

National framework for Chemicals Environmental Management NChEM

EPHC Chemicals Working Group

ROUNDTABLE

ENVIRONMENTAL REGULATION AND MANAGEMENT

Achieving national consistency and streamlining of environmental risk management controls for industrial chemicals

Tuesday 22nd May 2007

9.30am – 4.30pm

NSW DECC Office

59 - 61 Goulburn Street, Sydney

Please proceed to reception on arrival - Level 14 (ext 5799)

This roundtable paper focuses on the NChEM action area of Environment Controls. In particular it looks at the question of how to effectively link environmental risk management recommendations made by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) in its assessments of new and existing industrial chemicals, with state and territory environment protection/chemicals environmental management systems.

The paper provides an outline of some possible design elements and options/approaches to achieve such a link and also to achieve national consistency in environmental controls arising from NICNAS assessment recommendations. The paper is intended to provide background and to stimulate thought to facilitate discussions at the roundtable. It does not attempt to provide a comprehensive list of all possible options/approaches and other views are welcome.

The views elicited by this paper and roundtable, and previous stakeholder workshops and consultations, will be used to inform Environment Protection and Heritage Council (EPHC) input into the Council of Australian Governments (COAG) Ministerial Taskforce on chemicals and plastics and the Productivity Commission (PC) Study into Chemicals and Plastics Regulation.

This NChEM key action area will not be finalised until the outcomes of the COAG Ministerial Taskforce/PC Study into Chemicals and Plastics Regulation are completed. Broader regulatory reform issues for chemicals management will be addressed in the COAG context.

Written comments on any of the issues raised in this paper are also welcome and to be incorporated into advice provided to EPHC Ministers on 1 June 2007, would need to be provided by 25 May 2007 to: lisa.nardi@environment.nsw.gov.au. Comments received beyond this timeframe are also welcome as the approaches and concepts will be further developed for input to the COAG Ministerial Taskforce/PC Study.

INTRODUCTION

In 2003 a high level National Taskforce (Occupational Health and Safety, Health, Primary Industries and Environment) reviewed the current chemical management systems to determine the need for a national approach to ecologically sustainable chemicals management and regulation.

EPHC agreed, following the taskforce report, that there was a need to bridge significant gaps as well as to streamline chemical controls so that Australia has effective protection for the environment and the community. EPHC established the EPHC Chemicals Working Group to develop a proposal for a national framework for the environmental management of chemicals (now called NChEM).

EPHC also agreed that the most effective way to make improvements to the environmental management of chemicals was to focus on areas where significant gains can be made to the current system in the near future and to review other areas at a later stage.

NChEM therefore focuses on filling 'gaps' in the regime for environmental management of industrial chemicals. There are also some minor gaps identified in the context of environmental management of agricultural and veterinary chemicals, which NChEM is also seeking to address. NChEM does not aim to identify or fill gaps within the therapeutic or food standards management regimes at this stage. Any consideration of these two systems would need to be considered at a later stage in consultation with stakeholders.

Many stakeholders have been involved in the development of the key areas of NChEM. An outline of NChEM and key action areas is provided at **Attachment A**.

OUTLINE OF THE PAPER

Section A: Setting the Scene

Section B: Making the Link – options for the future

Section C: Further Issues for Consideration

Section D: Short term policy options to bring improvements now

Section E: Previous Stakeholder Views

Note: It is anticipated that Roundtable discussions will focus primarily on Sections B and C.

Attachments:

A: Outline of NChEM

B: Examples of possible NICNAS recommendations relevant to the environment

C: Examples of possible linking options

D: Some existing legislative approaches for achieving national consistency

SECTION A: SETTING THE SCENE

*This section of the paper provides background to provide an explanation about the environmental ‘gap’ in the current system to manage industrial chemicals. For context, it includes a brief discussion of the current powers of the industrial chemicals regulator (NICNAS) and the types of environmental recommendations arising from NICNAS chemical assessment reports. It is intended to provide a common information base from which discussions can be had about the possible options for linking environmental risk management recommendations for industrial chemicals to environmental control actions. This Section ends by proposing some key features that could underpin the design of a linked system. **Stakeholder views on the proposed key features are sought.***

What is the current gap for industrial chemicals management?

The Commonwealth *Industrial Chemicals (Notification and Assessment) Act 1989* (referred to in this paper as the ‘IC Act’) provides for the assessment of both new and ‘priority existing’ chemicals.

NICNAS assessments may address Occupational Health and Safety (OH&S), public health and environment matters¹ and assessment reports may contain risk management recommendations on OH&S, public health and environmental management as well as the use, packaging, handling, labelling, storage, and disposal of the chemical. Assessments can be done in full (i.e. covering all issues), or cover only one area (such as public health). (*NICNAS considered the variety of its assessment products in its recent Existing Chemicals Program Review and is currently considering the outcomes of this Review, consequently the contents of NICNAS assessment reports may become more varied in the future.*)

In the IC Act there is no statutory mechanism to require the States and Territories to implement a NICNAS environmental recommendation, or to implement it consistently across jurisdictions. In addition, there is no clear or agreed process on how to provide advice to affected industries or the broader community on such an outcome. There are however systems in place to facilitate the adoption of the OH&S and public health recommendations.

Public health recommendations:

- reflected in poisons scheduling decisions made by the National Drugs and Poisons Schedule Committee (NDPSC). Following a decision by the NDPSC regarding inclusion and classification of a chemical in the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP), States and Territories generally adopt these scheduling decisions into relevant legislation relating to poisons, drugs or controlled substances. Jurisdictional legislation may pick up scheduling decisions automatically, or by gazettal or other means.

Occupational health and safety recommendations:

- reflected in national standards and codes of practice for hazardous substances and dangerous goods, which in turn are adopted through States’ and Territories’ OH&S and dangerous goods legislation. Coordination and consultation regarding the uptake of OH&S recommendations is facilitated through the existing MOU Group between OH&S agencies and NICNAS.

¹ NICNAS assesses the environmental impacts of industrial chemicals based on advice from the Australian Government Department of the Environment and Water Resources (DEW). This arrangement is formalised through a service level agreement.

Environment recommendations:

- are not systematically taken up. It is left to the State and Territory jurisdictions to determine whether and how to implement each environmental recommendation. (*Noting that many general environmental management, pollution and waste control measures such as bunding and storage requirements may be already implemented under existing State and Territory tools such as environment protection licensing*)

NICNAS assessments and environmental matters under the IC Act - Assessments of new and priority existing industrial chemicals

Any consideration of how to streamline uptake of environmental risk management recommendations requires understanding of the scope of NICNAS powers and NICNAS responsibilities regarding assessment recommendations under the IC Act, in particular in relation to environment matters. The following provisions apply to assessments of new chemicals under the IC Act (*very similar provisions apply to priority existing chemicals under sections 60A and 60B of the IC Act*)²:

s32 “Nature of ... assessment

- (1) Where an assessment of an application under section 23 for an industrial chemical is being made the officer preparing the report **must determine the risk (if any) of adverse health effects, safety effects or adverse environmental effects that could be caused by:**
 - (a) ...the **importation**; or
 - (b) ...the **manufacture**; or
 - (c) the **use, storage, handling or disposal; of the chemical.**
- (2) For the purpose of making a determination under subsection (1) in relation to an industrial chemical, **account is to be taken of each of the following matters:**
 - (a) the properties of the chemical;
 - (b) any use to which the chemical is intended to be, or is reasonably likely to be, put;
 - (ba) any adverse effects on the environment or persons that the chemical has the intrinsic capacity to cause;
 - (bb) the extent to which the environment, persons in a particular occupation or the public will be exposed to the chemical;
 - (c) any risk to the health or safety of persons who because of their occupation are engaged, or likely to be engaged, in the manufacture, handling, storage, use or disposal of the chemical;
 - (d) any risk to the health or safety of likely consumers handling or using the chemical or any product containing the chemical;
 - (e) any risk to the environment arising from the use of the chemical or from the discharge of waste products resulting from the manufacture or use of the chemical;
 - (f) the extent to which any risk referred to in this subsection is capable of being reduced by compliance with:
 - (i) appropriate procedures relating to the manufacture, handling, storage, use or disposal of the chemical;

² As noted above, NICNAS is currently considering the outcomes of its Existing Chemicals Program Review. This could result in amendments to the IC Act provisions relating to NICNAS assessments.

- (ii) special requirements in the packaging or labelling of the chemical;
- (iii) procedures relating to the control of, or the discharge into the environment of, the chemical or waste products resulting from the manufacture or use of the chemical;
- (g) any other relevant information available to the Director.”

s33 “Contents of ... assessment report

An assessment report (other than... (self-assessment)) **must include** a Material Safety Data Sheet, **a summary of** health, safety and **environmental matters considered in the assessment and such recommendations as may reasonably be made in relation to each of the following...**:

- (a) the precautions and restrictions to be observed during the importation, manufacture, handling, storage, use or disposal of the chemical to protect persons exposed...;
- (b) controls to limit emissions of the chemical into the environment, including permissible concentrations in emissions of the chemical into the air or water from a manufacturing plant or other facility;
- (c) the packaging, labelling, handling or storage of the chemical;
- (d) the measures to be employed in emergencies involving the chemical to minimise hazard to persons and damage to the environment;
- (e) the uses of the chemical;
- (f) the means of disposal of the chemical;
- (g) the circumstances ... in which secondary notification of the chemical is required;
- (h) any prescribed matter.”

Types of NICNAS environmental assessment recommendations

To date most environment recommendations in NICNAS assessment reports for priority existing chemicals have related to controlling discharges to drains/waterways, containing spills and disposal practices. For new chemicals, most environmental recommendations in NICNAS assessment reports relate to disposal. With improved framing of the recommendations in assessment reports, improved coordination and involvement of State and Territory environment agencies in risk assessments and improved environmental risk assessment processes (all of which are anticipated outcomes under NChEM), the Working Group expects that a wider range of more specific recommendations on environmental management of industrial chemicals could be made in assessment reports (see **Attachment B** for a list of possible recommended environmental controls). Examples of relevant NICNAS assessment recommendations drawn from recent assessment reports are provided in the table below.

Working draft for discussion at Roundtable

Chemical	Year	Environmental and other relevant recommendations
Priority Existing Chemicals		
Formaldehyde	2006	It is recommended that NEPC take the data and findings of this report into consideration when setting an ambient air standard for formaldehyde. Evaluation of the available data in this report indicates that an ambient air standard in the order of 80 ppb (sampling over a short duration) would be warranted. It is recommended that the Australian Government Department of the Environment and Heritage (<i>Water Resources</i>) update the National Pollutant Inventory (NPI) Fact Sheet for formaldehyde in accordance with the findings of this report.
N-Vinyl-2-pyrrolidine	2000	Spills should be contained with absorbent material such as earth, sand or similar inert material, and disposed of to licensed landfill or incinerated. Do not allow product to enter drains or waterways.
Tetrachloroethylene	2001	Industries using tetrachloroethylene should limit as much as possible release of the chemical to the atmosphere, and the chemical should not be released to drains and waterways. Disposal should be through a licensed waste contractor.
Hydrofluoric acid	2001	Anhydrous hydrofluoric acid Do not allow chemical to enter drains and waterways or surrounding soil. Extracted air contaminated with large amounts of fumes should be scrubbed prior to release to the atmosphere. Where possible, upturn leaky containers to allow gas rather than liquid to be released. Contain leaks with sand, earth or other absorbent material. Dilute with water and neutralise with lime. Keep waste out of drains and waterways. Hydrofluoric acid solution Do not allow chemical to enter drains and waterways. Contain spills with sand, earth or other absorbent material. Dilute with water, and where possible, neutralise with lime.
Methylcyclopentadienyl Manganese Tricarbonyl (MMT)	2002	Should be sent to licensed waste disposal contractors in accordance with State and Territory requirements. No specific waste disposal guidelines, standards or management issues were identified for MMT or Mn wastes. Due to the toxicity of MMT, care should be exercised in disposing of contaminated wastes to avoid pollution of the environment.
Glutaraldehyde	1994	It is recommended that no special environmental controls beyond those that currently prevail across Australia are considered necessary. Spent solutions disposed of to sewer should be flushed with copious amounts of water. Glutaraldehyde must not be discharged to surface waters, storm water drains or septic systems.

Features of a Linked System

A clear and consistent link between NICNAS assessment recommendations for the environment and their consistent implementation by the States and Territories would help streamline environmental chemicals management, providing potential benefits to industry and the community. While the best approach is still to be determined, some key principles for such a link need to be considered and agreed. Suggested key principles include:

- There should be clear, effective and formalised communication processes between environment agencies and NICNAS so that assessment recommendations take into account on-the-ground experience of States and Territories and to ensure that any recommendations are action-based, practical and linked with appropriate management tools. *(This would be supported by improved framing of recommendations and formal establishment of an environment agency consultative mechanism, allowing agencies to receive and input to NICNAS draft reports early in the process. Development of appropriate NICNAS management recommendations could also be enhanced by developing a Manual of Environmental Controls, as discussed further below.)*
- The linking mechanism should be as simple as possible e.g. NICNAS recommendations could come automatically into force, or be automatically adopted in each of the States and Territories in a consistent way. *(This would replace the current system whereby recommendations are implemented on an ad hoc and individual basis by State/Territory agencies, which results in unnecessary complexity of controls and uncertainty for industry and the public and is less efficient for governments.)*
- The focus for consistent implementation of environmental controls would be those chemicals identified as of environmental concern, and for which environment agencies have had input early to the assessment process and assisted in framing the recommendations to ensure they are practical and can be implemented *(these are likely to cover any new chemicals where environmental controls are required and controls for priority existing chemicals once reviewed)*.
- A linked system would be usefully supported by a central and easily accessible location/repository for industry, the community and government agencies to find information about environmental management recommendations for industrial chemicals *(The Working Group, in consultation with NICNAS, is exploring options for such a repository)*. It would also be useful to have an agreed and transparent process for disseminating information on controls to affected companies.
- The development of a link would be undertaken in the context of no unnecessary regulation/red tape and would be subject to any necessary impact assessment processes.

QUESTIONS

- 1. Are there any other key design features?**
- 2. Should any of the listed features be modified?**

SECTION B: MAKING THE LINK - POSSIBLE LONGER TERM OPTIONS

*There are many possible options to link NICNAS environmental risk management recommendations and their implementation by the States and Territories. This section (and its supporting **Attachments C and D**) provide some general thoughts on ways of achieving legislatively linked and consistent environmental risk management actions to implement industrial chemical assessment recommendations. Stakeholders will be asked to contribute their thoughts on options and issues at the Roundtable meeting.*

Achieving national consistency

Many options for achieving consistency in government actions talk about ‘uniform’ legislation. Uniform legislation is legislation which is substantially the same in all jurisdictions (or all target jurisdictions). There are a number of ways of achieving nationally consistent (uniform) legislation, for example:

- State parliaments may refer power to the Commonwealth, which can then legislate;
- “mirror” legislation may be enacted by all jurisdictions in nearly identical terms;
- Co-operative legislation may be enacted – the Commonwealth legislate to the extent of its existing powers and the States and Territories legislate to cover the remaining matters;
- “template” or “model” legislation is enacted by a “host” jurisdiction and other jurisdictions adopt that legislation;
- jurisdictions may enact “alternative consistent” legislation, that is legislation that is consistent but does not use template or mirror legislation.

Cross-cutting issues

Some fundamental questions underlie all options, including:

- How should responsibilities be divided between NICNAS and States and Territories (i.e. who does what – for example in relation to information gathering, investigation and enforcement)?
- What types of investigation and enforcement tools may be needed? (e.g. powers for information exchange, investigation powers, offences, penalties, enforceable codes of practice etc)
- How can ‘must do’ environmental controls be identified from other NICNAS recommendations (e.g. those seeking further policy advice, education, monitoring or information provision)?
- Does there need to be a provision to enable variation amongst jurisdictions? If so, where should the ‘final say’ reside? What should be considered in deciding whether a variation is appropriate? Are there examples where such a provision would be needed? (*Noting that variation or opt-out clauses could reduce national consistency.*)
- What should be done if a NICNAS environmental control/recommendation is inconsistent with an existing State or Territory control (e.g. a licence discharge condition)? Should the NICNAS control automatically override the State or Territory control?

- How should affected industry be informed of environmental controls? How could timely, efficient and comprehensive communication to stakeholders be facilitated? (*Noting this would need to include small and non-licensed users.*)

QUESTION

1. Are there any other cross-cutting issues that should be considered?

Options for a Link

An effective link is likely to require some level of amendment to State and Territory legislation and could also involve amendment to the *IC Act*. Three broad possible options are provided in **Attachment C** and can be summarised as:

1. Automatic link – Commonwealth legislates so that NICNAS environmental decisions automatically become the law in jurisdictions.
2. Automatic link but only after a new “review” step - NICNAS environmental decisions reviewed by other party (possible new environment review committee) and, if agreed, automatically become the law in jurisdictions (combination of Commonwealth and State/Territory legislation).
3. Automatic link effected by States and Territories - States and Territories each legislate to adopt NICNAS environmental recommendations as law in their jurisdiction.

The options do not attempt to provide a comprehensive legal description of how the system would work, but rather a simplified summary of some key features. A fourth policy option is also provided in **Attachment C**. Under this option NICNAS recommendations and jurisdictional environmental control actions would only be linked by policy agreement, with no legal underpinning.

The options are provided to indicate that there are many ways of reaching a nationally consistent outcome. Some background on examples of approaches used to achieve national consistency for other policy issues is also provided in **Attachment D**. All of these example legislative regimes have pros and cons and operate in a different policy context, however they may provide valuable insights into various elements of the possible linking options.

The section below *‘Linking options – elements for consideration/discussion’* pulls out the key elements contained in the attached models and groups them thematically to enable broad discussion at the Roundtable. These elements will be further explained at the Roundtable.

The Working Group is keen to explore all potential elements and is open to stakeholder views on which elements should feature in a model to link NICNAS recommendations to State/Territory actions, and how this can best be done. The Working Group does not intend to “finalise” any one model at this time, noting that finalisation of any regulatory approaches will need to await the outcomes of COAG/PC Study processes.

Linking options – elements for consideration/discussion

Type of link:

- a) automatic – after formal assessment by NICNAS finalised, no additional steps required to give effect to environmental recommendations
- b) intermediate step - NICNAS recommendations require review by others before taking effect. Inserts an additional decision point into the system
- c) no legislative link - consistent actions stem from policy commitment of jurisdictions

Commonwealth legislation – what are the options?

- a) amend the IC Act to increase NICNAS powers
- b) new Commonwealth Act to give DEW (or other body) power to adopt NICNAS environmental recommendations
- c) no change – rely on policy links

State and Territory legislation – what are the options?

- a) new uniform legislation to mandate NICNAS environmental recommendations as State/Territory law
- b) new uniform model legislative provisions inserted in existing State/Territory law
- c) no change – rely on policy links

Decision making points:

- a) NICNAS determines environmental controls (after consultation with environment agencies)
- b) DEW/State and Territory environment agencies determine controls via a new “review” body – potential to alter/reject NICNAS recommendations
- c) States/Territories action the recommendations via stand alone legislative model or via policy commitment

QUESTIONS

1. What do stakeholders want to see in any future linking mechanism between NICNAS environmental assessment recommendations and jurisdictional control actions?
2. What don't you want – what problems do we need to avoid?
3. Would any of the examples presented in Attachment D be a useful model for a possible future legislative link under NChEM and why/why not? Are any elements of these example approaches useful?

SECTION C: FURTHER ISSUES FOR CONSIDERATION

In considering possible legislative options there are a number of additional questions that arise and the Working Group is interested in stakeholder views on these questions:

1. What are the current costs/problems for industry caused by:
 - a. inconsistent State and Territory approaches to implementing NICNAS environmental recommendations/ differences in environmental management of chemicals across the States and Territories? ; or
 - b. uncertainty regarding the adoption of environmental recommendations?Any specific examples would be valuable.
2. If NICNAS environmental recommendations relate to premises, different environmental management tools are likely to be necessary for licensed versus non-licensed premises. How could/should this be taken into account?
3. In the context of improving the framing of NICNAS recommendations, the possibility has been raised of changing the term “recommendation” in the IC Act in order to indicate a stronger expectation that the ‘recommendation’ should be adopted nationally and in a consistent manner. An alternative term could be ‘direction’, ‘control’ or ‘action’, but other possibilities could be canvassed. Should this be considered? What would be the implications of such a change?

QUESTIONS

1. **What are stakeholders’ views on these issues?**

SECTION D: SHORT TERM POLICY OPTIONS TO BRING IMPROVEMENTS NOW

This section of the paper provides background information only about policy actions that, if approved by Ministers, environment agencies will take in the short term to improve environmental chemical risk management coordination. These have been previously discussed with stakeholders and will not be further discussed at the Roundtable meeting.

There are a number of short term policy actions that Environment Ministers can take now to ensure that appropriate environment protection controls are recommended and to achieve some level of national consistency in their implementation. These policy actions have been previously discussed with stakeholders in particular at previous roundtables, and have broad support. The actions below will be presented to EPHC at its meeting in June 2007 for consideration, and if agreed will be further progressed by the Chemicals Working Group.

A. Policy agreement by Environment Ministers to cross-jurisdictional consistency

The Working Group proposes to seek a commitment from Environment Ministers to implement NICNAS environmental management recommendations in as consistent a manner as possible on an interim basis (in the context that it would be using existing legislative tools, which may vary between jurisdictions). The focus of the commitment would be those chemicals of concern (not all chemicals) where jurisdictions have contributed to NICNAS' development of practical and workable environmental recommendations. As a policy commitment this would not in itself generate legally enforceable requirements but could provide a very valuable opportunity to "trial" practical and consistent implementation actions.

The agreement being sought from Ministers would include a reporting component so that NICNAS is informed of how its recommendations have been taken forward, and, to enable identification of any issues with implementation.

(The policy commitment between Environment Ministers could be strengthened and supported through the establishment of a formal link between State and Territory environment agencies and NICNAS, e.g. through a revised MOU as in B below).

B. Revise NICNAS MOU with the States and Territories

NICNAS currently has an MOU with the States and Territories. The existing MOU was signed in 1991 with the intention of formally establishing arrangements to facilitate linkages between the *IC Act* and State and Territory legislation relating to industrial chemicals. Under the MOU, in particular paragraph 5, Governments committed "to consider and wherever possible implement" each of NICNAS' risk assessment recommendations and to inform the Director of NICNAS of any actions taken regarding those recommendations. The MOU Group currently consists of jurisdictional representatives from state and territory OH&S portfolios, while public health and environment agencies are not formally represented. Recommendation 5.5 of the *Final Report of the NICNAS Existing Chemicals Program Review* indicated that NICNAS will explore improved processes for coordination and cooperation with States and Territories, including under its MOU Group.

The EPHC Chemicals Working Group will consider, with NICNAS, how the MOU could be expanded to facilitate greater involvement of jurisdictional environment agencies and the

consideration and consistent implementation of environmental recommendations. This would be a policy commitment by the States and Territories and on its own would not generate legally enforceable requirements or penalties.

C. Improve ongoing coordination and consultation between NICNAS and environment agencies

Revision of the NICNAS MOU would help formalise improved coordination and consultation mechanisms. Another action to improve coordination would involve the Australian Government Department of Environment and Water Resources (DEW) consulting early in the process with its State and Territory counterparts when assessing chemicals of concern. This would ensure State/Territory on-the-ground experience can be incorporated into the assessment process, including the recommendation of appropriate environmental controls. This arrangement could be formalised through an ongoing NICNAS and environment agencies consultative group and/or via revisions to the NICNAS MOU. (*Note: this action links with the NChEM action on improving environmental risk assessments and was discussed at previous roundtables*).

D. Improve framing of environmental assessment recommendations

Currently NICNAS assessment recommendations for the environment are broad and generally not framed in enforceable action-based language. Recommendations that need to be implemented to prevent environmental harm need to be written in such a way that it is very clear about *what* must be done as well as *who* the recommendation applies to (e.g. users, manufacturers/ importers/ reformulators, governments etc) to ensure that there is certainty about the requirements and how to implement them, and so that environment agencies can manage or enforce them.

The EPHC Chemicals Working Group is currently working with DEW and NICNAS to improve the wording of environmental recommendations by reviewing a series of specific environment risk assessment reports. In addition, NICNAS has undertaken to explore improving this aspect of its assessment process in response to the outcomes of the *Final Report of the NICNAS Existing Chemicals Program Review*, which recommends (Recommendation 5.10) that “NICNAS use action statements that are evidence-based, specific to the needs identified, achievable, and practical and be directed to the most appropriate body for implementation”.

Improved environmental control recommendations at the national level would support and streamline any possible longer term legislative link between NICNAS environmental recommendations and their implementation by the States and Territories.

E. Develop a manual of environmental controls

A manual of environmental controls would greatly assist risk assessors in recommending appropriate controls for the environmental management of industrial chemicals by providing a clear understanding of the range of tools and environmental risk mitigation measures available or required. It would also help drive changes to some inconsistent or inadvisable disposal practices currently recommended in MSDSs, such as incineration.

Development of this manual and its application by the risk assessors is not dependent on a legislative mechanism being implemented. However, improved environmental control recommendations at the national level would support and streamline any legislative link between NICNAS environmental recommendations and their implementation by the States and Territories.

F. Develop central repository for information about environmental recommendations

The Working Group believes a single, central repository that incorporates industrial chemical management decisions is an important supporting mechanism to facilitate a link between the Commonwealth (NICNAS) and State/Territory systems for environmental chemicals management.

While not essential to the development of a linking mechanism, a central repository would be an information resource to enable easy access to environmental recommendations without the need to trawl through complex NICNAS assessment reports to extract these recommendations. It could be used by States and Territories as a reference point and would also facilitate access to information about environmental controls for industrial chemicals for industry, the community and governments.

Appropriate tools could be, for example, a central database or chemical listing point on the NICNAS website (where the environmental recommendations drawn from NICNAS assessment reports are posted), *or* via annotations in the Australian Inventory of Chemical Substances (AICS).

For information:

AICS is established under the IC Act and includes information on chemicals approved for importation or manufacture in Australia. Currently there are some restrictions on annotations in AICS can include, however according to the IC Act AICS can include:

“any condition of use, or any other condition, to which the importation or manufacture of a chemical...is subject...” (section 12 (3)(f)); and

“any particulars about the assessment of the chemical....” (section 13 (1)(c)).

These provisions under the IC Act suggest it may be feasible to include on AICS the environmental recommendations from NICNAS assessments. However, AICS does not include all new chemicals (there is a time period before they are incorporated onto AICS) and may therefore only adequately cover existing chemicals. Amendment of the IC Act to expand the coverage of AICS could also be considered if this option was deemed appropriate.

SECTION E: PREVIOUS STAKEHOLDER VIEWS

Stakeholder views in response to the July 2006 NChEM Discussion Paper sections regarding this Action Area are summarised below:

- Universal support for consistent management of chemicals of environmental concern across jurisdictions
- Some support for enhanced NICNAS powers to improve environmental outcomes. Some industry concerns that expansion of NICNAS powers might duplicate powers already in place in the States and Territories.
- Any additional regulatory controls would need to be in accordance with regulatory best practice, including thorough regulatory impact assessment and only applying new controls where they are justified (net benefit). Also call for them to be based on evidence/science.
- Desire for a national system to provide genuine consistency, and noting that this is not always the case.
- Call for chemicals to be banned automatically in Australia if they have been banned internationally.
- Call for use of a variety of management tools, including economic incentives, voluntary approaches and interim management measures in addition to regulation.
- Need to ensure that streamlining does not lead to a lowest common denominator approach to chemical control, and that a certain level of 'regulatory burden' may be an appropriate and necessary safeguard for the use of chemicals of high environmental and health concern.
- Need to ensure that the adoption and enforcement of NICNAS controls by States and Territories does not undermine or weaken any effective controls already in place, noting that not all States have dedicated environmental chemicals legislation.

ATTACHMENT A

OUTLINE OF NChEM ACTION AREAS

The EPHC Chemicals working group has been leading work to develop a proposal for a framework for National Chemicals Environmental Management (NChEM). The EPHC Chemicals Working Group (*chaired by Lisa Corbyn, Director General NSW Department of Environment and Climate Change*) was established by Environment Ministers in 2003 as a result of National Chemical Taskforce work (http://www.ephc.gov.au/ephc/chemicals_mgt.html).

NChEM aims to provide a more **streamlined, transparent and nationally consistent** approach to environmental chemicals management, and improve key **environmental outcomes** in chemicals management. The NChEM proposals have a particular focus on the management of industrial chemicals as this is the area where significant gains can be made to improve the application of nationally consistent controls for environmental management.

NChEM consists of the following four linked action areas:

1. **Environmental Risk Assessment** – strengthening our ability to assess chemical risks by enhancing consultative mechanisms among national chemical assessment agencies and state and territory environment agencies.
2. **Environmental Controls** – improving approaches to and consistency in environmental regulation and management of chemicals.
3. **Feedback of Information** – improving our understanding of chemical impacts and the feedback of information to the national assessment agencies.
4. **Prioritising Action** – establishing an inclusive and transparent process to identify and deal with higher concern environmental chemical policy issues.

ATTACHMENT B

POSSIBLE NICNAS ASSESSMENT RECOMMENDATIONS RELEVANT TO ENVIRONMENT

Environmental controls available to State and Territory Governments need to cover all potential NICNAS environmental risk assessment recommendations. Potential environmental risk assessment recommendations may include:

Discharge or emissions limits/standards or premises based requirements

- Restrictions/prohibition on discharges to sewers/waterways/drains e.g. restrictions on concentrations permissible in discharges to water
- Restrictions/prohibition on discharges to air
- Requirement to contain/capture contaminants
- Requirement to meet specified indoor or ambient air standards/limits
- Tailings dam requirements
- Requirement to meet on site disposal/handling/storage specifications
- Spill management requirements:
 - Bunding
 - Other structural, materials or process requirements
- Waste management requirements:
 - Disposal to landfill (e.g. restriction of disposal to landfills with leachate capture systems)
 - Specified treatment of waste/specific technologies mandated
 - Limitations /considerations for recycling or energy recovery

Non-premises based requirements

- Ban or phase-out of chemical
- Restriction on use
- Placing limit on total volume of use across industry/nationally (*e.g. via national or regional threshold establishment and businesses reporting to NICNAS on quantities used*)
- Requirement for testing of ecotoxicological risk modelling outcomes/assumptions (*e.g. whether a chemical is really removed via STP processes*)
- Requirement for ongoing monitoring of chemical
- Requirement for industry to report back on impacts, monitoring or levels of use etc.
- Requirements relating to labelling, packaging, storage or handling during supply chain activities
- Requirement to implement education program

QUESTIONS

- 1. Are there any other likely environmental recommendations?**

ATTACHMENT C

POSSIBLE FUTURE LINKING OPTIONS

OPTION 1: Automatic link contained in Commonwealth Legislation

NICNAS has increased regulatory powers and States and Territories automatically implement NICNAS controls. The effect is that NICNAS environmental decisions once formally made are automatically the law in each jurisdiction without the need for any additional review or legislative step.

Features:

- The IC Act would be amended to give NICNAS strengthened powers to mandate environmental management controls resulting from its risk assessment processes (*any controls needed to prevent environmental harm would no longer be referred to as recommendations, but would be clearly identified as mandatory environmental controls e.g. in a Schedule of the IC Act*).
- States and Territories would adopt the identified and mandated controls without amendment of those controls or any further review process (*agreement would be through risk assessment process*).
- States/Territories would adopt the amended IC Act as State/Territory law i.e. uniform/consistent legislation would be introduced in each State and Territory ‘applying’ the IC Act. NICNAS environmental controls in assessment reports would then automatically and immediately apply in each jurisdiction.
- Controls, as with current recommendations, could include setting conditions on the import, manufacture, use, storage, handling, labelling and disposal of industrial chemicals. (*With changes to the IC Act, this could include banning, phasing-out or restricting the use of a chemical where unacceptable adverse effects on the environment are identified*).
- The uniform State and Territory legislation could set out appropriate investigation and enforcement powers, penalties etc to ensure consistency across jurisdictions.

Identified Pros and Cons

- An **advantage** of this approach is that tying environmental risk assessment outcomes directly with mandatory environmental controls and enforcement in the same statute (the IC Act) improves regulatory clarity: a direct link exists between the NICNAS decision and State/Territory environmental management. This approach also achieves a very high level of consistency across the States/Territories
- A potential **disadvantage** is that there may be implications of adopting IC Act regarding existing State/Territory environmental, waste or chemicals management legislative regimes.
- Similar to the Food Standards Code and Agvet Code systems (*i.e. where each jurisdiction has complementary statutes that adopt the Commonwealth Food and Agvet Codes*). The national Water Efficiency Labeling and Standards (WELS) Scheme is another example.

OPTION 2: Intermediate step - link after review

There is an intermediate step between NICNAS environmental recommendations and their implementation in States and Territories. NICNAS recommendations about environmental controls would take effect by way of a new ‘environment chemicals management Act’ administered by the Australian Government. This new Act would set up a mechanism to adopt NICNAS environment recommendations and State and Territory applying legislation would make them mandatory in the jurisdictions.

Features:

- NICNAS would continue to provide environmental recommendations in its assessment reports.
- There would be an intermediate step to facilitate implementation/adoption of the environmental recommendations via a new Commonwealth Act, probably administered within the Australian Government’s environment portfolio (e.g. by DEW).
- This Act could, for example, involve establishment of a new statutory committee (with representation of all States and Territories) whose role would be to review and ‘approve’ or otherwise stipulate environmental controls arising from NICNAS recommendations.
- The new Commonwealth Act (or a schedule of decisions made by the committee under the Act) would then be adopted or applied by the States and Territories to give legal effect to the implementation of the environmental controls in all jurisdictions.

Identified Pros and Cons

- An **advantage** of this approach is that it can operate independently of any possible amendments to the IC Act.
- Another **advantage** of this approach compared with Option 1 is that a new Commonwealth Act could be targeted and tailored specifically for adoption of the NICNAS environmental recommendations (*i.e. For Option 1, many provisions of the IC Act, such as provisions regarding NICNAS administration, AICS administration, registration and related national level enforcement activities and treatment of OH&S and public health recommendations would not be relevant in the State/ Territory equivalent Act*). As with Option 1, this Option would achieve a high level of consistency in the legislative regime across the States/Territories.
- A **disadvantage** of this approach is that it may be seen as increasing regulation and bureaucracy due to the need to create a new Commonwealth Act and possibly to establish a new “review” committee to activate NICNAS recommendations. Also, there is still a level of regulatory remove between the NICNAS environmental recommendation and the environmental risk management actions/controls taken to implement that recommendation.

OPTION 3: Automatic Link – State and Territory Legislation

States and Territories introduce new uniform legislation or consistent provisions in existing legislation. Commonwealth legislative changes are possible but not required. The effect is that NICNAS environmental recommendations are picked up by the States and Territories under new State/Territory legislative provisions rather than through a central Commonwealth Government level mechanism.

Features:

- NICNAS would continue to make environmental recommendations as a result of its assessment processes.
- States and Territories would implement NICNAS environmental recommendations consistently in a legally mandated way either: a) via separate uniform State/Territory industrial chemicals environmental management Acts; or b) by drafting model provisions to slot into existing State and Territory legislation. The new provisions or Act would be designed to make NICNAS environmental recommendations mandatory in the jurisdiction.

a) Model uniform legislation approach

- One State would draft model legislation for a new State/Territory industrial chemicals environmental management Act. This law would refer or link to the NICNAS environmental assessment recommendations made under the IC Act, mandate the adoption or implementation of these NICNAS assessment recommendations and include enforcement provisions and an appropriate range of tools and offences/penalties to cover different types of potential NICNAS recommendations. The adoption of the appropriate environmental controls would be automatic following release of NICNAS final assessment reports.
- Mirror legislation would be introduced in each State and Territory referencing the model Act and applying it as a law of their State/Territory. Simultaneous repeal of, or amendment to, other chemicals, environmental and pollution management legislation might be required in some jurisdictions.
- The new State/Territory legislation could be developed in consultation with the Australian Government. However, changes to Commonwealth legislation would not necessarily be required.

Identified Pros and Cons

- A potential **advantage** is that States could do this as a ‘stand alone’ option, without needing legislative changes at the Commonwealth level.
- A potential **disadvantage** of this approach is that it would require NICNAS recommendations to be clear and enforceable and adequately cover all types of environmental controls.

b) Model provisions in existing legislation

- States and Territories would agree to implement a consistent suite of provisions mandating adoption of NICNAS environmental recommendations into an appropriate existing environmental or chemicals management Act in their jurisdiction. One State would prepare model wording for the new provisions which would then be reviewed by other jurisdictions’ legislative drafting bodies with the intention of adopting the provisions (or keeping the substantive provisions as consistent as possible) across all jurisdictions. The new provisions would then be ‘slotted in’ to the chosen Act in each jurisdiction (*e.g. in NSW provisions could be introduced into the Protection of the Environment Operations Act or Environmentally Hazardous Chemicals Act*).

Identified Pros and Cons

- A potential **advantage** of this Option is that from a regulatory/government point of view this Option could possibly be more easily progressed and with fewer costs to government than other Options (*i.e. only drafting a new set of provisions rather than an entire Act; uses/builds on existing Acts and frameworks; Commonwealth legislative changes not required*).
- A potential **disadvantage** is that in some jurisdictions this approach may be problematic if their identified existing legislation had limited scope and was not structured so as to provide a suitable framework for simply ‘slotting in’ the model provisions (*e.g. if offence/penalty clauses not aligned; appropriate environmental tools not available; responsibilities split among several Acts and portfolios etc*).
- A further **disadvantage** is that this Option may also lead to regulatory inconsistencies within or between jurisdictions (*e.g. each individual piece of State and Territory legislation has its own enforcement and investigation regimes, so a chemical may end up subject to the same discharge limit (for example) but different penalties across jurisdictions. Alternatively, if investigative and enforcement powers are specified per chemical, they may then vary between chemicals or with regard to other regulatory aspects of the legislation i.e. different investigative and enforcement tools may apply for chemicals versus waste management*).
- As with Option 3a above, this approach may also be limited by national level constraints (*i.e. the quality or comprehensiveness of NICNAS recommendations*).

OPTION 4 – Link by Policy Agreement

States and Territories agree to continue to implement NICNAS recommendations via formal agreement rather than legislative means, that is, there is no legal link to mandate consistent action.

- Environment Ministers would agree to implement NICNAS environmental management recommendations in as consistent a manner as possible (*noting that it would be using existing legislative tools, and these vary across jurisdictions*)
- This would apply to those chemicals of environmental concern where jurisdictions have contributed to NICNAS’ development of practical and workable environmental recommendations.
- The policy commitment between Environment Ministers could be strengthened and supported through the establishment of a formal link between State and Territory environment agencies and NICNAS, e.g. through a revised MOU.

Identified Pros and Cons

- An **advantage** is that there would be no legislative amendments required
- A **disadvantage** would be that the consistency would be limited by the tools currently available to States or Territories to manage the environmental impacts of chemicals within their jurisdictions. While there may be broadly consistent outcomes achieved, industries operating in several states would still need to understand and comply with several different legislative regimes.
- Another potential **disadvantage** would be that a policy commitment would not in itself generate legally enforceable requirements. That is there would be no guarantee of consistent national action.

ATTACHMENT D

EXAMPLES OF LEGISLATIVE APPROACHES TO ACHIEVE NATIONAL CONSISTENCY

National framework for agricultural and veterinary (Agvet) chemicals

The *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994* (the Agvet Code) establish a national scheme for the assessment and registration of Agvet products, through the Australian Pesticides and Veterinary Medicines Authority (APVMA) (previously the National Registration Authority). This enables the APVMA to control the importation, manufacture, packaging, labelling, distribution, sale and registration of Agvet chemicals and chemical products.

The APVMA operates within the Australian Government Agriculture, Fisheries and Forestry portfolio. All new Agvet products must be assessed and registered by the APVMA before they can be sold, supplied, distributed or used in Australia. The APVMA also has a program to review existing pesticides and manages quality assurance programs that monitor the ongoing safety and performance of registered products. The Primary Industry Ministers' Council seeks advice from its Product Safety and Integrity Committee (PSIC) on key issues relating to the management and implementation of the National Registration Scheme. Membership of PSIC includes representatives from Australian and State/Territory Government primary industry or agriculture departments, CSIRO and the APVMA as well as other Ministerial Councils which have an interest in management of agricultural and veterinary chemicals, including the EPHC. The APVMA also chairs an AgVet Registration Liaison Committee comprising State, Territory and Commonwealth agencies, which deals with the operational aspects of the National Registration Scheme.

To enable the Agvet Code to have national coverage each State and the Northern Territory has complementary legislation which adopts the Agvet Code and allows for its application in their jurisdiction (the Australian Capital Territory is covered by the Commonwealth Act).

Food Standards Code

Food Standards Australia New Zealand (FSANZ) established under the Commonwealth *Food Standards Australia New Zealand Act 1991* (FSANZ Act), sets national standards for composition, residue limits, testing, packaging, storage and labelling of food. FSANZ also assesses the human health risk of food additives before they are allowed to be used. National standards developed by FSANZ in accordance with the requirements of the FSANZ Act are incorporated into the national Food Standards Code. The Act provides for consultative mechanisms with the States and Territories. The Food Standards Code establishes the maximum permitted levels of food additives that may be present in food, regulates the addition of vitamins and minerals, controls the labelling of food products and provides general food standards covering the maximum residue limits for contaminants and natural toxicants, including various agricultural and veterinary chemicals and heavy metals.

Each State and Territory has a Food Act which allows for the application of the Food Standards Code in their jurisdiction and this legislation is generally administered by jurisdictions' health agencies. State/Territory legislation adopts the Code either automatically (*e.g. in NSW*) or via gazettal/other means. It is the responsibility of States and Territories to enforce and regulate the standards contained in the Code in their jurisdiction.

Hazardous substances and dangerous goods regulatory packages

The Australian Safety and Compensation Council (ASCC) have declared a number of Standards and Codes of Practice which form the basis of a nationally consistent regulatory approach for the control of workplace dangerous goods and hazardous substances. The ASCC (previously the National Occupational Health and Safety Commission (NOHSC)) has functions conferred on it under the Commonwealth *Australian Workplace Safety Standards Act 2005*. A key function of the ASCC is to support the achievement of nationally consistent regulation by developing and declaring national Standards and Codes of Practice, along with other guidance material, as a model for laws in the States and Territories. These Standards and Codes of Practice are produced as guidance or advisory documents to form the basis for nationally consistent regulation by States/Territories under their principal OH&S Acts and are not themselves legally enforceable unless the States and Territories adopt them under their jurisdictional legislation. (Jurisdictions have generally adopted the key Standards/Codes of Practice in these regulatory packages).

The **Hazardous Substances Regulatory Package** provides a framework for the legislative control of hazardous substances used in the workplace. The regulatory package consists of Model Regulations, National Standards, Codes of Practice and other guidance material. The key document is: *The National Model Regulations for the Control of Workplace Hazardous Substances [NOHSC: 1005(1994)]* (including a list of designated hazardous substances) which were developed in 1994 and have since been adopted by all States/Territories.

A key document is the *Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008(2004)]* which provides criteria for classifying substances as 'hazardous'. The classification used by the *Approved Criteria* is based on the health effects (i.e. toxicology) of the substance.

The **National Dangerous Goods Framework** is designed to enable a nationally consistent regulatory approach to the control of workplace dangerous goods. In March 2001, NOHSC released the key *National Standard for the Storage and Handling of Workplace Dangerous Goods (NOHSC: 1015 (2001))* which sets out requirements for effective control of the storage and handling of dangerous goods. The Workplace Relations Ministerial Council committed to the adoption of this National Standard by all States and Territories to ensure a nationally consistent regulatory regime.

The Dangerous Goods Framework is performance-based, incorporating the principles of hazard identification, risk assessment and risk control. The intent of the Framework is to ensure the effective control of the storage and handling of dangerous goods (Classes 2, 3, 4, 5, 6.1, 8, 9, Combustible Liquids and Goods Too Dangerous to Be Transported) so as to protect the safety and health of workers and the public as well as the protection of property and the environment. The Framework is comprised of two key documents, the *National Standard for the Storage and Handling of Workplace Dangerous Goods* and the *National Code of Practice for the Storage and Handling of Dangerous Goods [NOHSC:2017 (2001)]* which provides advice on compliance for those who have duties under the National Standard. It also provides specific guidance for the storage and handling of dangerous goods in minor quantities and in consumer packages supplied by retailers.

The ASCC has also developed a range of other national standards, codes of practice and guidance documents including for the preparation of MSDSs, labelling of workplaces substances and for various specific hazardous substances. NICNAS applies the ASCC classification, labelling and MSDS codes to its chemical risk assessments and OH&S recommendations to help facilitate a consistent national approach to achieving safe chemical use.

National standards for scheduling drugs, poisons and controlled substances

The National Drugs and Poisons Schedule Committee (NDPSC) is a statutory committee of the Therapeutic Goods Administration (TGA), established under the Commonwealth *Therapeutic Goods Act 1989*, and functions within the Australian Government Department of Health and Ageing. The NDPSC decides the classification of a substance for the purpose of including it in the national Standard for Uniform Scheduling of Drugs and Poisons (SUSDP). The SUSDP is developed with the aim of promoting nationally uniform scheduling, labelling and packaging of drugs, poisons and other controlled substances. The SUSDP classifies drugs and poisons into eight Schedules:

- Schedule 1 – *has been intentionally left blank*
- Schedule 2 – Pharmacy Medicine
- Schedule 3 – Pharmacist Only Medicine
- Schedule 4 – Prescription Only Medicine/Prescription Animal Remedy
- Schedule 5 – Caution
- Schedule 6 – Poison
- Schedule 7 – Dangerous Poison
- Schedule 8 – Controlled Drug
- Schedule 9 – Prohibited Substance

The NDPSC comprises a nominated representative from the Commonwealth and each of the States and Territories. As determined by the Minister, it may also include representatives from the TGA, APVMA, NZ Medsafe, NZ Environmental Risk Management Authority, scientific experts, an industry representative, a consumer representative and a representative of practising pharmacists.

Scheduling decisions of the NDPSC require the support of the majority of jurisdictions. The decisions of the NDPSC in relation to the SUSDP have no force in Commonwealth law but generate a national standard for States and Territories to incorporate into their relevant drugs, poisons or controlled substances legislation. Most States and Territories have legislation specifically dealing with the regulation and control of therapeutic goods, drugs, poisons and/or controlled substances (except Queensland which has a specific Regulation under its *Health Act 1937*) and this legislation is generally administered by the jurisdictional health departments. Jurisdictional legislation may pick up scheduling decisions automatically, or by gazettal or other means. For example in NSW, the legislation (*NSW Poisons and Therapeutic Goods Act 1966*) incorporates an additional decision point: a NSW Poisons Advisory Committee reviews and may adopt (with or without modification) an SUSDP scheduling decision, and if so incorporate the substance into the NSW Poisons List. As a result of differences in jurisdictional legislation (and jurisdictional opt-out provisions) there is some variation in the adoption of the SUSDP standards across States and Territories.

The SUSDP schedules cover not only drugs and medicines (assessed and registered by the TGA³), but also agvet products (which would have been registered by the APVMA), prohibited substances and household chemicals (which would have been assessed by NICNAS). In terms of chemicals assessed by NICNAS, the NDPSC may consider the public health recommendations from NICNAS assessments of industrial chemicals and make a decision regarding inclusion and classification of the chemical in the SUSDP schedules.

³ The TGA is responsible for the assessment and registration of therapeutic goods. After the assessment process products are entered into the Australian Register of Therapeutic Goods (ARTG). The ARTG is established under the *Therapeutic Goods Act 1989* for the purpose of documenting and evaluating the impacts of therapeutic goods on human health. All therapeutic products must be entered in the ARTG before being supplied in Australia. All manufacturers of therapeutic goods are also required to be licensed under the *Therapeutic Goods Act 1989*.

National Electricity Law

As for chemicals management, the Commonwealth does not have direct Constitutional power to regulate electricity supply. In the case of the National Electricity Law (which makes provision for the operation of the national electricity market (NEM)), relevant states and the Australian Capital Territory developed a uniform legislative regime, without requiring Commonwealth level legislative change (the process was conducted in the context of intergovernmental cooperative arrangements involving the Commonwealth however). One state (South Australia) developed model legislation and then each of the other NEM States and the Australian Capital Territory implemented an Act referring to the South Australian (SA) Act (the *National Electricity (South Australia) Act 1996*) and adopting the National Electricity Law (contained in Schedule 1 of the SA Act) in their jurisdiction. (*Subsequently the Commonwealth implemented a national energy market Act, a primary purpose of which was to ensure coverage of offshore lands/areas falling within Commonwealth jurisdiction that could also be affected by NEM operation. However, this Commonwealth Act also simply applied the national electricity law contained in the SA Act.*)

Water Efficiency Labelling and Standards (WELS) Scheme

The national Water Efficiency Labelling and Standards Scheme (commonly referred to as the WELS scheme) is a national initiative of the Commonwealth, State and Territory Governments. The WELS Scheme helps to address the issue of high domestic water consumption by providing nationally consistent water efficiency information to consumers at point of purchase and by encouraging manufacturers to design more water-efficient products. The aim of the WELS Scheme is to encourage the uptake of water-efficient products and appliances in domestic and commercial areas while maintaining individual choice and accounting for regional variations in water supply in urban Australia. The scheme requires certain water use appliances to display labels at the point of sale which provide information on the performance and water efficiency of the appliance. The scheme may also establish a minimum standard for water-use appliances, with appliances not meeting the minimum standard not being able to be sold.

The Scheme is established through a legal framework based on a model Commonwealth Act (the *Water Efficiency Labelling and Standards Act 2005*) supported by uniform State and Territory legislation. The NSW Act (the *Water Efficiency Labelling and Standards (New South Wales) Act 2005*), for example, is quite short (only 8 pages in total) and simply:

- (a) applies the *Water Efficiency Labelling and Standards Act 2005* of the Commonwealth as a law of NSW; and
- (b) makes provision to help ensure that the Commonwealth Act and the applied law are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

The framework establishes a Regulator to administer the WELS scheme. The WELS Regulator is the Secretary of the Commonwealth Department of the Environment and Water Resources, who will take advice from a national inter-jurisdictional committee on a range of issues including policy issues, technical issues, compliance and enforcement issues.

QUESTIONS

- 1. What do stakeholders see as the pros and cons of these approaches as models for any possible future legislative link under NChEM?**

NATIONAL FRAMEWORK FOR CHEMICALS ENVIRONMENTAL MANAGEMENT (NChEM)

Legislative Links – Roundtable Workshop
Tuesday, 22 May 2007

Summary of key issues raised

Discussion of Options

- In developing a good regulatory link model, it is necessary to consider implications beyond environmental management e.g. the need to consider any 'flow-on' implications or linkages with public health and Occupational Health and Safety (OH&S).
- In terms of the options contained in the thought-starter paper participants generally felt:
 - Option 4 (States and Territories agree to continue to implement NICNAS recommendations via formal policy agreement rather than legislative means) is a good short-term option and should be pursued while other options are developed/agreed/implemented.
 - Option 1 (NICNAS has increased regulatory powers and States and Territories automatically implement NICNAS controls. NICNAS environmental decisions once formally made are automatically the law in each jurisdiction without the need for any additional review or legislative step) has the advantage of being the simplest/most automatic approach and is likely to achieve the highest national consistency. There were concerns that a more comprehensive assessment of impacts would need to be undertaken upfront if significant environmental controls were going to be recommended e.g. better taking into account impacts on industry or linking environmental exposure with possible health implications. This could occur as part of the assessment process rather than requiring a separate and additional review step. This would add to the efficiency/streamlining benefits compared with adding a separate review step outside of the NICNAS assessment process.
 - Option 2 (NICNAS recommendations about environmental controls would take effect by way of a new 'environmental chemicals management Act' administered by the Australian Government. This new Act would set up a mechanism e.g. a review committee, to adopt NICNAS environment recommendations and State and Territory applying legislation would make them mandatory in the jurisdictions) is most similar to the existing systems for OH&S and public health, and hence is more familiar to stakeholders (which may assist implementation). The advantages of a separate review step were seen as: allowing further input from industry and the community on issues that go beyond technical accuracy; allowing States and Territories to 'refine' recommendations to make them practical to implement (it was noted this could be built into Option 1). The disadvantages were primarily related to timeliness of implementation, additional bureaucracy, and efficiency/cost of administering.
 - Option 3 (States and Territories introduce new uniform legislation or consistent provisions in existing legislation that adopt NICNAS recommendations. Commonwealth legislative changes are possible but not required) was not widely supported, although some mechanisms with which it could be implemented were thought to be workable (e.g. could achieve consistent implementation outcomes if mirror legislation was put in place). Concerns included that it may be more resource intensive e.g. require more resources from States and Territories and need active technical working groups; dependent on a good 'upstream' system (i.e. NICNAS processes and recommendations would need to be enhanced, as per broader changes being sought under the NICNAS reforms and NChEM).

Specific Design Features and Elements of Different Approaches

- The circumstances in which a Regulatory Impact Statement (RIS) may be needed would need to be clearly delineated under whatever model is developed and could likely be:
 - making of legislation;
 - setting a new national standard;
 - introducing a new type of control requiring major technological investment.
- RIS/Cost Benefit analysis (CBA) would not be needed for 'bread and butter' environment protection controls resulting from a chemical assessment.
- Whatever model is chosen needs to include an exemption provision.
- Such a provision must be closely defined, with clear criteria for its use, and could be time limited and/or subject to review.
- Enforcement powers need to sit with the jurisdiction/agency holding responsibility for that issue (e.g. no point in empowering States to enforce information provision requirements between industry and NICNAS).
- There will need to be a range of cooperative arrangements that are linked.
- Adequate information about chemical volumes and use patterns is essential.

Roundtable participants:

Mr Carlos Santin (PACIA)

Dr Peter Holdsworth (Animal Health Alliance)

Mr Robert Ward (DuPont)

Mr Jeremy Taylor (Minerals Council of Australia)

Mr Michael Hambrook (Australian Paint Manufacturers Federation)

Mr Rod Barber (WSN Solutions)

Mr Charles Koch (Solvay Interlox Pty Ltd)

Dr Alison Bleaney (NECF)

Ms Jo Immig (on phone) (NECF)

Dr Bro Sheffield-Brotherton (NECF)

Dr Liz Hanna (Public Health Association)

Professor Ian Rae (RACI)

Mr Adam Capon (NSW Health)

Ms Bianca Phelan (NSW Dept of Premier and Cabinet)

Mr Doug Gibbons (NSW WorkCover)

Dr Wafa El-Adhami (Australian Government Dept of Health and Ageing, Office of Chemical Safety)

Mr Bob Graf (NICNAS)

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