

Mutual Recognition Schemes
Productivity Commission
Locked Bag 2, Collins Street East
MELBOURNE VIC 8003

Email: mutual.recognition@pc.gov.au



Dear Commissioner

Accord is pleased to provide the following comments in response to the Productivity Commission's (PC) Draft Report, *Mutual Recognition Schemes* (June 2015).

Accord welcomes the PC's draft finding 4.1 and draft recommendation 4.1 with respect to the reconsideration of removing the permanent exemption for hazardous substances, industrial chemicals and dangerous goods. These support the position put forward in our submission. They also supports similar views put forward by the New Zealand Ministry of Business, Innovation and Employment (NZ Ministry) in its statement:

We therefore consider there would be benefit in New Zealand and Australia formally examining harmonization of hazardous substances regulation in the immediate future so as to facilitate removal of the current permanent exemption leading to mutual recognition (p7).

While we expect that there may be some opposition to the PC's draft finding and recommendation, we would encourage the PC to maintain its position.

And while there are different regulatory systems, we agree with the statement put forward by the NZ Ministry in its submission:

The TTMRA makes an important contribution to our SEM aspirations by addressing behind the border barriers to the movement of goods and skilled people. It is unique amongst mutual recognition instruments in that it is broad, conceptually simple and works by recognizing regulatory outcomes rather than trying to align regulatory processes and rules. (p2)

The submission by the Australian Food and Grocery Council (AFGC) provides examples of where activities in the New Zealand market led to market innovation for Australian consumers through the TTMRA. Products which were able to be manufactured in New Zealand but not manufactured in Australia due to food standards were still able to be sold to Australian consumers because of the TTMRA. The Australian industry responded by arguing for reform to allow for equitable treatment. Importantly these reforms demonstrated that public safety was not compromised; it led to market driven regulatory reform; and promoted consumer access to innovative products (AFGC submission p5).

The TTMRA provides a mechanism to foster regulatory reform. We see this as an important feature in further reform measures to Australia's industrial chemicals regime as well as for the implementation of the government's Accepting Trusted International Standards policy. This is particularly relevant for areas such as non-hazardous industrial chemicals as well as for low risk product categories such as cosmetics, personal care and other household products.

At the Mutual Recognition Roundtable discussion in Melbourne on Friday 17 July, additional advice was sought from the Department of Infrastructure and Regional Development regarding the regulation of cosmetic products as dangerous goods (DG). This has been a longstanding issue of concern to Accord members and we have provided a number of submissions to the National Transport Commission (NTC) on this topic. Put simply, cosmetics are regulated as DG because transport regulations are hazard and not risk based. Flammable liquids such as perfumes and nail polish removers even though they are in small packaging are treated as though they are bulk chemicals such as tanks of petrol. Similarly aerosols, because they contain compressed gases, are treated in a similar manner to cylinders of highly compressed

gases even though the pressure within an aerosol can is not comparable to the pressure within a gas cylinder.

There is recognition internationally that some risk consideration is necessary, and that is why most alcoholic beverages are exempt from DG transport requirements – they are treated as non-DG. A recent paper to the United Nations Sub-Committee of Experts on the Globally Harmonised System for the Classification and Labelling of Hazardous Substances (UNSCEGHS) made the argument that cosmetics and therapeutic goods that contain ethanol should be treated in a similar manner to alcoholic beverages since the risk profile would also be similar. The UN SCETDG paper on proposed new Special Provisions for consumer and pharmaceutical products containing ethanol can be found at <http://www.unece.org/fileadmin/DAM/trans/doc/2014/dgac10c3/ST-SG-AC.10-C.3-2015-25e.pdf>. The Special Provisions relating to alcoholic beverages as SP 145 and SP146.

A copy of an Accord submission to the NTC on limited quantities and retail distribution loads is attached to provide further information to the PC.

Accord also strongly supports the proposed draft findings and draft recommendations to enhance governance arrangements. The proposed arrangements while remaining a light touch approach should improve accountability and responsiveness with implementation of the PC recommendations. For example, as a result of the 2009 review the PC recommended the possibility of mutual recognition for selected products within the scope of hazardous chemicals could be applied. Accord recommended that cosmetics be one of the products categories considered. No work has progressed on this and the NZ Ministry noted that mutual recognition of chemicals and hazardous substances had “slipped off the radar” (p7). A strengthening of governance arrangements would prevent this slippage from re-occurring.

Accord believes that the efficient and effective operations of the MRA and TTMRA can play a valuable role in eliminating unnecessary burdens which arise because of jurisdictional differences. The MRA and TTMRA can be highly effective tools which form a suite of government measures to eliminate costly and unnecessary duplication. This could be particularly effective in areas where there is limited cross border impact for companies operating across more than one jurisdiction. For these areas of regulatory control it may be simpler to mutually recognise individual jurisdictional regulatory controls rather than go down the time consuming and potential resource intensive path of harmonisation.

Please do not hesitate to contact me
require further clarification on any of the points raised.

should you

Yours sincerely

Dusanka Sabic
Director Regulatory Reform

31 July 2015

Mr David Moulton
Manager DG
National Transport Commission
Level 15/628 Bourke Street
MELBOURNE VIC 3000

Dear David

Accord Australasia welcomes the opportunity to provide comments on the Issues Scoping Paper, *Transport of DG: Limited quantities and retail distribution loads*.

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 member companies make and/or 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 Australia's economy.

Headline statistics for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the \$10 billion mark.
- Accord's membership is approximately 100 companies.
- Collectively, Accord member companies directly contribute more than 14,000 full-time equivalent jobs.
- Nationally, more than 180 offices and more than 50 manufacturing sites are operated by Accord member companies.

Member companies include large global consumer product manufacturers as well as small dynamic Australian-owned businesses. A list of Accord member companies is provided at Attachment 1.

We have attempted to respond to the questions posed in the Issues Scoping Paper in the order that they have been posed. These are provided in Attachment 2.

Limited Quantities and Retail Distribution Loads are arguably the lowest risk dangerous goods (DG) transported in Australia. However, the cost associated with transporting limited quantities and Retail Distribution Loads are arguably higher than the cost of transporting higher risk DG. The cost is also higher in Australia than it is in other advanced economies such as the USA and the EU. This is an anomaly that needs to be fixed.

In order to fix this issue, we believe the focus must be on the risk spectrum and acceptable risk rather than zero risk. We will never reach zero risk but we could become very inefficient in an effort to get there. Noting that there is a risk associated with driving, sharing the road with large vehicles, and general transport of consumer goods that are not DG, such as icing sugar, olive oil, butter, we should only be imposing requirements where the risks posed by limited quantities and Retail Distribution Loads are greater than these general risks. The requirements imposed should also be commensurate with the risk identified and be able to mitigate the identified risk.

We must also keep in mind the recent government policy announcement, the “Accepting Trusted International Standards” policy. Given that the direction set by the government is to accept standards and processes that are accepted overseas, we believe we must examine the treatment of limited quantities in economies such as the USA. It is our understanding that the USA will treat limited quantities packages as non-DG.

If we do not wish to follow the USA, firstly there must be a good reason for this decision, again noting the government’s policy. The next step would be to examine and adopt the UN Orange Book, which does not require documentation or placarding for limited quantities.

There is however scope to further improve efficiency of transport of packages that sit within the lower risk spectrum of limited quantities. While we understand that the Retail Distribution Load chapter, Chapter 7.3 was intended to address this, we do not believe that it has delivered many benefits to industry. In many cases, Retail Distribution Load is more restrictive to comply with than limited quantities. This does not make any risk management sense.

Accord has provided a draft re-write of Chapter 7.3, focussing on the concept of retail distribution packages. It is our view that for small quantities of low risk products, load calculation only adds significant burden without providing much risk mitigation. Given that the USA is able to treat all limited quantities as non-DG, we do not believe treating retail distribution packages as non-DG should cause significant concerns.

We thank you for this opportunity to provide comments. If you have any queries, or for more information, please do not hesitate to contact me.

Yours sincerely

Catherine On
Regulatory & Technical Manager

28 November 2014

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
Beautopia Hair & Beauty Pty Ltd
Beiersdorf Australia Ltd
BLC Cosmetics Pty Ltd
BrandPoint Pty Ltd
Chanel Australia
Clorox Australia Pty Ltd
Colgate-Palmolive Pty Ltd
Combe Asia-Pacific Pty Ltd
Conair Australia 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
Evolve Hair Concepts Pty Ltd
Frostbland Pty Ltd
GlaxoSmithKline Consumer Healthcare
Helios Health & Beauty Pty Ltd
iNova Pharmaceuticals – A Valeant Company
Integria Healthcare (Aus) Pty Ltd
International Beauty Supplies Pty Ltd
Johnson & Johnson Pacific
KAO Australia Pty Ltd
Keune Australia
Kimberly-Clark Australia
La Biothetique Australia
La Prairie Group
L'OCCITANE Australia Pty Ltd
L'Oréal Australia Pty Ltd
LVMH Perfumes and Cosmetics
Mary Kay Cosmetics Pty Ltd
Muk Haircare Pty Ltd
Natural Australian Kulture Pty Ltd
Nutrimetics Australia
NYX Pty Ltd
Panamex Group
Procter & Gamble Australia Pty Ltd
PZ Cussons Australia Pty Ltd
Reckitt Benckiser
Revlon Australia
SC Johnson & Son Pty Ltd
Scental Pacific Pty Ltd
Shiseido (Australia) Pty Ltd
Skin Health Pty Ltd
Syndet Works 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
Vitafive
Weleda Australia Pty Ltd

Hygiene and Specialty Products

Albright & Wilson (Aust) Ltd
BioPak
BP Castrol Australia Pty Ltd
Brenntag Australia Pty Ltd
Castle Chemicals Pty Ltd
Chemetall (Australasia) Pty Ltd
Clariant (Australia) Pty Ltd
Deb Australia Pty Ltd
Dominant (Australia) Pty Ltd
Ecolab Pty Limited
Huntsman Corporation Australia Pty Ltd
Jalco Group Pty Limited
Jet Technologies Australia Pty Ltd
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 Interlox 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

Corporate Travel Services

Platinum Travel Corporation

Graphic Design and Creative

Ident Pty Ltd

Legal and Business Management

FCB Lawyers

K&L Gates

KPMG

TressCox Lawyers

Regulatory and Technical Consultants

Clare Martin & Associates Pty Ltd

Competitive Advantage

Engel, Hellyer & Partners Pty Ltd

Robert Forbes & Associates

Seren Consulting Pty Ltd

Sue Akeroyd & Associates

Toxikos Pty Ltd

Specialist Laboratories and Testing

ams Laboratories

Dermatest Pty Ltd

October 2014

Attachment 2

2.2 Limited Quantities and retail distribution loads – what are they and how are they being transported?

1. What kinds of limited quantities products do you generally transport?

Due to our diverse membership, Accord Members transport a wide range of products as limited quantities. Some examples of products shipped in limited quantities include:

- Cosmetics and personal care products e.g. perfume (Class 3), lipstick (some are Class 4), mascara (Class 3), antiperspirant deodorant (Class 3 or Division 2.1 or Division 2.2), facial cleanser (Class 9) and toner (Class 3), alcohol-based hand-rubs (Class 3) and mouthwash (Class 3).
- Household cleaning products e.g. hard-surface cleaners such as oven cleaners (Division 2.1 or 2.2 with sub-class 8), toilet cleaners (Class 8), products for glass (Class 3), laundry products (Division 2.1 or 2.2) and shoe polish (Class 4).
- Home garden and pest products e.g. fly sprays (Division 2.1 or 2.2).
- Beauty/hair salon products e.g. nail polish (Class 3), nail polish remover (Class 3), hair bleach (Division 5.1) and hair spray (Division 2.1 or 2.2).
- Industrial cleaning, hygiene and other industrial products in up to 5L packaging (quantities, Classes and Divisions as allowed by the ADG Code).

It must be noted that based on information from our members, home maintenance/DIY products e.g. methylated spirits and mineral turpentine in 1L plastic bottles are not shipped using the limited quantities provisions. These companies mainly deal with chemicals that are DG and introduction of limited quantities to their operation would not necessarily be helpful.

It is our understanding that home maintenance/DIY products may be shipped as limited quantities or retail distribution loads if they are purchased by consumers and delivered, or if they are sent from retail warehouse to replenish a small retail store. Generally speaking, our members are not in this space.

2. Why do you transport these goods (e.g. retail delivery, distribution to stores, etc.)?

Again, due to our diverse membership, the reason for transporting these goods can differ. There are complicated arrays of transport arrangements. Some of these are detailed below:

- Traditional wholesaler to retailer transport model.
- Direct sellers receiving online orders and sending products to consumers. The orders may be initially managed in the central warehouse (order received, goods packed, package labelled and documentation generated), then shipped to regional warehouses where the goods are further sorted/grouped for delivery before making its way to the consumer. The package may go through multiple warehouses and sorting by locality between the original warehouse and the customer.
- Wholesaler providing packages to individual retail stores of a large retail chain. The wholesaler packages goods for the destination store. The packages are then transported to the retailer's warehouse where it is cross-docked and sent out to individual retail stores.
- Wholesaler providing packages to individual SME businesses providing a service e.g. hair dresser or beauty salon.

Except in the case of the traditional wholesaler to retailer transport model, most of the packages are DG mixed in with non-DG.

One of our Members that is a Direct Seller has calculated that approximately 1 in 10 packages sent out by their warehouse contains enough DG to make it a DG package. In almost all cases, these DG packages contain more non-DG than DG i.e. these packages closely resemble an average grocery load of an average consumer.

3. In what quantities do you transport these goods and how?

We understand that there are a large number of DG limited quantities packages being transported around Australia. Unfortunately we are unable to provide an overall figure.

The quantity of DG in each package varies depending on the transport scenario. For example, in tradition wholesaler to retailer model, we expect most DG packages to be filled with the same type of DG. This is not the case for the other three scenarios discussed above (under question 2).

All inner packaging of DG shipped in limited quantities contain DG below the maximum quantity allowed per inner packaging. In most cases e.g. nail polish, perfume, etc., the quantity is well below the maximum allowed. The package quantity is also well below the maximum allowed per package i.e. 20kg for shrink-wrapped packages and 30kg for boxes.

One member company ships between 10,000 – 15,000 ‘cartons’ per month. Approximately 10% of these contain DG packages i.e. 1,000 – 1,500 limited quantity packages for one company per month. Generally, only a fraction of each DG package is DG. If we estimate the average weight of the carton at 5kg and estimate approximately 20% of the carton on average is DG, this is equivalent to 1,000kg – 1,500kg of DG being shipped from this company per month.

The same company estimates that the cost savings if these packages were to be treated as non-DG packages, would be approximately \$150,000 - \$200,000 per year.

Another company estimates that approximately 3-5% of all of their products shipped are DG. As the company ships approximately 4000 cartons per day, this equates to approximately 600kg – 1,000kg of DG being shipped per day (if we once again estimate approximately 5kg weight per package) across Australia and New Zealand.

With the Accord exemption for documentation (which allows reduced documentation requirement), this company was able to save tens of thousands of dollars (for their main distribution – not counting the subcontractors). If the full documentation requirement were to apply, the cost savings would disappear.

4. Do you use your own vehicle/s or hire a trucking company?

In most cases, our members use a third party transport company/parcel delivery company. Some of the contract agreements can be fairly straight forward e.g. 1:1 agreement where one trucking company agrees to take all goods for a particular company. Others can be much more complex e.g. different transport company for each State, different company for DG and on-DG, etc.

5. Are your goods primarily transported by road, rail, air or a combination?

Combination of road, rail, air and sea transport is used. In some cases e.g. shipping products to Tasmania from Sydney, a combination of road or rail transport with sea or air transport is necessary.

6. How often/far do you transport these goods under LQ/RDL provisions?

Limited Quantities provisions are used every day by our members across Australia and New Zealand. Some of our Members receive products from overseas in limited quantities packages, sometimes in large quantities (in the consumer products and cosmetics sector), as this is how products are shipped overseas.

It is our understanding that our Members do not find the current Retail Distribution Load clause very useful as it is written, as it is significantly more restrictive than Limited Quantities provisions e.g. quantity and percentage limit per load, and the mixed DG diamond is not accepted internationally.

2.3 Productivity – is there room for improvement?

- 7. How would increasing/decreasing the amount of limited quantities allowed to be carried in a load affect productivity? Is the limited quantities provision a major factor, or do other factors dominate?*

It is our understanding that there is no limit on the amount of DG that can be carried in limited quantities per load. There is a limit past which the vehicle must be placarded. In Australia, the limit for placarding limited quantities is the same as any other DG. It is our understanding that the Orange Book does not require placarding of the vehicle for limited quantities. In the EU, a vehicle carrying eight tonnes or more of limited quantities (and no other DG) must be placarded. If other DG are being carried in placardable load, limited quantities can be ignored for the purposes of placarding.

For our direct sellers and companies sending small packages directly to small businesses, factors other than the load quantity of limited quantity packages are more important.

When a business send hundreds or thousands of packages a day where only <10% of those packages contain any DG, the current requirements are exceedingly difficult to comply with.

Firstly, the business must be aware when a package becomes a DG package. They are unable to rely solely on product classification, as packages containing less than the amount of DG specified in Table 5.1 in the ADG Code are not DG packages. As the amounts specified in Table 5.1 differ between classes and packing groups, it can be difficult to understand when a package becomes a DG package. For example, can a package contain just below the maximum quantity allowed of Class 3 packing group II product and just below the maximum quantity allowed for Class 3 packing group III product and not be classified as a DG package? What about different classes of DG?

Once a decision is made that a package is a DG package, the company must generate DG paperwork for these packages. As previously, explained packages can go through multiple warehouses for sorting, and therefore different vehicles at different stages of transport. At each stage of transport, right documentation must be found for each of the packages and sorted with the packages. The ADG Code requires that DG documentation be kept with the driver and not with the package. We reiterate that a single company can send hundreds or thousands of packages per day.

Due to our current exemption allowing the use of very simple documentation where documentation is not unique to the package (although the Company contact details are required), fortunately this has not caused too many issues to date. However, companies are still producing one documentation per package just in case the division of packages is such that each truck ends up with one package from the company. This means hundreds or thousands of pages paper are sent out daily, all stating basically the same thing – that the packages contain household consumer products from Company XXX.

Often, the DG packages must then be separated from non-DG packages for shipping as DG packages must be transported by a transport company with appropriate DG licenses. If the company wishes to

use the same transport company, a DG surcharge, which I understand is 50% in addition to normal transport charge may be added to all packages, DG and non-DG. Usually, the complexity of using two transport companies is more than off-set by cost savings of having non-DG packages not attracting additional surcharge. This however means that a company can send two vehicles, one carrying a package containing some DG products and the other containing a non-DG package to the same street on the same day, as this is the more cost efficient method.

This is not an efficient methods of regulating these low risk DG.

8. How would expanding concessions to all limited quantities rather than those for household use benefit business?

I do not quite understand this question. If it is referring to Retail Distribution Load “concessions” applying to Limited Quantities, I believe most wholesale consumer product companies that are currently using limited quantities clause would prefer to continue using limited quantities clause.

As previously stated, Retail Distribution Load, while meant to be a further concession to limited quantities, places too many restrictions for it to be really useful.

9. Would broader concession be of particular use to certain operators, business models or types of limited quantities? Would the productivity gains or other benefits be generally similar under a given range of concessions? Why or why not?

Chapter 7.3 could be reviewed so that it truly becomes a further concession to limited quantities, to be applied only to packages of consumer products and salon and beauty products. The focus should be on packages rather than on loads – limited quantities provisions apply to packages and not loads (other than placarding provision beyond certain weight). Our draft proposal is provided as Attachment 3.

The proposal outlined in Attachment 3 is an attempt to simplify the process for direct sellers and other similar businesses operating with complex transport models and shipping low risk DG in small quantities. If Retail Distribution packages were treated as non-DG packages, then all complications arising from DG transport disappears. Given that the risk posed by a Retail Distribution package is similar to any box of groceries, we do not believe that this should cause any concerns.

We have often heard that aerosols, when on fire, can become a projectile and become a hazard to the emergency responders. While we understand that this is a hazard, we cannot see how a label on a burning box, which is most likely contained within a burning vehicle can help emergency responders avoid the hazard of projectile aerosols.

If the boxes are not burning and intact, then we assume that these packages should cause no more concern than any box of groceries. If the package is damaged, the label on individual products may be more helpful than either the limited quantities marking or the mixed DG diamond.

Similarly on documentation we do not believe it is useful in an emergency for emergency responders to receive hundreds or even thousands of pages of transport documentation detailing small amounts of consumer products contained within the vehicle. It does nothing to help with the situation at hand at that point in time – emergency responders are unlikely to sift through hundreds or thousands of pages of information. If there is a need to obtain information on the load after the emergency e.g. for remediation, the transport companies should be able to rely on their relationship with their customer to gain detailed information on the load carried.

10. In what other ways do you think productivity could be improved, with respect to LQ/RDL transport?

Noting the recent government announcement on Accepting Trusted International Standards¹, as a minimum we believe that Australia should accept the limited quantities provisions as set out in the UN Orange Book.

If we are to look to other countries, we understand that the US Department of Transport has recently announced that packages meeting limited quantities requirements are deemed not to be DG. We could support this approach.

Even the EU does not require any documentation for limited quantities, and the placarding requirement only starts when the load reaches 8 tonnes of limited quantities (and no other DG).

Australian requirements are much more restrictive than set out in the UN Orange Book, the US and the EU. Yet, we have not seen or heard any justification as to why sending the same DG in the same transport situation in Australia is more dangerous than the EU or the US and therefore requires additional, complicated and costly risk mitigation.

2.4 Risks – what are they and how can they be managed?

11. What do you think are the main risks associated with transport of limited quantities?

As far as we are aware, the risks of transporting limited quantities is very low. The risk for mixed packages containing non-DG and DG are even lower. We believe that the risk of transporting DG consumer products is equivalent to transporting non-DG consumer products.

Risk can be viewed as hazard vs likelihood, or frequency vs consequence.

Looking at the first measure, not all DG are allowed to be packaged in limited quantities (only lower hazard DG are allowed). The likelihood of incidents arising from limited quantities is also smaller, mostly due to the smaller packages that are easier to handle properly.

If we are to consider frequency of incidents and consequences of such incidents, as previously identified by the NTC, the frequency of incidents is low for all DG, but it is even lower for packaged DG. This is supported by the fact that most of our consumer products members have not experienced an incident involving their product.

The NTC Regulatory Impact Statement (RIS) for the ADG7 update in 2007 identified that most incident relating to DG are transport accidents where DG being carried by the vehicle contributed to the consequence of the incident. Products packages in limited quantities are unlikely to contribute significantly to the consequence of the incident.

For example, we are aware of one case where transport accident involving two trucks, where one of them was carrying DG in limited quantities. We understand that these were consumer products. The truck rolled and spilled its content. All the DG product had to be picked up off the road. The consequence of this incident was no different to an incident involving a truck carrying non-DG e.g. milk, butter, chair or bicycle.

¹ http://www.dpmc.gov.au/publications/Industry_Innovation_and_Competitiveness_Agenda/international_standards_risk_assessments.cfm

12. *What influences these risks? Is it the type of good, the aggregate amount, packaging requirements, how it is being transported (including how often/far), who it is being transported to or other factors?*

As stated above, the risk of transporting these DG are already very low. I am not certain whether the risks can be further mitigated as they are already very low. The only way to achieve zero risk from transporting any goods is not to transport any goods.

13. *How do you think these risks should be managed?*

Any risk management must be simple for industry to comply with, and the cost of compliance should be commensurate with the risk. We do not believe this is the case with current requirements.

As stated in previous responses, the limited quantities provision should align with the UN Orange Book or the US DoT. Even the EU system deserves consideration as it is still much simpler than the Australian requirement.

There should also be consideration given to retail distribution packages (amendment to Chapter 7.3). As noted earlier, we have provided our draft proposal as Attachment 3.

14. *Are there specific risks associated with transporting these goods in Australia?*

We have not been able to identify any.

2.5 Regulatory effectiveness – what does this mean to you?

15. *What do you think are the strengths of our current regime?*

The current DG transport regulatory regime is fairly consistent with international requirements for bulk commodity chemicals. However, we would argue that even in this space, improvements can be made.

One positive has been the introduction of the special provision AU01, which recognises that environmentally hazardous substances in smaller receptacles pose lower risk than bulk transport of environmentally hazardous substances.

16. *What are the weaknesses?*

We believe there are many weaknesses in the current regulatory system that should be addressed. Some of these are provided below:

- The State/Territory regulations adopting the ADG Code makes it very difficult for an ordinary person to understand the requirements across all jurisdictions. I am yet to come across anyone who can say that they have read every Australian State and Territory laws relating to the transport of DG as well as the ADG Code, let alone understanding the differences in each jurisdiction. Compliance is harder to reach if the requirements are difficult to understand.
- Australian unique requirements in the ADG Code creates compliance difficulties. For example, the “inner-package” marking and labelling requirement leads to following problems:
 - An aerosol format medicine (Division 2.1, 60ml in size) is packaged in the EU and sent to Australia meeting all international (sea/air) DG requirements. The package does not meet the Australian DG requirements because the aerosol (the “inner package”) does not carry appropriate DG label and mark i.e. it is non-compliant once it arrives in Australia and reaches its first warehouse.

- The need to define “inner package”. The definition does not exist in the ADG Code currently, and many are confused between the definition of “packaging” and “package”. Inner packaging is well defined internationally, but this is not the same thing as an “inner package”. There is no such thing as an “inner package” internationally within the DG real; only packages.
- The need to keep Table 5.1, which in itself is a confusing table as mentioned briefly under a separate question – the maximum quantity of DG allowed if different classes are packaged together, or different packing groups of the same class are packaged together is unknown.

We note that the term “inner package” has been substituted with the term “inner packaging” in most cases in the last update of the ADG Code, except for the titles of 5.2.1.8 and 5.2.2.1.13. I understand that this may have been an attempt to address my concerns raised on this matter previously, however, my proposal then was to remove the requirements, not add additional requirements to all inner packaging, noting that this requirement does not exist internationally.

17. Are your legal requirements clear to you?

No, they are not. Some of the confusion has already been highlighted in previous responses. However, I believe I am more aware of the DG transport requirements than an average industry person.

I regularly receive DG queries, on average two per week, from members and non-members.

The confusion regarding DG requirements is wide spread. I have heard of cases from members where they hire DG specialists to help them understand their requirements, only to be told the wrong information. This is particularly true in the case of limited quantities.

For example, one company was told that for road and rail transport, they were not allowed to put into the same box different classes of DG. While this is a requirement for sea transport, it is not for road/rail transport and the company should not have had to send multiple boxes of hair products, each box containing one or two products each to a single business by road, significantly increasing their operating costs.

Another member attended DG training where he asked questions about packing, marking and labelling of cosmetics that are DG for transport. The trainer told him that cosmetics were not DG.

In another case, a New Zealand based third party DG auditor told one of our members that their DG package could contain no more than 1L of DG if they wished to transport it as limited quantities. The company understood their requirements better and tried to inform the DG auditor that the 1L limit was for each inner packaging for this particular UN number, but the limit on the package was 30kg. The auditor disagreed and failed the company’s audit. It took several weeks of Accord’s involvement trying initially to convince the auditor, then asking the New Zealand regulator to provide a statement before the issue was resolved. By this stage, the company had lost their customer.

These examples should highlight the deep confusion in the DG transport space. In order for the DG transport laws to operate efficiently, the confusion must be addressed. One way of achieving this is by simplifying requirements.

18. Do you think your compliance costs are reasonable in light of the risks associated with transport of limited quantities? How do you think these costs could be reduced?

No, compliance costs are not reasonable for low risk consumer products that are available for self-selection in grocery stores and department stores. This is a unanimous view within our membership.

Accord has also gained several members when an exemption was issued to Accord and our members only, as the reduced documentation requirement was a significant help for many of these companies – more than enough to justify the monetary cost of becoming an Accord member.

We have also had micro-businesses contact Accord to see whether their transport costs could be reduced. These were niche companies with products such as natural fragrances or small hobby-businesses selling “fun” cosmetics which included some DG e.g. nail polish. They were mainly dependent on internet sales but could not justify the DG surcharge, in some cases \$30 for a box containing \$10 worth of cosmetics.

While some may dismiss this as the transport companies unnecessarily charging high fees, we understand that the fees are there to pay for their compliance to all the DG requirements.

The cost training the staff to understanding the requirements must also be considered. As previously stated, the requirements are complex and confusing and it is more difficult to comply with requirements that are complex and confusing.

Attachment 3

CHAPTER 7.3 – RETAIL DISTRIBUTION PACKAGES

7.3.1 This chapter provides provisions for the final stages of transport of retail distribution of limited quantities. A package is a Retail Distribution Package if it has all of the following characteristics:

- (a) dangerous goods are limited quantities meeting the applicable quantity limit for the inner packaging or article is specified for each substance in Column 7a of the Dangerous Goods List of Chapter 3.2.
- (b) the package is packed in accordance with Chapter 3.4;
- (c) the package does not contain dangerous goods of Class 2.3 or Packing Group I;
- (d) the dangerous goods are packaged and distributed in a form intended or suitable for sale through retail agencies for purposes of personal care or household use;
- (e) any inner packaging of glass, porcelain or stoneware are transported only in combination packaging;
- (f) the package is packed intended for a retailer or consumer (or returns);
- (g) the package is packed to order and may contain mixed dangerous goods and non-dangerous goods.

Note: A full package containing a single type of product (sometimes called a “stock keeping unit”) does not qualify as a Retail Distribution Package.

7.3.2 Retail Distribution Packages, meeting the provisions of this Chapter, are not subject to any other provisions of this Code except the relevant provisions of

- (a) Part 1, Chapters 1.1, 1.2 and 1.3;
- (b) Part 2;
- (c) Part 3, Chapters 3.1, 3.2, 3.3;
- (d) Part 4, paragraphs 4.1.1.1, 4.1.1.2 and 4.1.1.4 to 4.1.1.8;
- (e) Part 5, paragraphs 5.1.1.2, 5.1.2.3, 5.2.1.7, 5.2.1.8, 5.2.2.1.13 and section 5.4.2;
- (f) Part 6, construction requirements of 6.1.4, paragraph 6.2.1.2 and section 6.2.4.

7.3.3 Dangerous goods in Retail Distribution Packages need not be counted towards placard load calculations.

7.3.4 Shipping documentation requirements do not apply to Retail Distribution Packages. However, the contact details of the consignor and the words “RETAIL DISTRIBUTION” should appear on the consignment note.