Safe Work Australia
https://engage.swa.gov.au/cris-workplace-exposure-standards

Email: WESconsult@ swa.gov.au

Dear Madam/Sir

Accord is pleased to provide this submission to the *Consultation regulation impact statement: Workplace exposure standards framework under the model work health and safety laws* (the Consultation RIS).

Accord 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 including hygiene, cosmetics and specialty products, sunscreens, food contact sanitisers, industrial and agricultural sanitisers, household pesticides, disinfectants and specialty commercial products. Member companies include large global consumer product manufacturers as well as small dynamic Australian-owned businesses with 45%[1] of members operating as SMEs (<200 employees). A list of Accord member companies is available on our website: http://accord.asn.au/about/members.

Headline statistics for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the $10 billion mark.
- Accord's membership is approximately 100 companies.
- Collectively, Accord member companies directly contribute more than 12,000 full-time equivalent jobs.
- Nationally, more than 176 offices and more than 68 manufacturing sites are operated by Accord member companies.

Accord notes the options provided in the Consultation RIS. We are broadly supportive of Option 3 with industry and other stakeholder consultations as a part of the consultation process to update each workplace exposure standards (WES) value. From our current understanding of industry practice, we believe options 2 and 3 will deliver comparable worker health outcomes. Option 3 has an added advantage of reducing the cost of achieving this outcome.

From a practical perspective, WES is not consulted for every chemical product use in every workplace. This is entirely appropriate. To use the example of ethanol, the manufacturing/formulating sites utilising ethanol as a raw material should be aware of ethanol WES and monitor worker exposure. However, a window cleaner using an ethanol-based cleaning product may be trained to open a window if they are working in an enclosed space.

[1] Results from Accord Industry Size and Scale Survey 2018

Similarly, it may be assumed that a nurse using alcohol-based hand-sanitisers will not exceed the WES value, and no monitoring may be performed.

This is a practical view that appears to be shared by regulators. I am yet to hear of any cases where air monitoring results for the worker's breathing zone were requested by an inspector where the workers are using alcohol-based hand rubs on a regular basis, or where a window cleaner is working in a well-ventilated area.

And yet this is not reflected in the regulations that mandates compliance with WES, where compliance can only be demonstrated "*when the exposure of an individual or a group of workers is known, with an acceptable degree of certainty, to be below the WES value"* (paragraph 54 of the Consultation RIS).

If WES became an information standard rather than a set of mandatory compliance values, that would remove the uncertainty for uses such as window cleaning and use of alcohol-based hand rubs. However, this would not remove the general duties within the WHS laws to manage the risks to workers. WES values would be used as a benchmark by those that need to closely monitor workers e.g. manufacturing in the alcohol example above.

We have also provided some comments using the submission template. We note that the questions were pitched at company level (not industry associations), and therefore our responses may not match exactly with the questions posed. We also approached the questions as a response to the SWA's preferred option, option 2. If WES was to become an information standard rather than a mandatory standard, then the consideration to minimise the cost of regulatory implementation would not be relevant.

Than you for the opportunity to provide this submission. If you have any queries, please do not hesitate to contact me at [redacted].

Yours Sincerely

Catherine Oh
Regulatory & Technical Manager

13 September 2018

SUBMISSION

Consultation Regulation Impact Statement:

Workplace exposure standards framework under the model Work Health and Safety laws

Instructions

To complete this online submission:

- Download and save this submission document to your computer.
- Use the saved version to enter your responses under each question below. These questions are from the consultation regulation impact statement on the workplace exposure standards framework under the model Work Health and Safety laws.
- Once you have completed your submission, save it and upload it using the upload your submission link on the Engage submission form.

Submissions will be accepted until **11.59 pm AEDT, 13 September 2018**.

Additional documentation

Up to three additional documents can also be uploaded when you submit your response. Relevant documents to upload could include cover letters or reports with data and evidence supporting your views.

Help

If you are experiencing difficulties making your submission online, please contact us at WESconsult@swa.gov.au.

Respondents may choose how their submission is published on the Safe Work Australia website by choosing from the following options:

- submission published
- submission published anonymously
- submission not published

For further information on the publication of submissions on Engage, please refer to the Safe Work Australia Privacy Policy and the Engagement HQ privacy policy.

Please note the following are unlikely to be published:

- submissions containing defamatory material, and
- submissions containing views or information identifying parties involved in hearings or inquests which are currently in progress.

Your details

(Please leave blank if you wish to remain anonymous)

1. Name or organisation

   Accord Australasia

2. Email used to log into Engage

   [redacted]

Questionnaire

(Consultation RIS questions)

1. Do the estimated rates of compliance with the workplace exposure standards align with your experience? Please explain. **(Section 2 Pages 24-25)**

   Click or tap here to enter text.

2. Are there any particular issues that make it difficult for you to comply with the workplace exposure standards? Please provide examples. **(Section 2 Pages 24-25)**

   There are issues with demonstrating compliance with WES.

   Regulation 49 of the Model WHS Regulations specify that the PCBU must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the workplace exposure standard. Unlike the duty to eliminate or minimize risks, reg 49 is not qualified by “so far as is reasonably practicable”.

   Quoting paragraph 54 of the Consultation RIS, *Compliance with workplace exposure standards can be demonstrated only when the exposure of an individual or a group of workers is known, with an acceptable degree of certainty, to be below the WES value*.

   Following the hierarchy of controls, a properly fitted breathing apparatus may be used if the airborne contaminant levels cannot be controlled below WES levels through elimination, reduction, engineering controls, etc. It is not possible to test for contaminant levels within the breathing apparatus i.e. compliance with WES cannot be demonstrated, and therefore there can be no confirmation as to whether the WES is complied with.

3. Are there any other costs to your organisation relating to the workplace exposure standards framework not discussed here? **(Section 2 Pages 26-30)**

   Yes, the broader implementation costs borne by industry does not appear to have been considered in depth. This includes:

   - Updating SDS for all relevant products. This requires some technical consideration (rather than automation) as the WES update cannot be simply linked to a CAS number or by substance group e.g. update to metal fumes WES is irrelevant to formulated products containing the metal in solution. The number of SDS requiring updates may be significant but will depend on the substance e.g. if ethanol WES was to be updated, all

products with ethanol as a solvent and/or active ingredient will need to be reviewed. Products would range from E10 petrol through to window cleaners and alcohol-based hand sanitisers.

- Risk assessment for each product and process. The risk assessment should be for each process, so for each product that includes the substance with updated WES there may be multiple risk assessments required, including:
  - Consideration of eliminating the product from the process,
  - Isolation consideration if necessary,
  - Updating any engineering controls as necessary,
  - Updating any administrative controls as necessary
  - Updating/introducing PPE as necessary.
- Communication with workers. Communicating new risk assessment and new risk mitigation measures with workers, including training for any new administrative measures or proper fitting of PPE as necessary.
- Communication with customers/end users. Communicating the new WES (via dissemination of SDS) and training as necessary for customers/end users.

The cost implication of each of these exercises are likely to vary depending on the timing of the transition from the old WES value to the new WES value. For example, a five-year timeframe to update SDS with new WES values would lead to close to zero additional cost for industry to update the SDS, as SDS must be updated every five years as a minimum. As the implementation timeframe shortens, it is expected that the cost of updating SDS will increase linearly as more SDS will need to be reviewed out of the normal review cycle.

It is difficult to estimate the cost of updating SDS for each WES amendment, as it will vary significantly based on the "popularity" of the chemical in formulated products, and hence the number of SDS.

In addition to five years to update the SDS, there should be time allowed e.g. two years minimum for risk assessment and work that follows on from risk assessment, as some risk mitigation measure such as implementation of new engineering control can be a lengthy and costly process.

4. If there is not an Australian workplace exposure standard available for a particular chemical, how do you manage the risk of exposure? Please describe. **(Section 2 Pages 29-30)**

Where a potential inhalation risk is identified and an Australian WES value is not available, companies generally look to internationally available information including international regulatory values for risk management. If international values are not available and the company is holds significant data and expertise in a particular chemical e.g. a patent holder, may set its own exposure limit.

5. Are there any other options that could be considered to achieve the government's objectives? Please provide details. **(Section 3 & 4 Pages 31-38)**

Click or tap here to enter text.

6. Are there any practical issues to consider in relation to any of the proposed options? Please provide examples. **(Section 4 Pages 32-38)**

As detailed in response to Question 2, there are issues with demonstrating compliance with WES.

Regulation 49 of the Model WHS Regulations specify that the PCBU must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the workplace exposure standard. Unlike the duty to eliminate or minimize risks, reg 49 is not qualified by "so far as is reasonably practicable".

Quoting paragraph 54 of the Consultation RIS, *Compliance with workplace exposure standards can be demonstrated only when the exposure of an individual or a group of workers is known, with an acceptable degree of certainty, to be below the WES value*.

Following the hierarchy of controls, a properly fitted breathing apparatus may be used if the airborne contaminant levels cannot be controlled below WES levels through elimination, reduction, engineering controls, etc. It is not possible to test for contaminant levels within the breathing apparatus i.e. compliance with WES cannot be demonstrated, and therefore there can be no confirmation as to whether the WES is complied with.

7. Would making the workplace exposure standards advisory (rather than mandatory) lead to changes in the level of compliance in your industry? Please explain. **(Section 4 Page 37-38)**

   Click or tap here to enter text.

8. Beyond these options, what else could be done to help your business understand and comply with the workplace exposure standards? **(Section 4 Pages 32-38)**

   Click or tap here to enter text.

9. What impact, if any, would the proposed name change from 'workplace exposure standard' to 'workplace exposure limit' have on your organisation? **(Section 4 Page 38)**

   Click or tap here to enter text.

10. Please provide details of the types of costs that are incurred by your organisation when a WES value is updated. For example, do you update any policies or procedures to reflect changes in the WES value? **(Section 5 Page 39-40)**

    Details were provided in response to Question 3. The types of costs include:

    - Updating SDS for all relevant products. This requires some technical consideration (rather than automation) as the WES update cannot be simply linked to a CAS number or by substance group e.g. update to metal fumes WES is irrelevant to formulated products containing the metal in solution. The number of SDS requiring updates may be significant but will depend on the substance e.g. if ethanol WES was to be updated, all products with ethanol as a solvent and/or active ingredient will need to be reviewed. Products would range from E10 petrol through to window cleaners and alcohol-based hand sanitisers.

- Risk assessment for each product and process. The risk assessment should be for each process, so for each product that includes the substance with updated WES there may be multiple risk assessments required, including:
    - Consideration of eliminating the product from the process,
    - Isolation consideration if necessary,
    - Updating any engineering controls as necessary,
    - Updating any administrative controls as necessary
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It is difficult to estimate the cost of updating SDS for each WES amendment, as it will vary significantly based on the "popularity" of the chemical in formulated products, and hence the number of SDS.

In addition to five years to update the SDS, there should be time allowed e.g. two years minimum for risk assessment and work that follows on from risk assessment, as some risk mitigation measure such as implementation of new engineering control can be a lengthy and costly process.

11. Survey respondents indicated that, on average, a quarter of their control costs are directly attributable to the current workplace exposure standards framework. Is this consistent with your experience? Please provide details. **(Section 5 Pages 39-40)**

Click or tap here to enter text.

12. Are there any other significant regulatory costs that you incur because of the workplace exposure standards that have not been included in the consultation RIS? **(Section 5 Pages 39-40)**

Responses to Questions 3 and 10 also address this question.

13. Do you think awareness of the workplace exposure standards will improve if they are updated more frequently? Please explain. **(Section 5 Pages 40-46)**

Click or tap here to enter text.

14. What impact would more frequent updating of the workplace exposure standards have on your organisation? In your response, please consider the possible addition of the chemicals listed in Appendix C. **(Section 5 Pages 40-46)**

Click or tap here to enter text.

15. To understand and implement option 2, what would this cost your business or organisation? **(Section 5 Pages 40-46)**

Click or tap here to enter text.

16. What benefits would option 2 provide for your business or organisation, and community? **(Section 5 Pages 40-46)**

Click or tap here to enter text.

17. To understand and implement option 3, what would this cost your business or organisation? **(Section 5 Pages 46-52)**

Click or tap here to enter text.

18. What benefits would option 3 provide for your business or organisation, and community? **(Section 5 Pages 46-52)**

Click or tap here to enter text.

19. If workplace exposure standards were advisory (rather than mandatory), would your business continue to seek information or guidance from a WHS regulator? **(Section 5 Pages 46-52)**

Click or tap here to enter text.

20. For each option are there any other costs, benefits, and/or unintended impacts which have not been considered in this consultation RIS? Please provide details.

Click or tap here to enter text.

21. Do you have anything further you would like to add as part of this process?

Click or tap here to enter text.