

**COAG RESPONSE TO THE PRODUCTIVITY COMMISSION'S
RECOMMENDATIONS FOR CHEMICALS AND PLASTICS REGULATORY
REFORM FROM ITS REPORT OF JULY 2008**

National policy formulation and system governance

Recommendation 3.1

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

- provide an ongoing forum for assessing:
 - the consistency of chemicals-specific policy settings across the various areas of concern, including public health, workplace and on-farm safety, transport safety, environment protection and national security
 - the effectiveness and efficiency of the overall chemicals-specific regulatory system;
- oversee the consistent application of chemical hazard and risk-assessment methodologies and international standards such as the Globally Harmonised System of Classification and Labelling of Chemicals;
- support the coordinated development of regulatory proposals that have cross-portfolio implications, including the conduct of regulatory impact assessments;
- make recommendations for specific actions by relevant ministerial councils
- be supported by a secretariat in the Department of Innovation, Industry, Science and Research.

Response

The Council of Australian Governments (COAG) supports Recommendation 3.1 to establish a new Standing Committee on Chemicals.

At present, there is no single forum addressing chemicals and plastics regulation policy and regulation nationally. As a consequence, chemicals and plastics regulation is fragmented and administered by multiple agencies across all levels of government.

The new Standing Committee on Chemicals (the Committee) comprising representatives from all ministerial councils that have responsibility for chemicals and plastics regulation will coordinate policy advice on a range of chemicals and plastics policy issues with cross-jurisdictional and cross-portfolio implications that are dealt with by the relevant ministerial councils and other policy groups.

The objective of the Committee will be to coordinate and monitor chemicals and plastics policy and regulation within a new governance framework.

The Committee will formulate strategic policy and oversight the institutional and regulatory arrangements. It will provide national policy coordination, promoting consistency and reducing the potential for regulatory duplication or overlap, enhancing the efficiency and effectiveness of chemicals and plastics regulation.

The Committee will make recommendations to the respective ministerial councils for specific actions, reforms or policy changes to encourage national consistency across sectors and jurisdictions. The Committee will have a key role in implementing the new governance framework for the regulation of chemicals and plastics informed by the Productivity Commission research report of 2008.

The Committee will not have decision-making power and will not replace the role of the existing standing committees under each of the respective ministerial councils. Rather it will make recommendations to these councils which will continue to have responsibility for policy development.

The Committee may also make recommendations to COAG, as appropriate, through the Business Regulation and Competition Working Group. The Committee will be ultimately accountable to COAG.

The Committee will be supported by a unit located within a Commonwealth agency and chaired by a Commonwealth senior official. The resources available to the unit will be determined through the Commonwealth budget process. The proposed terms of reference for the Committee are set out below.

Objectives

The objective of the COAG Standing Committee on Chemicals (the Committee) is to achieve an effective and efficient national system of chemicals and plastics regulation.

The Committee will co-ordinate and direct the implementation of the new governance framework for the regulation of chemicals and plastics informed by the Productivity Commission (PC) research report of 2008 as agreed by COAG in October 2008.

The Committee will monitor the timeliness, effectiveness and consistency of reforms of chemicals and plastics regulation, and provide advice and make recommendations to relevant ministerial councils (including the Australian Health Ministers' Conference, Workplace Relations Ministers' Council, Australian Transport Council, Primary Industries Ministerial Council, Environment Protection and Heritage Council, and ministers concerned with the security aspects of chemicals) on regulatory reform.

The Committee will be responsible to COAG, reporting through the Business Regulation and Competition Working Group (BRCWG).

Functions

The Committee will be established under a memorandum of understanding signed by first ministers which sets out its relationship with the ministerial councils. The Committee will:

- provide an ongoing forum for assessing:
 - the consistency of chemicals-specific policy settings across the relevant

policy areas, including public health, workplace and on-farm safety, transport safety, environment protection and national security; and

- the effectiveness and efficiency of the overall chemicals and plastics regulatory system.
- oversee the consistent application of chemical hazard and risk-assessment methodologies and international standards such as the Globally Harmonised System of Classification and Labelling of Chemicals;
- support the coordinated development of regulatory proposals that have cross-portfolio implications, including the conduct of regulatory impact assessments;
- make recommendations for specific actions by relevant ministerial councils; and
- make recommendations to COAG.

Membership

Membership of the Committee will comprise Commonwealth, state and territory officials representing all relevant ministerial councils and other relevant policy groups. The Committee will be chaired by a senior Commonwealth official. It will be supported by a secretariat based in a Commonwealth agency.

Reporting

The Committee will provide recommendations to relevant ministerial councils on how chemicals and plastics policy initiatives that have cross-portfolio or cross-jurisdictional implications might be best progressed. As part of its ongoing monitoring role, the Committee will report to COAG and the ministerial councils on the effectiveness and efficiency of chemicals regulation.

The Committee will be accountable to COAG through the BRCWG.

Review

The memorandum of understanding will include a sunset clause requiring that the effectiveness and efficiency of the Committee be reviewed after five years.

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National hazard and risk assessment

Recommendation 4.1

The Australian Government should impose a statutory obligation on NICNAS to ensure that:

- the costs of chemical assessments are commensurate with the risks posed by the chemicals concerned;
- its assessment priorities are directed to the most efficient management of the aggregate risk of all industrial chemicals.

Response

COAG welcomes the response of the Commonwealth as set out below.

Consistent with the existing legislative objective of National Industrial Chemicals Notification and Assessment Scheme (NICNAS), the Commonwealth Government agrees that assessment effort and priorities should be risk-based.

New chemical assessment categories and exemptions under the NICNAS are set on a risk-based gradient. Recent new chemical reforms have introduced additional assessment options for low risk chemicals and this reform activity will continue.

The same general approach is used for existing industrial chemicals assessments, where the assessment effort can be directed to areas of potential high risk. The NICNAS Existing Chemical Program Review recommended a systematic risk-based approach to existing chemicals assessments. Implementation is underway.

To assist in directing and clearly communicating the objective that assessment effort and priorities should be risk-based, the Commonwealth will explore the potential for embedding some guiding principles in legislation and guidance. Resource and legislative implications require further consideration in the development of an implementation plan and through the Commonwealth's budget processes.

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Recommendation 4.2

The Australian Government should establish a technical advisory committee within NICNAS, as a statutory requirement.

Response

COAG welcomes the response of the Commonwealth as set out below.

The Commonwealth Government supports the recommendation. The impact on governance arrangements, resources and legislative implications require analysis as part of the development of an implementation plan and the Commonwealth's budget processes.

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Recommendation 4.3

The Australian Government should generally limit the role of NICNAS to the scientific assessment of the hazards and risks of industrial chemicals. The power to annotate the Australian Inventory of Chemical Substances to ban or phase out chemicals, and the responsibilities for administering the Cosmetics Standard 2007, and for implementing the Rotterdam Convention, should be removed from NICNAS.

Response

COAG welcomes the response of the Commonwealth as set out below.

The Commonwealth Government agrees with the intention that the primary role of the National Industrial Chemicals Notification and Assessment Scheme's (NICNAS) should be as a scientific risk assessment body for industrial chemicals, noting that any change to current arrangements should not introduce regulatory gaps that would weaken health and environmental protection.

In light of the Productivity Commission's preferred governance framework, the Commonwealth Government supports further efforts to clarify the role of NICNAS and ensure that the institutional location of standard setting and risk management powers provide a cohesive and integrated industrial chemicals framework across Commonwealth and state and territory regulatory authorities.

In this regard, reducing the power of NICNAS to annotate the Australian Inventory of Chemical Substances requires further consideration to ensure that the existing levels of human health and environmental protection are maintained and that equivalent powers are established in another national body.

The Commonwealth Government supports the transfer of responsibility for implementing the Rotterdam Convention from NICNAS to the Department of the Environment, Water, Heritage and the Arts (DEWHA).

The transfer of responsibility for the Cosmetics Standard is dealt with under Recommendation 5.5.

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Recommendation 4.4

All relevant national standard setting bodies should be required to respond to NICNAS recommendations within defined time limits. NICNAS should maintain a public schedule of all responses.

Response

COAG welcomes the response of the Commonwealth as set out below.

The Commonwealth Government agrees with the recommendation. Requirements for national standard setting bodies to consider and respond to National Industrial Chemicals Notification and Assessment Scheme recommendations should be underpinned by formal arrangements such as Memoranda of Understanding or legislation. Resource and legislative implications require further consideration in the development of an implementation plan and through the Commonwealth's budget processes.

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Recommendation 4.5

The Australian Government should introduce a statutory timeframe for the technical screening of applications by NICNAS.

Response

COAG welcomes the response of the Commonwealth as set out below.

The Commonwealth Government supports the establishment of statutory timeframes for screening of applications. Resource and legislative implications require further consideration in the development of an implementation plan and through the Commonwealth’s budget processes.

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Recommendation 4.6

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

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

The Australian Government should meet the cost of screening all existing chemicals from budget funding. NICNAS should continue to recover the costs of subsequent assessment of chemicals of concern.

Response

COAG notes the response of the Commonwealth as set out below.

The Productivity Commission's recommendation envisages a resource intensive, Government-funded approach to assessment of existing chemicals.

The extent and speed of implementation of this recommendation would be dependent on available funding. The recommendation for budget funding of this activity is not consistent with current cost-recovery policy as implemented in the National Industrial Chemicals Notification and Assessment Scheme.

Resource implications require consideration in the development of an implementation plan.

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Public health

Recommendation 5.1

The Australian Health Ministers’ Conference should:

- proceed as soon as feasible with implementing its proposed reforms to separate poisons and medicines scheduling processes, including that poisons scheduling decisions be made by the Secretary of the Department of Health and Ageing, upon advice from a Chemicals Scheduling Committee;
- undertake a review of the Australian Health Ministers' Advisory Council model for poisons two years after commencement, including:
 - an analysis of the consistency between the recommendations of the Chemicals Scheduling Committee and the decisions of the Secretary of the Department of Health and Ageing
 - an analysis of the impact of the model on national uniformity of poisons regulations.

Response

Reform to the national decision-making mechanism for scheduling of poisons is supported by the Council of Australian Governments, noting that any change to current arrangements has significant implications for medicines scheduling. COAG notes that the resource implications of this reform require consideration through the Commonwealth budget process. This reform will be considered through the Australian Health Ministers' Conference (AHMC) which oversees the sub-committee responsible for developing and maintaining the scheduling framework.

The Australian Health Ministers' Advisory Council has referred the Productivity Commission's recommendations on scheduling reforms to the National Coordinating Committee on Therapeutic Goods for development of implementation plans. Resource and legislative implications require further consideration in the development of an implementation plan and through the Commonwealth's budget processes.

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Recommendation 5.2

State and territory governments should:

- adopt poisons scheduling decisions made by the Department of Health and Ageing directly by reference, as published in the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP);
- uniformly adopt regulatory controls for poisons through either a template or model approach, as published in the SUSMP;
- continue to report any variations to nationally-agreed poisons scheduling or regulatory decisions at the state and territory level to the Australian Health Ministers' Conference, and include a statement of reasons for the variations.

Response

COAG supports uniform adoption of national poison scheduling decisions, noting the detailed mechanisms for adopting decisions into jurisdictional legislation (e.g. by direct reference to the national standard) require further consideration by state and territory governments.

Consistent with the approach to recommendation 5.1, this closely related reform will be considered through the Australian Health Ministers' Conference which oversees the sub-committee responsible for developing and maintaining the scheduling framework.

The Australian Health Ministers' Advisory Council has referred the Productivity Commission's recommendations on scheduling reforms to the National Coordinating Committee on Therapeutic Goods for development of implementation plans. Resource and legislative implications require further consideration in the development of an implementation plan and through the Commonwealth's budget processes.

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Recommendation 5.3

Where a poison is adequately covered under workplace substances regulations and there is demonstrated compliance with those regulations, state and territory governments should exempt workplace users from poisons controls.

Response

COAG supports a nationally consistent approach to regulating poisons, noting that the recommended reform requires further consideration by state and territory Governments and can be addressed as part of the broader reforms to scheduling under recommendations 5.1 and 5.2.

COAG notes that the National Coordinating Committee on Therapeutic Goods has agreed to an implementation plan for this recommendation which will be considered by the Australian Health Ministers' Council and provided to COAG for consideration.

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Recommendation 5.4

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

Response

COAG welcomes the response of the Commonwealth as set out below.

The Commonwealth supports the recommendation. However, the establishment of a systematic research program to identify and deal with risks of chemicals in consumer articles has resource and legislative implications for both National Industrial Chemicals Notification and Assessment Scheme (NICNAS) and the Australian Competition and Consumer Commission (ACCC) that require further consideration through the Commonwealth's budget processes.

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Recommendation 5.5

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

Response

COAG welcomes the response of the Commonwealth as set out below:

The Commonwealth supports the intent to separate the assessment and enforcement functions associated with the Cosmetics Standard. Resource and legislative implications require consideration in the development of an implementation plan and through the Commonwealth's budget processes.

Consistent with the principles of the proposed new governance framework, the Commonwealth will explore a variation to the Productivity Commission's recommendation that provides for separation between assessment, standard setting and enforcement.

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Recommendation 5.6

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

Response

The development and implementation of a National Precursor Control Framework is being led by the Commonwealth Attorney-General's Department as part of the *National Strategy to Prevent the Diversion of Precursor Chemicals into Illicit Drug Manufacture* (the National Precursor Strategy). This work is informed and supported by the *National Working Group on the Prevention of the Diversion of Precursor Chemicals*; a committee of experts that brings together 45 members from Commonwealth, state and territory law enforcement, forensic and health services, and non-government members including the pharmaceutical and chemical industries.

At its May 2008 meeting the Ministerial Council on Drug Strategy (MCDS) requested that the *National Working Group on the Prevention of the Diversion of Precursor Chemicals* report back to MCDS by mid-2009, with a National Framework for the Control of Precursor Chemicals and Equipment. In line with Recommendation 5.6, the project will establish a nationally consistent risk-based approach to the control of precursor chemicals across the entire supply chain to minimise the opportunity for diversion for use in illicit drug manufacture.

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Occupational health and safety

Recommendation 6.1

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

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

Response

The review of the National Standard and Code of Practice for the Control of Major Hazard Facilities (MHF), which has recently commenced, will be undertaken in accordance with Council of Australian Governments' (COAG) requirements for national standard setting bodies and Office of Best Practice Regulation (OBPR) guidelines. The scope of national material for the regulation of MHF will be determined in accordance with regulation impact statements to meet such COAG and OBPR requirements.

The Commonwealth Government is in the process of establishing a new independent body to replace the Australian Safety and Compensation Council. The new body, Safe Work Australia, will be underpinned by the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA), agreed by COAG on 3 July 2008. Through the IGA, the state, territory and Commonwealth governments commit to adopt model OH&S legislation, regulation and codes, complemented by a nationally consistent approach to compliance policy and enforcement policy.

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Recommendation 6.2

The Workplace Relations Ministers' Council should implement the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) in the workplace sector in Australia only when it can be shown that adoption of the new regime would produce net benefits.

The Australian Safety and Compensation Council should undertake a further regulatory impact assessment when some of Australia's key trading partners, such as China and the United States of America, have commenced implementation of systems of regulation for workplace chemicals that are based on the Globally Harmonised System of Classification and Labelling of Chemicals.

Response

COAG agrees that Globally Harmonised System of Classification and Labelling of Chemicals (GHS) implementation in the workplace chemicals sector, as part of the review of the national standards and codes for workplace hazardous chemicals as well as GHS implementation in other sectors, should not occur unless there is a demonstrated net benefit to the community, and not in advance of Australia's major trading partners.

The Australian Safety and Compensation Council's review of the workplace chemicals framework will be conducted in accordance with COAG regulatory impact assessment requirements for national standard setting bodies. As such, changes to the framework will only be made on the basis of a demonstrated net benefit to the community, and not in advance of our major trading partners.

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Recommendation 6.3

The Australian Safety and Compensation Council should conduct a regulatory impact assessment of the proposal to require agricultural and veterinary chemical products that are also workplace hazardous chemicals to carry workplace hazardous chemicals labels. The assessment should identify alternatives and the costs and benefits of the options. The Workplace Relations Ministers' Council should only adopt the proposal if it can be demonstrated that it would deliver a greater net benefit to the community than any alternative.

Until the regulatory impact assessment has been completed, recognition of agricultural and veterinary chemical product labels for occupational health and safety purposes should continue to apply.

Response

COAG agrees that the Australian Safety and Compensation Council (ASCC) or its replacement body, Safe Work Australia, should consider the costs and benefits of any proposed regulatory changes to the workplace chemicals framework in accordance with COAG and OBPR regulatory impact assessment requirements for national standard setting bodies. As such, changes to the framework will only be made on the basis of a demonstrated net benefit to the community.

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Recommendation 6.4

The review of the operation of the body that replaces the Australian Safety and Compensation Council that is planned to commence within six years of its creation should assess its effectiveness and efficiency, including the impact of the tripartite structure of the body on the quality and nature of advice that it provides to the Workplace Relations Ministers' Council. The review should also consider the case for replacing the new body with a smaller, statutorily independent body comprised of experts in standard setting, rather than representatives of particular constituencies.

Response

The Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA), agreed by COAG on 3 July 2008, commits the parties to review the operation of the ASCC replacement body, Safe Work Australia (SWA), and the IGA no later than the sixth anniversary of the commencement of the Act establishing SWA or as agreed by the Workplace Relations Ministers' Council.

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Transport safety

Recommendation 7.1

The Australian Transport Council should commission an independent public assessment of the consistency with which the Australian Dangerous Goods Code is adopted by jurisdictions, and of the regulatory outcomes produced by their implementation of the associated legislation and regulations. The review should commence not later than twelve months after the reforms have been implemented by all jurisdictions.

Response

COAG agrees to this recommendation.

The Australian Transport Council (ATC) agreed to update model dangerous goods legislation (ADG7) in August 2008 with a common implementation date of 31 December 2008 and a 12 month transitional period. Implementation is now a state and territory responsibility and most jurisdictions are expected to meet that timeframe, apart from the NT, the ACT and Tasmania.

COAG notes that the ATC currently requires the National Transport Commission (NTC) to independently monitor, assess and report on the implementation of agreed national road transport reforms including the implementation of the Australian Dangerous Goods Code (ADG Code) and its associated model legislation.

COAG welcomes the agreement by the ATC that the National Transport Commission will undertake an independent review of the consistency with which the Australian Dangerous Goods Code is adopted, and of the regulatory outcomes produced by the implementation of the associated legislation and regulations. The review will commence within 12 months of the implementation of the reforms, but no later than the first half of 2010.

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Recommendation 7.2

Responsibility for policy development and monitoring should remain with the National Transport Commission, reporting to the Australian Transport Council.

Once proposed revised governance arrangements have become operational in the transport and workplace relations arenas, the Australian Transport Council should undertake a public review, involving consultation with all stakeholders and including consideration of necessary funding, to determine the most appropriate forum for developing and implementing future national dangerous goods transport policy.

Response

COAG agrees that responsibility for policy development and monitoring of the Australian Dangerous Goods Code (ADG Code) should remain with the National

Transport Commission (NTC) and that it should continue to report to the Australian Transport Council (ATC) on these matters.

COAG also notes that a legislative review of the NTC and its operations is due by September 2009. COAG considers this will provide an opportunity to consider the most appropriate forum for developing and implementing future dangerous goods transport policy.

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Recommendation 7.3

The current review of the Australian Explosives Code by the Australian Forum of Explosives Regulators (AFER) should be completed as expeditiously as possible to produce uniform regulations that are adopted and consistently applied by all jurisdictions.

The AFER should then immediately undertake a review of jurisdictional legislation and regulations for explosives transport, with the aim of achieving nationally consistent legislation and regulations to complement the uniformly adopted technical code. Any technical code issues not adequately resolved in the current review of the Australian Explosives Code (AEC3), should also be considered.

Response

The revised Australian Explosives Code will be finalised by mid-2009 in accordance with the Council of Australian Governments' regulatory impact assessment requirements for national standard setting bodies and the requirements of the Office of Best Practice Regulation. Further activity relating to the development of nationally consistent explosives regulation will be subject to agreement by the Workplace Relations Ministers' Council.

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Recommendation 7.4

The National Transport Commission should price all modes of provision of the Australian Dangerous Goods Code at avoidable cost, including free provision on the internet. The resultant revenue loss for the National Transport Commission, together with any compensation payable to the Code distributor, should be offset by increased jurisdictional contributions. Pricing of the Australian Explosives Code should also follow these principles.

Response

The Commonwealth Government agrees that the revised Australian Explosives Code will be made available free of charge on the internet by 31 December 2008.

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Agricultural and veterinary chemical products

Recommendation 8.1

The Australian Government, in consultation with the states and territories, should impose a statutory obligation on the Australian Pesticides and Veterinary Medicines Authority to ensure that:

- the costs of chemical assessments are commensurate with the risks posed by the chemicals concerned
- its assessment priorities are directed to the most efficient management of the aggregate risk of all agvet chemicals.

Response

COAG agrees to a statutory obligation on the Australian Pesticides and Veterinary Medicines Authority (APVMA) to ensure that:

- the costs of chemical assessments are commensurate with the risks posed by the chemicals concerned
- its assessment priorities are directed to the most efficient management of the aggregate risk of all agvet chemicals.

COAG agrees that the regulation of agricultural and veterinary (agvet) chemicals must be effective and properly deal with the risks posed by the chemicals concerned and efficient in terms of maximising the benefits to the community, taking account of the cost. Consistent with these principles COAG supports the recommendation that assessment effort and priorities should be risk-based, noting that the quantification of risk is an assessment outcome.

APVMA assessment categories, prescribed by regulations, are established on a risk-based gradient and facilitate the alignment of assessment requirements with the risks posed. Modular assessment arrangements under that framework allow the specific tailoring of assessment costs to match product risks. Reforms being progressed through the chemicals and plastics early harvest agenda will further improve the efficiency with which low risk agvet chemical products are administered by the APVMA.

APVMA's reconsideration of existing agvet chemicals is underpinned by a rigorous and transparent scoping process to define the issues warranting reconsideration, and a risk-based prioritisation process. In response to the recommendations of an Australian National Audit Office performance audit the APVMA is currently re-evaluating its approach to ensure the ongoing effectiveness of its Chemical Review Program. That work will ensure that assessment priorities are directed at the most efficient management of the risks associated with agvet chemical products.

To assist in directing and clearly articulating the objective that assessment effort and priorities should be risk-based the Commonwealth will explore the potential for embedding additional guiding values in legislation, consistent with the principles underpinning the Commonwealth best practice regulation requirements.

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Recommendation 8.2

The Australian Pesticides and Veterinary Medicines Authority (APVMA) should regulate the use of agricultural and veterinary chemical products after the point of retail sale through amendments to the Agvet Code:

- The scope of the new control-of-use regime should be negotiated through the Primary Industries Ministerial Council, and should include, at a minimum, uniform approaches to enforcing conditions of use on product labels and to the licensing and training of users.
- The Commonwealth, state and territory governments should renegotiate the intergovernmental agreement to confer the necessary powers on the Commonwealth, and develop service level agreements for the regime to be delivered by the states and territories.
- The APVMA should recover additional costs through a mix of charges and levies.

Response

COAG directs the Primary Industries Ministerial Council (PIMC) to bring forward to COAG for consideration in the first half of 2010 a proposal for a single national framework to improve the efficiency and effectiveness of the regulation of agricultural and veterinary chemicals.

COAG notes that the integration of regulatory activities up to the point of retail sale with a national control-of-use regime would encourage a nationally consistent approach to risk management and improve the consistency of risk-management outcomes, underpinning the assessment and authorisation process (registration and permit).

COAG also notes that this recommendation may have significant resource implications which will be considered during the Commonwealth’s budget processes.

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Environment protection

Recommendation 9.1

The Environment Protection and Heritage Council should examine the costs and benefits of mandatory environmental labelling of chemicals. Mandatory environmental labelling should only be introduced if there is a demonstrated net benefit to the community.

Response

COAG agrees that the Environment Protection and Heritage Council (EPHC) will examine the costs and benefits of mandatory environmental labelling of chemicals, recognising that environmental labelling of industrial chemicals is not mandatory at present. COAG notes that the study will have some resource implications and that legislative change may be required should the study demonstrate net benefit to the community from mandatory labelling.

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Recommendation 9.2

The Commonwealth, state and territory governments should negotiate an intergovernmental agreement to create an independent standard setting body to manage the impact of chemicals on the environment. This body should:

- report to the Environment Protection and Heritage Council (EPHC)
- develop standards for the environmental risk management of chemicals and undertake regulatory impact assessment where appropriate
- comprise members who are experts in standard setting, and have the ability to appoint advisory bodies as necessary
- assess and respond to the NICNAS recommendations on the environment, with any other work to be agreed specifically by the EPHC
- meet only as required and be funded by jurisdictions.

The standards developed by this body should be submitted to the EPHC for consideration and approval, and adopted uniformly and automatically by the states and territories by reference. Once adopted, any variation by a jurisdiction should, at a minimum, be reported to the EPHC and include a statement of reasons for the variation.

A sunset clause should apply to the new body, which would require that it be dissolved unless a review of its effectiveness and efficiency showed an ongoing need.

Response

COAG requests the Environment Protection and Heritage Council (EPHC) to report back to COAG with a proposal for consideration in the first half of 2009 for establishing a standard-setting body for chemicals in the environment which will report to the EPHC. COAG notes that this will close a significant gap in the current arrangements for environmental protection and provide for a single national decision on the environmental management of chemicals which can be adopted by reference and applied consistently in all jurisdictions.

COAG agrees that this could be progressed through an enhancement to the existing EPHC intergovernmental agreement on chemicals and the National Chemicals Environmental Management Framework (NChEM), with supporting legislation as necessary. The composition, operation and funding of the standard setting body will need to be examined and resolved by the EPHC. Effective implementation of the reform will require continuing close consultation between Commonwealth, state and territory environment agencies in the assessment by the Department of the Environment, Water, Heritage and the Arts of the environmental impact of chemicals. The reforms will have resource implications.

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Recommendation 9.3

Commonwealth, state and territory governments should develop a performance measurement framework for monitoring the impact of chemicals on the environment that identifies national environmental monitoring and reporting objectives, and includes performance indicators for measuring outcomes against these objectives.

- The data needed to construct these performance indicators should be compared to what is already collected (using the Department of Environment, Water, Heritage and the Arts database) to determine if any gaps exist.
- The case for further monitoring should be based on cost–benefit analysis and consider options for reallocating monitoring resources on a budget neutral basis.

Response

COAG agrees that the Environment Protection and Heritage Council (EPHC) will examine the feasibility of developing a performance measurement framework for monitoring the impact of chemicals in the environment, both for impacts on the environment and human health.

In developing the study, the EPHC will consult closely with other ministerial councils with an interest in the environmental monitoring of chemicals, noting the need to avoid duplicating effort across jurisdictions or portfolios.

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National security

Recommendation 10.1

Commonwealth, state and territory governments should implement a nationally uniform approach to conducting security checks for access to security sensitive ammonium nitrate, irrespective of other harmonisation measures. The background checking process should be managed by a single agency such as AusCheck. A database that reports current, refused or revoked security clearances should be established, and the information shared across jurisdictions.

Response

COAG’s Review of Hazardous Materials Steering Committee is considering reforms of security sensitive ammonium nitrate arrangements. Opportunities for reform were

noted by COAG at its meeting on 2 October 2008. The Steering Committee will further develop recommendations for consideration by COAG at its first meeting 2009.

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Recommendation 10.2

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

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

Response

COAG’s Review of Hazardous Materials Steering Committee is developing reforms of security sensitive ammonium nitrate arrangements. Opportunities for reform were noted by COAG at its meeting on 2 October 2008. The Steering Committee will further develop recommendations for consideration by COAG at its first meeting 2009.

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Recommendation 10.3

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

Response

COAG welcomes advice from state and territory governments that there are currently no plans to add further chemicals to the regulatory regimes established for security sensitive ammonium nitrate and that decisions to do so would be taken as a last resort.

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Recommendation 10.4

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

Response

COAG agrees with the recommendation. In October 2008, COAG agreed to establish a Chemical Security Management Framework that will reflect an agreed approach to

minimising the potential of chemicals to harm the Australian community, industry and infrastructure and signed an Intergovernmental Agreement (IGA) which will underpin implementation of the Framework. The IGA incorporates strong governance arrangements through the establishment of a chemical security coordination unit within the Attorney-General's portfolio for which the Commonwealth Government has provided \$13.92 million in funding.

The Framework provides a structured process for the development and implementation of measures to enhance the security of chemicals on an ongoing basis, proportionate to the assessed risk. The measures are intended to assist security and law enforcement agencies in minimising the risk of terrorist use of chemicals, while not impeding the legitimate use of chemicals. The unit will undertake detailed risk assessments of chemicals of security concern to provide the specific information required for governments and industry to identify and implement appropriate capability and control measures to manage risk. The Chemical Security Coordination Unit has now been established within the Attorney-General's Department and is working to develop a risk methodology for assessing chemicals of security concern.