ACCORD

Advocate for the Consumer, Cosmetic, Hygiene and Specialty Products Industry

ADG7 Implementation Issues

ACCORD Australasia Submission to the NTC

26 November 2010

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Executive Summary

The implementation of the *Australian Code for the Transport of Dangerous Goods by Road and Rail 7th Edition* (ADG7) has resulted in an unacceptable and unworkable increase in regulatory burden for our industry without delivering the benefits initially foreshadowed in the *Regulatory Impact Statement for the Development of the 7th edition of the Australian Dangerous Goods Code* (RIS).

The RIS identified costs and benefits. These are outlined in Table 1 below.

Table 1

Costs		**Benefits**	**Benefit achieved?**
Direct • Major costs associated with updated training and education. • Changes to documentation and administrative systems. • Some additional costs associated with changes to placarding and labelling requirements.		**Direct** • Closer harmonisation with maritime and air transport codes with a reduction in intermodal difficulties and inefficiencies will reduce costs for importers/exporters. • Increased frequency in the revision cycle to ensure the Code is kept up to date with international practices. • A more frequent revision cycle will reduce the impact on industry since fewer changes will be required. • The inclusion of infectious substances. • The inclusion of compliance and enforcement provisions addressing anticompetitive behaviour.	**X** **X** **X** √ **?**
Indirect • Higher and expanded range of infringement penalties.		**Indirect** • Merging of road and rail regulations will reduce complexity for freight inter-modal companies operating on a national basis. • Benefits for global companies based in Australia with closer alignment with UN and international practice. • Increased Australian input to UN model regulation development. • Some anticipated cost savings from the treatment of small quantities	**X** **X** **?** √

While the RIS identified changes to placarding and labelling only as "some additional costs", our Members supplying consumer products and cosmetics, including SMEs, have identified between tens of thousands of dollars to over a million dollars of additional regulatory compliance costs per year due to these extra labelling requirements. As an example, one company estimates the increase to the cost of operating the Australian business, based in New South Wales, at **$1.75 million per annum**.

This is despite the fact that many of these companies have never experienced an incident involving dangerous goods in the many decades of operation in Australia, and despite the fact that in the dangerous goods risk scale, consumer products belong to the lowest risk category.

We are not aware of any similarly large increases in regulatory burden for higher risk bulk commodity chemicals introduced through the implementation of ADG7.

While the RIS identified costs associated with updating training and education as a major cost, we believe that the costs borne by the cosmetics and fast moving consumer products sector for training and education of their staff has been higher than estimated by the NTC. One of the difficulties for training and education has been a lack of consistent understanding

and interpretation of ADG7 by the trainers and Dangerous Goods (DG) inspectors, some of whom were not even aware that consumer products such as perfumes, nail polish and bathroom cleaners were classified as dangerous goods.

While we congratulate the NTC for responding to the COAG early harvest reforms by making ADG7 freely available on the internet, we are not aware that the NTC has attempted to provide any further support for industry or for States and Territories to come to a consistent understanding of ADG7, or help industry with compliance requirements during the transition from ADG6 to ADG7.

Of the benefits identified by the RIS, ACCORD can only identify one listed benefit that is currently producing some, albeit limited, advantages for our industry.

The amendment of the treatment of small quantities of dangerous goods through the introduction of the Limited Quantities clause (that has been available internationally long before the implementation of ADG7) currently allows some benefit for the shipment of consumer products. However, this benefit is expected to be short lived. International regulations are expected to change next year and we will then be left with Australian unique requirements.

Most other listed benefits have failed to come to fruition.

Expected benefits of increased efficiencies through closer harmonisation with maritime and air transport codes, and also with UN and international practice have failed to materialise, and in fact the ADG7 implementation has had a perverse outcome of increasing difficulties and inefficiencies for multimodal and international transport for the consumer products sector. The problems arising from differences between the three modes of transport have become magnified through the changes to the labelling requirement of road and rail transport of retail quantities of consumer products.

Also, a major benefit that could have been achieved for the consumer products industry was lost due to the failure to adopt the UN document as it was written.

There are two direct benefits identified in the RIS linked with frequency of revision of the ADG Code. However, as far as we are aware, there are no plans or processes in place for a regular review and revision of the ADG Code.

There are other costs associated with the implementation of ADG7 that were not identified by the RIS and borne by industry. These include:

- Uncertain business operating environment produced by inconsistent adoption of ADG7 by States and Territories, both in timeline (we are still waiting for some States and Territories to adopt ADG7) and content, and
- Missed opportunity for regulatory reform: ADG7 and related regulations continue to inappropriately regulate the individual consumer product label as a transport requirement, even though these are not visible during transport, and there are other public health and safety regulators with responsibility over consumer products labelling.

ADG7 implementation has also brought to our attention the lack of capacity of the NTC and the State and Territory regulators responsible for dangerous goods transport to address dangerous goods transport issues imposed on industry through regulation.

In most cases, the NTC and the States and Territory regulators were unable to act on industry identified issues even when the problem was obvious and impossible to solve without intervention from regulators. Some State regulators tried to assist our industry but

could not achieve outcomes due to the flawed Competent Authorities Panel (CAP) process that lacks accountability, transparency and consistency.

From ACCORD's experience of implementation of ADG7, the effort that was put into the implementation process and the ongoing costs associated with the increase in regulatory burden far outweigh any benefits.

However, longer term positive outcomes can be achieved if the systemic problems identified during the ADG7 implementation are addressed.

Ultimately, we believe that dangerous goods transport regulations and processes related to these regulations should become more transparent, nationally consistent, accountable, reactive to industry needs and proactive in international discussions. Currently, based largely on the experience of the cosmetics and consumer products industry, none of the above applies.

ADG7 Implementation Issues

1. Inconsistencies in implementation and administration of ADG7 in State and Territory Law

(a) Implementation timeframe

In February 2007, the Australian Transport Council (ATC) approved the adoption of the nationally consistent ADG7 legislative package. Further, the ATC agreed to the implementation of the *Australian Code for the Transport of Dangerous Goods by Road and Rail 7th Edition* (ADG7) package by 1 January 2008. The transition period, where both ADG6 and ADG7 were accepted, was agreed at 12 months, ending on 31 December 2008.

By 1 January 2008, none of the States and Territories had implemented ADG7. Western Australia implemented ADG7 based regulations in May 2008.

On 3 July 2008 and again at its 29 November 2008 meeting, the Council of Australian Governments (COAG) agreed to implement some of the Productivity Commission's recommendations relating to transport of dangerous goods arising from their research report into chemicals and plastics regulation. This included a common implementation date for ADG7 of 31 December 2008 with a 12 month transition period.

By 31 December 2008, Victoria and South Australia, in addition to Western Australia had implemented ADG7. That is, only three out of eight States and Territories met the COAG agreed timeline – less than 50%.

Now in November 2010, almost three years from the initially agreed implementation of 1 January 2008 and a year after the transition period from ADG6 to ADG7 has expired, ADG7 implementation status for three out of the eight States and Territories is still unclear. While the foreshadowed implementation of ADG7 for Tasmania and the Australian Capital Territory (ACT) was some time in 2010, we are unsure whether the relevant legislative packages implementing ADG7 have yet been finalised. Also, as far as we are aware, the Northern Territory (NT) has not announced any ADG7 implementation plans.

Meanwhile, industry has had to revise and re-revise their ADG7 implementation plans to coincide with the implementation of ADG7 by States and Territories, and are now in an unhappy situation of having to comply with ADG7 based regulations in some States and Territories while complying with ADG6 based regulations in others.

For an industry that operates Australia-wide like ours, this is clearly an unacceptable imposition on business operations.

When we raised these issues with some State and Territory regulators we were informed that as there is little difference between ADG6 and ADG7, the fact that the States and Territories are operating to these two different versions of the ADG Code should be of little concern to industry.

As we demonstrate under the section *Regulatory outcome produced by implementation of ADG7* in this submission, for our industry the difference between ADG6 and ADG7 is substantial and has significant compliance costs.

We were also informed by some regulators that there was an "understanding" between State and Territory regulators that ADG7 would apply even in those States and Territories that did not have laws implementing ADG7.

This is the worst possible scenario - industry is informed that compliance to the law is not necessary in some situations, and those situations are decided by informal agreements between regulators. This creates too much room for unpredictable bureaucratic discretion, which combined with uncertainty of compliance requirements, leads to an uncertain business operating environment.

When introducing new or amended regulations that have a national impact, States and Territories must provide assurances to industry that there will be just one set of harmonised regulations to comply with nationally. Unfortunately, while Australian governments have committed to the harmonised implementation of ADG7 through the COAG process, the execution by the State and Territory regulators has failed to deliver this outcome.

(b) Differences between States and Territories

When South Australia (SA) consulted on the implementation of ADG7 related regulations in SA (*Dangerous Substances (Dangerous Goods Transport) Regulations 2008*), ACCORD made a submission requesting that they consider an alternate compliance measure, where the regulation recognises equivalent Dangerous Goods Transport regulations of other State and Territory jurisdictions, whereby a company complying with these equivalent Dangerous Goods Transport regulations are in compliance with the *Dangerous Substances (Dangerous Goods Transport) Regulations 2008.* ACCORD made similar comments to Victoria when Victoria consulted on the implementation of ADG7 related regulations.

These suggestions were not taken up by either State Government.

Feedback from some States when we raised concerns over the possibility of differences arising between the State regulations implementing ADG7, was that the regulations are expected to be "99% the same". However, no-one could pinpoint the 1% that would be different between the State regulations.

ACCORD is aware of some differences between the State regulations. These include:

1. Western Australia requires "Approved Responders" to deal with emergencies (*Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007*, Regulation 185). As far as we are aware, this is not required in any other States.
2. Of all the States that have adopted ADG7, South Australia is the only state where it is not an offence to mark/label packages as Class 9 dangerous goods where the goods are classified as UN3082 or UN3077 and are in packages smaller than 500kg or litres (see comments under the section *Class 9 environmentally hazardous DG and multimodal transport (road/rail interface with sea/air transport* in this submission).

However, we cannot be certain that we are aware of all the differences between the States as the regulations are written in slightly different formats in each State and it is not easy to compare one regulation with another let alone across 6 different State regulations against the *Model Subordinate Law on the Transport of Dangerous Goods by Road or Rail 2007* (Model Regulation), and referencing back to the relevant Act in each state as well as ADG7.

For example, in order to check whether the State regulations were harmonised for point 2 above, ACCORD's Science and Technical Manager spent half a day comparing 6 different State regulations (NSW, VIC, SA, WA and two QLD regulations) with the Model Regulations and then referenced back to ADG7 to understand the implication of the regulations. That is, someone with technical expertise needed to spend half a day to read and comprehend the meaning and consequences nationally, for what is essentially a single clause.

We do not believe that there are many companies, particularly SMEs that have the capacity to perform this exercise. Nor do we believe macro-level Government policies geared towards helping small businesses and boosting employment would expect SMEs to invest their limited resources in developing this capacity.

ACCORD is also unaware of anyone within State governments or in the Federal government that has attempted to identify and compile a list of differences between the State regulations.

In order for States and Territories to truly provide useful, harmonised ADG7 regulation, where compliance to each requirement in each State and Territory is feasible, as a minimum we believe that one of the following paths should be taken.

1. States and Territories adopt a nationally agreed template regulation with firm agreement that there will be no deviation, or
2. States and Territories mutually recognise each others' regulations based on ADG7 so that a company only has to read/understand/comprehend one State or Territory's regulation, ideally the State their head office is in, and know that they are in compliance nationally.

Clear, simple and easy to understand regulation is necessary in order to achieve a high rate of compliance. While a large majority companies operating in Australia are dedicated to safe transport of dangerous goods and compliance to all necessary requirements, the sheer volume of legislative instruments (Model Regulations, ADG7, plus all States and Territory Acts and Regulations implementation ADG7) that must be understood for national compliance, and the conflicting compliance requirements between States and Territories, makes it extremely difficult if not impossible for industry to achieve national compliance.

2. Regulatory outcome produced by implementation of ADG7

(a) New marking/labelling requirements for retail distribution loads of DG

(i) Newly introduced marking/labelling requirement and its impact on our industry

Under ADG6, the Consumer Commodity Load clause (section 1.2.1) exempts packages containing small amounts of dangerous goods that meet the criteria set out in section 1.2.1 from the labelling (under ADG6 definition – under ADG7 definition marking and labelling). There are also reduced shipping documentation requirements for these packages.

This has meant that until the implementation of ADG7, dangerous goods that are retail shipments, i.e. mixed packages of consumer products containing dangerous goods such as dishwashing detergent, bleach, deodorant, methylated spirits, perfume and hair sprays, were not required to display any marking/labelling on the outer packages.

Under ADG7, a similar clause was introduced (Chapter 7.3 Retail Distribution Load). However, rather than exempting packages from marking/labelling requirements, two alternative marking/labelling requirements were introduced; either Limited Quantities marking/labelling (Chapter 3.4, figure 3.4) or mixed class label (model No. 10 in 5.2.2.2.3).

This has hugely increased the regulatory compliance cost for our industry. There are many hundreds of thousands of boxes containing fast moving consumer goods being transported across Australia every day.

For direct sellers and companies offering products through the internet, return of goods is also posing interesting challenges. Generally sales representatives, like consumers, return the goods in the same boxes the goods are delivered in. Since usually only part of the initial delivery is returned, the dangerous goods marking/labelling on the box may or may not match the goods that are being packaged for return. E.g. initial delivery included bathrobes, perfumes, nail polish and aerosols, but only perfumes are being returned, or only the bathrobes are being returned.

Products that are not dangerous goods may be returned in boxes marked as dangerous goods, and boxes may list more dangerous goods than are actually present in the boxes. Then of course, there is the shipping document requirement.

Are all sales representatives expected to be trained in dangerous goods transport requirements? What about consumers?

Also, the new marking/labelling requirement has complicated multimodal transport of these consumer goods. The requirements between the sea, air and land transport are all different for these goods.

This is particularly unacceptable since as far as we are aware, there were never any incidents, issues or complaints relating to the way these goods were being transported under ADG6.

The data used in the ADG7 Regulatory Impact Statement indicates that the incidents involving dangerous goods transport are relatively small with most road accidents involving dangerous goods usually caused by factors common to all road crashes. Further, the number of incidents involving packaged dangerous goods is much smaller than incidents involving bulk containers transporting dangerous goods.

"Incidents and accidents associated with the transport of dangerous goods shipments present additional risks of exposure to explosions, fire or the inhalation of toxic fumes from the releases or spill of chemical and fuel substances.

However, most road accidents involving dangerous goods are usually caused by factors common to all road crashes eg. driver error, road or weather conditions, and are rarely directly attributable to the release of dangerous goods themselves. Trends identified from available data include:

- *Vehicles carrying flammable/combustible liquids were the most likely to be involved in incidents or accidents involving dangerous goods. This is borne out by data from the Australasian Fire Authorities Council (10% of reported incidents) and by overseas data. In the US, the Federal Motor Carrier Safety Administration reported that trucks carrying flammable liquids accounted for 64% of crashes involving a release of dangerous goods.*

- *In most cases, dangerous goods road transport incidents are usually related to a release or a spill of the dangerous good being transported. The Australasian Fire Authorities Council reported 'most incidents responded to were leaks or spills' (38%). In the period 1998 and 2005, the Health and Safety Executive, UK, reported an average of 52 vehicle spill incidents per annum. In the US data indicates 30% of road accidents involving dangerous goods involved spills.*

- *Australian data also appears to indicate a number of incidents involving spillage during transfer (pipe/hose 6%). Canadian statistics also show that in recent years a number of accidents occurred during the loading / unloading phase.*

- *The US data indicates a preponderance of container failures (21%) and open container spills (8%).*

- *Bulk containers transporting dangerous goods appear to have a much higher accident rate than vehicles carrying packaged dangerous goods. This is due to the fact that approximately 75% of the dangerous goods transport task involves the distribution of petroleum and gas.*

- *A frequent cause of incidents appears to involve fuel tanker / road train rollovers with West Australia reporting an average of 41% of incidents related to vehicle rollovers in the period 2000-2005."* (our underlining: "Australian Dangerous Goods Code 7th Edition Regulatory Impact Statement, August 2006", Appendix D Page 11)

Given that the NTC did not believe that there was a need to increase regulation of retail packages of consumer goods, we are at a loss to understand the policy rationale driving the huge increase in the regulatory burden on our industry introduced through the implementation of ADG7.

Case Study 1

Company A, a cosmetics house estimates that approximately **$20 000 was spent to change the computer programme** used for sorting freight so that the packages requiring the newly introduced DG marking/labelling could be identified and separated. In addition to this cost, Company A expects that the **additional labelling cost will be around $6 000 per year**.

However, the real cost to the business has been in reorganising the logistics operation of the company, and this is not easy to quantify. Some unquantifiable costs include:

- Dedicating two specific dispatch lanes to combine all DG items together.

- The above has taken up 33% capacity of Company A's dispatch sortation leading to challenges in meeting customers' expectations in terms of cross-docking* (see end of case study for definition), etc. as now there are insufficient lanes to dedicate to cross-dock customers.
- With the need of two dedicated lanes for DG, Company A now needs to run their cross-dock customers down a single lane which has resulted in a manual sort by purchase order and distribution centre. This has significantly hampered Company A's productivity and accuracy.
- Whilst nil DG surcharge was negotiated for this year with the third party transport company, this is likely to change in the future adding additional cost to Company A.
- Additional time to pack and consolidate as Company A try to pack DG's together in one carton hence minimizing the need for the carrier to sort consignment cartons at their facility.
- The above means additional lead times to the customers which in turn can result in lost sales.

In addition to the above, Company A has also lost the flexibility that was initially built in at the time of designing their facility. This means that if any customers decide to change the way they receive Company A's product in the future (e.g. deliver to DC) it will mean **a redesign of Company A's facility.**

With the increase in road and rail requirements, Company A now finds that it can ship products by air more easily (by using Class 9 ID8000 Consumer Commodity classification) than by road and rail.

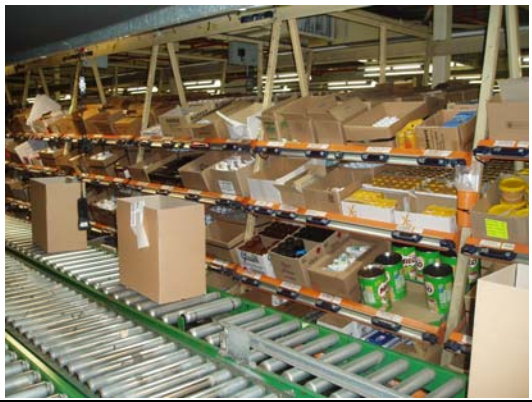
As far as Company A is aware, it has not been involved in a single transport incident over the past 20 years at least.

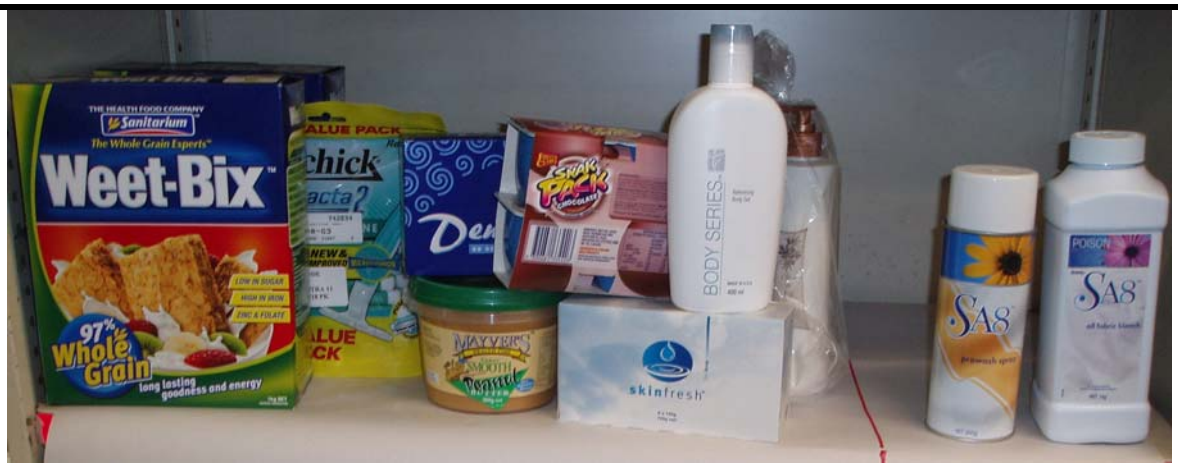
* **Cross-docking** is a practice in logistics of unloading materials from an incoming semi-trailer truck or rail car and loading these materials directly into outbound trucks, trailers, or rail cars, with little or no storage in between. This may be done to change type of conveyance, to sort material intended for different destinations, or to combine material from different origins into transport vehicles (or containers) with the same, or similar destination.

Case Study 2

In a typical month, Company B, a direct seller operating out of NSW ships out approximately 40 000 cartons as home deliveries to consumers. Most of these cartons do not contain any dangerous goods. On average;

- 1 in 2 cartons contain dangerous goods of any quantity, and
- 1 in 100 cartons contain dangerous goods above the quantity requiring marking/labelling according to ADG7 (section 5.2.1.8 and 5.2.2.1.13).





Company B estimates that the new marking/labelling requirement for retail distribution load has added **minimum $28 500 per year** to the cost of running business not including the increase in freight charges (**indications are that transport costs for dangerous goods could be 10% higher than for other goods**), as well as a one off cost to **change the computer program of $48 000**. While this cost is considered one off at this stage, the complex computer system utilised by Company B which is centralised in USA will require ongoing maintenance of the system with associated maintenance costs.

Company B has been operating in Australia for close to 40 years, and in that time has not experienced any serious transport incidents, or even minor transport incidents that resulted in leaks or spills of dangerous goods.

The cost associated with the compliance to the newly introduced marking/labelling requirements in ADG7 for Company B include:

- Changes to the automated pick-and-pack system layout to allow manual application of DG marking/labelling,
- Changes to the computer system to identify packages containing DG,
- Increased labour cost (slower pick-and-pack time resulting in lower productivity as well as application of extra marking/labelling),
- Label purchase cost, and
- Increased transport costs.

However, of greater concern are the incompatible requirements between road/rail transport of dangerous goods with sea and air transport of dangerous goods.

By air, Company B can send all of their packages as ID8000 Consumer Commodity Load. For sea transport, with the implementation of *United Nations Recommendations on the Transport of Dangerous Goods 16th Edition* (UNRTDG 16) where significant changes were made to the Limited Quantities clause since UNRTDG 15, the marking/labelling requirements are different to those of ADG7. i.e. **if multimodal transport is required, then the packages need changes to labelling at each different transport stage**.

The multimodal transport of these products were not of concern **under ADG6,** as **these packages were not required to be marked for road and rail transport, and for multimodal transport, the packages were marked and labelled for either sea or air transport requirements.**

Case Study 3

Company C, a multinational cosmetic company estimates that approximately one third of their consignments contain some quantity of dangerous goods.

The additional cost incurred by Company C by their transport company due to the new marking/labelling requirement is **approximately $300 000 per year**. This does not include the label and labour costs with combined total of approximately **$12 000 per year**.

(ii) ADG7 Consultation Process – NTC responses to industry concerns

During the ADG7 consultation period, ACCORD made a submission to the NTC on the issue of newly introduced marking/labelling requirement for Retail Distribution Loads. The NTC responded to the public consultation comments with the following:

> *"Chapter 7.3 was never designed for ACCORD members, or anyone supplying to the retail industry or for anyone outside the retail industry for that matter.*
>
> *Chapter 7.3, as with 1.2.1 of ADG6, was designed to overcome the specific problems of the retail industry, particularly retail distribution centres where mixed loads need to be made up to replace stock sold from retailers. The basic concept is that with small amounts of dangerous goods, the risk is sufficiently reduced that a larger quantity can be transported before the emergency services need to be advised by placards that there are dangerous goods on board. That is why all the conditions must be met before the concession applies.*
>
> *Noted. No change."*

And:

> *"7.3.3.1 permits the retail distribution centre and retail outlet to use a mixed class label on a package included in a retail distribution load in lieu of having to keep and use stocks of multiple labels. This concession cannot be made available to manufacturers or distributors, mainly because the cartons they fill cannot be transported as part of a retail distribution load.*
>
> *Manufacturers will need to use either the class label (if not packed as LQ) or the UN No in a diamond if a limited quantity is involved.*
>
> *Noted. No change."*

These responses show a clear lack of understanding of our industry including the types of goods and supply chain operations that are represented by ACCORD.

However, of more serious concern is the apparent bias against our industry where even though our industry operation is similar if not identical to that of retail industry operation, and the risk of transporting goods is identical to that of the retail industry, we note that our industry cannot use a clause in ADG7 which from our interpretation is applicable to some of our members, because it was "never designed for ACCORD members".

In our submission we also questioned the reason for the removal of clause 3.4.9 from the ADG7. Clause 3.4.9 in the 15th edition of the *United Nations Recommendations on the Transport of Dangerous Goods* (UNRTDG 15) on which ADG7 is based, further exempts consumer products from marking and labelling requirements.

> *"3.4.9 Limited quantities of dangerous goods for personal or household use, that are packaged and distributed in a form intended or suitable for sale through retail agencies, may furthermore be exempted from marking of the UN number on the packaging and from the requirements for a dangerous goods transport document."* (UNRTDG 15)

That is, if UNRTDG 15 had been adopted as it was written, then there would have been a much greater flexibility for our industry than under ADG6, not the reverse.

The NTC responded:

> *"The Dangerous Goods Steering Group took a policy decision not to adopt 3.4.9 from the UN Model Regulations. Amway will not have to do anything different to what they already to under ADG6. However, chapter 3.4 provides an additional option for industry of marking with the UN No in a diamond, if they find that is simpler than marking the Class label, UN No and Proper Shipping Name.*
>
> *Noted. No change."*

And:

> *"The Dangerous Goods Steering Group specifically ruled out including UN provision 3.4.9.*
> *As explained above, the Retail Distribution Load concept does not normally apply to Amway loads.*
> *See also above discussion on 7.3.1.1.*
>
> *Noted. No change."*

ACCORD notes that there was no explanation on what the "policy" actually is, the reasoning behind the "policy decision" not to adopt 3.4.9 from the UN Model Regulations, or the cost/benefit justification for such a policy decision.

Further NTC has once again singled out our industry to inform us that the Retail Distribution Load clause does not apply to our members: even though some of our members like Amway distribute groceries in the same manner as large grocery retailers through their online retail system. We are at a loss to understand the basis for what is in essence a discriminatory application of dangerous goods requirements, with a reduced burden allowed for large grocery chains over direct sellers.

(iii) ACCORD Exemption Application to the Competent Authorities Panel

ACCORD first made an exemption application to the Competent Authorities Panel (CAP) requesting that the CAP issue an exemption from the LQ marking/labelling requirements for the consumer products sector on 26 May 2008. We were informed that the submission was too late for the 29 May 2008 meeting, and therefore it will be tabled under "other business" to be properly discussed at the November meeting.

During the application process, ACCORD learnt that there was very little information available on CAP and how it operates.

We understand that CAP is a body whose prime responsibility is to consider exemptions, determinations, approvals and licenses under the ADG Code or the Regulations and to achieve mutual recognition of decisions across Australian jurisdictions. CAP is made up of jurisdictional representatives with responsibility over dangerous goods storage and transport. The Federal Department of Infrastructure, Transport, Regional Development and Local Government (Department of Infrastructure) provides the secretariat for CAP.

There is very little public information available on the process for an exemption application. On the website of Department of Infrastructure, the following information is provided on CAP:

> "Submissions to CAP for either an exemption, approval or administrative determination must first be considered by the Competent Authority in the relevant jurisdiction to ensure that the matter is of national effect and the submission is complete and in accordance with the Regulations…

> …When submitting an application to CAP through the Competent Authority, it is essential that organisations provide adequate supporting information for Panel members to consider. This may include diagrams, photographic material and other technical information. **When applying for an exemption the submission material must demonstrate 'equivalent safety'**.
>
> Organisations must provide both an electronic and a hard copy of the submission. The electronic copy will be circulated to aid discussion of the submission at a national level. The hard copy must be signed and submitted to the relevant Competent Authority."

A list of State and Territory contacts, an exemption application pro forma and log of past decisions are also provided.

However, there is no information available anywhere on frequency of the CAP meetings, when and where the CAP meetings are held, the cut-off date for exemption submissions for any particular meeting, the types of information that the CAP will consider (other than "equivalent safety"), the decision making process and timing of the decisions. There is also no public record of the CAP meeting discussions or the logic or policy rationale behind any decisions made.

In essence, there is no transparency, clarity or certainty in the process.

On 5 November 2008, ACCORD re-submitted to CAP (through the WA Competent Authority) our exemption application for consideration at the 18 November 2008 meeting of the CAP. We were present at the meeting to give a presentation, work through our issues with CAP and take any questions on safety concerns as we understood that was the main consideration for CAP in making decisions for exemptions.

On 30 January 2009, two-and-a-half-months after our exemption application, and a month after the date when all States and Territories were supposed to have implemented regulations based on ADG7, ACCORD received a formal rejection letter from CAP. The reasons for the rejection were:

- *"Dangerous goods transport regulations adopting the Australian Dangerous Goods Code 7th Edition (ADG7) had not been implemented in any State or Territory in Australia except Western Australia on the date of the CAP meeting; and*
- *Consumer goods are not a defined term in ADG7." (our underlining)*

ACCORD found these reasons puzzling for a number of reasons.

Firstly, the information available on CAP consideration for exemptions only mentioned equivalent safety and no other considerations. When we presented our exemption application to CAP, there were no concerns raised over safety of the proposal.

Secondly, the CAP meeting on 18 November 2008 where our exemption was discussed was less than one and a half months prior to the COAG agreed date for the full ADG7 implementation across all States and Territories. To state that exemptions can only be issued after all States and Territories have implemented ADG7 is to say that companies must change their business practices twice; first time when ADG7 comes into force, and second time if and when the exemption is issued.

At best, this is an extremely inefficient process.

Further, when the CAP finally issued the rejection letter, it was a month after the supposedly harmonised ADG7 implementation across all States and Territories. By this stage, at least three States (possibly four) had implemented ADG7.

Lastly, while we understand that the term “consumer goods” are not defined in ADG7, we also understand that any word that is not defined in ADG7 is usually taken to have the common English meaning of the word. If the CAP had concerns with the commonly used definition of “consumer goods” then we believe this could have been addressed easily with some discussion between the CAP and our industry.

Because the CAP rejection on 30 January 2009 did not mention any concerns over safety and the concerns appeared to be around definitions and timing, ACCORD made another submission to CAP for consideration at their 28 May 2009 meeting.

At this meeting, the CAP members were more open to discussion. However whenever we requested the reasons for some members of the CAP believing that the exemption should not be issued, the only response we received was that the decision to publish ADG7 as it stood, was made already and that they did not wish to go back on these decisions. Once again there were no safety concerns raised over our exemption proposal.

We also found this response puzzling since we understood that one of the roles of the CAP was to issue exemptions. If CAP did not believe that it should issue any exemptions because it goes against the originally agreed text of ADG7, then it should not have powers to issue any exemptions at all.

There are currently 17 Exemptions that have been issued by CAP under ADG7.

ACCORD did not receive a formal response to this exemption request until seven months later, on 23 December 2009. This is two days before Christmas and one week before the transition period from ADG6 to ADG7 in all States and Territories that have implemented ADG7 (by this stage five States) was to expire.

During the seven months of waiting, ACCORD worked with the NSW Competent Authorities to make our exemption more “palatable” to CAP members. This was an extremely difficult task for industry, as we did not know what problems or issues that we were expected to address – CAP members had consistently not raised any safety concerns.

After the “negotiation” process, we were eventually told informally that CAP will be rejecting our exemption application. Although ACCORD prefers to work through issues with regulators as representatives of the government, it became apparent at this stage that a reasonable outcome could not be expected from further discussions with the transport regulators.

ACCORD wrote to every State and Territory Minister with responsibility over transport of dangerous goods to support our application. This was not an easy task, as the responsibility for road and rail transport of dangerous goods does not always sit with the Transport Minister.

It was only after these representations to responsible Ministers that the CAP issued an exemption for ACCORD (CA2009/172). However, the exemption appears to have been aimed at giving the impression of addressing the issues for industry rather than actually addressing them.

The exemption issued was not what was requested by ACCORD. There was a severe restriction on volume (no more than 250kg or litres of dangerous goods in any transport load, 1/8th of the volume allowed under ADG6), and marking/labelling requirement was not removed, but instead replaced with different marking/labelling. The exemption issued stated that most CAP members agreed that there were no safety concerns with our original

exemption application, and no explanation was provided for the caveats added to the exemption.

This put our members in a strange situation where complying with the exemption in most cases was more onerous than complying with the new marking/labelling requirement of ADG7.

Case Study 4

Company D is a large multinational direct selling company specialising in beauty and beauty related products. Under ADG6, Company D has been distributing products to their Sales Representatives under the Consumer Commodity Loads clause 1.2.1. An ACCORD exemption under ADG6 (EXEM2006/43B) also meant that the Sales Representatives could send beauty products such as perfume and nail polish back to the Company D distribution centre if the need arose, without dangerous goods marking and labelling.

With the introduction of ADG7, Company D is now required to comply with the new marking/labelling requirements for Retail Distribution loads. That is, not only shipments going out need to comply with dangerous goods marking/labelling requirements that were not previously required, but products that the Sales Representatives send back to the distribution centre must also meet the new marking/labelling requirements.

The number of sales representatives for direct selling firms is seasonal, but it is estimated that for Company D, up to 40 000 Australians can be engaged on some basis, either full-time or part-time.

When assessing the possibility of using ACCORD exemption CA2009/172 issued under ADG7 Company D found that most of their larger loads will exceed 250 kg (or litres) limit and could not apply the exemption without complicating their supply chain operations even further.

The process required now for delivery of perfumes, nail polish and other beauty products by Company D is excessively complex.

Step 1: DG identification
Data relating to the classification and volume DG's by UN number by SKU is required.

Step 2 : DG volumes
The total volume of DG's by UN number by carton tabulated to pallet total, load total, traffic code total. This is required for transport documentation purposes and for breakdown/on forwarding by each State carrier.
The pallet/load total would be achieved by affixing barcode labels to each pallet and then the scanning of the first and last carton onto each pallet. Data from our Shipping Inventory Control System (SICS) would be required to be modified to provide the intermediate cartons and DG contents/totals.

Step 3: DG labelling/marking
A system is necessary to identify cartons containing DG's requiring labelling and to affix a label as prescribed below.

Label to be affixed to the side of each carton, either by incorporating the DG diamond within an enlarged side pick label at order start or a separate label/spray-on system.
The size of the label is determined by the UN numbers (4) with each character to be 6mm high.

Step 4: DG recording and carrier advice
Each pallet will be required to be scanned onto the line haul vehicle. At this point the data could be transmitted wirelessly to a base station for production of documentation for the initial vehicle journey. Company D currently transmit an XML file to the majority of States detailing the total quantity of cartons dispatched via traffic code. This XML file would need to be amended to include DG details for each carton containing DG's.

Step 5: DG documentation ex Company D
The total volume of DG's including the total volume by UN number plus the total volume by pallet in every load is required for documentation purposes.
Placarding of the line haul vehicle is required once the total quantity of DG's is > 1000 litres/kgs.

Step 6: DG requirements and documentation ex carrier
Each State carrier will be required to produce accurate summaries of DG's contained within each on-forwarded load from the first and subsequent breakdown location.
This will require the carrier to scan each carton and pallet onto the subsequent line haul vehicle if the total load of DG's contained within the vehicle is >250 litres/kgs or if the vehicle comprises a shared load with other consignees (i.e. all instances) or any cartons contain DG markings. Further documentation is required to be produced by the carrier at the first, and subsequent, freight breakdown points for trans-shipment of the goods to the next port regardless of the size of the load. The documentation is required due to the label/marking affixed to each carton containing DG's.
The document required would be the multi-modal document from each departure port. ACCORD exemption doc CA2009/172 does not apply due to the labelling and shared line hauls/delivery vehicles.

Company D ships approximately 30 000 cartons (or fibreboard boxes) per week.

This increase in regulatory burden is despite the fact that Company D has been operating in Australia for over 40 years without a single transport incident in that time.

The total annual cost increase for the new requirement is estimated to be $1.75 million. This equates to an approximate 20% increase in transport costs based on the 2010 budget.

Additional one off cost for hardware purchase and software development for the purposes of identification and labelling of products that are dangerous goods is $350 000.

This estimation does not include costs that are not easily quantifiable, such as:

- ADG7 training for employees,
- Additional fees and charges to retrieve products from Sales Representative homes,
- DG consultants hired in order to work through the complexities of the system,
- Internal IT programming costs,
- Management meetings to discuss the cost implications,
- Regional/Global meetings with the parent company to discuss options (including possible closure of the Australian business), and
- Discussions with transport companies on how to manage the changes through the supply chain.

Case Study 5

One of the large grocery retailers contacted one of the State Competent Authorities to discuss the consequences of the implementation of ADG7, including the new marking/labelling requirement for retail distribution loads.

It is our understanding that the Competent Authority informed the retailer that the intent was not to capture them. The Competent Authority then made a ruling that as they do not consider plastic bags as overpacks, grocery retailers are not required to mark/label these goods.

From safety perspective, we are at a loss to explain why retail quantities of consumer products that are dangerous goods packed in plastic bags (not best known for containing spillage) do not require DG marking and labelling while fibreboard boxes (better at containing spillage) containing the same types of products require marking/labelling.

Further, while this decision was not made by the full Competent Authorities Panel (CAP) and the decision has not been made public, we understand that Competent Authorities will not demand

compliance from large retailers to the new marking/labelling requirements.

(iv) International Regulations relating to Retail Distribution loads

It is our understanding that some countries like the UK and New Zealand have implemented regulations to address the retail distribution load issues.

The UK has issued a Retail Distribution Load exemption, which is specific to the UK (*DfT dangerous goods guidance note 7 (revised): Retail distribution).*

This measure exempts small quantity of products which have been broken down (i.e. not in bulk quantities) for distribution to small warehouses or to end users from certain requirements (such as labeling and marking) of the Transport of Dangerous goods regulations.

That is, in the UK, there are no marking or labelling required for retail distribution load packages. Also, in the UK (and also internationally) unlike Australia, there are no shipping documents requirement for transport of Limited Quantities Loads or Retail Distribution Loads by road and rail.

As far as we are aware, there are no concerns over the transport of Retail Distribution Loads in the UK.

In New Zealand they have a clause within *Land Transport Rule, Dangerous Goods 2005, Rule 45001/1* which states:

> *"4.4(2) Dangerous goods that are contained in their retail packaging are not required to have labelling or marking on any additional packaging used to carry the dangerous goods after retail sale."*

This means that all direct selling businesses and retailers where goods are purchased and paid for prior to delivery, are exempted from dangerous goods marking and labelling requirements for that delivery.

Both the UK and New Zealand have identified the problems associated with retail distribution of consumer products, and have introduced regulations to address these issues.

Although the system in the USA is quite different to that of the UK and New Zealand, the USA has also similarly recognised the issues for retail quantities of dangerous goods and addressed them. For transport within the USA, whether by sea, air, road, rail, or any combination of these modes, Limited Quantities and retail distribution packages only require a single sticker with "ORM-D" written on it. No shipping document is required.

The UK, New Zealand and the USA regulations for transport of dangerous goods, although all different, are all simpler and produce less regulatory burden than ADG7.

Australia on the other hand, has introduced the problem with the implementation of ADG7 by ignoring the concerns raised by industry during the drafting and consultation stages of ADG7, and by failing to properly consider the consequences of the newly introduced regulatory requirements. Australian regulators continue to burden industry with unjustified additional operating costs by refusing to issue appropriate exemptions.

ACCORD strongly urges NTC to consider retail distribution load operations in other countries, particularly the UK. Adoption of a regulation similar to that of UK would address industry's concerns over increased regulatory burden produced by additional requirements for marking/labelling of retail distribution of consumer goods in ADG7.

(b) Benefits of ADG7 implementation identified in the RIS not delivered

(i) Frequency of ADG Code update - lack of forward planning

Some of the benefits identified in the RIS for the implementation of ADG7 are:

- Increased frequency in the revision cycle to ensure the Code is kept up to date with international practices,
- A more frequent revision cycle will reduce the impact on industry since fewer changes will be required, and
- Benefits for global companies based in Australia with closer alignment with UN and international practice

Despite this, there does not appear to be any work or even a plan of work to revise the ADG Code to take up the amendments to the *United Nations Recommendations on the Transport of Dangerous Goods 16th Edition* (UNRTDG 16).

This is a particular concern for our members as there has been a major amendment to the Limited Quantities labelling clause in UNRTDG 16.

To put in simple terms, the current marking/labelling requirement for Limited Quantities introduced under ADG7 for Australia will as of next year be a unique Australian marking/labelling requirement as rest of the world will base their dangerous goods transport regulations on UNRTDG 16.

This means that when Australian importers receive goods that meet the international sea and air transport requirements for limited quantities, the marking/labelling on these packages will not be acceptable for road and rail transport.

As the consumer products industry internationally frequently uses Limited Quantities marking/labelling, this will have a major impact on our industry starting next year. Yet, we do not see any plans by regulators to address this issue, and other issues that will be unavoidable with the international adoption of UNRTDG16.

Further UNRTDG 17 is expected to be published next year with more changes expected, for implementation in 2013.

Clearly, the foreshadowed benefits listed above from ADG7 implementation are not being delivered.

(ii) Harmonisation with maritime and air transport codes

As demonstrated in an earlier section of this submission "*New marking/labelling requirements for retail distribution loads of DG*", and as will be demonstrated in the coming section "*Class 9 environmentally hazardous DG and multimodal transport (road and rail interface with sea/air transport)*", ADG7 implementation has had a perverse outcome for our

industry by increasing the difficulties and inefficiencies of intermodal transport and therefore increasing the cost for importers and exporters.

The benefit identified for ADG7 implementation in the RIS, "Closer harmonisation with maritime and air transport codes with a reduction in intermodal difficulties and inefficiencies will reduce costs for importers/exporters" therefore was not achieved for our industry.

(iii) Merging of road and rail regulations

While we understand that one of the benefits identified by the RIS was "merging of road and rail regulations will reduce complexity for freight inter-modal companies operating on a national basis", we believe that the overall outcome of ADG7 was to increase complexities for companies operating nationally.

Currently Northern Territories, Australian Capital Territories and Tasmania still operate under ADG6 (separate road and rail regulations). Queensland has also chosen to maintain separate road and rail regulations, although adopting ADG7.

All other States have adopted ADG7 and have merged road and rail regulations.

With these differences between States and Territories, the overall outcome from ADG7 implementation is that currently, it is much more complicated for companies operating nationally.

Therefore the benefit identified in the RIS has not been achieved, mostly due to the differences in the ADG7 implementation timeline between States and territories. We believe that moving from Template regulation (ADG6) to Model regulations (ADG7) was also a contributing factor for this benefit not being delivered.

(c) Class 9 environmentally hazardous DG and multimodal transport (road/rail interface with sea/air transport)

ADG7 contains some provisions that are applied specifically to Australian road and rail transport of dangerous goods. These are called Australian Special Provisions and are found in section 3.3.3 of the ADG7. Australian Special provision number AU01 states:

> ***"AU01** Environmentally Hazardous Substances meeting the descriptions of UN3077 and UN3082 are not subject to this Code when transported by road and rail in;*
> *(a) Packagings;*
> *(b) IBCs; or*
> *(c) Any other receptacle not exceeding 500 kg(L)."*

This Special Provision has caused major compliance issues for the chemical industry since the implementation of ADG7.

Special Provision AU01 is picked up in the *Model Subordinate Law on the Transport of Dangerous Goods by Road and Rail 2007* (Model Regulation) and State regulations as meaning that if AU01 applies, then these goods are not dangerous goods. This interpretation does not apply in South Australia where the wording of the Model Regulation has been amended. The relevant regulations are summarised in Table 2.

Table 2

State	Regulation
Model Regulation	Model Subordinate Law on the Transport of Dangerous Goods by Road or Rail 2007 ***Regulation 2.1.1, subclause (2)*** *However, goods that satisfy the criteria set out, or referred to, in Part 2 of the ADG Code are not dangerous goods if the goods are:* *(a) Determined under paragraph 1.6.1 (1) (a) not to be dangerous goods; or* *(b) Described as not subject to the ADG Code in a special provision in Chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the Dangerous Goods List.*
NSW	*Dangerous Goods (Road and Rail Transport) Regulation 2009* **Regulation 32 subclause (2)** However, goods that satisfy the criteria set out, or referred to, in Part 2 of the ADG Code are not dangerous goods if the goods are: (a) determined under clause 24 (1) (a) not to be dangerous goods, or (b) described as not subject to the ADG Code in a special provision in Chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the Dangerous Goods List.
Victoria	Dangerous Goods (Transport by Road or Rail) Regulations 2008 **Regulation 38 subclause (1)** Goods are dangerous goods if the goods satisfy the dangerous goods classification criteria set out, or referred to, in Part 2 of the ADG Code for determining whether goods are dangerous goods but does not include goods— (a) determined under regulation 30(1)(a) not to be dangerous goods; or (b) described as not subject to the ADG Code in a special provision in Chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the Dangerous Goods List.
Queensland	*Transport Operations (Road Use Management—Dangerous Goods) Regulation 2008* **Regulation 33, subclause (2)** However, goods that satisfy the criteria stated, or referred to, in part 2 of the ADG Code are not dangerous goods if— (a) the chief executive has made a determination that the goods are not dangerous goods; or (b) the goods are described as not subject to the ADG Code in a special provision in chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the dangerous goods list. *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008* **Regulation 30 subclause (2)** However, goods that satisfy the criteria stated, or referred to, in part 2 of the ADG Code are not dangerous goods if— (a) the chief executive has made a determination that the goods are not dangerous goods; or (b) the goods are described as not subject to the ADG Code in a special provision in chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the dangerous goods list.
South Australia	*Dangerous Goods Transport Regulations 2008* **Regulation 3, subclause (3)** Part 4 of the Act and these regulations do not apply to— (a) goods that satisfy the criteria set out, or referred to, in Part 2 of the ADG Code if a determination under regulation 155 that the goods are not dangerous goods is in effect; and (b) goods if they are described as not subject to the ADG Code in a Special Provision applied to the goods by column 6 of the Dangerous Goods List and any criteria set out in that description as the basis for the goods not being subject to the code are satisfied.

Western Australia	*Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007* **Regulation 28, subclause (2)** A substance or article that satisfies the criteria set out, or referred to, in the ADG Code Part 2 is not dangerous goods for the purposes of these regulations if — (a) it is described as not subject to the ADG Code in a Special Provision in the ADG Code Chapter 3.3 that is applied to the substance or article by column 6 of the Dangerous Goods List; or (b) a determination made under regulation 17(1)(a) that the substance or article is not dangerous goods is in effect.

All States except South Australia (SA) has used the wording "is not dangerous goods for the purpose of this regulation" as it is written in the Model Regulations. SA amended the wording to "these regulations do not apply to". This means that with the exception of SA, in all States that have implemented ADG7, Environmentally Hazardous Substances meeting the descriptions of UN3077 and UN3082 are not dangerous goods if they are in; (a) packagings; (b) IBCs; or (c) any other receptacle not exceeding 500 kg(L) for road and rail transport.

It is against the law in all States to mark/label non-dangerous goods as dangerous goods, with associated penalties. The summary of these regulations are provided in Table 3.

Table 3

State	Regulation
Model Regulation	Model Subordinate Law on the Transport of Dangerous Goods by Road or Rail 2007 ***Regulation 5.2.3 Consignor's duties, subclause (3):*** *A person must not consign goods for transport in a package or overpack that does not contain dangerous goods but is marked or labelled as if it contained dangerous goods.* ***Regulation 5.2.4 Packer's duties, subclause (3):*** *A person who packs goods for transport must not mark or label a package or overpack that the person knows, or reasonably ought to know, does not contain dangerous goods as if it contained dangerous goods* ***Regulation 5.2.5 Prime contractor's and rail operator's duties, subclause (3):*** *A prime contractor or rail operator must not transport goods if the prime contractor or rail operator knows, or reasonably ought to know, that the package or overpack does not contain dangerous goods but is marked or labelled as if it contained dangerous goods.*
NSW	*Dangerous Goods (Road and Rail Transport) Regulation 2009* **75 Consignor's duties, subclause (3):** A person must not consign goods for transport in a package that does not contain dangerous goods but that is marked or labelled as if it contained dangerous goods. Maximum penalty: (a) in the case of large packaging or overpack—20 penalty units for an individual or 100 penalty units for a corporation, or (b) in any other case—10 penalty units for an individual or 30 penalty units for a corporation. **76 Packer's duties, subclause (3):** A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or reasonably ought to know, that it does not contain dangerous goods. Maximum penalty: (a) in the case of large packaging or overpack—20 penalty units for an individual or 100 penalty units for a corporation, or (b) in any other case—10 penalty units for an individual or 30 penalty units for a

	corporation. **77 Prime contractor's and rail operator's duties, subclause (3):** A prime contractor or rail operator must not transport goods in a package that is marked or labelled as if it contained dangerous goods if the prime contractor or rail operator knows, or reasonably ought to know, that the package does not contain dangerous goods. Maximum penalty: (a) in the case of large packaging or overpack—20 penalty units for an individual or 100 penalty units for a corporation, or (b) in any other case—10 penalty units for an individual or 30 penalty units for a corporation.
Victoria	Dangerous Goods (Transport by Road or Rail) Regulations 2008 **81 Consignors, subclause (3):** A person must not consign goods for transport in a package that does not contain dangerous goods but is marked or labelled as if it contained dangerous goods. Penalty: (a) for large packaging or overpack— 18 penalty units for a natural person; 90 penalty units for a body corporate; (b) in any other case— 6 penalty units for a natural person; 30 penalty units for a body corporate. **82 Packers, subclause (3):** A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or reasonably ought to know, that it does not contain dangerous goods. Penalty: (a) for large packaging or overpack— 18 penalty units for a natural person; 90 penalty units for a body corporate; (b) in any other case— 6 penalty units for a natural person; 30 penalty units for a body corporate. **83 Prime contractors and rail operators, subclause (3):** A prime contractor or rail operator must not transport goods in a package that is marked or labelled as if it contained dangerous goods if the prime contractor or rail operator knows, or reasonably ought to know, that the package does not contain dangerous goods. Penalty: (a) for large packaging or overpack— 18 penalty units for a natural person; 90 penalty units for a body corporate; (b) in any other case— 6 penalty units for a natural person; 30 penalty units for a body corporate.
Queensland	*Transport Operations (Road Use Management—Dangerous Goods) Regulation 2008* **80 Duties of consignor, subclause (3):** A person must not consign goods for transport in a package that does not contain dangerous goods but is marked or labelled as if it contained dangerous goods. Maximum penalty— (a) for large packaging or an overpack—20 penalty units; or (b) in any other case—71/2 penalty units. **81 Duties of packer, subclause (3):** A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or ought reasonably to know, that it does not contain dangerous goods. Maximum penalty—

	(a) for large packaging or an overpack—20 penalty units; or (b) in any other case—71/2 penalty units. **82 Duties of prime contractor, subclause (3):** A prime contractor must not transport goods in a package that is marked or labelled as if it contained dangerous goods if the prime contractor knows, or ought reasonably to know, that the package does not contain dangerous goods. Maximum penalty— (a) for large packaging or an overpack—20 penalty units; or (b) in any other case—71/2 penalty units. *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008* **75 Duties of consignor, subclause (3):** A person must not consign goods for transport in a package that does not contain dangerous goods but is marked or labelled as if it contained dangerous goods. Maximum penalty— (a) for large packaging or an overpack—20 penalty units; or (b) in any other case—71/2 penalty units. **76 Duties of packer, subclause (3):** A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or ought reasonably to know, that it does not contain dangerous goods. Maximum penalty— (a) for large packaging or an overpack—20 penalty units; or (b) in any other case—71/2 penalty units. **77 Duties of prime contractor and rail operator, subclause (3):** A prime contractor or rail operator must not transport goods in a package that is marked or labelled as if it contained dangerous goods if the prime contractor or the rail operator knows, or ought reasonably to know, that the package does not contain dangerous goods. Maximum penalty— (a) for large packaging or an overpack—20 penalty units; or (b) in any other case—71/2 penalty units.
South Australia	*Dangerous Goods Transport Regulations 2008* **Regulation 75 Consignor's Duties, subclause (3):** A person must not consign goods for transport in a package, or as an unpackaged article, that does not contain dangerous goods but is marked or labelled as if it contained dangerous goods. Maximum penalty: (a) for an offence involving large packaging or an overpack— (i) in the case of a body corporate—$10 000; (ii) in the case of a natural person—$2 000; (b) for any other offence— (i) in the case of a body corporate—$3 250; (ii) in the case of a natural person—$650. Expiation fee: (a) for an offence involving large packaging or an overpack— (i) in the case of a body corporate—$2 000; (ii) in the case of a natural person—$400; (b) for any other offence— (i) in the case of a body corporate—$650; (ii) in the case of a natural person—$130. **Regulation 76 Packer's duties, subclause (3):** A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or ought reasonably to know, that it does not contain dangerous goods. Maximum penalty: (a) for an offence involving large packaging or an overpack— (i) in the case of a body corporate—$10 000; (ii) in the case of a natural person—$2 000;

	(b) for any other offence— (i) in the case of a body corporate—$3 250; (ii) in the case of a natural person—$650. Expiation fee: (a) for an offence involving large packaging or an overpack— (i) in the case of a body corporate—$2 000; (ii) in the case of a natural person—$400; (b) for any other offence— (i) in the case of a body corporate—$650; (ii) in the case of a natural person—$130. **Regulation 77 Prime contractor's and rail operator's duties, subclause (3):** A prime contractor or rail operator must not transport goods in a package, or as an unpackaged article, that is marked or labelled as if it contained dangerous goods if the prime contractor or rail operator knows, or ought reasonably to know, that the package or article does not contain dangerous goods. Maximum penalty: (a) for an offence involving large packaging or an overpack— (i) in the case of a body corporate—$10 000; (ii) in the case of a natural person—$2 000; (b) for any other offence— (i) in the case of a body corporate—$3 250; (ii) in the case of a natural person—$650. Expiation fee: (a) for an offence involving large packaging or an overpack— (i) in the case of a body corporate—$2 000; (ii) in the case of a natural person—$400; (b) for any other offence— (i) in the case of a body corporate—$650; (ii) in the case of a natural person—$130.
Western Australia	*Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007* **Regulation 107 Duty on consignors, subclause (3):** A person must not consign goods for transport in a package that does not contain dangerous goods but is marked or labelled as if it contained dangerous goods. Penalty: (a) for large packaging or overpack — a fine of $5 000; (b) in any other case — a fine of $1 500. **Regulation 108 Duty on packers, subclause (3):** A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or ought reasonably to know, that it does not contain dangerous goods. Penalty: (a) for large packaging or overpack — a fine of $5 000; (b) in any other case — a fine of $1 500. **Regulation 109 Duty on prime contractors and rail operators, subclause (3):** A prime contractor or rail operator must not transport goods in a package that is marked or labelled as if it contained dangerous goods if the prime contractor or rail operator knows, or ought reasonably to know, that the package does not contain dangerous goods. Penalty: (a) for large packaging or overpack — a fine of $5 000; (b) in any other case — a fine of $1 500.

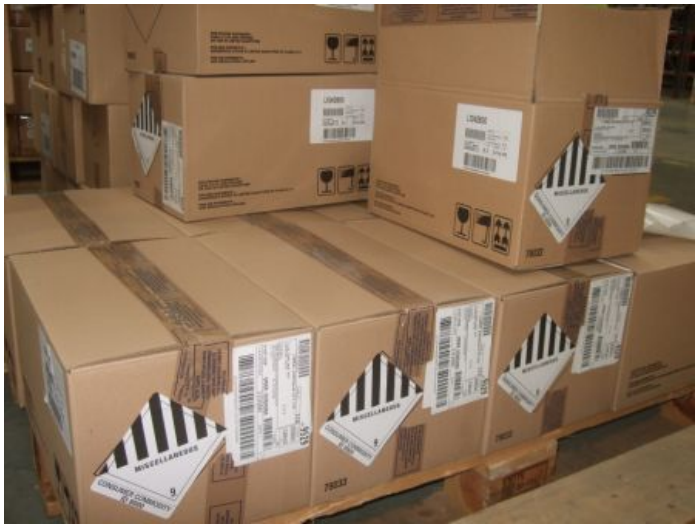
There is no equivalent special provision for sea and air transport. For sea and air transport, outer packages containing Environmentally Hazardous Substances are required to be marked and labelled as dangerous goods.

This has caused problems for dangerous goods being transported within Australia where sea or air transport is required, as well as for international transport of imports and exports. Because UN3077 and UN3082 substances are deemed not to be dangerous goods for road and rail transport if in packages smaller than 500 kg or litres (except in SA), these products cannot be marked or labelled when they are transported from the manufacturing site or the warehouse to seaports or airports. These products must then be marked and labelled as dangerous goods for transport by sea or air. Similarly, UN3082 or UN3077 products arriving by sea or air with dangerous goods marking and labelling must have these marking and labelling removed before being transported by road or rail to their final destination.

Clearly this is not an acceptable situation.

Case Study 6

Company E imports shampoos classified as UN3077 by air to Melbourne. When the cardboard boxes arrive at the Melbourne airport, they are marked in compliance with the International Air Transport Authority (IATA) Dangerous Goods Regulations (see picture below).



In order for Company E to transport the packages from Melbourne Airport to the warehouse in Melbourne in compliance with the *Dangerous Goods (Transport by Road or Rail) Regulations 2008,* Company E must remove Class 9 dangerous goods marking and labelling from each box.

This is expected to impact on the integrity of the cardboard boxes due to likely tearing, which may potentially have an impact on safe transport of goods.

Further, removing dangerous goods marking/labelling from cardboard boxes is not likely to produce a benefit in any way. However, it does mean that a person must be unproductively employed in order to remove the marking/labelling from each box at the airport. This is a costly exercise for Company E with no foreseeable benefits.

The penalties in Victoria for a prime contractor or a rail operator for marking/labelling goods as dangerous goods when they are not deemed to be dangerous goods is 6 penalty units for a natural person and 30 penalty units for a body corporate (for the above scenario). It appears likely that the penalty is per package (i.e. per box). Currently in Victoria, 1 penalty unit is $119.45, and we understand that this is increased by CPI annually.

The Competent Authorities Panel (CAP) made up of dangerous goods regulators from States and Territories have been aware of this situation since ADG7 came into force in most

of the States. These issues were even discussed by the members of the CAP at the HazMat Conference in 2009. We understand that the CAP can issue national exemptions if they wished to address this clearly difficult compliance situation.

We understand that the NSW Competent Authority has been working to convince the other CAP Members of the need to issue a national exemption, where packages containing UN3077 and UN3082 substances can be marked as dangerous goods for road/rail transport, but are exempted from other requirements of the ADG7 and not subject to penalties. However, it is our understanding that generally speaking, CAP did not see this as an issue of concern and currently has no plans to issue a national exemption.

Further, as the discussions and outcomes from the CAP meeting are not available publicly, it is difficult for industry to find out that the CAP has made this decision, and the reasons behind the decision that was made.

(d) Lost Opportunities - Unique Australian requirement for DG inner package labelling

Up until this point of our submission we have focused on the negative impact of ADG7 implementation when compared with ADG6. However, there are also lost opportunities for improvement that we believe should be discussed.

During the public consultation phase for the draft ADG7, ACCORD made a submission to the NTC requesting that the Australian unique requirement for DG inner package labelling be removed from ADG7. While we understood that this was a requirement carried over from ADG6 to ADG7, it was our view that the requirement to label inner packages (i.e. consumer level packaging) that are not visible during transport was not within the jurisdiction of DG transport regulators.

This is still our view.

In our submission to the NTC in September 2005, we highlighted that maintenance of inner package labelling in ADG7 is out-of-step with international DG requirements and the United Nations Model Regulations and impacts on international trade. We also highlighted that inner package labelling is not a transport issue, and the application of GHS labelling to inner packages as an alternative solution to DG labelling directly conflicts with Australia's risk-based approach for consumer products labelling, and also ignores the fact that internationally, GHS is not applied to cosmetics and few other categories of chemicals.

Our recommendation to the NTC was to delete the inner package labelling requirements from the ADG7.

NTC's response to this was:

> *"Under ADG7, industry will have a number of options: label according to ADG7, use GHS labelling if exporting or retain on imports from EU and elsewhere where GHS is already in force.*
>
> *Removing inner package labelling from ADG7 would leave a regulatory vacuum until GHS is introduced in Australia.*
>
> *Finally, in the absence of ADG7, GHS or EU labels, what is there to tell anyone that a 5L can or clear plastic bottle of acetone is a dangerous good? When GHS is introduced, this can and should be removed from the ADG Code."* (our underlining)

When we raised this issue again with NTC, NTC responded with the following in a letter dated 18 December 2006.

> *"The regulators do not currently support the recommendation to remove references to 'inner-package label' requirements from ADG7.*
>
> *They have taken the view that once the Therapeutic Goods Administration or the Australian Safety and Compensation Council or another body provides a more comprehensive system for managing the risk of transporting aggregate quantities of consumer products classified as dangerous goods, inner package labelling requirements will be removed from the ADG Code. Peak bodies such as ACCORD could raise the matter with SUSDP regulators to ensure there are no gaps or overlaps in labelling requirements between the different sets of substances which could lead to unsafe practices. This exercise could be undertaken next year and the ADG7 Code subsequently amended if necessary."* (our underlining)

These responses raise a number of serious concerns.

Firstly, it shows an alarming lack of understanding of the Australian chemical regulatory system. To suggest that in regards to labelling there is a "regulatory vacuum" without ADG7 is to ignore the requirements currently in place for:

- the industrial workplace through the *National Code of Practice on Storage and Handling of Dangerous Goods*, the *National Model Regulations for the Control of Workplace Hazardous Substances* and related standards and codes of practice,
- consumer products through the *Standards for the Uniform Scheduling of Drugs and Poisons* (now the *Standard for the Uniform Scheduling of Medicines and Poisons* or SUSMP), and the Australian Competition and Consumer Commission's Mandatory Guide for ingredient labelling of cosmetics and toiletries,
- agricultural chemicals and veterinary medicines through the assessment by the Australian Pesticides and Veterinary Medicines Authority (APVMA), and
- therapeutic goods through the assessment by the Therapeutic Goods Administration (TGA).

The above is not an exhaustive list of all mandated labelling on the chemical industry in Australia – it is just a short list of the most common ones.

Secondly, it is unfairly destructive to the image of Australian government bodies that currently provide safe chemical management systems to suggest that, although NTC does not have jurisdiction over inner package labelling, it has had to step in because other Australian government regulators are failing in their chemical risk management function. It is also unhelpful to industry to suggest that industry should act as a go-between for Australian regulators and negotiate regulatory outcomes to the satisfaction of one of those regulators.

Thirdly, by only considering EU and GHS labels NTC has ignored our other major trading partners like the USA, which has an impact on international trade.

We are aware of companies that are required to have Australian specific labelling to meet DG inner package labelling requirements. This is particularly frustrating when the imported product meets the consumer products labelling requirements set by the SUSMP (formerly SUSDP), but does not meet the DG inner package labelling requirement.

Case Study 7

Corrosive diamond for stainless steel cleaners.

Currently stainless steel cleaners that are classified as corrosive to metals are available on the Australian consumer products market. These products are not corrosive to skin or eyes, but have been formulated to be mildly corrosive to stainless steel which is essential to the function of the product.

Applying DG corrosive diamond to these products is misleading to consumers as most consumers are not aware that the corrosive diamond can be applied to products that are not corrosive to skin and eyes. Also, the requirement to mark these products with a proper shipping name (or a technical name) does not provide any useful information to consumers but creates regulatory burden on industry.

Products imported from the USA are not labelled with these DG diamonds, and Australian importers must over-label these imports to meet the DG inner package labelling requirement even though these products are not visible during transport.

Fourthly, it is questionable whether the transport regulators can check for compliance to this requirement. As indicated, inner packages are not visible during transportation. So unless the compliance officer opens each package being transported, there is no way of knowing whether the inner packages are in compliance with the DG inner package labelling requirement. It is our opinion that if a regulator cannot enforce compliance to a requirement, then the requirement should not exist.

Lastly, the acceptance of GHS labelling as an alternate compliance measure to DG labelling, while ignoring the current Australian mandatory regulations for labelling for consumer products appears to be an attempt to introduce GHS in Australia across all chemical sectors without any consideration of existing systems, differences between these systems or risk benefit analysis for the introduction of GHS in Australia. GHS implementation is a complex issue that must be considered carefully not only in terms of international harmonisation, but also in the context of benefits and risks to the Australian society. This requires constructive dialogue between regulators and industry across all chemical sectors, not a blanket requirement by DG regulators for all inner packages that are not visible during transport.

ACCORD has always supported the concept of effective and efficient regulation. This mandatory requirement to label inner packages with transport labelling when those packages are not visible during transport, and when those requirements do not take into account other existing national regulations or recognise the role of other regulators, is clearly ineffective and inefficient and should not exist.

(e) Training and support for compliance to new regulatory requirements

Implementation of ADG7 has been a long and drawn out process. The RIS for ADG7 implementation was completed in 2006. More than four years later, at the end of 2010, we are still waiting for the implementation of ADG7 in some States and Territories.

In that time, we are not aware of any training on ADG7 organised and provided by the NTC or State and Territory regulators for industry.

ACCORD organised ADG7 training for our members. There were difficulties along the way, including some trainers being surprised that perfume, nail polish and toilet cleaners were dangerous goods, and who were therefore unsure of the requirements applying to these products. Even the trainers that were aware that these products were dangerous goods

were still unsure how some ADG7 requirements could be applied. e.g. labelling/marking of overpack for packages meeting Limited Quantities clause.

We believe that there should have been a comprehensive training and awareness campaign organised nationally to coincide with ADG7 implementation, to deliver consistent information throughout Australia, and to aid industry transition from ADG6 to ADG7. Unfortunately, this has not happened.

It appears that industry was not the only group left to decipher the complex set of rules alone. Anecdotally from our Members' experience, it appears some State inspectors were also unaware of the ADG7 implementation timeframe, and struggled with interpretation of certain clauses within ADG7.

Lack of consistent training and information sharing nationally has left different stakeholders with differing interpretations of the regulations based on ADG7. Problems can and have arisen due to an inspector having certain expectation of compliance, and a different interpretation by companies of the same compliance requirements.

Case Study 8

A retail company has been informed by a dangerous goods inspector that their fibreboard box did not have the correct size dangerous goods label, and therefore was in breach of the regulatory requirements.

The relevant section in question in ADG7 is section 5.2.2.2.1.1 which states:

"Labels must be in the form of a square set at an angle of 45° (diamond-shaped) with minimum dimensions of 100 mm by 100 mm, except as provided in 5.2.2.2.1.2 and 5.2.2.2.1.9. They must have a line 5 mm inside the edge and running parallel with it. In the upper half of a label, the line must have the same colour as the symbol and, in the lower half, it must be the same colour as the figure in the bottom corner. Labels which are not displayed on a background of contrasting colour must have either a dotted or solid outer boundary line."

Section 5.2.2.2.1.9 states:

"Where the size of a package or inner packaging is such that it is impracticable to apply a label of 100 mm x 100 mm as required by 5.2.2.2.1.1, the label must be of at least the dimensions specified for the package in Table 5.2. In each instance, the minimum dimensions apply to each side of the outer border set at 45°.

Table 5.2 Minimum Dimensions of Labels

Class	*Package, Packaging or Article*	*Minimum dimensions of labels (mm)*	*Recommended minimum size of lettering [see 5.2.1.2(d)] (mm)*
Class 2 (other than Aerosols)	*Cylinder of outside diameter: <75 mm*	*10 x 10*	*2.5*
	≥ 75 mm < 180 mm	*15 x 15*	*3*
	≥ 180 mm	*25 x 25*	*5*
	Pressure drum or tube ≤ 500 L	*100 x 100*	
Class 2 Aerosols)	*Aerosol can containing: ≤ 25 g*	*10 x 10*	*2*
	> 25 g ≤ 0.5 kg	*5 x 15*	*2.5*
	> 0.5 k	*20 20*	*3*

All others	*Packages or inner packaging containing:* *≤ 0.5 kg(L)*	*1 x 5*	*2.5*
	> 0.5 kg(L) ≤ 5 kg(L)	*2 x 20*	
	> 5 kg(L) ≤ 25 kg (L)	*50 x 0*	*5*
	> 25 kg(L)	*100 x 100*	*7*
	IBC ≤ 500 k (L)	*100 x 100*	*7*
	Large packaging, overpack, segregation device	*100 x 100*	*7*

"

The interpretation by the inspector was that unless it was physically impossible to apply 100 mm x 100 mm label, then the 100 mm x 100 mm label must be used.

The retailer's interpretation was that table 5.2 figures provided the guidance on what was impracticable. i.e. cardboard box containing less than 25 kg weight of goods can be labelled with diamond sized 50 mm x 50 mm.

Working out the differences in opinions in this case will take many hours of work for both the inspector and the retailer. If the inspector insists on the interpretation of applying 100 mm x 100 mm labels, then the retailer has two options; either review and change their labelling practices which is expected to be costly, or challenge the inspector in court, which will also be expensive.

We do not expect that the difference in the size of the label in this case will interfere with safe transport of dangerous goods.

Case Study 9

Company F, an Australian SME supplying hair care products has incurred an **increased annual cost to the business of around $30 000**, which includes cost of labour, increased freight charges and extra packaging material through the implementation of ADG7. **This equates to approximately 10-15% increase in labour costs and around 9% increase in warehousing and distribution costs**.

While one of the contributing factors for this increase in the business operating cost has been the newly introduced marking and labelling requirements for retail distribution loads (discussed under the heading "New marking/labelling requirements for retail distribution loads of DG" in this submission), a less obvious contributing factor is the differing interpretation of ADG7 and related State and Territory regulations by different stakeholders.

Under ADG6, Company F operated under an exemption EXEM 01/050 (expires with the expiration of ADG6), which allowed hair dyes (Class 5.1), hair styling sprays (Class 2.1) and ethanol solution (Class 3) to be packaged together in one fibreboard box. The transport operator was provided with the exemption document for these loads.

With the implementation of ADG7, Company F has been informed by their third party logistics company that the exemption under ADG6 was no longer applicable.

This is true in a sense, since the exemption is no longer required because these loads can now be transported under ADG7 Limited Quantities provisions. However we understand that the transport company was not happy with this situation. When an exemption document was available under ADG6, the transport company had a piece of paper that it could produce to satisfy a DG inspector when on the road. Under ADG7, the transport company now must rely on the correct interpretation of the Limited Quantities provision by all DG inspectors so that the load is not detained. From experience, the transport company does not have confidence that this will be the case.

The cost to this particular transport company if an inspector stops and locks the transport load because of a misunderstanding is huge since the company guarantees all delivery of goods. It is our understanding that while the company can fight any fines that are issued due to misunderstanding of the Limited Quantities clause, they will not be reimbursed for any losses.

Company F is therefore now required to segregate even small quantities of products that are dangerous goods.

When Company F sends products to a customer now, the staff must segregate the hair dyes (small quantity of paste containing small percentage of sodium hydroxide, in multiple layers of consumer packaging), hair sprays and ethanol solution, even if in minor quantities. i.e. multiple mostly empty fibreboard packages are being delivered to the same customer. There is also the added cost related to additional handling time which leads to delays in scheduled delivery time, which can in turn impact on customer satisfaction and lost business opportunities.

Company F delivers many hundreds of small fibreboard boxes per month. The cost to this Australian SME is significant.

Conclusion

ACCORD has been actively seeking to engage with the NTC and the State and Territory regulators, through the CAP, in order to discuss ADG7 and its implementation problems ever since the draft of ADG7 became available, and it became apparent that there would be major implications for our industry.

The issues highlighted in this submission should therefore not be too surprising to either the NTC or the State and Territory regulators.

However, the effort to actively and positively engage in the ADG7 implementation process and to improve regulatory compliance of companies, while providing reasonable and workable business operating environment, has been mostly one-sided.

The NTC has frequently and openly stated that it does not wish to maintain its responsibility over the coordination of the regulation for dangerous goods transport. This partly explains the apparent lack of interest in engaging with industry and the lack of ownership of the ADG7 implementation process and associated issues.

The NTC has also stated that it does not have the expertise in the area of dangerous goods transport. This is problematic for industry as there are no other bodies with responsibility in this area that can be contacted to discuss implementation problems or issues of interpretation of the Model Regulations as they arise.

While State and Territory regulators meet on regular basis at CAP meetings, because the process is not transparent and there appears to be no policy or decision-making accountability, these meetings have not provided any useful assistance to industry.

No problems, however big or small, are resolved as there appears to be a “do nothing” mentality that is ingrained in all systems and processes dealing with dangerous goods transport regulations.

Our industry is currently operating in an intolerable environment where dangerous goods transport regulators increasingly demand higher regulatory controls for low risk products; no justification is ever provided for these demands. And perhaps most intolerably, similar goods transported via retailers are “exempted” from requirements imposed on our industry.

COAG has agreed that all governments will ensure that regulatory processes in their jurisdictions are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
    a. the benefits of the restrictions to the community as a whole outweigh the costs, and
    b. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;

6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

These principles are published in the *Council of Australian Governments, Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* published in 2007.

The NTC and the State and Territory regulators involved in the ADG7 implementation have, in our view, failed to meet every COAG principle.

In order for this to improve, we believe that a serious re-think of the existing system is required. The resultant system should provide:

- Clear designation of responsibilities,
- Increased accountability of all bodies involved in the dangerous goods transport regulatory processes,
- Increased transparency,
- A central coordinating body,
- Improved decision making processes with an expert committee including industry representation providing recommendations to responsible Ministers or their designates for decision making,
- Improved decision making timeframes,
- Clear processes for issues resolution; and
- Improved engagement with relevant stakeholders.

ACCORD is willing and able to participate in discussions with all parties involved to improve the dangerous goods transport regulations and associated processes. We sincerely hope that the NTC will take up this offer and work towards improving the system.