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13 May 2008

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Chemicals and Plastics Regulation Study  
Productivity Commission  
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Dear Mr Woods

**Productivity Commission Draft Research Report:  
Chemicals and Plastics Regulation**

PACIA commends the Commission on its draft report and recognises the comprehensive process of research and stakeholder consultation that has characterised the conduct of the study. Indeed, we believe the process and opportunity for open dialogue with the study team has contributed significantly to the quality of the draft report.

PACIA, on behalf of its member companies, is pleased to provide the attached submission of comments on the draft report. Whilst some of the issues are complex, and there may be varying views on detail, PACIA is supportive of the direction and broad thrust of the Draft Report and its recommendations. We trust that our comments will assist the Commission in confirming industry views, particularly in areas of key policy.

PACIA wishes to recommend strongly that the Commission, in its Final Report, should develop an Implementation Plan with timeframes and milestones, to assist the jurisdictions at all levels of Government to progress the recommended reforms.

We would be pleased to discuss or clarify any of the matters raised in the attached submission and look forward to the Commission's finalisation of its report.

Should the Commission require any additional information from PACIA at this stage please do not hesitate to contact me on (03) 9426 3805 / 0419 007 551 or Geoff MacAlpine on (02) 9558 0817 / 0409 111 179.

Yours sincerely

A handwritten signature in black ink that reads "Margaret Donnan". The signature is written in a cursive, flowing style.

Margaret Donnan  
**Chief Executive**

# **PACIA Submission on Productivity Commission Draft Research Report: Chemicals and Plastics Regulation**

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## ***1. Introduction***

PACIA is the peak national body for the Australian chemicals and plastics sectors. It represents some 200 members across all sectors of the chemicals and plastics supply chain, including manufacturers, processors, importers, distributors and transport and storage operators. Chemicals and plastics producers had a combined turnover of \$30.5 billion in 2004-05, and directly employed more than 82,400 Australians. They represent roughly 10 percent of all national manufacturing output and employment. PACIA actively supports its members in their efforts to ensure that the plastics and chemicals industries are leaders in health, safety, security and environmental performance improvement through the implementation of the Responsible Care® and Plascare™ programs.

PACIA commends the Commission on its draft report and recognises the effective and comprehensive process of research and stakeholder consultation that characterised the conduct of the study. Indeed, we believe the process and opportunity for open dialogue with the study team has contributed significantly to the quality of the draft report.

Understanding the imperative for change, to improve regulatory efficiency and effectiveness, is key to achieving much-needed reform. We see the Commission's study as a key component of that analysis, communication and policy articulation; with the critical role of informing the considerations of the Ministerial Taskforce on Chemicals and Plastics and subsequent governance structures.

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

*(PC Draft Research Report page xxv)*

PACIA does not underestimate the challenges to progress regulatory reform for the chemicals and plastics industries .... *but we have taken a step forward.*

PACIA, on behalf of its member companies, is pleased to provide the following comments on the draft report. Whilst some of the issues are complex, and there may be varying views on detail, PACIA is supportive of the direction and broad thrust of the Draft Report and its recommendations. We trust that our comments will assist the Commission in confirming industry views, particularly in areas of key policy.

## ***2. General Comments***

### **2.1 Best practice regulation**

In its 22 October 2007 submission, PACIA noted its strong support for the Council of Australian Governments (COAG) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies (COAG Principles). PACIA has long promoted that these principles should be rigorously applied in the consideration of any regulatory response.

Under the terms of reference, the Commission is required to have regard to the COAG Principles and the Commission has further identified the seven principles and features of the Checklist for Assessing Regulatory Quality (*Argy and Johnson 2003*) as best practice design standards for regulation.

In its outline of interpretation of assessment criteria the Commission has identified the components of economic efficiency:

- Productive efficiency;
- Allocative efficiency; and
- Dynamic efficiency

The Commission has further elaborated its broad approach to application of the assessment criteria by addressing the following three questions:

1. *Are the regulations effective in achieving the stated outcomes?*
2. *Could regulation improve the way resources are used to enhance community wellbeing?*
3. *Do current regulations deliver the greatest possible improvement in efficiency (and hence community wellbeing), or are reforms required?*

*(PC Draft Research Report, page 16)*

PACIA supports best practice regulation of the chemicals and plastics industries as an appropriate intervention and agrees with the Commissions statement:

*“..... regulations that impose costs on firms may nonetheless be supported by the Commission, because they deliver a net benefit to the community as a whole. Conversely, regulations are not supported if they do not make the community better off, or due to poor regulatory design, do not deliver the greatest possible improvement in community wellbeing.”*

*(PC Draft Research Report, page 16)*

Overall, PACIA supports the study methodology and evaluative criteria with the following qualifying comment on the question of “*should national uniformity always be a goal?*”

The Commission identifies:

*Regulations are harmonised by aligning common elements, such as definitions, certification requirements, enforcement protocols, and measurement systems. National uniformity occurs when all jurisdictions across Australia have the same standards and codes of practice and, desirably, the same legislative base.*

*(PC Draft Research Report, page 20)*

The Commission notes the ‘subsidiarity principle’ which supports responsibility for a particular function to reside, where practical, with the lowest level of government and the Commission gives context to its consideration in the Draft Report.

PACIA wishes to emphasise that many of its member companies, ranging from large companies to small medium enterprises, operating throughout the chemicals and plastics supply chain, do so on a national basis.

For industry, one of the fundamental impediments to efficient regulatory operations continues to be regulatory fragmentation, complexity, and differences and inconsistencies between the jurisdictions. This is particularly acute given the large number of regulators and regulations that apply throughout Australia. Indeed, PACIA contends that the current regulatory framework actively works against compliance rather than facilitating it.

PACIA sees urgent need to make real progress with meaningful regulatory reform.

## **2.2 The proposed framework**

PACIA believes that the Commission's proposed institutional and regulatory approach provides a suitable framework for division of policy, assessment, standards setting and administration/monitoring of agreed standards between the different levels of government.

PACIA supports the following broad description of the Commission's proposed institutional and regulatory approach:

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

Specific comment on the elements will be provided in following sections of this submission

## **2.3 Opportunities for progress**

At the 19 February 2009 meeting with members of the Study Team, PACIA together with its Chemicals and Plastics Leadership Group (CPLG) colleagues, identified five recommendations to accelerate the current reform process:

- Reducing systemic inconsistency;
- Lowering the costs of compliance;
- Improving the quality of regulation;
- Centralising reform responsibility; and
- Reforming institutions.

PACIA sees a good deal of consistency in the five recommendations that CPLG has raised with the Commission's statements on best practice regulation and the proposed institutional and regulatory approach.

PACIA wishes to recommend strongly that the Commission, in its Final Report, should develop an Implementation Plan with timeframes and milestones, to assist the jurisdictions at all levels of Government to progress the recommended reforms.

## **2.4 Future review of chemicals and plastics regulatory framework**

Progress with substantial beneficial regulatory changes needs to be identified within short, medium and long-term reform targets. This submission will also further comment on the critical need to maintain regulatory reform momentum.

PACIA recommends that the Commission, in its final report, make a recommendation that the Commission review the effectiveness of the regulatory framework for chemicals and

plastics in five years. PACIA submits that such a recommendation is valid and appropriate given the clear identification of regulation in the sectors as a 'hot-spot'.

### 3. *National policy formulation and system governance*

#### **DRAFT RECOMMENDATION 3.1**

*Subsequent to the COAG Ministerial Taskforce on Chemicals and Plastics Regulation having completed its reference, the Commonwealth, states and territories should establish, under the Australian Health Ministers' Conference, a Standing Committee on Chemicals, comprising representatives of all ministerial councils that have responsibility for chemicals regulation. It would:*

- *provide an ongoing forum for assessing:*
  - *the consistency of chemicals-specific policy settings across the various areas of concern, including public health, workplace and on-farm safety, transport safety, environment protection and national security*
  - *the effectiveness and efficiency of the overall chemicals-specific regulatory system*
- *address emerging issues, such as nanotechnology*
- *oversee the consistent application of chemicals hazard and risk-assessment methodologies*
- *make recommendations for specific actions by individual ministerial councils.*

**PACIA Position:** Support with qualification that the Standing Committee on Chemicals (SCOC) has clear direction to **drive and monitor** continuing regulatory reform as a key mandate to deliver best-practice regulation and economic efficiency of chemicals and plastics regulation. It is recommended that SCOC has a direct reference to the Business Regulation and Competition Working Group (BRCWG), in addition to its particular Ministerial Council.

**Comments:** PACIA recognises the critical role of a best practice governance framework.

PACIA provides in-principle support for the establishment of a Standing Committee on Chemicals with the following reservations:

- It is vital that SCOC's charter provides clearly focus on driving best-practice regulation and economic efficiency of regulation for the chemicals and plastics industries to deliver significant improvements as a key objective.
- Given the need for significant regulatory reform there is an important direction and monitoring role for COAG and BRCWG. The BRCWG has the following objectives:
  - *To accelerate and broaden the regulation reduction agenda to reduce the regulatory burden on business.*
  - *To accelerate and deliver the agreed COAG regulatory hot spots agenda.*
  - *To further improve processes for regulation making and review, including exploring a national approach to processes to ensure no net increase in the regulatory burden, and common start dates for legislation.*
  - *To deliver significant improvements in Australia's competition, productivity and international competitiveness.*

PACIA is concerned that without linkage back to the objectives of the BRCWG that SCOC would lose sight of the reform imperative to achieve best-practice regulation and economic efficiency of chemicals and plastics regulation.

PACIA is concerned that a long term, whole of government focus is required to achieve significant reform for chemicals regulation in Australia. PACIA is concerned that the Australian Health Minister's Conference may not be an appropriate Ministerial Council to champion this process, given their other major priorities. PACIA recommends that this process needs to be championed and oversighted by a central process for at least a five year period, and suggests that this could be done by COAG or through the existing Ministerial Taskforce on Chemicals and Plastics.

#### 4. *National hazard and risk assessment*

**DRAFT RECOMMENDATION 4.1**

*An objective of NICNAS should be to maximise net community benefit, and its assessment requirements and outcomes should be supported by analysis of the associated costs and benefits.*

**PACIA Position:** Supported with qualification that the cost-benefit analysis be applied to NICNAS requirements rather than individual assessments.

**Comments:** In its study the Commission has given consideration to how regulations improve economic efficacy and PACIA notes the Commission's description:

*"Economic efficiency is about maximising the wellbeing of the members of the community. There are three components.*

- *Productive efficiency is achieved when output is produced at minimum cost. It incorporates technical efficiency, which refers to the extent to which, in the production of any good or service, it is technically feasible to reduce any input without decreasing the output, and without increasing any other input.*
- *Allocative efficiency is about ensuring that the community gets the greatest return (very broadly defined) from its scarce resources. A nation's resources can be used in many different ways. The best or 'most efficient' allocation of resources is the one that contributes most to community wellbeing.*
- *Dynamic efficiency refers to the allocation of resources over time, including allocations designed to improve economic efficiency and to generate more resources. Investments in education, research, development and innovation are involved. Dynamic efficiency can also refer to the ability to adapt efficiently to changed economic conditions, a capacity for optimally modifying output and productivity performance in the face of economic 'shocks'."*

*(PC Draft Research Report, page 15)*

With regard to NICNAS, the Commission states:

*"The Commission considers that, as a matter of principle, the generation of net community benefit should be explicitly recognised as the objective of the NICNAS legislation. Further, this objective should be reflected in NICNAS's design (in particular, the nature and extent of chemical assessment requirements) and in the outcomes of individual assessments. Without explicit recognition of this objective, NICNAS is likely to err on the side of minimising risks and not having sufficient regard for the costs of its actions, for example, by requiring excessive testing of a new*

*chemical, or through making overly cautious recommendations for controls that are out of proportion to the risks involved.”*

*(PC Draft Research Report, page 51)*

The Draft Report (page 61) further identifies NICNAS assessment fees for non-polymer chemicals as the most expensive in the countries identified – United States, Canada, European Union, Japan, Korea and China. Whilst the Commission notes that differences may be reflective of different cost-recovery regimes, the outcome remains that of the countries listed, for a country with a relatively small economy, ***the cost to gain regulatory approval to enter the Australian market is the highest.***

PACIA’s comments on this draft recommendation are predicated on the assumption that Draft Recommendation 4.2 – namely that the role of NICNAS is limited to the scientific assessment of the hazards and risks of industrial chemicals, is accepted. If NICNAS role were to be expanded to ban or severely restrict chemicals, then clearly full cost benefit considerations would be required prior to making those decisions.

Whilst PACIA understands the rationale for the Commission’s recommendation PACIA has concerns that application of the cost-benefit analysis to individual assessments would be cost prohibitive and further increase the cost burden on industry bringing new chemicals to the Australian market. This approach could also increase assessment times.

PACIA would strongly support that NICNAS requirements be subject to an economic efficiency test as a means of maximising the wellbeing of the members of the community. This would allow objective analysis through consideration of the elements of:

- Productive efficiency;
- Allocative efficiency; and
- Dynamic efficiency

Key to these considerations would be NICNAS requirements that are excessive or substantially different from requirements in major markets, with developed regulatory and chemicals management schemes, such as those of North America or Europe.

A current issue under contention with NICNAS relates to the recognition of Canada under their Foreign Scheme provisions where NICNAS does not recognise the outcomes of the Canadian regulatory assessment unless the process is the same – examples include use of modelling by the Canadian regulator. PACIA strongly contends that NICNAS should recognise the **outcomes of assessments** undertaken by an approved foreign scheme.

**DRAFT RECOMMENDATION 4.2**

*The role of NICNAS should be limited to the scientific assessment of the hazards and risks of industrial chemicals*

**PACIA Position:** Supported

**Comments:** NICNAS currently has a combination of chemical assessment and standard setting functions but these functions commonly are duplicative with other agencies (e.g. NICNAS conditions on certificates and the determinations of the National Drugs and Poisons Schedule Committee or Australian Safety and Compensation Council). Furthermore, PACIA has previously expressed concern that NICNAS moves to set stringent controls or restrictions have not been accompanied by the necessary regulatory



impact process.

PACIA supports the general framework of separation of risk-assessment and risk-management functions, notes the Commission's discussion, and supports the recommendation.

**DRAFT RECOMMENDATION 4.3**

*A technical advisory committee should be established within NICNAS, as a statutory requirement.*

**PACIA Position:** Supported

**Comments:** PACIA supports the principle of a properly constituted NICNAS technical advisory committee.

**DRAFT RECOMMENDATION 4.4**

*NICNAS should implement a program to greatly accelerate the assessment of existing chemicals that:*

- *screens all existing chemicals to develop a list of high priority chemicals for assessment*
- *makes greater use of simulation techniques based on the hazards of chemical analogues*
- *urgently reviews the scope for recognising the assessment schemes of a range of other countries as 'approved foreign schemes'. Priorities should be the schemes operated by Canada, the European Union and the United States.*

*The incremental cost of this program, which is in the broader public interest, should be met from budget funding.*

**PACIA Position:** Supported

**Comments:** The Commission notes:

*"Several countries have implemented or are currently implementing programs for assessing existing chemicals. Approaches range from a preliminary screening of all existing chemicals in combination with a more detailed assessment of chemicals identified as being of concern (for example, in Canada and the United States) to assessment of all existing chemicals with detailed assessment of all high volume chemicals (for example, under the new EU REACH scheme)."*

*(PC Draft Research Report, page 56)*

There are significant opportunities for Australia to benefit from the work being undertaken in the major economies. For these benefits to be realised there is critical need for NICNAS to accept 'outcomes' from screening processes in the EU and North America. Impediments as perceived by NICNAS to accepting the 'outcomes' of modelling (simulation techniques) currently present an impasse in recognition of Canadian assessments under the NICNAS Foreign Scheme, and must be addressed and overcome as a priority.

Draft Recommendation 4.1 raised the need for cost-benefit analysis of NICNAS requirements. PACIA agrees that such an analysis is needed for developing a NICNAS

process for screening, categorisation and prioritising of existing chemicals for assessment.

PACIA supports the incremental cost of the program be met from budget funding.

**DRAFT RECOMMENDATION 4.5**

*An objective of the National Registration Scheme for agricultural and veterinary chemicals should be to maximise net community benefit, and its assessment requirements and outcomes should be supported by analysis of the associated costs and benefits.*

**PACIA Position:** Supported with qualification that the cost-benefit analysis be applied to APVMA requirements rather than individual assessments.

**Comments:** The Draft Recommendation is similar to that of Draft Recommendation 4.1 for NICNAS and the principles identified for that item by PACIA also apply here.

**DRAFT RECOMMENDATION 4.6**

*The National Registration Scheme for agricultural and veterinary chemicals should be extended to cover regulation of agricultural and veterinary chemical use after the point of retail sale, provided:*

- *the new national regime contains appropriate exemption provisions and is administered at state and territory level, to allow adequate flexibility to address local issues*
- *there is a commensurate reduction in regulatory burden at state and territory level.*

**PACIA Position:** Supported with qualification that the extension of the NRS should not provide for cost-shifting of current control-of-use functions under the States and Territories to fees and levies under the APVMA.

**Comments:** The operation of the APVMA is cost-recovered from industry through an arrangement of fees and levies. PACIA would not support cost-shifting of functions currently undertaken by the States and Territories to fees and levies under the APVMA.

PACIA is aware that CropLife has raised a number of matters under the headings of:

- Interstate consistency;
- Reduced cost to suppliers; and
- Off-label uses

PACIA is supportive of the issues raised by CropLife.

## 5. *Public health*

### DRAFT RECOMMENDATION 5.1

*The Australian Health Ministers' Conference should agree to separate responsibility for the scheduling and regulation of poisons from that of drugs. An intergovernmental agreement should be prepared between the Commonwealth, state and territory governments to:*

- *establish a Poisons Standing Committee under the Australian Health Ministers' Advisory Council to design the poisons schedules and the attached regulatory controls, and oversee the poisons regulatory process at all levels of government*
- *establish a Poisons Scheduling Committee of science experts under the Poisons Standing Committee, appointed by the Ministerial Council on the basis of their knowledge and experience, rather than on who they represent, to make decisions about the appropriate scheduling of poisons.*

**PACIA Position:** The separation of regulation of drugs from poisons is supported.

PACIA supports a model of a Poisons Advisory Committee reporting to a decision-maker who is a delegate of the Secretary of the Department of Health and Aging.

PACIA supports the establishment of a Poisons Scheduling Committee with qualification that the expertise sought as a criteria of membership includes experience and knowledge in industry and the practical use of chemicals.

**Comments:** PACIA is aware that ACCORD has made specific submission on this Draft Recommendation. PACIA closely collaborates with ACCORD on scheduling matters and supports the issues identified and recommendations that have been made by ACCORD.

### DRAFT RECOMMENDATION 5.2

*State and territory governments should:*

- *uniformly adopt regulatory controls through either a template or model approach*
- *adopt poisons scheduling decisions made at the national level directly by reference*
- *report any variations to nationally-agreed poisons scheduling or regulatory decisions at the state and territory level to the Australian Health Ministers' Conference.*

**PACIA Position:** Supported

**Comments:** PACIA notes the Commission's discussion and rationale, and strongly supports the recommendations. PACIA promotes a model involving either development of template legislation or direct referencing of Commonwealth powers by the jurisdictions. PACIA supports a system of incentives and disincentives for the jurisdictions, with a strong oversight and monitoring of consistent jurisdictional adoption of decisions made at the national level.

**DRAFT RECOMMENDATION 5.3**

*State and territory governments should exempt authorised users of poisons in the industrial environment from poisons controls. Such users should be regulated by appropriate workplace substances regulations.*

**PACIA Position:** Supported

**Comments:** PACIA notes and supports the Commission's discussion:

*"This overlap between domestic poisons controls and those on workplace substances imposes unnecessary costs on firms that have to meet additional requirements, with little benefit to public health (or occupational health and safety) outcomes. It also imposes unnecessary costs on governments administering poisons controls that apply to both industrial and domestic uses. The intent of poisons controls are to protect public health by managing the risks from chemicals in domestic use. Occupational health risks are best dealt with through the existing regulatory framework for occupational health and safety."*

*(PC Draft Research Report, page 110)*

**DRAFT RECOMMENDATION 5.4**

*The Ministerial Council for Consumer Affairs should initiate the development of a broadly-based hazard identification system, based on a clearing house approach, in line with the recommendations of the Productivity Commission's 2006 report on consumer product safety (PC 2006, recommendation 9.1). It should be coordinated by the Australian Competition and Consumer Commission, and take account of health and safety issues around chemicals released from consumer articles.*

**PACIA Position:** Supported with qualification that risk needs to be considered in addition to hazard.

**Comments:** PACIA supports initiation of a scheme that has active industry participation in its development and regulatory impact analysis.

**DRAFT RECOMMENDATION 5.5**

*The ACCC and NICNAS should negotiate formal arrangements for cooperation on issues regarding chemicals in consumer articles. These arrangements should include the establishment of a more systematic research program to identify and deal with the risks of chemicals in consumer articles.*

**PACIA Position:** Supported

**Comments:** PACIA supports initiation of an arrangement that has active industry participation in its development and regulatory impact analysis.

**DRAFT RECOMMENDATION 5.6**

*The Australian Government should transfer responsibility for the administration and enforcement of the Cosmetics Standard 2007 (Cwlth) from NICNAS to the ACCC.*

**PACIA Position:** Supported

**Comments:** PACIA notes the Commission's discussion and rationale, and supports the recommendations.

**DRAFT RECOMMENDATION 5.7**

*The Australian Government should add 'deemed-to-comply' provisions to the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991 (Cwlth) for fully-imported cosmetic products that meet the cosmetic labelling requirements of specified countries that have labelling requirements that produce sufficiently comparable policy outcomes.*

**PACIA Position:** Supported

**Comments:** PACIA notes the Commission's discussion and rationale, and supports the recommendations.

**DRAFT RECOMMENDATION 5.8**

*The Ministerial Council on Drug Strategy should develop illicit drug precursor regulations for adoption by reference by all jurisdictions. The associated risk-based schedule of chemicals and apparatus subject to the regulations should be maintained by a committee of experts overseen by the Ministerial Council, and also be adopted by reference in each jurisdiction*

**PACIA Position:** Supported

**Comments:** PACIA has long been committed to preventing the diversion of precursor chemicals into illicit drug manufacture. PACIA and Science Industry Australia, in conjunction with law enforcers, first developed the PACIA / SIA National Code of Practice for Supply Diversion into Illicit Drug Manufacture back in 1994. PACIA works closely with all law enforcement agencies, coordinated by the Australian Crime Commission to update the Code<sup>1</sup> regularly. Our Code has been used as the basis upon which many State jurisdictions have developed their own precursor regulation. This adoption at jurisdictional level has not been done in a consistent fashion. These inconsistencies create complexity and cost burden for industry and also the complexity actually undermines compliance with the requirements.

PACIA has made specific submission on this matter to the Commission and has noted the Commission's discussion including:

*"There are inconsistencies between each jurisdiction's regulations and the Supply Diversion Code (PACIA, sub. 33). This is despite each jurisdiction's regulations being largely derived from the Code. A notable inconsistency is that some jurisdictions do not use risk categories and risk-tailored controls for each category. Failure to tailor controls to the level of risk could lead to regulatory burdens being greater than necessary, and, therefore, greater compliance costs for firms. It could also impose a competitive disadvantage on firms operating in multiple jurisdictions compared with some single state firms. Inconsistencies can result in unwarranted costs due to the burden of understanding and fulfilling different controls.*

*Inconsistencies can also undermine the effectiveness of the regulations. This can include difficulties in complying with requirements in multiple jurisdictions as firms attempt to understand the different controls, and regulatory gaps that can be exploited by illegal elements (including ‘jurisdiction shopping’). A uniform approach across jurisdictions would address these issues.”*

*(PC Draft Research Report, page 130)*

PACIA is therefore supportive of the Commission’s draft recommendation.

**DRAFT RECOMMENDATION 5.9**

*Maximum residue limits set by the APVMA, which take account of dietary impacts using methods agreed with Food Standards Australia New Zealand (FSANZ) and the Australian Government Department of Health and Ageing, should be automatically incorporated into the Australia New Zealand Food Standards Code. Any decision to the contrary by FSANZ and the Australia and New Zealand Food Regulation Ministerial Council should be based on a cost–benefit analysis and be reported publicly.*

**PACIA Position:** Supported

**Comments:** PACIA notes the Commission’s discussion and rationale, and supports the recommendations.

## 6. *Workplace safety*

**DRAFT RECOMMENDATION 6.1**

*As part of its review of the National Standard and Code of Practice for the Control of Major Hazard Facilities, the Australian Safety and Compensation Council should:*

- *determine whether there is a case for regulation of Major Hazard Facilities beyond existing generic regulation in areas such as occupational health and safety, environmental protection and planning, based on cost–benefit analysis*
- *if such a case exists, identify strategies and opportunities for achieving greater consistency in the adoption and application of the Standard across jurisdictions, than what has been achieved to date.*

**PACIA Position:** PACIA supports the current ten year ASCC review of the National Standard as a pragmatic mechanism to drive greater consistency in the adoption and application of the Standard across all jurisdictions.

**Comments:** PACIA has been supportive of sound and consistent administration of the safety case regime as described in the ASCC 1996 National Standard for the Control of MHFs, by a competent regulator as a valuable approach to minimise the risk of major accident events. The Longford Royal Commission in Victoria following the Esso Longford incident, undertook an expert review of the circumstances of the incident and the regulatory environment in Victoria at that time, and recommended the need for introduction of safety case regulation as the existing OHS and DG regulations were

inadequate to address the specific risk. PACIA is supportive of the current review by ASCC of the 1996 National Standard, and recommends the need to examine techniques to better integrate land use planning arrangements with major hazard controls. PACIA believes any extension of the major hazard regime to a second tier of facilities must not be progressed unless fully justified through a cost benefit analysis.

PACIA made extensive comment during the Commission's consultation. PACIA's MHF Case Study of 22 October 2007 concluded with

*"PACIA considers this case study on the regulation of major hazard facilities across Australia highlights the lack of appropriate and consistent regulatory action in relation to MHFs and reveals a major deficiency in a vital regulatory requirement in half the jurisdictions. This case study highlights the inefficiencies and unnecessary costs resulting from an apparent inability to achieve consistent, efficient and uniform standards to enable industry to operate efficiently and competitively in a national and international environment."*

The same case study also contained a number of proposals and models.

*"One possible model to deal with this issue can be seen in the offshore regime. In the offshore oil and gas industry, administration of the safety case regime moved in January 2005 from a model which involved state based delivery of national legislation through state regulators - to a national regulator – the National Offshore Petroleum Safety Authority, which administers the national legislation itself."*

*"Another possible model to deal with this issue of lack of specialist resources would be for one or two state agencies to provide "consultancy" type of services to all other jurisdictions on this complex safety case regime. In this way, a sufficient pool of expertise could be accumulated and retained to provide expert services to support consistent administration of legislation across Australia."*

*Ideally this would involve either national legislation or national legislation which can be adopted by template in all jurisdictions – and administered through service agreements with other agencies with appropriate level of expertise and resourcing."*

Given the difficulties over the last 12 years in national adoption, PACIA recognises that a pragmatic approach to making progress is required in order to effectively and efficiently improve control of major accident events.

**DRAFT RECOMMENDATION 6.2**

*The Commonwealth, state and territory governments should replace the existing systems of regulation of workplace hazardous substances and dangerous goods with a single system of regulations for the classification, labelling, provision of material safety data sheets and risk assessment for all workplace hazardous chemicals. The new system should be based on the Globally Harmonised System of Classification and Labelling of Chemicals (GHS).*

*Australia should not implement the new system until our major trading partners have implemented the GHS. In this context, the European Union has announced that it intends to move to a GHS-based system in 2015.*

**PACIA Comment and Position:** PACIA supports the implementation of the GHS,

appropriate to the needs of the individual sector (industrial chemicals, agricultural chemical products, and consumer products) with a timeframe that is extended beyond Australia's major trading partners thereby allowing efficiencies and cost-effective benefits to be realised. The case and issues for GHS were documented in detail in PACIA's previous submissions to the Commission.

PACIA's 14 March 2007 submission to the Proposed Workplace Hazardous Chemicals Framework Public Comment made the following comment on the draft Regulation Impact Statement:

*"The Draft Regulation Impact Statement (RIS) has not considered the substance and detail of the Workplace Hazardous Chemicals Public Comment package. This would seem to reflect that the details of the reform proposals were not known at the time that the Draft RIS was prepared. (underlining added)"*

Additionally, analysis of the proposals was complex, particularly considering the scenarios of whether or not the proposals could be efficiently and cost-effectively adopted with or without the accompanying proposals for implementation of the GHS. PACIA's submission is at [http://www.ascc.gov.au/NR/rdonlyres/CD293E08-225D-4D1D-B070-8CE9B0B3BF4D/0/ChemComment\\_PACIA\\_2007.pdf](http://www.ascc.gov.au/NR/rdonlyres/CD293E08-225D-4D1D-B070-8CE9B0B3BF4D/0/ChemComment_PACIA_2007.pdf)

There remains significant detail to be worked through to finalise the detail of the proposals for the single system of workplace hazardous substances and dangerous goods and to provide necessary regulatory impact analysis.

**DRAFT RECOMMENDATION 6.3**

*Any new system for workplace hazardous chemicals labelling should recognise labels approved by APVMA as being sufficient for workplace requirements.*

**PACIA Position:** Supported

**Comments:** PACIA made previous submission on this matter, notes the Commission's discussion and rationale, and supports the recommendation.



**DRAFT RECOMMENDATION 6.4**

*In light of the agreement by the Workplace Relations Ministers' Council (the Council) to replace the Australian Safety and Compensation Council with a new and independent national body, the Commission recommends:*

- *the new body be statutorily independent and made up of five to nine members appointed by the Commonwealth Minister on the basis of their qualifications and experience, and be constituted to reflect the broader public interest, rather than represent the interests of particular stakeholders*
- *the appointments by the Commonwealth Minister be approved by the Council*
- *the new body have the ability to appoint advisory bodies, noting the importance of consulting with employers, unions and all jurisdictions*
- *the Council be required to formally approve national standards and codes of practice prepared by the independent national body*
- *agreement by all jurisdictions to adopt, without variation, the standards and codes approved by the Council.*

**PACIA Position:** In-principle support but with need for further information and assurances.

**Comments:** The suggested smaller, more skills oriented body leaves open a number of unanswered questions including:

- The structure and membership of such a body and how members are to be appointed;
- If not tri-partite then industry representation is not guaranteed; and
- If there is no industry representation or none, which is, tied to a peak industry organisation, how is it planned to establish a two-way conduit to industry, to provide input and to disseminate information?

A move away from a tri-partite Commission to a small 'expert' body could downgrade and in practice disenfranchise industry, which currently plays a very active and constructive role in developing national policy, national standards and the national strategic direction of Occupational Health & Safety in Australia

## 7. *Transport safety*

**DRAFT RECOMMENDATION 7.1**

*Jurisdictions should consistently adopt the Model Transport of Dangerous Goods Act and Regulations and should uniformly reference the Australian Dangerous Goods (ADG) Code.*

*In light of the risks of greater inconsistency in moving from template to model legislation for implementing the ADG7 package, the National Transport Commission should undertake a transparent public review of the consistency with which the new legislation, regulations and the ADG Code are adopted by jurisdictions.*

**PACIA Position:** Supported

**Comments:** The Commission will be aware that there are also imminent issues with ADG7 implementation that need to be addressed. These relate to matters agreed by the Australian Transport Council in February 07, namely consistency of implementation of the ADG7 legislative package in terms of both content and commencement date and the agreed 12 month period of transition for coexistence of ADG6 and ADG7. PACIA has raised these matters through the Ministerial Taskforce and the Australian Transport Council.

**DRAFT RECOMMENDATION 7.2**

*In view of the strong governance arrangements for implementing national transport policy, and the successful implementation of dangerous goods transport policy under those arrangements to date, the Commission considers that responsibility for policy development and monitoring should, at this stage, remain with the National Transport Commission, reporting to the Australian Transport Council.*

**PACIA Position:** Supported

**Comments:** PACIA notes the Commission's discussion and rationale, and supports the recommendation.

**DRAFT RECOMMENDATION 7.3**

*The current review of the Australian Explosives Code (AEC) should be expanded to include jurisdictional legislation and regulations for explosives transport, and should lead to nationally consistent legislation and regulations and a uniformly adopted technical code.*

*Future revisions to the AEC should be undertaken separately from, but in parallel with, revisions to the regulation of other dangerous goods. In the longer term — if successful interjurisdictional harmonisation of explosives transport legislation regulations and technical code is achieved — the regulation of dangerous goods and explosives transport should be combined.*

**PACIA Position:** Supported

**Comments:** PACIA notes the Commission's discussion and rationale, and supports the recommendation. Furthermore, PACIA wishes to highlight the need for this recommendation to also address the nationally consistent regulation of storage and use of explosives, and PACIA wishes to support the recommendations made by the Australian Explosives Industry Safety Group in this regard.

**DRAFT RECOMMENDATION 7.4**

*The Australian Dangerous Goods Code should be available free on the internet and at avoidable cost for hard copies. The resultant revenue loss for the National Transport Commission should be offset by increased jurisdictional contributions. Pricing of the Australian Explosives Code should also follow these principles.*

**PACIA Position:** Supported

**Comments:** PACIA made previous submission on this matter, notes the Commission's discussion and rationale, and supports the recommendation.

## 8. *Environment protection*

### DRAFT RECOMMENDATION 8.1

*The Environment Protection and Heritage Council (EPHC) Chemicals Working Group should continue to assess the need for a national framework for the management of chemicals in the environment.*

*If this work demonstrates that such a framework would improve effectiveness and efficiency, the Commonwealth, state and territory governments should negotiate an intergovernmental agreement to create an independent standard-setting body reporting to the EPHC.*

- *This body would develop standards for the environmental risk management of chemicals that the states and territories would adopt by reference, and have the power to ban or phase out chemicals, subject to appropriate cost–benefit analysis.*
- *Members of the environmental risk management standard setting body should be appointed based on their qualifications and experience. The body should be constituted to reflect the broader public interest and have the ability to appoint advisory bodies as necessary.*

**PACIA Position and Comments:** PACIA supports that the EPHC Chemicals Working Group continue to assess the need for a national framework for the management of chemicals in the environment. PACIA has previously indicated its opposition to an expansion of NICNAS' powers to mandate environmental controls. Until the Working Group is able to report its findings PACIA believes that it is premature to define next steps. PACIA does however recognise that the model proposed by the Commission is consistent with identified frameworks. PACIA recommends the Commission should highlight the need for the CWG to clearly demonstrate that the costs of any proposed new standards setting body would not exceed the expected benefits.

## 9. *National security*

### DRAFT RECOMMENDATION 9.1

*A nationally uniform approach to conducting security checks for access to security sensitive ammonium nitrate should be implemented, irrespective of other harmonisation measures. This process should be managed by the Australian Government, through AusCheck. The information should be shared across jurisdictions using a database that reports current, refused or revoked security clearances.*

**PACIA Position:** Supported

**Comments:** PACIA has made previous detailed submission on this matter, notes the Commission's discussion and rationale, and strongly supports the recommendation.

**DRAFT RECOMMENDATION 9.2**

*State and territory governments should consider the following improvements for achieving greater national harmonisation of the security sensitive ammonium nitrate (SSAN) regulations:*

- *removing major inconsistencies in reporting requirements*
- *basing storage requirements on the internationally agreed physical properties of SSAN, provided security controls are met*
- *ensuring that a single security plan can be lodged for transporting SSAN nationally*
- *making licence durations nationally consistent*
- *regulatory agencies committing to, and reporting on, timeframes for assessing licence applications.*

**PACIA Position:** Supported

**Comments:** PACIA has made previous detailed submission on this matter, notes the Commission's discussion and rationale, and strongly supports the recommendation.

**DRAFT RECOMMENDATION 9.3**

*State and territory governments should not add any additional security sensitive chemicals to the current security sensitive ammonium nitrate regulations.*

**PACIA Position:** Supported

**Comments:** PACIA made previous detailed submission on this matter, notes the Commission's discussion and rationale, and strongly supports the recommendation.

**DRAFT RECOMMENDATION 9.4**

*Australian governments should establish an agreed framework for assessing the security risks and appropriate control measures associated with chemicals of security concern. This framework should incorporate strong governance arrangements, underpinned by an intergovernmental agreement, that ensure control measures are implemented consistently across jurisdictions. Once established, this framework should be used to re-examine the controls on ammonium nitrate.*

**PACIA Position:** Supported

**Comments:** PACIA has made previous detailed submissions on this matter, both to the Commission and to the Department of Prime Minister and Cabinet on the draft Report on Control of Chemicals of Security Concern. PACIA notes the Commission's discussion and rationale, and strongly supports the recommendation. PACIA wishes to emphasise the vital role of ongoing active industry engagement in the design and implementation of this policy framework.