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# Chemicals and Plastics Leadership Group

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Chemicals and Plastics Leadership Group  
PO Box 211  
Richmond Vic 3121

Mr Gary Banks  
Chair  
Regulation Taskforce  
PO Box 282  
BELCONNEN ACT 2616

Dear Mr Banks

The Chemicals and Plastics Leadership Group (CPLG) is the leading industry-based taskforce representing the industrial, agricultural, domestic and specialty chemicals and paint industries and their respective industry associations.

The CPLG was initially appointed by Industry Minister Macfarlane in December 2002 for a two year period to oversight the implementation of the Government's response to the industry's Action Agenda Report *Underpinning Australia's Industrial Growth*.

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

- investment
- regulatory reform
- a skilled workforce
- innovation

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

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

The CPLG has valued the opportunity to work closely with the Australian Government through Minister Macfarlane and his colleagues on the development and subsequent implementation of the initial Chemicals and Plastics Action Agenda's recommendations.

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

While the CPLG was originally appointed for a two year period, in anticipation of the Government's response to industry's Final Report, the Minister agreed that the CPLG should

continue its work in providing leadership for the chemicals sector and working with the Australian Government to ensure that its response to the Final Report, when available, is fully implemented.

The CPLG is therefore pleased to make this submission to the Regulation Taskforce on the outstanding regulatory issues and priorities for reform to assist the nation's chemicals and plastics industry.

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

In addition, we particularly welcome the Australian Government's decision in this year's Budget to remove the 3% duty on tariff concession orders.

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

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

The **CPLG's priorities for regulation reform** as outlined in the Final Report and which are still 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.

While we've welcomed the in-principle support for the recommended comprehensive review by the Productivity Commission of the regulatory frameworks governing the chemicals sector, we are disappointed and frustrated by the now lengthy delay in provision of the Government's formal response to the CPLG's Final Report, which it has been considering for some 14 months.

The CPLG recognises that the Chemicals and Plastics Action Agenda provided a significant catalyst for the industry to collectively focus on identifying and realising its own potential. The

Australian Government looked to industry to provide leadership for much of this work and agreed to the establishment and ongoing recognition of the CPLG.

Industry is committed to ensure that the benefits which were initially delivered by the Chemicals and Plastics Action Agenda are not lost and is committed to continue to work as one to provide continued leadership and recommendations for reform.

***The CPLG seeks the Regulation Taskforce's support for the immediate implementation of the comprehensive regulatory review of the chemicals sector with a view to enhancing its efficiency and competitiveness.***

Also provided for the benefit of the Regulation Taskforce is a report commissioned by the Australian Chamber of Commerce and Industry (ACCI), ACCORD (formerly the Australian Consumer and Specialty Products Association [ACSPA]), the Australian Paint and Manufacturing Federation (APMF) and the Plastics and Chemicals Industry Association (PACIA) which considers a national policy framework for chemicals and plastics. As identified in our 2001 Report to Government, greater national uniformity is essential to the long term viability and competitiveness of our industry. The Allen Consulting Report, *Alternative Models for the Regulation of the Chemicals and Plastics Industry* explores these issues and how they might be developed to improve the operating environment for the chemicals and plastics industry. A copy of the Report is at Attachment 2.

The chemical industry is vital to Australia's economic wellbeing and is an integral part of Australian manufacturing. Initial findings from a study underway in Victoria show that the chemical industry is strategically more significant than tourism and mining, and not far behind the food sector. Each of these other sectors receives considerably more government support and public recognition for its economic contribution than does the chemicals and plastics sector.

It is vital that the Australian regulatory system be brought into line with existing Government policies and to immediately progress the regulatory reforms and recommendations initiated through the Chemicals and Plastics Action Agenda for the industry to maximise its potential and achieve its vision.

I trust you will find these comments of value to the work of the Taskforce.

Sincerely



Noel Williams  
**CHAIR**  
Chemicals and Plastics Leadership Group

November 2005

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

The Regulatory Reform Working Group was responsible for the implementation of the Action Agenda Recommendations 1 through 10 and provided ongoing advice to the CPLG on any additional activities to achieve the industry's goal of a revised and streamlined regulatory system that is more timely, accountable and cost-effective, and that is consistent with national and international best practice, particularly enabling the rapid use of overseas technology to facilitate the growth of chemicals and plastics manufacturing opportunities.

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

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

### Regulatory Reform Working Group Members:

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

## CPLG Response to Recommendations 1-10

### Recommendation 1

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

### Government response

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

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## Background – The COAG Principles and Guidelines

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

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

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

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

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

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

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

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

**Status**

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

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

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

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

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

- placement of specific individuals in agencies to champion the RIS process; and

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

- development of sector specific protocols with ORR.

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

### **Further steps**

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

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

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

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

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

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

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

Particular attention could be given to areas where regulatory requirements, including administrative arrangements, unnecessarily burden business, for example through poor drafting, duplication, unnecessarily rigid requirements or the interaction with other regulatory requirements. Reviews could also consider whether the regulations are being administered in [a] way that minimises the compliance burden. (p. 117)

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

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

The CPLG also welcomes COAG's recent explicit expansion of the COAG Principles and Guidelines to national standard setting bodies, especially ministerial councils. Standards established by Standards Australia are often written into regulations and become prescriptive

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

requirements for specific products, activities and/or industry sectors. Changes in such standards can have significant economic and administrative impacts and should be subject to proper impact assessment consistent with other forms of regulation and quasi-regulation.

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

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

### **Recommendation 2**

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

### **Government response**

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

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### **Status**

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

### **Further steps**

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

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

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

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

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

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

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

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

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

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

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

### **Recommendation 3**

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

#### **Government response**

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

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#### **Status**

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

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

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

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

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



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

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

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

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

### **Further steps**

As noted above, progress to date with best practice identification and implementation has been *ad hoc* and piecemeal. The CPLG acknowledges that agencies face daily operational demands and challenges that make it difficult to give sufficient attention to identifying best practice from counterpart agencies.

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

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

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

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

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

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

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

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

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

#### **Recommendation 4**

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

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

#### **Government response**

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

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

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

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#### **Status**

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

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

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

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

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

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

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

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

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

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

### **Further steps**

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

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

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

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

#### **Recommendation 5**

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

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

#### **Government response**

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

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#### **Status**

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

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

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

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

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

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

### **Further steps**

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

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

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

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

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

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

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

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

### **Recommendation 6**

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

### **Government response**

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

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

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### **Status**

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

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

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

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

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

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

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

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

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

#### **Further steps**

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

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

#### **Recommendation 7**

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

#### **Government response**

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

---

#### **Status**

Refer to Recommendation 6.

#### **Further steps**

Refer to Recommendation 6.

#### **Recommendation 8**

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

#### **Government response**

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

---

#### **Status**

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

#### **Further steps**

Refer to Recommendation 6.

#### **Recommendation 9**

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

#### **Government response**

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

---

## Status

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

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

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

## Further steps

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

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

## Recommendation 10

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

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

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

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

## Government response

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

## Status

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







## STATEMENT RE THE ALLEN CONSULTING GROUP'S REPORT

### "ALTERNATIVE MODELS FOR THE REGULATION OF THE CHEMICALS AND PLASTICS INDUSTRY"

The Australian Chamber of Commerce and Industry (ACCI), the Australian Consumer & Specialty Products Association (ACSPA), the Australian Paint Manufacturers' Federation (APMF) and the Plastics and Chemicals Industry Association (PACIA) are committed to the goals of the Chemicals and Plastics Action Agenda.

The Action Agenda seeks significant regulatory reform, its goal being to achieve a revised and streamlined regulatory system that is more timely, accountable and cost-effective and that is consistent with national and international best practice, particularly enabling the use of overseas technology to facilitate growth of the chemicals and plastics manufacturing opportunities. The Action Agenda recommits the Government and regulatory system to the Council of Australian Governments (COAG) Principles and Guidelines for good regulation.

Further, the Action Agenda recommends the development of alternative models for the establishment of a National Chemicals Policy. To facilitate this discussion, ACCI, ACSPA, APMF and PACIA commissioned The Allen Consulting Group to examine alternative models which could be used for chemical industry regulation - one in which the framework has policy driving regulation and a central focus with uniform adoption by the States/Territories.

In the brief to the consultant, the industry Associations suggested that the options to be considered may have been successfully used in alternative industries in Australia, in specific sectors, or may have been successful in foreign jurisdictions and may be based on a singular legislative platform or that of a co-ordinated approach utilising different pieces/layers of legislation. The scope thereby ensuring all options could be identified.

The attached report and its recommendations are currently being considered by ACCI, ACSPA, APMF and PACIA. They have also been forwarded to the Chemicals and Plastics Leadership Group (CPLG - the group charged with the oversight of the implementation of the Action Agenda's recommendations).

It should be noted that the report represents the views of The Allen Consulting Group and not necessarily those of the commissioning bodies.

5<sup>th</sup> August, 2003

END

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June 2003

Report Prepared for:  
The Plastics and Chemicals Industry Association  
The Australian Consumer and Specialty Products Association  
The Australian Paint Manufacturers Federation  
The Australian Chamber of Commerce and Industry

# Alternative Models for Regulation of the Chemicals and Plastics Industry

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## Abbreviations

ABCB	Australian Building Codes Board
ACCI	Australian Chamber of Commerce and Industry
ACSPA	Australian Consumer and Specialty Products Association
APMF	Australian Paint Manufacturers Federation
AUBRCC	Australian Uniform Building Regulations Coordination Council
CPLG	Chemicals and Leadership Group
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
EPA	Environment Protection Authority
EPHC	Environment Protection and Heritage Council
FSANZ	Food Standards Australia and New Zealand
HSRF	Hazardous Substances Regulatory Framework
LRCC	Low Regulatory Concern Chemicals
MSDS	Material Safety Data Sheets
NCP	National Competition Policy
NICNAS	National Industrial Chemicals Notification and Assessment Scheme
NOHSC	National Occupational Health and Safety Commission
OHS	Occupational Health and Safety
NRA	National Registration Authority
PACIA	Plastics and Chemicals Industry Association
R & D	Research and Development
RIS	Regulatory Impacts Statement
TGA	Therapeutic Goods Administration

## Preface

The Plastics and Chemicals Industries Association (PACIA), the Australian Consumer and Specialty Products Association (ACSPA), the Australian Paint Manufacturers Federation (APMF), and the Australian Chamber of Commerce and Industry (ACCI) have commissioned The Allen Consulting Group to provide independent regulatory advice on alternative models for the regulation of the plastics and chemical industry.

This report draws on our existing knowledge and represents a scoping analysis of the options for regulation of the chemicals and plastics industry

The report represents the views of The Allen Consulting Group and not necessarily those of the commissioning bodies.

## Executive Summary

*The Chemicals and Plastics Industry is subject to wide-ranging and complex regulatory intervention.*

*Reform of the chemicals and plastics industry has begun but progress lacks coordination...*

*... and there is no forum to consider regulation from a whole of government perspective.*

*In the absence of a national framework, regulation can become fragmented, result in overlap, or conflict with existing legislation.*

*Coordination will provide a range of benefits ...*

The chemicals and plastics industry is subject to wide-ranging and complex regulatory intervention by a number of Commonwealth and State Government regulatory agencies. A study by Environment Australia suggested that the industry was directly affected by 144 separate pieces of Commonwealth and State Government legislation.

Overtime, a number of regulatory agencies have engaged in processes to reform their approach to regulation with implications for the chemicals and plastics industry. However, with the exception of the *Action Agenda*, the majority of reform activities have tended to be program specific, agency specific, or policy specific, that is, most reforms have been piecemeal.

Currently, there is no forum in which State or Commonwealth Governments can consider the regulation of the chemicals and plastics industry from a whole-of-government perspective, nor is there a broad framework or national policy specifically tailored to the chemicals and plastics industry to guide regulators of the industry.

In the absence of such a framework for chemicals and plastics, changes to chemical regulations can easily become fragmented, result in overlap, or conflict with existing legislation. This concern is exacerbated by the numerous reform and review activities that are currently taking place quite independently of each other – such efforts are not guided by a framework or broad national approach to the regulation of the industry.

### ***The Benefits of Better Regulatory Coordination and Reform***

Given the size of the chemicals and plastics industry and its importance to the Australian economy, better coordination of regulation and reform activities is likely to provide significant benefits to industry, consumers, and the Australian economy and community more broadly. The sources of the benefits for the main stakeholders are shown in Table ES1.

Table: ES1

#### **BENEFITS OF BETTER REGULATORY COORDINATION AND REFORM**

<b>Stakeholder</b>	<b>Impact</b>
Government	<ul style="list-style-type: none"> <li>- decreased administration costs</li> <li>- increased access to knowledge and expertise</li> <li>- increased ability to respond to challenges</li> <li>- greater transparency</li> </ul>
Industry	<ul style="list-style-type: none"> <li>- decreased compliance costs</li> <li>- increased certainty</li> <li>- decreased risks to industry</li> <li>- leveller playing field</li> <li>- greater economies of scale</li> <li>- increased opportunities for innovation</li> </ul>
Consumers	<ul style="list-style-type: none"> <li>- decreased price</li> <li>- increased availability and choice</li> <li>- increased safety</li> <li>- increased quality</li> </ul>



### *A Coordinated Approach to Regulatory Reform*

*There is a clear map for influencing strategic policy shifts ...*

There is a number of broad steps to develop a coordinated approach to regulation reform. These steps reflect well-accepted pathways to strategic policy shifts in Australia. They are:

- Step One — take responsibility and agree on a vision;
- Step Two — establish direction;
- Step Three — establish guiding principles;
- Step Four — develop new roles, activities and institutions;
- Step Five — encourage change;
- Step Six — assess performance; and
- Step Seven — review and revise.

*... but the plastics industry has stalled part-way through ...*

While significant progress has been made in Steps One, Two and Three, there is a distinct need to address the myriad of piecemeal approaches to regulatory reform currently being undertaken. There is evidence that the lack of coordination is creating distortions in the efficiency and effectiveness of the reform process and imposing costs on other stakeholders, as highlighted by the findings of the Australian Chemicals and Plastics Industry Action Agenda (here in called the *Action Agenda*).<sup>1</sup>

*...and there is a need to develop new roles, activities and institutions*

It is clear that, in light of the progress made in Steps One, Two and Three, current reform initiatives need to be aligned as part of a broad coordination process.

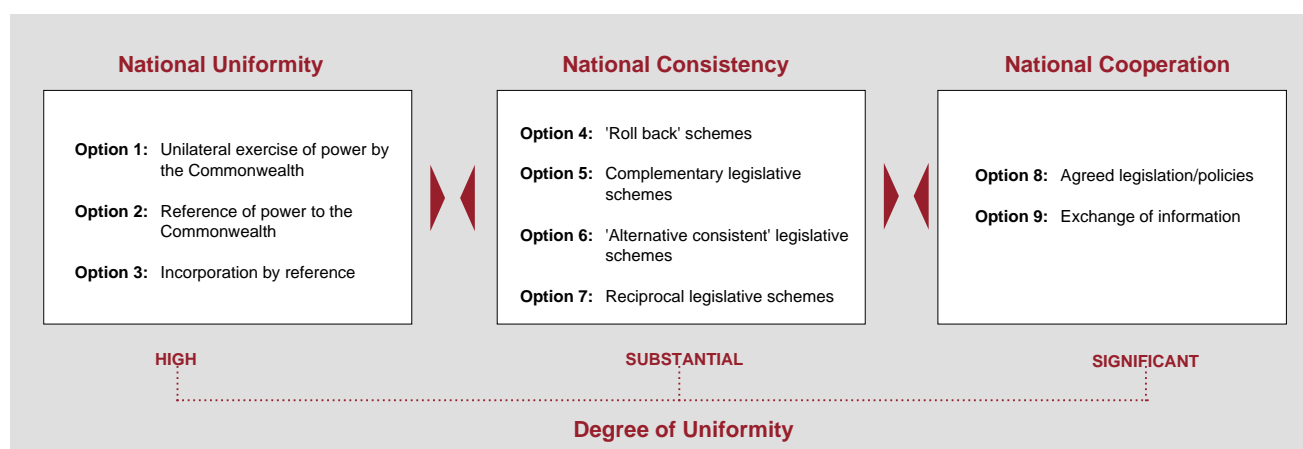
### *Options for Achieving Better Regulation*

*Three families of options have been identified.*

Three families of options have been identified to achieve better regulation of the chemicals and plastics industry. These families of options can be characterised as pursuing: ‘National Uniformity’; ‘National Consistency’; or ‘National Cooperation’. They are depicted in Figure ES1.

Figure ES1

#### ALTERNATIVE FAMILIES OF OPTIONS FOR BETTER CHEMICALS AND PLASTICS REGULATION



<sup>1</sup> The Australian Chemicals and Plastics Action Agenda (March 2001), *Underpinning Australia's Industrial Growth*.

*There is a trade-off between higher degrees of uniformity and acceptability by stakeholders.*

Assuming policy makers are convinced that powerful grounds exist for changing the status quo, the choice they must then face is the extent to which they are able to deliver ‘National Uniformity’, ‘National Consistency’, or ‘National Cooperation’. This is most likely to involve a trade-off between achieving higher degrees of uniformity of regulation across Commonwealth and State regulatory agencies and achieving the level of acceptability amongst the key stakeholders that is required to support such uniformity.

*Achieving National Uniformity is likely to be extremely difficult.*

Achieving ‘National Uniformity’ is likely to be extremely difficult and involve significant time before benefits can be delivered to industry. Furthermore, it is not clear that the Commonwealth has a head of power over chemicals and plastics that would enable it to legislate to the exclusion of the States and the likelihood of Constitutional change on this matter is remote.

*Industry and Government should consider options for National Consistency and National Cooperation.*

From a pragmatic view point, industry and government should consider options for ‘National Consistency’ and ‘National Cooperation’. To narrow down further the appropriate range of options would require a more detailed assessment of the costs and benefits associated with each.

### ***Facilitating Better Regulation***

*A number of options and combinations can be used to facilitate coordination...*

Prospective options to develop a coordinated national approach to regulation could be facilitated through a new or existing Ministerial Council, a series of Intergovernmental Agreement or through regulatory control by a Central Administration Body.

*...coordination through a commonwealth agency is likely to generate the greatest benefits.*

At present there are a number of Ministerial Councils that could coordinate the reform processes. Commonwealth agencies that have responsibilities for regulation of chemicals and plastics include the Department of Industry, Science and Resources, Department of Health and Ageing and Environment Australia. The greatest gains from coordinated regulatory reform are likely to be achieved through one of these agencies.

### ***The Way Forward***

*Establish a Chemicals and Plastics Industry Ministerial Council to provide a framework for reform.*

The Allen Consulting Group believes that the best way forward is for industry and government to consider ‘National Consistency’ and ‘National Cooperation’ approaches. This involves a three-staged process.

First, establishing a *Chemicals and Plastics Industry Ministerial Council* to develop a National Framework for the reform of chemicals and plastics regulation. The Ministerial Council would provide a forum to encourage change, assess regulatory performance, and review and revise regulation on an ongoing basis. The National Framework would include a coordinated set of national principles of regulation consistent with COAG principles of good regulation. Given that the then Commonwealth Minister for Industry, Science and Resources initiated the *Chemicals and Plastics Action Agenda*, perhaps it would be best to use an existing Ministerial Council such as the *Industry and Technology Ministerial Council*.

*Develop a series of Intergovernmental Agreements between regulatory agencies.*

Second, and within the Ministerial Council framework, a series of intergovernmental agreements could be facilitated between various regulatory agencies, eg Health Departments or State EPAs. For some regulatory areas, such as food safety, an appropriate framework already exists, but for others the Ministerial Council would be a useful forum for regulatory areas where there is a need to better coordinate chemical and plastics regulation but no national approach, eg environment or Occupational Health and Safety. These intergovernmental agreements would allow for ‘National Consistency’ to be agreed and implemented.

*Call for a National Forum to discuss industry regulation.*

Third, momentum for change could be encouraged and facilitated by holding a *National Forum* with key Commonwealth and State regulators to discuss the current regulatory burden faced by the industry, problems associated with piecemeal regulatory reform, outline a draft of a National Framework for the industry, and discuss the benefits and costs of better of coordination of regulation and regulatory reform. Key conclusions and recommendations from the *National Forum* could be provided to the Ministerial Council for consideration and further action. Importantly, participation in the *National Forum* should include industry representation, which could be coordinated through the *Chemicals and Plastics Leadership Group*.

*Augment the Action Agenda.*

In support of the *National Forum* and to document the potential gains from desirable regulatory coordination and reform, industry and/or government could consider augmenting the work of the *Action Agenda*, by initiating work to assess:

- the indirect as well as direct benefits to the economy from the chemicals and plastics industry thereby providing a more complete picture of the role this industry plays in the Australian economy;
- the implications for the future of the chemicals and plastics industry should little or no progress be made in addressing regulatory coordination and reform; and
- the implications for the future of the chemicals and plastics industry should substantial progress be made in addressing regulatory coordination and reform.

## Chapter One

# Australia's Chemicals and Plastics Industry

*As background to this report, this chapter provides an overview of the chemicals and plastics industry and maps out the current regulatory environment including current reforms.*

## 1.1 The Australian Chemicals and Plastics Industry

The chemicals and plastics industry is a diverse manufacturing sector comprising base and feedstock products, specialty and refined chemicals, intermediate goods and components through to consumer products. As is the case with most manufacturing industries, the demand for chemicals and plastics in the Australian economy is met by a mixture of local production and imports. The chemicals and plastics industry also exports a proportion of its output.

For the purposes of this report, the definition of the chemicals and plastics industry is that used by the *Action Agenda* Steering Group.<sup>2</sup>

### 1.1.1 Industry Linkages

The products of the chemicals and plastics industry are integral to the commercial well-being and viability of a wide range of other sectors of the Australia economy. As illustrated in the *Action Agenda*, there are substantial linkages between the chemicals and plastics industry and other industries.

### 1.1.2 The Economic Contribution of the Australian Chemicals and Plastics Industry

The Australian chemicals and plastics industry is a key contributor to the economic prosperity of Australia. While data on the chemicals and plastics industry has traditionally focused around manufacturing of chemicals and plastics, it is important to recognise that the industry makes significant contributions to a number of other industries.

#### *Economic Impact*

In 2000-01 Australia's chemicals and plastics industry contributed \$6.87 billion in industry value added. This represented over 9.5 per cent of manufacturing industry value added. As shown in Figure 1.1, the contribution by Australia's chemicals and plastics industry to total manufacturing industry value added has declined over the last few years, falling from just over ten percent in 1997-98 to 9.5 percent in 2000-01. This reflects the fact that

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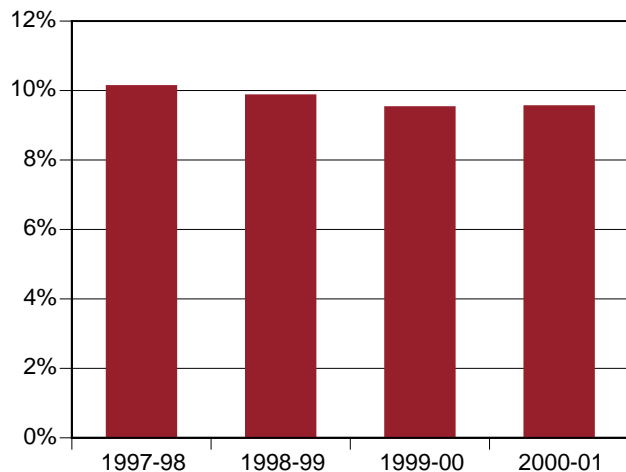
<sup>2</sup> That is, the industry is defined by the following Australian and New Zealand Standard Industrial Classification (ANZSIC) codes:

- 253 - Basic Chemical Manufacturing;
- 254 - Other Chemical Manufacturing (less 2543 Pharmaceuticals);
- 255 Rubber Product Manufacturing; and
- 256 Plastics Product Manufacturing.

from 1997-98 to 2000-01, industry value added for the chemicals and plastics industry was static, while manufacturing as a whole recorded a growth rate of over six percent for the period.

Figure 1.1

**CHEMICALS AND PLASTICS INDUSTRY'S SHARE OF MANUFACTURING INDUSTRY VALUE ADDED**



Source: Action Agenda: Key Statistics October 2002

As reported in the *Action Agenda* the chemicals and plastics manufacturing industry:

- has an annual turnover of \$22 billion, or a little less than ten percent of manufacturing industry as a whole;
- employs over 77,000 people or just over eight percent of manufacturing industry as a whole, which reflects its above average capital intensity;
- undertakes around \$200 million in research and development activities annually;
- has exports of \$2.8 billion, which makes it one of the leading manufacturing sectors; and
- imports of \$11.3 billion of goods and services annually, averaging just under 12 percent of the manufacturing sector's import bill.

Also, the industry is made up of a large number of small to medium sized enterprises – over 95 percent of the industry – which generates around 30 percent of industry value added.<sup>3</sup>

The industry plays an important role in enabling production by other parts of manufacturing industry and the economy more generally. About 70 percent of its outputs used as inputs by a number of other sectors including the automotive, packaging, medical, building and construction, agriculture and mining sectors. In addition, the import and export, supply, transport and sale of associated chemicals and plastics and other manufactured items which use these products further increases the economic significance of the industry.

<sup>3</sup> Taken from Australian Bureau of Statistics summary of operations by detailed employment size of selected ANZSIC Groups 253, 254, 255, 256, and 25 for 2000-01.

## 1.2 Regulatory Reform of the Chemicals Industry

### 1.2.1 The Action Agenda

The regulatory approach to the management of chemicals has changed significantly over the past decade, reflecting government priorities for a more consistent national approach to regulation and enhanced protection for employees, the public and the environment. A critical aspect of reform in these areas has been a series of reviews and assessments by Government, including the *Action Agenda*. The *Action Agenda*, completed in March 2001, identified impediments facing the industry and proposes an action plan to resolve these impediments.

The *Action Agenda* recommended significant regulatory reform, with one of its goals being a revised and streamlined regulatory system that is more timely, accountable and cost-effective and that is consistent with national and international best practice, particularly enabling the rapid use of overseas technology to facilitate growth of the chemicals and plastics manufacturing opportunities.

The *Action Agenda* called for regulatory approaches to be brought into line with COAG principles of good regulation. The key recommendations for regulatory reform are outlined in Box 1.1.

Box 1.1

#### KEY RECOMMENDATIONS FOR REGULATORY REFORM

Regulatory approaches to be brought into line with the 1997 Council of Australian Governments (COAG) principles and guidelines.

Annual auditing of all agencies regulating the chemicals and plastics industry to ensure they comply with the 1997 COAG principles.

Regulatory bodies to:

- Recognise data from overseas sources that test to accepted international standards;
- Recognise chemical approvals from specified countries including substances "grandfathered" in those countries; and
- Ensure consistency of international definitions/classifications.

Development of a National Chemicals Policy by Commonwealth, State and Territory governments, industry, unions, environmental organisations and consumer groups.

Subject regulatory agencies that use cost recovery to enforceable productivity targets.

Government funding of the public good aspects of regulatory agencies' activities.

Open up regulatory assessments to alternative service providers.

Source: Action Agenda for Chemicals and Plastics Industry

### 1.2.2 Other Regulatory Reform Activities

As a consequence of, or in parallel to, the *Action Agenda*, various Government agencies have established a number of strategic reviews, initiatives, working committees, advisory committees and consultative committees to provide input to, or advise on, chemicals regulation in

Australia. Some of the more recent policy initiatives are given below. These initiatives are additional to earlier reviews such as the work of the:

- Small Business Deregulation Taskforce;
- National Competition Policy review of the NRA; and
- work programme of the Office of Regulation Review.

#### *The Chemicals and Plastics Leadership Group*

In response to the *Action Agenda*, the Minister for Industry, Tourism and Resources, the Hon Ian McFarlane MP, announced the formation of a Chemicals and Plastics Leadership Group (CPLG) to steer the *Action Agenda* over a two year period. This Group is now considering the Government's response to the *Action Agenda* released in October 2002.

#### *The Low Regulatory Concern Chemicals Task Force*

The Low Regulatory Concern Chemicals (LRCC) Task Force has been established to investigate reform of such chemicals. The Task Force aims to introduce flexibility into the industrial chemicals assessment process to allow for fast tracking the introduction of previously assessed new chemicals onto the Australian market without compromising public health or the environment. The Task Force, chaired by the Director of the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), is to report its findings to the Parliamentary Secretary to the Minister for Health and Ageing in June 2003.

#### *The National Taskforce on Chemical Management and Regulation*

The National Taskforce on Chemical Management and Regulation was established in May 2002 by the Environment Protection and Heritage Council (EPHC) of Ministers. The EPHC Ministers have asked the Taskforce to scope out the issues associated with, and the need for a national approach to; ecologically sustainable chemical management and regulation. The Taskforce, chaired by the Director of the NSW Environmental Protection Authority (EPA), is due to provide its scoping report to the Environment Protection and Heritage Council of Ministers in April 2003.

#### *Review of National OH&S Regulation*

On 13 March 2003, the Parliamentary Secretary to the Treasurer referred to the Productivity Commission a review of workers' compensation and occupational health and safety frameworks in Australia. This review will examine whether the establishment of a national framework for occupational health and safety regulation can deliver better outcomes for business, employees, and the general community. As the manufacture and use of chemicals and plastics are governed in part by OHS regulations, the Commission's review has implications for the overall regulatory framework of the industry.

#### *Hazardous Substances Regulatory Framework*

In preparation for a more comprehensive review, of the Hazardous Substances Regulatory Framework (HSRF) by 2004, the National Occupational Health and Safety Commission (NOHSC) released a draft

report in March 2003 examining the strategic issues for hazardous substances regulations.

In undertaking the preliminary review a number of additional research projects were considered to be needed to complete the broader review:

- a survey of companies involved in chemical manufacture, use and sale;
- a detailed comparison of each State and Territory's Dangerous Goods legislative clauses and Hazardous Substances legislative clauses;
- an examination of each State and Territory's legislative adoption process;
- an examination of how the Environmental Risk Management Authority of New Zealand have approached a nationally integrated framework, and how they have identified cross-agency issues; and
- an examination of the government's role in enforcement and a benchmarking study of jurisdictional resources, etc.

### **1.3 What is Wrong with the Current Approach?**

#### ***1.3.1 The Regulatory Framework is Complex***

The current regulatory system governing the chemicals and plastics industry is complex. Regulatory oversight covers assessment and registration, food standards, transport, storage and handling, control of use, occupational health and safety, and waste and recycling requirements. Responsibility for these areas come under Commonwealth Departments and Agencies like NOSHC, Environment Australia, FSANZ, Department of Health and Ageing, TGA, NICNAS, NRA and State or Territory Departments or Agencies like EPAs, Health, Industry, or Environment Departments, with some Local Governments responsible for enforcement and monitoring of selected regulation. This complexity is highlighted in Figure 1.1 below.



Figure 1.1

**REGULATORY OVERSIGHT OF THE CHEMICALS AND PLASTICS INDUSTRY**

Regulatory Area	Regulatory Agency		
	National	State	Local Government
<b>Advice</b>	National Occupational Health and Safety Commission; Environment Australia; Agriculture, Fisheries, Forestry Australia; Department of Health and Ageing.	Health, Environment Protection Agencies, Work Cover, Industry.	
<b>Assessment and/or Registration</b>	Therapeutic Goods Administration; National Industrial Chemicals Notification & Assessment Scheme; National Registration Authority; Food Standards Australia New Zealand.		
<b>Poisons Schedule</b>	Drugs and Poisons Scheduling Committee.	Health Departments — implement scheduling recommendations through State legislation.	
<b>Food Standards</b>		States adopt Food Standards Code and monitor food quality	
<b>Transport Storage and Workplace Safety</b>	Civil Aviation Safety Authority; National Road Transport Commission; National Occupational Health and Safety Commission; Australian Marine Safety Authority.	States implement National Occupational Health and Safety Commission guidelines through State-based legislation.	
<b>Control of Use</b>		State responsibility in either Health or Environment Departments.	Some enforcement in some States.
<b>Control of Impact</b>	Food Standards Australia New Zealand; National Registration Authority.	Set emission standards, manage incidents, impose limits, monitor and enforce regulations.	Some enforcement and monitoring of environment and food regulations.
<b>Recover, Recycle and Dispose</b>		Classify waste, licensing, waste collection.	Enforcement and operation of some waste facilities.

Source: EPHC National Chemicals Taskforce, Provided by PACIA

In November 1998, Environment Australia released a report that identified 144 separate pieces of legislation from Commonwealth or State Governments impacting on the chemicals and plastics industry.<sup>4</sup> Inevitably, lack of uniformity of regulation across the jurisdictions and the number and scope of legislation impedes efficient and effective industry compliance. This issue is compounded by the fact regulatory burden falls disproportionately on small to medium sized enterprises and over 95 percent of the companies operating in the chemicals and plastics industry employ less than 100 people.

<sup>4</sup> Environment Australia (1998), *National Profile of Chemicals Management Infrastructure in Australia*.

The *Action Agenda* considered that this issue has led to departures from COAG principles on good regulation, and resulted in:

- inefficient regulatory systems imposing inappropriate costs;
- systematic inflexibility and complexity impeding innovation and growth; and
- inconsistent treatment and overlapping responsibilities between regulatory agencies and across jurisdictions.<sup>5</sup>

More recently, the Royal Commission into the building and construction industry reached a similar conclusion in relation to occupational health and safety regulation. While the following quote from the Royal Commission relates specifically to the building industry, it is, nonetheless, relevant as an example of general concern about regulatory coordination and uniformity impacting on the chemical and plastics industry:

“There is at present a fragmented, disjointed and uncoordinated system of occupational health and safety law and regulation in Australia which, when applied to a national industry such as the building and construction industry, is inequitable, wasteful and inefficient.”

Royal Commission into the Building and Construction Industry (Feb 2003).

### ***1.3.2 Regulatory Reforms Tends to be Piecemeal***

With the exception of the *Action Agenda*, the majority of reform activities have tended to be:

- program specific — such as the LRCC review;
- agency specific — such as the current review by EHPC; or
- policy specific — such as NCP reviews of individual legislative instruments.

While Section 1.2.3 provided examples of current reform activities, none is being undertaken within a broad framework or national policy specifically tailored to the chemicals and plastics industry.

While reform efforts are to be commended, the scope of regulation governing the chemicals and plastics industry requires that governments consider the regulatory framework on a holistic basis. Piecemeal review runs the risk of introducing inefficiencies and unnecessary burdens on industry and the community more broadly. In the absence of a national chemical industry policy, changes to chemical regulations can easily become fragmented, result in overlap, or conflict with existing legislation.

Better coordination is likely to result in considerable benefits, as outlined in Table 1.2 below. While this paper has not quantified these benefits, it is quite clear from the size of the industry and its relative importance to the Australian economy that there are significant payoffs from better coordination of regulatory reform efforts.

<sup>5</sup> The *Action Agenda* p 27.

Table 1.2

**BENEFITS OF BETTER REGULATORY COORDINATION AND REFORM**

Stakeholder	Impact
Government	<ul style="list-style-type: none"> <li>- decreased administration costs</li> <li>- increased access to knowledge and expertise</li> <li>- increased ability to respond to challenges</li> <li>- greater transparency</li> </ul>
Industry	<ul style="list-style-type: none"> <li>- decreased compliance costs</li> <li>- increased certainty</li> <li>- decreased risks to industry</li> <li>- leveller playing field</li> <li>- greater economies of scale</li> <li>- increased opportunities for innovation</li> </ul>
Consumers	<ul style="list-style-type: none"> <li>- decreased price</li> <li>- increased availability and choice</li> <li>- increased safety</li> <li>- increased quality</li> </ul>

The remainder of this report examines a framework in which better coordination can be achieved.

## Chapter Two

# A Coordinated Approach to Regulatory Reform

*The previous chapter highlighted that the current regulatory framework is disjointed, with reform efforts undertaken in the absence of a national framework. This chapter outlines a seven-step process within which to consider and develop a national framework.*

## 2.1 A Process for Change

There are a number of broad steps that need to be undertaken to develop and implement a national regulatory framework for the chemicals and plastics industry. These steps reflect well-accepted pathways to strategic policy shifts in Australia, with the regulatory framework for the chemicals and plastics industry some way progressed along this pathway.<sup>6</sup> The steps are:

- take responsibility and agree on a vision;
- establish direction;
- establish guiding principles;
- develop new roles, activities and institutions;
- encourage change;
- assess performance; and
- review and revise.

## 2.2 The Seven Steps

### 2.1.1 Step One — Take Responsibility and Agree on a Vision

It is essential that the Commonwealth, State, Territory and Local Governments, industry and the community accept two points:

- that we need a coordinated national regulatory framework to improve the efficiency, competitiveness, environmental sustainability etc of the chemicals and plastics industry; and
- that there is a joint responsibility for the development and application of the strategy.

In preparing the *Chemicals and Plastics Industry Action Agenda* key stakeholders agreed on a vision (as shown in Box 2.1), which identifies what stakeholders consider is the desirable broad direction for the industry. It also sets a target for where the industry wants to be by the year 2010.

<sup>6</sup> See for example, The Allen Consulting Group, 2002, *Recapitalising Australia's Cities: A Strategy in the National Interest*. Discussion Paper for the Property Council of Australia, p.58.

Box 2.1

**THE CHEMICALS AND PLASTICS INDUSTRY VISION AND GOALS****VISION**

*“To be a sustainable, dynamic and innovative industry underpinning Australia’s industrial growth capturing significant domestic and export markets.”*

**GOALS**

- A. Being recognised by the community and Governments as a critical element of Australia’s economy, supporting a wide range of manufacturing and service industries.
- B. Maximising industry growth by:
- increasing the value adding capabilities of the existing Australian chemicals and plastics industry. A key element to this will be ensuring that the decline in re-investment is halted and reversed; and
  - using the competitive advantage provided by Australia’s ample resource and energy base as a springboard for growth, particularly in exports.
- C. A revised and streamlined regulatory system that is more timely, accountable and cost-effective and that is consistent with national and international best practice, particularly enabling the rapid use of overseas technology to facilitate growth of chemicals and plastics manufacturing.
- D. Expanding and strengthening industry linkages, including with:
- the automotive industry (export and domestic);
  - Australia’s food export industry;
  - the medical and bioprocessing industries;
  - the mining and mineral processing industries;
  - building and allied industries.
- E. Increasing the level of industry R&D through:
- building alliances with the public sector research base; and
  - strengthening the incentives to conduct R&D in Australia.
- F. Developing a highly skilled, well-qualified and flexible workforce.
- G. Being recognised by the community and Governments for contributing to Australia’s quality of life through environmentally, socially and economically responsible practices.

Source: Chemicals and Plastics Action Agenda Steering Group, *Underpinning Australia’s Industrial Growth: Report to Government*, March 2001, p.3

**2.1.2 Step Two — Establish Direction**

Once the vision has been established it is necessary to establish an appropriate direction for the industry. Three elements that suggest themselves are:

- a mapping of the current situation and outlook;
- the identification of a more favourable position; and
- a consideration of how to achieve progress towards the favourable position.

The Chemicals and Plastics Action Agenda Plan *Underpinning Australia’s Industrial Growth* has gone a long way to addressing these matters, with the Steering Committee making ten key regulatory reform recommendations, outlined in Box 2.2.

Box 2.2

**KEY ACTION AGENDA RECOMMENDATIONS**

Recommendations included:

- Regulatory approaches to be brought into lines with the 1997 COAG principles and guidelines.
- Annual auditing of all agencies regulating the chemicals and plastics industry to ensure they comply with the COAG guidelines.
- regulatory bodies to:
  - recognise data from overseas sources that test to accepted international standards;
  - recognise chemical approvals from specified countries including substances “grandfathered” in those countries; and
  - ensure consistency of international definitions/classifications.
- Development of a national Chemicals Policy by Commonwealth, State and Territory governments, industry, unions, environmental organisations and consumer groups.
- Subject regulatory agencies that use cost recovery to enforceable productivity targets.
- Government funding of the public good aspects of regulatory agencies’ activities.
- Open up regulatory assessments to alternative service providers.
- The Government to involve industry from the inception to the implementation phase of greenhouse gas abatement policies and strategies that impact on industry.
- Only implement a mandatory domestic emissions trading scheme if all developed countries ratify the Kyoto Protocol and there is an established international emissions trading regime.
- Avoid greenhouse gas abatement policies that would distort investment decisions.

Source: Chemicals and Plastics Action Agenda Steering Group, *Underpinning Australia’s Industrial Growth: Report to Government*, March 2001.

**2.1.3 Step Three — Establish Guiding Principles**

It is important to establish guiding principles for reform to promote consistency and coherence towards a national vision.

In the Government’s response to the *Action Agenda*, the Commonwealth reaffirmed its commitment to reducing unnecessary regulation and ensuring that all departments and agencies strictly adhere to the *COAG Principles and Guidelines*.

**2.1.4 Step Four — Develop New Roles, Activities and Institutions**

Coordinating industry regulation will involve recommending new roles and integrating current initiatives into the regulatory reform process and the proposed framework. As shown in Section 1.2.3, there are a number of current reform initiatives, all of which are being run by different agencies. These include the:

- *Chemicals and Plastics Leadership Group* — Department of Industry, Tourism and Resources;
- *National Taskforce on Chemical Management and Regulation* — Environment Protection and Heritage Council;

- *Low Regulatory Concern Chemicals Task Force* — Health and Ageing; and
- review of the *Hazardous Substances Regulatory Framework* — National Occupational Health and Safety Commission.

The main thrust of the approach is that, to be effective and shape well aligned outcomes, a coordinated national regulatory framework needs to link strategies with legislative and policy reviews and Action Agenda priorities.

While there is a number of concurrent initiatives being undertaken by various government agencies, industry groups and other stakeholders, these initiatives have tended to be piece-meal and not guided by a national policy specific to the chemicals and plastics industry.

### **2.1.5 Step Five — Encourage Change**

Financial resources will be required to achieved change in the public interest. It is needed as a catalyst where a lack of resources has placed limitations on the ability to undertake reform. More importantly, funding can also be a powerful motivator, particularly where there is a reluctance to change.<sup>7</sup>

At this stage it is not clear how much, when, or whether such funding has been made available or will need to be made available. Those questions are perhaps better answered further down the track when key stakeholders have agreed on the most appropriate approach to tackle the problems that have been identified.

### **2.1.6 Step Six — Assess Performance**

Governments today demand a rigorous process to assess performance of activities involving public resources.

Under the new outputs and outcomes frameworks public sector activities are expected to develop a performance management strategy that should:

- make it possible to assess the extent to which outcomes have been achieved;
- demonstrate the delivery of outputs;
- provide information about the uses of administered items that is relevant to the achievement of outcomes (including the production of outputs by third parties); and
- demonstrate the link between outputs and planned outcomes.<sup>8</sup>

The process described above is a key means of ensuring that plans and activities undertaken are subject to assessment as reform unfolds. In addition, high levels of transparency will be a central means of building and maintaining widespread support for the reform process.

<sup>7</sup> For example, to facilitate the implementation of NCP, the Commonwealth made available significant sums of money in the form of Competition Payments. These payments were provided to States and Territories on the condition that NCP and other COAG-endorsed national reforms (eg, water resource policy) were implemented.

<sup>8</sup> See Department of Finance and Administration, 1998, *Specifying Outcomes and Outputs: Implementing the Commonwealth's Accrual-based Outcomes and Outputs Framework*, Canberra, p.43.

### ***2.1.7 Step Seven — Review and Revise***

It is generally agreed that policies are likely to be less volatile where there is, amongst other things:

- consensus around the need for reform and a compelling vision;
- broad stakeholder engagement;
- transparency of process; and
- broad political support for the policy framework.

However; given that politics and policy are explicitly linked, regulatory frameworks need to be flexible enough to accommodate changes in policy. As such, the requirements for periodic reviews are a common feature of regulatory frameworks.

## **2.2 Performance to Date**

While significant progress has been made in Steps One, Two, and Three, there is a need to consider the range of specific, yet limited, approaches to regulatory reform currently being undertaken. There is evidence that lack of coordination is creating distortions in the efficiency and effectiveness of the reform process and subsequently imposing costs on other stakeholders, as was highlighted in the Action Agenda.

It is therefore essential that, in light of the progress made in Steps One, Two, and Three, the current reform initiatives be aligned in a broad coordinated process. It is likely that this may require a redefining of existing and/or developing new roles, activities and institutions.



## Chapter Three

# Options for Achieving Better Regulation

*This chapter sets out three families of options for achieving better regulation of the chemicals and plastics industry. The chapter concludes with an assessment of these options in terms of the potential for improved performance they offer and the feasibility of achieving their introduction by the Commonwealth and State Governments in a reasonable time period..*

### 3.1 Introduction

Achieving better regulation of the chemicals and plastics industry has to take account of a number of considerations. These considerations have implications for both the form regulation should take and the way change should be brought about. Important considerations include:

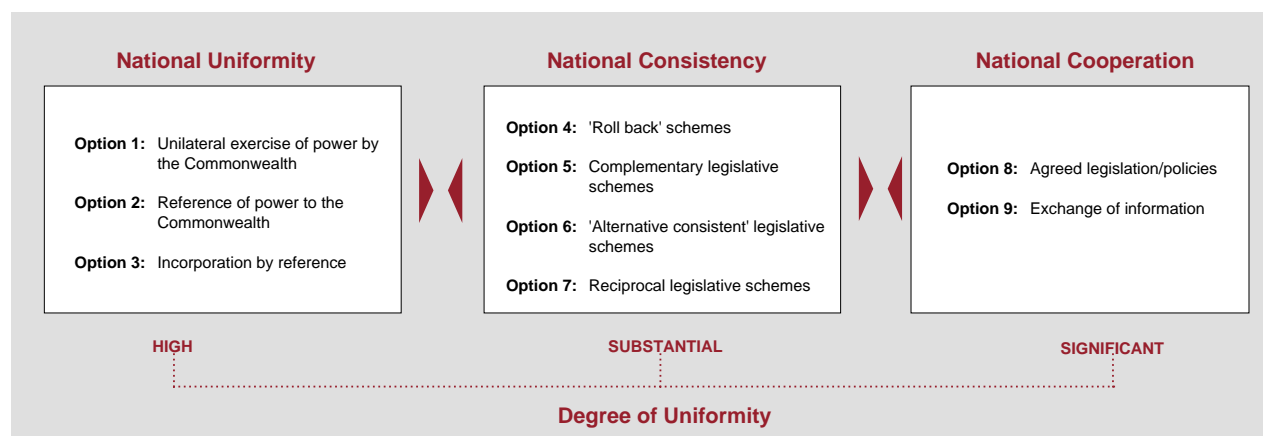
- it is almost certainly not feasible, without going through a major reform preparation process, to take a ‘clean sheet approach’ given the division of powers between the Commonwealth and States and the diverse stakeholder interests involved.
- some regulatory issues which are imposing especially high costs relative to their benefits may need to be addressed quickly, while others can be addressed over a longer time-frame, with significant opportunity for discussion and accommodation of different stakeholder interests;
- ensuring that high levels of uniformity is achieved and maintained overtime may be more important where cross-border trade or movement is involved;
- allowing participating jurisdictions control over matters such as the form of legislation, the amendment and administration process of the policy may be more important where the issue has, for example, a history of strong and distinctive State or Territory control; and
- industry diversity may mean that the regulatory environment is so complex that it limits the scope for uniformity to just core provisions or standards.

Assuming policy makers are convinced that powerful grounds exist for changing the status quo, the choice they must then face is the extent to which they are able to achieve the adoption and implementation of better approaches. We have identified three families of options available to achieve better regulation of the chemicals and plastics industry. These families of options can be characterized as pursuing:

- ‘National Uniformity’;
- ‘National Consistency’; and
- ‘National Cooperation’.

Within each of these approaches there is a range of options that could be used by government to achieve better regulatory outcomes. The three approaches and the associated options are shown in Figure 3.1.

Figure 3.1

**ALTERNATIVE FAMILIES OF OPTIONS FOR BETTER CHEMICALS AND PLASTICS REGULATION**

### 3.2 National Uniformity

The most direct ways to achieve 'National Uniformity' would be for the Commonwealth either to introduce a new Act for the regulation of chemicals and plastics covering all major regulatory areas relevant to the chemicals and plastics industry or introduce a number of Acts relating to specific regulatory areas relevant to the industry.

If this approach were feasible, it would provide the framework to ensure ongoing regulatory oversight of the chemicals and plastics industry was uniform and coordinated. This would:

- reduce the compliance and regulatory costs of industry – as they would only need to focus on Commonwealth legislation;
- reduce the regulatory costs of government – as regulatory effort would be focused through a single or small number of legislative instruments; and
- allow for an easier application of the COAG principles of good regulation – as future regulatory reform efforts would need only consider a single or a small number of legislative instruments.

Moving to 'National Uniformity', however, does represent a significant change to current regulatory responsibilities and could only be achieved if there was a clear head of power for the Commonwealth over the industry or there was agreement from the States.

The following three options provide for 'National Uniformity'.

#### ***Option 1 — Unilateral Exercise of Power by the Commonwealth***

The most complete way to achieve national uniformity is for the Commonwealth to assume legislative responsibility for the industry. This could be achieved by:

- the use of an indirect head of power in the Constitution relating to interstate and overseas trade and commerce, and/or foreign trading and financial corporations; or

- the creation of a new specific head of power by means of a change to the Constitution passed at referendum.

### ***Option 2 — Reference of Power to the Commonwealth***

Sub-section 51(37) of the *Constitution* envisages some or all of the States referring power to the Commonwealth from time to time, or adopting Commonwealth legislation on a reference of power. Once a ‘matter’ is referred to the Commonwealth, the Commonwealth is able to legislate in the same way as any other head of Commonwealth power.

The scope of the reference power is quite broad and it may be limited in duration, involve one or more States, and may be subject to conditions imposed by the States.

### ***Option 3 — Incorporation by Reference***

Incorporation by reference is also referred to as ‘template’, ‘cooperative’, ‘applied’, ‘adopted complementary’ and ‘application of laws’ legislation. Under this option, one jurisdiction enacts legislation which contains all the substantive provisions, and this legislation is then adopted and that legislation is then enacted by the other jurisdictions in the scheme.

Incorporation by reference requires considerable consultation between States and Territories to agree on a uniform piece of legislation which each State and Territory would then adopt as a whole.

## **3.2 National Consistency**

Moving to ‘National Consistency’ relies on negotiation between Commonwealth and State governments to agree on nationally acceptable regulation.

While the options for achieving ‘National Consistency’ will not guarantee national uniformity of regulation, they would provide a framework in which substantive regulatory issues and principles can be agreed, while still providing for minor derogations by jurisdictions that take account of local factors, geography, demographics, or politics in respective jurisdictions.

‘National Consistency’ could be achieved in one of four principal ways, outlined below

### ***Option 4 — ‘Roll Back’ Schemes***

‘Roll back’ schemes offer a way of achieving a level of uniformity through the establishment of minimum standards by the Commonwealth on matters over which the Commonwealth and the States have concurrent power. Such a scheme operates with respect to Native Title. The *Commonwealth Native Title Act 1993* gives States and Territories the capacity to replace rights and procedures, including the right to negotiate, available under Commonwealth legislation with alternative rights administered by the States and Territories. The Commonwealth Minister may make a determination that the State or Territory provisions comply with the relevant Commonwealth provisions.

### ***Option 5 — Complementary Legislative Schemes***

This option relies on the Commonwealth and States working together to achieve legislative coverage of a particular policy area. A typical scenario prompting such a scheme would see the Commonwealth working with the States to pass complementary legislation to nationally consistent legislation in the area of health, environment, and occupational health and safety in so far as they relate to the chemicals and plastics industry.

The Commonwealth and all participating States would pass separate but consistent pieces of legislation, although legislation need not necessarily be identical. An intergovernmental agreement is likely to be used to set out the terms and understandings on which the legislation is based.

### ***Option 6 — ‘Alternative Consistent’ Legislative Schemes***

An ‘alternative consistent’ legislative scheme is a variation of Option 3 (see above). In this version, rather than pass legislation, which applies template legislation enacted by a host jurisdiction, participating jurisdictions can pass their own legislation which can be identical to, but can also be more or less extensive than, the host legislation.

This is the approach that was adopted with respect to uniform administration of building regulations through the *Model Building Act*,<sup>9</sup> even though only partially implemented – see Box 3.2 below.

Box 3.2

#### **THE MODEL BUILDING ACT**

In 1990 the Australian Uniform Building Regulations Co-ordinating Council (AUBRCC) commissioned a project to develop a model Building Act for consideration by the States and territories. The resultant Model Building Act was formulated through a consultative process and was published by the AUBRCC in 1991.<sup>10</sup> This established the umbrella legislation under which each jurisdiction would have uniformity in terms of both technical regulations (the *Building Code of Australia 1996*) and the administrative processes with respect to building regulation. Some of the options presented were based on current practices in jurisdictions while others were considered innovations, particularly in the areas of private certification and liability limitation. The intention was that all jurisdictions would eventually adopt the legislation and that building regulations would, as a result, become uniform across Australia. Elements of the Model Building Act were adopted to vary degrees in different jurisdictions, but not in the consistent and broad manner envisaged by its proponents.

### ***Option 7 — Reciprocal Legislative Schemes***

This option recognises other jurisdictions’ legislation or undertake not to be inconsistent with that legislation. Reciprocal schemes allow a jurisdiction to recognise, on a reciprocal basis, a status given by another jurisdiction. Their principal purpose is to extend national coverage rather than to achieve uniformity — although in practice they may prove to have a homogenising

<sup>9</sup> See Australian Uniform Building Regulations Co-ordinating Council, *The Model Building Act for Consideration by the States and Territories*, Federation Press, Sydney, 1991.

<sup>10</sup> Australian Uniform Building Regulations Co-ordinating Council, *The Model Building Act for Consideration by the States and Territories*, Federation Press, Sydney, 1991.

effect<sup>11</sup> — and hence is not considered a materially useful approach requiring further consideration. The best example of this approach is the mutual recognition schemes for registration of professionals, such as doctors and lawyers, developed in the early 1990s.

### **3.3 National Cooperation**

Moving to ‘National Cooperation’ requires cooperation between the Commonwealth and the States, and does not necessarily need national legislation passed by the Commonwealth or template legislation being adopted by jurisdictions.

‘National Cooperation’ would involve jurisdictions agreeing on a preferred approach to regulation of the chemicals and plastics industry, consistent with agreed national principles forming part of a national policy for the chemicals and plastics industry. Jurisdictions would then implement their own legislation in response to that agreement. For example, the introduction of firearms controls following the Port Arthur shootings is one example of this type of approach – agreed at a national level but implemented separately by the States.

Two options to develop ‘National Cooperation’ are outlined below.

#### ***Option 8 — Agreed Legislation***

This option involves Governments agreeing to implement similar legislation or policies, which is then implemented by local legislation. Agreed legislation can be achieved through the establishment of a Ministerial Council, through intergovernmental agreements, or through the development of a national policy for chemicals and plastics that is adopted by all jurisdictions.

Experience has shown that political commitment and fiscal contributions from the Commonwealth increases the likelihood that a national approach to legislation can be agreed. For example, the National Competition Policy Reforms involved million dollar payments from the Commonwealth to the States, which redistributed some of the gains from reform captured by the Commonwealth through higher tax receipts back to the States.

#### ***Option 9 — Exchange of Information***

This option involves the exchange of information on regulatory proposals and outcomes. Such an exchange can take many forms, including:

- ministers and/or public servants could meet on a more or less regular basis to exchange information about their relative experiences with policy initiatives and regulatory structures; or
- jurisdictions could publish best practice guidelines with the hope that they will be adopted (implicitly or explicitly) by other jurisdictions. Unlike Option 8, there is no agreement on whether or not to implement such policies or principles.

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<sup>11</sup> The best example of this is the mutual recognition scheme developed in the early 1990s.

### 3.4 Appropriateness for the Chemicals and Plastics Industry

To provide a preliminary assessment of the alternative families of options for chemicals and plastics industry regulation, the following aspects have been considered:

- **Timeliness** the ability for the option to be quickly adopted.
- **Industry expectation** the extent to which the option satisfies industry expectations, as interpreted by The Allen Consulting Group.
- **Stakeholder acceptance** the extent to which the option addresses and takes account of stakeholder expectations other than industry, including Commonwealth and State Governments, Regulatory agencies, consumers, and the community more broadly.
- **Costs effectiveness** the extent to which the option is cost effective in delivering the desired outcomes, ie an assessment of the effort required to ensure ongoing success of the option once implemented.
- **Likelihood of success** the extent to which this option is likely to address the issue of regulatory coordination discussed in Chapter One.

Table 3.1 below outlines the assessment of each option against these aspects.

Table 3.1

#### ASSESSMENT OF OPTIONS

		Timeliness	Industry Expectation	Stakeholder Acceptance	Cost Effectiveness	Likelihood of Success
National Uniformity	Unilateral Exercise of Power by the Commonwealth	x	✓	x	x	x
	Reference of Power to the Commonwealth	✓	✓✓✓	x	✓✓✓	x
	Incorporation by Reference	✓	✓✓✓	✓ / x	✓✓	✓
National Consistency	Roll Back Scheme	✓	✓✓	✓	✓	✓✓
	Complementary Legislation	✓✓	✓✓	✓	✓	✓✓
	Alternative Consistent Legislation	✓✓	✓✓	✓✓	✓	✓✓
	Reciprocal Legislation	✓✓	✓	✓✓	✓✓	✓✓
National Cooperation	Agreed Legislation	✓✓	✓	✓✓	✓	✓✓✓
	Exchange of Information	✓✓✓	✓	✓✓✓	✓✓	✓✓✓

Where

x – not feasible or not likely to be achieved

✓ – may be achieved with considerable effort

✓✓ – is quite likely to be achieved with effort

✓✓✓ – can be achieved with effort

The preliminary assessment shown in Table 3.1 highlights that there is a trade-off between achieving higher degrees of uniformity of regulation across Commonwealth and State regulatory agencies and achieving the level of acceptability amongst the key stakeholders that is required to support such uniformity. While lower levels of uniformity could be implemented in a more timely fashion with a greater degree of success, it is less likely to satisfy industry expectations and the need for better coordination and uniformity.

Achieving 'National Uniformity' is likely to be extremely difficult and involve significant time before benefits can be delivered to industry. Furthermore, it is not clear that the Commonwealth has a head of power over chemicals and plastics that would enable it to legislate to the exclusion of the States and the likelihood of Constitutional change on this matter is remote.

Options to achieve 'National Consistency' would also take considerable effort on behalf of the Commonwealth and the States but unlike options for 'National Uniformity', could realistically be achieved provided sufficient political will and commitment to change.

Options to achieve 'National Cooperation' could be adopted relatively quickly by jurisdictions, given sufficient political commitment exists. However, 'National Cooperation' relies heavily on the development of principles that are broad enough to include all parties. In this regard, industry concerns for better coordination and uniformity across on a whole of government basis may not be fully addressed and perhaps therefore is only a partial solution.

From a pragmatic view point, this would suggest that the adoption of a coordinated set of national principles, as part of a national policy of chemicals, could be the best option to achieving desirable change in the shorter term. That is, industry and government should consider options for 'National Consistency' and 'National Cooperation'. To narrow down further the appropriate range of options would require a more detailed assessment of the costs and benefits associated with each.

## Chapter Four

# Facilitating a National Approach

*This chapter provides details on a number of potential approaches to facilitate a coordinated, whole-of-government approach to the regulation of the chemicals and plastics industry. These options may be used in isolation or in combination.*

### 4.1 Ministerial Council

A Ministerial Council is defined as a formal meeting of Ministers of the Crown from more than four jurisdictions, usually including the Commonwealth, the States and Territories of the Australian Federation, which meet on a regular basis. The role of Ministerial Councils is to facilitate consultation and cooperation between governments, to develop policy jointly, and to take joint action in the resolution of issues that arise between governments in the Australian Federation.<sup>12</sup>

Ministers carry the authority of their governments and those Ministers convened as a Ministerial Council may, where appropriate, determine to finality all matters in their field of concern.

Ministerial Councils may include representatives of the Australian Local Government Association and the governments of New Zealand and Papua New Guinea (or other regional governments) by invitation. New Zealand has full membership and voting rights in Ministerial Councils in relation to any decision involving the *Trans-Tasman Mutual Recognition Arrangement*.

Councils with Ministerial representatives from one to four jurisdictions are known as 'Other Ministerial Fora'.

In recognising the fundamental role that Ministerial Councils play in facilitating consultation and cooperation between Governments, Heads of Government commissioned a review of Ministerial Councils in November 2000. Following the review, Heads of Government agreed to combine a number of Councils. The current Ministerial Councils that may be relevant to the chemicals and plastics industry are:

- *Environment Protection and Heritage Council*);
- *Health and Community Services Ministerial Council*;
- *Industry and Technology Ministerial Council*;
- *Australian and New Zealand Food Regulation Ministerial Council*;
- *Natural Resources Management Council*;
- *Primary Industries Ministerial Council*;
- *Australian Transport Council*; and
- *Workplace Relations Ministers' Council*.

<sup>12</sup> The Department of the Prime Minister and Cabinet, 2002, "Commonwealth-State Ministerial Councils: A Compendium", Canberra, p.1.



The *Environment Protection and Heritage Council* or the *Health and Community Services Ministerial Council* may be appropriate Ministerial Councils given the predominance of health and environment regulation relating to the plastics and chemicals industry. However, the Ministerial Council that is most likely to be appropriate is the *Industry and Technology Ministerial Council* given that the then Commonwealth Minister for Industry, Science and Resources initiated the *Chemicals and Plastics Action Agenda*. Alternatively,

#### *Development of New Councils*

As an alternative to using an existing Ministerial Council, a new Ministerial Council could be established specifically to deal with regulatory issues relating to the chemicals and plastics industry, although, the likelihood of COAG agreement is slim.

At the June 2001 meeting COAG agreed to a presumption against the creation of new Ministerial Councils. The Guidelines for the creation of new Ministerial Councils are set out in Box 4.1.

Box 4.1

#### **GUIDELINES FOR THE CREATION OF NEW MINISTERIAL COUNCILS**

If a new Ministerial Council is to be created the following tests should apply:

- Could the work proposed for the new Council be done by an existing Council?
- If not, could the new Council be brought under the umbrella of an existing Council or under an arrangement with an existing Council?
- If not, is there scope for adjustment and/or rationalisation of the work of existing Councils to encompass the work proposed for the new Council?

If it is considered necessary to create a new Council<sup>13</sup>:

- Heads of government must formally agree to its creation and terms of reference;
- It should be supported by existing Secretariats, wherever possible;
- Consideration should be given to inserting a sunset clause in its terms of reference.

Source: COAG (June 2002) Commonwealth-State Ministerial Councils, A Compendium

## **4.2 Inter-Governmental Agreement**

Intergovernmental agreements are 'political compacts' which set down the understanding between the parties involved, including the role, functions and processes for Ministerial Council, the terms of the arrangements and the provisions to be included in any subsequent legislation.

There is a range of methods by which the Commonwealth and States and Territories may give effect to intergovernmental agreements. These methods include:

- agreements with no statutory authority basis;
- agreements authorised by legislation to remove any doubts about the validity or authority to make them;
- agreements ratified by legislation to transform contractual duties into statutory duties;

<sup>13</sup> Councils include Heads of government meetings, Ministerial Councils, and other Ministerial fora.

- agreements ratified in such a way as to enact the agreement as law, thus changing any inconsistent law;
- agreements which although not ratified or enacted by statute are implemented by new legislation; and
- agreements which are given constitutional status.<sup>14</sup>

Examples of existing intergovernmental agreements include:

- *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*;
- *Intergovernmental Agreement for Rail Operational Uniformity*; and
- *Intergovernmental Agreement on a National Action Plan for Salinity and Water Quality*.

Within the framework of Ministerial Council, inter-governmental agreements could be used to coordinate regulatory responsibilities outside the jurisdiction of that specific Ministerial Council.

### **4.3 Central Administration Bodies**

A greater degree of uniformity in the operation of a regulatory framework is likely if the administration is centralised. Once the framework has been developed there is a need to harmonise the framework's administration, which is quite often done through the creation of a central administrative body or national authority.

The tasks of the central body may range from simply administering the scheme and legislation to setting standards. Political responsibility may rest with one government or may be retained by a Ministerial Council.

Current examples of bodies established for this purpose include: the Australian Building Codes Board (see Box 4.2) and the National Motor Vehicle Theft Reduction Council.

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<sup>14</sup> Gardner, A., "Federal Intergovernmental Co-operation on Environmental Management: A Comparison of Developments in Australia and Canada", *Environmental and Planning Law Journal*, Vol.11, No.2, April 1990, p.116.

Box 4.2

**THE AUSTRALIAN BUILDING CODES BOARD**

The Australian Building Codes Board (ABCB) is a joint initiative of all levels of Australian government, in co-operation with the building industry. The ACBC was established by means of an inter-governmental agreement signed by the Commonwealth, State and Territory Ministers responsibly for building regulatory matters. The ABCB is responsible for:

- developing and managing a nationally uniform approach to technical building requirements, currently embodied in the *Building Code of Australia 1996*;
- developing a simpler and more efficient building regulatory system; and
- enabling the building industry to adopt new and innovative construction technology and practices.

Board members include a number of industry representatives, the Commonwealth, State and Territory Governments' chief executives responsible for building regulatory matters, and a Local Government representative. The ABCB reports directly to the Commonwealth, State and Territory Ministers responsible for building regulatory matters, and provides a vital link for the building industry between building practice and Government building regulatory policy.

Alternatively, the administration of a scheme may rely on coordination between existing separate State and Territory bodies. One example of this is the National Companies and Securities Commission which was established as part of the co-operative companies scheme in the 1970s. The Commission used State-based Corporate Affairs Commissions to administer the scheme at the State level.

The move to consolidate some regulatory areas within the Department of Health and Ageing — for example NICNAS — indicates that this process may already be underway.

#### **4.4 National Forum**

A National Forum is a key national initiative aimed at developing a partnership approach to identifying and discussing key issues and agreeing on strategic approaches to address these issues. By bring together representatives from the private sector, non-governmental organisations, academia and government, a National Forum provides a starting point for uniting all participants in pursuing a common course of action.

National Forums are generally centered around key themes with significant pre-Forum work being undertaken to identify key issues and flag potential policy options to enable forums to act as a catalyst for action.

It is important to recognise that a National Forum represents only one stage in the process of consultation in the development of national policies. In this regard, it will be necessary to undertake further consultation to refine and consolidate issues and to monitor implementation.

Recent National Forums or Summits have included the National Children's Summit, the Regional Australia Summit, the National Innovation Summit (see Box 4.3) and the National Tax Reform Summit. On an international scale, summits have included the International Summit on Sustainable

## Development, Drugs in Sport International Summit, and the International Health Summit.

Box 4.3

### THE NATIONAL INNOVATION SUMMIT 2000

The National Innovation Summit was a ground-breaking initiative developed through a partnership between the Federal government and the Business Council of Australia. The aim was to create 'a new vision for Australian innovation by bringing together representatives of industry, government and the research community to develop a strong national innovation system'

It was a key step in focussing the discussion of innovation in Australia and provided an opportunity for all players in the innovation system to create a strategic vision for the future and foster a national culture of entrepreneurship. The Summit involved more than 500 participants and was centred around three broad themes:

- creating a competitive environment;
- investing in new ideas; and
- building industry-research linkages.

In order to progress the findings arising from the national Innovation Summit, an Innovation Summit Implementation Group was established. The group consisted of nine members drawn from industry, education, research and government sectors and in October 2000 released its final report *Innovation – Unlocking the Future*. The Final presented key recommendations in three critical areas: creating an ideas culture, generating ideas; and acting on ideas.

A National Forum should include a cross section of personnel from chemicals and plastics industry regulators, so as to ensure that participants are those who deal directly and regularly with chemicals and plastics regulatory issues. Additionally, industry participation would be critical to ensuring appropriate input and feedback on key policy issues. Participants could include advisors to relevant Ministerial Councils, as well as representatives from the TGA, Office of Chemical Safety, NOSHC, EPAs, NRA, NICNAS, and industry (for example the CPLG).

### 4.5 National Inquiry by the Productivity Commission

The Productivity Commission is the Commonwealth Government's principal review and advisory body on microeconomic policy and regulation. Consistent with the objective of raising national productivity and living standards, its remit covers all sectors of the economy. The Commission's work extends to the private and public sectors, including areas of State, Territory and local government, as well as Commonwealth responsibility.

The statutory functions of the Commission are to:

- hold public inquiries and report on matters related to industry and productivity;
- provide secretariat services and research services to government bodies such as the Council of Australian Governments;
- investigate and report on complaints about the implementation of the Commonwealth Government's competitive neutrality arrangements;
- advise the Treasurer on matters related to industry and productivity as requested;
- initiate research on industry and productivity issues; and

- promote public understanding of matters related to industry and productivity.

Under the direction of the Chairman, the Commission's work is undertaken by inquiry and research. Commission inquiries can vary greatly in issues and scope. An inquiry is initiated when a 'reference' is sent by the Treasurer to the Commission. The terms of reference describe what an inquiry will cover. Reference may cover any sectors of the economy. The subject matter generally involves key economic and social issues, including important industry, environmental and regional policy issues. The Government can request the Commission to review and evaluate any government programs that it considers require scrutiny.

Much of the Commission's inquiry and research program has been concerned with assessing the efficacy of regulatory and institutional arrangements for market activities. Most recently, as already discussed, the Productivity Commission has been asked to review workers compensation and occupational health and safety regulation in Australia. Beyond current inquiry terms of reference it is hard to see the Productivity Commission reviewing, as part of a coordinated review, all regulation governing the chemicals and plastics industry, particularly since the *Action Agenda* has yet to be fully implemented.

## 4.6 State Based Inquiry

State based inquiries are used to investigate a particular industry or issue. In general they stem from the work of parliamentary committees which are referred issues by a House of Parliament or by Order of the Governor in Council.

### 4.6.1 Parliamentary Committees

As well as work in the Chamber, Members of the Parliament are also appointed to various Committees. These fall into two types:

- *investigatory Committees* — from time to time the Parliament may form investigatory committees that examine particular issues of interest to Parliament. These may be either 'standing' committees in that they exist for the life of the Parliament, or 'select' committees, in that they exist only until they have completed a particular investigation; and
- *'Administrative' Standing Committees* — these are concerned with the administration of parliament.

All of these committees are 'joint committees' in that they comprise Members from both chambers.

#### *Joint Investigatory Committees*

The role of Joint Investigatory Committees is to inquire into such matters as are referred to it, either by resolution of a House of Parliament or by Order of the Governor in Council. In the 54<sup>th</sup> Parliament seven Joint Investigatory Committees were appointed pursuant to the *Parliamentary Committees Act 1968 (Vic)*. These include:

- Drugs and Crime Prevention Committee;

- Environment and Natural Resources Committee;
- Family and Community Development Committee;
- Law Reform Committee;
- Public Accounts and Estimates Committee;
- Road Safety Committee; and
- Scrutiny of Acts and Regulations Committee.

#### *Select Committees*

From time to time, both Houses or either House will appoint select committees to inquire into specific matters. They are usually appointed by resolution but there have been examples in the past of joint select committees being established by an Act of Parliament. In Victoria these have included committees on road safety and the meat industry.

#### **4.6.2 Multi-State Inquiries**

Where State and Territory governments believe that there is an issue, which needs attention, and other avenues have failed to produce an appropriate response, there is the option for concerned jurisdictions to pursue a multi-State inquiry. The aim of this approach is to generally used to increase the public profile of, and support for, the issue and in turn mount pressure on the federal government to act. Recent examples include the:

- *Review of Commonwealth-State Funding* where the Governments of New South Wales, Victoria and Western Australia argued that the (then) current Commonwealth-State funding arrangements disadvantaged them. Late in 2001, these States commissions Professor Ross Garnaut and Dr Vince FitzGerald (from The Allen Consulting Group) to review the arrangements and recommend changes; and
- *Report of the Kyoto Protocol Ratification Advisory Group — A Risk Assessment* was prepared in response to a request from the Premiers of New South Wales and Victoria. On the basis of the analysis presented in the report, the Group concluded that both for the medium and longer term, ratification for the first commitment period of the Kyoto Protocol carries more advantages than non-ratification.

#### **4.7 Appropriateness for the Industry**

In line with the approach taken in Chapter Three, The Allen Consulting Group has undertaken a preliminary assessment of the implementation options discussed above. Again, consistent with Chapter Three, this assessment has considered the following factors:

- timeliness;
- industry expectation (as interpreted by The Allen Consulting Group);
- stakeholder acceptance; and
- costs effectiveness;
- likelihood of success.

Table 4.1

**ASSESSMENT OF IMPLEMENTATION OPTIONS**

	Timeliness	Industry Expectation	Stakeholder Acceptance*	Cost Effectiveness	Likelihood of Success
Ministerial Council	✓✓	✓✓✓	✓	✓✓	✓✓
Inter-Government Agreement	✓✓	✓✓✓	✓✓	✓✓	✓✓
Central Administration	✓✓	✓✓✓	✓✓	✓✓	✓✓
National Forum	✓✓✓	✓✓✓	✓✓	✓✓✓	✓✓
Inquiry by the Productivity Commission	✓	✓✓	✓	✓	✓✓
State Based Inquiry	✓✓	✓	✓	✓	✓

Where

✓ – may be achieved with considerable effort

✓✓ – is quite likely to be achieved with effort

✓✓✓ – can be achieved with effort

\* Refers to Stakeholders other than industry

Reaching agreement on these implementation options is likely to involve significant effort on behalf of key stakeholders, as reflected in the timeliness, cost effectiveness, and likelihood of success in Table 4.1. Importantly, examples of these options in other regulatory areas highlight that success is possible and stakeholders can be encouraged through the process, particularly if the issue is championed by a prominent area within the Commonwealth or a consortium of key States. The scope and coverage of the *Action Agenda*, would indicate that Commonwealth and State industry departments are the most likely champions of the options outlined.

If such support could be harnessed then coordination of chemicals and plastics regulation and regulatory reform activities could be achieved through a three-staged process.

- First – establishing a Ministerial Council for the regulation of the chemicals and plastics industry. This could be achieved by incorporating regulatory and policy issues relating to the plastics and chemicals industry into the *Industry and Technology Ministerial Council*. Alternatively, it could be achieved through the creation of a new Ministerial Council for plastics and chemicals regulation that included Industry Ministers as well as key Health, and Environment Ministers.
- Second – establishing a series of inter-government agreements between regulatory agencies in relation to the relevant regulatory area, eg health, OHS, environment, transport, storage, and handling, etc.
- Third – holding a National Forum to provide a platform to discuss and agree on the implementation options development in line with a National Policy for the chemicals and plastics industry. Importantly, participation in the forum should include industry representation which could be coordinated through the *Chemicals and Plastics Leadership Group*.

## Chapter Five

# The Way Forward

*This report has identified that the current regulatory framework is disjointed and confusing and that there are a variety of benefits that will flow to a range of stakeholders. The questions that remain are: How do we get there? What is the desired level of uniformity? What processes and/or institutions are best suited to achieve this direction?*

### 5.1 The Regulatory Problem

The chemicals and plastics industry is subject to wide-ranging and complex regulatory intervention by a number of Commonwealth and State Government regulatory agencies. A study by Environment Australia suggested that the industry was directly affected by 144 separate pieces of Commonwealth and State Government legislation.

Overtime, a number of regulatory agencies have engaged in processes to reform their approach to regulation with implications for the chemicals and plastics industry. However, with the exception of the *Action Agenda*, the majority of reform activities have tended to be program specific, agency specific, or policy specific, that is, most reform efforts have tended to be piecemeal.

Currently, there is no forum in which State or Commonwealth Governments can consider the regulation of the chemicals and plastics industry as a whole, nor is there a broad framework or national policy specifically tailored to the chemicals and plastics industry to guide regulators of the industry.

In the absence of such a framework for chemicals and plastics, changes to chemical regulations can easily become fragmented, result in overlap, or conflict with existing legislation. This concern is exacerbated by the numerous reform and review activities that are currently taking place quite independently of each other – such efforts are not guided by a framework or broad national approach to the regulation of the industry.

Given size of the industry and its relative importance to the Australian economy there are likely to be significant payoffs from better coordination of regulatory reform efforts.

### 5.2 Progress to Date

A seven-step process to reforming the regulation of the chemicals and plastics industry in Australia was set out in Chapter Three. These steps reflect well-accepted pathways to strategic policy shifts in Australia and area:

- take responsibility and agree on a vision;
- establish direction;
- establish guiding principles;



- develop new roles, activities and institutions;
- encourage change;
- assess performance; and
- review and revise.

While significant progress has been made Steps One, Two, and Three, there is a distinct need for the plethora of current reform initiatives to be realigned in a broad coordinated process. It is likely that this may require a redefining of existing and/or developing new roles, activities and institutions before moving forward.

### 5.3 The Next Steps

The Report has outlined three families of options for achieving better chemicals and plastics regulation, while ensuring an appropriate balance is struck between protecting the community's health and safety and the development of this important industry.

In general, there is trade-off between achieving higher degrees of uniformity of regulation across Commonwealth and State regulatory agencies and achieving the level of acceptability amongst key stakeholders other than industry that are required to support such uniformity.

Our judgement is that it is difficult to see the adoption of the 'National Uniformity' approach. In the circumstances the chemicals and plastics industry should focus attention on the 'National Consistency' and 'National Cooperation' approaches.

Consistent with this view, The Allen Consulting Group believes that the best way forward involves a combination of three strategies.

First, establishing a *Chemicals and Plastics Industry Ministerial Council* to be responsible for the development and implementation of a *National Policy for Chemicals and Plastics*.

- This National Policy should articulate the vision, regulatory approach, and a coordinated set of national principles to be adopted by Governments and Agencies.
- Agencies (Commonwealth and States) responsible for regulation of chemicals and plastics should be allowed the opportunity to contribute and comment on the National Policy. These agencies could be co-signatories or provide endorsement of the Policy and its implementation.

The advantage of establishing a *Chemicals and Plastics Industry Ministerial Council* is that it would provide an overarching framework for reform and review activities. This is the key element missing from current reform activities. The Ministerial Council would provide a framework in which to negotiate inter-government agreements and it would establish a forum to progress the remaining steps outlined in Chapter Two, that is a forum to ensure Step Five (Encourage Change), Step Six (Assess Performance), and Step Seven (Review and Revise).

Second, and within the framework of the Ministerial Council and a National Policy, a series of intergovernmental agreements should be facilitated. For

some regulatory areas, such as food safety, an appropriate framework already exists, but for others the Ministerial Council would be a useful forum to coordinate chemical and plastics regulation but where no national approach currently exists, for example environment or OHS.

These intergovernmental agreements would allow for national consistency regulation to be agreed and implemented, as outlined in *Option 4* through to *Option 7* in Chapter Three.

Third, momentum for change could be encouraged and facilitated by holding a *National Forum* with key Commonwealth and State regulators to:

- discuss the current regulatory burden faced by the industry;
- discuss the current problems associated with piecemeal regulatory reform;
- outline a draft of a National Policy for the industry; and
- discuss the benefits and costs of better of coordination of regulation and regulatory reform.

Key conclusions and recommendations from the *National Forum* would be provided to the Ministerial Council for consideration and further action. Importantly, participation in the *National Forum* should include industry representation, which could be coordinated through the *Chemicals and Plastics Leadership Group*.

In support of such the *National Forum* and to document the potential gains from desirable regulatory coordination and reform, industry and/or government could consider augmenting the work of the *Action Agenda*, by initiating work to assess:

- the indirect as well as direct benefits to the economy from the chemicals and plastics industry thereby providing a more complete picture of the role this industry plays in the Australian economy;
- the implications for the future of the chemicals and plastics industry should little or no progress be made in addressing regulatory coordination and reform; and
- the implications for the future of the chemicals and plastics industry should substantial progress be made in addressing regulatory coordination and reform.