Ms Rosalyn Bell
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Regulator Engagement with Small Business
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Dear Ms Bell

Accord Australasia is pleased to provide the following submission in response to the Commission Draft Research Report, *Regulator Engagement with Small Business* (the Draft Research Report) published in June 2013.

Introducing Accord and our Industry

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

Accord has around 100 member companies which range from smaller Australian-owned family businesses to the local operations of large consumer brand multinationals (a full membership list is provided at Attachment 1).

The formulated hygiene, cosmetic and specialty products industry is a significant industry sector contributing to Australia's economy.

Headline statistics for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the $10 billion mark.
- Collectively, Accord member companies directly contribute more than 12,000 full-time equivalent jobs.
- Nationally, more than 180 offices and more than 66 manufacturing sites are operated by Accord member companies.

Our industry's products include household and commercial cleaning agents; disinfectants; make-up and beauty products; toiletries and personal care products; hair-care products; skincare products, including sunscreens; oral hygiene products; fragrances and perfumes, feminine hygiene products; industrial and agricultural sanitisers; household pest control; and adhesives and sealants.

Our sector's products provide the following benefits:

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

Ours is a heavily regulated industry, as recognised by the Productivity Commission (PC) in its 2008 report into chemicals and plastics regulation and COAG's goal of addressing the chemicals and plastics industry as a national "regulatory hotspot". An Accord survey of members conducted in 2011 showed that:

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

Additionally, our member companies are regulated by the ACCC (under the Australian Consumer Law) and a range of state and territory health, OHS, environment and transport agencies.

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

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

In our submission we will focus on the regulation of transport of "dangerous goods" and its impact on small businesses in particular.

What are dangerous goods?

Chemicals classified as dangerous goods are chemicals with physicochemical properties and/or toxicity profiles that, if mishandled, may cause significant damage to human health, the environment or property.

While this sounds high risk, as the classification of dangerous goods does not take into account the volume of the chemical or packaging, frequently used low risk household products such as toilet cleaners (corrosive), all aerosols (compressed gases) and some shoe polish (flammable solids) can be classified and regulated as dangerous goods. Even cosmetics such as perfume, nail polish (flammable liquids) and hair dyes (oxidiser) can be classified as dangerous goods.

Examples of small businesses supplying dangerous goods and therefore subjected to the regulation of the transport of dangerous goods include hair product suppliers and small boutique cosmetic houses.

Regulation of dangerous goods in Australia

The rules for classification, packaging, labelling, etc. for dangerous goods in Australia is based on the *United Nations Recommendations on the Transport of Dangerous Goods* (UNRTDG), as it is in most developed countries in the world.

The UNRTDG is updated every two years. As sea and air transport of chemicals are likely to involve international waters and air space, these are regulated by international bodies, the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). Both organisations update their regulations (International Maritime Dangerous Goods (IMDG) Code and International Civil Aviation Organization (ICAO) Technical Instructions) in line with the UNRTDG update. Both IMO and ICAO will amend some clauses in the UNRTDG to suit the mode of transport, generally introducing greater restrictions that can be expected from road and rail transport.

Australian regulatory bodies, the Australian Maritime Safety Authority (AMSA) and the Civil Aviation Safety Authority (CASA) regulate respectively the sea and air transport of dangerous goods within Australia with regulations based on IMDG Code and ICAO Technical Instructions. To make matters somewhat more complex for air transport, the International Air Transport Authority (IATA) Dangerous Goods Regulations based on the ICAO Technical Instructions but updated more frequently, is used as default regulations internationally because of its wide acceptance by the aviation industry.

The responsibility for setting the policy for the transport of dangerous goods in Australia by road and rail sits with the National Transport Commission (NTC), with the oversight of the Standing Committee on Transport and Infrastructure (SCOTI). However, the responsibility for regulating the transport of dangerous goods by road and rail rests with the States and Territories.

Interestingly, while SCOTI is made up of Transport Ministers from States and Territories, dangerous goods regulators tend not to belong to transport departments. For example, in NSW, the responsibility for regulating the transport of dangerous goods by road and rail is shared between WorkCover NSW and the Environment Protection Agency. In Victoria, the responsibility sits with WorkSafe Victoria, in WA the Department of Mines and Petroleum and in Tasmania, the Workplace Standards Tasmania within Department of Justice. Queensland appears to be the only State where the responsibility sits with the Department of Transport and Main Roads.

Current State and Territory dangerous goods regulations are based on the NTC (Model Legislation – Transport of Dangerous Goods by Road and Rail) Regulation 2007 (the Model Legislation). While most States and Territories have adopted most of the Model Legislation, there are some differences that have been identified over time. Submissions to the NTC review of the implementation of ADG7 identified some of these differences.

The Model Legislation references the Australian Code for the Transport of Dangerous Goods by Road and Rail 7th edition (ADG7), which is based on the 14th and 15th editions of the UNRTDG, which means

it is out of step with the IMDG Code and IATA Regulations that are working to the 16th edition of UNRTDG and will soon move to the 17th edition. The NTC is currently revising the ADG Code to adopt changes in the 16th and 17th editions of UNRTDG. Unfortunately some important changes for industry (e.g. updates to Limited Quantities clause) will not be implemented due to regulators' opposition.

There are also many "Australianisms" within ADG7, some of which reflect practices in other regions such as the UK e.g. the use of Hazchem Codes, while others are unique to Australia e.g. "inner package" marking and labelling requirements.

Impact of dangerous goods regulations on small business

As can be seen from the above description of the regulation of dangerous goods, it is exceedingly complex and difficult to understand.

The sheer volume of information alone, information that must be read and understood for compliance is daunting for any business and practically impossible for small businesses.

The Model Legislation itself is approximately 300 pages in length and the ADG7 is approximately 700 pages in length. Each State and Territory has at least one set of dangerous goods legislation (legislation and at least one subordinate legislation) that can vary in length. The IMDG Code is provided in two volumes, each approximately 400 pages in length and IATA regulations is approximately 800 pages in length.

To make matters worse, the differences in the language and format used in each of the State and Territory legislation makes it very difficult to compare the requirements of one State to another. In Accord's submission to the NTC review of ADG7 implementation (attached to this submission as a reference – Attachment 2), we gave an example of a single clause in the Model legislation which was adopted by States and Territories in such a manner that the requirements on industry was different between the States. More to the point, it took Accord's Science and Technical Manager half a day to find and compare this single clause in the Model Legislation with the equivalent clauses in each of the State and Territory legislation. Small businesses do not have the resources to devote this time to such activities.

The cost of acquiring the codes and regulations for sea and air transport compliance is also not insignificant for small businesses. As the IMDG Code, ICAO Technical Instructions and IATA Regulations are authored, printed and retailed by international organizations they are not freely available to Australian industry even though they are necessary documents for compliance to regulatory requirements.

According to the IMO website, an electronic version of IMDG Code 2012 for a single user costs 205 pounds (approximately A$350). Users are expected to purchase a new updated version every two years to keep abreast with changes. According to the IATA website, a hard copy of IATA Dangerous Goods Regulations costs US$299 while an electronic copy costs US$347. As IATA regulations are updated yearly, new versions must be purchased annually. Industry lobbied government when the ADG7 was introduced to make it freely available (electronically) and this was achieved to remove some of the regulatory cost on industry.

Where the requirements of the sea, air and road/rail transport are not aligned, the cost of regulatory compliance for industry is significantly increased.

The misalignment in the requirements of different modes can occur for several reasons. The first example is when the road and rail regulations do not keeping up to date with the UNRTDG updates. This has been the case in Australia for well over a decade. ADG7 implementation was supposed to bring Australia up to date with UNRTDG updates. However, by the time ADG7 (based on 14th and 15th editions of UNRTDG) was implemented in States and Territories, sea and air transport requirements had already moved on to the 16th edition of UNRTDG.

The misalignment of requirements can also occur when regulators deliberately choose not to implement changes brought in by the UNRTDG. While we support exercising Australia's sovereign rights, we believe that the regulators should consider the cost and benefit of such deliberate misalignment.

For example, the NTC is now consulting on amendments to ADG7 to bring it up to date with the 16th and 17th edition of the UNRTDG. However, State and Territory regulators have opposed the adoption of the amended Limited Quantities clause into Australian regulations, even though this means that imported products which come in by sea and air will not have marking that is compliant with Australian requirements i.e. relabelling of all imported boxes with Limited Quantities marking will be required.

Accord currently holds a National exemption, which applies to anyone who wishes to use the exemption, which allows the use of the Limited Quantities marking in 17th edition of UNRTDG. As far as we are aware, this exemption will continue to be accepted by the regulators that have rejected the adoption of the same marking into regulation. This means that only those companies that are aware of the existence of the exemption will be able to make use of the exemption. Small businesses are less likely to have the time, resources or expertise to find information such as our exemption document which sits outside the regulation.

The third example of misalignment is where requirements that are not in UNRTDG are introduced into Australian regulations. The ADG7 contains a unique requirement for marking and labelling of "inner packages" of dangerous goods. This is not a concept that exists in international regulation for the transport of dangerous goods. Internationally, a "package" is the consignment including packaging ready for transportation. The concept of "inner package" is therefore a strange one as "inner packages" are never transported without being inside a "package" and therefore are not "packages" *per se* in dangerous goods terminology.

Further, as "inner packages" are not visible during the transportation stage, it could be argued that transport regulators have no jurisdiction over the labelling of these "inner packages". Nevertheless, this requirement exists as a unique Australian requirement for road and rail transport of dangerous goods.

For consumer products and cosmetics, "inner packages" are consumer packages that the consumer purchases from retail outlets.

For small businesses that may be importing or manufacturing and exporting consumer products or cosmetics, this is an additional, unnecessary, unique Australian requirement that they must be aware of and comply with. This is on top of other important Australian labelling requirements for consumer products and cosmetics such as the mandatory ingredient labelling imposed by the Australian Competition and Consumer Commission, the consumer product labelling requirements set out in the Poisons Standard (and implemented by health departments in States and Territories), unit measure requirements by the National Measurement Institute and Customs' Country of Origin requirement.

Dangerous goods regulator culture and impact on small business

As the Draft Research Report has summarised, regulator culture has a large impact on the way industry "experiences" regulation. Accord notes that Figure 2 provide an excellent summary of industry's preference for regulators which correlates well with leading practices adopted by good regulators. Unfortunately our experience with dangerous goods transport regulators in general has been less than ideal. We note that this is a generalisation based on our experiences, rather than a statement on all dangerous goods regulators.

Accord will provide a summary and examples of our and our members' experience of dangerous goods regulations and regulators using the six traits which small businesses have identified as good regulatory practice.

Accessible information

As provided in some detail in this submission, accessibility to information is a significant problem in dangerous goods regulations.

For sea and air dangerous goods transport regulations, information is only available when purchased.

Even when information is freely available as in the case of road and rail transport, there is often too much information in technical jargon for small businesses to handle with little to no guidance for any specific industry.

As dangerous goods regulations are regularly updated, small businesses must continually scan the updated documents to search for changes that have been introduced with the new update. An example of this is the newly introduced letter height requirement for UN numbers on labels which will be introduced in the IMDG Code from 1 January 2014. As far as we are aware, this was not raised by the regulator as a change to look out for, even though this will have a significant impact on all industry.

The NTC is currently consulting on bringing in the same letter height requirement in ADG7, to be implemented from 1 July 2016.

Flexibility in compliance

From our experience, generally speaking, rather than focussing on the outcomes, dangerous goods regulators see compliance to regulatory requirements as the end goal. We must stress here that this is a general statement and some regulators do focus on outcomes rather than simple compliance.

An example of this can be seen in the road and rail dangerous goods regulators' refusal to issue an exemption for requirements applying to retail distribution of consumer products which was newly introduced in ADG7 (detailed in Attachment 2). This is despite the fact that no new risk was identified to warrant the requirement introduced by ADG7, and a number of the regulators have stated that there are no safety issues.

Proportionate enforcement responses

Within Accord membership, consumer products and cosmetics represent lower risk dangerous goods. Despite this, their cost for transporting dangerous goods have increased significantly since ADG7 was implemented (some examples are provided in Attachment 2) while the higher risk industrial chemicals sector has seen little to no increase in costs.

It is Accord's view that the risk based approach is either not being used by regulators or being used inappropriately producing perverse outcomes.

Simplified requirements

While it is our understanding that the State and Territory regulators are working towards this goal through consideration of accepting licences from other States etc., we believe much more can be done in this area.

Where the laws impact on the operation of businesses, we believe that it is important, as far as it is practicable, to provide a set of consistent rules across all jurisdictions that the business operates in.

This appears to have been recognised by the US and the EU for transport of dangerous goods. It is our understanding that there is only one set of laws for transport of dangerous goods within the US, set by the Department of Transport (DOT). In the EU, long standing treaties such as the European Treaty concerning the International Carriage of Dangerous Goods by Road (ADR) and the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) apply.

Ideally, Australia should be aiming to provide this level of simplified information, rather than streamlining one or two dangerous goods transport regulatory requirements across the States and Territories.

Regulator understand impacts

In our experience, in the consumer products and cosmetics sector, regulators have little to no understanding of:

- our products,
- our processes,
- other Australian regulations applying to these products, or
- the impact of their decisions on the overall business.

This has resulted in regulatory requirements that are near impossible to comply with. Please see Case Study 4 and 6 in Attachment 2.

Unfortunately, in our experience, very few regulators make the effort to try to understand the impact on industry.

Timely, impartial and consistent decision making

Accord's experience of the exemption application, consideration and decision process of dangerous goods regulators is that they are anything but timely, impartial and consistent.

One of Accord's exemption applications was rejected on the basis that the application was made before all the States and Territories had implemented ADG7, despite the fact that the application was made to Western Australia which had implemented ADG7 and all other States and Territories were behind agreed COAG implementation timelines. Also, by the time the rejection was issued (two and a half months after the application), more States had implemented ADG7. More details are available in Attachment 2.

One of Accord's exemption applications was also rejected even though this application sought an almost identical exemption from another successful application from a different industry association, and the two applications were considered at the same time.

Further, regulators issue exemptions to the specific applicant that seeks the exemption, which means that another business who may benefit from the same exemption as the applicant misses out and there is no guarantee that a submission of application to seek an identical exemption will be issued.

Conclusion

Accord agrees with the Draft Research Report that regulator culture has a big impact on the way industry, particularly small businesses "experience" regulation.

In the case of dangerous goods regulation, the experience of our industry is mostly very negative. Most of our members, even the larger businesses find dangerous goods regulations difficult to navigate. In our experience, not many businesses are willing to approach dangerous goods regulators directly with specific questions on compliance in case they are targeted for compliance action, which makes it difficult to seek clarity on compliance issues.

In addition to this, while the NTC has responsibility over the policy of dangerous goods transport by road and rail, as the regulatory powers sit with the States and Territories, all policy decisions must gain support of all State and Territory regulators before they can be implemented. We do not believe that it is good practice for regulators to dictate policy development, as they can be too close to issues to make good judgement calls on risks and benefits of regulation.

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

Yours sincerely

[unsigned for electronic submission]

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