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22 October 2007

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

Dear Mr Woods

Productivity Commission Study into Chemicals and Plastics Regulation

The Plastics and Chemicals Industries Association (PACIA) is very pleased to make this submission to the important study of chemicals and plastics regulation in Australia (PC Study). PACIA is the peak national body for the Australian chemicals and plastics sectors. It represents some 250 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 has greatly appreciated the opportunity to meet with various Commissioners and staff involved with this important PC Study on Thursday 23rd August and Tuesday 2nd October, and we look forward to ongoing input and consultation throughout the Study.

As you are aware, PACIA works actively and closely with governments in the development of legislation impacting on our industry. PACIA strongly supports 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) and promotes that they should be rigorously applied in the consideration of any regulatory response.

These Principles state that regulatory solutions should:

- be the minimum required to achieve the stated objectives;
- adopt a risk management approach to forming and administering regulation;
- minimize the impact on competition;
- be compatible with international standards and practices;
- cause no restriction to international trade;
- be developed in consultation with the groups most affected and be subject to regular review;
- be flexible, not prescriptive and be compatible with the business operating environment
- standardize the exercise of bureaucratic discretion; and
- have a clear delineation of regulatory responsibilities and effective and transparent accountability mechanisms.

At our first meeting on 23rd August, you requested that we provide you with copies of some existing submissions PACIA has made to various Government agencies and enquiries, in order to highlight for you some of PACIA's concerns regarding the regulatory framework governing the chemicals and plastics sector. That pre-submission was provided to you on 29th August, and we trust the material and links to PACIA submissions have been of some assistance:

Following the release of the Productivity Commission Issues Paper on Chemicals and Plastics Regulation, we have worked closely with our member companies in an effort to obtain detailed examples and insights from a cross section of the industry impacted by the regulatory environment over this sector.

As you are aware, gathering together information on the incremental costs which result from the complexity and regulatory burden has been found very difficult by our members, and we look forward to working further with the Commission to provide you with further detail.

Subsequent material and submissions will be provided to the Commission when they become available.

Any queries regarding this letter may be directed to me (03-9426 3812 or mcatchpole@pacia.org.au) or to Margaret Donnan (03-9426 3805 or mdonnan@pacia.org.au).

Sincerely

Unsigned for electronic transmission

Michael Catchpole
Chief Executive

PACIA's Response to the Productivity Commission Issues Paper (September 2007)

PACIA, as the peak national body for the Australian chemicals and plastics sectors and as a member of the Chemicals and Plastics Leadership Group (CPLG) has long had a strong focus on improving the regulatory environment for our sector. PACIA's vision is for a vibrant and sustainable chemicals and plastics industry in Australia, valued and respected by its customers, employees, the community, government and shareholders. To underpin that vision for the industry, PACIA is seeking a regulatory environment which will achieve the public health, occupational health and safety, environmental and security outcomes sought by Governments, our industry and the community, while simultaneously supporting the productivity, competitiveness and efficiency of the industry.

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.

PACIA notes the **CPLG's priorities for regulation reform** as outlined in the Final Report to Government of August 2004, and which are still 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.

PACIA is pleased to note this PC Study will inform the work of the Ministerial Taskforce established by COAG to ***“develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation”***.

PACIA is very pleased to note the very broad definition of “regulation” being taken by the Commission as shown in Box 2 of the Issues Paper. PACIA in this submission will endeavour to deal with all categories of regulation, namely

- Acts of Parliament
- Subordinate legislation
- Co-regulation
- Quasi-regulation
- Self-regulation

PACIA was very pleased to note that the concerns regarding the regulatory environment for C&P sector raised previously by the industry, were raised most recently by the Regulation Taskforce (2006) and included

- The volume and complexity of existing regulations
- Duplication and inconsistency between commonwealth, state and territory regulatory regimes
- Timeliness and cost of regulatory processes
- Inadequate recognition of international standards and approval processes
- Overly prescriptive regulation of labelling.

PACIA notes the Issues Paper reproduces in Figure 1 the *“Summary of chemical regulation by the National Taskforce on Chemical Management and Regulation”*.

PACIA would argue in fact the picture is more complex than that represented in Figure 1, and in fact two further vertical columns need to be included – one for Chemicals of Security Concern (CSC), and another for Chemicals which are Drug Precursors.

At present, CSCs have a lead agency through the Department of the Prime Minister and Cabinet. Precursor Chemicals on the other hand have a lead agency through the Department of the Attorney General.

Given these two additional columns in the framework are dealing with the risk and threat of illegal diversion of legitimate chemicals (which may be industrial or may be agvets or even therapeutics), PACIA will argue that those two columns should in fact be merged into one nationally consistent process moving forward.

Recommendation:

- **PACIA recommends that the development of control frameworks for chemicals of security concern and precursor chemicals should be integrated so as to achieve the optimum outcome in preventing illegal acts, while having minimal impact on the impacted industry.**

A PACIA member which is a Victorian major hazard facility (MHF), chemical manufacturing company in 2002, developed a powerpoint presentation which is useful in displaying the growth in regulations which applied to its business from the 1970's to 2002. The specific slides can be accessed via the link

http://www.pacia.org.au/_uploaditems/docs/2.regulatoryburden_oct07.pdf

PACIA will consider the questions as listed in the Issues Paper. For convenience, the questions have been numbered. The original two fundamental questions will be considered at the conclusion of this submission.

The Case for Change

Q3 - Why has it been so difficult to achieve fundamental reform of chemicals and plastics regulation despite advice from numerous reviews and government efforts to address the concerns?

Q4 - What specific barriers to reform should the Commission focus on in order to raise the likely effectiveness of its recommendations?

In large part, PACIA believes the failure to achieve fundamental reform reflects the huge complexity of the task, which is compounded by our multiple levels of Governments and political processes.

To assist the Commission in scoping the magnitude of the problem, PACIA has endeavoured to identify the range of chemical regulators at federal, state and territory and local government levels. This task has not yet been completed because of the complexity, but the current draft Table in Attachment 10, reveals in excess of **50 different regulators** impacting on the chemicals and plastics sector.

As an example, the structure of Government in Queensland for regulating the chemicals industry is particularly fragmented which adds to the burden on industry in that state. To elaborate,

- Major Hazard Facilities and Dangerous Goods legislation is under CHEM Services in the Department of Emergency Services
- Class 3 Dangerous Goods (Flammable Liquids) licensing is carried out by local government
- Hazardous Substances are regulated by Workplace Health and Safety in the Department of Employment and Industrial Relations
- Explosives and security sensitive ammonium nitrate are regulated by the Department of Natural Resources, Mines and Energy

- Transport of Dangerous Goods is regulated through Queensland Transport.

It must be noted that in several other states, e.g. Victoria through WorkSafe Victoria, these areas are all regulated through **one** Department, as distinct from 4 State government agencies plus local government.

In Queensland, in addition to these agencies dealing with health and safety, the chemicals industry is also regulated through the Department of Health for drugs and poisons, the EPA for environmentally relevant activities and hazardous waste management, QLD Police for drug misuse legislation (dealing with diversion of legitimate industrial chemicals into illicit drug manufacture) and the Department of Primary Industries and Fisheries for agricultural and veterinary chemicals.

The complexity and burden of this breadth of administration must be recognised and addressed.

To achieve fundamental reforms over all levels of government require ***sustained political commitment over a prolonged period of time.***

The regulatory environment of this sector cannot be addressed via short term effort. PACIA has highlighted the inability of some regulators to give effect to one new National Standard eg in Attachment 2 which deals with the National Standard for Control of MHF. The Attachment shows currently NSW, WA, SA and TAS have not made regulations covering MHF, some **11 years** after the national standard was declared by NOHSC.

In the past, reform agendas are often deflected by new political priorities. For this review to achieve fundamental reform, PACIA would argue it is vital to secure enduring COAG support for the process.

The reality is that without sustained ongoing COAG support and political commitment, the different interests, priorities and funding in jurisdictions will continue to drive parochial differences. Too often, regulatory developments covering this sector are reactive and are not driven by sound policy. That needs to change.

Q5 - Given the criticisms of the existing system, are there grounds for preserving structural elements of the status quo (for example, are there good reasons for variations in State and Territory regulations)?

There will always be particular reasons which drive political imperatives and resultant variations in State and Territory regulations – but PACIA would argue they are ***not good or justifiable reasons.***

For example, a major incident like the Longford gas plant fire and explosion drove Victoria's MHF regulation development – but surely we should not wait for each jurisdiction to have a major tragedy, before each develops appropriate regulation.

PACIA would also argue that often variations in State and Territory Regulation may result from an attempt to convert an ***inappropriate national product*** like the COAG Principles on SSAN or an ASCC National Standard into regulation. PACIA will argue throughout this submission, that if we are to eliminate variation in State and Territory regulation, then we need to change our national development processes, so we prepare national legislation that can either be adopted by template by the states, or simply have the states administer the national legislation.

PACIA notes the importance also of incentives in Attachment 5 which deals with the various models for regulating transport of dangerous goods.

Recommendation

- **PACIA recommends that national legislation be developed for all key areas of chemicals and plastics regulation, to support either template adoption by the jurisdictions or administration by the states and territories on behalf of the Commonwealth. Furthermore, the importance of incentives and monitoring of performance of regulators must be recognised.**

The need for effectiveness

Q6 - What are the problems that chemicals and plastics regulation address?

Q7 - Is there a need to make more extensive use of a risk-based approach to regulation in parts of the system? How can such an approach be integrated with the future adoption of the hazard-based Globally Harmonised System (see later)?

Q8 - Is the burden of regulation commensurate with the problems caused by chemicals and plastics?

Q9 - Is the regulatory system sufficiently flexible to incorporate and respond to changing knowledge and understanding of issues over time?

It is clear that the chemicals and plastics sectors present inherent risks to health, safety and the environment – which need to be controlled. It is important that those controls are scientifically based, and are not driven by perception. Further it is important that the regulatory controls comply with COAG Principles and Guidelines for National Standard Setting and Regulatory Action.

Much of our legislative framework is already risk based and it is very important that that be maintained and extended.

PACIA would argue that it is quite inappropriate that the **burden** of regulation be commensurate with the problems caused! It is appropriate that regulatory controls be commensurate with the risk – and that the level of intervention by the regulator be commensurate with the hazard and risk – but certainly not that the **regulatory burden** be linked to the risk.

PACIA would argue the complexity and burden of the regulatory environment undermines compliance – not enhances it!

It is also important to remember the benefits that the plastics and chemicals industries provide to society for our sustainability, such as water treatment and transport, health products, safety devices, energy efficient machines etc.

The chemical 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 chemical industry is strategically more significant than tourism and mining, and not far behind the food sector.

In terms of flexibility of the regulatory system, PACIA would suggest the system is very flexible – but at times our regulators are not. For example, the 2001 NOHSC National Standard for Storage and Handling of Dangerous Goods changed our regulatory approach from a very prescriptive regulation to a more performance based, risk management approach.

In Queensland, as identified earlier, the licencing of flammable and combustible dangerous goods is carried out by local government, not the dangerous goods regulator. Because it is more complex to administer a performance based regime than a prescriptive regime, the outcome in QLD tends to be that local government requires strict prescriptive compliance with the Australian Standard (AS1940), despite the performance based nature of the regulations.

This is an adverse impact which results from the fragmentation of administration of chemicals regulations in Queensland.

Q11 - Could regulatory objectives be stated more clearly?

Q12 - Do you consider that the current regulatory regime is effective in addressing issues in relation to:

- . • **public health and safety**
- . • **OHS**

- *the environmental outcomes*
- *security sensitive ammonium nitrate (SSAN)?*

Q13 - Have governments achieved the right balance between these issues? That is, are they devoting too many or too little resources to any?

Q14 - What, if any, examples are there of outcomes of regulation that are contrary to the stated goal? For example, does the fact that the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) only makes recommendations relating to risk assessment and management undermine the value of its assessments?

Q15 - Are there cases where regulations are in direct conflict (in complying with one regulation, you are breaching another)?

Q16 - Have responses to major adverse outcomes led to ongoing regulatory or operational short-term responses, or have they led to structural change that has improved the efficiency and effectiveness of the regulatory system?

PACIA believes it is impossible to generalise on the effectiveness of the regulatory environments addressing issues in relation to public health and safety, OHS, environmental outcomes and SSAN. Often specific aspects are done well and effectively in specific jurisdictions.

A number of Attachments deal with issues of regulatory environments addressing

- Att 1 - Environmental regulation including NChEM
- Att 2 – MHF
- Att 3 - Illicit Drugs
- Att 4 – NICNAS Issues
- Att 5 - Transport of Dangerous Goods
- Att 6 - Climate Change and Regulation
- Att 7 – NPI
- Att 8 - Water Treatment Industry
- Att 9 - SSAN
- Att 10 – Table of Chemical Regulators by jurisdiction

These attachments address many of these issues.

In terms of responses to major adverse outcomes, we typically see short or long term, **local** regulatory and operational action – such as in response to the WA Bellvue fire or the Coode Island fire in Victoria.

However there have been a few responses to a major adverse outcome, which led to structural change that improved the efficiency and effectiveness of the regulatory system.

Some years ago, in response to a major industrial dispute at a Melbourne chemical company over uncontrolled use of a probable human carcinogen, the then Department of Labour developed short term regulations to take over administration of carcinogens in workplaces, which had been regulated at that time by Health Department legislation. Some years earlier, the majority of scientific and inspectorial resources dealing with Occupational Health issues had moved from the Department of Health to Labour – but administration of carcinogen warrants had remained in the Health Department. The change following the industrial dispute corrected that structural problem in government.

Furthermore, to ensure the issue was appropriately addressed nationally, the matter was referred to NOHSC who proceeded to develop the National Model Regulations on Hazardous Substances Part 2 – Scheduled Carcinogenic Substances. Those national regulations were subsequently adopted in all jurisdictions. This improved the effectiveness of the national regulatory system covering carcinogens.

Q17 - Do regulators make sufficient effort to measure and monitor the effectiveness of the regulations they impose?

In terms of regulators efforts to measure and monitor the effectiveness of regulations they impose, PACIA would commend the ongoing efforts of WorkSafe Victoria – in the current review on the implementation of the OHS Act 2004, and also on several reviews of stakeholder feedback on the effectiveness of the MHF Regulations 2000.

Q18 - Can you identify specific gaps, overlaps or variations in the regulatory structure that make regulations less effective (for example, do variations in the regulation of SSAN undermine the effectiveness of regulations in this area)?

PACIA wishes to highlight the Attachments dealing with both SSAN and also MHF – both of which identify the negative impacts as a result of the inconsistencies. Clearly, the whole security objective of COAG in June 2004 was to rapidly put in place sound security controls over SSAN. The fact that SSAN still remains unregulated in WA currently, undermines completely the controls in the other states.

Q19 - Is there a gap in the existing regulatory system with respect to the environmental impacts of chemicals and plastics? If so, do you see the National Framework for Chemical Environmental Management (NChEM) proposals as a good way to fill that gap?

Q20 - Do you consider that the current processes for assessing existing industrial chemicals (see attachment B) represent a gap in the existing regulatory structure? If so, what new ways are there to prioritise (or categorise) chemicals and identify those chemicals that warrant risk assessment, and who (industry or government) should bear the primary responsibility, and cost, for carrying out those assessments?

Q21 - Does the focus of some parts of the regulatory system on individual chemicals rather than products represent a gap in the system? If so, what should be done to cover that gap?

Q22 - What measures should be adopted to streamline data requirements and assessment processes so that, for example, information and data relating to the same chemical do not have to be provided to multiple agencies (for example developing a common national chemicals database)?

The Commission is referred to the various Attachments to deal with these questions.

Alternatives to government regulation

Q23 - How well existing self- and co-regulatory have approaches to regulation worked? Are they used appropriately?

Q24 - What net impacts have self- and co-regulatory approaches had on the plastics and chemicals industry over and above government regulations, and at what cost?

Q25 - Is there scope to strengthen current self-regulatory measures or further develop new voluntary and self-regulatory frameworks (including covenants between industry and regulators)?

Q26 - Are there any overseas self- or co-regulatory models that are worth examining?

Overview

Voluntary, self and co-regulatory approaches can in appropriate cases avoid or minimise the need for regulation and also enhance and improve the objectives of regulation. Where the regulatory intervention develops a compliance threshold, voluntary, self and co-regulatory programs can deliver outcomes beyond the minimum compliance. A key benefit of these alternative models is their ability to stay ahead of potential market failures and improve industry competitiveness by developing best practice models before regulatory intervention is even considered necessary.

The key strengths of industry leadership coupled with strong, dynamic government and community partnerships provide a platform beyond a simple regulatory model. These outcomes are able to improve the competitiveness of participating organisations with their capacity to deliver best practice as opposed to only minimum compliance.

Importantly, these approaches are developed and implemented at a national level. This automatically delivers a nationally consistent structure with benefits for industry in reduced compliance burden and a service to government of aggregating industry experience and developing best practice approaches.

PACIA and PACIA member companies have significant experience participating in and developing complementary frameworks to regulation.

Within the scope of voluntary, self and co-regulatory approaches, there is a range of mechanisms which are currently working very effectively, for example:

- Focussed voluntary arrangements between industry and government, such as the Victorian Sustainability Covenant model and the PACIA/EPA Victoria Covenant
- Self regulatory frameworks - PACIA currently operates a number of self regulatory arrangements within the chemicals and plastics sector
- Co-regulatory arrangements, such as the National Packaging Covenant, to which PACIA is a foundation signatory.

Voluntary Arrangements

The Victorian Sustainability Covenant provides an excellent leadership model for voluntary partnerships between industry and government, in this case EPA Victoria. Covenants are statutory agreements (under the Environment Protection Act) however they are entered into voluntarily and developed by consensus between the parties.

Covenants provide a framework for PACIA and EPA to work together toward industry sustainability by:

- increasing resource efficiency at member companies
- reducing the impact of products and services throughout their life cycle

The scope and application of Covenant's vary considerable, and PACIA was the first industry association to enter into a Covenant in 2004 and was the second signatory to the covenant program. The covenant partnership has achieved:

- Significant waste, water and energy savings through covenant projects delivered in partnership with member companies
- Increased industry capability and awareness to implement sustainable business practices, and emerging issues such as life cycle management
- A strategic and integrated approach within PACIA to sustainability policy, program and practices advocated to the industry
- Internal resources for PACIA to deliver activities in partnership with EPA Victoria and other stakeholders.

Covenants provide a public forum for organisations to partner with EPA Victoria, and the commitment was made between the two organization's chief executives, PACIA Board, and the Victorian Environment Minister. PACIA's Covenant activities have been strongly supported by direct funding from EPA Victoria, which is sourced from the Victorian levy on industrial waste to landfill. Linking funding resources to the commitments and objectives of the Covenant has been fundamental to providing resources for PACIA to deliver projects, which provide both strategic program development and on the ground results.

The projects and programs developed under the Covenant are largely seen as leading edge and well beyond compliance. PACIA and EPA staff work cooperatively to identify prospective projects, and PACIA develops an annual work plan which is integrated with PACIA's standard planning process. Regular reviews occur for each program and project, and the entire Covenant progress is

reviewed annually. This provides both organisations the flexibility to pursue opportunities within an overarching framework.

Self Regulatory Arrangements

PACIA has also significant experience in the development of self regulatory frameworks for the industry. These arrangements, while also voluntary in nature, are typically developed to establish a leadership performance standard or to confirm expectations in the absence of regulation or government policy. PACIA and industry partners operate several flagship programs including:

- Responsible Care program
- PACIA Carrier Accreditation Scheme for transporters of Dangerous Goods
- PACIA / SIA Code of Practice for Supply Diversion into Illicit Drug Manufacture
- Product Stewardship Guide and Commitment for Degradable Plastics
- Vinyl Council Product Stewardship Agreement

Examples of some of these programs follow:

Responsible Care program

Responsible Care is an initiative of the International Council of Chemical Associations (ICCA) to improve the health, safety and environmental performance of its operations and to increase community involvement and awareness of the industry.

Responsibility for managing Responsible Care within Australia lies with PACIA, which is approved by the ICCA Board as a Responsible Care® Association. PACIA develops the Responsible Care initiative within Australia, consistent with the principles, procedures, and the initiative's fundamental features covered by the Responsible Care® Global Charter, while also reflecting the national culture, legal system and other expectations of its Member companies participating in the Responsible Care program.

PACIA strongly promotes compliance with Responsible Care to all PACIA member companies manufacturing, importing and distributing chemicals. Commitment to the program is evidenced through a company CEO signing Responsible Care Guiding Principles.

Responsible Care is a HSE Management system, consistent with international approaches, including the ISO Quality, Environmental and OH&S series and the national major hazards facilities Standard and Code. The Responsible Care system consists of Codes, guidance notes and checklists for implementation of good HSE practices, covering all aspects of the life cycle of the chemical, as follows:

- Community Right to Know
- Manufacturing Process Safety
- Environment Protection
- Storage and Transport Safety
- Employee Health and Safety
- Product Stewardship

Company self assessment of the HSE system against each Code is collected from members to track Code compliance; one Code is self assessed every four months in a rolling 2 year cycle. An External Verification program cycle uses third party auditor desktop verification of approximately 30-50% of one Code.

Externally, performance is measured through annual Safety Surveys of Responsible Care companies who report lost time and medical treatment related injury and illness, site incidents, and transport incidents. Internal and external measures are publicly reported to a range of stakeholders and published on the PACIA website. The program provides a platform for community engagement, establishing and operating state based community – industry networks in New South Wales, Victoria, and Western Australia.

PACIA supports Responsible Care companies through information, networking, and training activities, including specific chemicals handling training - from warehousing and transport to labelling, MSDS, risk assessment and emergency response.

PACIA / SIA Code of Practice for Supply Diversion into Illicit Drug Manufacture

This Code of Practice was first developed by PACIA and SIA in partnership with law enforcement bodies back in 1994, and is aimed to provide a best practice guide for companies to address prevention of diversion of legitimate industrial chemicals into the illicit drug manufacture. The Code is updated regularly to reflect latest law enforcement information on trends in illicit drug manufacture, and has been most recently updated in October 2007. Compliance with the Code is voluntary; however the requirements of the Code have been legislated to varying degrees in some jurisdictions.

Chemicals deemed to be of significant interest for diversion purposes are typically submitted to PACIA by law enforcement with justification for their inclusion into the Code. Listed chemicals in the code attract controls proportionate to the level of risk for diversion and are categorised into three lists. Category I lists attract stringent industry controls, such as the requirement companies request End User Declarations from customers seeking to purchase the listed chemicals, and to subsequently forward these declarations to law enforcement in order to analyse potential diversion risks.

Cash sales are prohibited for Category I chemicals, and supply of these products is required to be delayed for 24 hours. Category II chemicals attract less stringent controls, with Category III chemicals listed for precautionary purposes only.

PACIA work closely with the Australian Crime Commission to update the Code annually, and generally support inclusions of chemicals where justified by the Commission. To support and promote the aims of the Code, PACIA takes part in National Awareness Raising programs with the ACC and other supporting law enforcement and Government Departments.

Product Stewardship Guide and Commitment for Degradable Plastics

PACIA has recently developed a product stewardship program for degradable plastics in partnership with the Australian Government Department of the Environment and Water Resources.

The program responded to early signals of concern about confusing product performance claims for new degradable materials. Industry leaders wanted to ensure that sound decision making for design and labeling was guided by accurate information, in line with consumer law requirements. Early engagement and consultation with the Australian Competition and Consumer Commission was instructive in developing the program.

The program has also been implemented to support the development of Australian Standards for degradable plastics and provide a framework for their use. With many new standards coming into existence, the PACIA program delivers a means of characterizing their purpose and providing a framework for their use.

The program has three components:

- A central document “Using Degradable Plastics in Australia” – A Product Stewardship Guide and Commitment”. This performs three functions:
 - informs users of degradable plastic materials what they are buying and using and how degradable plastics should perform
 - For organisations involved with designing, manufacturing and marketing products it provides information on: sound whole-of-life design; Industry definitions and terms and answers to frequently asked questions
 - It is also a commitment by leading material suppliers and product manufacturers that they will: use clear and accurate labelling and contribute to the Degradable Plastics Reference Group.
- A verification system for claims made about products has been implemented to independently confirm the supporting evidence needed for a company to claim they hold certification to a relevant Standard.

- The Degradable Plastics Reference Group which will update the guide, assist with developing Australian Standards and liaise with other groups including plastic recyclers and composters.

The program is the first of its type in the world that PACIA and DEW are aware of. PACIA is now working with industry associations in New Zealand and Canada to develop and implement similar programs in those countries based on this Australian model.

Vinyl Council Product Stewardship Agreement

Launched in October 2002, the Poly vinyl chloride (PVC) industry's voluntary Product Stewardship Program has been in place for five years. Under the Program, Signatories commit to meet certain obligations to address issues associated with the life cycle of PVC. The Program provides a vehicle for government and industry to work together to characterise issues and develop appropriate solutions. Representatives of both State and Federal governments as well as industry constitute the Program's Steering Group.

The program has developed voluntary targets, codes of practice and/or standards for industry to meet to reduce emissions, phase out certain heavy metal additives, share research, characterise and quantify waste streams and commence development of infrastructure and systems to reduce and recover waste. Industry's progress in meeting these is reportedly publicly on an annual basis, although government representatives are kept informed more frequently through quarterly meetings and reports.

The Program signatories are drawn from the supply chain, meaning that the suppliers to the industry and upstream and downstream manufacturers work together to characterise and address an issue.

Co-regulatory arrangements

National Packaging Covenant

Co-regulatory models also play an important role to improve the efficiency of regulatory outcomes and recognize participants. PACIA has extensive experience with co-regulatory models, a good example being the National Packaging Covenant (NPC) which is designed to reduce the whole-of-life environmental impact of retail consumer packaging. This is comprised of a voluntary agreement by industry to develop and implement action plans and make financial contributions to fund enabling projects. It is matched by a regulatory underpinning *National Environment Protection Measure* to deliver a level playing field. A collective Council with representation from industry, Federal, State and Local governments as well as the community manages the NPC.

How Well Have Alternative Models Worked?

It is PACIA's experience that well considered and consensus based frameworks provide an important role in reducing the impact of externalities and market failure. Such frameworks can support and improve intended regulatory outcomes by

- providing a leadership example or beyond business as usual outcomes in excess of a minimum standard
- effectively engaging stakeholders and related groups, including improving communication between and within industry to enhance outcomes
- addressing a potential future market failure
- delivering lower or lowest cost outcomes ahead of regulatory impost
- developing technical capability and knowledge

Leadership

Voluntary industry and self regulatory initiatives allow companies and Associations to take a leadership role and can go beyond what might be a minimum standard approach. The Sustainability Covenant and PACIA's Responsible Care program are examples of this.

Responsible Care provides the platform for Product Stewardship and the industry – through community dialogue, and engagement with Governments, local, State and Federal, views commitment to Responsible Care as an important component of the continued licence to operate. The Responsible Care brand and the commitment by a significant proportion of the Australian chemicals industry, provides leverage to positively influence the external stakeholder audience. Responsible Care, as a global initiative, enhances the image of the industry both in the market place and in the wider community.

The Vinyl Council's Product Stewardship Program has delivered greater industry "buy-in" because of the leadership role industry plays in developing solutions and agreeing commitments.

The Sustainability Covenant has provided an opportunity for companies to initiate projects which might be technically risky or not otherwise able to be resourced by the company. The Covenant's focus on leading edge or broad impact programs has created a pull through effect, progressively drawing in a greater number of companies.

Stakeholders and Communication

Communication and information sharing is often an important feature of voluntary, self and co-regulatory models, compared with direct regulation. Companies are willing to be identified as participants in leading programs, and participate in event, publications and networks. For example, Responsible Care provides an information-sharing forum for industry to develop a sustainable business, essential today for long term competitiveness. Identifying leading case studies is an important component of the Sustainability Covenant. These activities create a virtual cycle for the take up and implementation of alternative models.

The National Packaging Covenant has significantly improved the networking and flow of information between and within industry and government organisations. An example is the development of the PACIA Annual Plastics Recycling Survey. Close work with State governments has resulted in PACIA's independent report being the central, authoritative source for Australia with tailored information now provided to States in a suitable reporting format.

Communication and stakeholder engagement through voluntary programs can lead to more rapid and effective responses by government and industry.

For the most part, the Illicit Drug Code has been an excellent example of how industry, Government and law enforcement can best work in partnership.

The Code is intended to give industry clear guidelines on how to best assist law enforcement in preventing illicit diversion, and is updated regularly to reflect changing concerns of law enforcement quickly. Voluntary codes of this nature are unencumbered by the often-lengthy regulatory process, and the Code of Practice is highly regarded for this reason.

Stakeholder participation increases transparency and also accountability in voluntary programs. The following comments on the voluntary PVC Product Stewardship Program were recorded in the Vinyl Council's Stakeholder Research conducted earlier this year by Fenton Communications who interviewed a range of VCA's external stakeholders:

- Participation on the technical steering committee was seen as being highly valuable and government representatives were keen to see that aspect of the relationship maintained and fostered.
- The Program commitment document and annual reports were seen as valuable information documents.

One government stakeholder commented: "The technical steering group has been a very valuable source of information. There's good representation on the committee and they have a good international speakers and industry representation. It's a valuable way of communicating with stakeholders."

Market failure and lowest cost

Industry self regulatory arrangements can be developed so as to be workable and can be implemented in a practical way and at lower cost both for the business and the regulator. As an example, Responsible Care provides an integrated management system to improve health, safety and environment performance, all critical to a business operation. Effective HSE management provides economic returns in accident and incident reduction and reduced waste management costs. Internally, Responsible Care is a comprehensive audit tool, compatible with ISO health and safety systems, and consistent with HSE regulatory frameworks. Regulation costs money in drafting, implementation, operations, review and updating. Effective self-regulation can avoid or reduce the net cost.

The alternative to the national Packaging Covenant model is State by State legislation, inherently more costly and less efficient for both government and industry. The benefit of NPC model is that it enables organizations to go beyond the collection of used packaging for business as usual recycling.

The degradable plastics product stewardship program allowed industry leaders to work with federal environment and fair trading departments and set the standard for industry performance and behaviours where risk of poor behaviour of a minority may have impacted on the majority. This highlights that alternative arrangements can be put in place very rapidly in response to an emerging issue, risk or market failure, and can be responsive to changes in circumstance.

The Vinyl Council has identified that the voluntary approach product stewardship provided a "level playing field" for all applications of the material to address a particular issue such as the phasing out of lead-based stabilisers or development of recycling programs under a common timeframe. The program has helped the industry transition more smoothly with less market disruption than under some regulatory approaches, and costs are largely borne by industry (as there are no regulatory implementation costs for government).

Technical capability

Industry self-regulation can also work alongside, support and be the avenue for the use of Australian Standards in various applications. An example of this is the degradable plastics program. The program has also been implemented to support the development of Australian Standards for degradable plastics and provide a framework for their use. Australian Standards for degradable plastics have commenced and to date have put in place one part of a five part standards framework. With so many new standards coming into existence, the PACIA program delivers a means of characterizing their purpose and providing a framework for their use. The other Standard supported by this program is AS/NZS ISO 14021: Self declared environmental claims. The Australian Competition and Consumer Commission upholds this standard as part of its consumer law and trade practices responsibilities. The PACIA program provides industry with a structure, means and network to avoid difficulty in understanding and therefore complying with AS/NZS ISO 14021.

The National Packaging Covenant has increased the technical capability of the industry. PACIA member companies have worked with their customers to recycle polypropylene (PP) and polystyrene (PS) packaging otherwise destined for landfill. Technical trials funded by the NPC have enabled the development of new PP and PS recycled raw materials and applications.

The Vinyl Council's stakeholder research has found that the technical steering committee was singled out as a Council initiative that is highly appreciated by participants and one which the Council might consider expanding to a wider range of stakeholders (now underway). Further, the program provides a recognition of industry expertise/technical know-how in developing solutions, and that options or alternative strategies can be recognised and accepted - it does not have to be a "one-size fits all" approach.

Appropriateness of Voluntary Codes

The potential lack of critical mass and participation is a valid criticism of industry based schemes and their impact. For example, the Sustainability Covenant has taken 2 to 3 years to build engagement and participation to include a broader industry base. Funding and resources provided

by EPA Victoria through landfill levies has been critical to build an effective participation program, and one which ultimately reduces the need for intervention by EPA Victoria. Responsible Care develops a critical mass by its condition of membership for all PACIA member companies manufacturing, importing and distributing chemicals, and the development of programs to support that buy-in.

Industry alternative frameworks have on occasion been adapted or used by others in a way not necessarily intended by the program. For example, the Illicit Drug Code has been adopted into legislation in some state jurisdictions to varying degrees. PACIA and its' members have publicly supported legislating the Code, to the extent requirements are consistent across jurisdictions, consistent with the Code itself, and bear no additional cost burden on the companies required to comply. Unfortunately, this has not been the case

New South Wales regulated the Code in 2006, adopting the categories of chemicals as prescribed in the code and their accompanying controls. Western Australia however legislated some requirements of the Code in 2004 in the *Misuse of Drugs Act* and supporting regulations. Disappointingly, the Categories of chemicals were legislated inconsistently with the Code with Ammonia gas attracting more stringent and burdensome controls than it had under the voluntary code.

Victoria has recently adopted precursor regulation, however has not picked up any industry controls. That said, the jurisdiction has recently advised that the industry control provisions of the Code will be included in regulation at a later date. Queensland has recently released the *Drugs Misuse Amendment Bill 2007* for comment. PACIA is currently analysing the Bill, which unfortunately has categories of chemicals which are quite inconsistent with the Code.

To date, no regulator has carried out a Regulatory Impact Analysis to justify the costs and benefits of the requirements.

This has presented industry with a situation whereby compliance with the requirements of the Code is mandatory in some States, and is strictly voluntary in others. The complexity is compounded by those requirements, where adopted in legislation, being inconsistent across state lines. A case study is presented below on the difficulties this presented for one of our member companies.

While the Code continues to be used as a starting point for the regulation of its' requirements, one of the negative aspects of having a voluntary scheme is that it is has been adopted into legislation with no analysis of the cost implications on industry. This has compromised to an extent the effectiveness of a voluntary system. While our voluntary process has meant the expedient inclusion of chemicals deemed to be of law enforcement concern, it has also paved the way for regulators to adopt these chemicals into legislation without due consideration of the implications mandatory inclusion will entail.

Industry therefore becomes more reluctant to endorse the inclusion of chemicals into a voluntary scheme when it is likely they will be adopted into mandatory legislation without a consultative process to examine the costs of doing so. This undermines compliance, and faith in voluntary schemes.

What are the Net Impacts and at What Cost?

It is PACIA's view that where alternative frameworks have been appropriately and successfully implement, the cost burden to industry, the community and government is lowered. However, it is also acknowledged that no comprehensive cost benefit analysis of the examples provided in this submission has been undertaken.

It is valuable to note two categories of cost analysis types relating to voluntary, self and co-regulation:

1. Approaches that have responded to existing or likely market failure,

2. Approaches that have predicted potential issues and have acted in advance or market failure

The benefits of alternative frameworks can be especially difficult to measure, as they:

- involve multiple stakeholders and co-beneficiaries
- are often in-direct
- represent an avoided future cost, or an avoided potential cost such as
 - increased future staffing
 - the need to prepare regulation
 - the need to respond to future regulation
- represent issues which are emerging or not fully described
- may stimulate other activities which are difficult to measure such as technology diffusion

Implementation of alternative frameworks can result in direct costs for companies and Associations such as:

- development and stakeholder consultation costs
- administrative costs to monitor and comply with code requirements (such as for Responsible Care and the Illicit Drug Code), including training costs for staff and supply chain partners and record keeping costs
- implementation costs
- reporting, auditing and verification costs
- marketing and communication costs
- supporting program costs, such as training extensions.

The inclusion of voluntary codes into regulation, such as the Illicit Drug Code also presents a cost impact. In the case of the Illicit Drug Code, regulatory impact assessments have not been undertaken to describe these costs, and the inconsistent implementation by States has significantly added to costs, particularly for national companies. The inconsistency thus undermines compliance by adding complexity. While it is difficult to quantify the lost opportunity cost inherent in this situation, it demonstrates to some extent the anti-competitive outcome that inconsistent adoption of voluntary schemes can result in.

Case Study

Western Australia legislated some provisions of the Illicit Drug code in 2004. However, that state made a decision to alter the nationally agreed categories of a number of chemicals it scheduled. As an example, the legislation categorized ammonia gas as a Category I chemical with all the attached obligations. The Code categorises ammonia gas as a Category II chemical, and thus this alteration presented significant change and issues for the companies who deal with ammonia gas on a national level.

Clearly ammonia gas has widespread use in refrigeration processes, and practical aspects of dealing with repeat and regular orders from account customers means that provision of End User Declarations on each and every supply is a very unnecessary and burdensome requirement. Furthermore the requirement to delay supply for 24 hours has significant unintended consequences in some situations (such as dealing with refrigeration breakdowns etc), yet the regulations have no exemption power to allow discretion in application.

One PACIA member deals with approximately 260 orders for ammonia each year. That company has a centralized national call centre which deals with supply in all states. The cost of having very different processes in only one state has made business operation complex, and contributed to the additional cost of training staff.

PACIA is currently waiting on this company to provide us with detailed compliance costs related to this issue, and will forward these at a later time.

Scope to Strengthen Schemes

It should be acknowledged that alternative regulatory models will clearly not be applicable or appropriate in many circumstances. These include the need to establish an unambiguous

performance standard, to deal with immediate risk or where the potential for significant free rider effects exist.

However, voluntary, self and co-regulatory schemes are very successful when:

- The program benefits and costs are described, and the program is adequately resourced by industry and also government, recognizing that cost savings for all parties are expected
- The programs are flexible, and deliver lowest cost outcomes
- Programs include safety net provisions where appropriate to avoid commercial disadvantage
- Programs allow rapid response to a real issue and support those associations and companies keen to take a leadership role
- The arrangement includes a mechanism to assess performance and measure outcomes, such as through independent third party auditing or stakeholder review
- The program delivers an opportunity to reduce regulatory reporting or red tape
- The program is “owned” and regularly reviewed by the relevant federal and state agencies as well as the industry association and its members and stakeholders, and the arrangements have a profile and recognition within government and community.

Voluntary codes are rarely subjected to a quantitative cost benefits analysis, though overall net benefits are expected for industry, government and community. Industry codes, such as Responsible Care can require substantial commitment from industry and also deliver savings to government through avoided regulatory effort, and enhanced outcomes for communities. A model approach to assess costs and benefits for voluntary schemes would be valuable; however this should not replace an RIS in the case of a Code being adopted into regulation.

Where voluntary schemes or programs are to be adopted into legislation, a formal process at a national level is necessary to ensure consistency, and to undertake a comprehensive, informed and consultative cost-benefit analysis in order to examine, inform and justify to industry the costs involved beyond the benefits of the voluntary scheme.

The involvement of government is critical to the success of voluntary industry codes. The development of the Product Stewardship guide for degradable plastics is an excellent example of industry and government cooperation and leadership. The experience of the PACIA/SIA Illicit Drug Code highlights the need for effective participation by state and federal agencies in voluntary programs.

Alternative models have the potential to achieve an overall “lowest” cost outcome. The Victorian Sustainability Covenant model is a very flexible approach that places primary emphasis on reducing the environmental impacts of a product or service over its entire life cycle. This approach recognizes that while the regulation may focus on the manufacturing site, the potential for greatest environment improvement may lie elsewhere in the product chain or during the product’s use phase. Covenant projects are showing that the environmental improvement expenditure is more effectively spent at the point of impact or the externality, which may not be wholly the manufacturing site. EPA Victoria’s new licensing powers have the potential to provide “off-sets” for companies where voluntary life cycle reduction initiatives exist, and this approach is highly commended, though is yet to commence in practice. Actual implementation of this will require significant capability in life cycle assessment techniques by the regulator and within industry and community support of life cycle approaches.

In some cases, there is a need for safety net regulations or alternative mechanisms to support industry programs, because voluntary agreements may commercially disadvantage those engaged in the agreement (such as local versus overseas manufacturers). The PVC industry has attempted to work through Australian Standards to underpin the changes resulting from the voluntary program; but in other instances, signatories are at commercial risk from implementing the life cycle improvement commitments because of trade exposure to non-signatory product that does not have to meet the criteria and the resultant costs involved. The National Packaging Covenant is a co-regulatory model, with underpinning legislation implemented by each state. The effectiveness of the Covenant, and therefore the value to voluntary signatories, was significantly increased when the respective state agencies utilised the underpinning powers against non-signatories.

Voluntary programs can at times be deficient in performance monitoring or external review, however appropriately targeted review mechanisms can increase the value of voluntary programs. The external audit program adopted by the industry has recently strengthened the Australian Responsible Care program. This provides a 3rd party assessment of the completion of codes by companies and aggregated results are reported publicly by PACIA.

PACIA and EPA, to ensure projects align with the Covenant objectives, will review the second PACIA Sustainability Covenant annually and an external review of the first Covenant processes was recently completed. Performance monitoring increases the cost of program, both to industry participants and the program administrator, therefore should be appropriately targeted and scoped to critical issues.

An opportunity to strengthen the value of alternative frameworks is the potential for regulatory or reporting to be reduced for voluntary program participants; in recognition of not just participation, but performance and outcomes. As regulation and mandatory programs now move to encompass less obvious market failures, such as resource efficiency under Victoria's EREP program, leading companies are still finding they have reporting obligations or commitments under these new programs. This is despite participating in voluntary industry or government programs for the same effect. In the case of the Victorian EREP Regulation, PACIA has member companies who, on an on going basis, have participated in voluntary programs to reduce water and energy use and waste generation. The onus will be on these companies to initiate the process to seek exemption from the new mandatory EREP program.

Are there any overseas self- or co-regulatory models that are worth examining?

PACIA will provide the Commission with further information and background on international and overseas programs relevant to the industry.

Responsible Care is an initiative of the International Council of Chemical Associations (ICCA) and responsibility for managing Responsible Care within Australia lies with PACIA, which is approved by the ICCA Board as a Responsible Care® Association. PACIA develops the Responsible Care initiative within Australia, consistent with the principles, procedures, and the initiative's fundamental features covered by the Responsible Care® Global Charter, while also reflecting the national culture, legal system and other expectations of its Member companies participating in the Responsible Care program.

Vinyl 2010 - the European PVC industry's voluntary commitment which has been recognised by the European Commission and the UN.

The UK Chemical Industries Association has established agreed performance measures and industry wide goals with the UK EPA, and performance is reported through CIA's sustainability report.

Access to information

Q26 - Is the quality and quantity of information supplied to the public on public health, workplace safety and environmental outcomes of chemicals in Australia appropriate for effectively managing risks?

Both the NICNAS review of the Existing Chemicals program and the NChEM process have made recommendations on these matters. PACIA looks forward to working closely with the regulators and community to give effect to the identified enhancements.

Q27 - What are the best ways to enhance public understanding of the potential risks from chemicals and plastics (such as improved education, training and awareness-raising activities, and generation and dissemination initiatives)? Is the National Pollutant Inventory a useful and cost-effective tool?

Q28 - Do regulators have sufficient access to technical information to be effective? If not, what improvements can be made in managing the flow of technical information between regulators?

The Attachment on MHF and also Environmental regulation identify difficulties and gaps, and also proposed solutions. Much can be done by more exchange between industry and government, and also between government agencies. For example, PACIA is aware that WorkSafe Victoria's Hazard Management Division provides training and support to MHF regulators in other jurisdictions.

Consultation

Q30 - Are the current consultation processes that underpin chemicals regulation and decision-making in Australia adequate? If not, why not, and are there strategies to support more active participation by interested parties?

PACIA notes there is a huge variation in consultation processes that underpin chemicals regulation and decision making. They range from the extensive and effective consultation seen in the development of the Victorian OHS Regulations 2007, the national consultation and information sessions on NChEM and the NICNAS Existing Chemicals review – through to the ASCC consultation process on the draft Workplace Hazardous Chemicals Framework and GHS, which held no public information sessions during the public comment process, although two sessions were subsequently arranged, at the request of industry, only days before closure of extended public comment.

PACIA wishes to also highlight industry's concern at the failure to undertake cost benefit consideration processes in some jurisdictions altogether – and certainly on some topics. This issue is highlighted in the attachment on illicit drug controls.

The need for efficiency

PACIA refers again to the draft Table of Regulators which in some small way highlights the inefficiency and complexity in the system.

Q33 - How substantial are the barriers to entry caused by the existing regulatory system? What reforms would address these barriers while still maintaining an appropriate degree of protection for public health and the environment?

Q34 - Are there specific areas of overlap in the regulations that are burdensome and inefficient?

Q35 - Are you able to provide any estimates of the costs caused by gaps, overlaps or inconsistencies in the regulatory framework?

Q36 - Do you have any evidence of excessive costs imposed by chemicals and plastics regulations? Can you estimate, however approximately, the costs imposed by these regulations on your firm or industry?

Q37 - Can you identify cases where the regulatory environment has altered the way a business would otherwise operate (for example, making a decision about where to locate a major hazard facility)?

Q38 - Are you able to articulate alternative regulations that would meet the same objectives, but that would reduce or eliminate the costs you have identified?

The attached Case studies deal with these issues of inefficiency and highlight the barriers to entry of safer products into Australia.

It is particularly important that our regulatory environment facilitates – not hinders, the introduction of safer chemicals into Australia.

Furthermore, it is vital that we address the inconsistencies and overlaps, so we remove the burden of repeat work for different regulators for no beneficial outcome.

The need for coordination within and across jurisdictions

Q39 - Where are the greatest inconsistencies in regulation: between the Australian Government and the states and territories, between the states and territories, or within jurisdictions, that warrant reform?

The inconsistencies occur in all cases as stated. Depending on the particular company's locations, the greatest burden may change form between federal to state or across state borders. All areas need to be addressed.

Q40 - What advantages have there been in taking different regulatory approaches to chemicals and plastics in different jurisdictions? Can you provide examples of these advantages?

PACIA has provided examples earlier of the benefits of the Sustainability Covenant arrangement between PACIA and the Victorian EPA. This concept could readily be extended to other jurisdictions – or to address other issues.

Q41 - What existing institutional frameworks or coordination mechanisms within or across jurisdictions are working well? Conversely, which ones are less effective, and how could they be improved?

As discussed in the Attachment on transport of dangerous goods, PACIA believes national legislation, which could be adopted by template is a reliable and efficient mechanism to drive uniform regulatory framework across states. PACIA believes we have many many examples of the inconsistencies which emerge when the states and territories have endeavoured to give effect to other instruments, like Principles or Model Regulations or National Standards. A template approach to legislation would be very much more efficient also in supporting implementation of new legislation.

The model of the Competent Authorities Panel for transport of dangerous goods is also a model to support consistent administration which is worth close examination.

Q42 - Taking account of all the costs and benefits involved, should inconsistencies be reduced by having fewer regulators at any jurisdictional level (in the extreme case, having a 'mega regulator' at each jurisdictional level)?

While PACIA is not promoting a "mega regulator", the issues of fragmentation as shown in particular in QLD and across many jurisdictions is highlighted for action.

Q43 - What elements of chemicals and plastics regulation can most appropriately be dealt with through uniform national approaches (for example, should the Agvet code be extended to include control of use)?

PACIA struggles to identify **any elements** of chemicals and plastics regulation which could **not** be appropriately dealt with through uniform national approaches.

PACIA particularly notes and supports the principles for improved regulatory environment for the agvet sector proposed by CropLife Australia. CropLife proposes that there is significant scope at the national level for the regulation of agricultural chemicals to become more streamlined through the vertical integration of Commonwealth and state and territory regulatory regimes.

Q44 - More generally, given the different roles, responsibilities and powers of the different levels of government in Australia, what would be the most efficient and effective regulatory framework, how would this be achieved, and how quickly should it be implemented?

In order to assist the work of the PC Study, PACIA and other members of CPLG, propose to commission research to provide us with detailed analysis of regulatory options for an improved national framework for the regulation of the chemicals and plastics.

It is intended that the proposed 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 industries:

- 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 the region's continued economic expansion.

Once the research has concluded, we will provide additional comments to the PC Study. We expect that the results of the research will be available in January 2008 and that we will be in a position to provide further advice regarding our recommendations for change towards the end of January 2008.

Implementation and administration of regulation

Q45 - Is fragmentation of regulations across and within jurisdictions hampering the effectiveness and efficiency of regulation in Australia — including securing staff to enforce regulations?

Q46 - Is there scope to build economies of scale by merging parts of the regulatory structure so that better use is made of the limited resource pool?

Q47 - Are some parts of the regulatory system more acutely impacted than others by lack of institutional experience and institutional memory?

Q48 - Are government regulators having problems retaining expert staff? If so, what can be done to address the problem?

These issues are covered to some extent in Attachment 2 on MHF and also in Attachment 1 on Environmental regulation.

PACIA has suggested the need to reduce fragmentation in many cases – while also noting that “mega regulators” can bring just as many problems as a very small regulator.

As discussed in Attachment 2, with a complex technical issue like MHF, where a critical mass of expertise is required in the regulator in order to administer the regime – and certainly to retain staff, PACIA believes it will be necessary to pool resources – either through merging parts of the regulatory structure – or through service agreements between agencies.

PACIA has highlighted the impact of resource shortages on business – where companies may be forced into situations of technical non compliance, because the regulator lacks resources to assess industry submissions in a timely fashion and either approve or reject them.

Delays in regulatory decision making –which often result from lack of technical or policy confidence in the regulator - can result in significant financial loss and loss of opportunity for industry. This is particularly the case with approvals for expansions or location of new facilities.

PACIA promotes the value of staff exchanges between regulators and industry to broaden experience from both parties, and to assist in the “on site” operational training of regulators.

In terms of issues relating to loss of corporate memory or lack of institutional experience, PACIA promotes the vital importance of regulators have transparent documented policies and decision making criteria.

For example, in the case of NICNAS, PACIA has strongly promoted the publication of a Manual of Decisions and a Record of Policy Register – to assist both industry and the regulator to avoid repeating previous work – and providing enduring certainty.

Industry is always concerned to ensure that there is not a shift in policy or standards over time – and this is a transparent mechanism to provide certainty.

The NICNAS Handbook for example is a very valuable document – but it would assist industry if changes to the handbook were publicised, for example by notation in the Chemical Gazette.

Some regulators have very open and transparent decision making processes – for example, the entire Safety Case Assessment Framework used by WorkSafe Victoria for making MHF licence decisions, is published on the website.

Q58 - Are the current regulations effectively enforced? How is this monitored? Do the powers of regulators give them sufficient scope to effectively enforce the regulations they are responsible for? Is the mix of education, information and penalties appropriate?

Good regulators seek to achieve compliance with regulations through a strategic mix of education, information and guidance, promotion, enforcement and where necessary penalties.

The balance of those elements varies greatly across jurisdictions and agencies – and even within agencies – and generally reflects the level of maturity of the particular group of regulators.

Q59 - Would greater economies of scale, through merged functions or regulators (within or between jurisdictions), make compliance any more effective?

Attachment 10 – the draft Table of Chemical Regulators, can be used to identify that many common areas and common objectives are addressed by multiple regulators. For example controls to prevent loss of containment of dangerous goods and to minimise impact of the spills, are required under both dangerous goods and environmental protection legislation.

Q60 - To the extent that there is non compliance, is there evidence of how much of this is deliberate, and how much is due to lack of knowledge or understanding (possibly because of complexity of the system)?

This is very difficult to answer – but PACIA promotes the importance of ensuring the system is clear and simple, to support compliance wherever possible. PACIA believes it is vital that we address the complexity which undermines compliance, and makes it more difficult and costly.

PACIA notes that one task of the NChEM Process is to “develop a manual of environmental controls, to assist chemical assessors, national regulators and stakeholders understand the current tools that are in place and how they are used”. This task merely serves to highlight the broad diversity of environmental legislation in the states and territories which lead to this task being necessary. Clearly, this diversity and complexity does not aid national companies in their efforts to comply.

Q61 - Does the compliance regime take sufficient account of the market mechanisms that play a part in reducing the risk of adverse events (such as large companies needing to protect their brand and to be seen as ‘good corporate citizens’, and that failure to comply with regulatory obligations may void insurance coverage)? Does compliance effectively target rogue operators?

The current regime does not take this into account. It is the companies wanting to protect brand or be good corporate citizens who go to extreme efforts to ensure they comply with the excessively complex and burdensome regimes. This results in these companies doing more, when it does not

provide “more” compliance. The rogue operators are not impacted by the thought of bad brand, as this is typically not an issue for them, therefore the complex system does not effectively target these rogue operators.

It is interesting to note that WorkSafe Victoria is currently starting to segment the market by company size, and develop appropriate intervention strategies for small, medium and large companies. It is possible that this new approach may seek to make better use of market mechanisms.

Leveraging international linkages

The Globally Harmonised System for Classification and Labelling of Chemicals (GHS)

General

The GHS has developed on the premise of a single, globally harmonized system for classification of chemicals and hazard communication (labels and safety data sheets). The genesis of the GHS will be well known to the Commission and will not be further elaborated in this submission.

The challenge for the GHS is that it attempts to address classification and labelling for all chemical sectors (transport, industrial/workplace chemicals, industrial formulated products, agricultural chemical products, and household consumer products) under a single approach. Moreover, it attempts to do so for both developing nations, which may have limited or no schemes, and developed nations with sophisticated chemicals management regimes.

Whilst many governments are actively considering how GHS may be implemented in national schemes, no major economy has yet fully implemented the GHS across all chemical sectors. Indeed, governments and industry are now focusing attention on the practical aspects of how the GHS might be implemented at the national level, while keeping in mind the key considerations of enhancing national schemes and gaining the benefits of trade facilitation.

Hazard-based approaches to labelling in the transport sector and for bulk commodity industrial chemicals in international and national trade and in the workplace sector are non-contentious except where regulators maintain or promote unique Australian requirements such as inner package labelling. The central issues relate to timing (including transition periods and what occurs during transition periods), the scope of implementation of hazard classes and categories, and how to achieve consistency in chemical classifications. This latter point is not to be underestimated.

The GHS remains a ‘work-in-progress’ and will need to evolve in recognition of problems that arise in both practical application, and to reflect changes that arise in the implementation that occurs in the major chemical trading nations – otherwise the official GHS text and documentation will lose relevance.

In its 27 June 2007 announcement, the European Commission proposed a hazard-based approach across all chemical sectors. In Australia and countries such as the United States, Canada, Japan and others, the contemporary regulatory approach for consumer products and agricultural chemical products (pesticides) has been for consideration product labelling within a risk analysis framework.

A simplified risk analysis framework, including potential application of the GHS, can be represented as follows.

Simplified risk-analysis framework identifying potential application of GHS

Risk Analysis:

Risk Assessment:

- hazard identification
 - hazard characterization
 - exposure assessment
 - risk characterisation
- } GHS hazard classification

Risk Management

Risk Communication: may include appropriate hazard elements

In such more sophisticated approaches, GHS hazard classification has a potential role in hazard identification and hazard characterisation.

Notwithstanding the pros and cons of hazard versus risk-based labelling, there is a clear divide in how regulatory philosophies approach communication with end-users in the various sectors. The current European Commission proposals are very different in approach from current practices in countries such as Australia, United States, Canada, Japan and others.

The emergence of 'brands' of GHS

Europe: Without debating the merits of the proposals, the European Commission has proposed that its scope of GHS Implementation will not include a number of GHS hazard categories but will include a number of hazards not currently included in the scope of the GHS.

During a panel question time at the April 2007 ChemCon Conference in Singapore, a representative of the European Commission responded to a question as to whether a chemical classified and labelled to all GHS endpoints (i.e. more protective than the Commission's proposals) would be acceptable in the EU – the response was that only chemicals classified and labelled to the European adoption of GHS would be acceptable.

PACIA understands that this European Commission position is also the interpretation of Australian government representatives to the UNSCEGHS.

New Zealand: The Environmental Risk Management Authority (ERMA) has been attempting to implement an early 2003 version of the GHS. ERMA has made a number of changes and additions to hazard classifications and used codification not adopted up in the GHS official text or in proposals by any other country.

Adoption of the lowest classification toxicity categories means that ERMA regulates chemicals, as hazardous substances, that may be or of similarly toxicity to common food items. For example, GHS Acute Oral Toxicity Category 5 classifies substances with LD₅₀ values of 2000mg/kg to 5000mg/kg. This classification picks up chemicals such as sodium chloride (table salt) with an acute chloride oral LD₅₀ in rat approximately 3000mg/kg and sodium carbonate (baking soda) with acute oral LD₅₀ in mouse approximately 3360mg/kg. These low-end classifications are not included in the European Commission's proposals.

New Zealand's scheme is not currently harmonised with any other country and is commonly referred to as a 'GHS-based' scheme rather than a 'GHS implemented' scheme.

In 2006, ERMA pragmatically provided 'alternative compliance measures' under its Group Standards to allow the transfer of substances and mixtures to its Hazardous Substances and New Organisms Act 1996 (HSNO). The alternate compliance measures provide for acceptance of:

"the relevant current labelling requirements of Australia, USA, Canada, the European Union or any other country as approved by the Authority, as if the substances were for sale or supply in those countries"

Example of text in a Group Standard is at <http://www.ermanz.govt.nz/appfiles/orgctrl/pdf/HSR002525Con.pdf>, page 8

These alternate compliance measures are due to expire on 31 December 2010 but in reality these will need to be extended as even the European Commission's proposals do not contain mandatory GHS labelling of mixtures until 2015. Additionally, for consumer products and others where New Zealand's major trading partners will adopt risk-based approaches to labelling there are no current provisions under HSNO for this to occur.

The New Zealand experience has highlighted the significant problems that can occur with small economies trying to implement schemes in isolation before major trading partners and not benefiting from the substantial work that is still to be done in the major chemical trading nations. This is not a model for Australia to emulate.

North America: there is no detailed information yet available on GHS implementation in North America.

The consequence of different 'brands' of GHS

The emergence of different customised brands of GHS, without mutual recognition of GHS in other economies has the potential to strongly work against a stated objective of GHS with regard to trade facilitation. This is a key issue for Australian industry.

What will be the costs and benefits of implementing the GHS in Australia?

United Kingdom Health and Safety Executive

In July 2007, the UK HSE commenced a consultation of GHS implementation in the United Kingdom (<http://www.hse.gov.uk/consult/condocs/cd213.htm>) to allow it to inform the considerations of the European Parliament and Council. The consultation closes on 2 November 2007

The HSE Initial Regulatory Impact Assessment (RAI) notes the context of GHS for the United Kingdom.

- “5. The current EU classification and labelling system for supply and use of chemicals is mature, well developed, and widely understood. It is unlikely the EU (and therefore the UK) will experience significant benefits for human health or environmental protection from implementation of the United Nations Global Harmonised System of Classification and Labelling of Chemicals (GHS), compared with the current EU classification and labelling system. It is countries that as yet do not have a regime in place to control the supply and use of hazardous chemicals, that are expected to benefit the most from the UN GHS, and for them it will be a significant step forward in the safer management of chemicals.
6. The principal economic benefit of the GHS for the EU, and therefore the UK, is considered to be the facilitation of international trade, over the longer term, due to the lowering of technical barriers to trade.....” (underlining added)

UK Initial Regulatory Impact Assessment on the Proposed European Regulation on the Classification, Labelling and Packaging of Substances and Mixtures (Based on the UN Globally Harmonised System. Consultative Document 213 - Annex B, July 2007 <http://www.hse.gov.uk/consult/condocs/cd213ria.pdf>

The RAI includes cost estimates for the introduction of the GHS at between £95,680,000 and £215,680,000. At current exchanges rates this equates to A\$218 million to A\$492 million.

Australia has a developed and sophisticated regulatory regime for chemicals management that is comparable to other developed countries. The current schemes include world best practice in chemicals classification, labelling and information provided through material safety data sheets.

The contribution of the GHS to *Australia's National Interest* will be best served through trade facilitation and efficiencies that may be achieved through harmonized international approaches to classification, labelling and safety data sheets.

ASCC Regulatory Impact Assessment

The ASCC 2006/2007 consultation on the Draft National Standard and Codes of Practice for the Control of Workplace Hazardous Chemicals included key elements of:

- use of the Globally Harmonised System for Classification and labelling of Chemicals (GHS) as the primary tool for classification, labelling and safety data sheets in the workplace sector; and
- consolidating the requirements for workplace hazardous substances and dangerous goods into a consolidated framework

The detail of the overlapping considerations were extremely complex as recognised in government and industry submissions. Copies of the submissions to the consultation are at: <http://www.ascc.gov.au/ascc/AboutUs/PublicComment/ClosedComment/Public+Submissions/PublicSubmissions-ControlofWorkplaceHazardousChemicals.htm>

The detail of some submissions is worth noting, for example WorkCover NSW (150 pages), PACIA (55 pages), ACCORD (50 pages). The complexity is also reflected in the nature of the draft Regulation Impact Statement (146 pages).

Consultation meetings for the Regulatory Impact Analysis were conducted in early 2006. This was at a time when no major economy in the world had released a detailed GHS proposal. Further, no analysis of the detail of potential GHS implementation impacts had been conducted by industry or governments at this time – indeed much of this detail continues to emerge.

It will not be possible, nor would it be appropriate, to complete an analysis of costs and benefits, even for the industrial chemicals sector; until Australia's major trading partners have released detailed proposals for GHS implementation.

Who are Australia's major trading partners for chemicals and plastics?

Industry has recommended that regulatory agencies be informed on trade considerations by the Department of Foreign Affairs and Trade (DFAT) and Department of Industry, Resources and Tourism (DITR).

There are different trade classification systems and there is critical need for agreement on classification and data sets. For example, data can be analysed under the Australia New Zealand Standard Industrial Classification (ANZSIC) codes or by trade using a harmonised tariff system – the two are not directly comparable but appear to yield similar relativities. PACIA has undertaken an analysis using the ANZIC codes.

Major Sources of Australian Chemicals & Plastics imports and destinations of exports (2005-06)

	Source of Imports	\$m	%	Exports Destination	\$m	%
1	United States	3,088	21.02	New Zealand	804	21.72
2	China	1,553	10.57	China	307	8.30
3	Japan	1,020	6.95	United States	295	7.97
4	Germany	810	5.51	Indonesia	166	4.50
5	United Kingdom	698	4.75	Japan	143	3.87
6	New Zealand	513	3.49	Korea, Republic of	136	3.68
7	Korea, Republic of	476	3.24	Hong Kong	135	3.67
8	Malaysia	427	2.91	India	124	3.37
9	France	419	2.85	Thailand	110	2.97
10	Taiwan	361	2.46	Finland	105	2.86
11	Thailand	325	2.22	Singapore	84	2.27
12	Singapore	302	2.06	United Kingdom	77	2.10
13	Italy	288	1.97	Malaysia	77	2.10
14	Netherlands	197	1.34	Papua New	72	1.95

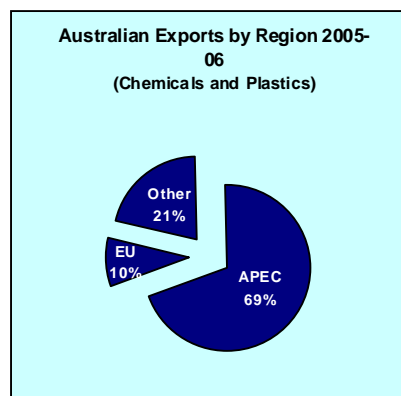
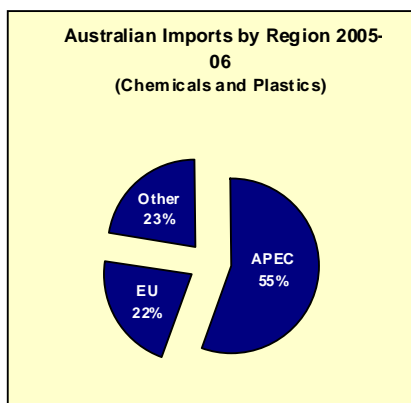
15	Belgium	183	1.25	Guinea		
16	Qatar	170	1.16	Taiwan	67	1.82
17	Indonesia	167	1.14	Viet Nam	57	1.57
18	Ireland	159	1.08	Philippines	51	1.39
19	India	153	1.05	South Africa	45	1.24
20	Spain	151	1.03	Netherlands	41	1.11
	Other	3,225	21.95	Pakistan	39	1.06
				Other	759	20.49
	Top 10	9,370	63.76%	Top 10	2,330	62.91
		11,46				
	Top 20	9	78.05%	Top 20	2,945	79.51
	Total	14,69	100.00	Total	3,704	100.0
		4	%		0	

The United States is Australia's largest single country sources of imports at 21.02% and accepts 7.97% of Australia's exports. New Zealand accounts for 3.94% of imports but is Australia's largest export destination at 21.72%

Further analysis of the data identifies that:

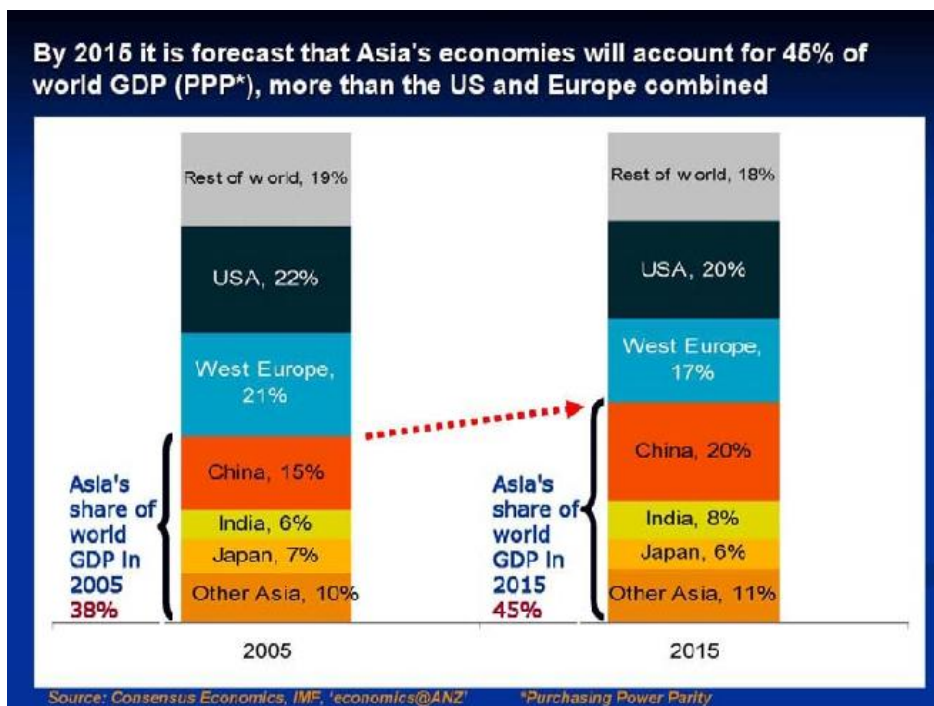
- Australia was 0.86% of global trade in chemicals and plastics in 2005-2006
- Australia is a net chemicals importer with imports exceeding exports by a ratio of 4:1
- the 27 countries of the European Union contribute, in total, 21.88% of imports and accept 9.52% of Australia's exports
- North America (Canada, USA and Mexico) accounts for a total of 21.96% of imports and accepts 9.05% of exports (note: Australian chemicals trade with Canada and Mexico is relatively minor at this time)
- The 21 member economies of the Asia Pacific Economic Cooperation (APEC) contribute 55.36% of imports and accept 69.16% of Australia's exports

Australian Imports and Exports by Region 2005-2006



There is also important need for analysis of export and import trends in the chemicals and plastics sectors to position Australia for future market opportunities and trade efficiencies.

GDP Growth 2005-2015



PACIA strongly supports industry recommendations to regulatory agencies that information be sourced from DFAT and DITR to establish the context and trends of Australia's trade in chemicals and plastics. This information must inform policy consideration such as whether Australia should align with any individual or regional trading partner(s). It may be that Australia's does not directly align with any individual trading partner but optimises benefits to consider the full range of trade considerations.

**What should influence decisions about the timing of the implementation of the GHS?
Should Australia wait until the system has been implemented by our major trading partners, or aim to be a leader in adopting the new system?**

Australia represents less than 1% of the world's chemicals trade and is a net chemicals importer. Given Australia's trade profile, it is critical that any consideration of GHS implementation locally be informed by developments from our major trading partners. Ongoing dialogue and consultation with trading partners is crucial to *Australia's National Interest*.

The benefits to any country implementing the GHS will be realised only with a high level of co-ordination and harmonization within the affected sectors in major trading partners. No nation can meaningfully implement the GHS in isolation. Consistent approaches to GHS implementation among Australia's trading partners are crucial to realise the benefits of a harmonized system. For Australia, failure to recognise this key imperative could lead to much effort for no gain or negative outcomes and bring the national application of GHS into disrepute.

Australia has a unique opportunity to gain benefits of GHS classification and approaches to communication through labelling and safety data sheets if it phases GHS implementation to follow behind that adopted in major economies and trading partners such as the European Union, North America and other APEC economies. PACIA and ACCORD made specific recommendations to the 2006/2007 ASCC consultation in this regard. If Australia extended the transition periods for mandatory adoption of GHS by 2 years from whatever becomes an agreed international benchmark then this would allow Australia to benefit from:


- GHS classifications that are undertaken in the major chemical trading nations
- Resolution of major GHS implementation issues
- Avoidance of duplication and inconsistencies

- Avoidance of potential significant costs of 'reworking' as the GHS evolves during implementation

Is there a need for more extensive use of a risk-based approach to regulation in parts of the system? How can such an approach be integrated with future adoption of the hazard based Globally Harmonised System

GHS labelling implications for industrial "products" need special consideration. *Products* are different from *raw materials* and bulk commodity chemicals in trade and use in manufacture as the former have *defined uses*.

An example might be a cleaning product used that is used in the workplace by janitorial staff (and requires labelling as an industrial chemical). If the product contains ethanol (ethyl alcohol – also present in all alcoholic beverages) at a concentration of >0.3% then the label, according to the GHS, may be required to bear the following information and pictogram:

Label effect		Signal Word: DANGER
		Statements: May damage fertility or the unborn child (state specific if known) (state route of exposure if it is conclusively proven that no other routes of exposure cause the hazard)

The above example identifies the inadequacy of only considering hazard for *defined use* products and how this may lead to miscommunication of relevant information to users.

Recommendations on the Globally Harmonised System for Classification and labelling of Chemicals (GHS)

Australia has the opportunity to maximise the benefits and minimise the costs of the GHS through its implementation strategy. PACIA strongly recommends that the Productivity Commission supports the following recommendations:

- the Department of Foreign Affairs and Trade (DFAT) and the Department of Industry Tourism and Resources (DITR) provide advice to Australian government regulators of the chemicals and plastics industry on Australia's trade profile and emerging trends
- DFAT and DITR be actively engage in the development of Australian implementation strategies for the GHS
- further considerations on Australian GHS implementation to be informed by developments in Australia's major trading partners
- acknowledgement be given that *Australia's National Interest* will be best served through trade facilitation and efficiencies that timely and appropriate GHS implementation may offer
- Australia maintain an active role in the APEC Chemicals Dialogue to promote trade facilitation from GHS implementation within the 21 APEC economies
- acknowledgement be given that Australia's currently developed regulatory regime for chemicals and plastics is comparable to those in other developed countries
- the Productivity Commission endorses the principle that Australia adopt GHS implementation transition periods that are beyond major chemical trading economies thereby allowing efficiencies and cost-effective benefits to be realised
- the Productivity Commission supports the development of an Australian government/ industry workplan that:
 - involves government and industry in a partnership approach
 - addresses the individual chemical sector needs and issues
 - is progressively informed by international developments

- recognises and provides input on Australian views to international fora, such as the APEC Chemicals Dialogue and the UN Sub-committee of Experts on the GHS
- ensures efficiency, avoids duplication, enhances trade, and promotes consistency with international progress such as in the area of GHS classifications
- explores opportunities for mutual recognition (*vs full harmonisation*)
- provides for broad training, outreach and awareness raising

To what extent can chemical risks and hazards be treated generically across different countries, and what are the Australian-specific circumstances or conditions that justify separate risk assessment and management (for example, do agricultural chemicals need to be tested in Australian conditions)?

The GHS identifies hazards as properties arising from the intrinsic properties of chemical elements, compounds and mixtures thereof, whether natural or synthetic. Hazard properties are independent of factors such as geographic location.

All regulatory approaches (hazard-based or risk-based) consider the hazard properties of chemicals, compounds and mixtures.

Risk analysis is a framework for higher level consideration for identification and characterisation of hazards, exposure assessment, risk characterization, risk management and risk communication. A simplified risk-analysis framework was identified earlier in this submission.

Chemical hazard properties, based on accepted testing methodologies, have the potential to be universally used around the world – because the intrinsic properties do not change. Where the use of a chemical, compound or mixture is the same or similar in one location to another location then it may be valid to fully accept a risk assessment developed under with comparable standards.

There are currently other non-science factors that may impose on the ability for transmittance of information from one country to another. Such factors may include intellectual property rights, treatment of commercial-business-information, the nature of reports that may be prepared by regulatory agencies, and other factors. Despite any philosophical desire for increased sharing of information, the fundamental incentive for innovation through intellectual property rights, including as defined under the World Trade Organisation, must be respected.

Regulation of Security Sensitive Ammonium Nitrate

The chemical industry is committed to achieving enhanced levels of security and control over all aspects of the chemical supply chain to minimise the risk of legitimate industrial products being diverted for illicit use. PACIA and its member companies have a long history of working very closely with both federal and state agencies to achieve enhanced security controls. This work has historically focused on areas of chemical weapon precursors, chemical precursors, illicit drug precursors, explosives and in recent years, security sensitive ammonium nitrate (SSAN).

PACIA has been very pleased over the last four years to proactively develop specific industry guidance on security issues. In 2003, PACIA developed the first Edition of its Responsible Care Site and Supply Chain Security Guidance to assist the industry. PACIA is currently updating and reviewing the document to publish the fourth Edition.

In addition, prior to the June 2004 COAG decisions regarding SSAN, PACIA developed a draft industry Code of Practice for Secure Distribution of Security Sensitive Ammonium Nitrate which subsequently was largely adopted into the national SSAN Transport Guidelines.

The three policy aims of the COAG Principles on SSAN, set out below, were strongly supported by industry:

- A nationally-consistent, effective and integrated approach to control access to security sensitive ammonium nitrate to those with legitimate need

- To ensure accountability at all stages of the ammonium nitrate supply chain, in order to address security and safety concerns
- To establish a framework for control which may be applicable for other materials of security concern

Sadly, those policy aims were not met in the regulation and administration of SSAN.

From an industry perspective, there have been a number of issues:

- There have been delays in making this priority security legislation
- There are significant inconsistencies between the states, eg
 - o Terminology
 - o Licence Requirements
 - o Mutual Recognition
 - o Different approaches to control
- This has been a very inefficient process for all stakeholders.

The National Security Division of the Department of the Prime Minister and Cabinet, in September 2006, requested PACIA's advice on details regarding industry's difficulties in implementing SSAN requirements in the different jurisdictions across Australia. PACIA's response, which was developed with the Australian Explosives Industry and Safety Group can be accessed via the link below:

http://www.pacia.org.au/uploaditems/docs/2.paciasub_regs_ssan_%20sept06.pdf

PACIA has greatly valued the opportunity to continue working closely with the National Security Division over the last 12 months in the development of the broader framework over chemicals of security concern. Our submission on the Discussion Paper can be accessed below.

http://www.pacia.org.au/uploaditems/docs/2.paciasub_chemicals_securityconcern_1mar07.pdf

The issues associated when one State proposes to go in a completely different direction on security can be seen in these submissions to the Victorian Department of Justice below. A successful outcome was achieved with this legislative proposal as a result of intervention by the Minister for Police, following correspondence from PACIA. The final legislation is consistent with the priorities and approaches being developed through the COAG work on Hazardous Materials.

http://www.pacia.org.au/uploaditems/docs/2.terrorism_cpmps_regsfeb05.pdf

PACIA will deal with the specific question in the Issues Paper relating to the regulation of SSAN.

Q 75 - *Could the development of the agreed principles for SSAN regulation have been improved?*

PACIA and its member companies have given and will continue to give their unconditional support to achieving the outcomes required by the COAG Principles for the Regulation of Security Sensitive Ammonium Nitrate. However members have major concerns about the quantity of compliance work which has to be done up to 8 separate times to comply with different laws and Regulations in the various jurisdictions and we strongly recommends that the SSAN model **NOT** be used to regulate other materials identified by the COAG Review of Hazardous Materials. Furthermore we consider that the differences in regulatory requirements are counter-productive inasmuch as they consume scarce skilled compliance resources performing the same tasks in different ways to meet jurisdiction specific requirements. In our view these resources would be more effectively utilised if the one set of regulations applied consistently Australia wide.

The development of the COAG Principles for SSAN through the Department of the Prime Minister and Cabinet (PM&C) was done in almost complete isolation of the affected industry. Industry was not able to see any of the draft documents as they were developed, nor were they able to provide any input on practical or technical business implications of the approach under consideration. Even when a number of peak industry associations were invited to meet with PM&C to discuss the

recommendations to go to COAG, industry was not provided the draft documents under consideration.

On the other hand, in relation to the development of the controls for chemicals of security concern, PACIA has been very pleased to be engaged and consulted in the process since September 2006. PACIA has found the ability of industry to input issues, concerns and possible solutions into the development of the draft COAG paper a much more valuable and constructive process.

The willingness to not only engage in a consultative and open process with peak industry groups, but also to engage actively in formal public comment processes, is a much more transparent and inclusive process.

However, even if the development of the Principles for SSAN had been done differently, PACIA would argue that "**COAG Principles**" is the wrong product or legislative tool, with which to achieve the objective of "a nationally-consistent, effective and integrated approach" as set out in those Principles.

PACIA would contend that the COAG Principles on SSAN (like the NOHSC National Standard on Control of MHF as set out in Attachment 2) which then must go through a legislative development process in each jurisdiction to produce legislation is extremely unlikely to produce consistent outcomes.

PACIA would argue it is vital that a further step needs to be taken in the national development process – to develop **national legislation** which can then be either **adopted by template** in the jurisdictions and administered by the jurisdictions, or **administered as national legislation**.

PACIA would also promote the need for incentives to drive the states and territories to adopt template legislation in consistent timeframes. The Transport Case Study in Attachment 5 discusses these issues further.

PACIA notes the direction in the June 2004 COAG Principles regarding upgrading explosives regulations to a similar standard in terms of security has been addressed by jurisdictions even more slowly than the SSAN Principles.

Given the failure of this mechanism to achieve the outcome sought, **PACIA recommends the need to**

- **Develop legislation nationally**
- **Offer incentives to encourage prompt and consistent adoption**
- **Monitor the actions taken by jurisdictions**
- **Establish a nationally coordinated mechanism to support consistent administration.**

Q 76 - Are the security measures required by the agreed principles commensurate with the security risk posed by ammonium nitrate products?

It is somewhat difficult for industry to comment on this question given the security risk posed by SSAN is best assessed by ASIO and other intelligence agencies, rather than by industry.

However the security measures "required" as a result of the way the COAG Principles have been given effect in state and territory legislation, unfortunately vary significantly between the jurisdictions. The resulting burden on industry as a result of the inconsistencies achieves no security benefits yet causes considerable costs.

PACIA would promote an ongoing centralised collaborative process between industry and Government to determine the best ways to achieve the security outcomes sought by COAG, industry and the community.

Q 77 - What impacts have the individual state and territory legislation for SSAN had on business operations? Can the benefits and costs be quantified?

PACIA works closely with the Australian Explosives Industry and Safety Group (AEISG) on dealing with security controls and we commend their detailed input to this study with identified costs and benefits.

Attachment 9 highlights the range of impacts on both business operations and also on the security objectives. In particular, the lack of mutual recognition of licences, security plans and security clearances across Australia and the different state by state approach to security clearances have been found particularly burdensome. The requirements in some jurisdictions for controls based on consequence, rather than risk has resulted in significant cost burdens in those jurisdictions.

Q78 - What grounds are there for variations across the jurisdictions in the regulation of SSAN? How extensive are these variations, and what impact have these variations had on the overall security objective, and on the costs to business of complying with the regulations?

PACIA cannot identify any grounds for variations across the jurisdictions, and believes those variations have been responsible for undermining the credibility of the whole regime. National security is not an area where one can tolerate any variations.

Q79 - Could less stringent regulations or other policy measures be introduced to control access to SSAN without compromising the security objectives?

Again, similar to Q76 this is difficult for industry to comment. However, PACIA would suggest that a common understanding of the security objective, outcomes and expectations between industry and Government (ie not by State – but one national Government view) would have made the process much easier, and most likely less stringent in many jurisdictions, yet more effective overall.

Conclusion

In conclusion, PACIA has significant concerns about the complexity, duplication and inconsistency within the chemical regulatory regimes at all levels of government which impact on the chemicals and plastics sector.

PACIA has indicated throughout this submission that the regulatory environment, not only impacts on the efficiency and effectiveness of the sector, but also adversely impacts on the health, safety, security and environmental outcomes sought by the industry, government and community.

PACIA is very keen to continue to work closely with the Commissioners. As you are aware, gathering together information on the incremental costs which result from the complexity and regulatory burden has been found very difficult by our members, and PACIA looks forward to working further with the Commission to provide you with the necessary information and detail.

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.

PACIA is pleased to note this PC Study will inform the work of the Ministerial Taskforce established by COAG to ***“develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation”***. We look forward to assisting the Commission and the Ministerial Taskforce to achieve that outcome.

Attachment 1 – Environmental Regulation

Q19. Is there a gap in the existing regulatory system with respect to the environmental impacts of chemicals and plastics? If so, do you see the National Framework for chemical Environmental Management (NChEM) proposals as a good way to fill that gap?

Q35. Are there specific areas of overlap in regulations that are burdensome and inefficient?

Q48. Are some parts of the regulatory system more acutely impacted than others by lack of intuitional experience and institutional memory?

Q49. Are governments having problems retaining expert staff? If so, what can be done to address the problem?

Environment Case Study – NChEM Proposal

PACIA strongly supports the proposal to develop a national framework for an improved regulatory system to underpin consistent controls of the environmental impacts of chemicals and plastics. However we note that the NChEM model (released in July 2006) appears to ignore the current regulatory models which are available and in place. It is vital that a new model achieves the environmental outcomes through an **improved** regulatory environment – and does **not add** to the regulatory burden and complexity.

PACIA agrees that there are current gaps in the existing regulatory systems with respect to the environmental impacts of chemicals and plastics. PACIA supports a model which would seek to consider scientifically sound data from relevant departments and enhance the current communication and information systems which enable the states and territories provide information to NICNAS and APVMA through the Department of Environment and Water Resources.

PACIA believes the current failures in the existing regulatory system are not due to the lack of powers. They are due to deficiencies and failings to best use existing powers resulting from poor implementation and/or a lack of commitment for effective communication within and between government agencies. In the past, there has been no federal coordination role played by the Department of Environment and Water Resources (similar to the roles played by NDPSC and ASCC for public health and OH&S). PACIA recommends greater communication to increase better governance and accountability and a greater role played by the Department of Environment and Water Resources similar to NDPSC and ASCC.

PACIA believes policy discussion and information flow between National and State and Territory regulators is one of the most important issues to achieve a model which lessens the regulatory burden on industry and strengthens a model to protect the environment.

PACIA also supports the recommendation for NICNAS to explore with states and territories for an improved process for engaging with its MOU group.

Features of a Linked System

PACIA agrees that there should be clear, effective and formalised communication processes between environment agencies and NICNAS so that assessment recommendations take into

account on-the-ground experience of States and Territories and to ensure that any recommendations are action-based, practical and linked with appropriate management tools.

We agree the linking mechanism should be as simple as possible e.g. in theory, NICNAS recommendations for environmental controls **could** come automatically and consistently into force, or be automatically adopted in each of the States and Territories in a consistent way.

However, this mechanism would be completely different to the current mechanisms used to give effect to NICNAS recommendations on public health and OHS. PACIA believes a Regulatory Impact Assessment (RIA) process must at all times be undertaken prior to any recommendation being made mandatory. If theoretically, NICNAS recommendations for environmental controls were to be able to come automatically and consistently into force – the RIA would NEED to be undertaken by NICNAS (or some other agency) prior to that happening. Currently if NICNAS recommendations on OHS are to be converted into law (eg as occurred with the prohibition of chrysotile asbestos), the RIS was undertaken by ASCC – not NICNAS.

PACIA strongly believes it is important and appropriate to have a system for environment which is consistent and integrates with those for public health and OHS.

PACIA believes any framework should not try and duplicate existing powers under relevant state and territory legislation. This is contrary to the Government's commitment to reduce the regulatory burden on industry, and the development of a streamline and harmonised system of national chemicals and plastics regulation. If additional powers were to be given to one agency, then it would be necessary to take away powers from other agencies – to avoid duplication and overlaps.

PACIA supports the NChEM proposal to determine priority and emerging issues with chemicals by applying a model based on scientifically based information collected by government agencies/stakeholders. Such a model must also take into account detailed technical work established by other agencies (NICNAS and APVMA) – state and territory and international conventions to evaluate environmental priorities. PACIA supports the principle for clear, objective criteria and guidelines rather than 'factors' which could lead to subjectivity and the exercise of 'bureaucratic discretion' contrary to COAG principles.

The NChEM proposal must not duplicate existing powers shared by the States and Territory agencies and indeed current federal agencies. This duplication will add costs and a regulatory burden on government and industry. The NChEM proposal must also ensure that 'priority chemicals' are identified by using clear science based criteria consistent with international standards.

Current National Initiatives

An example of a current system which is in use in Australia is the National Environment Protection Council (NEPC) Act which seeks to develop nationally consistent approaches for environmental management in Australia; an approach which PACIA strongly agrees with and endorses.

In the same way that broad stakeholder involvement provides greater synergy and strength for problem solving, guidance and regulation, consistency amongst jurisdictions creates similar benefit. The alternative to a uniform approach is for companies to have to deal with the

requirements of multiple regulatory frameworks and their unique requirements. This in turn adds cost and complexity rather than building workable platforms for necessary progress.

However, our experience suggests that outcomes of the NEPC process have not been as effective or efficient as intended. This has much to do with the nature of the legislation and the fact that a NEPM's development is devolved to a state agency and that ultimate enforcement is left to the States and Territories. As a result, development processes can vary, and implementation, particularly for some NEPMs, has been fragmented. The variation in approach and timing in implementation by States and Territories is also a major deficiency.

PACIA has frequently highlighted the need for consistency in legislation across all Australian jurisdictions. Currently a complex framework of legislation and regulation govern the operations of plastic, chemical and transport companies. This produces an environment of uncertainty, increases costs and increases the administrative burden for companies, particularly those who operate sites in different states. This is a key issue for the Productivity Commission to address.

Current Need for Efficiency

A major area of regulatory overlap is within water, air and waste legislation. The pace of legislative development is proving more difficult for industry to keep up with at times. It requires significant amount of work and detailed technical review in order to remain up to date. Some specific details relating to the inefficiencies are as follows:

- A burden to industry is caused by each piece of legislation addressing a different aspect from water, waste to air, with some targeting greenhouse gas production, a focus on energy use or others carbon, all of which require a different set of measurements or calculations in addition to the time that is spent on attending meetings and consultation sessions.
- Often regulators are inflexible about altering details. For example, assisting industry to have greater alignment on reporting periods (the option to report against a calendar year or financial year), but some regulators will not provide flexibility in this regard. PACIA commends the Energy Efficiency Opportunities (EEO) Act (Federal) for allowing industry to choose reporting periods due to suitability to internal company procedures.
- Currently industry could be hindered by various timeframes which have to be met through reporting to Greenhouse Challenge, EEO, National Pollutant Inventory and individual license EPA reporting.
- PACIA notes the EEO legislation requires industry to implement projects where the payback is four years or less, whereas the recently released Draft Victorian Environmental Resource Efficiency Plans (EREP) (Water, Energy and Waste) legislation requires a payback of three years or less.
- In Victoria in 2007, the requirement to undertake an assessment of water savings opportunities (waterMAP) was introduced within a month of the Draft EREP legislation which also requires industry to assess water saving opportunities.
- The QLD Environmental Agency has carriage of regulation in normal day to day business, although the Councils become involved in setting effluent standards where development applicants occur. Currently, EPA legislation is not capable of enforcing clean ups following incidents detrimental to the environment. For major incidents, this is handled by CHEM Services under the DGSM Act as a chemical emergency, or absorbed by the local government as a cost. PACIA believes recovery from an incident could be hampered by the duplication of multiple government agencies.

Industry faces difficulties in their management of water and wastewater issues and at times has competing priorities. For example:

- The increased costs to dispose tradewaste to sewer increases businesses operating costs.
- Potential requirements for on-site treatment of tradewaste (in particular Total Dissolved Solids (TDS)) requires costly capital investment and is also energy intensive.
- The implementation of water conservation measures has meant that at times businesses are unable to meet their trade waste obligations (under tradewaste agreements). For example decreased quantities of tradewaste are discharged to sewer but with higher concentrations of parameters including Total Dissolved Solids. The lack of water to dilute the concentrations of parameters such as TDS limit companies ability to meet their tradewaste obligations.
- The proposed increase in potable water charges also has implications for the industries. In Victoria the Essential Services Commission (ESC) is currently reviewing water tariff structures. As part of this review the ESC is looking at the proposed shift in charging to increase the cost of water for industry above the increase for households. Any increases in water prices for industry will result in increased operating costs for an already highly competitive and trade exposed sector.

Implementation and Administration of Regulation

Aside from the budgetary and cultural issues that are specific to each regulatory agency, PACIA believes the loss of institutional memory and experience in some agencies has created significant issues for industry for several years. The rise of regulation has seen an increase in industry HSE wages and a subsequent turnover in regulatory staff, as government wages have failed to keep pace.

For example:

- Turnover of Victorian EPA client managers has increased over the last three years across the chemicals industry
- Some PACIA member companies have reported that they have been forced into situations of technical non compliance, because the regulator has not had the necessary skilled resources to assess company submissions and either approve or reject them.

PACIA notes the great strain such turnover has on day to day operations for a site due to greater time need by industry to inducting/familiarising/training each new client manager for the specific site.

PACIA recommends a regulatory pay scale – for specialist industry experience to be applied in order to retain experienced regulatory staff in agencies such as the Victorian EPA.

Example 1: PACIA notes whereby a company was 3 months late in receiving a licence application approval due to the lack of agency personnel and experience in dealing with specific environmental approvals set on the application for process.

Example 2: Industry has experienced with the assignment of junior level officers with no industry experience with the task of drafting environmental emissions policy documents. The representatives had not visited a site in the past but yet were expected to draft quasi-technical documents regarding emission measurements.

However, PACIA notes the loss (or retention) of institutional experience is not solely related to wages. The culture and leadership of an agency are two very important matters which need to also be taken into account.

PACIA believes greater emphasis must be placed for new employees in a regulatory agency to visit and learn from industry/clients as well as from experienced regulators.

There have been a number of very successful two way staff exchange programs in the past between PACIA and PACIA member companies and the Victorian EPA and WorkSafe Victoria. These programs have been exceedingly beneficial in broadening knowledge and enhancing understanding of different policies, priorities and perspectives.

While many regulatory requirements fall within State responsibilities, the drivers for and desired outcomes of these regulations are often similar – indeed, in many cases they derive from an agreed position in relation to a risk that is national or global in its nature.

In both Federal and State regulatory procedures, it is important that Australia take full advantage of the benefits of international efforts – both those of international forums, and the research, testing and certification work done in other countries. Apart from the obvious savings of time and effort that this can represent, it is important for industry competitiveness that standards are uniform to the greatest extent possible.

Regulatory solutions should:

- be the minimum required to achieve the stated objectives;
- adopt a risk management approach to forming and administering regulation;
- minimise the impact on competition;
- be compatible with international standards and practices;
- cause no restriction to international trade;
- be developed in consultation with the groups most affected and be subject to regular review;
- be flexible, not prescriptive and be compatible with the business operating environment;
- standardise the exercise of bureaucratic discretion; and
- have a clear delineation of regulatory responsibilities and effective and transparent accountability mechanisms.

Nevertheless, the primary concerns of the Chemicals and Plastics sectors in relation to regulation relate to consistency, uniformity and timeliness of regulation. If all levels of government ensured firm adherence to COAG principles and guidelines by all its regulatory agencies, this would, in PACIA's view, provide a basis for this concern to be addressed.

Attachment 2 – Implementation of the 1996 National Occupational Health and Safety Commission (NOHSC) Major Hazard Facilities (MHF) National Standard

After some five years of development by a tripartite committee of the National Occupational Health and Safety Commission (NOHSC) (now ASCC) involving a Regulatory Impact Statement and formal public comment processes, NOHSC declared the National Standard for Control of MHF in 1996.

It is important to note that NOHSC (and ASCC) National “Standards” are not drafted as legislation, and are not considered or reviewed by Parliamentary Counsel drafters, to ensure they could readily be converted into legislation. PACIA considers this to be a significant flaw in the NOHSC / ASCC development process, which exacerbates the inconsistencies when the national “standard” is converted into enforceable state and territory legislation.

At the time of the Esso Longford gas plant explosion and fire in Victoria in September 1998, when two people were killed, eight seriously injured and Victoria lost gas supply for almost two weeks, neither Victoria nor any of the jurisdictions had moved to adopt the 1996 national MHF standard in legislation, although Western Australia had adopted it to some extent administratively. The Longford Royal Commission Report in June 1999 recommended that the Victorian Government implement Safety Case legislation of the style set out in the 1996 NOHSC National Standard.

Delays in adoption

Today, some eleven years after the National Standard was declared by NOHSC, few jurisdictions have given effect to the 1996 NOHSC standard in regulations.

In summary,

- Victoria declared MHF regulations in 2000,
- QLD regulated MHFs in 2001,
- Northern Territory directly adopted the NOHSC National Standard into regulations in 2005 and
- Comcare gave effect to the National Standard in 2007.

In NSW, WA, TAS and SA, MHF legislation is still being drafted – 11 years after the National Standard was declared. It is noteworthy that the 10 year review of the national standard has already commenced nationally through the Australian Safety and Compensation Council (ASCC) – yet half the states have not yet adopted the original version of 1996,

Inconsistency in adoption

Specific differences exist between the MHF Regulations in the jurisdictions. These differences are as fundamental as

- the **definition of what is an MHF** – this definition can be impacted by whether the agency is provided power under the regulation to decide that a facility will NOT be classified as a MHF even though it is above the thresholds set in the national standard, as in Queensland: The definition of what is classified as an MHF may also be impacted by technical definitions such as the definition of Toxic (different in the draft WA

regulations to the definitions in the other states). This can have a very fundamental impact such as a facility being classified as a MHF in one state (and incurring all the requirements of the regulation) – but not in another state.

- the **scope** of the regulations – whether the safety case must deal with health and safety issues alone, or whether it must also address environmental or land use planning issues or property issues. All these differences impact on the scope and complexity and hence cost of the safety case required to be developed.
- The **nature** of the regulations eg the Victorian regulations are more prescriptive and onerous than either the National Standard or the Queensland regulations.
- MHF legislation is administered by a range of different **lead agencies** - eg – WorkCover in Victoria, Emergency Services in Queensland, etc. These differences result in some differences in focus in implementation.
- The **definition of what is a “major incident”** differs between states, with Queensland establishing a damage bill of \$50,000 or a very short stay in hospital as thresholds - which is seen as capturing many more incidents within the regime, than would occur in other jurisdictions.
- Formal coverage of **security** - while most jurisdictions address security at MHFs in a generic way consistent with the National Standard, the draft NSW Regulations propose a much more prescribed and detailed security requirements. These security requirements in the NSW regulations were opposed by PACIA, and PACIA promoted that such security coverage should result from the detailed consideration of security controls through the COAG review on Hazardous Materials – and should not be regulated through a unilateral approach in one jurisdiction.

Inefficiencies and costs

Notwithstanding the comprehensive and lengthy NOHSC development processes, States have initiated further tripartite development processes at the jurisdictional level – often taking years for each jurisdiction.

With an MHF standard implemented in a limited number of jurisdictions, (and then inconsistently), industry in those jurisdictions has a competitive disadvantage with respect to their interstate competitors and counterparts. Workers and the public also in WA, SA, NSW and TAS continue to be denied the levels of protection the MHF National Standard requires.

Lack of resources and expertise among regulators

One barrier to prompt and consistent declaration and administration of MHF regulations across Australia is the significant level of expertise and resources needed by the regulator to effectively administer a safety case regime often to a limited number of facilities in each jurisdiction. Typically, the jurisdictions may each have say between 10 and 50 MHFs to regulate.

It is exceedingly difficult for smaller jurisdictions to justify the expenditure to engage sufficient expert resources to effectively gather a critical mass of specialists, necessary if the jurisdiction wishes to properly administer the safety case regime and retain staff.

The impact of this issue appears to have been a key element behind the delays in implementation in many jurisdictions.

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.

This change in another sector, resulted from a review by an Independent Review Team which identified “ ***the legal and administrative framework.....is complicated and insufficient to ensure appropriate, effective and cost efficient regulation of the ...industry.***”

Detail of the review, process through the Ministerial Council and current status may be accessed via the federal Department of Industry website - <http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectID=45588390-65BF-4956-BC4372FFC10BCEC2>

In summary, in the offshore industry, the solution has been the creation of a skilled national regulator administering national legislation across Australia.

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.

Fees and charges for MHF administration

Currently PACIA is dealing with very different government fee proposals for proposed new MHF regimes in NSW and WA. PACIA has been very actively working with the two state governments and relevant Ministers in an effort to drive some parity between licensing costs in the states with existing regulations, and the two new proposed regimes.

PACIA has collected real cost information from some of our New South Wales members that have operations across other states. This information highlights the huge and uncompetitive fees that NSW is proposing to impose on industry, as compared with other jurisdictions.

PACIA Member Company	Cost over 5 years in QLD	Cost over 5 years in VIC (1 st licence)	Cost over 5 years in VIC (ROUND 2)	Proposed cost over 5 years - in NSW	Comment
A	\$0	\$35,000		\$ 400,000	
B	\$0	\$34,187		\$350,000	
C	\$0	\$36,000	\$30,000	\$440,000	Note – only 3 materials & AQR close to 1 – yet \$440,000!
D		\$52,000		\$440,000	
E		\$52,000	\$39,000	\$400,000	Note – VIC facility is much larger & more complex than the NSW facility
F	\$0	\$52,000		\$440,000	
G		\$50,000	\$25,951	\$400,000	

Discussions are continuing with both States at present – and industry concerns have largely been resolved now as a result of further revised proposals in WA. However, industry remains extremely concerned regarding the potential impact of the proposals in NSW.

Earlier submissions are provided below to highlight the issues faced by industry.

Link to submissions:

http://www.pacia.org.au/uploaditems/docs/2.paciasub_nsw_mhffees_13june07.pdf and

http://www.pacia.org.au/uploaditems/docs/2.paciasub_dgreform_feescharges_march07.pdf

Conclusion

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.

Attachment 3 - PACIA/SIA Code of Practice into Supply Diversion into Illicit Drug Manufacture – A Case Study

This Code of Practice was first developed by PACIA and SIA in partnership with law enforcement bodies back in 1994, and is aimed to provide a best practice guide for companies to address prevention of diversion of legitimate industrial chemicals into the illicit drug manufacture. The Code is updated regularly to reflect latest law enforcement information on trends in illicit drug manufacture, and has been most recently updated in October 2007. Compliance with the Code is voluntary; however the requirements of the Code have been legislated to varying degrees in some jurisdictions.

Chemicals deemed to be of significant interest for diversion purposes are typically submitted to PACIA by law enforcement with justification for their inclusion into the Code. Listed chemicals in the code attract controls proportionate to the level of risk for diversion and are categorised into three lists. Category I lists attract stringent industry controls, such as the requirement companies request End User Declarations from customers seeking to purchase the listed chemicals, and to subsequently forward these declarations to law enforcement in order to analyse potential diversion risks.

Cash sales are prohibited for Category I chemicals, and supply of these products is required to be delayed for 24 hours. Category II chemicals attract less stringent controls, with Category III chemicals listed for precautionary purposes only.

PACIA work closely with the Australian Crime Commission to update the Code annually, and generally support inclusions of chemicals where justified by the Commission. To support and promote the aims of the Code, PACIA takes part in National Awareness Raising programs with the ACC and other supporting law enforcement and Government Departments.

Legislating the Code

Industry alternative frameworks have on occasion been adapted or used by others in a way not necessarily intended by the program. For example, the Illicit Drug Code has been adopted into legislation in some state jurisdictions to varying degrees, and without any consideration of costs and benefits or other regulatory requirements which also apply to the industry.

PACIA and its members have publicly supported legislating the Code, to the extent requirements are consistent across jurisdictions, are workable, and are cost effective. Unfortunately, this has not been the case

In addition, the more recent emergence of the focus on chemicals of security concern has revealed many commonalities in dealing with the potential for illegal diversion of legitimate industrial chemicals – whether for terrorist purposes or for the illegal manufacture of illicit drugs.

Unfortunately, the developments for drug precursors and chemicals of security concern are currently proceeding in parallel with very little interaction, much to the concern of the impacted industry.

Illicit drug diversion regulation is inconsistent across jurisdictions. The PACIA/SIA Illicit Drug Code of Practice prescribes a number of controls for industry to adhere to in order to assist in the prevention of illicit drug manufacture. The Code applies to substances categorised in the Code on a risk based approach, with Category 1 chemicals attracting the most stringent controls. Category II chemicals attract some controls, while Category III substances are

provided for information purposes to alert suppliers of these chemicals should an order of one or more of these substances appear suspicious.

The provisions in the Code have been picked up into some state legislation, usually in the relevant drugs Act or Regulation that prescribes possession and supply offences in relation to controlled substances, drugs, poisons and precursors.

However, the provisions of the Code and the chemicals listed in the Code have not been adopted uniformly by the States. This has created difficulties for companies in complying with inconsistent regulation, especially where companies operate and sell nationally.

A PACIA presentation on this issue was presented to the National Chemical Diversion Congress in Darwin in October 2005 and graphically displays the differences in requirements in different jurisdictions at that time. This presentation can be accessed via the link http://www.pacia.org.au/uploaditems/docs/2.precursorregs_Oct05.pdf

Below is an outline of each State's relevant legislation with an overview of what, if any, provisions of the Code have been adopted and highlighting where that legislation may be inconsistent with or compete with the Code controls.

Australian Capital Territory

*Criminal Code Regulation
Schedule 3*

The Criminal Code outlines a number of offence provisions for the possession and supply of precursor chemicals. Schedule 3 lists those substances covered by the definition of 'precursors'.

This list has not been categorised by risk as in the National Code of Practice, and no associated industry controls have been adopted into the Act or regulation.

New South Wales

*Drug Misuse & Trafficking Amendment Act 2006
Drug Misuse & Trafficking Regulation 2006*

The NSW Regulation has adopted the sale and supply controls as found within the PACIA/SIA Code. The Regulation has scheduled the precursors into two lists on a risk based approach as in the Code.

Schedule 1 precursor controls mirror Category I controls in the Code, with a requirement for an End User Declaration is supplied by the purchaser, the purchaser is an account customer, and has furnished the supplier with photographic identity.

Schedule 2 precursor controls mirror Category II controls in the Code. Where the purchase is not an account customer, an End User Declaration must be supplied.

The chemicals listed in the Schedules are consistent with those outlined in the Code. However it is worth noting that when the NSW regulation came into force, it had included 2 additional substances into its' Schedule I that had not previously been listed in the code.

Northern Territory

Misuse of Drugs Regulations Schedule 2 Reg 6

The Regulation outlines a number of offence provisions for the possession and supply of precursor chemicals. Schedule 2 lists those substances covered by regulation.

This list has not been categorised by risk as in the National Code of Practice, and no associated industry controls have been adopted into the Act or regulation.

Queensland

Drug Misuse Act

Drug Misuse Amendment Bill 2007

Drugs Misuse Regulation 1987 –Schedule 6

Queensland currently have a draft Bill out for public comment that amends the Drugs Misuse Act 1987. The Bill introduces new requirements for industry, including the introduction of a new offence for producing and supplying precursors with intent, and the requirement for End User Declarations to be completed for supply transactions of precursor drugs or equipment.

While these amendments appear to seek consistency with the Controls outlined in the Code, the Scheduled chemicals in Schedule 6 of the Regulation are not consistent with the Code and have not been updated to reflect the Code. This means that there is no distinction between Category I or Category II chemicals, and end-user declarations must be supplied for all chemicals. Some chemicals that are listed in the Code have not been included into Schedule 6 of the Regulation.

Further, Queensland did not undertake a Regulatory Impact Statement to assess the affect these amendments may have on industry, and would have included a comparative analysis of the inconsistencies across jurisdictions and the associated difficulties and cost this causes for industry.

South Australia

Controlled Substances Act 1984

Controlled Substances (Prohibited Substances) Regulations 1996

The Act and Regulations outline a number of offence provisions for the possession and supply of precursor chemicals. Industry controls have not been included into the regulation.

Tasmania

Misuse of Drugs Act 2001 Part 4 Controlled Precursors

The Act outlines a number of offence provisions for the possession and supply of precursor chemicals.

Precursors have not been categorised by risk as in the National Code of Practice, and no associated industry controls have been adopted into the Act or regulation.

Victoria

Drugs, Poisons and Controlled Substances Act 1981

Drugs, Poisons and Controlled Substances (Precursor Chemicals) Regulations 2007

The recently introduced Victorian legislation introduces offence provisions for the possession and supply of precursor chemicals. Industry controls have not been included into the regulation, and therefore the relevant substances have not been scheduled in accordance with the Code.

However, the Victorian Department of Justice has indicated that the controls as prescribed in the Code of Practice will be looked at for future inclusion into this regulation.

Western Australia

Misuse of Drugs Amendment Act 2004

Amendments to the Misuse of Drugs Act in 2004 introduced industry controls for prescribed chemicals, consistent with controls outlined in the Code. The Act differentiates between Category I and II substances, with provisions related to the supply and sale of those substances similar to those in the Code (i.e. the requirement for End User Declarations etc).

However, the chemicals prescribed in the relevant schedule to this Act were adopted inconsistently to the Code. Two chemicals that were categorised as Category II chemicals were adopted into the legislation as Category I substances, with the more stringent controls applied.

No cost-benefit analysis or assessment of the impact this would have on the industry was carried out. These changes presented a situation whereby a particular chemical in any one state would necessarily have to be treated differently and more stringently in Western Australia.

For one of our member companies operating on a national scale, with a national central sales centre, this caused difficulties in terms of cost for training up staff dealing with the sales of controlled substances and the additional administrative burden associated with compliance.

PACIA is currently liaising with this company in order to obtain the details of the costs associated with these regulations and the inconsistencies thereof.

Conclusion

As evidenced above, the PACIA/SIA Code of Practice, in force since 1994 has been adopted into legislation both inconsistently and without the appropriate cost-benefit analyses taking place. There has been no appropriate consideration of the parallel requirements emerging in relation to chemicals of security concern – thus potentially making this difficult issue of illegal diversion even more complex.

The complexities in this legislation undermine industry compliance with the law. Inconsistencies of responsibilities across jurisdictions mean companies operating at a national level are met with difficulty in understanding and complying with the appropriate regulation in different areas of sale and supply.

The COAG Review of hazardous chemicals has identified a number of chemicals of security concern, at risk of diversion for illegal terror-related purposes. The Review is charged with proposing a national framework for controlling those chemicals of security concern. The consultative process the Department of Prime Minister has facilitated in order to coordinate a national approach to the possible regulation or control of such chemicals has highlighted the need for a similar and integrated approach with regulating precursor chemicals for the prevention of diversion for illicit drug manufacture.

Precursor chemicals listed in the PACIA/SIA Code have in some instances been identified as also being of security concern. Further, the same controls outlined by the Code may or may not be appropriate for security-related purposes.

The Government must assess any potential security-related regulation against regulated requirements for the prevention of illicit drug diversion. The goal and objective of both are the same – to prevent illegal diversion – and ***should attract the same integrated regulatory framework that works in harmony and with no overlap so as to burden the industry with unnecessary regulation and associated cost.***

This current situation is a major departure from the COAG principles of good regulation. PACIA has been lobbying the Federal Government to act on their commitment to promote a consistent and coordinated national approach to implementation and policy development in relation to drugs issues. We look forward to any recommendations from the Productivity Commission's work to help achieve this outcome.

Attachment 4 – NICNAS Issues

<u>No.</u>	<u>Question</u>
1	<p><i>What concerns do you have about Australia's regulatory regime for chemicals and plastics, and how substantial are they?</i></p>
	<p>The National Industrial Chemical Notification and Assessment Scheme (NICNAS) provides a national notification and assessment scheme to protect the health of the public, workers and the environment from the harmful effect of industrial chemicals. NICNAS assesses all chemicals new to Australia, and those chemicals already used (existing chemicals) on a priority basis, in response to concerns about their safety on health and environmental grounds.</p> <p>As such, the industry interaction with NICNAS represents a significant component of regulatory compliance for Australian chemical companies and therefore a significant cost to industry. Cost components include an annual registration with NICNAS, annual reporting for certain categories of chemicals, fees for notification and assessment of new chemicals to Australia, provision of data for existing chemicals identified as Priority Existing Chemicals, and reporting under the High Volume Industrial Chemicals List.</p> <p>The migration of manufacturing industry to Asia has many factors providing momentum, however two central factors for the chemical industry are the regulatory burden of operating in Australia and the cost of production inputs.</p> <p>While the subject of comparative regulatory burden is multifaceted and complex, there is no doubt that the NICNAS 100% cost recovery model, coupled with the wide net of substances under the NICNAS framework, is inconsistent with most other OECD economies. The chemical industry does not object to appropriate regulation, however the evolution of the NICNAS framework into the depth and cost of requirements of, for example, Low Regulatory Concern Chemicals - chemicals which in major sophisticated markets of Europe and the USA often do not require any notification whatsoever – is prohibitive to industry survival and growth in this country.</p> <p>Only Canada has a scheme that captures a similar breadth and depth of chemicals, however Canadian fees are significantly lower in dollars and exchanged currency and is not 100% cost recovered. On average, the Canadian regulatory cost burden to industry is estimated to be between 30 and 50% of NICNAS charges averaged over one year for new chemical applications of all classes.</p> <p>Review of new chemical notification costs in other countries shows that Australia maintains a significantly higher cost per capita than all other jurisdictions. The majority of the additional cost is being borne by Low Regulatory Concern polymers, chemicals which present minimum risk.</p> <p>(See later examples of cost comparisons between Australia and other OECD countries – Q36)</p> <p>Increasing and disproportionate costs of chemical registration: Chemical registration is an important issue for industry. NICNAS in its current form offers low value for the fees levied on industry and over regulates for low risk chemicals relative to the majority of OECD countries. The process employed is very lengthy, costly, and disproportionate to the level of risk in a significant number of assessments.</p>

	<p>While some advances in productivity have been achieved, significant reforms have foundered and new bureaucratic devices and delays have arisen that slow the process and shift accountability. Increasingly demanding levels of data not provided elsewhere is poorly value adding and symbolic of bureaucratic pedantry.</p>
2	<p><i>What policy changes do you recommend to address your concerns, and what would be their costs and benefits?</i></p>
	<p>A fundamental flaw in the NICNAS model is the failure to recognise overseas notification and assessment schemes. A mechanism for such recognition is available within the ICNA Act. It is very disappointing, given the Act was proclaimed in 1989, that to date only one overseas scheme - Canada is recognised; even this is limited, with argument on occasion and differences in schedules serving to reduce the use and application of the Canadian scheme and information in Australia.</p> <p>The use of overseas schemes would greatly improve the effectiveness of NICNAS and deliver real benefits to industry. This leads into the very obvious question regarding the current NICNAS approach – why does a chemical that has been assessed and approved for commercial use in a regulated OECD country (overseas), have to be assessed <u>again</u> by NICNAS (at a significant cost to industry) before introduction into Australia?</p> <p>It would make better sense if the scope of NICNAS is limited to assessing chemicals new to Australia that have NOT been assessed in other regulated countries.</p> <p>Harmonisation should also be pursued with vigour in the following areas:</p> <p style="padding-left: 40px;">Polymer exemption – manufacturers and importers of polymers of low concern in the US need only to provide a letter to the US EPA identifying the no. of polymers. The EU REACH Directive does not require registration of polymers.</p> <p style="padding-left: 40px;">Data requirements (see later comment on onerous nature of NICNAS data requirements – Q.50)</p> <p style="padding-left: 40px;">Use of Quantitative Structure Activity Relationships - QSAR methodology (see later comment on use of QSARs – Q.28)</p>
8	<p><i>Is the burden of regulation commensurate with the problems caused by chemicals and plastics?</i></p>
	<p>In the case of NICNAS, chemical registration should be proportionate to the level of risk. The rigour of data requirements (Q.50), a risk averse application of the Precautionary Principle (Q.57), the degree of internal processing (Q.51), and other factors are disproportionate to the level of risk posed by some classes of chemicals, for example polymers of low concern (PLC).</p> <p>The level of assessment for chemicals used in solely industrial processes, or where the risk profile is accepted as low, should be scaled back accordingly.</p> <p>The onerous nature of the NICNAS framework is in contrast to other Australian regulatory models for sectoral control of chemicals, including workplace, agricultural, and</p>

	environmental chemical control at state and Federal level, where supplier responsibility for control of exposure is set down in a performance based legislative framework.
14	<i>What, if any, examples are there of outcomes of regulation that are contrary to the stated goal? For example, does the fact that the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) only makes recommendations relating to risk assessment and management undermine the value of its assessments?</i>
	<p>NOTE regarding cited example above - a review of the NICNAS Existing Chemicals program in 2006 has recommended a strengthening of the NICNAS – States Memorandum of Understanding, to achieve better outcomes from a NICNAS assessment, as reflected in regulatory action at the state level. Industry supports this action.</p> <p>PACIA notes that currently NICNAS does not undertake any Regulatory Impact Assessment – which would indeed be essential – were NICNAS recommendations to change their status to become decisions.</p> <p>PACIA would suggest that if the NICNAS framework were proposed to change in this way, the Act would need to be changed significantly to introduce transparent decision making criteria and appeal mechanisms.</p> <p>Furthermore, any change of this nature would have significant flow on effects to other federal agencies (in particular ASCC and NDPSC) and also state and territory regulators of public health, worker health and safety and environment.</p>
16	<i>Have responses to major adverse outcomes led to ongoing regulatory or operational short-term responses, or have they led to structural change that has improved the efficiency and effectiveness of the regulatory system? Do regulators make sufficient effort to measure and monitor the effectiveness of the regulations they impose?</i>
	With regard to the second point (above), it is interesting to note that, in terms of the effectiveness of the Industrial Chemicals (Notification and Assessment) Act 1989 and Regulations 1990, there has been no comprehensive review of this framework, after eighteen years of operation. This is in contrast to, for example, state chemical control related legislation, which requires a mandatory five year review process.
19	<i>Do you consider that the current processes for assessing existing industrial chemicals (see attachment B) represent a gap in the existing regulatory structure? If so, what new ways are there to prioritise (or categorise) chemicals and identify those chemicals that warrant risk assessment, and who (industry or government) should bear the primary responsibility, and cost, for carrying out those assessments?</i>
	NOTE – A review of the NICNAS Existing Chemicals program in 2006 has recommended the development of a transparent process for determining priority chemicals for assessment; this will include the screening of chemicals listed in the Australian Inventory of Chemical Substances, and the development and publication of agreed scientific criteria for prioritising those chemicals which warrant assessment. This proposal represents the first comprehensive, and open process for the operation of the (Priority) Existing Chemicals program in NICNAS since the Act was declared.
28	<i>Do regulators have sufficient access to technical information to be effective? If not, what improvements can be made in managing the flow of technical information between regulators?</i>
	NO.

	<p>An example of restrictive practice is the limitation on the use of analogue data and Quantitative Structure Activity Relationship (QSAR) methodology.</p> <p>A review in 2003 developed the Low Regulatory Concern Chemicals (LRCC) pathway, with reduced fees and a quicker assessment process for certain categories of chemicals. The LRCC self-assessment model, whereby industry would self assess low concern chemicals (chemicals which in their use offer negligible risk to workers, the public, consumers or the environment), was seen as a sensible path to reducing regulatory costs.</p> <p>The LRCC reform recognised that analogue chemicals can be considered as a valid source of additional data for new chemical registration.</p> <p>However, the use of analogues for this purpose has been very narrowly defined (to be plus or minus one carbon with the same functionality). It is important for NICNAS to develop understanding of analogues and the underlying principles of Quantitative Structure Activity Relationship (QSAR) modeling as used overseas by, for example, the Canadian EPA and the US EPA.</p> <p>QSAR modeling recognizes the activity of functional groupings and the potency of certain chemical structures while other structures are of very low concern. QSAR modeling is useful for validating analogues that are more complex than plus and minus one carbon. The typical QSAR model is built on experience and knowledge and represents technological advancement.</p> <p>NICNAS uses a plus or minus one carbon rule, whereby the acceptance of an analogue requires the analogue to be structurally identical plus or minus one carbon. This appears to be only relevant to small molecules < 100 Molecular weight (Mw), as one carbon is significant. For structures with similar structure, a > 100 Mw rule should allow 1 additional carbon for every 100Mw as a minimum. Activity should be due to similar reactive functionality.</p> <p>Use of QSAR by applicants should be admissible as substitute data for toxicology and ecotoxicology.</p> <p>There should be acceptance of QSAR data as viable substitute data for data gaps.</p> <p>Revise use of analogues (the current +/- 1 carbon rule)</p> <p>Recommendation: Acceptance of QSARS as adequate data</p>
33	<p><i>How substantial are the barriers to entry caused by the existing regulatory system? What reforms would address these barriers while still maintaining an appropriate degree of protection for public health and the environment?</i></p>
	<p>NICNAS was set up to monitor the usage of chemicals in Australia and to investigate suspect chemicals with a view to restricting or eliminating the use of such chemicals. By implication, replacing of chemicals with poor toxicological profiles with safer alternatives should be a high priority for NICNAS. However, in practice this does not occur and in fact the regulatory environment often creates a barrier to bringing safer chemicals into Australia. For example Araldite 2014 contains an adduct which due to a change in classification of a constituent raw material now requires a Toxic hazard classification. A new adduct which carries only an Irritant classification has been developed and which when used in the adhesive formulation as a direct substitute for the old adduct allows</p>

adhesive performance that is identical to the old version of the adhesive. However, the new adduct is not listed on the AICS, therefore a full notification will be required before the safer version of the adhesive can be marketed in Australia. The quantity of the adduct to be required will be much greater than the 100kg per annum allowed under a Low Volume Permit. Therefore, in this instance, the old adhesive will remain on the market as the adhesive is specified for a variety of applications in many industries. Another PACIA member has recently completed the notification of 2 new chemicals which are components of new water-borne epoxy systems developed for protective coatings. Such technology is slowly starting to replace solvent-containing systems which present serious problems for both workers and the environment. The notifications cost the company approximately \$40000 AUD each, which means virtually no profit will be made for several years in Australia from either of the two systems. Clearly the replacement of chemicals with safer alternatives is not happening unless a high cost is paid. Even allowing for the use of a Commercial Evaluation permit to test the market a specified customers, there is the underlying issue of the company really not knowing the commercial viability of a product until the notification has been completed and the large amount of money spent.

See Q.36 Cost barriers
 See Q. 37, Q.50, Q.51 and Q.57 for Technical barriers

36 *Do you have any evidence of excessive costs imposed by chemicals and plastics regulations? Can you estimate, however approximately, the costs imposed by these regulations on your firm or industry?*

(1) Cost of Notification under NICNAS - Comparison costs with other OECD country fees for certain classes of notification

A comparison of NICNAS fees for several categories of Notification against some OECD countries reveals that Australia's current system of chemical regulation is the most expensive system on a per capita basis in the world for fees and charges. Fees for notifying Polymers of Low Concern (PLC), standard notification, and limited notification categories are outlined below.

NICNAS Notification fees:

Polymer of Low Concern	AUD\$14,970
Limited Notification	AUD\$12,539
Standard Notification	AUD\$ 4,223

Canadian scheme:

Polymer of Low Concern	Can\$3,500 unlimited volume registration - lower volume fee \$1,500
Limited schedule V	Can\$3,500

US TSCA scheme:

All categories PMN lodged	US\$2,500
PLC self certification	nil

Korean scheme:

Polymer of Low Concern	US\$10
Limited	US\$50
Standard	US\$50

The EU does not require PLC notification (and the new EU REACH Directive does not

require registration of polymers).

NOTE - The **Limited Notification** cost (above) does not take into account typical *add on* costs to industry in a typical notification, for example:

Fee		\$12,539
Fee for exempt information	+ \$	633
Fee for variation from scheduled data	+ \$	1184

Where a Consultant is employed to assist with the draft Assessment report to NICNAS (at \$140 p/hr, average work 32 hrs) = + \$4,500

Total Fee can be of the order \$18,868

Additional comparison for the cost of polymer registration in several OECD countries is at **Appendix 1** which further demonstrates the increased cost burden for the Australian scheme.

Recommendation: Australian fees should not disadvantage Australian chemical Industry vs OECD average for each class of notification/reduce cost recovery to OECD best practice average

(2) The Low Regulatory Concern Chemical Program – an added cost burden

While a review in 2003 developed the Low Regulatory Concern Chemicals pathway, with reduced fees and a quicker assessment process for certain categories of chemicals, industry has not used this pathway due to the cost of additional annual regulatory reporting burdens added after the self-assessment process is completed.

The LRCC self-assessment model, whereby industry would self assess low concern chemicals (chemicals which in their use offer negligible risk to workers, the public, consumers or the environment), was seen as a sensible path to reducing regulatory costs. Self Assessment Notification is limited to chemicals that are classified as Non hazardous, for example, Polymers of Low Concern (PLC).

The LRCC Self-Assessment (SA) was introduced and rapidly taken up by industry due to its efficiency and cost savings. However within the first year of operation an annual reporting requirement was introduced - although this requirement was not designed into the self-assessment when establishing the program.

The initial design of SA required NICNAS to briefly check each notification and completely audit 10% of SA/PLC as a compliance mechanism. Auditing started at 100% justified on the basis that the Self-assessment (SA) method needed examples to be understood by industry and NICNAS. The reduction of the audit from 100% to 10% has yet to eventuate.

The continued 100% audit and compulsory yearly reporting of self-assessments inflate the real costs of the SA/PLC to be equivalent or greater than the cost a standard PLC for a notifier. Both annual reporting and 100% audit have no justifiable reason for continued existence in risk reduction and must be removed to obtain viable efficiency.

Costs associated with the LRCC self-assessment PLC and why this pathway is not used by industry

Using conservative figures, the impost of yearly reporting and auditing are illustrated to demonstrate why industry (notifiers) no longer uses the self-assessment system.

NICNAS fee comparison between SA/PLC Vs PLC, as at September 2007.

Standard PLC	\$4,223
LRCC – SAPLC	\$2,534

Upfront Saving \$1,689

Cost of Yearly Reporting:

The lower up front cost of the SA/PLC is a superficial positive only, as the additional administrative demands on industry of added reporting requirements ensures the total costs of the SA/PLC is a poor choice, relative to a standard PLC.

Administrative cost factors:

a) Yearly Data Extraction of product data for specific products containing the new chemical:

There will be at least or up to 25 or more products each containing a different percent composition of the new chemical and each has to be tracked each year for 5 years using non-routine reporting periods Aug-September.

Consider a simple case with only 3 products containing the self assessed chemical (3 products is a low estimate for paint, adhesives, lubricants, moulding plastics)

Time to extract end use product data from one business with senior management approval
 $3 \times 0.5\text{Hr} = 1.5\text{hr}$

b) Unique and varying data calculation:

Apply the unique percentage concentration per product to produce total Kg used 0.25hr

c) Data Entry

Enter above data in NICNAS report for each chemical 0.25 hr
Total hours $1.8 \times$ fully loaded hourly rate $\$180/\text{hr} = \324 per year
Over 5 years = $\$1,620$

Cost of Audit:

Post preparation (collation & binding) of the data file and support papers for a NICNAS application is 1 hour = $\$180$.

(If NICNAS have further questions that require answer an additional 1-3 hours may be added but this is ignored for this example)

	<p>Cost Comparison: Difference between SA/PLC and Standard PLC = \$1,689 (Saving) Total reporting and audit costs = \$1,800 (Additional cost)</p> <p>NICNAS is unlikely to be aware of the above costs as they have been shifted to industry, effectively cancelling the price reduction in the lower application costs for a SA/PLC.</p> <p><u>Further inbuilt negatives of self-assessment</u></p> <p>Self assessment cannot be used by principals with distributorships to co-notify. Records have to be safely stored for 5 years</p> <p>Recommendation: Remove all reporting requirements for SA/PLC notifications, and audit only 10% SA/PLC as initially intended.</p>
37	<p><i>Can you identify cases where the regulatory environment has altered the way a business would otherwise operate (for example, making a decision about where to locate a major hazard facility)?</i></p>
	<p>NICNAS Confidentiality provisions - a hidden cost of public reporting of new chemicals</p> <p>Under the NICNAS framework, if a chemical name or Chemical Abstracts Number (CAS Number - a unique, globally recognised identifier for a chemical) is available in any public inventory, this will override any industry request for confidentiality in Australia.</p> <p>Requests for confidentiality are considered by the NICNAS Director, who considers information provided by the applicant and draws on the advice of the Technical Advisory Group (TAG). Members of the TAG are selected so as to provide the broad expertise in commercial and public interest and may seek additional advice or information from other sources as needed</p> <p>This process presents a series of COST IMPACT issues for industry: The presence of a given chemical in a specific country may have tactical or market value to the introducer, so competitive knowledge of the chemical in a jurisdiction is also valuable competitive information. A given chemical cannot always be directly related to a product, as it may be one of several components in a finished product. The NICNAS Technical Advisory Group has expanded the boundaries of what is regarded as applicable data required to be collected under NICNAS for extension of confidential listing. For example, the inclusion of non hazardous chemicals (eg) polymers of low concern, where the polymer has already been assessed as non hazardous, is a misnomer. It is suggested that if the work of the TAG was constrained to lie within the scope and framework of the NICNAS Act, it would significantly reduce the amount of time notifiers spend defending chemicals already notified and assessed as Non-Hazardous.</p> <p><i>Accordingly, this lack of assured confidentiality results in the best global technologies entering Australia at a later date than would otherwise happen.</i></p> <p>Confidentiality of CAS and chemical name only relate to publication within the scope of the Act.</p>

	Recommendation: Non-Hazardous chemicals to have a presumption of confidentiality.
49	<i>Are the financial costs to applicants (and cost recovery arrangements) for pre-market notification and registration/approval of new chemicals appropriate? If not, how could they be improved?</i>
	See earlier comparison between NICNAS Fees for notification and other OECD countries.
50	<i>Are the information and other requirements on notifiers of new chemicals appropriate? Could they be streamlined or improved?</i>
	<p>PACIA members believe the information and other requirements on notifiers of new chemicals are not appropriate. In particular, there is onerous physiochemical data requirement for notified chemicals</p> <p>NICNAS notifications now routinely require a physiochemical data set with full experimental test results that support each data point. As recently as two years ago, the technical data sheets fully satisfied these data sets without formal supporting data and reference points.</p> <p>While there may be some data points for each NICNAS notification that, because of the core critical nature, may justify a level of proof, most data is not critical to the assessment. This is an example of where being global best practice is neither cost nor benefit justified.</p> <p>Australia accepts the Canadian EPA (CEPA) as an approved foreign scheme yet CEPA does not require physiochemical data to have test reports. Demand for the test reports behind the physiochemical data points provides little benefit to the assessment while spending scarce resources on data points that are many times of moderate to low importance.</p> <p>Recommendation: Remove the requirement for physiochemical data test reports except for specific and justified requests from NICNAS.</p>
51	<i>Are the time limits and stop-the-clock provisions for regulators adequate, and do they achieve their objectives?</i>
	<p>PACIA members do not believe the time limits and stop the clock provisions for NICNAS are adequate and they consider internal NICNAS processes bureaucratic.</p> <p>NICNAS consider that the assessment workflow should be governed by the concept of Submit Once Review Once (SORO). Unfortunately this process has a number of significant deficiencies as it allows the time to completion for an assessment to be slowed by NICNAS due to trivial objections or trivial lacks in data sets.</p> <p>Industry understands that NICNAS spend approximately 30% of the total assessment time at this early stage assessing data completeness and quality. To make the assessment of quality and completeness requires the file be fully read, and the data drawn together to provide a holistic picture including a gauge as to whether any data is critical, unclear, needs more support, or is inconsistent. Industry believes this model is flawed as no more than 10% of the total assessment time should be taken to complete this work.</p> <p>Incomplete data packages cannot be used as an excuse to fail to start the clock (ie) the assessment process begins its statutory assessment period, as very few chemicals more than 10 years old have comprehensive data packages.</p>

	<p>Recommendation:</p> <ul style="list-style-type: none"> • Reduce the data-screening phase. • The assessment clock should start when the package is time stamped by NICNAS as being received • The clock can only stop after 50% of the assessment time has elapsed without scheduled data issues and deficits being remedied.
54	<p><i>Should changes be made to existing LRCC assessment and approval procedures to increase their efficiency and effectiveness, or are there alternative methods to better manage chemicals of low regulatory concern?</i></p> <p>See Recommendations in Q 36</p>
55	<p><i>What scope is there to make greater use of self-assessment processes?</i></p> <p>See Recommendations in Q 36</p>
57	<p><i>Are there institutional design factors that make regulators overly risk averse?</i></p> <p>PACIA members believe there are institutional design factors that make regulators overly risk averse.</p> <p>The application of the Precautionary Principle in toxicological, environmental and natural resource management areas subject to scientific uncertainty, where the outcomes are of low risk and moderate impact, and can be foreseen and managed by professional judgment, is strongly questioned.</p> <p>For example, the use of 100X and 1000X safety factors in environmental calculations</p> <p>While the 100X ecological safety factor may be a global default practice, the use of a 1000X factor is excessive and an abuse of the precautionary principle.</p> <p>While there are many definitions of the precautionary principle most definitions seek to ensure that an absence of scientific certainty and likelihood of potential serious or irreversible hazards that serious potential threats are NOT ignored. However it would be wrong if the uncertainty principle is used as a default position in place of scientific skill and judgment - or applied when a hazard does not in all likelihood exist.</p> <p>A 1000X multiplier factor is automatically used to evaluate ecotoxicology when a standard notification has no available ecotoxicology data. However, a number of ecotoxicological computer modeling packages based on expert knowledge systems can be used to provide superior insight in this area.</p> <p>Recommendation: Safety factors of 1000X only to be used when a fully justified and referenced argument is provided to the notifier, explaining why the 100X default value cannot be applied.</p>
63	<p><i>What international regulatory frameworks or benchmarks should Australia seek to participate in and align itself with?</i></p> <p>NICNAS – Alignment with the major trading blocks (U.S. and the EU) would greatly benefit industry, in terms of harmonisation and recognition of overseas assessment processes. See Q.64 below.</p>
64	<p><i>Are there any specific international coordination initiatives that could be progressed or further developed for the benefit of Australia?</i></p> <p>See Q.2 (repeated below)</p>

A fundamental flaw in the NICNAS model is the failure to recognise overseas notification and assessment schemes. A mechanism for such recognition is available but to date only Canada is recognised; even this is limited, with argument on occasion and differences in schedules serving to reduce their application in Australia.

*The use of overseas schemes would greatly improve the effectiveness of NICNAS and deliver real benefits to industry. This leads into the very obvious question regarding the current NICNAS approach – **why does a chemical that has been assessed and approved for commercial use in a regulated OECD country (overseas), have to be assessed again by NICNAS (at a significant cost to industry) before introduction into Australia?***

Appendix 1

Data item	Australia	Korea		USA	Japan					EU	Canada	Philippines		China
National Inventory	AICS	KECI		TSCA	ISHL		CSCL			ELINICS	DSL	PICCS		
Volume (per year)	>1 tonne	<1 tonne	>1 tonne	Unlimited	<100 kg	>100 kg	<1 tonne	1-10 tonne	>10 tonne	1-10 tonne	Unlimited	<1 tonne	> 1 tonne	<10 tonne
Govt Application Fee	14418 AUD	KRW 50,000	KRW 100,000	2,500 USD	No	No	No	No	NO	5,165 EURO	3,500 \$Cdn	No	No	No
Exempt Information	633 AUD	None	None	None	None	None	None	None	None	None	600 \$Cdn	None	None	None
Variation of Data Requirements(if needed)	1140 AUD	None	None	None	None	None	None	None	None	None	NA	None	None	None
Timing (months) Consolidate / submit Govt Screening, Assessment, Review	6	6	6	4	0.10	0.25	1	18	18	10-12	3	2	12-24	6

- The timeframes indicated are based on no clock stops or concerns raised by competent authorities, i.e., EPA in US
- The EU timing and costs covers all member states incl. UK. However Switzerland is not covered and a separate notification is necessary. EU tests are sufficient. We suggest to submit after the EU approval is available, because then both fee and review in Switzerland are reduced (CHF 6'500, 30 days).

Attachment 5 – Transport of Dangerous Goods

Productivity Questions

Would greater economies of scale, through merged functions or regulators (within or between jurisdictions), make compliance any more effective?

Transport Case Study – Release of the Australian Dangerous Goods Code and the merged functions of transport regulators in Australia

PACIA believes that the legislative and regulatory system for dangerous goods transport by road is a good example of what can be achieved through merged functions of regulators.

Implementation of the dangerous goods laws in late 1990's

The national dangerous goods transport reforms for the Australian Dangerous Goods Code (ADG6) and the Road Transport Reform (Dangerous Goods) Act and Regulations were completed by late 1997. The nationally agreed plan established by the Australian Transport Council was that each State and Territory would implement the regime together on 1 March 1998. Unfortunately, practical constraints encountered by jurisdictions did not allow for simultaneous national commencement and consequently legislative implementation was staggered across jurisdictions.

However, PACIA notes that the outcome of the process in States and Territories was extremely encouraging. By and large jurisdictions remained closely aligned to the national reforms.

A number of jurisdictions (Victoria, New South Wales and South Australia) adopted significant parts of the national package by reference, meaning that their laws were substantially word for word with those in the national package. PACIA notes the approach adopted by the remaining jurisdictions seems to be nearly if not just as effective as the other states. In essence, the other jurisdictions (Western Australia, Tasmania and Queensland) have generally adopted the broad structure and wording of the national package. To a large extent, they have repeated or 'mirrored' the words of the national package in their local laws.

The critical features of the process which achieved this very successful outcome was

- The federal government developed federal Road Transport Reform (Dangerous Goods) Act and Regulations which could be adopted by template by the jurisdictions and
- An incentive in terms of federal transport funding was provided to encourage timely adoption by template.

Current process: ADG7

In February 2007, the Australian Transport Council comprising federal, state and territory transport ministers approved the adoption of the ADG7 legislative package.

This agreement encompassed approval of the ADG7 and the National Transport Commission (Model Legislation on Transport of DG by Road and Rail). The Ministerial Council agreed to

- Implementation of the ADG7 package no later than 1 January 2008 and
- The expiration of the application of the ADG6 on 31st December 2008.

The National Transport Commission (NTC) has very recently finalised and published the 7th Edition of the Australian Dangerous Goods Code (ADG7). However the accompanying model legislation to manage the safe transport of dangerous goods over land in Australia has been delayed. The new code will replace the 1998 ADG Code to ensure Australia remains in line with international standards and removes potential barriers to global trade. ADG7 combines both UN and Australian specific requirements and adopts the format, structure and definitions of UN Model Regulations.

The 7th Edition of the Australian Dangerous Goods Code [ADG 7] represents a major change in format from the 6th Edition of the Code in order to *more* closely align with the United Nations Model Regulations for the Transport of Dangerous Goods and therefore with the modal codes covering air and sea transport of dangerous goods.

Road and rail regulations are being aligned and harmonised with related air and maritime regulations for the transport of these substances. This will leave Australian industry well placed to move dangerous goods around Australia and the world more efficiently and safely.

PACIA and other Associations recommended that a formal mechanism be established for future UN revised Editions to be more rapidly and simply adopted into Australian legislation. This was to avoid the current issues and burden on Australian industry which result from the significant inconsistencies between Australian and international obligations.

The alignment with UN has resulted in structural changes and some content changes to the technical Code which in turn has resulted in changes to the regulations that give power to the Code. These regulations currently known as the Road Transport Reform (Dangerous Goods) Regulations 1997 and the Rail (Dangerous Goods) Rules will be issued as one set of regulations known as the *Model Subordinate Law on the Transport of Dangerous Goods by Road or Rail*.

Implementation Issues

Despite the February 2007 decision and direction by the Ministerial Council, there is a considerable difficulty with current implementation arrangements and adoption of reforms by the jurisdictions. PACIA is concerned even if jurisdictions did implement the package in full, the legislation may not be the same as or basically consistent with the overall package. The aim of the dangerous goods reforms back in the 90's was to establish the same regulatory environment throughout Australia for the carriage of those goods by road initially by full adoption of the template concept.

However, despite all 9 transport ministers unanimously agreeing to the new reforms developed by the Commission and agreeing to implementation timeframes, PACIA is concerned with the actions of some States and Territories as to whether and how the reforms are given effect in local legislation.

PACIA has been advised that few if any states and territories will move to commence the 12 month implementation period on 1 January 2008, despite the Ministerial decision. Yet PACIA has been advised jurisdictions are planning to maintain the final end date of the transitional period to 31 December 2008 – meaning the transitional period may be reduced to 6 months or less.

PACIA has been very concerned at suggestions that the Queensland regulator may be considering making changes to some of the technical requirements in the Code – despite the extensive national development and consultative process.

PACIA fails to understand why the successful template model of ADG6 was changed – so that now we have “model” legislation – not “template” legislation which is (still) being developed to accompany ADG7. That would appear to be a very retrograde step and decision by Government.

PACIA believes having achieved a significant degree of national uniformity or consistency in the past with ADG6 and the template legislation; the challenge will be to achieve the outcome despite the disappointing changes in the process.

PACIA notes the current process lacks the financial benefits to the states and territories which were offered in the past.

PACIA is also very disappointed to note the political commitments given by Ministers in February 2007, both in terms of adoption of the Code and model legislation, and also in terms of the transitional timing and arrangements – appear to be of little real value in achieving outcomes. It appears the jurisdictions are not held accountable by the Ministerial Council for delivering on the commitments made by Ministers.

Plans for introduction of approved emergency responders for dangerous goods transport in WA only

As an example of the approaches taken in some jurisdictions which industry finds very disappointing, PACIA has previously expressed its concern to the WA regulator regarding a policy position for introduction of approved emergency responders for dangerous goods transport in WA only. This policy position was endorsed by the Western Australian Cabinet on 17 May 2004, yet was not put forward by the WA representative into Australia’s national forum for considering dangerous goods transport issues for possible inclusion in ADG7 back in 2004.

PACIA believes it would have been appropriate for the whole of ACTDG to have considered and reviewed the proposed initiative for ***adoption or rejection nationally***.

From an industry perspective, such unilateral action in one state only, on a matter like transport of dangerous goods, which is vital to be addressed in a nationally uniform manner, is very disappointing and burdensome. Further it impacts on the competitiveness of business in that particular state.

Attachment 6 - Climate Change and Regulation

An area of significant concern to PACIA is the increasing overlap and inconsistency of regulation in relation to climate change. It has been unfortunate that governments in Australia have been unable or unwilling to work together effectively to produce a common approach to climate change policy. The growth in regulation is further complicated when considering the inextricable link between energy use and greenhouse emissions. As such, there is significant overlap in the areas of emissions reporting, emissions trading, energy efficiency programs and environmental approvals process.

The reporting burden is the single biggest concern to the plastics and chemicals industry in relation to greenhouse and energy policy. Companies currently report to a number of voluntary and mandatory schemes, including:

- Greenhouse Challenge Plus programme;
- Energy Efficiency Opportunities (EEO) programme;
- Requirements under the State and Territory Government Approvals processes;
- State and Territory Government Greenhouse Gas Inventories, such as the Western Australian Greenhouse Gas Inventory (WAGGI); and
- State and Territory Greenhouse, Energy and Water Schemes, such as the Victorian Government Environment and Resource Efficiency Plans (EREP).

Also, both the Australian Government and the State and Territory Governments (through their Inter-jurisdictional Working Group) are proposing to implement a National Emissions Trading Scheme. Each has required (and will continue into the foreseeable future) considerable input by company representatives and the PACIA Secretariat. We have also been required to respond to competing proposals for the establishment of a national reporting scheme through either the National Pollutant Inventory (NPI) or a new purpose built tool.

The reporting cost burden is exacerbated by the requirements of each piece of legislation to address slightly different aspects: some target greenhouse gas production, some focus on energy use while others focus exclusively on carbon, all of which require a different set of measurements or calculations, in addition to the time that is spent on attending meetings and consultation sessions.

Often regulators are inflexible about altering details. For example, it assists industry to have alignment on reporting periods (the option to report against a calendar year or financial year), but some regulators will not allow flexibility in this regard. The EEO programme is to be congratulated for allowing companies to choose either reporting period depending on what is the most suitable for them. However, it remains the case this it is currently possible for companies to have different reporting periods for Greenhouse Challenge, EEO, NPI and EPA reporting, for the same or similar data.

The EEO legislation requires industry to implement projects where the payback is 4 years or less, whereas the Victorian EREP legislation requires a payback of 3 years or less. In Victoria in 2007, the requirement to undertake an assessment of water savings opportunities (WaterMAP) was introduced within a month of the EREP legislation which also requires industry to assess water saving opportunities.

It should also be noted that most companies are invited to provide input to numerous surveys throughout the year such as the ABARE fuel and energy study. Estimates for these surveys for an indicative medium sized company stands at around nine or so surveys per year each placing an additional burden on company resources.

Case Study

A PACIA member company estimates that the cost of dealing with duplicate legislation would be \$30,000 per site each year. The cost is comprised mostly of additional labour required to duplicate reporting etc, but there is also an additional cost that is caused by having to prepare and conduct different inductions and training programs in each state due to the need to cater for local differences in legislation.

PACIA Response

PACIA members are committed to addressing climate change through their own actions inside the “ring fence” and also through stewardship arrangements with its customers and suppliers. PACIA supports:

- National leadership and policy on climate change, including national consistency wherever practicable;
- A broad suite of measures to address climate change;
- The introduction of an appropriately designed emissions trading regime that recognises the key challenges facing trade exposed emissions intensive industry; and
- The mandatory reporting of greenhouse emissions.

While PACIA welcomes the intent of the recent legislation introduced into Federal Parliament aimed at streamlining energy and emissions reporting, it will be critical that the *intent is delivered upon*. That is wherever practicable all Australian Government and State and Territory Government programs are streamlined into a single reporting tool, again emphasising that under current arrangements companies operating across several jurisdictions are required to report up to eight different schemes each subtly different in the information they require or the methodology used to underpin them.

PACIA would also hope that the proposal for an Emissions Trading Scheme by the Australian Government would build on the work of the State and Territory governments. It would be particularly unfortunately if both systems were to exist into the future. Further, it is important that wherever possible existing mechanisms and regulatory and compliance models were used to implement the trading scheme rather than “re-inventing the wheel”.

PACIA would also see significant value in the all levels of government seeking to align regulatory approvals processes and that ministerial approval conditions would be applied equally across the jurisdictions.

Attachment 7 – NPI

Productivity Questions

Q28. *What are the best ways to enhance public understanding of the potential risks from chemicals and plastics (such as improved education, training and awareness-raising activities, and generation and dissemination initiatives)? Is the National Pollutant Inventory a useful and cost effective tool?*

The chemical industry, while supporting in principle the NPI, has been extremely concerned and opposed the new inclusion of transfers (on and off site) in the reporting requirements on the grounds that it will incur significant costs to industry and government and will not contribute meaningful information **to enhance public understanding of the potential risks from chemicals and plastics (such as improved education, training and awareness-raising activities, and generation and dissemination initiatives).**

- *PACIA believes if transfers are to be included, then only those transfers that end up directly in the environment – air, land or water (e.g.: direct to land-fills, rivers, sea) should be reported. In many cases, data is already being gathered for reporting to various jurisdictions, however, additional costs for analyses would most likely be needed.*
- *PACIA has opposed the inclusion of transfers in the NPI because they represent increased administrative burden and cost to industry without any net-positive environmental benefit or further enhancement to public understanding of the potential risks from chemicals and plastics (such as improved education, training and awareness-raising activities, and generation and dissemination initiatives).*
- *PACIA understands that the requirement to report is designed in part to alert businesses and the community to the environmental impacts industry operations have on the environment, thereby encouraging industry to minimise negative impacts and potentially divert wastes to alternative, value-adding production streams.*
- *However, it still remains unclear to PACIA how the reporting of substances destined for landfill, sewerage, tailings dams, underground injection, or other long-term waste storage or treatment facility will actually result in a net environmental improvement. The companies that will be affected by this measure are already acutely aware of the substances they are emitting, the destinations of these, the effects of these on the environment, and any alternatives available to them.*

PACIA notes transfers are neither pollution nor emissions to the environment unless they are emitted to air, land or water. Substances from the reporting list which are included in the transfers (mandatory or voluntary) do not enter the environment. If a portion of the substance does in fact eventually enter the environment, that emission is reported by the facility responsible for the release.

- *PACIA notes in the Australian Government’s response to the report “Rethinking Regulation – Report of the Taskforce on Reducing Regulatory burdens on Business”, the commitment to reduce variation from international standards and for regulators to align Australian approaches with international standards.*

The basis for inclusion of transfers has also referred to Australia’s international commitments. PACIA notes that a number of countries have Pollutant Release and Transfer Registers (PRTR). However, only a few countries have these registers and only one country (USA), includes external transfers plus estimates of on-site treatment, recycling and energy recovery. Canada and the UK include external transfers only, and the remaining countries do

not include transfers. Further, the UK obtains the information only as summary data for classes of wastes.

PACIA believes the proposal for transfer data in the NEPM is far more detailed and costly than those in any other country with the possible exception of the USA. Given the size of our industry this is not an economically sustainable reporting requirement **to enhance public understanding of the potential risks from chemicals and plastics (such as improved education, training and awareness-raising activities, and generation and dissemination initiatives).**

- *Increased public scrutiny will neither enhance companies' awareness nor their ability to divert the emissions to a non-transfer destination. In fact, PACIA is concerned that companies reporting mandatory transfers may have to divert resources from environmental management to public relations efforts in order to explain to stakeholders what is effectively not new information about how they deal with certain substances.*

Case study (Refer to Appendix 1)

To help determine the financial impacts of the amended variation, the Department of the Environment and Water Resources commissioned EECO Pty Ltd to investigate and report on the financial impact associated with transfer reporting under the new requirements.

This report investigates the costs of reporting transfers to the National Pollutant Inventory (NPI). The obligation to report transfers is part of a variation to the current NPI NEPM requirements. A case study on the chemical industry was completed very late in the review stage to explore the tasks necessary for industry to report transfers and their associated costs.

For the industrial estate, the total cost for transfer reporting in the first year is \$26,300 and includes the set-up costs plus ongoing costs.

The total cost of transfer reporting in the second year (and thereafter) is \$12,200. The approximate cost of ongoing transfer reporting per facility is \$2,440.

The estimates represent the additional costs of mandatory transfer reporting. In some cases, a facility may determine that they do not need to report transfers, but they nonetheless incur costs in learning the transfer requirements and determining the facility's reporting obligations. Ongoing costs beyond the first year are lower as the reporting obligations are known and the need for waste characterisation (including chemical analysis) is reduced or eliminated.

To properly self-assess the need to report transfers, a facility needs to:

- review regulatory requirements,
- review the NPI substances for which they exceed the reporting threshold,
- identify the waste streams that may contain these NPI substances,
- review existing data including waste stream analyses, and
- identify any data gaps and if required, obtain the required data.

Where significant data gaps exist, laboratory analyses may be required. Analytical costs are mostly incurred in the first year as transfer factors should be developed for subsequent years. Ongoing analyses are only needed for highly variable waste streams or to modify transfer factors to account for significant process changes.

Appendix 1: Table 1.1 Case study cost summary

First year only*	Component						
Task	Hourly rate	Staff 1	Staff 2	Staff 3	Staff 3	Analyses	Subtotal
	\$ 200	\$ 150	\$ 100	\$ 50			
Understanding regulatory reqs		2	8	2	1	\$ -	\$ 1,850
Determining reporting obligations		0	19	6	0	\$ -	\$ 3,450
Performing calcs, measurements & estimates		0	30	11	1	\$ 1,500	\$ 7,150
Reporting transfers		2	7	1	2	\$ -	\$ 1,650
hours		4	64	20	4		
Total		\$ 800.00	\$ 9,600.00	\$ 2,000.00	\$ 200.00	\$ 1,500.00	\$ 14,100.00
*excludes ongoing costs 92 total hrs							
Every year	Compo						
Task	Hourly rate →	Staff 1	Staff 2	Staff 3	Staff 3	Analyses	Subtotal
	\$ 200	\$ 150	\$ 100	\$ 50			
Understanding regulatory requirements		1	4	1	0	0	\$ 900
Determining reporting obligations		0	10	6	0	0	\$ 2,100
Performing calcs, measurements & estimates		0	28	12	1	1500	\$ 6,950
Reporting transfers		2	10	3	1	0	\$ 2,250
hours		3	52	22	2		
Total		\$ 600.00	\$ 7,800.00	\$ 2,200.00	\$ 100.00	\$ 1,500.00	\$ 12,200.00
total hrs							
1 Operations Mgrs							
2 Site Env. Engineer							
3 Operational techs							
4 Admin							

Department of the Environment and Water Resources commissioned EECO Pty Ltd to investigate and report on the financial impact associated with transfer reporting under the new requirements.

Attachment 8 – Water Treatment Industry Case Study

Productivity Questions

12. *Do you consider that the current regulatory regime is effective in addressing issues in relation to: public health and safety (cooling towers)*

34. *How substantial are the barriers to entry caused by the existing regulatory system? What reforms would address these barriers while still maintaining an appropriate degree of protection for public health and the environment?*

35. *Are there specific areas of overlap in the regulations that are burdensome and inefficient?*

36. *Are you able to provide any estimates of the costs caused by gaps, overlaps or inconsistencies in the regulatory framework?*

38. *Can you identify cases where the regulatory environment has altered the way a business would otherwise operate?*

39. *Are you able to articulate alternative regulations that would meet the same objectives, but that would reduce or eliminate the costs you have identified?*

40. *Where are the greatest inconsistencies in regulation: between the Australian government and the states and territories, between the states and territories or within jurisdictions, that warrants reform?*

Water Treatment Industry Case Study

Purpose of the industry:

- *Legionella* control
- Corrosion/scaling control
- Process water management
- Water use minimisation

Diverse range of applications and services to industries such as:

- Commercial, Industrial, Energy, Mining, Automotive, Paper, Petrochemical, Manufacturing, Food & Beverage, Chemical and Plastics

Diversity of organisations

- Multi-national to one man operations
- Overall estimate of 750 to 1,000 estimated employees
- Estimated \$200M to \$300M in revenue

PACIA believes it is essential to have a uniform regulatory regime with the ultimate objective of:

- Minimising potential occupational and public health risks from exposure to *Legionella* bacteria arising from cooling tower systems.
- Provide guidance to water treatment service providers (WTSPs) and their clients on maintaining the waters of cooling tower systems, in accordance with a system's risk, relevant legislation, standards and water conservation.

- Establish an accepted minimum level 'best practice' standard for WTSPs, to assist in achieving the above objectives.
- Provide an acceptable self-regulating mechanism for improving the industry's collective performance and accountability.

PACIA notes the current regulatory regime is effective in some states but ineffective or non-existent in other states.

There is no nationally consistent approach at this point in time. A cooling tower in one state requires three times the amount of service that an identical tower would in another jurisdiction; yet this does not necessarily make it any safer to the public. It must be noted that even the highest regulated states such as Victoria and New South Wales have not considered the changes to technology in cooling tower monitoring equipment.

The barriers to entry are substantial as a result of the significant regulatory differences between States. The regulatory differences require companies to manage additional overheads in the form of:

- Training differences between states
- Service reporting differences between states
- Service and administration procedural differences between states
- IT development between states

Currently most water treatment companies have to operate quite differently in some states (for example NSW and Queensland), this is a result of the operational differences. PACIA believes if the regulatory systems were uniform then companies would be able to operate on a more consistent basis throughout the country. As a result, organisations would be more efficient and more effective.

Reforms that introduced a higher degree of regulatory commonality between States would address these barriers while maintaining an appropriate degree of protection for public health and the environment. In fact, the degree of protection would improve because under the current regime some states are not regulated. Furthermore, it is inevitable that inconsistency undermines regulatory compliance and companies struggle to deal with the different requirements.

In some cases where there are no barriers, PACIA believes it is to the detriment of industry as it causes large numbers of operators working in an environment which is not equal to all. PACIA believes this is not responsible and adds to the significant risk to public health. We believe the regulatory requirements for protection of public health need to be high; they also need to be consistent.

Looking at a state by state comparison, the regulations vary greatly; PACIA notes the greatest differences are in service and reporting requirements.

State Analysis – Operational Differences

Water:

- Water quality varies but knowledge-base is the same

Industries:

- Some industries more prominent in some states (for example Mining in WA)

State Regulations - Differences

Philosophy Prevention Resolution	or Governing bodies Health Dept or OHS	Consequences of infringement
Registration Local or centralised	Prescriptive permissive Mandate recommend	or or Who is Responsible? Owner/Manager Whether independent audits are undertaken or coordinated by a central body or by council
Frequency of servicing – records kept	Frequency of cleaning - Cleaning procedures	Bacteria and Legionella sampling Random sampling or response to issues
Response to high bacteria Whether positive Legionella results must be referred to an authority	Response to positive Legionella Corrective actions if high HCC or Legionella results incurred.	Risk management requirements

State Regulations – Example

Response to positive Legionella:

	Action	Mandatory or Recommend	Response Time
NSW	AS3666: Disinfect and resample	Recommend	n/a
QLD	AS3666: Disinfect and resample	Recommend	n/a
SA	n/a	n/a	n/a
Vic	Disinfection, review, resample	Mandatory	24 hours
WA	n/a	n/a	n/a

PACIA member companies find estimating costs to be always difficult. Costs to run a service business in Victoria are obviously higher than in South Australia or Western Australia

Industry requirements which are taken into account include costs to industry over and above those which must be met due to compliance increased due to running parallel systems such as:

- IT
- Training
- Administration and services procedures
- Procedures
- Systems
- Industry body training programs
- Industry body accreditation programs

Example 1: Company A

- National Company
- Australian owned
- Over 100 employees
- Water services and equipment
- 50% Commercial, 50% Industrial

Example 2: Company B

- International Company
- Internationally owned
- Over 100 employees
- Water services and equipment

Both company A and B service clients in all state jurisdictions - many sites weekly depending on state requirements. Such activity adds to administration costs, upgrading computer systems to cope with the scheduling etc. In South East Queensland company B is not only a water treatment specialist but are also required to act as water auditors – such costs are absorbed into the business. The full cost of servicing and especially the administration component is not completely cost recovered from customers. Training technical employees

who work across various state borders (on regulatory requirements – codes of practice and standards) is at times difficult as they need to be aware of different legislation.

PACIA notes the availability of use of an Australian Standard for the Water Treatment Industry (AS3666). We believe the greatest inconsistency lies in the types of legislation in the various states and territories, although all quite prescriptive, some states have taken a more 'Risk Management Plan' approach, such as Victoria and Queensland. Other states use a more prescriptive approach - for example in New South Wales and South Australia. A term commonly used by various state requirements is 'competent person' and this at times has caused confusion as to the definition given in particular jurisdictions.

Some issues which appear throughout the industry are for example when national customers based in one state request all their towers treated based on the Victorian system. Therefore in NSW, the tower is treated under the state regulations and also by the more risk based regulations such in Victoria.

The increased costs would be in the order of \$100,000 to \$150,000 across all States of Australia.

The estimated increased costs to Company B would be in the order of the vicinity of \$250,000 annually.

PACIA believes a national approach is required.

PACIA strongly recommends more emphasis must be placed on new issues and monitoring approaches. The new issues include increasing the number of cycles of concentration and the use of recycled water in cooling towers to save water, requiring different approaches be taken to current programs.

The introduction of more sophisticated control and monitoring equipment would allow for on-line 24/7 monitoring with sophistication not seen before. Such areas need to be taken into account and therefore reduce the service component of a cooling tower program as equipment and chemical status is available.

Uniform approach to Water Treatment Industry will result in

- Reduction in costs to industry
- Improvement in training standards
- Improvement in service standards
- Realisation of national accreditation:
 - technicians and company
- Development of national career path for industry employees

Attachment 9 - Security Sensitive Ammonium Nitrate (SSAN)

This case study is based on information which was gathered together in September 2006 at the request of the Department of Prime Minister and Cabinet to help them to understand better the impact on industry of the differences between the jurisdictions. It has been updated a little from the letter to Dr Rob Floyd, dated 15 September 2006.

The chemical industry is committed to achieving enhanced levels of security and control over all aspects of the chemical supply chain to minimise the risk of legitimate industrial products being diverted for illicit use. PACIA and its member companies have a long history of working very closely with both federal and state agencies to achieve enhanced security controls. This work has historically focused on areas of chemical weapon precursors, chemical precursors, illicit drug precursors, explosives and in recent years, security sensitive ammonium nitrate (SSAN).

PACIA has been very pleased over the last four years to proactively develop specific industry guidance on security issues. In 2003, PACIA developed the first Edition of its Responsible Care Site and Supply Chain Security Guidance to assist the industry. PACIA is currently updating and reviewing the document to publish the fourth Edition.

In addition, prior to the June 2004 COAG decisions regarding SSAN, PACIA developed a draft industry Code of Practice for Secure Distribution of Security Sensitive Ammonium Nitrate which subsequently was largely adopted into the national SSAN Transport Guidelines.

The three policy aims of the COAG Principles on SSAN, set out below, were strongly supported by industry:

- A nationally-consistent, effective and integrated approach to control access to security sensitive ammonium nitrate to those with legitimate need
- To ensure accountability at all stages of the ammonium nitrate supply chain, in order to address security and safety concerns
- To establish a framework for control which may be applicable for other materials of security concern

Sadly, those policy aims were not met in the regulation and administration of SSAN.

From an industry perspective, there have been a number of issues:

There have been delays in making this priority security legislation - Only two states (Queensland and Northern Territory) met the 1 November 2004 deadline set by COAG. All other States then worked to a revised 1 July 2005 target for making regulations; however none achieved that revised target. One state – Western Australia, still has not made legislation. Those delays and inconsistent commencement dates, impact on national companies greatly, and clearly don't achieve the security outcomes in the timeframe sought by COAG and the industry.

There are significant inconsistencies between the states, e.g.:

Terminology

- Victoria regulates SSAN under the Dangerous Goods Act as a Class 5.1 Dangerous Goods called a "High Consequence Dangerous Goods". This terminology is used by the United Nations Sub Committee of Experts, but has quite a different interpretation.
- Queensland declared SSAN to be a Class 5.1 "Explosive" – a uniquely Queensland terminology, which inappropriately distorts perception of SSAN products.

- New South Wales developed new Explosive Regulations which cover SSAN as an “explosive precursor” or “security sensitive dangerous substance”.
- South Australia refers to SSAN as a “Security Sensitive Substance”, and Tasmania refers to it as “Security Sensitive Dangerous Substance”.
- Western Australia refers to it as a “Security Risk Substance”.

This does not support national consistency in approach.

Licence Requirements

- Details of the different requirements / costs and processes by State is attached at Attachment 1

Background Checking

- States are dealing with background checking differently – the role of the regulator differs, disclosure rules differ. In particular, the process in QLD, where the onus is on the employer (not the regulator as in all other states) to make the decision on people with marginal security assessment, proves very difficult. This also means other states like Victoria, will mutually recognize security clearances in all other states, except for Queensland, because of the issues with the QLD process.

Mutual Recognition

- Some states, e.g. South Australia, will not mutually recognize transport licences issued in other states, despite considerable industry comment on the adverse impact and cost burden on industry resulting from that position. In addition, SA is the only state which requires an import licence when bringing SSAN in from another state (as distinct from another country). Furthermore, industry is required to give seven days notice and obtain permits for movement of SSAN to and from other States. This would appear to be in contravention of the spirit, if not the letter of Section 92 of the Constitution.
- On the other hand, other states like Victoria are quite explicit in their legislation in mutually recognizing licences and security clearances granted in other jurisdictions.
- Operations under State management but Commonwealth *Security* regulations (ie ISPS compliant ports) require different licences again (MSIC Cards), which are not recognized by any jurisdiction apart from Victoria.
- The most burdensome aspect of the SSAN Regulatory framework is the lack of Mutual Recognition between jurisdictions for such essential operating items as licenses (people and vehicles) security plans, security clearances and similar matters. The major supplies of SSAN come from factories located in 3 States (NSW, Qld and WA) topped up by small quantities of imports. Intrastate movements are not problematic but large quantities of *interstate* movements are necessary to supply customers in jurisdictions lacking manufacturing facilities inside their borders and to redress supply/demand imbalances which occur regularly between the east and west of Australia. Each such trip has to be carried out with separate security plans for each jurisdiction. Costs are not separately calculated but are absorbed into both freight rates and the number of additional people employed solely for compliance work.

Different approaches to control

- A summary of major problems for industry by jurisdiction is attached at Attachment 2.
- One state, namely Tasmania, has banned use of SSAN for agricultural purposes despite the COAG decision to the contrary.
- Queensland is currently considering declaring the fertilizer, Calcium Ammonium Nitrate – which falls within the definition of SSAN, but is not classified as a dangerous goods internationally – to be a “dangerous goods”. This would have huge cost impact on the industry, and would trigger very different storage and transport safety requirements. Industry has carried out and provided test results to the regulator to confirm the international classification as a non dangerous goods – yet this issue

remains unresolved. PACIA notes that the National Guidance Notes issued by the COAG National Working Group, which was set up to prepare nationally consistent guidance on SSAN repeatedly make statements such as “**SSAN includes calcium ammonium nitrate which is not classified as a dangerous good**”. This is a very significant issue for the affected industry.

- South Australia has added UN 2426 to the list of materials fitting the definition of SSAN – contrary to the COAG definition
- The lack of a national licensing system is a major impediment to the smooth running of the industry with no fewer than nine separate jurisdictions each with their own licences which largely deny recognition of any other licences.
- The demands in some States for a recognized non-explosive material to be stored and handled as an “explosive” do not reflect the scientific reality of SSANs.

Issues Arising from the complexity of this licence structure:

1. The differences in licence costs, coverage and duration in the various jurisdictions; differences which considerably complicate the redeployment of people and machines between States in an industry which demands frequent and rapid movements of this type.
2. The significant differences in what should be at least one common factor – the cost of an ASIO check.
3. A Queensland authorisation (licence) is not accepted in other jurisdictions owing to the regulatory reluctance to issue a portable formal credential (eg a photo ID card) and a regulatory regime which requires employers¹ to decide if an employee is a fit and proper person to hold an SSAN credential.
4. Regulators consider State based security clearances are essential to ensure the criminal checks are conducted in conformity with existing laws in that jurisdiction relating to spent convictions and like matters.
5. If a person moves permanently interstate a complete security assessment in the new state is required *including* a repeat ASIO check.
6. The licence status of a person temporarily located interstate (eg for holiday relief) is unclear and is greatly complicated by the different licensing structures detailed in Table 1. Note that for a person moving in or out of Queensland even a short term relocation requires a new application for the reasons given in point (3) above.
7. Interstate relocations requiring re-licensing attract the full fee for the new licence but receive no refund for the unexpired portion of the previous licence. Costs are significant but almost impossible to quantify.
8. Industry staff are very mobile – it is estimated that 10-15% of operational employees spend some time every year living interstate to meet business demands of some type eg projects, holiday/sickness relief, business support etc.

Industry has not received adequate guidance on assessment and ranking of security risks and has concerns regarding the possibility of storage risks being overstated. Some jurisdictions have imposed *consequence* determined separation distances for SSANs instead of risk based, thus applying explosives separation distances to non explosives. Industry would welcome the opportunity to work jointly with government, as has occurred with the Department of Homeland Security in the United States for example, to develop security vulnerability assessment methodology and training.

Regulatory complexity within jurisdictions

A further problem is regulatory overlaps within a jurisdiction. eg:

¹ In other jurisdictions the regulator makes these decisions.

- differing interpretations of which regulator takes precedence when an MHF also manufactures or stores SSAN – the MHF regulator or the SSAN regulator – that differs in different jurisdictions
- split responsibilities for transport safety and security licence issue causing the situation in NSW where licenses are issued by any one of combination of DPI, WorkCover and DECC

This has been a very inefficient process for all stakeholders.

- Clearly the overall process – involving separate public comment processes in each jurisdiction, and different regulatory and implementation requirements, has caused significant cost, time and resources burden on industry and government.
- It must be noted from a Government perspective, this process is taking significant resources in each jurisdiction, for just **one** security sensitive family of chemicals – and it is not at all clear that the security outcomes sought are being achieved. Not only is the current legislation inconsistent between states, but approaches to education and enforcement are also different. The mechanisms for effectively detecting any diversion would appear essential to feed into a national system in order to identify patterns etc.

SSAN REGULATIONS - STATE DIFFERENCES

REGULATION FEATURE: LICENCE

STATE	DETAILS
NSW	<p>Photo licenses agreed; have not yet become available. Security assessments carried out by police and ASIO only.</p> <p>Cost of simplest licence \$150</p> <p>Unsupervised Handling Licence (UHL) available</p> <p>Interstate licences recognized for drivers in transit; change of domicile to NSW requires getting new licence from scratch <i>including ASIO clearance</i>.</p> <p>Not valid for ISPS ports</p> <p>Max. term 5 years</p>
VIC	<p>Similar to NSW</p> <p>Explicit mutual recognition</p> <p>Maximum fee \$80</p> <p>Maximum term 5 years</p>
SA	<p>No acceptance of interstate licences at all</p> <p>Identification requirements exceed passport requirements</p> <p>Security checks require consent to waiving rights under Spent Convictions Act, fingerprinting and in some cases DNA samples</p> <p>Maximum term 3 years</p> <p>Director has right to cancel OR renew expired licence.</p>
QLD	<p>Only shotfirer's and "high level" (eg corporate) licences are issued</p> <p>Onus is on the employer (not the regulator as in all other states) to make decision on people with marginal security assessment. This means other states like Victoria, will mutually recognize security clearances in all other states, except for Queensland.</p> <p>All other security cleared people to be documented on security plans but are only identified by production of driver's licence. The QLD Regulator has been formally requested by industry to revisit his decision not to issue photo-ID licences.</p>
WA (draft Regulations)	<p>A person's security status is proposed to be established with a personal security card – a photo-ID type. This does not by itself constitute a licence but it is a pre-requisite to being granted an "authority" by a licence holder to handle SSAN.</p> <p>Security card has 5 year duration.</p> <p>A licence issued under that security card has a maximum 3 year duration – timing differences are expected to create difficulties.</p>
TAS	<p>A person handling SSDS must have a "permit" and be nominated on a Security Plan. The permit may not be issued without security clearance and is "employer specific" ie should a person change employers the Permit procedure needs to be performed a second time. Permits are issued and withdrawn by the Commissioner of Police.</p> <p>In Tasmania an "Authorised person" is a Government employee authorized to enforce the SSDS Regulations. In all other jurisdictions "authorized person" refers to a security cleared person actually working with SSDS.</p>

Specific costing of licensing in each state.

Most states have similar fees, although QLD is a little higher. NSW on the other hand, is noticeably more expensive, with licences costing in the thousands. The ASIO checks (highlighted in RED, ITALICS) are also comparable, except for NSW, which is double the other states (\$60-\$70 versus \$150).

Another difference is the number of licences required in each state. There is no consistent approach as to how SSAN is licenced. For example, in VIC, use, sell, import, export, manufacture, etc is all contained on the **one** licence. In QLD, each licence is separate.

Type of Licence	NSW	SA	TAS	VIC	QLD
Application for a licence to Access High Consequence Dangerous Goods (Store, Use, Sell, Transport, Import, Export, Manufacture)				\$80	
Identification Form - Natural Person				\$0	
Application to conduct National Police Check and ASIO Security Assessment				\$59	
Notification of Dangerous Goods Storage and Handling				\$0	
Identification Form - Non Individual				\$0	
Explosives Licence (Licence to Make Explosives with MMU) individual for 5 years				\$250	
Bulk Vehicle Licence (individual) 3 years				\$30	
Licence to Manufacture (covers all trucks) 1 year	\$2,500				
Transport Explosives (covers all trucks) 1 year	\$2,000				
Import Explosives	\$2,000				
Supply Explosives	\$750				
ASIO Check	\$150				
Licence to Store - Company (5 years)	\$250				
Notification of Dangerous Goods on Premises (1 yr)	\$100				
Manufacture Explosives (5 years)	\$2,350				
Licence to Store Explosives (5 years)					\$1,438
Licence to Manufacture (5 years)					\$1,478
Licence to Import (5 years)					\$1,167
Licence to Sell (5 years)					\$289
Licence to Export (5 years)					\$1,167
Licence to Manufacture (MMU) 1 year					\$136
Licence to Use (5 years)					\$205
ASIO Check - Authorised Person					\$78
Security Clearance		\$63			
Bulk Vehicle Dangerous Goods (1 year)		\$98			
Mix and Use Ammonium Nitrate (1 year)		\$105			
Permit to Purchase, Sell, Supply, Manufacture, Use, Dispose, Import, Export, Store, Carry (3 years)		\$45			
Security Sensitive Dangerous Substances Permit			\$157		
Licence to Keep Dangerous Goods			varies		
Bulk Vehicle Licence for the Transporting of Dangerous Goods (3 years)			\$88		
Security Check			\$66		
Manufacturers Licence			\$181		

MAJOR PROBLEMS BY JURISDICTION

1. QUEENSLAND

- a) Excessive focus on alleged explosive behaviour of SSAN materials which are internationally recognized as “non explosive”. There is a focus on perceived catastrophic consequences of an extremely improbable event ie a group of skilled and well equipped terrorists deciding to destroy a large SSAN inventory in spite of:
 - security precautions at the site
 - the technical uncertainty which exists about the percentage of material which would react and the power of such reaction
 - the relative political attractiveness of damaging an otherwise unattractive industrial target.
- b) Conversely transport security requirements are quite modest
- c) Supplier’s obligations to verify identities and on-the-spot security statuses of various parties in the supply chain are handicapped by regulator’s use of paper authorizations and security plans, thus avoiding the use of official photo ID cards or similar
- d) Declaration of the fertilizer Calcium ammonium nitrate as an “explosive” in Queensland despite its well documented behaviour both as a non-explosive and a non dangerous goods.
- e) QLD is the only state to require monthly reporting of sales from all levels of the distribution chain, creating issues with cross border sales and importation
- f) Complex State legislative structure ie
 - Regulation of Explosives, SSAN and mines is with Dept of Natural Resources, Mines and Water
 - Transport safety (but not security) is with Dept of Transport
 - Workplace Health and Safety regulates OHS
 - Dept of Emergency Services regulates DG and MHF
 - Local government licences Class 3 DGs

2. NEW SOUTH WALES

- a) Regulator (WorkCover) is high cost and resource limited; and hence struggles to achieve own deadlines and forced to issue periodic exemptions from those deadlines. A further 3 month delay in some issuing some licences was gazetted very recently.
- b) Complex State legislative structure ie
 - Regulation inside a mine boundary is with Department of Primary Industry (DPI)
 - Transport safety (but not security) is regulated by the Department of Environment and Conservation
 - WorkCover regulates the remainder

3. VICTORIA

No major state specific issues apart from inappropriate use of term “HCDG”, given the earlier use of the term by the United Nations.

4. TASMANIA

Lack of interchangeability of security credentials to a different employer within the same state.

5. SOUTH AUSTRALIA

- a) Requirements for identification, security clearances, DNA samples, Spent Convictions Act waiver exceed requirements in other jurisdictions *including passport regulations*.
- b) State has similar focus to QLD on alleged explosive behaviour of SSAN materials which are internationally recognized as *non-explosive* materials.
- c) Requirement to give 7 days' notice and obtain permits for movement of SSAN to and from other States contravenes the spirit if not the letter of the Australian Constitution.
- d) State requires annual returns of SSAN quantities handled within the State.
- e) In addition to SSAN used within the State, item (c) above requires SSAN in transit though the State in locked containers on rail to be subjected to requirements for permits and 7 days notice.

6. WESTERN AUSTRALIA (draft Regulations)

- a) A similar focus to QLD and SA on alleged explosive behaviour of SSAN materials which are internationally recognized as non explosive materials. This is resulting in existing facilities for SSAN being declared as non-conforming on safety grounds.
- b) Licence system proposed to operate in yet another way which requires security cleared personnel to carry a security card and to have a specific permit from their licenced employer to carry out a particular task on licenced SSAN premises.

KEY ISSUES AFFECTING ALL JURISDICTIONS

- COAG first policy aim requiring a “nationally consistent, effective and integrated approach” has demonstrably *not* been implemented by the jurisdictions. Similarly COAG Principle No 15 requiring the upgrading where necessary of explosives regulations to SSAN standards has not been implemented by most jurisdictions.
- The lack of a national licensing system is a major impediment to the smooth running of the industry with no fewer than nine separate jurisdictions each with their own licences which largely deny recognition of any other licences.
- The demands in some States for a recognized non-explosive material to be stored and handled as an “explosive” do not reflect the scientific reality of SSANs.
- Industry has not received adequate guidance on assessment and ranking of security risks and has concerns regarding the possibility of storage risks being overstated.

Attachment 10 – Table of Chemical Regulators

Chemical Regulators by Jurisdiction			
Jurisdiction	Purpose/Objective	Legislation	Information
Federal Government			
Department of Defence	Defence, including - international defence relations and defence co-operation - align to international treaties.		
Department of Health and Ageing (National Industrial Chemicals Notification and Assessment Scheme)	National chemical notification scheme	<i>Industrial Chemicals (Notification & Assessment) Act 1989.</i>	All importers and/or manufacturers of industrial chemicals for commercial purposes must register with NICNAS.
Department of Agriculture, Fisheries and Forestry (Australian Pesticides & Veterinary Medicines Authority)	Agricultural Chemicals Regulation	<i>Agricultural and Veterinary Chemicals Code Act 1994 (The Agvet Code Act)</i>	
Comcare	Major Hazard Facilities; Hazardous Substances; Dangerous Goods	<i>Occupational Health and Safety (Safety Standards) Regulation 1994</i>	
Department of Health and Ageing Therapeutic Goods Administration (Office of Chemical Safety)	Drugs		The Office of Chemical Safety undertakes risk assessment and provides advice on potential public health risks posed by chemicals used in the community

Chemical Regulators by Jurisdiction			
National Drugs and Poisons Schedule Committee (NDPSC)	Scheduling of medicines and poisons	<i>Therapeutic Goods Act 1989</i>	The NDPSC has been established under section 52B of the Therapeutic Goods Act 1989 and consists of State and Territory government members and other persons appointed by the Minister such as technical experts and representatives of various sectional interests.
Department of Employment and Workplace Relations (Office of Australian Safety and Compensation Commission)	Development of OHS Standards, Codes, Guidance Material for States to adopt	<i>Develop OHS Standards and Codes for State adoption only - does not regulate as such.</i>	
National Transport Commission	Transport - Regulatory Reform	<i>Develops national model regulation for State adoption only - does not regulate as such.</i>	Develops regulatory reform proposals to assist Australian governments in achieving their jointly agreed objective set out in the Inter-Governmental Agreement ¹ (IGA) of: "...improving transport productivity, efficiency, safety and environmental performance and regulatory efficiency in a uniform or nationally consistent manner."

Chemical Regulators by Jurisdiction

<p>Department of Foreign Affairs and Trade (ASNO)</p>	<p>Authority responsible for implementation of the Chemical Weapons Convention.</p>	<p><i>Charter of the United Nations Act 1945</i> <i>Chemical Weapons (Prohibition) Act 1994</i> <i>Comprehensive Nuclear Test-Ban Treaty Act 1998</i></p>	<p>External Affairs, including - relations and communications with overseas governments and United Nations agencies treaties, including trade agreements bilateral, regional and multilateral trade policy international trade and commodity negotiations market development, including market access trade promotion international development co-operation international security issues, including disarmament, arms control and nuclear non-proliferation</p>
<p>Department of Transport and Regional Services</p>	<p>Transport - policy advice at a national and international level.</p>	<p>National Transport Commission Act 2003 Road Transport Reform (Dangerous Goods) Act 1995</p>	<p>The Dangerous Goods Unit (DGU) provides policy advice on national and international dangerous goods matters, and provides secretariat support to the Competent Authorities Panel (CAP).</p> <p>The DGU also works with the National Transport Commission (NTC) and all States and Territories on the maintenance of the Australian Dangerous Goods Code (Road and Rail) and the nationally harmonised regulatory framework.</p>
	<p>Maritime Security</p>	<p><i>Maritime Transport and Offshore Facilities Security Act 2003</i></p>	<p>The Act applies to Australian trading and passenger ships, and foreign ships travelling to a port in Australia. It also applies to Australian ports, port facilities, and port service providers that serve security regulated ships, and Australia's</p>

Chemical Regulators by Jurisdiction			
			offshore facilities
Australian Customs Service	Illicit Drugs		
Department of Environment and Water Resources	<p>Focus on matters of national environmental significance by:</p> <p>Advising the Australian Government on its policies for protecting the environment and water resources</p> <p>Information about the legislation administered by the Australian Government Environment and Water Resources Portfolio:</p> <p>EPBC Act Hazardous Waste Act Heritage laws and notices Ozone protection</p>	<p>Environment Protection (Sea Dumping) Act 1981</p> <p>Hazardous Waste (Regulation of Exports and Imports) Act 1989</p> <p>National Environment Protection Council Act 1994</p> <p>National Environment Protection Measures (Implementation) Act 1998</p> <p>National Water Commission Act 2004</p> <p>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</p> <p>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</p> <p>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995</p> <p>Product Stewardship (Oil) Act 2000</p> <p>Water Efficiency Labelling and Standards Act 2005</p>	

Chemical Regulators by Jurisdiction

	and synthetic greenhouse gases legislation and regulations Renewable energy (mandatory renewable energy target) legislative framework Sea dumping legislation Sea Installations Act Water Efficiency Labelling and Standards Act		
Queensland Government			
Department of Emergency Services (Chemical Hazards and Emergency Management Services)	Dangerous Goods	Dangerous Goods Safety Management Act 2001, Regulation 2001	Under the DGSM Act, the DES has primary responsibility for administration of DG. Enforcement of the Act is delegated, however, with specified classes of dangerous goods regulated by those Government agencies that have a specific interest in them. This arrangement is made possible by letters of delegation and associated Memoranda of Understanding.
	Major Hazard Facilities	Dangerous Goods Safety Management Act 2001, Regulation 2001	
Department of Employment and Industrial Relations (Workplace Health and Safety)	Hazardous Substances Regulation	Workplace Health and Safety Regulation 1997	

Chemical Regulators by Jurisdiction

Department of Natural Resources, Mines and Energy	Explosives and SSAN	Explosives Act 1999	
Local Government	Class 3 Dangerous Goods (flammable liquids)	Dangerous Goods Safety Management Act 2001, Regulation 2001	Local Government jurisdiction is limited to Class 3 (flammable liquids) and combustible liquids at premises that have (or should have) a flammable and combustible liquids (FCL) licence issued by the Local Government.
Department of Health	Drugs and Poisons	Health Act 1937; Health (Drugs and Poisons) Regulation 1996	
Queensland Transport	Dangerous Goods transport by road and rail	Transport Operation (Road Use Management—Dangerous Goods) Regulation 1998	
Environmental Protection Agency	Environmentally Relevant Activities	Environmental Protection Act 1994, Environmental Protection Regulation 1998.	Regulates "environmentally relevant activities". ERAs are usually industrial activities with the potential to release contaminants to the environment, for example chemical processing, waste treatment, spray painting etc. Some agricultural activities such as piggeries, prawn farms and cattle feedlots are also ERAs. ERAs are required to have a development approval or a code of environmental compliance and registration certificate. The Environmental Protection Regulation 1998 (EP Reg) and the Environmental Protection Policies (EPPs) for Air, Noise and Water are to be remade by September 2008.

Chemical Regulators by Jurisdiction			
	Hazardous Waste Management	Environmental Protection (Waste Management) Regulation 2000; Policy 2000	
Queensland Police	Controlled Substances	<i>Drugs Misuse Regulation 1987</i>	QLD Premier has recently announced new measures will be introduced to restrict sale of controlled substances - will adopt compliance provisions of PACIA Code.
Department of Primary Industries and Fisheries	Agricultural Chemicals		The Department of Primary Industries and Fisheries (DPI&F) develops and implements policy in relation to the management of agricultural and veterinary chemicals in Queensland. DPI&F is also involved in the development and implementation of national policy decisions relating to the overall management of agricultural and veterinary chemicals in Australia.
N.S.W Government			
WorkCover NSW	Hazardous Substances	<i>Occupational Health and Safety Regulation 2001</i>	
	Dangerous Goods	<i>Occupational Health and Safety Regulation 2001</i>	In 2005, the Dangerous Goods Act 1975 was repealed and the OHS Act 2000 and Regulation 2001 were amended to regulate dangerous goods of all quantities at places of work, and certain quantities of dangerous goods at non-workplaces.
	Explosives (SSAN)	<i>Explosives Act 2003 and Regulation 2001</i>	

Chemical Regulators by Jurisdiction			
Department of Environment and Climate Change (DECC)	Environmental legislation	Contaminated Land Management Act 1997, Environmentally Hazardous Chemicals Act 1985, National Environment Protection Council (New South Wales) Act 1995, Pesticides Act 1999, Waste Avoidance and Resource Recovery Act 2001, Waste Recycling and Processing Corporation Act 2001	
Department of Environment and Climate Change (EPA)	Transportation of Dangerous Goods	<i>Road and Rail Transport (Dangerous Goods) Act 1997 and Regulation 1998, 1999</i>	The EPA's role relates to on-road aspects of the transport of dangerous goods
	Hazardous Chemicals	<i>Environmentally Hazardous Chemicals Act (EHC Act)</i>	regulate priority/high-risk chemicals, throughout their entire life-cycle, to minimise environmental risks from hazardous chemicals and chemical waste in NSW.
Department of Health	Drugs and Poisons	<i>Poisons and Therapeutic Goods Act 1966</i>	
NSW Police	Precursors	<i>Drug Misuse and Trafficking Regulation 2006</i>	Recently introduced and adopts aspects of the PACIA Code. Schedules updated.
Victorian Government			
WorkSafe Victoria	Hazardous Substances and Major Hazard Facilities	<i>Occupational Health and Safety Regulations 2007</i>	Hazardous Substances Regulations contain licensing requirements for employers using carcinogenic substances, outline requirement for manufacturers to prepare and review MSDSs; atmospheric and health monitoring, identification of haz subs in plant.

Chemical Regulators by Jurisdiction

	Dangerous Goods	<i>Dangerous Goods (Storage and Handling) Regulations 2000</i>	This governs the safe handling and storage of dangerous goods. It requires all site operators holding dangerous goods above a certain 'manifest' quantity to notify WorkSafe every two years of the quantities held.
	Transport	<i>Road Transport Reform (DG) Regs 1997;</i>	Requires bulk DG vehicles to be licensed, drivers to be licensed, requires approval for dangerous goods tank design.
	Security Sensitive Ammonium Nitrate - High Consequence Dangerous Goods	<i>Dangerous Goods (HCDG) Regulations 2005</i>	The term 'high consequence dangerous goods' (HCDG) is applied to dangerous goods that pose a security concern due to their potential for misuse and includes Security Sensitive Ammonium Nitrate. A license is required to access HCDG when they are manufactured, stored, sold, supplied, transported, used, imported or exported.
	Explosives	<i>Dangerous Goods (Explosives) Regulations 2000</i>	Requires licence issued by WorkSafe before manufacture, store, sell, transport, use or import any explosive, including safety cartridges and fireworks.
Department of Human Services (Health)	Drugs and Poisons	<i>Health Act, Drugs, Poisons and Controlled Substances Act 1981; Regulations 2006</i>	Issues licences and permits which limit the manufacture, distribution and use of drugs and poisons

Chemical Regulators by Jurisdiction

Department of Primary Industries	Agricultural Chemicals	Agricultural and Veterinary Chemicals (Control of Use) Act 1992	The <i>Act</i> came into effect in 1996 and sets rules of chemical use in Victoria. The federal APVMA took over responsibility for other activity in relation to agvet chemicals, up to and including the point of sale and supply.
Environment Protection Agency	Environmental Regulations, Permits Etc	<p>Environment Protection Act 1970 Pollution of Waters by Oils and Noxious Substances Act 1986 National Environment Protection Council (Victoria) Act 1995</p> <p>There are also various other policies regarding water/Air/Wate such as State environment protection policies (SEPPs).</p>	

Chemical Regulators by Jurisdiction

Department of Sustainability and Environment	Establishment of EPA.	Environment Protection Act 1970	This Act establishes the Environment Protection Authority and makes provision for the Authority's powers, duties and functions. See above.
Victoria Police	Prevention of Precursor Drug Diversion	<i>Drugs, Poisons and Controlled Substances Act 1981; Regulations 2006</i>	Whilst the Regulations have not legislated a requirement for companies to forward copies of EUDs to police, this has been flagged for inclusion by the Department of Justice. Currently, member companies are encouraged to comply with the PACIA Code for Prevention of Diversion and forward copies to VicPol Drugs Desk.
South Australia Government			
SafeWork South Australia	Hazardous Substances	<i>Occupational Health Safety and Welfare Act 1986; Regulation 1998</i>	
	Dangerous Goods	<i>Dangerous Substances Act 1979; Regulation 2002</i>	Regulates the storage, handling, transporting, conveyance, use and disposal and quality of dangerous substances
	Explosives including SSAN	<i>Explosives Act 1936; Regulation 1996; Explosives (Security Sensitive Substances) Regulation 2006</i>	Regulates manufacture, storage and carriage of explosives.
	Major Hazard Facilities	<i>Dangerous Substances and Major Hazard Facilities Bill 2006</i>	The SA Dangerous Substances and Major Hazard Facilities Bill is currently before the South Australian House of Assembly. It was introduced to Parliament on 6 December 2006. It is to commence on a date set by proclamation.

Chemical Regulators by Jurisdiction

Environment Protection Authority	Regulates National Environment Protection Measures	<i>Environment Protection Act 1993; EPA (National Pollutant Inventory) Measure</i>	The NPI NEPM provides the framework for the development and establishment of the NPI which is an Internet database designed to provide publicly available information on the types and amounts of certain chemicals being emitted to the air, land, and water. In July 2005, the National Environment Protection Council (NEPC) commenced the statutory process to make a variation to the NPI NEPM. In June 2006, NEPC agreed to release a draft NEPM variation, impact statement and other supporting documents for public consultation.
	Waste Management	Environment Protection (Waste Management) Policy 1994	
Department of Health; SA Police	Drugs and Poisons	<i>Controlled Substances Regulations 1996</i>	The Act and its regulations control the manufacture, sale, supply, possession, storage and use of all poisons, therapeutic goods, drugs of dependence and prohibited substances.
Primary Industries and Resources SA	Agricultural Chemicals	<i>Agricultural and Veterinary Products (Control of Use) Act 2002; Regulation 2004</i>	
Western Australia			
Department of Consumer and Employment Protection	Hazardous Substances	<i>Occupational Health and Safety Regulations 1996</i>	
	Dangerous Goods	Dangerous Goods Safety Act 1961; Explosives and Dangerous Goods (Dangerous Goods Handling and Storage)	Legislation currently under review.

Chemical Regulators by Jurisdiction			
		Regulations 1992	
	Transport	Dangerous Goods (Transport) Act 1998	
	Explosives	Explosives and Dangerous Goods (Explosives) Regulations 1963 (WA)	
	Major Hazard Facilities	National Standard for the Control of Major Hazard Facilities	WA has had a MHF program since 1997 which has adopted the National Standard under directions given by the Chief Inspector using powers of the Explosives and Dangerous Goods Act 1961.
Department of Environment and Conservation		<i>Environment Protection Act 1986</i>	
WA Police	Drug Diversion	<i>Misuse of Drugs Act 1981 - amendments 2003</i>	
Department of Agriculture; Department of Health	Agricultural Chemicals	<i>Health (Pesticides) Regulations 1956</i>	Western Australian legislation controls the use of agricultural chemicals once they are in the hands of the end user.
	Health Impact Assessments		Proposed scheme currently undergoing public discussion phase.
Department of Health	Drugs and Poisons	<i>Poisons Act 1964</i>	

Chemical Regulators by Jurisdiction

Tasmania			
The Department of Tourism, Arts and the Environment (DTAE)	The Division has the leading role in the development of State Environment Protection Policies and regulations for environmental management.	<i>Environment Management and Pollution Control Act 1994</i>	
Department of Justice (Workplace Standards Tasmania)	Dangerous Goods	<i>Dangerous Goods Act 1998</i>	
	SSAN and Explosives	<i>Security-Sensitive Dangerous Substances Act 2005</i> and regulations	The Act establishes that a person must have a permit that authorises the person to carry out restricted activities in relation to SSAN (Security-Sensitive Ammonium Nitrate). These restricted activities are specified by the COAG Principles.
	OHS	Workplace Health and Safety Act 1998	
Department of Human Services	Poisons	<i>Poisons Act 1971</i>	Agency responsible for the regulation, control, and prohibition of the importation, making, refining, preparation, sale, supply, use, possession, and prescription of certain substances and plants

Chemical Regulators by Jurisdiction

Department of Primary Industries and Water	Agricultural Chemical Regulation	<i>Agricultural and Veterinary Chemicals (Control of Use) Act 1995</i>	The Chemical Management Branch of DPIW is responsible for the oversight of agricultural and veterinary chemical issues. It administers legislation to control the use of agricultural and veterinary chemicals, applies fertiliser standards and regulates animal identification systems. The Branch administers commercial spray contractor and operator licensing, authorises the use of certain restricted products, coordinates residue surveillance and management programs and liaises with the Australian Pesticides and Veterinary Medicines Authority to provide product compliance and enforcement activities.
Australian Capital Territory			
Workcover ACT	OHS	<i>Occupational Health and Safety Act 1989</i>	The Act applies to all workplaces in the Australian Capital Territory other than those in Commonwealth employment
	Dangerous Substances	<i>Dangerous Substances Act 2004</i>	covers: explosives as defined by the Australian Explosives Code, dangerous goods as defined in the Australian Dangerous Goods Code, hazardous substances as defined by the Office of the Australian Safety Compensation Council (OASCC) hazardous substances regulatory package.
Department of Health	Drugs and Poisons	<i>Poisons and Drugs Act 1978</i>	
ACT Police	Illicit Drugs	<i>Criminal Code 2002, Drugs of Dependence Act 1989</i>	

Chemical Regulators by Jurisdiction

Northern Territory			
Department of Health	Drugs and Poisons	<i>Poisons and Dangerous Drugs Act</i>	
NT WorkSafe	OHS	<i>Work Health Act</i>	
	Dangerous Goods	<i>Dangerous Goods Act</i>	
Department of the Environment and Water Resources	Hazardous Waste	<i>Hazardous Waste Act</i>	The main purpose of the Hazardous Waste Act ('the Act') is to regulate the export and import of hazardous waste. In 1996, the Act was amended to include wastes that possess financial value, usually destined for recycling and recovery operations.
	Environment Protection	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	