

Mutual Recognition Schemes
Productivity Commission
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Dear Commissioner

Accord is pleased to provide the following submission to the Productivity Commission's (PC) Issues Paper, *Mutual Recognition Schemes*.

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 100 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 180 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:

- 97.5 percent have dealings with the National Industrial Chemicals Notification & Assessment Scheme (NICNAS)
- 80 percent with the Therapeutic Goods Administration (TGA)

- 62 percent with the Australian Quarantine Inspection Service (AQIS)
- 33 percent with the Australian Pesticides & Veterinary Medicines Authority (APVMA);
- 28 percent with Food Safety Australia New Zealand (FSANZ); and
- 5 percent with Attorney-General's Department (chemical diversion)¹.

Additionally, our member companies are regulated by the Australian Competition and Consumer Commission (ACCC) under the Australian Consumer Law as well as a range of state and territory health, OHS, environment and transport agencies in addition to trade measurement requirements.

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) 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.

The formulated chemical products sector is a heavily regulated sector which has resulted in an overly complex system made all the more difficult through the duplication of roles and responsibilities for chemical management between Commonwealth entities, state and territory governments as well as some local government bodies. Governments have recognised the complexity of the regulatory system and the chemicals and plastics sector has been the focus of multiple reform efforts including the Productivity Commission study into chemicals and plastics regulation which was released in 2008.

This has resulted in little by way of real outcomes having been achieved for our sector, but has resulted in increased costs due to the nature of cost recovery and a general tendency towards more unique Australian requirements rather than a move towards harmonisation of regulatory practices with that of our major trading partners. We believe that cost recovered agencies are not subjected to the same level of scrutiny as budget funded entities despite the rhetoric around reform and a seamless national economy.

Australia's costly, complex and fragmented regulatory system for the management of chemicals is a serious issue for our industry. Members have raised concerns at the very slow pace of reform, the ongoing loss of innovation and business opportunities, as well as continuing problems with the decision making and operational performance of our key regulatory agencies involved in chemicals management.

Accord has a specific and direct interest in the current review of the Mutual Recognition Agreement (MRA) and Trans-Tasman Mutual Recognition Arrangement (TTMRA). These arrangements can be extremely valuable vehicles to reducing regulatory impediments to goods and services mobility across jurisdictions. Our submission addresses the first two points of the PC's terms of reference.

¹ Results from Accord Industry Size and Scale Survey 2014.

Coverage, efficiency and effectiveness of MRA and TTMRA

Transport of dangerous goods

Accord is uncertain as to why the transportation, storage and handling of dangerous goods continues to be an exception to MRA and TTMRA arrangements given that Edition 7.3 of the Australian Dangerous Goods Code (ADG7.3) has been implemented in all jurisdictions in Australia.

According to information on the website of the Department of Infrastructure and Transport (DIT), *In order to assist industry through consistency and standardisation of regulation, Australia has been closely involved in international efforts to harmonise the classification and labelling requirements for all dangerous goods. This reduces the conformance burden for industries engaged in the use and transport of dangerous goods and facilitates seamless compliance for importers and exporters.*

The United Nations (UN) Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCETDG) is responsible for the 'UN Recommendations on the Transport of Dangerous Goods—Model Regulations'. The UN Recommendations are internationally accepted as the principal technical standards underpinning the air and sea dangerous goods codes, and are also used by many countries as the basis for their road and rail dangerous goods transport codes.

DIT represents Australia as a voting member of the UN Committee. Through this representation, DIT contributes to the development of uniform international safety requirements for the transport of dangerous goods and ensures that Australia's interests are considered within the UN process.

The purpose of ADG7.3 is to provide consistent technical requirements for the land transport of dangerous goods across Australia. The Code should be read in conjunction with relevant state or territory law. ADG7.3 adopts the structure, format, definitions and concepts of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations while retaining some Australian specific provisions. It also incorporates additional provisions for the transport of infectious substances.

ADG7.3 lists provisions applicable to the transport of dangerous goods including:

- classification;
- packaging and performance testing;
- use of bulk containers, IBCs, freight containers and unit loads;
- marking and placarding;
- vehicle requirements;
- segregation and stowage;
- transfer of bulk dangerous goods;
- documentation;
- safety equipment;
- procedures during transport emergencies; and
- the dangerous goods list with UN numbers.

New Zealand is also a signatory to the UN work and has adopted the United Nations Recommendations on the Transport of Dangerous Goods - Model Regulations.

Given this degree of harmonization domestically and with New Zealand, we ask what could be the valid reason for maintaining the exception for the transportation, storage and handling of goods within the MRA and TTMRA? With regard to reducing red tape, we do not understand why Australia has

imposed unique transport requirements such as inner package labelling or has deviated from the UN requirements for Limited Quantities provisions. Australia participates at the UN level and is a voting member. It should therefore adopt the UN decisions which would facilitate seamless operations not only across the Tasman but globally.

The Council of Australian Governments (COAG) targeted chemicals and plastic regulation as a regulatory hotspot for which a PC research study was commissioned in 2007 and a special ministerial taskforce established. The PC released its research report on Chemicals and Plastics Regulation in July 2008. On consistency of transport modes and international compatibility, the report states inter alia that:

The alignment of land transport regulations with the UN Model Regulations, on which air and sea transport regulations are based, has significantly increased the compatibility of dangerous goods transport regulations across modes. Intermodal consistency has been further enhanced by the ADG7 package setting out a single set of regulations for both road and rail. (p183).

The report also noted the potential for interjurisdictional inconsistency under the model legislation. This is where the application of MRA would be of great benefit. We see no need for the storage and handling of dangerous goods to continue to be outside the scope of MRA and TTMRA since the signing of the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety by COAG. This marks a significant step forward towards the ultimate goal of a national OHS system which is fully integrated into a seamless national economy and further, to continue with the exception would be inconsistent with the current thrust of the Government's reform agenda.

Chemical classification, labelling, packaging and safety data sheets.

The chemicals sector as part of industrial chemicals is currently subject to a permanent exemption under the TTMRA. This was the result of recommendations following the publication of the PC Research Report, *Review of Mutual Recognition Schemes* (January 2009). The PC recommended that the Australian and New Zealand governments should consider converting the TTMRA special exemption for hazardous substances, industrial chemicals and dangerous goods into a permanent exemption, and/or apply mutual recognition to some areas. A cost benefit analysis was recommended.

Industry is unaware of any cost benefit analysis and Accord was not invited to any such discussions with government on this issue. We note that the PC recommended that the possibility of mutual recognition for selected products could be applied. Accord in its submission to the PC review of 2009, recommended that cosmetic products could be one of the product categories under consideration (p136). There has been no progress on this.

At the time of the review and subsequent report, Australia was considering the introduction of Globally Harmonized System of Classification and Labelling of Chemicals (GHS). New Zealand introduced GHS to all sectors in July 2001 and is currently updating GHS requirements to the 5th Revised Edition of the GHS. The GHS is a single internationally agreed system of chemical classification and hazard communication through labelling and Safety Data Sheets (SDS). The GHS is published by the United Nations and is sometimes referred to as 'the purple book'. It includes harmonised criteria for the classification of:

- physical hazards,
- health hazards, and
- environmental hazards.

Safe Work Australia has published a list of chemicals classified in accordance with the GHS. This list has been classified by sources such as the European Commission or NICNAS.

Given that Australia and New Zealand have both adopted GHS we see no valid reason why this element of the permanent exemption should remain.

We believe that greater effort is required by regulators on both sides of the Tasman to overcome perceived obstacles regarding the trade in chemicals. Again we bring into question why Australia requires a notification and assessment scheme for all chemicals regardless of toxicity whereas New Zealand has a more pragmatic approach in the control of hazardous substances through a risk management approach without any detriment to environment, or public health and safety. There is no reason why new non-hazardous chemicals should not be exempt from assessment by NICNAS and all hazardous industrial chemicals subject to TTMRA arrangements as both jurisdictions have agencies which undertake assessment of their hazardous properties. This is particularly now that the government has announced its policy on accepting trusted international standards.

The primary thrust of chemicals regulation is the protection of public health and the environment. Accord supports these important objectives. We endorse the need for efficient regulation that is set at the minimum effective level of intervention necessary to manage risks while at the same time promoting innovation and productivity through increased business activity.

It is worth noting that New Zealand is in the process of reforming its OHS legislation. We understand that the Health and Safety Reform Bill is based on Australia's system of the Model work health and safety Act and Regulations. Again, we ask what could be the valid reason for chemical classification, labelling, packaging and safety data sheets to remain exempt from the TTMRA following this development in New Zealand?

Recommend ways to further improve the inter-jurisdictional movement of goods and skilled workers, and reduce red tape, including automatic mutual recognition where applicable

Accepting trusted international standards

As mentioned above, this new policy initiative by the government to reduce the regulatory burden on industry provides incentive to expand the scope of MRA and TTMRA in the area of dangerous goods and industrial chemicals. An essential ingredient to this is the Review of NICNAS which was commenced in 2010. The Review should be brought to conclusion consistent with the government's policy intent for reducing the regulatory burden on industry. This will provide opportunities for greater expansion of the TTMRA for those products which could be, under the reforms, excluded from the industrial chemicals regime in Australia such as cosmetic products and their ingredients and hence increase the scope and application of the TTMRA.

Also, a proportionate risk based chemical management system could enable the free flow of non-hazardous or low regulatory concern chemicals across the Tasman without subjecting them to further NICNAS notification and assessment processes. Similarly, an opportunity also arises to recognise certain low risk agvet products such as pet food additives within the scope of the TTMRA.

Concluding Comments

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 because of the small number of 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.

The contact officer for this matter is Ms Dusanka Sabic, Accord's Director Regulatory Reform. Please do not hesitate to contact her should you require further clarification on the points raised.

Yours sincerely

Bronwyn Capanna
Executive Director

B February 2015

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