ACTU response to the Productivity Commission Draft Research Report on Chemicals and Plastics Regulation

The ACTU has reviewed the Draft Research Report on Chemicals and Plastics Regulation released in March 2008 by the Productivity Commission. We are pleased to provide a response to assist the Commission to produce a final report that will have the maximum effectiveness and acceptance by those involved in, or impacted by, the chemical and plastics industry. The Comments of the ACTU focus on the occupational health and safety aspects of the chemicals and plastics industry.

The case for regulating chemicals

The case for regulating chemicals is discussed in section 6.1 of the report is presented mainly in terms of workers compensation claims costs. The workers compensation claims related to chemicals included a high proportion of acute injuries, but only a fraction of the diseases with a long latency that are caused by workplace exposure to chemicals.

In its original submission the ACTU cited the ASCC report *Occupational Cancer in Australia* that estimates that 1.5 million Australian workers are potentially exposed to carcinogens at work and that as a result of this workplace exposure there are 5000 serious cancer cases per year (leading to 2000 deaths per year). The most significant adverse impact of chemicals on workers is occupational disease.

Deaths due to occupational exposure to chemicals are discussed in section 6.3 of the draft report under the sub-heading 'Diseases of long latency are a significant problem'. This aspect of the report should be moved to section 6.1, as it is the predominant case for regulation; it is not really about the 'effectiveness of workplace chemicals regulations'. We also note that the sub-heading should be 'Diseases of long latency are the most significant problem'.

The need to simplify the regulatory system

The ACTU agrees with the conclusion of the draft report in section 6.3 under the sub-heading 'A simpler system would increase effectiveness' that –

> 'Measures to simplify the regulatory system could lead to increased compliance and reduced incidence of injury, illness and death'

The ASCC report *Barriers to the control of hazardous chemicals in small and medium enterprises* highlighted a number of factors arising from the current duplicated and complex systems that act as barriers to compliance. It is implicit in your discussion that this non-compliance leads injury and illness from exposure to chemicals. However, it would be useful to fill out the argument at this point noting that:

- The current complex and duplicate systems for workplace chemical legislation cause confusion that results in inaction or inappropriate action.
- The lack of appropriate action leads to continued exposure of workers to the adverse effects of chemicals and a consequent failure to reduce the incidence of illness and injury from workplace chemical exposure.

A single system for all workplace chemicals

Section 6.5 of the draft report discusses the cost and benefits of moving to a consolidated system of regulation for workplace chemicals. The consolidated system would combine the current separate systems for dangerous goods and hazardous substances under one framework based on the Globally Harmonised System for the Classification and Labelling of Chemicals (GHS).

We agree with the conclusion of the draft report that:

> 'There is a strong prima facie case for replacing the existing systems of regulation of hazardous substances and dangerous goods with a single system for the regulation of all workplaces.'

The discussion of benefits of a single system is largely based on the saving arising from the requirement to only have one risk assessment instead of two. This is a benefit, but not the most important one from the viewpoint of reducing illness and disease arising from workplace exposure to chemicals.

In its previous submission the ACTU noted that moving to a single framework would enable a greater understanding of the controls required to prevent exposure of workers to chemical hazards. This need for improved understanding is shared by employers, workers and personnel employed by regulators. Improved understanding will strongly facilitate the taking of necessary preventive measures, that is there will be improved compliance. The most important outcome from a single system would be a reduced incidence of injury and illness arising from workplace exposure to chemicals.

The discussion in section 6.5 should reflect that a single workplace regulation for workplace chemicals is not just about a single risk assessment, but also more importantly that it is about reducing illness and injury.

The timing of a change to a single system

The ACTU acknowledges that the timing of a transition to the GHS is a difficult issue. Certainly Australia does not want to repeat the experience of New Zealand's early adoption. In our previous submission we stated that

> 'It would be prudent to wait until some of our major trading partners have or are about to adopt the system... However, we should not be waiting for all or most of our trading partners to adopt the GHS, as the wait may be quite lengthy.'

This still reflects our position. It will be necessary for Australia to know when and how the European Union (EU) are going to make the transition, if we are to gain some benefits from their classification and labelling resources.

The foreshadowed delay of the EU until 2015 (7 years from now) would pose significant difficulties for Australia. The hazardous substances framework has, or is about to reach the point of 'sunset' in most jurisdictions. The on-going differences between dangerous goods and hazardous substances will continue to be confusing, inefficient and a barrier to understanding and implementation of required controls to prevent exposure. Significant difficulties with compliance will continue and an unacceptable incidence of chemical-related workplace injury and illness will be sustained.

A move to a single system is needed well before 2015. Unfortunately the concept of a single system has been firmly linked to adoption of the GHS. So far little consideration has been given to a phased introduction of a single system involving:

- an early adoption of the principles of a single classification, labelling an SDS framework
- followed by a gradual full transition to full adoption the GHS.

Regulators, industry and union representatives need to seriously examine an early start to a phased transition. Delay to 2015 is not workable in the context of the proven difficulties with the current duplicate systems.

APVMA labels must include hazard-based elements.

In its previous submission, the ACTU provided the view of the workforce in relation to labelling of agricultural and veterinary (agvet) chemicals.

> 'The term risk-based is also more narrowly applied to labelling, such as that for agvet chemicals, where the label includes instructions and precautions for use that have been developed through a risk assessment process based on the approved use or application of the product. The risk-based components of such labels should not be seen as an alternative to hazard information, such as hazard pictograms and hazard statements, but rather as an adjunct to it. The two components of information are compatible.
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> It is not only end users (undertaking an approved application of the product) who require information about a chemical product. It is particularly important to have hazard information on labels for emergency services, transporters, retailers and others to enable them to take appropriate action in case of spillage or leakage during transport or storage.'

It is noted that considerable weight has been given to the views of the APVMA and Croplife Australia in reaching the conclusion that 'Any new system for workplace hazardous chemicals labelling should recognise labels approved by APVMA as being sufficient for workplace requirements.' The draft report asserts that 'it is unlikely that dual labelling for agvet chemicals that are used in workplaces will lead to improved OHS outcomes'. This is not substantiated and is linked to the AVPMA view that 'dual labelling would potentially lead to confusion'.

The views of the ACTU, on behalf of the workforce, get no mention and appear to have been attributed no weight despite the fact that it is workers who are exposed to the potential adverse effects of chemicals.

The emphasis on dual labelling seems to be the basis of the issue. As stated in our earlier submission the so-called 'risk based' and 'hazard based' elements are compatible. Why cannot the APVMA incorporate the relevant hazard pictograms and statements into the label for Agvet chemicals? (Surely no one is seriously saying that a flammable liquid or corrosive agvet chemical should not carry a hazard-warning label this effect?). An acceptable agvet label should include a complete package of information:

- Hazard pictogram(s) and statements to warn all of those who could encounter the container of product of the potential harm that could arise (if not handled correctly)
- Risk based information that advises on what the product may be used for, how it is to be used and safe handling advice.

The ACTU strongly opposes the proposition that APVMA labelling is sufficient for workplace requirements, unless the APVMA label incorporates hazard pictograms and statements.

Reforms to the national OHS framework

The recommendations arising from the discussion, in section 6.5 of the draft report, of reforms to the national OHS framework are generally endorsed by the ACTU. Improvements are clearly needed to deliver nationally consistent adoption of standards.

The ACTU considers that there are two important elements missing from this discussion. These relate to resources and consultation during the development of national standards. Inadequacies in each of these aspects have created significant barriers to national uniformity as the standards developed are often not considered to be of a sufficient quality for adoption or significant groups of stakeholder shave no ownership of the standard.

Consultation

National standards have been developed with consultation being mostly through peak representative bodies (employers, unions and regulators). Consultation with industry about chemical regulation has mainly involved manufacturers, formulators and suppliers of chemical products. Workplaces where chemicals are utilised (as distinct from made) have generally not been significantly involved in consultation; resulting in proposed regulation that has not been well informed about its practicality in general workplaces.

The Chemical Standards Sub-committee (CSSC) of the previous NOHSC provided an effective tripartite consultative framework for the development of national standards for workplaces. The ASCC, the successor to NOHSC, did not until recently have such a tripartite forum.

Resources

High quality national standards, suitable for uniform adoption across Australia need to be developed by a group having sufficient numbers of people with high level skills in chemical hazard, use of chemicals in industry, legal drafting, communications appropriate to workplaces and working with stakeholders. A significant increase in current (ASCC) resources would be required.

Not only the developer of national standards needs resources. Most jurisdictions have some internal expertise to enable their meaningful participation in the standards development process. However, unions and employer associations generally have very limited access to specialist expertise on chemical regulation. As a result their ability to contribute to and review the development of the standards is greatly hampered. This is a critical deficiency as industry (employers and workers) is the main end-user of the standards.

The ACTU considers that the following need to be addressed in the report:

- The development of national standards should be through a tripartite process, having a decision-making status rather than as an advisory board.
- A range of strategies should be implemented to ensure that consultation obtains greater input from general workplaces that have to apply the standards.
- The body developing national standards for chemicals requires a high level of expert resources.
- Industry (employer associations and unions) needs support so that they can employ sufficient resources to contribute to the development and review of national standards.

Issue of clarity

The following matters are not directly related to the recommendations of the report, but are issues that need clarifying in order that readers fully understand the background to the recommendations.

Dangerous goods

In the discussion of the regulatory framework in section 6.2 of the report, it is not made clear that the regulatory requirements for dangerous goods are most commonly not under the OHS Act of the jurisdiction, but under a separate Act for dangerous goods or dangerous substances. In many cases these different Acts are administered by the same department, but even then different and fairly autonomous divisions manage the different aspects. This creates considerable difficulties for industry (employers and workers).

Basic elements of workplace chemicals regulation

The first element of workplace chemicals regulation given at the top of page 142 of the report should be amended from '*Classification*' to '*Identification*'. The classification duty is assigned to the manufacture or supplier of a chemical, not the employer.

Hazardous substances

At the bottom of page 142, the draft notes that the states and territories committed to a timeframe for implementation of the (1994) national model regulations. This may be so, but they spread implementation from 1995 (SA) until 1999 (Victoria).