the Productivity Commission is scheduled to review NICNAS and TGA in 2004-05 and APVMA's host agency, Department of Agriculture, Fisheries and Forestry, in 2007-08. (The CPLG has recommended these reviews be rolled into a broader and more comprehensive Productivity Commission inquiry to identify opportunities for efficiency improvements and the adoption of best practice.)

Industry feedback received by the CPLG highlights some concerns regarding the transparency of cost recovery arrangements.

Putting aside the need for ongoing agency cost-efficiencies to reduce the financial burden on industry, there is one other key principle that industry expects agencies (and indeed governments) to adhere to. That is, the "no surprises" principle.

When it comes to regulatory fees and charges, for its business planning, industry expects predictability in assessing and determining its likely liability for the coming financial year. This means knowing the level of fees and charges at least six months out and not being hit with unexpected increases (above reasonable inflationary levels) without sufficient warning and justification in terms of program activities.

All businesses and small businesses in particular, are adversely affected by unplanned costs. Some, like currency fluctuations and petrol price increases, are naturally volatile and part of the risks to which businesses are exposed.



Others, like regulatory costs, are entirely within the control of agency management and should be predictable up to three years out. It is not unreasonable for business to have same expectations that governments have of their departments when it comes to regulatory agency cost recovery demands.

The CPLG is advised that in the lead up to the 2004-05 financial year, both NICNAS and APVMA have proposed increases to fees and charges raised under cost recovery arrangements. The CPLG's understanding is that these issues have been negotiated or are currently under negotiation.

From the CPLG's perspective, it is the principles arising from these negotiations that are of most interest. Transparent activity-based budget details are still not as available from all agencies as they should be in accordance with new cost recovery policies.

This lack of transparency is also impeding industry scrutiny and efforts to ensure that agencies seek productivity improvements and cost savings by introducing reforms and innovations, like LRCC initiatives.

#### **Further steps**

CPLG notes that the Cost Recovery reforms introduced by the Productivity Commission are relatively new and does not expect that agencies will be 100% compliant immediately.

The CPLG believes that the improvements sought under this recommendation can be progressed by implementing our recommendation that the Productivity Commission conduct an inquiry to identify opportunities for efficiency improvements, productivity dividends and the adoption of best practice within the APVMA, NICNAS and TGA.

#### **Recommendation 7**

***Appropriate monitoring arrangement should be put in place to measure agencies' productivity against targets.***

#### **Government response**

*The Government will consider this recommendation once its final response to the PC's Report on Cost Recovery has been developed.*

---

#### **Status**

Refer to Recommendation 6.

#### **Further steps**

Refer to Recommendation 6.

#### **Recommendation 8**

***The Government should fund the public good aspects of regulatory agencies' activities.***

#### **Government response**

*The Government will consider this recommendation once its final response to the PC's Report on Cost Recovery has been developed.*

---

**Status**

The CPLG notes the Government's response to the PC report to conditionally agree to this.

**Further steps**

Refer to Recommendation 6.

**Recommendation 9**

***Regulatory assessments should be open to alternative service providers.***

**Government response**

*The Government supports this in principle, balanced with the requirement for rigorous health, safety and environment standards setting processes and policy advice. The Government has already considered and is finalising its response to the use of alternate non-government service providers with respect to the APVMA.*

---

**Status**

The CPLG notes that the chemicals and plastics industry has not been actively engaged in furthering the dialogue on the use of alternate non-government service providers.

The CPLG is aware of recent comments regarding outcomes of the Therapeutic Products Interim Ministerial Council in a statement released by the Hon Trish Worth MP, Parliamentary Secretary to the Minister for Health and Aging and the Hon Annette King, Minister for Health, New Zealand (dated 16<sup>th</sup> July 2004) that

“Ms King and Ms Worth agreed that, given the attendant risks to public health and safety, conformity assessment should not be outsourced to the private sector. International best practice dictates that regulatory decision making should occur at arms length from commercial interests.”

**Further steps**

**The CPLG would invite the relevant Parliamentary Secretaries overseeing the activities of the TGA, NICNAS and APVMA to initiate discussion with industry on this important part of the Chemicals and Plastics Action Agenda recommendations.**

Refer also to Recommendation 6 and the CPLG's recommendation that the Productivity Commission conduct an inquiry to identify opportunities for efficiency improvements, productivity dividends and the adoption of best practice.

**Recommendation 10**

***(i) Involve industry from the inception through to implementation phase of greenhouse gas abatement policies and strategies that impact on industry***

***(ii) Negotiate the implementation of the Kyoto Protocol flexibility mechanisms so that they operate in an efficient and transparent manner***

***(iii) Only implement a mandatory domestic emissions trading scheme if the Kyoto Protocol is ratified by Australia and enters into force, and there is an established emissions trading scheme***

***(iv) Avoid greenhouse gas abatement policies and measures that would distort investment decisions between particular projects and locations***

#### **Government response**

*The Government is developing a forward strategy to address climate change focusing upon the longer term. In developing the way forward the Government is actively consulting with the business community. The strategy will build on Australia's competitive advantage and its domestic policy setting will balance flexibility and certainty, and emphasise cost effectiveness.*

#### **Status**

The Government involved industry in its policy considerations effectively through the Government/Business Greenhouse Dialogue and had the opportunity to present its views in the report to the Ministerial Round Table in April 2003. The Plastics and Chemical Industries helped develop the submission on the energy intensive and import competing sectors. The Prime Minister's statement "Securing Australia's Energy Future" essentially deals with the concerns raised in Recommendation 10. No further action is anticipated unless government policy changes and favours ratification of the Kyoto Protocol.