Executive Summary

Accord supports the overall objective of the Occupational Health and Safety (OHS) reform; that is, the reduction in regulatory burden through the national harmonisation of existing State and Territory legislation, while improving worker safety by removing differences between the States and Territories which can cause confusion. However, we have significant concerns with the proposed reform package as currently drafted. As an industry body representing chemical formulators, we will focus on issues of specific concern to our members and identify failures in the proposed approach to deliver the outcomes of a national harmonised system and in particular removing confusion from the workplace.

Accord has made numerous attempts to communicate our concerns with Safe Work Australia (SWA) and its predecessor the Australian Safety and Compensation Council (ASCC), the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) and the Strategic Issues Group - Occupational Health and Safety (SIG-OHS).

This has entailed direct contact with Safe Work Australia and DEEWR staff, representation to SIG-OHS through our industry representative the Australian Chamber of Commerce and Industry (ACCI), organising special meetings with all interested parties including Commonwealth, State and Territory Health regulators and Commonwealth, State and Territory OHS regulators, and making detailed submissions to each and every public consultation. A copy of our latest submission can be found on the SWA website at:

http://www.safeworkaustralia.gov.au/Legislation/PublicComment/Documents/Model%20work%20health%20and%20safety%20public%20comment%202010/Public%20submissions%20A/1081%20ACCORD%20Australasia.pdf

Earlier submissions appear to have been removed. However, copies of our earlier submissions can be provided if requested.

Our main concerns can be summarised as follows:

- The proposed reforms will lead to increased regulatory burden
- There will be duplication of regulatory effort by Commonwealth regulatory agencies and safe work entities at the State and Territory level
- There will be conflicting regulatory requirements
- The consultation process did not adopt the COAG Best Practice Principles for Regulation nor Consultation.

Recommendation

We request that the Senate Committee not pass the Work Health and Safety Bill 2011 (WHS Bill) until these concerns have been addressed.

Issues

Increased regulatory burden, duplication of regulatory effort and conflicting regulatory requirements

Currently, the following chemicals are exempted from workplace chemical labelling requirements:

- agricultural chemical products as defined under the *Agricultural and Veterinary Chemicals Act 1988* (Cwlth) and when labelled in accordance with the *Code of Practice for Labelling Agricultural Chemical Products*;
- veterinary chemical products as defined under the *Agricultural and Veterinary Chemicals Act 1988* (Cwlth) and when labelled in accordance with the *Code of Practice for Labelling Veterinary Chemical Products;*
- therapeutic goods as defined by the *Therapeutic Goods Act 1989* (Cwlth);
- food, including food additives when incorporated in food for consumption by humans or animals;
- cosmetic products; and
- munitions and explosives.

These exemptions are listed in the *National Code of Practice for the Labelling of Workplace Substances [NOHSC:2012(1994)]* (the Labelling CoP).

The OHS regulators had previously recognised that the above listed chemical products are controlled by other regulatory agencies such as the Australian Pesticides and Veterinary Medicines Authority (APVMA), the Therapeutic Goods Administration (TGA) and the Department of Health and Ageing (DoHA) through their regulations and have additionally recognised the labelling applied through these regulatory mechanisms as providing adequate protection for workers coming into contact with those products. These existing labelling approaches are comprehensive and targeted at the protection of product users, the public and the environment.

The draft Work Health and Safety (WHS) Regulations, as it currently stands, will no longer recognise the role played by these other regulators. No justification has been given as to why the current exemptions will no longer stand.

This means that all existing therapeutic goods, agvet chemicals, foods, cosmetics, etc. will need to be checked against new WHS labelling requirements. As the labelling is dependent on hazard classification, this is a significant additional task per product, and may result in additional labelling that provides conflicting information for all of these products.

There has been no clear demonstration that the current controls have failed to deliver on the safety and environmental outcomes required. The APVMA, TGA and DoHA are held in high regard by comparable international regulatory authorities. We are therefore uncertain as to how, or why, OHS authorities have lost confidence in these agencies.

We note that the Regulatory Impact Statement commissioned by SWA did not even look at this increased regulatory burden, with the possible exception of agricultural chemicals and veterinary medicines.

Food, cosmetics and "human therapeutic agents"

The proposed WHS Regulations will exempt food, cosmetics and "human therapeutic agents as defined by the *Therapeutic Goods Act 1989"* if their use is not related to a work activity. Since WHS legislation only relates to work activities this is hardly a significant exemption. Also, "human therapeutic agent" is not a term defined in the *Therapeutic Goods Act 1989,* which leaves open to conjecture what exactly is exempted.

The ramifications are potentially ridiculous. How are restaurants supposed to run their business if they are required to classify and label their foods as hazardous chemicals?

For therapeutic goods, the TGA currently assesses labels to suit the use situation of the therapeutic goods in question. For example, an ampoule containing an intravenously administered drug has a label that contains information that is critically important for nurses and doctors to understand. Over-the-counter medicines contain information that are useful for pharmacists to help patients, and also clear directions on dosage for patients to adhere to. A hard-surface disinfectant in the form of an alcohol-soaked wipe also assessed by the TGA may display information that is important for hard-surface disinfectants used in hospitals, such as the type of microbes that the wipe is effective against and how to use it correctly.

Addition of workplace labelling to these finished products that have already been assessed and approved would not only clutter the label but potentially bury such important information. Medicines are generally beneficial in the right dose but toxic in large doses, and many of them will meet the workplace classification of "toxic" substance (e.g. paracetamol).

We understand from communication with SIG-OHS and DEEWR that the intent was to only require workplace labelling on hard-surface disinfectants, not all therapeutic goods. However this is not clear in the legislation as drafted. Further, there is no demonstrated failure in the current regulation and labelling of hard-surface disinfectants by the TGA.

When we raised these issues in one of the face-to-face meetings with SIG-OHS, DEEWR and SWA, we were assured that SIG-OHS and SWA understood the problems and agreed that these products should be exempted. Almost half a year later, the same drafting remains, and we are unsure why this still has not been addressed (these issues have not been addressed in any documentation circulated to the industry, and/or the industry member of SIG-OHS).

No justification has been given as to why there is a need to provide additional regulatory controls for these products that are already regulated through the Therapeutic Goods Administration (TGA) in the case of therapeutic goods and Food Safety Australia and New Zealand (FSANZ) in case of food and food additives.

The current exemptions should continue to apply to all cosmetics, therapeutic goods as defined by the *Therapeutic Goods Act 1989*, and all food and food additives when incorporated in food for consumption by humans or animals, i.e. maintain status quo.

Consumer products

While not specifically exempted in the current Labelling CoP, consumer products that meet the requirements of the *Standard for the Uniform Scheduling of Medicines and Poisons* (SUSMP), including the labelling requirement have to date been accepted as meeting the workplace labelling requirement.

The SUSMP is a compendium of risk management decisions. These decisions have been made over time by a scheduling committee made up of public health protection experts including State and Territory Health Departments. The SUSMP focuses on the risks posed by publicly available chemicals and mitigates those risks by a number of mechanisms including banning chemicals from being sold to the general public, restricting the use of certain chemicals, use of packaging restrictions including child-resistant packaging and labelling. Recent changes in this process have delegated the decision making to the Secretary of the Department of Health, upon advice from an expert committee.

Given that all workers are also consumers, it makes sense that a label intended to communicate the risks of the product to the consumer would also be understood by workers.

Unfortunately, this practice appears now to be in question by OHS regulators.

The draft WHS Regulations indicate that consumer products will only be exempted from WHS labelling if:

"It is reasonably foreseeable that the hazardous chemical will be used in a workplace only in:

1. a quantity that is consistent with household use; and
2. a way that is consistent with household use; and
3. a way that is incidental to the nature of the work carried out by a worker using the hazardous chemical."

Our initial interpretation of the above, was that everyday consumer products in their consumer packaging would be exempted from workplace labelling requirements. However, advice from SWA staff was that consumer products in a workplace can at times not satisfy the above criteria. For example, a household toilet cleaner sitting unopened on a supermarket shelf apparently does not meet the above conditions, and therefore needs workplace labelling. Also, a used aerosol container at a waste disposal site apparently does not meet the above conditions and therefore needs workplace labelling. This is despite the fact that existing labelling requirements cover such things as safe storage, safe handling and safe disposal.

Given these previous communications from SWA, Accord has asked numerous times that the above conditions be deleted. Failing that, we have suggested a clarifying statement in the Code of Practice for the Labelling of Hazardous Chemicals.

We have most recently been led to understand that this issue is now considered to be "resolved" by the SWA, DEEWR and SIG-OHS, even though we have not been informed how this has happened. The latest drafts of the WHS Regulations and the Code of Practice for the Labelling of Workplace Hazardous Chemicals made available to industry do not appear in any way to address our concerns.

In the recent revision of the draft Code of Practice for the Labelling of Workplace Hazardous Chemicals, "dual use" products were exempted from workplace labelling requirements if they met the SUSMP labelling requirements. "Dual use" products are defined as those products that may be used frequently in both households and workplaces, such as paints, adhesives and other DIY renovation products.

This is a pragmatic solution which recognises that it is not always possible to provide a clear division between household products and workplace chemicals. It also recognises that workers will understand the information on consumer product labelling, and that existing label requirements cover safe storage, handling and disposal in accordance with the clearly defined use pattern for these products.

We are therefore disappointed to note that consumer products are not as clearly exempted from workplace labelling requirements as for these "dual use" products.

Agricultural chemicals and veterinary medicines

Currently, all agricultural chemicals and veterinary medicines are regulated through the Australian Pesticides and Veterinary Medicines Authority (APVMA). The APVMA is a risk management body that not only looks at the active constituents of products but looks at the risk management of the whole product. The APVMA assessment is a rigorous process requiring considerable amount of data to be submitted by Applicant Companies. The APVMA assessment process in general takes approximately 12 months. If the assessed product is deemed safe for the use specified by the Applicant, then the risk management

information determined through this rigorous assessment process and needed to ensure safe use of these products is put on the labels.

This is different to the workplace hazardous chemicals labelling. Workplace chemicals are labelled according to their intrinsic hazard. The manufacturer or the importer is responsible for ensuring that all information provided is true and correct. No external or further expert assessment is required until the specific use of that chemical is defined in the workplace and a risk assessment is conducted.

While the workplace chemical labelling system is effective for commodity chemicals where their use is diverse and the people coming into contact with the chemicals have appropriate training to understand the chemical hazard communication, this is not an effective communication mechanism for farm products that already have a defined use that has been risk assessed by the APVMA.

While the SWA Regulatory Impact Statement (RIS) has tried to justify the application of workplace chemical labelling on these products, the quality of data used is at best questionable.

Further, the OHS regulators are not advocating removing the APVMA labelling elements. They only want to include additional labelling elements that may at times be at odds with the APVMA assessed labelling elements. This will increase the regulatory cost burden to industry and confuse the end user by providing seemingly contradictory information. The current APVMA labelling requirements state that information that may appear contradictory to the APVMA risk assessment must not be on the label. The OHS labelling requirement will contradict this existing APVMA regulatory requirement.

This will lead to an inefficient and ineffective regulatory process.

If it is the opinion that the APVMA has failed to provide effective risk management of agricultural chemicals and veterinary medicines, and workplace regulations would be adequate in controlling the risks of these chemicals, then dismantling of the APVMA should also be seriously considered. If this is not the case, then the APVMA should be allowed to continue their important work, and OHS regulators should continue to recognise APVMA assessed labels.

It should be noted further, that the GHS implementation and related changes impacting the labelling of chemical products did not have to occur at the same time as the OHS harmonisation process. While the chemicals industry broadly supports the implementation of GHS and its relevant application, we believe that by amalgamating this implementation with the broader OHS harmonisation reforms has distracted the proper consideration of many complex issues and has led to a proposed implementation in a manner that does not provide any net benefits.

<u>COAG Best Practice Principles for Regulation</u>

Such changes impacting the labelling of our industry members' products, should be considered in the context of COAG Best Practice Regulation which requires in the first instance, establishing a case for action before addressing a problem.

For example, for the workplace regulators to apply workplace labelling to any therapeutic good, the following needs to be established:

1. There is an identified and confirmed failure in the current system e.g. TGA has failed to provide adequate risk management and labelling of these products, and

2. Applying workplace labelling for these therapeutic goods is the most efficient way to address TGA's failures.

Regrettably, in this ongoing debate on jurisdictional responsibility and labelling of formulated chemical products that are therapeutic goods, the preferred regulatory system/outcome and/or potential overlap, no concrete evidence of a problem has been provided that would support changes (nor indeed for agricultural chemicals, veterinary medicines, consumer products and food/beverage).

COAG's Best Practice Principles for Consultation

Throughout the OHS reform process, SWA and DEEWR have continually assured us that they are conducting comprehensive public consultation.

As can be noted from comments made above, Accord is still uncertain of the outcomes of some of the most significant policy decisions affecting our members. Hence our concerns over the adequacy of the consultation process and its transparency.

It is our opinion that a good consultation process should undertake the following steps:

1. Government decides on a broad policy objective
2. Policy departments with input from key stakeholders draft up detailed policy options to deliver the policy objectives of the Government
3. These options are tested through the RIS
4. There is a public consultation phase
    a. The options and RIS go out for public consultation
    b. The comments from public consultation are compiled, responses are given to each recommendation and questions, and made publicly available
    c. The options and RIS are reconsidered in the light of the public consultation
5. The option delivering the highest benefit for the least cost is chosen
6. The Act is drafted based on the chosen option
7. There is a public consultation phase
8. The Regulations are drafted as needed
9. There is a public consultation phase
10. Other legislative instruments including the Codes of Practice are drafted as needed
11. There is a public consultation phase

Regrettably as mentioned previously, these processes were not followed.

For a process so lacking in transparency and validity – it is entirely reasonable to question whether the conclusions are flawed.

About Accord

Accord Australasia is the peak national industry association representing the manufacturers and marketers of formulated hygiene, cosmetic and specialty products, their raw material suppliers, and service providers. Accord Members market fast-moving consumer and commercial goods primarily in Australia and New Zealand.

The formulated hygiene, cosmetic and specialty products industry is a significant industry sector contributing to a prosperous Australian economy. Our industry's products include household and commercial cleaning agents; disinfectants; make-up and beauty products; toiletries and personal care products; hair-care products; skincare products, including sunscreens; oral hygiene; fragrances and perfumes, feminine hygiene products; industrial and agricultural sanitisers; household pest control; and adhesives and sealants.

Sector products play a vital role in:

- *Safeguarding public health*: Maintaining essential standards of hygiene and sanitation in institutions, hospitality, manufacturing and agriculture.
- *Promoting personal well-being*: Helping people keep clean, healthy and shielded from harmful effects of the environment.
- *Maintaining comfortable homes*: Enabling people to keep their everyday surroundings clean and inviting.
- *Enhancing quality of life*: Giving people greater personal freedom through time- and effort-saving technologies.
- *Boosting confidence and emotional wellbeing*: Providing opportunities for self-expression, individuality and pampering.
- *Keeping the wheels of commerce and industry turning*: Fulfilling specialised uses in industry, institutions and agriculture.

Accord has around 94 member companies which range from smaller Australian-owned family businesses to the local operations of large consumer brand multinationals (a full membership list is provided at Attachment 1).

Headline features and statistics for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the $10 billion mark.
- Accord member companies directly contribute more than 14,000 full-time equivalent jobs.
- Nationally more than 170 offices and more than 50 manufacturing sites are operated by Accord member companies.

Our sector is highly regulated with a recent internal Accord survey of members showing that:

- 97 percent have dealings with the National Industrial Chemicals Notification & Assessment Scheme (NICNAS);
- 77 percent with the Therapeutic Goods Administration (TGA);
- 58 percent with the Australian Quarantine Inspection Service (AQIS);
- 39 percent with the Australian Pesticides & Veterinary Medicines Authority (APVMA); and
- 33 percent with Food Safety Australia New Zealand (FSANZ).

In essence there are three distinct product segments for our industry, each with distinct supply chains through to the product end user:

- Industrial and Institutional products (e.g. commercial cleaning products, agricultural sanitisers) which are mainly sold on a business-to-business or business-to-government basis or through agricultural product resellers.
- Fast-moving consumer goods (e.g. household cleaners, laundry detergents, toothpaste, shampoo, soap, insect repellents, household pesticides and herbicides) which are sold to consumers primarily via either: grocery retailers, pharmacies, mass-market retailers, direct selling and hardware chains.
- Cosmetic and beauty industry products (e.g. make-up, skincare, sunscreens, fragrances, hair dyes) which are sold to consumers primarily via either: department stores, specialty retailers, grocery retailers, pharmacies, mass-market retailers, direct selling, hair salons, beauty salons, spas and on-line.

Attachment 1

Members

Consumer, Cosmetic and Personal Care

Advanced Skin Technology Pty Ltd
Amway of Australia Pty Ltd
Apisant Pty Ltd
AVON Products Pty Limited
Beautiworx Australia Pty Ltd
Beiersdorf Australia Ltd
BrandPoint Pty Ltd
Chanel Australia
Clorox Australia Pty Ltd
Colgate-Palmolive Pty Ltd
Combe Asia-Pacific Pty Ltd
Cosmax Prestige Brands Australia Pty Ltd
Coty Australia Pty Limited
De Lorenzo Hair & Cosmetic Research Pty Ltd
Elizabeth Arden Australia
Emeis Cosmetics Pty Ltd
Energizer Australia Pty Ltd
Estée Lauder Australia
Frostbland Pty Ltd
GlaxoSmithKline Consumer Healthcare
Helios Health & Beauty Pty Ltd
Johnson & Johnson Pacific
Kao (Australia) Marketing Pty Ltd
Kao Brands Australia Pty Ltd
Keune Australia
Kimberly-Clark Australia
KPSS Australia Pty Ltd
La Biosthetique Australia
La Prairie Group
L'Oréal Australia Pty Ltd
LVMH Perfumes and Cosmetics
Mary Kay Cosmetics Pty Ltd
Natural Australian Kulture Pty Ltd
Nutrimetics Australia
NYX Pty Ltd
Procter & Gamble Australia Pty Ltd
PZ Cussons Australia Pty Ltd
Reckitt Benckiser
Revlon Australia
Sabre Corporation Pty Ltd
Scental Pacific Pty Ltd
Shiseido (Australia) Pty Ltd
The Heat Group Pty Ltd
The Purist Company Pty Ltd
Three Six Five Pty Ltd
Trimex Pty Ltd
True Solutions International Pty Limited
Ultraceuticals
Unilever Australasia
Valeant Pharmaceuticals Australasia
Weleda Australia Pty Ltd

Hygiene and Specialty Products

Albright & Wilson (Aust) Ltd
Applied Australia Pty Ltd
BP Castrol Australia Pty Ltd
Callington Haven Pty Ltd
Campbell Brothers Limited
Castle Chemicals Pty Ltd
Chemetall (Australasia) Pty Ltd
Clariant (Australia) Pty Ltd
Cleveland Cleaning Supplies Pty Ltd
Deb Australia Pty Ltd
Dominant (Australia) Pty Ltd
Ecolab Pty Limited
Huntsman Corporation Australia Pty Ltd
Jalco Group Pty Limited
Lab 6 Pty Ltd
Novozymes Australia Pty Ltd
Nowra Chemical Manufacturers Pty Ltd
Peerless JAL Pty Ltd
Recochem Inc
Rohm and Haas Australia Pty Ltd
Solvay Interox Pty Ltd
Sopura Australia Pty Ltd
Tasman Chemicals Pty Ltd
Thor Specialties Pty Limited
True Blue Chemicals Pty Ltd
Univar Australia Pty Ltd
Whiteley Corporation Pty Ltd

Associate Members

Equipment and Packaging Suppliers

HydroNova Australia NZ Pty Ltd

Megara (Aust.) Pty Ltd

SCHÜTZ DSL (Australia) Pty Ltd

Graphic Design and Creative

Ident Pty Ltd

Legal and Business Management

FCB Lawyers

KPMG

TressCox Lawyers

Regulatory and Technical Consultants

Archer Emery & Associates

Clare Martin & Associates Pty Ltd

Competitive Advantage

Engel Hellyer & Partners Pty Ltd

Robert Forbes & Associates

Sue Akeroyd & Associates

Toxikos Pty Ltd

Specialist Laboratories and Testing

ams Laboratories

Dermatest Pty Ltd

Silliker Australia Pty Ltd

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