National Coordinating Committee on Therapeutic Goods

Strategies to implement a national approach to poisonous chemical controls

Decision Regulation Impact Statement

8 November 2012
This report contains 390 pages
National Coordinating Committee on Therapeutic Goods
Strategies to implement a national approach to poisonous chemical controls
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Glossary

The following abbreviations are used throughout this paper

ACCC Australian Consumer and Competition Commission
ACCS Advisory Committee on Chemical Scheduling
ACMS Advisory Committee on Medicine Scheduling
AHMAC Australian Health Ministers’ Advisory Council
AHMC Australian Health Ministers’ Conference
APVMA Australian Pesticides and Veterinary Medicines Authority
ASMI Australian Self-Medicating Industries
BRCWG Business Regulation and Competition Working Group
COAG Council of Australian Governments
CTEPC Chemical Technical and Ethical Principal Committee
DOHA Department of Health and Ageing
FSANZ Food Standards Australia and New Zealand
NCCTG National Coordinating Committee on Therapeutic Goods
NDPSC National Drugs and Poisons Schedule Committee
NICNAS National Industrial Chemicals Notification and Assessment Scheme
RIS Regulatory Impact Statement
SCOC Standing Committee on Chemicals
SCOH Standing Council on Health
SUSMP Standard for the Uniform Scheduling of Medicines and Poisons
TGA Therapeutic Goods Administration
Executive Summary

Chemical regulation in Australia

Poisonous chemicals have long been subject to government regulation, due to the dangers their misuse can pose to public health.

The framework that is in place to ensure a net benefit to the community as a whole in relation to the use of these chemicals that have the potential to cause harm has two key elements.

- First, a substance (either a medicine or a poisonous chemical) that can potentially cause harm is classified in one of the Schedules of the Standard for Uniform Scheduling of Medicines and Poisons (SUSMP) as per set criteria and factors in the Scheduling Policy Framework.1
- Second, the nature and level of controls that apply to the storage, disposal, labelling, packaging, record keeping, advertising and supply of poisonous chemicals in each Schedule of the SUSMP are specified. These controls are specified in the SUSMP and/or State and Territory legislation.

It is the second aspect of the regulatory framework which is the subject of this Decision RIS.

Implementation, compliance and enforcement decisions relating to these controls to achieve public health objectives are the responsibility of State and Territory Governments.

Differences in controls applying in each State and Territory have led to national inconsistency, which can pose a cost to businesses that operate in more than one jurisdiction.

Despite some reform focused towards achieving greater national consistency, there remain inconsistencies. These inconsistencies are of concern to the Council of Australian Governments (COAG) because they cause cost burdens to industry and create unnecessary complexity.

COAG’s 2009 Memorandum of Understanding on Plastics and Chemicals Regulatory Reform2 established the Standing Committee on Chemicals (SCOC). SCOC have included achieving greater national consistency of poisonous chemicals

1 NCCTG Scheduling Policy Framework, July 2010. Factors for Schedules 5, 6 and 7 are listed in Appendix G
regulation within their work plan. Progress against milestones on this reform has been included in reporting by the COAG Reform Council.3

This reform agenda came about as a result of the 2008 Productivity Commission research report into chemicals and plastics regulation. Submissions and research associated with this report argued that the current differences between the States and Territories’ regulatory environments imposed a burden on business and made complying with regulation difficult. The Productivity Commission consequently recommended that, in addition to work around the assessment of chemicals, State and Territory Governments should ‘uniformly adopt regulatory controls for poisons through either a template or model approach, as published in the SUSMP. (Recommendation 5.2)’4

Health Ministers approved an implementation plan to progress the recommendations of the Productivity Commission, which included a project to address recommendation 5.25. The project commenced in December 2011; and has consisted of the development of a Consultation RIS, and this Decision RIS on an agreed set of controls on poisons, and how future decisions regarding controls would be managed.

This Decision RIS is designed to inform a decision of commonwealth, State and Territory Health Ministers. Ultimately, Ministers will first decide how the objectives of the reform are to be achieved, second decide how they should adopt a single set of nationally consistent regulatory controls on poisonous chemicals, and then decide the key regulatory controls for poisonous chemicals in Schedules 5, 6 and 7. Jurisdictions will need to amend their legislation and regulations to give effect to the nationally agreed controls. The mechanism for amending national controls will also need to be established.

**Scope of RIS**

This RIS considers:

- what options exist to make poisonous chemical controls more nationally consistent;
- the options that should be adopted for each control relating to poisonous chemicals in Schedules 5, 6 and 7;

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4 This was part of recommendation 5.2 of the Productivity Commission report. The Standing Committee on Chemicals reports on ‘Reforms’ with numbering that correlates to the relevant Productivity Commission recommendations which are to be implemented.

5 Standing Committee on Chemicals 2011, Progress Report, March, p.3
• how revised controls should be implemented; and
• who should make future decisions regarding controls.

Statement of the problem

Industry has long argued that inconsistency of chemical and poisons regulation across States and Territories increases compliance costs for business, and indirectly for consumers, without improving regulatory outcomes. These inconsistencies are argued to create unnecessary costs to industry because they represent a complex compliance framework for industry and consumers. This complexity may also affect compliance, thereby leading to reduced levels of public health protection.

The problems of the current regulatory framework include:

1. The costs of time devoted to understanding the complex differences in controls by businesses operating (or considering operating) across jurisdictions, and having to put in place different procedures and training for staff, or in some cases adopt the most onerous controls nationally for simplicity where this is feasible.

2. The additional administrative cost on governments (and those they consult), and associated governance challenges within each State and Territory as they seek to align their regulation, or separately update it, in response to new information about the effectiveness of controls.

3. The costs to business of managing the transitional arrangements when changes to the SUSMP take different amounts of time to be reflected in State and Territory legislation and regulations.

4. The cost of compliance that arises from duplication and overlapping regulatory regimes controlling poisonous chemicals in different settings.

Options to address the problems

This Decision RIS outlines a number of options for each chosen regulatory control of poisonous chemicals to be considered for implementation. One of the six options will be selected as the preferred approach for each control.

A detailed mapping exercise that compared the regulatory controls in each jurisdiction was conducted to identify all the key differences and the magnitude of differences among the controls. This analysis showed that most of the substantive
differences exist in regulatory design (such as outcome vs prescriptive) and extent of the control. In many areas, there are limited substantive differences. Variations in detail may not affect regulatory outcomes, but can add complexity for businesses seeking to comply.

A systematic approach was taken to decide on the options considered for implementation. This approach led to the development of six different options for each regulatory control available to the States and Territories. The options below were assessed for their costs and benefits:

The options outlined in this RIS are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations, and rely on other chemical and general regulatory schemes.

The analysis of these options and their associated impacts drew heavily on the analysis that mapped the existing regulatory controls, any available evidence of outcomes achieved and information gathered by the NCCTG in the consultation phase of the RIS.

The impact of the options on each jurisdiction has also been considered and presented in the impact analysis.

**Preferred options in options impact analysis**

Out of the six options discussed for each regulatory control, one option has been labelled as the ‘preferred option’. The preferred option is that which the analysis suggests achieves the intended outcome of the control with the lowest level of regulatory burden. The selection of the option with the lowest burden in each case was largely due to the lack of evidence suggesting that where a more burdensome regulation option was currently adopted by one or more jurisdictions, that it had been any more effective in achieving better outcomes in terms of efficient and effective protection of public health.

The analysis presented in the Consultation RIS and this Decision RIS has highlighted the very limited evidence currently available relating to the costs and benefits of the current regulatory arrangements. Consultation has established that industry expect there will be on-going savings from implementing a nationally consistent approach to poisons controls (largely in line with those presented in the
Consultation RIS), but have not provided information to allow a robust quantification of the net benefits.

Consultation has also confirmed that the benefits of the current regulatory arrangements to public health outcomes are not expected to be reduced by the proposed changes. The transitional costs to business of adopting the preferred options as outlined in this RIS are likely to be small.

Consequently, an indicative, largely qualitative, assessment for the impact of each option on industry, consumers and government and in each State or Territory has been provided.

Questions were included throughout the impact analysis of the Consultation RIS that were focussed on gathering evidence from businesses and consumers on the types and level of costs and benefits they face. Industry and industry associations have reported that it is difficult to provide this level of quantitative evidence.

Preferred Options Summary

This report puts forward a preferred option for each regulatory control placed on poisonous chemicals. A summary of the preferred options is provided below.

Table 1.2 – Preferred options for each regulatory measure

<table>
<thead>
<tr>
<th>Regulatory control</th>
<th>Preferred Option</th>
<th>Details and impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage of Schedule 5 chemicals</td>
<td>Six$^8$</td>
<td>Remove existing provisions or controls. This option would mean that there are no explicit regulatory controls over the storage of Schedule 5 chemicals outlined in a national standard.</td>
</tr>
<tr>
<td>Storage of Schedule 6 chemicals</td>
<td>Four</td>
<td>Adopt an outcome-based control. This option will achieve a nationally consistent approach that retains flexibility for business.</td>
</tr>
<tr>
<td>Storage of Schedule 7 chemicals</td>
<td>Five</td>
<td>Adopt an outcome-based control, with a prescriptive ‘deemed to comply or satisfy’ provision. The impact of this option would be that Schedule 7 chemicals are kept in a facility or area which is secured, along with detailed guidance provisions for how this may be implemented.</td>
</tr>
<tr>
<td>Disposal of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Four</td>
<td>Adopt an outcome-based control for disposal. Reduction in the overall amount of regulation covering chemicals, while still requiring that public and environmental health and safety standards are upheld.</td>
</tr>
</tbody>
</table>

$^8$ The preferred option for this control has changed from the Consultation RIS to the Decision RIS. Consultation with stakeholders demonstrated that a control of storage of products with Schedule 5 chemicals would increase cost without delivering sufficient benefits from being nationally consistent. This is discussed in more depth in Section 4.2.
## Regulatory control

<table>
<thead>
<tr>
<th>Regulatory control</th>
<th>Preferred Option</th>
<th>Details and impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labelling of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Two</td>
<td>Implement the labelling provisions of the SUSMP as they are written with no additions. This option would achieve greater national consistency while still achieving the objective of the regulatory control. There is not expected to be any additional regulatory burden for businesses in the majority of States and, for Tasmania, the Australian Capital Territory and New South Wales, the increase in regulatory burden would be minimal.</td>
</tr>
<tr>
<td>Packaging of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Two</td>
<td>Implement the provisions of the SUSMP as they are written with no additions For jurisdictions that offer alternatives or include additional requirements the impact of adopting the SUSMP would be minimal while still achieving the objective of the control.</td>
</tr>
<tr>
<td>Record keeping of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Three</td>
<td>Adopt a prescriptive control Minimal impact: the majority of jurisdictions currently require the listed details and the period of retention aligns with the requirements of the Australian Tax Office.</td>
</tr>
<tr>
<td>Advertising of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Six</td>
<td>Remove existing provisions or controls This option would achieve national consistency. It is unlikely that removal of this control would have a material impact on consumers or businesses in Queensland</td>
</tr>
<tr>
<td>Hawking/Supply of product samples of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Three A</td>
<td>Adopt a prescriptive control This option is preferred because it would deliver national consistency of control; it would not represent a material regulatory increase in the Australian Capital Territory or the Northern Territory, and it would maintain an acceptable level of benefit to consumers in terms of restricting access to chemicals by children.</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Three</td>
<td>Adopt a prescriptive control This option would involve removing Appendix C from the SUSMP and creating a new Schedule of chemicals in the SUSMP. The impact of this decision on business would be minimal – it is not expected that the levels of control will materially change with the creation of a new Schedule.</td>
</tr>
<tr>
<td>Appendix I</td>
<td>Two</td>
<td>Implement the provisions of the SUSMP as they are written with no additions This option will achieve national consistency with minimal change from States and Territories, and is an appropriate level of control over dangerous chemicals in paints.</td>
</tr>
</tbody>
</table>
Strategies to implement a national approach to poisonous chemical controls

November 2012

The principal observation to be drawn from the summary is that for none of the controls is the status quo considered to be the preferred option. The impact of implementing the preferred options in the preferred method would be a nationally consistent regulatory approach to chemicals regulation, and reduced compliance costs to business. In addition, where options have been agreed to, they are generally the lower regulatory burden option.

Preferred options impact summary

The table below outlines whether implementation of the preferred option for each control would result in an increased, unchanged or decreased regulatory impact compared to the current regulatory requirements. It has not been possible to quantify the size of the impacts on individual businesses, although the feedback from most industry stakeholders suggested that the preferred options would have only have small positive or negative impacts, and in the views of stakeholders these impacts were outweighed by the benefits of national consistency.

<table>
<thead>
<tr>
<th>Control</th>
<th>Schedule</th>
<th>Preferred Option</th>
<th>Impact variation across States and Territories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>ACT   NSW   NT   QLD   SA   TAS   VIC   WA</td>
</tr>
<tr>
<td>Storage</td>
<td>5</td>
<td>6</td>
<td>-     -     -     -     -     -     -     -     ↓</td>
</tr>
<tr>
<td>Storage</td>
<td>6</td>
<td>4</td>
<td>↑     -     ↑     ↓     ↓     ↑     ↑     ↓     ↓</td>
</tr>
<tr>
<td>Storage</td>
<td>7</td>
<td>5</td>
<td>-     -     -     ↓     ↓     -     -     -     ↓</td>
</tr>
<tr>
<td>Disposal</td>
<td>5, 6 and 7</td>
<td>4</td>
<td>↑     -     ↑     ↓     -     ↑     ↑     ↓     -</td>
</tr>
<tr>
<td>Labelling</td>
<td>5, 6 and 7</td>
<td>2</td>
<td>↓     -     -     -     -     -     -     -     -</td>
</tr>
<tr>
<td>Packaging</td>
<td>5, 6 and 7</td>
<td>2</td>
<td>-     -     -     -     -     -     -     -     -     ↓</td>
</tr>
<tr>
<td>Record keeping</td>
<td>7</td>
<td>3</td>
<td>-     ↑     -     -     -     -     -     -     ↑</td>
</tr>
<tr>
<td>Advertising</td>
<td>7</td>
<td>6</td>
<td>-     -     -     -     -     -     -     -     -     -</td>
</tr>
<tr>
<td>Hawking/Supply of product samples</td>
<td>5, 6 and 7</td>
<td>3A</td>
<td>↑     ↑     ↑     -     -     -     -     -     -</td>
</tr>
</tbody>
</table>
Consultation

The consultation phase for the Consultation RIS (held in August 2012) comprised both targeted meetings and interviews with stakeholders, and consideration of seven written submissions. Non-business stakeholders were advised of the release of the consultation RIS, and offered briefings and meetings, but did not avail themselves of this opportunity.

Meetings were held with a mix of regulated businesses and industry associations.

Consultation on earlier drafts of the Consultation RIS indicated that industry as a group is very enthusiastic about the measure and objectives to reduce regulatory inconsistency. The stakeholders consulted with were in almost all cases supportive of preferred options.

The initial preferred option that industry argued had costs that exceeded any benefits related to the introduction of a national regulatory control over retail storage of Schedule 5 chemicals. Following consultation the NCCTG agreed to amend the preferred option to be the removal of regulatory controls over retail storage of Schedule 5 chemicals as outlined in this Decision RIS.

An industry association expressed some concern about references being made to an Australian Standard in regulation of packaging requirements, given that this Standard is not available freely. However, this did not impede their support for the preferred option for this control.

Implementation and decision making

This RIS has also considered options for the implementation and decision making regarding nationally consistent regulatory measures. Options for implementation that were included in this consideration were:
1. Maintain the status quo
2. Template ‘reference’ legislative approach
3. Model legislation and regulations
4. Referral of powers
5. Adoption of a national standard by reference
6. Harmonising subordinate law
7. Mutual recognition
8. Implementing agreed principles
9. Memorandums of Understanding
10. Service level agreements

From these options, the preferred option is **Option Five: Adoption of a national standard by reference.**

Options that were considered for potential decision makers for regulatory controls were:

1. A Commonwealth delegate to make decisions, on the advice of an Advisory Committee (this is the status quo for scheduling but not controls).
2. Establish a statutory board as the decision-maker.
3. Establish a standard-setting body (based on a model such as food regulation).
4. Through an intergovernmental arrangement (via a committee similar to the NCCTG) with a Ministerial Council (SCOH or equivalent) as the decision-maker.

From these options, the preferred option is **Option Four: Through an intergovernmental arrangement (via a committee similar to the NCCTG) with a Ministerial Council (SCOH or equivalent) as the decision-maker.**

**Role of the Decision RIS**

This Decision RIS has been prepared to inform ministerial decision-making on what should be the key regulatory controls for poisonous chemicals in Schedules 5, 6 and 7 of the SUSMP, and the approach to be used for implementation.

The objective of this decision should be aimed at achieving greater national consistency of poisonous chemicals regulation.

The Decision RIS has been finalised in November 2012.
1 Chemical regulation

1.1 Overview of regulation framework

Poisonous chemicals have long been subject to government regulation due to the dangers their misuse can pose to public and environmental health. This is particularly the case with poisonous chemicals, where misuse can lead to hazardous risks (toxic, explosive, corrosive or flammable.)\(^9\) It is reasonable to assume that chemical users may not always have pre-requisite knowledge to make informed decisions regarding the chemicals controlled by legislation, many of which could have serious, sometimes fatal consequences.\(^10\)

The institutional and regulatory arrangements relating to chemicals in Australia are complex. It involves some 140 pieces of legislation and multiple policy departments, assessment agencies, and regulatory decision-makers at the Commonwealth, State and Territory and local levels of government.\(^11\)

There are also separate but related regulatory regimes that govern poisonous chemicals: public health; food safety; agriculture; work health and safety; the transport of dangerous goods; disposal; and environment protection.

The primary focus of this RIS is on the public health regulation of poisonous chemicals. To the extent that opportunities to reduce unnecessary duplication and overlap with other related regimes are identified, these are also examined.

1.2 Public health regulation of poisonous chemicals

The public health regulatory framework that is in place to ensure a net benefit to the community as a whole in relation to the use of these chemicals that have the potential to cause harm has two key elements.

First, a substance (either a medicine or a poisonous chemical) that can potentially cause harm is classified in a Schedule of the SUSMP as per set criteria and factors in the Scheduling Policy Framework.\(^12\) The decision to include a substance in the SUSMP is made by the Secretary of the Commonwealth Department of Health and Ageing who may seek advice from statutory advisory committees beforehand (refer to table 1.3 below for details of the Schedules of the SUSMP.)

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\(^9\) Ibid
\(^10\) Ibid
\(^12\) NCCTG Scheduling Policy Framework, July 2010. Factors for Schedules 5, 6 and 7 are listed in Appendix G
Table 1.3 – Schedules of the SUSMP\(^\text{13}\)

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Title and description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule 1</td>
<td>Not currently in use</td>
</tr>
<tr>
<td></td>
<td>This Schedule is currently blank</td>
</tr>
<tr>
<td>Schedule 2</td>
<td>Pharmacy Medicine</td>
</tr>
<tr>
<td></td>
<td>Substances, the safe use of which may require advice from a pharmacist and which should be available from a pharmacy or, where a pharmacy service is not available, from a licensed person.</td>
</tr>
<tr>
<td>Schedule 3</td>
<td>Pharmacist Only Medicine</td>
</tr>
<tr>
<td></td>
<td>Substances, the safe use of which requires professional advice but which should be available to the public from a pharmacist without a prescription.</td>
</tr>
<tr>
<td>Schedule 4</td>
<td>Prescription Only Medicine OR Prescription Animal Remedy</td>
</tr>
<tr>
<td></td>
<td>Substances, the use or supply of which should be by or on the order of persons permitted by State of Territory legislation to prescribe and should be available from a pharmacist on prescription.</td>
</tr>
<tr>
<td>Schedule 5</td>
<td>Caution</td>
</tr>
<tr>
<td></td>
<td>Substances with a low potential for causing harm, the extent of which can be reduced through the use of appropriate packaging with simple warnings and safety directions on the label.</td>
</tr>
<tr>
<td>Schedule 6</td>
<td>Poison</td>
</tr>
<tr>
<td></td>
<td>Substances with a moderate potential for causing harm, the extent of which can be reduced through the use of distinctive packaging with strong warnings and safety directions on the label.</td>
</tr>
<tr>
<td>Schedule 7</td>
<td>Dangerous Poison</td>
</tr>
<tr>
<td></td>
<td>Substances with a high potential for causing harm at low exposure and which require special precautions during manufacture, handing or use. These poisons should be available only to specialised or authorised users who have the skills necessary to handle them safely. Special regulations restricting their availability, possession, storage or use may apply.</td>
</tr>
<tr>
<td>Schedule 8</td>
<td>Controlled Drug</td>
</tr>
<tr>
<td></td>
<td>Substances which should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence.</td>
</tr>
<tr>
<td>Schedule 9</td>
<td>Prohibited Substance</td>
</tr>
<tr>
<td></td>
<td>Substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of Commonwealth and/or State or Territory Health Authorities.</td>
</tr>
</tbody>
</table>

The SUSMP is a Commonwealth legislative instrument.

Second, a separate aspect of the framework specifies the nature and level of controls that apply to the storage, disposal, labelling, packaging, record keeping, advertising and supply of poisonous chemicals which are included in the SUSMP. It is this aspect of the regulatory framework which is the subject of this RIS.

Some of the aforementioned controls are referred to in the SUSMP, whilst others are referred to in State and Territory legislation. Implementation, compliance and

\(^{13}\) Only Schedules 5, 6 and 7 are relevant to this RIS.
enforcement decisions for all chemical controls are the responsibility of State and Territory Governments.

1.3 Background of this RIS

Different sets of regulation in each State and Territory have led to national inconsistency, which can pose a cost to businesses that operate in multiple jurisdictions.

The Commonwealth Government asked the Productivity Commission to undertake a research report into chemicals and plastics regulation, which reported in 2008. The Commission was asked to:

1. Assess Australia’s current system of chemicals and plastics regulation, including its effectiveness in achieving public health, occupational health and safety, and environmental outcomes, and its impacts on productivity, competitiveness and efficiency; and

2. Recommend reforms to the current system of regulation, including options to enhance national uniformity and consistency, streamline data requirements and assessment processes, and use alternatives to regulation.14

In regard to public health aspects of chemicals and plastics regulation, this study encompassed the consideration of the decision-making mechanism for scheduling of poisonous chemicals. The Productivity Commission found through its analysis and consultation process that poisonous chemical scheduling was not uniform, and that controls placed on poisonous chemicals for different Schedules was also nationally inconsistent.

This inconsistency had been earlier noted in the Galbally National Competition Review of Drugs, Poisons and Controlled Substances in 1999.

These variations and complexities have developed over time due to the evolution of each State and Territory’s regulatory frameworks, local issues of concern and differing attitudes towards risk across jurisdictions.15

Governments have responded to these challenges with a number of reform initiatives, including:

- modifying the administrative arrangements relating to the scheduling decisions regarding chemicals and medicines. The National Drugs and Poisons Schedule Committee (NDPSC) was disbanded and replaced by the Advisory Committee on

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14 Productivity Commission 2008, Chemicals and Plastics Regulation, Research Report, Melbourne, p. xxvi
15 Ibid, p. 7-8
Chemicals Scheduling (ACCS) and the Advisory Committee on Medicines Scheduling (ACMS). These modified arrangements took effect from 1 July 2010;

- allocating decision making regarding the scheduling aspects of the SUSMP to the Secretary or a delegate in the Commonwealth Department of Health and Ageing (DoHA), to increase consistency and efficiency of decision making; and

- requiring variations in the adoption of Schedules in each jurisdiction to be reported.

These changes improved the consistency of scheduling. However, there remain some jurisdictional differences in the adoption of Schedule 7. Schedules are still incorporated into legislation differently by the States and Territories and are not always updated in each State and Territory as soon as the SUSMP is updated. This results in some level of variation continuing.

The regulation of chemicals across all levels of government has been of significant concern for the Council of Australian Governments (COAG). This was highlighted by the Productivity Commission findings about the inconsistencies, fragmentation and the complexity of administration, and COAG’s response to the recommendations.\(^\text{16}\)

The Standing Committee on Chemicals (SCOC) was established in 2009 with responsibility for overseeing the implementation of agreed COAG reforms in this area by the various Ministerial Councils and Commonwealth departments, including the recommendation assigned to the then Australian Health Minister’s Conference (now Standing Committee on Health) of achieving national consistency of regulatory controls over poisonous chemicals.

### 1.4 State and Territory Government involvement

States and Territories have historically had primary responsibility for chemical controls relating to public health. The regulatory regimes of jurisdictions focus on control of use through the supply chain from transport and storage, to consumer access, to disposal and environmental protection.\(^\text{17}\) Consequently, the health departments listed below are responsible for State and Territory legislation and regulation over chemicals (Appendix B lists the relevant chemical-related Acts and Regulations that these Departments are responsible for administering.)

\(^{16}\) ibid.
\(^{17}\) Ibid
1.5 Commonwealth Government involvement

The Commonwealth Government undertakes the majority of hazard and risk assessments for chemicals. Generally, States and Territory Governments are responsible for role in licensing the manufacturing, wholesaling, and in certain circumstances, retailing and use of certain chemicals.

The SUSMP contains scheduling decisions regarding the classification and scheduling of chemicals and medicines, which affects some regulatory controls that apply to scheduled substances included in relevant State and Territory legislation.

The SUSMP consists of decisions regarding the classification of medicines and poisonous chemicals into Schedules for inclusion in the relevant legislation of the States and Territories. The SUSMP also includes model provisions about containers and labels, a list of products recommended to be exempt from these provisions, and recommendations about other controls on drugs and poisonous chemicals. The Secretary of Commonwealth’s Department of Health and Ageing (or their delegate) approves changes to the SUSMP.

States and Territories are responsible for making regulatory controls. Many of these State and Territory controls vary in their level of control, where some are based on the SUSMP Schedule that the chemical has been classified into by the Commonwealth (for example, there are varied storage controls in South Australia for Schedules 5, 6 and 7 chemicals) and other controls may vary. The extent of variation from the SUSMP differs across jurisdictions.

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19 The Australian Pesticides and Veterinary Medicines Authority also licences manufacturers of veterinary medicines which may also include some products that are also fall within Schedules 5, 6 & 7 (poisons schedules).
The Commonwealth Government’s Department of Health and Ageing Office of Chemical Safety (OCS) provides secretariat support to the ACCS and the ACMS. The Department of Health and Ageing administers the *Therapeutic Goods Act 1989* which provides the legislative framework for the scheduling of chemicals and medicines and risk management approach to chemical regulation.\(^\text{21}\)

The diagram below illustrates the regulatory framework and where there are different decision-making roles of State and Territory Governments and the Commonwealth Government.

*Figure 1-A - Role of the Commonwealth and State and Territory Governments in chemical regulation*

1.6 National initiatives to address inconsistency – National Competition Policy Review

In 1999 the Commonwealth, State and Territory Governments commissioned the National Competition Policy Review of Drugs, Poisons and Controlled Substances Legislation. This Review, undertaken by Rhonda Galbally (the Galbally Review), examined legislation of Commonwealth, States and Territories that regulated medicines and poisonous chemicals against national competition principles. The Review’s terms of reference specifically asked it to examine inconsistencies in regulation and administration of regulation of drugs and poisonous chemicals relating to: licensing of manufacturers, wholesalers and retailers; packaging and labelling; advertising; storage and handling, and additional requirements such as records of sale.\(^{22}\)

The Galbally Review identified significant advantages to consumers, government and industry if a uniform national approach was adopted in regulating chemicals and medicines.\(^{23}\) These advantages included greater efficiency of chemical controls\(^{24}\) and reduced costs to stakeholders.\(^{25}\) This was further supported by the Productivity Commission’s 2008 report which also noted that a uniform national approach would improve both efficiency and effectiveness of chemical controls.\(^{26}\)

The Galbally Review identified that the lack of uniformity in chemical regulation across jurisdictions caused major costs to consumers, government and industry.\(^{27}\) These costs were associated with identifying and keeping up-to-date with requirements, and complying with varying controls across all jurisdictions.\(^{28}\)

It was noted that these costs not only affect stakeholders directly but also affect Australia’s competitiveness internationally by making market entry more difficult.\(^{29}\) It was identified that these costs could be minimised by adopting a more nationally consistent approach to regulation.

To achieve uniformity, the recommendations of the report included:

- the division of the National Drugs and Poisons Schedule Committee (NDPSC) into two committees;

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\(^{23}\) Ibid, p.96


\(^{25}\) Ibid, p.156

\(^{26}\) Productivity Commission 2008, *Chemicals and Plastics Regulation*, Research Report, Melbourne, p. 300


\(^{28}\) Ibid

\(^{29}\) Ibid
• the National Coordinating Committee on Therapeutic Goods (NCCTG) to develop template legislation;
• Australian Pesticides and Veterinary Medicines Authority (APVMA) to be responsible for labelling and packaging decisions\(^{30}\); and
• removal of more onerous regulatory requirements on poisonous chemicals in some jurisdictions, where they continue to exist without achieving more effective outcomes.

In 2005 the Commonwealth, State and Territory Governments responded to the Galbally Review. In their response, they agreed to most of the recommendations.\(^{31}\) However, governments did not support the recommendation to adopt template legislation. Instead they stated that they would prefer to achieve regulatory uniformity through alternative means. Despite national standards and the involvement of national regulatory bodies, the inconsistencies of interpretation and legislation across Australia have continued. Business stakeholders have argued that this has imposed significant costs without evidence of commensurate benefits.

1.7 National Partnership to Deliver a Seamless National Economy

In 2006, COAG identified chemicals and plastics as a ‘regulatory hotspot’. A Ministerial Taskforce was established to develop a streamlined and harmonised national system of chemicals and plastics regulation. COAG agreed that the Productivity Commission would undertake a study to assist the work of the Taskforce. The study was commissioned in July 2007, and reported in July 2008. The Commission made 30 recommendations covering: hazard and risk assessment; public health; occupational health and safety; transport safety; agricultural and veterinary chemical products; environmental protection and national security.

COAG included national consistency of chemical regulation as an area for reform in its 2008 National Partnership Agreement to Deliver a Seamless National Economy.\(^{32}\) The Australian Health Ministers’ Conference (now the Standing Committee on Health) was tasked with achieving a nationally consistent approach to regulating the public health aspects of poisonous chemicals.\(^{33}\) This agreement required that there be clear implementation plans for reform of poisonous chemical controls by June 2011, with reporting to the Business Regulation and Competition

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\(^{30}\) The recommendation about the APVMA was not wholly agreed to. This point is included to provide background information and to illustrate the interwoven nature of the regulatory framework for poisonous chemicals.


\(^{32}\) COAG 2009, *National Partnership Agreement to Deliver a Seamless National Economy*, Canberra

Working Group on the progress of these reforms in June 2012. Key milestones in the improvement to chemicals and plastics regulation were found in this report to be behind time and at risk of not being met.\footnote{Ibid, p. 358.}

### 1.8 Committees and authorities

Chemicals are subject to a range of standards and regulatory controls by a variety of regulatory authorities and committees.

<table>
<thead>
<tr>
<th>Committee/Regulator</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standing Committee on Chemicals (SCOC)</td>
<td>To achieve an effective and efficient national system of chemicals and plastics regulation.</td>
</tr>
<tr>
<td>Standing Council on Health (SCOH) – Previously known as the Australian Health Ministers’ Conference (AHMC)</td>
<td>Intergovernmental ministerial committee that facilitates a cooperative and coordinated approach to the development of policy and efficient and effective delivery of health services.</td>
</tr>
<tr>
<td>Australian Health Ministers’ Advisory Council (AHMAC)</td>
<td>To advise and make recommendations to SCOH on development, implementation and evaluation of national policies, programs and priorities.</td>
</tr>
<tr>
<td>Australian Consumer and Competition Commission (ACCC)</td>
<td>Product safety regulator, responsible for safety and monitoring products after they have entered the consumer market.</td>
</tr>
<tr>
<td>Australian Pesticides and Veterinary Medicines Authority (APVMA)</td>
<td>Registers all agricultural and veterinary chemical products into the marketplace.</td>
</tr>
<tr>
<td>National Industrial Chemicals Notification and Assessment Scheme (NICNAS)</td>
<td>Responsible for risk and safety assessment of chemical substances.</td>
</tr>
<tr>
<td>National Coordinating Committee for Therapeutic Goods (NCTCG)</td>
<td>Co-ordinates national therapeutic goods and chemical regulation.</td>
</tr>
<tr>
<td>Chemicals Technical and Ethical Principal Committee (CTEPO)\footnote{Arrangements for Principal Committees were amended in April 2012 and CTEPC no longer exists in its current form. A new Principal Committee with oversight of the issues in this RIS will be established.}</td>
<td>To provide advice to AHMAC.</td>
</tr>
<tr>
<td>Office of Chemical Safety (OCS)</td>
<td>Risk and safety assessment for veterinary medicines and pesticides.</td>
</tr>
<tr>
<td>Advisory Committee on Medicines Scheduling/Advisory Committee on Chemicals Scheduling (ACMS/ACCS)</td>
<td>To advise the DOHA Secretary on appropriate scheduling of medicines and chemical substances, respectively, in the SUSMP.</td>
</tr>
<tr>
<td>Therapeutic Goods Administration (TGA)</td>
<td>Regulatory authority for therapeutic goods including medicines.</td>
</tr>
</tbody>
</table>
1.9 Stakeholders affected by chemical regulation

It is noted that parties interested in and affected by changes to the regulatory environment are not restricted to businesses and government bodies. Other stakeholders include:

- consumers
- businesses (retail, wholesalers, users, transporters and manufacturers)
- industry groups and industry entities
- environmental groups
- trade unions; and
- educational institutions

Stakeholders’ evidence and views were taken into consideration when considering the options for poisonous chemical regulation.

1.10 Scope and approach

The scope of this project focuses solely on how particular parts of the SUSMP are implemented by the States and Territories, and opportunities for either harmonising those or creating a national approach agreed to by all States and Territories to be uniformly adopted.

The chemicals within the scope of this project belong to the following Schedules:

- Schedule 5 - Caution
- Schedule 6 – Poison
- Schedule 7 – Dangerous Poison

These are the Schedules of the SUSMP that include poisonous chemicals rather than medicines or controlled drugs.

Poisonous chemicals are not scheduled on the basis of a universal scale of toxicity. Although toxicity is one of the factors considered, and is itself a complex of factors, the decision to include a substance in a particular Schedule also takes into account many other criteria such as:

- the purpose of use;
- potential for abuse;
- safety in use; and
- the need for the substance.
As outlined in the overview, the SUSMP lists substances in nine Schedules according to the degree of control recommended to be exercised over their availability to the public.

Schedule 5 and 6 poisonous chemicals include a range of industrial, domestic and specialty chemicals. Many of these chemicals have a wide range of industrial and commercial uses, for example Hydrochloric Acid, Acetone, Acetic Acid. These chemicals are used by a wide range of manufacturers and other businesses. Schedule 5 and the more toxic Schedule 6 poisonous chemicals are also often used domestically. Examples include liquid hydrocarbons (methylated spirits, turpentine), some pesticides, and in home garden products. These are sold to consumers primarily through hardware stores, supermarkets and chemists. These businesses vary from micro businesses to national chains.

Schedule 7 poisonous chemicals are even more toxic chemicals, such as agricultural and veterinary chemicals for on farm use. They also include some industrial chemical poisons such as hydrofluoric acid; these are sold through authorised suppliers, including licensed stock agents. Whilst Schedule 7 chemicals also contain some industrial chemicals - for example, benzene, this group tends to contain more specialty chemicals and chemical additives including chemicals sold specifically for their poisonous properties - for example paraquat and strychnine. Businesses in these sectors can also vary substantially in size.

The parts of the SUSMP which contain regulatory controls, and are thus within the scope of this project are:

- **Part Two** – Labels and Containers: outline labelling and packaging requirements for Scheduled substances.

- **Part Three** – Miscellaneous Regulations. These are regulations that have been developed over a number of years as a result of considerations by the National Drugs and Poisons Schedule Committee (NDPSC) (now the Advisory Committee on Chemicals Scheduling and the Advisory Committee on Medicines Scheduling) on appropriate regulatory controls for medicines and chemicals. Regulations and controls set out in this Part of the SUSMP can apply to all or any Schedule of poisonous chemicals or medicines.

- **Appendix C** – Substances other than those in Schedule 9, of such danger as to warrant prohibition of sale, supply and use

- **Appendix I** – the Uniform Paint Standard

- **Appendix J** – Conditions and Availability of use for Schedule 7 Poisons

These parts of the SUSMP also form the scope of the project because they constitute the substantive parts of the SUSMP that relate to Schedule 5, 6 and 7.
The following materials and information gathered as a result of the following discussions have informed the development of this RIS:

- detailed cross-jurisdictional legislative mapping of poisonous chemical legislation and regulations in Australian States and Territories;
- submissions that were made to a recent industry survey conducted on behalf of the NCCTG;
- preliminary consultation interviews with the NCCTG member from each Australian jurisdiction;
- academic literature on the effectiveness of physical packaging controls to prevent child poisonings;
- the Productivity Commission’s Report into Plastics and Chemicals Regulation; and
- submissions that were made to the Productivity Commission in response to its Issues Paper and draft Research Report.

1.11 Purpose of this Decision Regulatory Impact Statement

This Decision RIS outlines the preferred method to achieve COAG’s intent of implementing part of recommendation 5.2 of the Productivity Commission report. This part of the recommendation that related to regulatory controls stated:

State and Territory Governments should:
- uniformly adopt regulatory controls for poisons through either a template or model approach, as published in the SUSMP

This recommendation has not yet been implemented and is the focus of this RIS. The Decision RIS has been prepared to inform ministerial decision-making on what should be the key regulatory controls for poisonous chemicals in Schedules 5, 6 and 7 of the SUSMP, and the approach to be used for implementation.
2 Statement of the problem

This Decision RIS is focused on the problem caused by inconsistency of poisonous chemical regulation across the States and Territories. Inconsistency of regulation across States and Territories can present a heightened compliance cost to industry and indirectly to consumers, without necessarily improving regulatory outcomes, and can subsequently lead to reduced levels of public health protection. In addition to this, it may affect compliance by being unnecessarily complicated.36

The problems of the current regulatory framework include:

1. the costs of time devoted to understanding the complex differences in controls by business operating (or considering to operate) across jurisdictions, and having to put in place different procedures and training for staff, or in some cases adopt the most onerous controls nationally for simplicity where this is feasible.

2. the additional administrative cost on governments (and those they consult), and associated governance challenges within each State and Territory as they seek to align their regulation, or separately update it, in response to new information about the effectiveness of controls.

3. the costs to business of managing the transitional arrangements when changes to the SUSMP take different amounts of time to be reflected in State and Territory legislation and regulations.

4. the cost of compliance that arises from duplication and overlapping regulatory regimes controlling poisonous chemicals in different settings.37

In competitive markets the costs borne by industry will be passed onto consumers. The purpose of this chapter is to characterise and confirm the nature and extent of the problem posed by inconsistency of chemicals regulations.

In the consultation phase for this RIS, stakeholders commented on the problem as it has been presented. Accord reported that this was in line with their view and that of their members.

Croplife reported that they had separate concerns with issues that are out of scope of the RIS, such as the scheduling processes that are not part of this review. They also raised that there are some relevant contextual matters such as State and Territory control of use legislation, and work that is happening around the Better

36 Croplife 2008, Submission to the Productivity Commission Research Report, p. 6
37 This problem is not the primary focus of this RIS. However in a number of cases the options considered would result in a removal of unnecessary overlap or duplication, which should reduce regulatory complexity.
Regulation of Agvet Chemicals that affects their members as well. These comments have not caused there to be any change to the presentation of the problem.

2.1 Controls that are placed on poisonous chemicals

Numerous inconsistencies exist in the regulatory controls that apply to poisonous chemicals between jurisdictions. Business stakeholders have long argued that these inconsistencies create unnecessary costs for businesses operating across borders, and these costs will, ultimately, be passed on to consumers. However, there is little evidence available on the activities associated with compliance with chemical regulation that can assist in quantifying these costs. The consultation questions that were included within the Consultation RIS were designed to seek evidence of costs and impacts on business of nationally inconsistent regulation.

The current system has not been able to address the inconsistencies. There is little public information about the differences in these regulatory controls between jurisdictions. Although variations in chemical scheduling are published on the TGA website there is not publicly available resource for reporting of differences in State and Territory controls.

Comprehensive mapping to understand the types and extent of the differences, and the resulting costs, of inconsistent regulation has not previously been conducted in Australia.

The preparation of this Decision RIS has been underpinned by a legislative and regulatory mapping exercise which has sought to identify where there are inconsistencies between the States and Territories. Table 2.1 provides a high-level summary that outlines:

- where the SUSMP sets out a standard for a regulatory control, whether a State or Territory has adopted a more or less prescriptive approach; or
- where the SUSMP does not address that particular regulatory control, whether a State or Territory has adopted a control, and consequently a more prescriptive approach than some other jurisdictions

A more detailed analysis of the differences between the States and Territories for each regulatory control can be found in Chapter 5. These comparisons have been made with the Poisons Acts and related Regulations set out in Appendix B. The focus of this RIS has been on poisons regulation that has been put in place to

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38 At a Commonwealth level, the Minister for Agriculture, Fisheries and Forestry and the Minister Assisting on Deregulation have formed a Better Regulation Ministerial Partnership, which is making amendments to Agricultural and Veterinary Chemicals Legislation, intended to reform the operations of the Australian Pesticides and Veterinary Medicines Authority and reduce regulatory burden on businesses.

39 Observed by ACCORD, 2011, in response to an industry survey conducted on behalf of the NCCTG.
achieve public health objectives. Other chemical controls that exist in other Acts and Regulations have not been examined in detail, although the NCCTG has sought to identify, where possible, overlaps with other regulation that could be addressed, for example, with food, occupational health and safety, or transport regulation.

Table 2-1 - Comparing regulatory controls across States and Territories

<table>
<thead>
<tr>
<th>Control</th>
<th>Schedule</th>
<th>SUSMP?</th>
<th>Variation across the States and Territories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Storage</td>
<td>5</td>
<td>N</td>
<td>-</td>
</tr>
<tr>
<td>Storage</td>
<td>6</td>
<td>N</td>
<td>-</td>
</tr>
<tr>
<td>Storage</td>
<td>7</td>
<td>Y</td>
<td>-</td>
</tr>
<tr>
<td>Disposal</td>
<td>5, 6 and 7</td>
<td>N</td>
<td>-</td>
</tr>
<tr>
<td>Labelling</td>
<td>5, 6 and 7</td>
<td>Y</td>
<td>↑</td>
</tr>
<tr>
<td>Packaging</td>
<td>5, 6 and 7</td>
<td>Y</td>
<td>-</td>
</tr>
<tr>
<td>Record keeping</td>
<td>7</td>
<td>N</td>
<td>↑</td>
</tr>
<tr>
<td>Advertising</td>
<td>7</td>
<td>N</td>
<td>-</td>
</tr>
<tr>
<td>Hawking/Supply of product samples</td>
<td>5, 6 and 7</td>
<td>N</td>
<td>-</td>
</tr>
<tr>
<td>Appendix C: substances prohibited from sale, supply or use</td>
<td>n/a</td>
<td>Y</td>
<td>↓</td>
</tr>
<tr>
<td>Appendix I: Uniform Paint Standard</td>
<td>n/a</td>
<td>Y</td>
<td>-</td>
</tr>
<tr>
<td>Appendix J: conditions for availability</td>
<td>7</td>
<td>Y</td>
<td>-</td>
</tr>
</tbody>
</table>

Key:

↑ More onerous than SUSMP
- Consistent with SUSMP or no additional controls in place (if not covered by the SUSMP)
↓ Less onerous than SUSMP

This table illustrates how onerous regulation is for some controls is inconsistent across jurisdictions. There is also variation in the type of control. The table also highlights that the SUSMP outlines a possible control for half of the controls examined. The table also shows that controls outlined in the SUSMP have been
inconsistently adopted by States and Territories. This is explained further in the legislative and regulatory mapping at Appendix C.

An example of this is the storage requirements for Schedule 7 chemicals. The Australian Capital Territory, New South Wales, South Australia and Tasmania are consistent with the standard for storage of Schedule 7 chemicals in the SUSMP, which states that Schedule 7 chemicals should not be stored in a location that is accessible to the public. The Northern Territory, Queensland and Western Australia impose additional requirements, such as prescribing the people who are authorised to access poisonous chemicals. Meanwhile, Victoria has less onerous requirements for storage of Schedule 7 chemicals because they allow access to chemical storage facilities for members of the public, in some instances such as under the supervision of an authorised person.

A high level description of the current status of regulatory controls of poisonous chemicals is provided below.

**Storage**

There is no standard included in the SUSMP for Schedule 5 or 6 chemicals, however three jurisdictions impose conditions for storage for Schedule 5 chemicals and four jurisdictions impose conditions for storage for Schedule 6 chemicals. All jurisdictions impose conditions for storage for Schedule 7 chemicals; four jurisdictions are aligned to the SUSMP and four differ.

**Disposal**

Requirements in jurisdictions regarding disposal are split between having no requirements (aligned with the SUSMP) and requiring disposal in a manner that does not pose a risk to public health and / or safety.

**Labelling**

Half of the jurisdictions have minimal requirements for labelling poisons, with the other half referencing the SUSMP.

**Packaging**

All jurisdictions reference the SUSMP with some jurisdictions adding to these requirements. The Australian Standard for packaging is also used. This is only available by purchase, so it may be considered a problematic regulatory practice.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Record Keeping</td>
<td>Requirements for the record keeping of transactions involving Schedule 7 chemicals vary significantly between jurisdictions; however most jurisdictions require some or all of the following details of the purchaser: name, address, occupation, telephone number, signature, date of purchase, the name of the chemical, its strength, quantity and purpose for which it has been purchased.</td>
</tr>
<tr>
<td>Advertising</td>
<td>Queensland is the only jurisdiction that prohibits the advertisement of Schedule 7 chemicals by non-approved persons.</td>
</tr>
<tr>
<td>Hawking/supply of product samples</td>
<td>Six of the eight jurisdictions prohibit hawking. The restrictions on hawking prohibit selling or supplying in public places and / or from house to house.</td>
</tr>
<tr>
<td>Appendix C: Substances that warrant prohibition of sale, supply and use</td>
<td>All jurisdictions refer to Appendix C and effectively adopt the list as restricted or prohibited substances, except for Western Australia, which has not updated its reference to Appendix C since a proclamation in 2008.</td>
</tr>
<tr>
<td>Appendix I – Uniform Paint Standard</td>
<td>Two jurisdictions follow the SUSMP; one jurisdiction deviates slightly from the SUSMP and the remaining five jurisdictions have lower or no standard regarding paint.</td>
</tr>
<tr>
<td>Appendix J – Conditions for availability</td>
<td>Although there are substantial differences between the types of licences that the States offer, States and Territories are generally consistent with the standard set out in Appendix J as they require that a person or business be licensed or otherwise authorised.</td>
</tr>
</tbody>
</table>

### 2.2 Regulatory design is a barrier to national consistency

The Productivity Commission noted that there were some potential barriers to achieving greater national consistency. It particularly noted that legislation and regulations are designed differently in each State and Territory:

“The harmonisation of regulation is an important first step to greater national uniformity, but even this can be complicated by the fact that each jurisdiction has
its own legislative drafting conventions, and its own institutional structure. For example:

- Jurisdictions may have Acts that do not exist in other jurisdictions
- The scope of legislation can vary
- Penalties for non-compliance and appeal mechanisms may differ
- Interpretation of Acts varies across jurisdictions
- Terms used in legislation may have different definitions across jurisdictions
- Sections of Acts are numbered differently

2.3 Duplication and overlap: Regulation focused on chemicals from other areas

The regulation of poisonous chemicals covered by this RIS is aimed at improving public health outcomes. However, chemicals are subject to additional set of regulations than public health regulations, which makes achieving compliance a complicated task for industry. Although not a primary focus for this regulatory change project, where this is feasible the analysis considers options that contribute to simplifying regulation or reducing overlap, albeit ultimately only to a limited extent. Where regulation can be simplified, this is expected to reduce costs and improve the likelihood of compliance.

Other areas of regulation that control poisonous chemicals:

- **Workplace Health and Safety:** additional regulatory requirements originate from State WorkSafe/Workcover authorities and Safe Work Australia. The overlap here generally involves controls over storage and labelling of chemicals, including aspects such as height of storage.

- **Environment and environmental health policy:** Policy and regulatory responsibilities are split between State environment departments and authorities such as the Environment Protection Authority, plus the Commonwealth Department of Sustainability, Environment, Water, Population and Communities.

- **Transport:** federal policy in this area from Department of Infrastructure, the National Heavy Vehicle Regulator may have a role. In addition to this, workplace safety standards play a role in safety procedure. State Governments have a role

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*This has also been observed by the Australian Self-Medicating Industry Group, 2011, in response to an industry survey conducted on behalf of NCCTG.*
in transport safety through their respective road authorities and transport departments.

- **Food safety**: national standards are set by Food Safety Australia and New Zealand. States, Territories and local Governments are responsible for the regulation, compliance and enforcement of food safety standards.

- **Agricultural chemicals**: on a federal level this is regulated by the Australian Pesticides and Veterinary Medicines Authority. In the States and Territories, the relevant agricultural or primary industries regulator provides the controls over use but not over sale and supply unless the chemical is classified as a ‘restricted chemical product’.

The needs of each of the sectors covered by these regulatory schemes can differ significantly, and moreover, these schemes also vary across jurisdictions.41

In considering strategies to achieve either uniformity or less complexity in chemical controls, controls that exist in other regulatory policy areas should be taken into account. Examples of this are controls that relate to storage of Schedule 7 chemicals, and occupational health and safety controls.

There are occupational health and safety labelling controls on some substances. Recommendation 5.3 of the Productivity Commission’s *Chemical and Plastics Regulation* report stated that where these workplace controls were adequate, they should be the primary control and that no other chemical controls ought to apply. This condition being met depends on the intended field of use for the chemical. Workplace controls do not apply to domestic settings so they may not always be appropriate for Schedules 5 or 6 chemicals.

### 2.4 Considering the cost of the problem

Much of the difficulties and costs associated with inconsistent regulation lie in businesses being required to know and understand that there are different regulatory requirements in each jurisdiction in Australia.

Multiple reviews have highlighted the challenges associated with attempts to quantify the costs and benefits of chemicals regulation. This is due to the difficulty of accurately estimating the number of negative events that would have occurred in their absence. To understand the potential benefits, it is useful to note that with the current level of controls, the harm resulting from negative events caused by accidental or deliberate misuse are significant. For example, as noted by the Galbally Report, accidental and deliberate misuse of medicines and poisonous chemicals was estimated in 1998 to cause harm that has a social cost of $600

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million and could be related to as many as 40,000 hospital admissions annually.\textsuperscript{42} However, the controls within the scope of this RIS would only address a portion of these harms.\textsuperscript{43}

While industry association and industry stakeholders are generally supportive of projects to increase national consistency of regulatory regimes, it can be challenging to gather evidence of the burden on business from the inconsistencies.\textsuperscript{44} One of the purposes of the Consultation RIS was to gather any available current quantitative and qualitative evidence of the costs and benefits of the current regulatory framework and the options proposed in subsequent chapters of this report. Much of the evidence provided was qualitative. This means a calculation of net benefit from quantitative evidence was not possible.

The two main costs industry faces in the current system are the costs:

- To national businesses or businesses operating across State boundaries, which need to ensure compliance with up to eight different sets of legislation and knowledge of potential jurisdiction from other areas of policy. There were few industry stakeholders that conduct a business across state borders who were able to explain how they handle there being differing requirements in the different States and Territories. To the extent that they were able to describe their compliance strategy, they reported that the standard national practice is usually to adhere to requirements in the jurisdiction with the largest market, which is generally New South Wales. Where another jurisdiction has more stringent requirements, those requirements are addressed locally. None of the industry stakeholders who participated in the consultation were able to quantify the extent of these incremental costs.

- To State-based businesses which have to comply with potentially unnecessarily stringent controls if the controls are higher than that of other jurisdictions.

While multiple reviews have acknowledged that the current regulatory system for poisonous chemicals imposes costs to industry, government and consumers, those costs have not been able to be quantified, and nor are there specific case studies, or submissions from industry, that outline in detail the impact on business of the differences in regulatory control.

\textsuperscript{42} Galbally, R 2000, \textit{National Competition Review of Drugs, Poisons and Controlled Substances Legislation: Final Report Part A}, Canberra, p.17. More recent analysis that provides quantification of the economic and social costs of misuse associated with poisonous chemicals has not been identified.

\textsuperscript{43} The controls covered by this RIS reduce the risk of accidental misuse of poisonous chemicals, and reduce access to chemicals that may be deliberately misused, either for self-harm or to harm others. However, regulatory controls cannot completely eliminate all risks associated with deliberate misuse.

\textsuperscript{44} SA Health raised that the lack of costing evaluations to determine net benefit from legislative amendment could slow amendment processes \cite{SA_DOH_2012} in South Australia, and this may also be the case for other States and Territories through their respective regulatory assessment schemes South Australia Department of Health, Submission in response to Consultation RIS, September 2012.
The Public Health Association of Australia has noted that there is little evidence of problems that arise from non-compliance, because they argue compliance monitoring is an infrequent occurrence, which may result in breaches of regulation not being identified. On the other hand, there is concern from industry that the lack of consistency of controls encourages businesses to impose their own, overly onerous conditions across Australia, thereby increasing the regulatory burden.

The Productivity Commission noted in its report that it had received inadequate information to conduct any kind of cost-benefit analysis. The Galbally Review provided qualitative analysis of the costs of inconsistencies but did not conduct any quantitative analysis of the problem.

The Galbally Review noted that inconsistencies cause significant costs for government, industry and consumers. These costs were associated with:

- establishing and comprehending various requirements in all jurisdictions;
- complying with various requirements in all jurisdictions;
- confusion and frustration caused for consumers in identifying and using chemicals which may have different packaging and labelling; and
- costs for government from regulatory duplication and inefficiencies in administering various controls.

In addition, variations to requirements increase complexity making market entry more difficult and potentially decreasing Australia’s cost competitiveness internationally.

Whilst the Galbally Review was published in December 2000, the substantial variations in controls, as documented in this RIS, have persisted. Therefore it is a reasonable to assume that these costs still persist.

Furthermore, the 2008 Productivity Commission report supported the findings from the Galbally Review by noting that inconsistencies create costs for businesses operating across borders and, consequently, consumers.

Businesses or individuals subject to the regulatory controls relating to Schedule 7 chemicals can be identified in most jurisdictions they are required to be registered,

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50 Productivity Commission 2008, Chemicals and Plastics Regulation, Research Report, Melbourne, p. 103
licensed or otherwise authorised to be in possession or use of the chemical. The number of authorised persons for Schedule 7 chemicals in each State and Territory is included in Table 2-2 below:

Table 2-2 - Number of Schedule 7 licensees or authorised entities

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Number authorised to have, supply or use Schedule 7 chemicals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>3 research and education licences</td>
</tr>
<tr>
<td>New South Wales</td>
<td>81 authorised sellers</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>214 licences or permits issued for following sectors/uses: 117 industrial; 56 pest control; 30 retail; 8 wholesale; 3 manufacturing. Additional 89 agricultural and veterinary Schedule 7 authorisations</td>
</tr>
<tr>
<td>Queensland</td>
<td>100 licenced sellers</td>
</tr>
<tr>
<td>South Australia</td>
<td>280 sellers; 2032 purchasers(^5)(^1)</td>
</tr>
<tr>
<td>Tasmania</td>
<td>36 licences: 31 for possession and use and 5 wholesalers</td>
</tr>
<tr>
<td>Victoria</td>
<td>436 licences to sell, 292 licences to purchase or obtain</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Information not available</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,271 authorised businesses, individuals or researchers</td>
</tr>
</tbody>
</table>

Box 2.2 Difficulties in quantifying the additional burden from national inconsistency of poisonous chemical regulation

This RIS has limited costing information in the options impact analysis due to the lack of quantification of the cost to businesses that arises from the problem of a lack national harmonisation of poisonous chemical regulation. The following reviews and organisations have articulated that there is a cost arising from complexity without providing quantitative analysis to outline an estimate of the nature and magnitude of this cost.

Reviews

\(^{51}\) The number of persons authorised in South Australia to use Schedule 7 chemicals includes all licensed pest control operators and businesses. The licence permits the holder to use Schedule 5, 6 and 7 chemicals, not Schedule 7 only: some licence holders may not use Schedule 7 chemicals.


*Industry submissions*

**ACCORD**
- Response to recent industry survey
- Submission to Productivity Commission *Plastics and Chemicals Regulation issues paper*
- Submission to Productivity Commission *Plastics and Chemicals Regulation draft report*

**Australian Self-Medicating Industries**
- Response to recent industry survey

**Plastics and Chemicals Industry Association**
- Response to recent industry survey,
- Submission to Productivity Commission *Plastics and Chemicals Regulation draft report*

**Australian Chamber of Commerce and Industry**
- Submission to Productivity Commission *Plastics and Chemicals Regulation draft report*

**Australian Council of Trade Unions**
- Submission to Productivity Commission *Plastics and Chemicals Regulation issues paper*

**Public Health Association of Australia**
- Submission to Productivity Commission *Plastics and Chemicals Regulation issues paper*

**National Farmers’ Federation**
- Submission to Productivity Commission *Plastics and Chemicals Regulation issues paper*
The legislative mapping conducted in this regulatory impact analysis is the first time that regulatory controls have been comprehensively compared with each other and against the SUSMP. For this RIS, the differences in the regulatory controls for Schedules 5, 6 and 7 chemicals have been mapped and summarised. This means that options for each control can be analysed, which has been included in Chapter Four.

The current system also presents costs to consumers, passed on from businesses. It also presents some costs to government in terms of regulatory complexity and coordination. For example, poison information centres nationally received approximately 215,000 in 2010, although many of these calls relate to medicine poisoning.\(^{52}\)

Although Poison Information Centres have the potential to be a source of data on causes, locations and outcomes of poisoning, they report that they face challenges in terms of the quality and quantity of data that they collect. There is good information on poisoning events. For example, the West Australian Poisons Information Centre received 58,641 calls in 2009 and 2010 and has reported that 47.3 per cent of cases were displaying features of toxicity at that time.\(^{53}\) Of this 58,000, it has not been reported how many incidents have been due to scheduled chemicals such as Schedules 5, 6, or 7, nor where the event occurred. However they are not able to attribute that to outcomes data; and locations of poisoning events are inconsistently recorded.

### 2.5 Benefits or rationale behind maintaining variations across jurisdictions

In some circumstances, it may be justifiable that a particular jurisdiction has decided to vary their chemical scheduling or regulatory control from that of other jurisdictions in Australia.

Where jurisdictions have varying degrees of controls, we might expect to see differences in safety outcomes. For example, in the jurisdictions that have retail storage height controls that are more restrictive than other jurisdictions in terms of how the chemicals are kept, there may be fewer instances of poisonings of children in retail settings.

Consultation with stakeholders has indicated that firstly, most poisonings, especially of children, occur in the home, and secondly, information reporting and collecting at Poisons Information Centres is not such that a reliable estimation could be made on the causes of any differing levels of poisonings in the States and

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53 West Australian Poisons Information Centre, Email Correspondence, September 2012.
Territories. For example, no evidence is known to be collected that might suggest that more onerous retail storage requirements have proven to be more effective at preventing poisonings.

2.6 Rationale for government intervention in this project

The nature of the problem that this RIS is seeking to address is the inconsistency and difference in State and Territory regulation and control of chemicals. As problems arising from government regulation are the sole responsibility of Governments, Government intervention is needed to address the inconsistency and enable a consistent approach to regulation.

The results of an industry survey conducted by the NCCTG Working Group showed that there are many outcomes that could be achieved by government through working toward increasing the national consistency of regulatory controls over poisonous chemicals. Stakeholders who responded to the survey stated a wide range of benefits that they expected to occur if Governments intervened to achieve a more nationally consistent approach, some of which would occur directly due to changes considered in this RIS. The most common answers provided by industry stakeholders included:

- increased compliance and reduced business costs;
- timely and consistent investigation and enforcement of non-compliance by businesses;
- a single central and accessible contact point for matters relating to SUSMP, including interpretation and advice;
- timeliness of decision making and adoption of changes in the SUSMP; and
- enhanced reputation of the poisonous chemical regulatory system, with a perception that it is responsive and effective.

The nature of government intervention – regulatory controls

Regulatory controls are designed to avoid the occurrence of a range of negative events. The public health regulatory controls relating to chemicals were identified through the literature review, legislative and regulatory mapping and initial consultation with NCCTG members. These are:

- labelling;
- packaging;
- Appendix C: Substances, other than those included in Schedule 9, of such danger to health as to warrant prohibition of sale, supply and use. Appendix C is
a list of poisonous chemicals that are prohibited from availability, sale and supply;

- Appendix I: Uniform Paint Standard. This Appendix controls the concentrations and locations for chemicals in paints;
- Appendix J: conditions for availability and use of Schedule 7 chemicals. The role of this Appendix is to outline a list of chemicals for which users should be licensed or otherwise authorised;
- storage of Schedule 7 chemicals;
- storage of Schedule 6 chemicals;
- storage of Schedule 5 chemicals;
- disposal;
- record keeping;
- advertising; and
- hawking or supply of product samples.

This decision-making and reform process was seen by the Standing Council on Health, on the advice of the NCCTG, as an opportunity to improve the national consistency of controls of poisonous chemicals related to those of the SUSMP. This meant the scope of controls examined is somewhat broader than those in SUSMP. For example, while the SUSMP covers storage of Schedule 7 chemicals, it is silent on storage of Schedule 5 and 6 chemicals, even though this is regulated by many States and Territories. If the scope had been constrained to only those of the SUSMP, the reform process could potentially have led to consistent Schedule 7 storage requirements, while leaving Schedule 5 and 6 controls varying across jurisdictions.

Similarly, disposal of Schedules 5, 6 and 7 chemicals, record keeping of transactions involving Schedule 7 chemicals, advertising of Schedule 7 chemicals and hawking/supply of samples were also included as they are related or similar controls of chemicals that are in the scope of this project where there is inconsistency between the States and Territories on the nature and extent of regulatory control.

Public health regulatory controls in scope

As noted above, the Productivity Commission’s research report into *Chemicals and Plastics Regulation*, recommended that “States and Territories should uniformly adopt regulatory controls for chemicals through either a template or model approach, as published in the SUSMP.” Broadly speaking, a regulatory control is a limitation on the activities of firms or individuals imposed by a regulator.
Common controls of chemicals include requirements for: licensing, storage, labelling, disposal, packaging and record keeping. However, there is no uniform set of regulatory controls across Australian jurisdictions.

The Commission’s recommendation is arguably ambiguous. The extent of their intended scope of controls that were recommended to be made uniform was not explicitly defined, but focused on the SUSMP.

As described above, the Standing Council on Health, on the advice of the NCCTG, has decided, consistent with the Commission’s recommendation endorsed by COAG, to focus the scope of this project on those regulatory controls published in the SUSMP, and related control affecting disposal, record keeping, advertising and hawking.\(^{54}\)

Given the focus on the SUSMP controls, addressing the additional complex issues of variations in licensing arrangements, such as conditions for qualifying for a poisonous chemicals licence or being deemed an appropriately qualified person, and any fees associated with applying for the licence, are out–of-scope of this project.

Stakeholders, particularly those representing regulated businesses such as Accord and PACIA, supported the objective of achieving nationally consistent regulatory controls, but they have indicated that further work should be undertaken to achieve national licensing or accreditation of purchasers and users of Schedule 7 poisonous chemicals.

2.7 Rationale for government regulation of chemicals

Separately from efforts to achieve a nationally consistent approach, Commonwealth, State and Territory Governments, industry and the general public all agree that government intervention is necessary for the chemical industry. Two important reasons that it is reasonable to expect that Governments will regulate chemicals are the:

- protection of public health and safety; and
- information asymmetries that can at times exist between chemical manufacturers and users.

\(^{54}\) While Appendix J sets out a requirement that persons accessing certain substances be licensed, it does not outline how the licensing systems should work. This control has remained in the States and Territories’ jurisdiction.
The private sector may be unable to sufficiently provide protection of public health, national security and the environment from adverse effects of chemical misuse.\textsuperscript{55} Consequently, chemical regulation is centred on public health and safety.

In addition, significant information asymmetries are likely to exist concerning the nature of use of certain chemicals and the hazardous risks associated with them (toxic, explosive, corrosive or flammable).\textsuperscript{56} Many poisonous chemicals controlled by legislation could have serious, sometimes fatal consequences, and it is reasonable to assume that consumers do not have the pre-requisite knowledge to make an informed decision.\textsuperscript{57}

\textsuperscript{56} Ibid
\textsuperscript{57} Ibid
3 Objectives

The objective of this project is to improve the efficiency of this regulation by achieving greater levels of national consistency of chemical controls. This includes identifying the approach with which national consistency will be implemented, and who should be the decision-maker for controls in the future.

Regulation of chemicals creates an incentive for chemical businesses to disclose certain information and abide by certain requirements that they may not otherwise do. These requirements are intended to ensure that the net gain achieved from chemical use is maximised and that the risks to the public are minimised.

The status quo, in which there are eight different sets of regulations, gives rise to inefficiencies. This is particularly the case as this is an environment where the risks that regulation seeks to minimise are essentially the same. Review of existing arrangements has found that benefits can be achieved from harmonising parts of regulation, which will in turn increase the net benefit of chemical use to the community.

At a high level the objective of these regulations is to ensure the protection of public health and safety whilst minimising as much as possible the regulatory burden on business and government. There are a number of other objectives that achieving national consistency in this area of chemical regulation could seek to achieve. These objectives are targeted to remedy the existing problems that arise from inconsistent jurisdictional requirements.

- Decreased cost to businesses. Well designed regulations that did not impose overly onerous requirements and were nationally consistent would allow businesses operating across jurisdictions to interpret and comply with one set of regulations, thereby reducing costs.58

- Increased compliance with the regulatory framework. The current complex regulatory framework requires nationally operating businesses to comply with up to eight different sets of regulations. This is complex, time consuming and costly to businesses and carries the additional risk of intentional and unintentional non-compliance. Increased compliance should reduce risks to the public from poisonous chemicals.

- Decreased cost to consumers. National retailers may choose to simplify their supply chain management by adopting a single set of standards, which will meet the requirements of the most rigorous set of regulatory requirements. The cost

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58 One of the other ways that it can reduce the cost to business is by removing regulation where there are other sets of regulation that duplicate or overlap the effect of current poisonous chemical regulations.
of complying with the strictest standards will therefore be likely to be passed onto consumers. Agreeing on a set of nationally consistent controls that are commensurate to the risk they are addressing ought to reduce compliance costs to retailers, which may be reflected in reduced costs being passed on to consumers.

All stakeholders consulted with indicated that they agreed with the objectives as outlined in this chapter.
4 Poisonous chemical controls: options and impact analysis

This chapter details the general options available to achieve uniformity of controls for any one aspect of poisonous chemical regulation. Following the general outline, the chapter discusses each control that is in scope of this project, describing and assessing the impacts of each option and highlighting the preferred option for control. The controls that are in the scope of this project have been decided by the Standing Council on Health on the advice of the NCCTG.

4.1 Identification of options for the regulatory controls

This RIS identifies that there are six possible approaches available to the States and Territories in minimising inconsistency of each regulatory control.

States and Territories can:
1. Maintain the status quo;
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP;
3. Adopt a prescriptive control;
4. Adopt an outcome-based control;
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision; or
6. Remove the provisions of the SUSMP and any State or Territory variations, and rely on other chemical and general regulatory schemes.

**Option One: Maintain the status quo**

This option would involve making no changes from the current arrangements for a particular control. There would be no requirement for State or Territory Governments or the Commonwealth to make any change. This option retains any pre-existing inconsistency, and is considered to be a ‘base case’ for comparison with the other options. With this option, any costs or problems that are caused by national inconsistency would remain.

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59 The Productivity Commission recommendation informed COAG Agreement and the inclusion of chemicals in the National Partnership for a Seamless National Economy. It is this COAG NP that has driven the Business Regulation and Competition Working Group’s work plan. COAG set the high level scope, while SCoH have agreed the detail.
In the analysis for each regulatory control, a description of the differences between the States and Territories is provided where relevant. This description is based on detailed mapping of the regulatory requirements for poisonous chemicals in each State and Territory, which is provided as an addendum to the RIS at Appendix B.

**Option Two: Implement provisions in the SUSMP**

One option available for all controls is that the States and Territories simply reflect or refer to the provisions of the SUSMP in their own legislation. Initial analysis of the regulation of poisonous chemicals in the States and Territories indicates that this would likely constitute a reduction in the regulatory burden on the chemicals sector.

Depending on the legislative or regulatory approach that is used to implement the provisions, there is still a risk that States and Territories will implement the control differently.

To agree to implement the SUSMP as it is written, the decision makers would need to be confident that the SUSMP outlines a reasonable level of control or advice for managing poisonous chemicals, and that it does so in a way that delivers a net benefit while still adequately managing risk.

**Option Three: Adopt a prescriptive control**

For this option, States and Territories would agree to the specific requirements for a particular control. The main benefit from prescriptive controls would be clear requirements that industry must follow in order to comply. Conversely, this option allows less flexibility to business to decide how to comply in a manner that suits their individual needs.

**Option Four: Adopt an outcome-based control**

States and Territories would agree on the outcome that a regulatory control is seeking to achieve. This outcome would be stated, and business would be able to decide how to achieve the outcome.

**Option Five: Adopt an outcome-based control, that contains a prescriptive ‘deemed to satisfy or comply’ provision**

This option would see the regulatory control set as an outcome-based standard, with an additional provision or guideline included to outline the specific activities businesses could do to comply with the standard. This would offer businesses the option of either complying with a prescriptive black-letter requirement, or to achieve the intended outcome in a flexible manner.

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60 This is the regulatory model adopted in the National Construction Code.
Option Six: Remove the provisions of the SUSMP and any State or Territory variations

States and Territories could agree to remove regulatory controls on poisonous chemicals. This would be a ‘zero public health regulation’ option. Where there is regulatory duplication or overlap from another chemical regulatory framework such as occupational health and safety or food standards, that regulatory control would continue to apply. In some cases this may not be seen as a viable option for chemical regulation, as there is a general consensus that poisonous chemicals ought to be subject to regulatory controls in areas where the other regimes do not apply. Government and industry stakeholders are more concerned about the complexity of poisonous chemical regulation, rather than whether there should be regulation or not.

Consultation with stakeholders indicated that they supported the approach taken to identify the viable options for achieving national consistency of controls.

To decide to remove any controls, States and Territories would require evidence that the particular control – or its absence – would not make a material difference to public health and safety outcomes.61

Removing a control may not remove all regulation over a particular activity or requirement, as there is some overlap and duplication of poisonous chemical regulation. The regulatory framework may be simplified and streamlined if some regulation that is currently imposed by chemicals and poisons legislation located in health departments is removed and other controls (for example workplace controls over labelling and storage of chemicals) are allowed to be the controlling instrument.

For removal of controls to be the preferred option, decision makers would need to be confident that the other area of regulation (for example, occupational health and safety, consumer product safety regulation62 or environmental health regulation) is able to provide the appropriate level of control in an efficient and effective manner. Policy and decision-makers in that area would also need to be appropriately qualified to offer advice on particular issues concerning chemicals.

The following sections of this paper outline each of the key controls that regulate the use of poisonous chemicals. It includes a description of each control, followed by detailed analysis of the differences between the States and Territories. The

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61 A precautionary principle may support regulatory instrument development in circumstances where uncertainty exists about the nature and extent of risk.

62 Consumer product safety is regulated by State and Territory consumer regulators and the Commonwealth’s Australian Competition and Consumer Commission. This national regulatory scheme covers chemicals for some (but not all) consumer products. A gap that has been identified household chemicals - the ACCC identifies that the NDPSC (sic) is the specific regulator for that class of product. See http://www.productsafety.gov.au/content/index.phtml/itemId/970225 [accessed 18 March 2012]
costs and benefits of each of the six options identified above for achieving greater national consistency are then considered, followed by an indicative impact analysis. After identifying the preferred option for each regulatory control, Chapter Five identifies and analyses the impact of governance and decision-making options for implementing the preferred regulatory controls.

4.2 Impacts on stakeholder groups

This section summarises the general impacts that the options will have on each of the three key stakeholder groups. These impacts are described and discussed for each option for each control in the remainder of this chapter.

Industry

For many of the options described in this RIS, the option is deregulatory and so the impact is that there is a reduction in the compliance burden on affected businesses.

Where options stipulate that there will be a regulatory change that increases the level of regulation, businesses may be affected. The general types of activities that businesses may be required to do would include:

- **Physical environment** – where there is an additional storage requirement businesses may have to amend their retail display fittings to comply. While this would require in most cases ensuring that a chemical is located at the correct height, there may be changes required to the physical fittings of a shop to achieve this objective.

- **Software and other systems** – changes may require that businesses implement or modify their software or other IT systems (particularly, relating to record keeping controls).

- **Education impacts** – there may be a requirement for employers to conduct briefing or amend staff training sessions. The educational or briefing requirements would be an impact for all options identified in this RIS however, it is also a key part of the problem of the current national inconsistency (for example, businesses investing time in understanding the different requirements across jurisdictions).

- **Administrative impacts** – for example, if there were a greater level of record-keeping required for businesses, or a need to revise internal procedures and guidance, this would have an impact at the margin on a business’ administrative effort.
Consumers

The impact on consumers of the regulatory controls presented in this RIS is not able to be calculated, however it is expected to be minimal. The controls considered as a part of this RIS are not controls that directly regulate the activity of consumers, but rather may impose small additional costs on well run businesses. To the extent that the options considered in this RIS, and in particular the preferred options, impose any small additional costs, these would be offset by the reduced need for businesses operating across borders to understand the variations in controls.

National consistency is not expected to achieve any substantial reduction in costs that would be passed onto consumers but is anticipated to make it easier for industry and consumers to educate themselves about appropriate controls for chemicals, which could lead to improved health and safety outcomes for consumers.

Government

Cost of regulatory change

The one-off cost of implementing the legislative and regulatory changes to introduce control decisions from this RIS are not expected to be substantial and are expected to be resourced by a re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if the national harmonised controls are amended as it would be anticipated that these would be done once nationally, rather than by each of the eight States and Territories.

Compliance

The preferred options outlined in this RIS are not expected to result in any changes to a jurisdictions regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Compliance effort is targeted on where there is significant or potential significant public health harm. Each jurisdiction’s systems and decisions on compliance are based on government and departmental priorities, and are not dependent on the small changes in the individual regulatory controls.

Compliance is typically carried out on both a proactive and a reactive basis. Proactive compliance activities tend to be structured programs of inspections and education activities to alert businesses and industry groups to emerging issues or changes in regulation. Reactive compliance typically occurs following a complaint being made about a product or chemical, or an incident that occurs involving a chemical. The changes in controls in some jurisdictions as a consequence of
introducing national consistency is not expected to change the level of resourcing devoted to public health, or the compliance program of any jurisdiction.

4.3 Storage of Schedule 5 chemicals

Storage controls prescribe the location that poisonous chemicals must be kept and who should be able to access the poisonous chemicals in a retail environment. This and the next two sections describe and analyse possible options to achieve uniformity for controls of Schedules 5, 6 and 7 chemicals respectively.

Standardising retail storage of Schedules 5 and 6 chemicals has been considered and analysed by the NDPSC, the NCCTG and industry over a number of years. However, no resolution has been reached and there remain differences between the States and Territories. Schedules of poisonous chemicals with greater toxicity may require relatively more stringent controls due to increased risk associated with their storage.

Purpose of the regulatory control

The focus of requirements for retail storage of Schedule 5 chemicals is to control access to these poisonous chemicals in a retail environment. In particular, the outcome sought is to prevent access to poisonous chemicals by children.

Businesses affected by this control

Table 4-A identifies the main business types that are likely to be affected by the Schedule 5 chemicals storage controls. Changes to the control Storage of Schedule 5 chemicals could affect up to 68,000 Australian businesses across all States and Territories, with New South Wales and Victoria being home to almost 60 per cent of potentially affected businesses. The highest business count for businesses likely to be affected by changes to this control are for supermarket and grocery stores, automotive repair retailers, and hairdressing and beauty services, which together make up 61 per cent of the total business areas likely to be affected. The following table shows a breakdown of the number of affected business areas by jurisdiction.

Table 4-A: Number of business types that are likely to be affected by storage control for Schedule 5 chemicals

<table>
<thead>
<tr>
<th>Main affected business areas</th>
<th>Business count by jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Nursery Production (Under Cover)</td>
<td>9</td>
</tr>
<tr>
<td>Nursery Production (Outdoors)</td>
<td>4</td>
</tr>
</tbody>
</table>
National Coordinating Committee on Therapeutic Goods
Strategies to implement a national approach to poisonous chemical controls
November 2012

Options for the regulatory control
The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations [Preferred Option]

Main affected business areas | Business count by jurisdiction
--- | ---
| ACT | NSW | NT | QLD | SA | TAS | VIC | WA | AUS |
Retail - Fuel Retailing | 32 | 1411 | 42 | 791 | 251 | 169 | 880 | 343 | 3919 |
Retail - Supermarket and Grocery Stores | 122 | 3359 | 117 | 1900 | 546 | 306 | 2896 | 754 | 10000 |
Retail - Houseware Retailing | 19 | 631 | 3 | 337 | 111 | 41 | 496 | 184 | 1822 |
Retail - Garden Supplies Retailing | 26 | 844 | 32 | 588 | 256 | 90 | 827 | 343 | 3006 |
Retail - Sport and Camping Equipment Retailing | 54 | 1191 | 25 | 875 | 254 | 121 | 946 | 477 | 3943 |
Retail - Marine Equipment Retailing | 6 | 281 | 9 | 356 | 46 | 20 | 167 | 146 | 1031 |
Retail - Watch and Jewellery Retailing | 35 | 1138 | 29 | 624 | 206 | 59 | 734 | 266 | 3091 |
Retail - Department Stores | 3 | 71 | 6 | 30 | 11 | 9 | 53 | 12 | 195 |
Retail - Pharmaceutical, Cosmetic and Toiletry Goods Retailing | 107 | 2854 | 36 | 1530 | 556 | 195 | 1765 | 893 | 7936 |
Retail - Automotive Body, Paint and Interior Repair | 108 | 3637 | 97 | 2587 | 877 | 204 | 3039 | 1255 | 11804 |
Personal and Other Services - Hairdressing and Beauty Services | 317 | 6951 | 107 | 3988 | 1458 | 388 | 4708 | 1889 | 19806 |
Total | 842 | 22809 | 530 | 13969 | 4672 | 1653 | 16847 | 6689 | 68011 |

Source: Affected business types were identified by public health officials, and numbers of businesses are from Australian Bureau of Statistics (2011) Counts of Australian Businesses, including Entries and Exits, Jun 2007 to Jun 2011, Report. 8165.0.
Storage of Schedule 5 chemicals - Option One: Maintain the status quo

The status quo at present for retail storage of Schedule 5 chemicals is that there is no requirement contained in the SUSMP. However there is some inconsistency as South Australia, Queensland and Western Australia have specific storage requirements for Schedule 5 chemicals.

Five of the eight jurisdictions do not currently specify controls. There is no evidence to suggest that having storage controls for Schedule 5 chemicals leads to more beneficial outcomes in terms of poisonings in the three jurisdictions where the controls do exist.63

The Northern Territory has two provisions that make it an offence to drink methylated spirits or supply methylated spirits to someone while having reasonable cause to believe it is intended to be used for drinking purposes. This control does not apply to other Schedule 5 chemicals.64

The costs of this option are the continuation of the existing problems outlined in the problem section of this RIS. Some of these include associated costs of inconsistency between jurisdictions such as compliance costs for multi-jurisdictional businesses, costs of time devoted to understanding the differences in controls between jurisdictions.

Analysis of this option has not identified any clear benefits of continuing the status quo.

Impact on Industry

Three States currently apply controls to storage of Schedule 5 chemicals in retail premises. Industry have reported that there is no evidence of a greater number of incidents from children accessing Schedule 5 chemicals in retail stores in the States that do not have these controls.

Shelf space that is above child reach is considered premium retail shelf space and retailers often charge extra for suppliers to display their products there. In those States that do have controls, companies with finite budgets may be required to pay the premium for shelf space for their products above spending money on product based controls (i.e. child resistant packaging). The extent of the cost impact is not expected to be high. The physical changes that a shop might be required to make would be minor. In most cases it is expected that a shop will have appropriate

63 ACCORD 2011, Response to industry Survey.
64 The NT Chief Health Officer has requested that NT Government include a separate regulation for the storage of methylated spirits (a Schedule 5 substance) by retailers in NT’s new regulations (in draft). (Source: NT Department of Health, Email correspondence, September 2012)
shelving already, particularly if they are retailing products with Schedule 6 chemicals.

During the consultation, industry associations and businesses were unable to provide specific data on the cost associated with extra shelf space payments or changed packaging. Companies that operate nationally reported that they have not experienced any incidents in retail stores and that they did not see a need for the control for Schedule 5 chemicals. Stakeholders reported that the current system makes it difficult for a national wholesaler providing goods in all jurisdictions to ensure compliance in those states and territories that have requirements.

Businesses in the retail industry that operate in either South Australia, Queensland and Western Australia are subject to more stringent regulation, therefore are likely to be affected by the status quo. There are up to approximately 25,000 retail businesses operating in South Australia, Queensland and Western Australia that may be subject to regulation of Schedule 5 chemicals.

In addition, businesses that operate across jurisdictions have an education impact, as they are required to understand and adhere to multiple sets of regulation, and are therefore affected by the status quo.

Impact on Consumers

Business stakeholders have been unable to quantify the cost of complying with existing controls or accommodating differences.

To the extent there are costs associated with maintaining the status quo, these would continue to be passed on to consumers in higher prices.

Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

Jurisdiction-specific impacts

Queensland, Western Australia and South Australia’s controls currently also address food contamination issues. In other jurisdictions, food safety legislation or workplace safety legislation relating to food and chemicals has provided sufficient protection from food contamination. There is no evidence to suggest that there are inferior public health outcomes in jurisdictions that do not currently deal with food contamination issues in current poisonous chemical regulation. Retaining food contamination controls in storage requirements would contribute to regulatory
duplication. This view was supported by a government stakeholder, who noted that the control is intended to prevent contamination, while the point of enforcement for food safety legislation lies after contamination as it prevents sale of contaminated food or beverages.

The reason that poisons regulations duplicate food safety regulation in some jurisdictions is unclear, but may be historical. All jurisdictions now have food safety laws and regulations, which is considered the appropriate regulatory framework to deal with such contamination issues.

This option retains any pre-existing inconsistency, as well as the associated costs of the inconsistency and is considered to be a ‘base case’ for comparison with the other options.

The impact of the status quo was illustrated by a cosmetic industry stakeholder. The current varying storage requirements for Schedule 5 chemicals have a time impact on them. The company releases a new planogram\(^\text{65}\) for retailers twice a year, in order to take into account new and changed product lines. There are 10 retail companies that the cosmetic company sells to. The cosmetic company reported that at each planogram release, the Scientific Manager is required to spend time explaining the different requirements for particular States and Territories to the retailers. The communication time involves responding to multiple emails from each retailer, and conducting phone conversations with retailers to further explain requirements and differences.

**Conclusion**

This option is not preferred as it retains national inconsistency as well as some regulatory duplication for businesses that operate in Queensland, Western Australia and South Australia.

**Storage of Schedule 5 chemicals - Option Two: Implement the provisions of the SUSMP**

This option would involve the States and Territories implementing any provision in the SUSMP relating to storage of Schedule 5 chemicals.

There are no suggested regulatory controls over retail storage of Schedule 5 chemicals contained in the SUSMP.

Implementing this option would require that all States and Territories do not have any controls over retail storage of Schedule 5 chemicals – therefore Queensland, Western Australia and South Australia would consequently have to remove existing

\(^{65}\) A diagram or model that indicates the placement of retail products on shelves in retail stores, this is distributed by cosmetic brands to their retailers.
controls. This option is essentially the same as Option Six: Remove the provisions of the SUSMP and any State or Territory variations.

*Impact on Industry*

There are no additional costs to industry across Australia associated with this option. For industries that operate where there are prescriptive storage controls, the change may represent a reduction in regulatory burden due to greater flexibility, and thus reduced compliance cost. This would affect approximately 25,000 retail businesses in Western Australia, South Australia and Queensland.

*Impact on Consumers*

There are expected to be small savings to businesses that operate in the jurisdictions where there are controls – Western Australia, South Australia and Queensland – as a result of the removal of controls in those jurisdictions. These savings would be expected to ultimately be passed on to consumers in lower prices. These savings are unquantifiable but expected to be small.

There is no evidence of a benefit from reduced poisoning in retail settings in those jurisdictions with controls compared to those jurisdictions without controls. Therefore, removing these controls in the jurisdictions where they exist is not expected to adversely affect consumers.

This option is expected to have a minimal and unquantifiable impact on consumers.

*Impact on Government*

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

While several large jurisdictions do not have any regulatory controls in this area, there has been no evidence identified indicating jurisdictions with more stringent regulatory controls relating to storage in a retail or wholesale environment have more positive health outcomes in terms of preventing poisonings than jurisdictions without prescriptive controls.
Conclusion

This option is effectively the same as Option Six: Remove the provisions from the SUSMP and any State or Territory variations, which is the preferred option.

Storage of Schedule 5 chemicals - Option Three: Adopt a prescriptive control

This option would involve outlining specific requirements for the regulatory control, for example, along the lines of those currently in place in South Australia. South Australia’s current model is a feasible option for a prescriptive control due to it stating specific limitations on height and nature of retail storage. Specific requirements would relate to elements such as the height at which chemicals should be stored, and the public accessibility of storage areas. This would be a new control for five of the eight jurisdictions in Australia, and an increased level of detail in the regulatory control for businesses in Queensland and Western Australia.

Impact on Industry

This option would represent less flexibility than exists currently for businesses in all States and Territories (except South Australia) in how they achieve the intended policy outcome. The main benefit would be clear requirements that industry must follow in order to comply. Compliance would be a ‘tick-the-box’ exercise that requires little interpretation or margin for error.

The impact of this option is increased regulation for retail businesses that operate in New South Wales, Victoria, Tasmania, Northern Territory and Australian Capital Territory. This represents approximately 42,000 businesses out of an Australian total of 68,000 potentially affected businesses. There would be an increased level of detail in the regulation of businesses in Queensland and Western Australia, which number approximately 21,000 businesses.

Impacts on industry are largely on retailers who would be required to change how their merchandise is displayed. They would be required to either move products with a Schedule 5 chemical to a higher location, or, where their shelving is not high enough, they would be required to install new shop fittings so that the shelving they have is compliant.

The extent of the cost impact is not expected to be high. The physical changes that a shop might be required to make would be minor. In most cases it is expected that a shop will have appropriate shelving already, and will be affected because they have to ensure that the products are displayed at an appropriate height.

While there is a possible benefit from a prescriptive control being straightforward to comply with (although this was not raised by industry stakeholders for Schedule 5 chemicals), there is no evidence to suggest that regulated retail storage of Schedule 5 chemicals leads to improved public health outcomes.
For this more costly regulation to be warranted there would need to be an evidence base that suggests it would be the most cost-effective control.

**Impact on Consumers**

There would be small increased costs to businesses that operate in the jurisdictions where there are no controls – the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria – as a result of the implementation of controls in those jurisdictions. These small increases in cost would be expected to ultimately be passed on to consumers in higher prices.

There is no evidence of a benefit from reduced poisoning in retail settings in those jurisdictions with controls compared to those jurisdictions without controls. Therefore, removing these controls in the jurisdictions where they exist is not expected to adversely affect consumers.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that these would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred as it is considered that being this prescriptive would impose an undue regulatory burden on business. It would represent an increase or change in the regulatory burden for seven jurisdictions, five of which have no retail storage requirements for Schedule 5 chemicals, while delivering no clear benefits.

**Storage of Schedule 5 chemicals - Option Four: Adopt an outcome-based control**

The regulatory control would require that businesses which store chemicals achieve the objective of preventing access to children by stating that poisonous chemicals be stored in a manner that ‘precludes access to the poison by children’, but does not prescribe how this should be achieved (along the lines of the control currently in place in Western Australia or Queensland).

Western Australian or Queensland regulations are a feasible model for an outcome-based control as they both contain a high level statement that indicates that
businesses are required to achieve the objective of keeping chemicals out of reach of children without specifying the precise method for affected businesses to do this.

**Impact on Industry**

This option would only impose costs and an additional regulatory burden on industry to the extent that there were businesses that would otherwise not control public or children’s access to poisonous chemicals. This regulatory control would not seem to impose a material additional cost, as it would likely align with standard business practices.

There are other drivers behind the safe-keeping of chemicals. Not having any controls over children’s access to poisonous chemicals may expose businesses to consequences such as reputation risks and private litigation.

A benefit from outcome-based regulation is that it would allow business to comply with the purpose of the regulation in the manner they see fit.

Impacts on industry are largely on retailers who would be required to change how their merchandise is displayed. They may be required to either ensure / move products with a Schedule 5 chemical to a higher location, or, where their shelving is not high enough, they would be required to install new shop fittings so that the shelving they have is compliant. The extent of the cost impact is not expected to be high. The physical changes that a shop might be required to make would be minor. In most cases it is expected that a shop will have appropriate shelving already, particularly if they are also retailing products with Schedule 6 chemicals. Retailers will be affected because they have to ensure that the products are displayed at an appropriate height.

L’Oreal, a cosmetics company, reported that an outcome based control may lead to businesses having a more conservative interpretation and it may be preferable to have a more prescriptive control. If not a more prescriptive control, stakeholders suggested that an industry-generated guideline would be useful as this would provide certainty and clarity.

The impact of this option is increased regulation for retail businesses that operate in New South Wales, Victoria, Tasmania, Northern Territory and Australian Capital Territory. This represents up to 42,000 businesses out of an Australian total of approximately 68,000 potentially affected businesses.

For businesses in South Australia this option would represent a change from prescriptive to outcome-based regulation, therefore potentially decreasing the regulatory burden on both small and large retail businesses, of which there are approximately 4,600.
Impact on Consumers

There would be small increased costs to businesses that operate in the jurisdictions where there are no controls – the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria – as a result of the implementation of controls in those jurisdictions. These small increases in cost would be expected to ultimately be passed on to consumers in higher prices.

There is no evidence of a benefit from reduced poisoning in retail settings in those jurisdictions with controls compared to those jurisdictions without controls. Therefore, removing these controls in the jurisdictions where they exist is not expected to adversely affect consumers.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that these would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

While this option may achieve greater national consistency than the status quo, it is not preferred. It would represent a higher burden of regulation for five of the eight jurisdictions. No evidence has been identified that indicates that Western Australia, which has an outcome-based control, has better public health outcomes that could be attributed to the storage of Schedule 5 chemicals than that of jurisdictions without controls or worse outcomes than those jurisdictions with more prescriptive controls.

Storage of Schedule 5 chemicals - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy provision

This option would see storage control set as an outcome-based standard, with an additional provision included to outline the specific activities businesses could do to comply with the standard. This option would offer businesses the option of either complying with a prescriptive black-letter requirement, or to comply with the intended outcome in the manner they saw fit.
Impact on Industry

This option would impose a regulatory cost on businesses that operate in jurisdictions that do not currently have any storage requirements for Schedule 5 chemicals.

The impact of this option is increased regulation for retail businesses that operate in New South Wales, Victoria, Tasmania, Northern Territory and Australian Capital Territory. This represents up to 42,000 businesses out of an Australian total of approximately 68,000 potentially affected businesses.

Impacts on industry are largely on retailers who would be required to change how their merchandise is displayed. They would be required to either ensure/move products with a Schedule 5 chemical to a higher location, or, where their shelving is not high enough, they would be required to install new shop fittings so that the shelving they have is compliant. The extent of the cost impact is not expected to be high. The physical changes that a shop might be required to make would be minor. In most cases it is expected that a shop will have appropriate shelving already, particularly if they are also retailing products with Schedule 6 chemicals. Retailers will be affected because they have to ensure that the products are displayed at an appropriate height.

For businesses in South Australia this option would represent a change from prescriptive regulation to outcome-based with a deemed to comply or satisfy provision, therefore providing greater flexibility to both small and large retail businesses of which there are approximately 4,600. This could be considered a reduction of the level of regulation, although the reduction would in practice be relatively minimal.

However, much of this cost would seem to align with standard business practices, as not controlling children’s access to poisonous chemicals may expose businesses to consequences such as reputation risks and private litigation.

Impact on Consumers

There would be small increased costs to businesses that operate in the jurisdictions where there are no controls – the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria – as a result of the implementation of controls in those jurisdictions. These small increases in cost would be expected to ultimately be passed on to consumers in higher prices.

There is no evidence of a benefit from reduced poisoning in retail settings in those jurisdictions with controls compared to those jurisdictions without controls. Therefore, removing these controls in the jurisdictions where they exist is not expected to adversely affect consumers.
Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that these would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option offers both certainty and flexibility to businesses, depending on how they choose to comply with the requirements. However, it is not preferred as depending on the extent of the prescriptive ‘deemed to comply provisions’ it would increase the complexity of regulation, without delivery of any clear benefits to industry or consumers.

Storage of Schedule 5 chemicals - Option Six: Remove the provisions of the SUSMP and any State or Territory variations [Preferred Option]

This option would mean that there are no explicit regulatory controls over the storage of Schedule 5 chemicals. This would be consistent with the five jurisdictions that currently have no controls over retail storage of poisonous chemicals, which affect up to approximately 60 per cent of likely affected retail businesses.

Impact on Industry

There are no additional costs to industry across Australia associated with this option. For industries that operate where there are prescriptive storage controls, the change may represent a reduction in regulatory burden due to greater flexibility, and thus reduced compliance cost. This would affect 25,000 retail businesses in Western Australia, South Australia and Queensland. The extent of the cost savings is expected to be small, as there are not high costs associated with retail storage or with minor changes to a retail fit-out.

Several large jurisdictions do not have any regulatory controls in this area: there has been no evidence identified indicating jurisdictions with more stringent regulatory controls relating to storage in a retail or wholesale environment have more positive health outcomes in terms of preventing poisonings than jurisdictions without prescriptive controls.
Accord reported that in most jurisdictions, Schedule 5 chemicals are not subject to storage controls and that there is no evidence that this is causing any problem.

For this reason Accord, PACIA and the members that were interviewed, were strongly of the view that there was no need for the three jurisdictions with controls on Schedule 5 chemicals to retain them. Stakeholders reported that height requirements that have been imposed mean that some cosmetic companies are required to pay retailers more for their stock to be displayed, as the required higher shelves attract a premium fee.

**Impact on Consumers**

There are expected to be small savings to businesses that operate in the jurisdictions where there are controls – Western Australia, South Australia and Queensland – as a result of the removal of controls in those jurisdictions. These savings would be expected to ultimately be passed on to consumers in lower prices. These savings are expected to be small and unquantifiable.

There is no evidence of a benefit from reduced poisoning in retail settings in those jurisdictions with controls compared to those jurisdictions without controls. Therefore, removing these controls in the jurisdictions where they exist is not expected to adversely affect consumers.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that these would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Indicative impact of each option on stakeholder groups**

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>-</td>
<td>↓</td>
<td>↑ (except SA)</td>
<td>↑ (except WA, SA, QLD)</td>
<td>↑ (except WA, SA, QLD)</td>
<td>↓</td>
</tr>
<tr>
<td>Consumers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Government</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Jurisdictional impact

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for storage of Schedule 5 chemicals by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>-</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
</tr>
<tr>
<td>4</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>-</td>
<td>-</td>
<td>↑</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>5</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>↑</td>
<td>-</td>
</tr>
<tr>
<td>6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>↓</td>
<td>↓</td>
<td>-</td>
<td>-</td>
<td>↓</td>
</tr>
</tbody>
</table>

Consultation

Industry association stakeholders Accord and PACIA reported that their preferred option was option six. Industry stakeholders L’Oreal and Revlon were of the view that the status quo does impose additional cost and, more importantly, additional complexity for national businesses.

Stakeholders consulted noted that there seemed to be little evidence that controls for storage of Schedule 5 chemicals is necessary. They reported that they had never experienced a poisoning incident from any of their products.

Conclusion

Option Six is the preferred option. Instead of retail storage controls, for Schedule 5 chemicals the principal controls are labelling or packaging, which have been demonstrated as being effective at preventing accidental poisoning in a domestic setting.66

This option will assist to achieve national consistency and will also represent a decrease in regulatory requirements in three jurisdictions.

---

4.4 Storage of Schedule 6 chemicals

Purpose of the regulatory control

The focus of the regulation of storage of Schedule 6 chemicals is to control access to poisonous chemicals by children.

Industry is supportive of industry self-regulation for retail storage rather than government regulation. However the NCCTG considered that as Schedule 6 chemicals present a different set of risks from Schedule 5 chemicals, it was reasonable to have a graduated set of requirements for retail storage.

Chemicals contained in Schedule 6 are often in common use however they are still quite toxic to children, adults and animals alike, making careful storage of products containing these chemicals necessary. Examples of chemicals in Schedule 6 include arsenic, ammonia, nicotine and bay oil and an assortment of household insecticides such as allethrin, camphor, naphthalene and mothballs. Due to their greater level of toxicity and potential harm that would be caused by their ingestion, these chemicals are required to be labelled with the recommendation that they be ‘Kept out of Reach of Children’. While storage in a domestic setting cannot be directly regulated by Government, retailers can be required to store the chemicals out of reach of children, in line with the recommendations for consumers.

Businesses affected by the control

Changes to the control Storage of Schedule 6 chemicals could affect up to 68,000 Australian businesses across all States and Territories, with New South Wales and Victoria being home to almost 60 per cent of potentially affected businesses. The highest business count for businesses likely to be affected by changes to this control are for supermarket and grocery stores, automotive repair retailers, and hairdressing and beauty services, which together make up 61 per cent of the total business areas likely to be affected. Table 4-B shows a breakdown of the number of affected business areas by jurisdiction.

Table 4-B: Number of businesses likely to be affected by storage control for Schedule 6 chemicals

<table>
<thead>
<tr>
<th>Main affected business areas</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
<th>WA</th>
<th>AUS</th>
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</thead>
<tbody>
<tr>
<td>Nursery Production (Under Cover)</td>
<td>9</td>
<td>177</td>
<td>12</td>
<td>150</td>
<td>27</td>
<td>17</td>
<td>107</td>
<td>42</td>
<td>541</td>
</tr>
<tr>
<td>Nursery Production (Outdoors)</td>
<td>4</td>
<td>264</td>
<td>15</td>
<td>213</td>
<td>73</td>
<td>34</td>
<td>229</td>
<td>85</td>
<td>917</td>
</tr>
<tr>
<td>Retail - Fuel Retailing</td>
<td>32</td>
<td>1411</td>
<td>42</td>
<td>791</td>
<td>251</td>
<td>169</td>
<td>880</td>
<td>343</td>
<td>3919</td>
</tr>
</tbody>
</table>
### Main affected business areas

<table>
<thead>
<tr>
<th>Business count by jurisdiction</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
<th>WA</th>
<th>AUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail - Supermarket and Grocery Stores</td>
<td>122</td>
<td>3359</td>
<td>117</td>
<td>1900</td>
<td>546</td>
<td>306</td>
<td>2896</td>
<td>754</td>
<td>10000</td>
</tr>
<tr>
<td>Retail - Houseware Retailing</td>
<td>19</td>
<td>631</td>
<td>3</td>
<td>337</td>
<td>111</td>
<td>41</td>
<td>496</td>
<td>184</td>
<td>1822</td>
</tr>
<tr>
<td>Retail - Garden Supplies Retailing</td>
<td>26</td>
<td>844</td>
<td>32</td>
<td>588</td>
<td>256</td>
<td>90</td>
<td>827</td>
<td>343</td>
<td>3006</td>
</tr>
<tr>
<td>Retail - Sport and Camping Equipment Retailing</td>
<td>54</td>
<td>1191</td>
<td>25</td>
<td>875</td>
<td>254</td>
<td>121</td>
<td>946</td>
<td>477</td>
<td>3943</td>
</tr>
<tr>
<td>Retail - Marine Equipment Retailing</td>
<td>6</td>
<td>281</td>
<td>9</td>
<td>356</td>
<td>46</td>
<td>20</td>
<td>167</td>
<td>146</td>
<td>1031</td>
</tr>
<tr>
<td>Retail - Watch and Jewellery Retailing</td>
<td>35</td>
<td>1138</td>
<td>29</td>
<td>624</td>
<td>206</td>
<td>59</td>
<td>734</td>
<td>266</td>
<td>3091</td>
</tr>
<tr>
<td>Retail - Department Stores</td>
<td>3</td>
<td>71</td>
<td>6</td>
<td>30</td>
<td>11</td>
<td>9</td>
<td>53</td>
<td>12</td>
<td>195</td>
</tr>
<tr>
<td>Retail - Pharmaceutical, Cosmetic and Toiletry Goods Retailing</td>
<td>107</td>
<td>2854</td>
<td>36</td>
<td>1530</td>
<td>556</td>
<td>195</td>
<td>1765</td>
<td>893</td>
<td>7936</td>
</tr>
<tr>
<td>Retail - Automotive Body, Paint and Interior Repair</td>
<td>108</td>
<td>3637</td>
<td>97</td>
<td>2587</td>
<td>877</td>
<td>204</td>
<td>3039</td>
<td>1255</td>
<td>11804</td>
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<tr>
<td>Personal and Other Services - Hairdressing and Beauty Services</td>
<td>317</td>
<td>6951</td>
<td>107</td>
<td>3988</td>
<td>1458</td>
<td>388</td>
<td>4708</td>
<td>1889</td>
<td>19806</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>842</strong></td>
<td><strong>22809</strong></td>
<td><strong>530</strong></td>
<td><strong>13969</strong></td>
<td><strong>4672</strong></td>
<td><strong>1653</strong></td>
<td><strong>16847</strong></td>
<td><strong>6689</strong></td>
<td><strong>68011</strong></td>
</tr>
</tbody>
</table>

*Source: Affected business types were identified by public health officials, and numbers of businesses are from Australian Bureau of Statistics (2011) Counts of Australian Businesses, including Entries and Exits, Jun 2007 to Jun 2011, Report. 8165.0.*

### Options

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control
4. Adopt an outcome-based control [Preferred Option]
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations
Options analysis

Storage of Schedule 6 chemicals - Option One: Maintain the status quo

The costs of this option are the continuation of the existing problems outlined in the problem section of this RIS. Some of these include associated continued costs of inconsistency between jurisdictions such as compliance costs for multi-jurisdictional businesses and the costs of time devoted to understanding the different requirements in different jurisdictions.

Maintaining the status quo would continue a level of national inconsistency and the associated costs of national inconsistency.

Analysis of this option has not identified any clear benefits from continuing the status quo.

Impact on Industry

The impact of the status quo is most prominently on industry stakeholders, particularly businesses that operate across state borders in the retail industry. Industry reported that as for Schedule 5 chemicals, not all States and Territories have controls in place for storage of Schedule 6 chemicals in retail spaces. They noted that Schedule 6 chemicals would pose a higher risk than Schedule 5 chemicals and that this may warrant some control.

Businesses in the retail industry that operate in New South Wales, South Australia, Queensland and Western Australia are affected by a higher level of regulation than businesses in other States or Territories. This is approximately 50,000 of retail businesses likely to be affected. The extent of the cost impact is not expected to be high. The physical changes that a shop might now be required to make would be minor. In most cases it is expected that a shop will have appropriate shelving already, and will be affected because they have to ensure that products are at an appropriate height.

In addition, businesses that operate across jurisdictions have an education impact, as they are required to understand and adhere to multiple sets of regulation and are therefore likely to be affected by the status quo.

Impact on Consumers

Business stakeholders have been unable to quantify the cost of complying with existing controls or accommodating differences. The extent of the cost impact is expected to be small, as there are not high costs associated with retail storage or with minor changes to a retail fit-out.

To the extent there are costs, these would be expected to continue to be passed on to consumers in higher prices.
Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

Jurisdiction specific impacts

There are specific regulatory requirements affecting approximately 50,000 businesses that operate in New South Wales, South Australia, Queensland and Western Australia. Western Australian and Queensland require that poisonous chemicals are kept out of the reach of children and that they are stored in a way that does not allow contamination of any food, drink, condiment or any other substance intended for human or animal (Queensland only) use. New South Wales and South Australian regulations are outcome focused and provide that Schedule 6 chemicals are kept out of reach from children and are not accessible to the public. South Australia also has an exemption from their storage requirements for Schedule 6 hair dyes in retail premises.

Approximately 9,000 businesses in the Australian Capital Territory, Northern Territory, Tasmania and Victoria are not subject to any specific controls in this area.

The inconsistencies tend to exist because each State and Territory’s legislative and regulations have been developed and redeveloped over a long period of time and subject to local pressures. These jurisdictions will have food safety regulations and legislation that should be sufficient to protect food health and safety. However, continuing this practice may not be appropriate or aligned to the COAG objectives of creating a seamless economy.

Conclusion

This option is not preferred as it involves maintaining national inconsistency and the continuation of associated costs for businesses operating in multiple jurisdictions, and governments maintaining their own controls.

Storage of Schedule 6 chemicals - Option Two: Implement the provisions of the SUSMP as they are currently written

This option would involve the States and Territories implementing any provision in the SUSMP relating to the storage of Schedule 6 chemicals.

The SUSMP does not contain any suggested regulatory controls over retail storage of Schedule 6 chemicals.
Implementing this option would require that all States and Territories do not have any controls over retail storage of Schedule 6 chemicals – therefore Queensland, Western Australia, New South Wales and South Australia would consequently have to remove existing controls. This option is essentially the same as Option Six: Remove the provisions of the SUSMP and any State or Territory variations.

**Impact on industry**

There are no additional costs to industry across Australia associated with this option. For industries that operate where there are prescriptive storage controls, the change would represent a reduction in regulatory burden relating to the physical environment and merchandising layout of retail businesses, due to greater flexibility, and thus reduced compliance cost. This would affect retail businesses in New South Wales, Western Australia, South Australia and Queensland, which is up to approximately 50,000 businesses.

Several large jurisdictions do not have any regulatory controls in this area. There has been no evidence identified indicating jurisdictions with more stringent regulatory controls relating to storage in a retail or wholesale environment have more positive health outcomes in terms of preventing poisonings than jurisdictions without prescriptive controls.

Controls on poisonous chemicals such as labelling or packaging, which have been demonstrated as effective at preventing accidental poisoning in a domestic setting, could be more effective at preventing poisoning in this environment.

However, as discussed in the ‘Purpose of the control’ section, a level of regulation is considered to allow implementation of an important step in hazard mitigation: removing the potential harm to children. This is in recognition of the fact that Schedule 6 chemicals are toxic and would be harmful if ingested. For this reason, it is reasonable to have a graduated system of regulatory requirements for storage of chemicals in moving up a scale of toxicity from Schedules 5 and 6 and into Schedule 7.

In consultation, industry reported that Schedule 6 chemicals are often presented differently from Schedule 5 chemicals in a retail setting, which can also be attributed to packaging requirements. It was thought that these extra packaging requirements also provide a barrier to children accessing a poison in a retail environment.

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Impact on Consumers

Businesses have not been able to quantify the costs of complying with existing controls or accommodating differences. There are expected to be small savings to businesses that operate in the jurisdictions where there are prescriptive controls – New South Wales, Western Australia, South Australia and Queensland – as a result of the removal of controls in those jurisdictions. These savings would be expected to ultimately be passed on to consumers in lower prices. These savings are expected to be small and unquantifiable.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is not preferred. As there is no standard for storage of Schedule 6 chemicals included in the SUSMP, it is not feasible to implement provisions of the SUSMP for this regulatory control.

Storage of Schedule 6 chemicals - Option Three: Adopt a prescriptive control

The adoption of a prescriptive standard would prescribe the storage of Schedule 6 chemicals with specific requirements to prevent access by children. Aspects of the control that might be included in the standard would be specific limitations on the height and nature of retail presentation of Schedule 6 chemicals.

Impact on Industry

The adoption of a prescriptive standard would likely increase the regulatory burden for industries in all jurisdictions except for New South Wales and South Australia. Currently, New South Wales and South Australia have existing regulations that stipulate specific requirements for storage of Schedule 6 chemicals, in terms of distance above the floor. The cost to industries in jurisdictions with outcome-based legislation would increase due to decreased storage flexibility for Schedule 6 chemicals.
The main benefit of prescriptive standards is the reduced risk of inconsistent interpretation by businesses and any compliance officers by creating clear guidelines for compliance.

A cost to business from this option would occur due to reduced flexibility of compliance for businesses as they adhere to specific standards and rules.

Impacts on industry may include physical environmental changes. Retailers would be required to change how their merchandise is displayed. They would be required to either move products with a Schedule 6 chemical to a higher location, or, where their shelving is not high enough, they would be required to install new shop fittings so that the shelving they have is compliant. The extent of the cost impact is not expected to be high. The physical changes that a shop might now be required to make would be minor.

In most cases it is expected that a shop will have appropriate shelving already, and will be affected because they have to ensure that products are at an appropriate height.

**Impact on Consumers**

Policy makers believe that storage controls in retail settings should be consistent with the advice given to consumers on the best methods of storage of the same products in a domestic setting. This is due to the toxicity of chemicals contained in Schedule 6 of the SUSMP. This will deliver benefits to consumers in the form of potential increased safety in retail environments.

There would be small increased costs to businesses that operate in the jurisdictions where there are no controls – the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria – as a result of the implementation of controls in those jurisdictions. These small increases in cost would be expected to ultimately be passed on to consumers in higher prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.
Conclusion

This option is not preferred as it is considered that being prescriptive would impose an undue regulatory burden on business. This is particularly the case as there are currently four jurisdictions with no regulation over retail storage requirements for Schedule 6 chemicals.

Storage of Schedule 6 chemicals - Option Four: Adopt an outcome-based control [Preferred Option]

This option would prescribe that storage of Schedule 6 chemicals occur in a manner that would prevent access by children. This is the preferred option.

The main cost of this option would be increased costs to businesses, while the benefit would be safer storage of dangerous chemicals on retail premises. As outlined in the ‘Purpose of the regulatory control’, Schedule 6 chemicals include common use but high toxicity chemicals such as ammonia and household insecticides, which are very harmful when ingested. This means that it is appropriate that retailers ensure they are kept out of reach of children, as consumers are encouraged to do through labelling.

New South Wales, which specifies the policy outcome that the regulation would prevent access to chemicals by children, provides a feasible model for an outcome based control.

Impact on Industry

This option would increase the regulatory burden on industries within jurisdictions currently without regulatory controls. This is businesses that operate in the Australian Capital Territory, Victoria, the Northern Territory and Tasmania. These businesses represent approximately 18,000 retail businesses out of a potential 68,000 businesses nationally that may be affected by retail storage controls. However, this increase is likely to be minimal, if at all, as it would be expected that preventing access to poisonous chemicals by children would be standard business practice due to the associated risks of not doing so. Although the regulatory impact has been recognised in the impact summaries, it is not expected to represent a material impact.

Impacts on industry are largely on retailers who would be required to change how their merchandise is displayed. They would be required to either move products with a Schedule 6 chemical to a higher location, or, where their shelving is not high enough, they would be required to install new shop fittings so that the shelving they have is compliant. The extent of the cost impact is not expected to be high. The physical changes that a shop might now be required to make would be minor.
In most cases it is expected that a shop will have appropriate shelving already, and will be affected because they have to ensure that products are at an appropriate height.

For industries in the jurisdictions with prescriptive legislation (for example the up to 4,600 retail businesses that operate in South Australia that may be affected), the regulatory burden and associated costs of compliance would be slightly lower due to the increased flexibility.

**Impact on Consumers**

Policy makers believe that storage controls in retail settings should be consistent with the advice given to consumers on the best methods of storage of the same products in a domestic setting. This is due to the toxicity of chemicals contained in Schedule 6 of the SUSMP. This will deliver benefits to consumers in the form of potential increased safety in retail environments.

There would be small increased costs to businesses that operate in the jurisdictions where there are no controls – the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria – as a result of the implementation of controls in those jurisdictions. These small increases in cost would be expected to ultimately be passed on to consumers in higher prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is preferred to no regulation of retail storage because there are perceived flow-on detriments to householders of industry being too relaxed in their storage of poisonous chemicals in the home if there are no storage restrictions on these poisonous chemicals in a retail environment.

In Queensland, South Australia and Western Australia, for 24,000 businesses, the preferred option would reduce the level of regulation by providing greater flexibility.
In New South Wales the impact would be neutral. For the remaining jurisdictions there would be an increased regulatory burden.

For these jurisdictions with the reduced regulation, this is due to the proposed option having no specific reference to food, drink or condiments in the proposed option and a shift away from more prescriptive requirements.

For approximately 40,000 businesses within the remaining jurisdictions which are currently without regulatory controls, this option may increase the regulatory burden. However, while the requirement would be formalised, on a practical level this increase is likely to be minimal in terms of additional activities that businesses do. Preventing access to poisonous chemicals by children would be standard business practice due to the associated risks of not doing so.

Impacts on industry are largely on retailers who would be required to change how their merchandise is displayed. They would be required to either ensure / move products with a Schedule 6 chemical to a higher location, or, where their shelving is not high enough, they would be required to install new shop fittings so that the shelving they have is compliant. The extent of the cost impact is expected to be small, as there are not high costs associated with retail storage or with minor changes to a retail fit-out.

**Storage of Schedule 6 chemicals - Option Five: Adopt an outcome-based control containing a prescriptive ‘deemed to comply or satisfy’ provision**

This outcome based option would provide regulatory alternatives, allowing flexibility whilst maintaining the outcome of preventing access to Schedule 6 chemicals by children.

**Impact on Industry**

This option would provide benefits to businesses as they could comply with regulation in the manner they deem appropriate. In jurisdictions with existing regulations, the effect would be neutral.

The impact of this option is increased regulatory cost for retail businesses that operate in the Australian Capital Territory, Northern Territory, Tasmania and Victoria. This may represent up to 18,000 retail businesses out of an Australian total of 68,000 retailers who are likely to be affected.

For businesses in South Australia this option would represent a change from prescriptive regulation to outcome-based with a deemed to comply or satisfy provision, therefore potentially providing greater flexibility to both small and large retail businesses of which there are 4,600.
The option is considered to have a neutral regulatory impact on New South Wales, Queensland and Western Australia. Impacts on industry may include physical environmental changes. Retailers would be required to change how their merchandise is displayed. They would be required to either move products with a Schedule 6 chemical to a higher location, or, where their shelving is not high enough, they would be required to install new shop fittings so that the shelving they have is compliant. The extent of the cost impact is not expected to be high. The physical changes that a shop might now be required to make would be minor.

In most cases it is expected that a shop will have appropriate shelving already, and will be affected because they have to ensure that products are at an appropriate height.

However, much of this cost would seem to align with standard business practices, as not controlling children’s access to poisonous chemicals may expose businesses to consequences such as reputation risks and private litigation.

**Impact on Consumers**

Policy makers believe that storage controls in retail settings should be consistent with the advice given to consumers on the best methods of storage of the same products in a domestic setting. This is due to the toxicity of chemicals contained in Schedule 6 of the SUSMP. This will deliver benefits to consumers in the form of potential increased safety in retail environments.

There would be small increased costs to businesses that operate in the jurisdictions where there are no controls – the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria – as a result of the implementation of controls in those jurisdictions. These small increases in cost would be expected to ultimately be passed on to consumers in higher prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.
Conclusion

The adoption of an outcome standard with a ‘deemed to satisfy’ provision would appear to have little impact on consumers. This option offers both certainty and flexibility to businesses, depending on how they choose to comply with the requirements. However, it is not preferred in comparison to Option Four, as depending on the extent of the prescriptive ‘deemed to comply provisions’ it would increase the complexity and costs on businesses of complying with and understanding the regulation, without delivering increased benefits.

Storage of Schedule 6 chemicals - Option Six: Remove the provisions of the SUSMP and any State or Territory variations

This option would mean that there are no regulatory controls over the storage of Schedule 6 chemicals. This would be consistent with the four jurisdictions that currently have no controls over retail storage of Schedule 6 chemicals.

Impact on Industry

There are no additional costs to industry across Australia associated with this option. For industries that operate where there are prescriptive storage controls, the change would represent a reduction in regulatory burden relating to the physical environment and merchandising layout of retail businesses, due to greater flexibility, and thus reduced compliance cost.

Several large jurisdictions, such as Victoria, do not have any regulatory controls in this area, the largest State economy New South Wales, does. There has been no evidence identified indicating jurisdictions with more stringent regulatory controls relating to storage in a retail or wholesale environment have more positive health outcomes in terms of preventing poisonings than jurisdictions without prescriptive controls.

Impact on Consumers

There would be small increased savings to businesses that operate in the jurisdictions where there are controls – New South Wales, Queensland, South Australia and Western Australia – as a result of the implementation of this option. These small savings would be expected to ultimately be passed on to consumers in lower prices.

However, as controls on the retail storage of Schedule 6 chemicals are considered to be a positive method to keep poisons out of reach of children, this is not a preferred option. This is due to the toxicity of chemicals contained in Schedule 6 of the SUSMP.
Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This is not the preferred option. To some extent, controls on poisonous chemicals such as labelling or packaging have been demonstrated as effective at preventing accidental poisoning in a domestic setting. However, it is prudent chemical management to control the storage location of poisonous chemicals in public places, in case of any packaging or labelling failure, and in recognition of the toxicity of the chemicals contained in Schedule 6 of the SUSMP.

Policy makers believe that storage controls in retail settings should be consistent with the advice given to consumers on the best methods of storage of the same products in a domestic setting.

Indicative impact of each option on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
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<td>Industry</td>
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<tr>
<td>Government</td>
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</table>

Jurisdictional impact

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

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Impact variation of options for storage of Schedule 6 chemicals by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
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<tbody>
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<td>ACT</td>
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<td>5</td>
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<td>6</td>
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</tbody>
</table>

Consultation

Both PACIA and Accord advocated removal of existing controls for storage of Schedule 6 chemicals as it would minimise the regulatory burden on businesses and they argue there is no evidence to suggest that more stringent controls have more positive outcomes.  

However, Accord stated that the preferred option may also deliver an acceptable outcome.

The South Australia Health broadly supported the preferred option.

The Victorian Department of Health, on the other hand, noted that there is no evidence to suggest that the implementation of controls for storage of Schedule 6 chemicals are necessary and that the labelling requirements ‘keep out of reach of children’ provided sufficient control.

Conclusion

In conclusion, Option Four is the preferred option for this regulatory control. It would achieve a nationally consistent approach that retains flexibility for business. In addition, policy makers believe that storage controls in retail settings should be consistent with the advice given to consumers on the best methods of storage of the same products in a domestic setting and provide additional beneficial protection to consumers.

69 Accord, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012

70 Accord, Submission in response to the Consultation RIS, September 2012

71 South Australian Department of Health, Submission in response to the Consultation RIS, September 2012

72 Victorian Department of Health, Submission in response to the Consultation RIS, September 2012
4.5 Storage of Schedule 7 chemicals

Purpose of the regulatory control

The focus of the regulation of storage of Schedule 7 chemicals is to control access to those chemicals in a retail environment. As Schedule 7 chemicals are considered to have a higher risk profile than Schedule 5 and 6 chemicals, access arrangements should ensure that only people deemed to be appropriately qualified should have access. This occurs through licensing or other authorisations that are not considered nor are in the scope of this RIS. Regulated storage also mitigates security risks for businesses associated with selling and supplying quantities of these highly toxic chemicals and ensures that Schedule 7 chemicals are not available for self-selection (e.g. suitably qualified persons such as an agronomist should have the opportunity to counsel purchasers about lower toxicity products if appropriate.)

All jurisdictions and the SUSMP recognise that certain members of the public should not have access; or that access should only be granted under supervision. Consequently it is not expected that the level of regulation would change considerably with the adoption of nationally consistent standards.

Queensland, Western Australia and South Australia’s controls currently deal with food contamination. However, these would seem to be superseded by food specific regulation, and would only contribute to regulatory duplication. Each State and Territory’s legislation and regulations have been developed and redeveloped over a long period of time and subject to local pressures. However, this may not be appropriate or aligned to the COAG objectives of creating a seamless economy. Consequently, no options include coverage of this aspect.

Consultation noted that workplace and public health protection regulations were relevant.

Businesses affected by this control

Due to Schedule 7 licences and authorisation the States and Territories are better able to determine what businesses are affected by changes to this storage control. Changes to the control Storage of Schedule 7 chemicals could affect up to 3,200 Australian businesses across all States and Territories. Table 4-C shows a breakdown of the number of potential affected businesses.
Table 4-C: Number of businesses likely to be affected by storage control for Schedule 7 chemicals

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Number authorised to have, supply or use Schedule 7 chemicals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>3 research and education licences</td>
</tr>
<tr>
<td>New South Wales</td>
<td>81 authorised sellers</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>214 licences or permits issued for following sectors/uses: 117 industrial; 56 pest control; 30 retail; 8 wholesale; 3 manufacturing. Additional 89 agricultural and veterinary Schedule 7 authorisations</td>
</tr>
<tr>
<td>Queensland</td>
<td>100 licenced sellers</td>
</tr>
<tr>
<td>South Australia</td>
<td>280 sellers; 2032 purchasers</td>
</tr>
<tr>
<td>Tasmania</td>
<td>36 licences: 31 for possession and use and 5 wholesalers</td>
</tr>
<tr>
<td>Victoria</td>
<td>436 licences to sell, 292 licences to purchase or obtain</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Information not available</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,271 authorised businesses, individuals or researchers</td>
</tr>
</tbody>
</table>

Source: State and Territory Departments of Health

Options for the regulatory control

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision [Preferred Option]
6. Remove the provisions of the SUSMP and any State or Territory variations

73 The number of persons authorised in South Australia to use Schedule 7 chemicals includes all licensed pest control operators and businesses. The licence permits the holder to use Schedule 5, 6 and 7 chemicals, not Schedule 7 only: some licence holders may not use Schedule 7 chemicals.
Options analysis

Storage of Schedule 7 chemicals - Option One: Maintain the status quo

Most jurisdictions are aligned to the standards and require Schedule 7 chemicals to be kept away from public access; however there are differences in each State or Territory's regulations. Maintaining the status quo involves maintaining differences between the States and Territories and would involve a continuation of the associated costs of these differences. Key differences include that Queensland requirements differ according to the method of sale (wholesale or retail) and are more prescriptive of the method of storage. Western Australia explicitly specifies the individuals who are able to access the area where Schedule 7 chemicals are stored. Victoria allows access under supervision.

Some of the continued costs that arise from maintaining the inconsistency between jurisdictions include compliance costs of multi-jurisdictional businesses, and time related costs associated with understanding differences in legislation.

Analysis of this option has not identified any clear benefits of continuing the status quo.

Impact on Industry

The costs currently experienced by industry resulting from inconsistent legislation of storage of Schedule 7 chemicals will remain. The impact of the status quo for storage of Schedule 7 chemicals is mostly an education impact. This is due to time costs spent understanding and complying with different sets of legislation for multi-jurisdictional businesses. The cost of compliance is likely to therefore be greater for businesses that operate in jurisdictions with different regulation, and those that operate in many jurisdictions. There are 3,200 businesses operating within Australia that may be subject to regulation of Schedule 7 chemicals.

Impact on Consumers

Business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to continue to be passed on to consumers in higher prices.

Outside of any continuing potential costs to affected businesses being passed on to consumers, this option is expected to have a minimal and unquantifiable impact on consumers.
**Impact on Government**

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

**Conclusion**

This is not the preferred option. This is because this option would not achieve national consistency, which is the purpose of this RIS.

**Storage of Schedule 7 chemicals - Option Two: Implement the provisions of the SUSMP as they are currently written**

This option would involve the States and Territories implementing any provision in the SUSMP relating to storage of Schedule 7 chemicals. The SUSMP reads that “A person who sells or supplies Schedule 7 chemicals must keep these poisons in a part of the premises to which the public does not have access.”

This option is largely similar to Option Four: Adopt an outcome-based control.

**Impact on Industry**

While each jurisdiction has slight wording differences for the storage requirements of Schedule 7 chemicals, they are largely similar and aligned to the SUSMP. Therefore, if all States and Territories adopted the SUSMP a very similar outcome would be achieved to what is currently being achieved through individual State and Territory legislation.

It is expected that only minor changes will be required, such as ensuring that every premises has an appropriate storage location that is not accessible by the public. An associated benefit would be reduced likelihood of inappropriate access (which may lead to inappropriate or unauthorised use) of Schedule 7 chemicals.

The impact on business would be expected to mostly be a transitional education impact, as businesses become familiar with changed requirements. There may be an impact on the physical environment of businesses to the extent that they find they are required to amend their physical fit-out. However it is considered that this would be uncommon due to the minor changes in requirements.

Further, harmonised regulation across Australia would reduce the amount of legislation that multi-jurisdictional businesses are required to understand and comply with, thereby reducing compliance costs. This is likely to represent a reduced cost to multi-jurisdictional businesses.
On the other hand however, implementing this option may represent a transitional cost to industry because businesses would be required to interpret how to implement the public access outcome. They may prefer to have more black-letter rules around who should have access. This is likely to be an initial cost that all affected businesses are likely to encounter.

**Impact on Consumers**

As most Schedule 7 chemicals are not for domestic use, the general impact from this control is expected to be minimal. However those consumers authorised to purchase Schedule 7 chemicals may be affected by the controls.

Business stakeholders have not been able to quantify the costs of complying with existing controls or accommodating differences. However to the extent that there are costs, for example one-off costs from transition to a new control, these would be expected to ultimately be passed on to consumers in higher prices. The presence of slight differences in controls is not considered to provide any benefit to consumers through evidence that one control is more effective than another.

A benefit is that customers will have to actively seek and request the Schedule 7 chemical to obtain it. This may result in reduced misuse of the poisonous chemical. However, there is no evidence to suggest that this is or previously has been an issue in Australia and that disallowing public access to Schedule 7 chemicals is an appropriate way to mitigate this risk.

Outside of any increased potential costs to affected businesses being passed on to consumers, this option is expected to have a minimal and unquantifiable impact on consumers.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is not the preferred option because the wording is indistinct and may be interpreted a number of different ways. To resolve this issue, an outcome-based
control containing prescriptive ‘deemed to comply or satisfy’ provisions, such as that discussed in Option Five could be used.

**Storage of Schedule 7 chemicals - Option Three: Adopt a prescriptive control**

A prescriptive regulatory control could require that Schedule 7 chemicals are kept in an area that cannot be accessed by the public, apart from when escorted at all times by an appropriately deemed person. This approach is currently adopted by Victoria. Victoria was selected as the model for a prescriptive control as it maintains a balance between the risk of unauthorised access and the likelihood of this happening, while still maintaining appropriately authorised people access to the chemicals.

**Impact on Industry**

Implementing this option would require all premises to have a section that is not accessible to the public unless when escorted by an appropriate person. Potential costs could include:

- Time cost of the appropriate person to escort / accompany the customer to the appropriate part of the store if they chose to provide supervised access. This may influence staffing requirements of the business by requiring a minimum of two staff members to be present at all times (as if one staff member is involved in escorting a customer to the place of Schedule 7 chemicals, another staff member may be required to be present in the area where the public does have access). Appropriate security measures will also have to be in place. It is expected that this may be more of an issue and hence impose more costs on smaller retailers.

- Physical environment impacts from possible re-designs of store/premises. Depending on how a store is set up, the store may need to be redesigned or altered to allow for the regulatory requirements. It is expected that this could also be an issue where other prohibited substances are required to be stored in an area that the public does not have access, thus requiring that Schedule 7 chemicals are stored in a separate section.

**Impact on Consumers**

As most Schedule 7 chemicals are not for domestic use, the general impact from this control is expected to be minimal. However those consumers authorised to purchase Schedule 7 chemicals may be affected by the controls.

The benefits of escorted access would be that customers can read, under supervision, the ingredients and any other information on the packaging of Schedule 7 chemicals in conjunction with receiving guidance from the seller. They
may not be able to have this level of information if they are prohibited access to the chemical. This option would have a neutral effect on Victoria. It would be an extra regulatory burden in the other States and Territories, however this effort may be countered by the benefits delivered to purchasers of Schedule 7 chemicals who are able to see products prior to purchase.

There would be small increased costs to businesses that operate in the jurisdictions where there are controls as a result of the implementation of this option. These small increases in costs would be expected to ultimately be passed on to consumers in higher prices.

However, as controls on the retail storage of Schedule 7 chemicals are considered to be a positive method to keep poisons out of reach of children, this is considered to provide a beneficial outcome.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is not the preferred option. While it may achieve national consistency with specific requirements, it gives affected businesses insufficient flexibility or discretion.

**Storage of Schedule 7 chemicals - Option Four: Adopt an outcome-based control**

The regulatory control would require that businesses which store Schedule 7 chemicals store them in a manner that precludes public access.

**Impact on Industry**

Harmonising regulation to prohibit public access to Schedule 7 chemicals will not result in any substantial differences from current regulatory requirements. It is expected that only minor changes will be required, such as ensuring that every premises has an appropriate storage location that is not accessible by the public.
This may impose physical environment impacts on businesses where they may need to undertake physical alterations to the storage area. As this is likely to be the case for smaller retailers, implementing this option may therefore affect smaller retailers to a greater extent than larger retailers. An associated benefit would be reduced likelihood of inappropriate access (which may lead to inappropriate or unauthorised use) of Schedule 7 chemicals.

**Impact on Consumers**

As most Schedule 7 chemicals are not for domestic use, the general impact from this control is expected to be minimal.

For those authorised to use Schedule 7 chemicals, a benefit is that customers will have to actively seek and request the Schedule 7 chemical to obtain it. This may result in reduced misuse of the chemical. However, there is no evidence to suggest that this is or previously has been an issue in Australia and that disallowing public access to Schedule 7 chemicals is an appropriate way to mitigate this risk.

There would be small increased costs to businesses that operate in the jurisdictions where there are controls as a result of the implementation of this option. These small increases in costs would be expected to ultimately be passed on to consumers in higher prices.

However, as controls on the retail storage of Schedule 7 chemicals are considered to be a positive method to keep poisons out of reach of children, this is considered to provide a beneficial outcome.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is not the preferred option. This is because there would be a cost to industry as businesses would be required to interpret how to implement the public access outcome. They may prefer to have more black-letter rules around who should have access, rather than flexibility.
Storage of Schedule 7 chemicals - Option Five: Adopt an outcome-based control containing prescriptive ‘deemed to comply or satisfy’ provisions [Preferred option]

This option would contain both the sought outcome that Schedule 7 chemicals be kept in a facility or area which is secured, along with detailed guidance provisions for how this may be implemented. Details would include elements such as that only appropriately authorised personnel would be allowed access to the facility or area, and those interested in purchasing the chemicals would be supervised while accessing dangerous poison chemicals.

Impact on Industry

Impact on industry from this option will mostly relate to the physical environment of a retail store, as well as a standard education impact as businesses become familiar with new requirements. The potential cost of this option to business would be installation of an appropriately secured storage facility or area where this currently does not exist. This option, as it provides both an outcome based option and a deemed-to-satisfy provision, provides both flexibility and certainty to businesses. For Queensland, South Australia and Western Australia, the implementation of the preferred control would result in a decrease in the level of regulation as it is an outcome-based control with a ‘deemed to comply or satisfy provision’ with no specific reference to food, drink or condiments or methods of storage during transportation. This would benefit the approximately 380 businesses that operate in those jurisdictions.

Stakeholders describing the process that purchasers go through in deciding to purchase a Schedule 7 chemical indicated that they agreed this option was manageable.

This option is preferred because it would provide retailers with the option to store the Schedule 7 chemicals within view of potential purchasers, which could allow the purchasers to read ingredients and other information disclosed on the label. However they would not be able to access the poisonous chemical products without the knowledge or guidance of the person selling or supplying the product.

Purchasing decision

In general, a purchaser will decide on a product based on the function they need the product to perform. The retailer will detail the options available and then the farmer/purchaser can read the labels and ingredients.

In response to concerns that guidelines or guidance provisions would not filter through to retailers, it was reported that accreditation requires regular contact between AgSafe and accredited parties. Updates and advice can be disseminated easily.
Impact on Consumers

As most Schedule 7 chemicals are not for domestic use, the general impact from this control is expected to be minimal.

There would be small increased costs to businesses that operate in the jurisdictions where there are controls as a result of the implementation of this option. These small increases in costs would be expected to ultimately be passed on to consumers in higher prices.

However, as controls on the retail storage of Schedule 7 chemicals are considered to be a positive method to keep poisons out of reach of children, this is considered to provide a beneficial outcome.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This is the preferred option. There is general acceptance across all stakeholders that Schedule 7 chemicals require some level of control due to their highly hazardous nature. Providing businesses with both an outcome-based provision and deemed-to-satisfy provision provides businesses with both flexibility and certainty as to how they implement the legislation. Further, this option would not only improve uniformity, but also provide retailers with the option to store Schedule 7 chemicals within view of potential purchasers. In addition, it would allow customers access to Schedule 7 chemicals under appropriate supervision.

Storage of Schedule 7 chemicals - Option Six: Remove the provisions of the SUSMP and any State and Territory regulations

This option would mean that there are no explicit regulatory controls over the storage of Schedule 7 chemicals. This would not be consistent with any of the current controls that are employed by jurisdictions. All jurisdictions would be required to remove regulations that relate to the storage of Schedule 7 chemicals.
This option would mean that there would be no controls on the retail storage of Schedule 7 chemicals. Given their level of toxicity and therefore potential harm the chemicals can inflict, and that in all jurisdictions a person or business is required to be licensed or authorised to possess or use these chemicals, this is not considered to be an appropriate option.

**Impact on Industry**

It may be argued that removing current regulations would represent a reduction in regulatory burden and compliance costs. However, it is expected that jurisdictions and businesses would maintain a similar level of control to ensure that an appropriate amount of ‘duty of care’ is undertaken.

The most important impact of this option would be an education impact, as industry ensures its compliance with the rules.

**Impact on Consumers**

As most Schedule 7 chemicals are not for domestic use, the general impact from this control is expected to be minimal. However those consumers authorised to purchase Schedule 7 chemicals may be affected by the removal of controls.

No evidence has been identified indicating the effectiveness of storage controls in a retail or wholesale environment in terms of preventing poisonings. However, all jurisdictions have regulations controlling storage of Schedule 7 chemicals. This suggests there may be a risk-based justification for controlling access to these chemicals, and that inappropriate storage could create a potential risk to public safety. Therefore, this is not the preferred option. Given the nature of Schedule 7 chemicals; that they are dangerous and not for use without authorisation or licensing, it might present an unacceptable risk to public health if controls that are commonly used are removed.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.
Conclusion

This is not the preferred option. This is because Schedule 7 chemicals are very hazardous and consequently require some level of control at the point of supply. It is therefore deemed necessary to have legislation that control the storage of Schedule 7 chemicals to minimise the risk of inappropriate use.

Indicative impact of each option on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td></td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
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<td>↓</td>
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<tr>
<td>Consumers</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Government</td>
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</tbody>
</table>

Jurisdictional impact

The following table illustrates the regulatory impact that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for storage of Schedule 7 chemicals by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>1</td>
<td></td>
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<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>↑</td>
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<tr>
<td>4</td>
<td></td>
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<tr>
<td>5</td>
<td></td>
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<tr>
<td>6</td>
<td></td>
</tr>
</tbody>
</table>

Consultation

Consultation with stakeholders such as Accord and its members, and PACIA, indicated that there was no opposition to the preferred option. This is a more limited market than that for Schedule 5 or 6 chemicals, which would contain the regulatory impact. In addition, it was reported that all retailers are currently AgSafe accredited and all have lock-up areas or cages.
Conclusion

The preferred option for this control is Option Five: outcome-based control with a prescriptive ‘deemed to comply’ provision. This option will deliver a nationally consistent approach to the retail storage of Schedule 7 chemicals. Providing businesses with both an outcome-based provision and deemed-to-satisfy provision provides businesses with both flexibility and certainty as to how they implement the legislation. This option would not only improve uniformity, but also provide retailers with the option to store Schedule 7 chemicals within view of potential purchasers. In addition, it would allow customers access to Schedule 7 chemicals under appropriate supervision.
4.6 Disposal of Schedules 5, 6 and 7 chemicals

This controls standards and conditions for the safe disposal of Schedules 5, 6 and 7 chemicals.

This section will consider the different options to achieve uniformity of the control.

Purpose of the regulatory control

The focus of the control of disposal for Schedules 5, 6 and 7 chemicals is to ensure that chemicals are discarded in a safe manner that does not pose a risk to human health.

Four of the eight jurisdictions, namely the Australian Capital Territory, Northern Territory, Victoria and Tasmania, do not currently specify controls on disposal in their poisons regulation. Disposal is not included in the SUSMP.

Queensland’s disposal controls currently regulate for food contamination and animal welfare issues. These would likely be superseded by food specific regulation and animal welfare regulation, and seem to contribute to regulatory duplication. Consequently, no options include coverage of this aspect of the regulatory control.

Stakeholders noted that the purpose of the control is to maintain public health protection in non-industrial public places. The reason for this is that in public places, poisons are in some cases not covered by workplace safety or environmental protection legislation. They advocated for achieving national consistency, in addition to ensuring clear designation of responsibility to health departments for the control.

Businesses affected by this control

Changes to the control Disposal of Schedule 5, 6 & 7 chemicals could affect up to 35,000 Australian businesses that use these chemicals across all States and Territories, with New South Wales being home to 35 per cent of potentially affected businesses. The highest business count for businesses that are likely to be affected by changes to this control is for hairdressing and beauty services (19,806). This is 56 per cent of all affected businesses likely to be affected and almost five times the amount of businesses than the next closest business area. The following table shows a breakdown of the number of affected business areas by jurisdiction.

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74 However, Victoria does require that all those who need to complete a Poisons Control Plan include methods for disposal in their plan. Moreover, other regulation, such as environmental regulation, may cover disposal of poisonous chemicals.

75 South Australia Department of Health, Submission in response to the Consultation RIS, September 2012
Table 4-D: Number of businesses likely to be affected by disposal controls for Schedule 5, 6 & 7 chemicals

<table>
<thead>
<tr>
<th>Main affected business areas</th>
<th>Business count by jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Nursery Production (Under Cover)</td>
<td>9</td>
</tr>
<tr>
<td>Nursery Production (Outdoors)</td>
<td>4</td>
</tr>
<tr>
<td>Manufacturing - Human Pharmaceutical and Medicinal Product</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Pesticide Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Cosmetic and Toiletry Preparation Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Jewellery and Silverware Manufacturing</td>
<td>11</td>
</tr>
<tr>
<td>Wholesale - Pharmaceutical and Toiletry Goods Wholesaling</td>
<td>13</td>
</tr>
<tr>
<td>Personal and Other Services - Hairdressing and Beauty Services</td>
<td>317</td>
</tr>
<tr>
<td>Personal and Other Services - Funeral, Crematorium and Cemetery Services</td>
<td>12</td>
</tr>
<tr>
<td>Personal and Other Services - Laundry and Dry-Cleaning Services</td>
<td>59</td>
</tr>
<tr>
<td>Personal and Other Services - Photographic Film Processing</td>
<td>6</td>
</tr>
<tr>
<td>Personal and Other Services - Gardening Services</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td>457</td>
</tr>
</tbody>
</table>

Source: Affected business types were identified by public health officials, and numbers of businesses are from Australian Bureau of Statistics (2011) Counts of Australian Businesses, including Entries and Exits, Jun 2007 to Jun 2011, Report. 8165.0.

Options for the regulatory control

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control
4. Adopt an outcome-based control [Preferred Option]
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations

Options analysis

Disposal - Option One: Maintain the status quo

The current status quo is that four jurisdictions have regulatory controls over the disposal of poisonous chemicals. New South Wales, South Australia and Western Australia all use differently worded outcome-based approaches to stipulate that poisonous chemicals are disposed of in a manner that does not pose a risk to public health and/or safety. Queensland has adopted a prescriptive approach.

It is possible that the States with no specific references to disposal in their respective poisons acts have controls through other legislative instruments, such as environmental health and protection legislation or regulation, or in the case of Schedule 7 poisons through the associated licences. For instance, in their Poisons Control Plans in Victoria, businesses are required to demonstrate that they have a planned approach to disposal. However it should be noted that businesses handling Schedule 5 and Schedule 6 chemicals are generally not issued with licences, meaning that licensing arrangements will not cover this control for those businesses.

Impact on industry

The current system imposes continuing inconsistencies and continuing costs on businesses that operate across different jurisdictions, as they are required to be aware of the requirements in each jurisdiction in which they operate. This is likely to involve large businesses in the industries outlined above.

Impact on Consumers

Business stakeholders have been unable to quantify the cost of complying with existing controls or accommodating differences. The extent of the cost impact is expected to be small.

To the extent there are costs, these would be expected to continue to be passed on to consumers in higher prices.

Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.
This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

**Conclusion**

This option is not preferred as it does not achieve the objective of establishing a nationally consistent approach to the control, and it would maintain the differences that exist between the States and Territories as well as the associated costs.

**Disposal - Option Two: Implement the SUSMP as it is written**

Implementing the provisions of the SUSMP would have the same impact as removing States and Territories legislation, as there are no regulations for the disposal of poisons set out in the SUSMP.

This option would therefore mean that there would be no explicit regulatory control over the disposal of Schedule 5, 6 and 7 chemicals. This would require New South Wales, Queensland, South Australia and Western Australia to remove their legislation. Despite the removal of these jurisdictions’ legislation, legislation from other areas may provide necessary guidance relating to the disposal of dangerous chemicals.

Potential legislation could include the Environmental Protection Act, provisions in licensing requirements, or environmental standards-setting policy development such as that being considered by COAG at present.

However, environmental protection measures would not necessarily address incidental disposal as the focus of environmental protection measures is predominantly on emissions, rather than small scale problems that can occur in the retail and wholesaling setting.

**Impact on Industry**

There would be no additional costs to industry across Australia associated with this option. For the four jurisdictions that currently have controls regarding disposal of Schedule 5, 6 and 7 chemicals, the change may represent a reduction in regulatory burden. This would involve businesses in nursery, manufacturing, wholesale and personal and other services industries across New South Wales, Queensland, South Australia and Western Australia which is approximately 25,000 businesses.

Removing the legislation would still allow other areas of legislation, if any, to influence behaviour of disposal. It is currently unclear whether or not any other legislation exists, that contains requirements and implies a duty of care about the disposal of Schedule 5, 6 and 7 chemicals.

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76 Not all users of Schedules 5, 6 and 7 chemicals are required to be licensed. However, in Victoria, a Poisons Control Plan requires that an authorised seller plan how they intend to deal with disposal of chemicals.
This option would have an education impact as businesses would be required to keep themselves informed of the changed requirements.

**Impact on Consumers**

Businesses have not been able to quantify the costs of complying with existing controls or accommodating differences. There are expected to be small savings to businesses that operate in the jurisdictions where there are disposal controls – New South Wales, Queensland, South Australia and Western Australia – as a result of the removal of controls in those jurisdictions. These savings would be expected to ultimately be passed on to consumers in lower prices. These savings are expected to be small and unquantifiable.

No evidence has been identified indicating the effectiveness of disposal controls. The effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred because there are no regulatory controls specified for disposal of Schedule 5, 6 and 7 chemicals in the SUSMP.

**Disposal Option Three: Adopt a prescriptive control**

A prescriptive control would explicitly detail how the intended regulatory outcome is to be achieved. This would involve outlining specific elements of the regulation. In the case of controlling disposal, clauses that could be included are:

- stating specific locations of where chemicals must not be discharged;
- prohibiting disposal in particular circumstances; and / or
- ensuring that disposal does not provide certain people with access to the chemicals.
Queensland’s current model is a feasible option for a prescriptive control due to it stating specific limitations of how chemicals can be disposed.

**Impact on Industry**

Implementing this option would represent an increase in regulation for the four jurisdictions that currently have no regulation of the disposal of Schedule 5, 6 and 7 chemicals. This would affect businesses in nursery, manufacturing, wholesale and personal and other services industries that operate in the Australian Capital Territory, Northern Territory, Tasmania and Victoria.

Stakeholders consulted were not able to provide information on their disposal practices now, making assessing the proposed set of disposal clauses challenging.

Adoption of this option would also represent an increase in regulation and reduction of flexibility in the three jurisdictions that presently have outcome based regulation surrounding the disposal of Schedule 5, 6 and 7 chemicals. This would affect businesses in nursery, manufacturing, wholesale and personal and other services industries that operate in New South Wales, Western Australia and South Australia.

However, for the costs to be fully assessed, understanding of current business practices is required. Specifically, knowledge of whether or not businesses, in their day-to-day practice, follow these disposal practices without explicit regulation needs to be understood.

The impact on business would be expected to mostly be a transitional education impact, as businesses become familiar with changed requirements. This option would have minimal to no effect on businesses in Queensland which has existing prescriptive controls.

It is considered that this option will not create additional costs to business however it will mean that where governments might decide to enforce safe disposal of chemicals in these three schedules, they will have legislative or regulatory requirements to enforce.

**Impact on Consumers**

Businesses have not been able to quantify the costs of complying with existing controls or accommodating differences. There are expected to be small cost increases to businesses that operate in the jurisdictions where there are no prescriptive disposal controls – all jurisdictions with the exception of Queensland – as a result of increased controls. These costs would be expected to ultimately be passed on to consumers in higher prices. These costs are expected to be small and unquantifiable, due to their nature as education impacts.
Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is not preferred as it would lead to an increase in the regulatory burden, and would allow business less flexibility in how to achieve safe disposal of chemicals. For this option to be favoured, evidence is necessary to prove that this option would lead to an increase in achieving public health and safety.

Disposal - Option Four: Adopt an outcome-based control [Preferred option]

The regulatory control would require that businesses dispose of poisonous chemicals in a manner that does not constitute, or is not likely to constitute, a risk to public health or safety.

Impact on Industry

Costs would be incurred to the extent that there are no other regulations that require safe disposal of poisonous chemicals, and that those businesses do not currently dispose of Schedule 5, 6 and 7 chemicals in a manner that constitutes a risk to public health or safety. It is expected that good business practice would encompass safe disposal of poisonous chemicals.

In some States or Territories the requirement to dispose of Schedule 5, 6 and 7 chemicals may be covered by multiple regulatory regimes (both poison regulation and environmental and/or occupational health). However as it would be an outcome-based approach, this control would not impose additional compliance costs on those businesses that safely dispose of Schedule 5, 6 and 7 chemicals.

Accord’s view was that the disposal of Schedule 5, 6 and 7 chemicals are likely to be covered by other regulations. Accord did not provide any specific examples of these other regulations.
this and argued that the implementation of the preferred option may create duplication.\textsuperscript{78}

The impact of this option is increased regulation for businesses in nursery, manufacturing, wholesale and personal and other services industries that operate in Australian Capital Territory, Northern Territory, Tasmania and Victoria. This represents approximately 10,000 businesses out of an Australian total of 35,000 businesses.

The impact on business would be expected to mostly be a transitional education impact, as businesses become familiar with changed requirements.

For businesses in Queensland this option would represent a change from prescriptive to outcome-based regulation, therefore potentially decreasing the regulatory burden on both small and large businesses in nursery, manufacturing, wholesale and personal and other services industries.

It is considered that this option will not create additional costs to business however it will mean that where governments might decide to enforce safe disposal of chemicals in these three schedules, they will have legislative or regulatory requirements to enforce.

\textit{Impact on Consumers}

Businesses have not been able to quantify the costs of complying with existing controls or accommodating differences. There are expected to be small cost increases to businesses that operate in the jurisdictions where there are no disposal controls – Australian Capital Territory, Northern Territory, Tasmania and Victoria – as a result of increased controls. These costs would be expected to ultimately be passed on to consumers in higher prices. These costs are expected to be small and unquantifiable, due to their nature as education impacts.

\textit{Impact on Government}

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

\textsuperscript{78} Victorian Department of Health, Submission to the Consultation RIS, September 2012
Conclusion
This option is preferred because it involves a reduction in the overall amount of regulation covering poisonous chemicals, while still requiring that public health and safety standards are upheld.

Disposal - Option Five: Adopt an outcome-based control that contains a ‘deemed to comply or satisfy’ provision

This option would see an outcome-based control set out, with a provision that explicitly prescribes the conditions that can be met for a business to be deemed to have complied with the outcome.

Impact on Industry

Impact of this type of control would be an increase in the amount of regulation with an effect that would be similar to if there were just an outcome-based approach.

The impact of this option is increased regulation for businesses in nursery, manufacturing, wholesale and personal and other services industries that operate in Australian Capital Territory, Northern Territory, Tasmania and Victoria. This represents approximately 10,000 businesses out of an Australian total of 35,000 businesses.

The impact on business would be expected to mostly be a transitional education impact, as businesses become familiar with changed requirements.

It is considered that this option will not create additional costs to business however it will mean that where governments might decide to enforce safe disposal of chemicals in these three schedules, they will have legislative or regulatory requirements to enforce.

For businesses in Queensland this option would represent a change from prescriptive to outcome-based regulation with a deemed to comply or satisfy provision, therefore increasing flexibility for both small and large businesses in nursery, manufacturing, wholesale and personal and other services industries.

Impact on Consumers

Businesses have not been able to quantify the costs of complying with existing controls or accommodating differences. There are expected to be small cost increases to businesses that operate in the jurisdictions where there are no disposal controls – Australian Capital Territory, Northern Territory, Tasmania and Victoria – as a result of increased controls. These costs would be expected to ultimately be passed on to consumers in higher prices. These costs are expected to be small and unquantifiable, due to their nature as education impacts.
Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is not preferred as although it would be nationally consistent, it would constitute an increase in the level of regulation for no anticipated increased benefit.

Disposal - Option Six: Remove the provisions of the SUSMP and any State and Territory variations

This option would mean that there would be no explicit regulatory control over the disposal of Schedule 5, 6 and 7 chemicals. This would require four jurisdictions to remove their legislation. Despite the removal of some jurisdictions legislation, legislation from other areas may provide necessary guidance relating to the disposal of poisonous chemicals. Potential legislation could include the Environmental Protection Act, provisions in licensing requirements, or environmental standards-setting policy development such as that being considered by COAG at present.

Impact on Industry

There would be no additional costs to industry across Australia associated with this option. For the four jurisdictions that currently have controls regarding disposal of Schedule 5, 6 and 7 chemicals, the change may represent a reduction in regulatory burden. This would affect businesses in nursery, manufacturing, wholesale and personal and other services industries in Australian Capital Territory, Northern Territory, Tasmania and Victoria which is approximately 10,000 businesses.

Removing the legislation would still allow other areas of legislation, if any, to influence behaviour of disposal. It is currently unclear whether or not any other legislation exists, that contains requirements and implies a duty of care about the disposal of Schedule 5, 6 and 7 chemicals.

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79 Not all users of Schedules 5, 6 and 7 chemicals are required to be licensed. However, in Victoria, a Poisons Control Plan requires that an authorised seller plan how they intend to deal with disposal of chemicals.
The impact on business would be expected to mostly be a transitional education impact, as businesses become familiar with changed requirements.

**Impact on Consumers**

As this option would remove any controls, there are expected to be small savings to business. These savings would be expected to ultimately be passed on to consumers in lower prices. As there is no evidence of a benefit of reduced poisoning in those jurisdictions that do not contain disposal controls in their Poisons and Drugs legislation, removing these controls nationally would not be expected to adversely affect consumers.

No evidence has been identified indicating the effectiveness of disposal controls. The effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.

Outside of any increased potential transitional costs of affected businesses being passed on to consumers, this option is expected to have a minimal and unquantifiable impact on consumers.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is not the preferred option because four of the eight jurisdictions currently have legislation, and removing controls may provide insufficient guidance to businesses as to how to dispose of Schedule 5, 6 and 7 chemicals. In addition, any unsafe disposal that occurs might represent a public health and safety risk.
Indicative impact of each option on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
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<td>↑ (except QLD)</td>
<td>↑ (except QLD, NSW, WA, SA)</td>
<td>↑ (except QLD, NSW, WA, SA)</td>
<td>↓ (except ACT, NT, TAS, VIC)</td>
</tr>
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<td>Consumers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>Government</td>
<td>-</td>
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</table>

Jurisdictional impact

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for disposal of poisons by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
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<tbody>
<tr>
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<td>5</td>
<td>↑</td>
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<tr>
<td>6</td>
<td>-</td>
</tr>
</tbody>
</table>

Consultation

In discussions, Accord stated that disposal of Schedules 5, 6 and 7 chemicals is likely covered by other sets of legislation or licensing arrangements (in the case of Schedule 7 chemicals).

Key drivers of disposal were seen to be environmental and worker health and safety legislation rather than poisons controls.

Conclusion

In conclusion, the preferred option for disposal controls is option four: adopt an outcome-based approach. This approach is preferred because it will require that
business dispose of poisonous chemicals safely, with enough flexibility that they can decide how they will comply with the requirement.

It is considered that this option will not create additional costs to business however it will mean that where governments might decide to enforce safe disposal of chemicals in these three schedules, they will have legislative or regulatory requirements to enforce.

4.7 Labelling of Schedules 5, 6 and 7 chemicals

The SUSMP outlines the expected labelling requirements for all scheduled poisonous chemicals. States and Territories currently differ in the manner in which they implement or adopt those requirements. These differences have been noted as a major inconsistency and system gap, affecting consumers’ ability to understand what ingredients are in the products they buy, particularly for household cleaning products. The differences are detailed below.

This section will consider the different options to achieve uniformity of the control.

Purpose of the regulatory control

The focus of labelling containers that hold Schedule 5, 6 and 7 chemicals is to ensure that chemicals can be identified correctly and that the public are informed of any associated risks of use. Appropriate labelling is likely to reduce to cases of misuse.

All eight jurisdictions recognise that Schedule 5, 6 and 7 chemicals should be appropriately labelled and hence, include labelling requirements in their legislation. Labelling standards are also included in the SUSMP.

It should be noted, that in implementation, some consideration is required as to specific provisions of labelling regulations that currently exist such as jurisdictions’ ability to grant exemptions from labelling requirements. These provisions exist in at least Victoria, South Australia and New South Wales, however the extent to which they are utilised varies. South Australia reported that they issue approximately 10-12 labelling exemptions per year and that the frequency of those exemptions is determined by the number and extent of scheduling in the year. In addition to that they automatically recognise exemptions that are issued in other States and Territories. Victoria have reported that since October 2005 the Department of Health have given a time-limited “no objection” response to approximately 45

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80 Environment Protection and Heritage Council 2007, Submission to the Productivity Commission Plastics and Chemicals Regulation project.
81 South Australian Department of Health. Email Correspondence, September 2012.
labelling exemption requests, however only three of these requests were for Schedule 5 or Schedule 6 chemicals.\textsuperscript{82}

**Businesses affected by this control**

Changes to the control Labelling of Schedule 5, 6 & 7 chemicals could affect up to 35,000 Australian businesses across all States and Territories, with New South Wales being home to 36 per cent of potentially affected businesses. The highest business count for businesses that may be affected by changes to this control are for hairdressing and beauty services, which make up 55 per cent of total business areas that are likely to be affected. The following table shows a breakdown of the number of affected business areas by jurisdiction.

*Figure 4-E: Number of businesses likely to be affected by labelling controls for Schedule 5, 6 & 7 chemicals*

<table>
<thead>
<tr>
<th>Main affected business areas</th>
<th>Business count by jurisdiction</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Manufacturing - Human Pharmaceutical and Medicinal Product Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Pesticide Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Paint and Coatings Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Chemical Manufacturing</td>
<td>6</td>
</tr>
<tr>
<td>Manufacturing - Cosmetic and Toiletry Preparation Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Wholesale - Industrial and Agricultural Chemical Product Wholesaling</td>
<td>15</td>
</tr>
<tr>
<td>Wholesale - Other Hardware Goods Wholesaling</td>
<td>42</td>
</tr>
<tr>
<td>Wholesale - Pharmaceutical and Toiletry Goods Wholesaling</td>
<td>13</td>
</tr>
<tr>
<td>Wholesale - Grocery Wholesaling</td>
<td>30</td>
</tr>
<tr>
<td>Personal and Other Services - Hairdressing and Beauty Services</td>
<td>317</td>
</tr>
<tr>
<td>Total</td>
<td>417</td>
</tr>
</tbody>
</table>

\textsuperscript{82} Victorian Department of Health, Email correspondence, September 2012.
Options for the regulatory control

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP [Preferred Option]
3. Adopt a prescriptive control
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations

Options analysis

Labelling - Option One: Maintain the status quo

The status quo at present for labelling of Schedule 5, 6 and 7 chemicals is that the Australian Capital Territory and Tasmania have some differing and inconsistent requirements that generally only require that poisonous chemicals are labelled and correctly identified.

This is inconsistent with Victoria which requires labelling to be as per the SUSMP. This includes an additional requirement which stipulates that decanted containers must at least have a label that accurately identifies the chemical or controlled substance.

New South Wales, the Northern Territory, Queensland, South Australia and Western Australia require that labelling procedures follow those set out in the SUSMP. However, Queensland and Western Australia, whilst aligned to the SUSMP, also provide for some extra specification. Under most circumstances, these specifications do not pose an extra burden.

The costs of this option relate to the continuation of the existing problems outlined in the problem section of this RIS. Some of these include continued costs of inconsistency between jurisdictions such as compliance costs for multi-jurisdictional businesses and continued costs of time devoted to understanding the complex differences in controls.

Analysis of this option has not identified any clear benefits of continuing the status quo.
Impact on Industry

Businesses in manufacturing, wholesale and retail industries that operate across multiple jurisdictions are likely to be affected by the status quo as they are required to continue to understand and adhere to multiple sets of regulation.

In addition, there are requirements in addition to those of the SUSMP that exist in the Australian Capital Territory, Queensland, Northern Territory and South Australia. Whilst these additional requirements are not deemed to be particularly onerous in practice, they may cause confusion and work to increase the regulatory burden. This would affect businesses in manufacturing and wholesale industries in those jurisdictions which is up to approximately 4,000 businesses.

In Tasmania there is an additional requirement to include the seller’s name and address on a label in addition to the principal label. Therefore, businesses in manufacturing, wholesale and retail industries that operate in Tasmania are subject to increased regulation and are likely to be affected by the status quo. This is approximately 1,400 businesses.

Impact on Consumers

Business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to continue to be passed onto consumers in higher prices. The presence of these controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

Conclusion

This option is not preferred as it retains national inconsistency and associated costs of national inconsistency.

Labelling - Option Two: Implement the provisions of the SUSMP [Preferred Option]

The regulatory control would require that businesses in all jurisdictions adopt the labelling requirements as they are outlined in the SUSMP.
Impact on Industry

The Australian Capital Territory, Queensland, New South Wales, Northern Territory, South Australia, Western Australia and Victoria all refer to the SUSMP in their legislation in some way. While some of these jurisdictions impose extra requirements in addition to the SUSMP, they do not appear significant. Therefore, it is expected that there would be no additional regulatory burden, or material deregulation from the removal of those controls, which means the impact is considered neutral.

Tasmania refers to the SUSMP and also requires that an additional label with the seller’s name and address is affixed to the product. Therefore, businesses in manufacturing, wholesale and retail industries that operate in Tasmania (approximately 1,400 businesses) would experience a decrease in regulatory burden.

As the Australian Capital Territory currently has some additional labelling requirements to the SUSMP, it is considered that this option would be a regulatory reduction.

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. The other impact would be a minor output impact for businesses that make labels in any changes they would be required to make to the labels they produce. It is expected that the costs of these impacts would be relatively minimal.

Impact on Consumers

There would be small increased costs to businesses that operate in the jurisdictions where there are controls as a result of the implementation of this option. These small increases in costs would be expected to ultimately be passed on to consumers in higher prices. However the extent of the increase in prices is not expected to be high.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.
This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is preferred as it would achieve greater national consistency while still achieving the objective of the regulatory control. In addition, there is not expected to be any additional regulatory burden for businesses in the majority of States and, for the Australian Capital Territory and New South Wales, the increase in regulatory burden would be minimal.

Labelling - Option Three: Adopt a prescriptive control

The SUSMP is a prescriptive standard as it provides specific requirements for labelling of poisonous chemicals. Therefore, this option would have the same impact as Option Two.

The current prescriptive controls of the SUSMP are referenced by the Australian Capital Territory, Queensland, New South Wales, Northern Territory, South Australia, Western Australia and Victoria. For those jurisdictions that do not reference the SUSMP these requirements would be unlikely to place an increased regulatory burden on businesses. Therefore, the prescriptive controls of the SUSMP are deemed reasonable for this option.

There is no evidence to suggest that the additional controls in Tasmania provide improved public health and safety outcomes. Therefore, the prescriptive controls deemed to have minimal impact on the regulatory burden placed on businesses whilst still achieving the desired public health and safety outcomes, are those of the SUSMP.

Impact on Industry

This would be to a large extent the same impacts as described for Option Two. However for the Australian Capital Territory the options could increase regulation, as a prescriptive control may allow less flexibility than the Australian Capital Territory currently has in its regulations.

Impact on Consumers

This would be the same impacts as described for Option Two.

Impact on Government

This would be the same impacts as described for Option Two.
**Conclusion**

This option is not preferred as there would appear to be no benefit from creating an alternative prescriptive standard that would achieve the same outcome as simply adopting the SUSMP.

**Labelling - Option Four: Adopt an outcome-based control**

The SUSMP is a prescriptive standard that explicitly details the labelling requirements for different chemicals. An alternative to the prescriptive standard is to state the control as an outcome based standard. Potential wording could be:

‘Schedule 5, 6 and 7 chemicals must be labelled in a way that the public are made aware of the contents of the package so it does not pose a risk to public health and safety. Appropriate steps must be taken to ensure a label is affixed at all times.’

**Impact on Industry**

Implementing this option may represent a decrease in regulation for all jurisdictions, as it provides jurisdictions with a level of flexibility to achieve the specific outcome. This relates to businesses in manufacturing and wholesale industries across the Australian Capital Territory, Northern Territory, Queensland, South Australia, Western Australia, Tasmania, Victoria which is approximately 10,000 businesses.

As retailers, manufacturers and distributors have an existing duty of care to customers it is possible that most businesses would continue to maintain adequate labelling due to reputational risks. However, an outcome-based control may increase the level of complexity on how to achieve the outcome and therefore may create confusion. There may be increased costs associated with setting up structures to demonstrate compliance. Therefore, the cost of this confusion and complexity outweighs the benefit of decreased regulation through an outcome-based standard. This added confusion and implementation costs that would arise from an outcome-based standard are considered to be an increased regulatory impact and are demonstrated as such in the summary table at the conclusion of this control discussion.

**Impact on Consumers**

An outcome based standard may increase the risk to public health and safety, as labelling decisions would be at the business owners’ or manufactures’ discretion. As this would likely result in inconsistencies between businesses, risks of misuse or inappropriate handling may increase and cause confusion for consumers.

There would be small increased costs to businesses that operate in the jurisdictions where there are controls as a result of the implementation of this option. These small increases in costs would be expected to ultimately be passed on to
consumers in higher prices. However the extent of the increase in prices is not expected to be high.

Therefore, it is expected that the additional cost or likelihood of accidental poisoning outweighs any benefits from an outcome-based provision.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is not preferred as the potential increase of the risk to public health and safety outweighs the benefits of increased flexibility for businesses. In addition, the majority of States currently have prescriptive requirements with no evidence to suggest that these requirements have created a significant burden on businesses. Increasing the level of flexibility may also increase compliance costs for businesses by creating confusion on how to demonstrate compliance.

Labelling - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

This option would provide an outcome-based control, whilst also referring to the SUSMP as a list of requirements with which businesses could choose to comply. This option would allow businesses to choose to comply with a prescriptive standard or choose to comply in a manner they saw fit.

Impact on Industry

This flexibility could be considered unnecessary as it would increase the complexity of existing regulation, as the majority of States and Territories currently have prescriptive controls. In addition, this increased flexibility could potentially lead to increased ambiguity.

There is increased risk that the desired public health and safety outcome is not achieved if labelling is left to the discretion of businesses.
In the same way that the additional level of risk and confusion from option four has been considered to impose a regulatory burden in all jurisdictions, so too will the added confusion from this option.

**Impact on Consumers**

This option would have the potential to increase the risk to public health and safety as it would give the option for businesses and manufacturers to label poisonous chemicals differently from each other, which may cause confusion.

There would be small increased costs to businesses that operate in the jurisdictions where there are controls as a result of the implementation of this option. These small increases in costs would be expected to ultimately be passed on to consumers in higher prices. However the extent of the increase in prices is not expected to be high.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred in comparison to Option Two, as it would appear to increase the risk to public health and safety and provide an additional layer of complexity to regulation thereby potentially creating ambiguity and providing scope for misinterpretation.

**Labelling - Option Six: Remove the provisions of the SUSMP and any State or Territory variations**

This option would mean that there are no explicit regulatory controls over the labelling of Schedule 5, 6 and 7 chemicals. This would require all jurisdictions to remove their legislation.

**Impact on Industry**

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. The other impact would be a
minor output impact for businesses that make labels in any changes they would be required to make to the labels they produce. It is expected that the financial costs of these impacts would be relatively minimal.

The removal of this legislation would mean that there are no regulatory costs for businesses. However, as all jurisdictions currently have legislation regarding the labelling of Schedule 5, 6 and 7 chemicals it would appear that removing this legislation may increase the risk of public health and safety. For this option to be chosen, evidence would need to show that the cost of the regulatory burden of having labelling requirements is greater than the cost to public health and safety that would result if there are no labelling requirements.

The removal of this legislation however, would allow other areas of legislation to influence behaviour of labelling. The Safe Work Australia ‘Labelling or Workplace Hazardous Chemicals – Code of Practice 2011’ is one example of this. A further example of this is the Globally Harmonised System of Classification and Labelling, an internationally agreed system for warning and labelling of chemicals, to which Australia has agreed. However, workplace labelling would not apply to household chemicals and may not be the most appropriate mechanism for regulation in a non-industrial setting.83

**Impact on Consumers**

This option would have the potential to increase risks to public health and safety as it would provide no indication to businesses as to how they should label Schedule 5, 6 and 7 chemicals. Other areas of legislation would be likely to influence labelling decisions; however, they would be unlikely to provide consistent outcomes and may create confusion for consumers.

As this option would remove any controls, there are expected to be small savings to business. These savings would be expected to ultimately be passed onto consumers in lower prices. However, it is not considered that the benefit of lowered prices outweighs the public health risks that may be posed by removing labelling requirements.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, removing regulatory controls where they exist – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished

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83 South Australia Department of Health, Submission to the Consultation RIS, September 2012.
to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred as all jurisdictions currently have legislation and removing all legislation has the potential to increase the risk of public health and safety.

**Indicative impact of each option on stakeholder groups**

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
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</tbody>
</table>

**Jurisdictional impact**

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

**Impact variation of options for labelling controls by State/Territory**

<table>
<thead>
<tr>
<th>Option</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
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<th>TAS</th>
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<th>WA</th>
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</tr>
</tbody>
</table>
Consultation

Industry stakeholders Accord and PACIA, individual businesses who attended the workshop and government stakeholders were supportive of the preferred option for this control. They considered that the provisions of the SUSMP are well understood by industry and that a single set of requirements would increase uniformity, reduce compliance costs and have no adverse effects on health outcomes.

Stakeholders agreed with the preferred option as outlined in consultation and submissions. They noted that there may be future work regarding this in terms of the global harmonisation system for labelling.

Conclusion

In conclusion, the preferred option for labelling of Schedule 5, 6 and 7 chemicals is Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP. This option is preferred as the majority of States currently refer to the SUSMP for this control. For States and Territories that do not currently refer to the SUSMP for this control, the effect of adopting the SUSMP would be minimal. This option would achieve greater national consistency and the objective of the regulatory control.

4.8 Packaging of Schedules 5, 6 and 7 chemicals

This section will consider the different options to achieve uniformity of the control. Packaging standards do not vary significantly for Schedules 5, 6 and 7 chemicals. For the purposes of this analysis, packaging of Schedule 5, 6 and 7 chemicals are considered under the same framework.

Purpose of the regulatory control

The objective of controlling the packaging of Schedule 5, 6 and 7 chemicals is to minimise the risk to public health and safety, by requiring that packaging is leak proof, impervious, minimises the risk of contamination, and prevents inadvertent access by infants and young children.

All eight jurisdictions regulate to require that Schedule 5, 6 and 7 chemicals are appropriately packaged and hence, packaging requirements are included in each jurisdiction’s legislation. Packaging standards are also included in the SUSMP.

It is noted that this control and others contained in the SUSMP contain multiple references to Australian Standards. There is a general question regarding the appropriateness of requiring compliance with a Standard which is not available free. However, Australian Standards are widely used within industry as they are set out by groups of people who have a high degree of technical expertise, and so are well understood and accepted by business, and the cost of their purchase is not considered prohibitive.
Businesses affected by this control

Changes to the control of Packaging of Schedule 5, 6 and 7 chemicals could affect up to 35,000 Australian businesses across all States and Territories, with New South Wales being home to 36 per cent of potentially affected businesses. The highest business count for businesses that may be affected by changes to this control are for hairdressing and beauty services, which make up 55 per cent of total business areas that are likely to be affected. The following table shows a breakdown of the number of affected business areas by jurisdiction.

Figure 4-F: Number of businesses likely to be affected by packaging controls for Schedule 5, 6 & 7 chemicals

<table>
<thead>
<tr>
<th>Main affected business areas</th>
<th>Business count by jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Manufacturing - Human Pharmaceutical and Medicinal Product Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Pesticide Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Paint and Coatings Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Wholesale - Industrial and Agricultural Chemical Product Wholesaling</td>
<td>15</td>
</tr>
<tr>
<td>Wholesale - Other Hardware Goods Wholesaling</td>
<td>42</td>
</tr>
<tr>
<td>Wholesale - Pharmaceutical and Toiletry Goods Wholesaling</td>
<td>13</td>
</tr>
<tr>
<td>Wholesale - Grocery Wholesaling</td>
<td>30</td>
</tr>
<tr>
<td>Personal and Other Services - Hairdressing and Beauty Services</td>
<td>317</td>
</tr>
<tr>
<td>Total</td>
<td>417</td>
</tr>
</tbody>
</table>

Source: Affected business types were identified by public health officials, and numbers of businesses are from Australian Bureau of Statistics (2011) Counts of Australian Businesses, including Entries and Exits, Jun 2007 to Jun 2011, Report. 8165.0.

Options for the regulatory control

The method of determining the options for each control is outlined in Section 5.1 of this report.

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP [Preferred Option]

3. Adopt a prescriptive control

4. Adopt an outcome-based control

5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

6. Remove the provisions of the SUSMP and any State or Territory variations

Options analysis

Packaging - Option One: Maintain the status quo

The status quo for packaging of Schedule 5, 6 and 7 chemicals involves limited jurisdictional inconsistencies. All jurisdictions reference the SUSMP, but South Australia, New South Wales and Victoria require adherence to further standards. However these appear to be simple and would not likely impose substantive extra burdens. The Australian Capital Territory, Queensland, Western Australia and Tasmania allow for an alternative to compliance with the SUSMP if consent is given by the relevant chief officer or Minister.

Maintaining the status quo would result in continuation of the costs and inconsistencies as outlined in the problem section of this RIS. Some of these include associated costs of inconsistency between jurisdictions such as compliance costs for multi-jurisdictional businesses\(^4\), costs of time devoted to understanding the complex differences in controls.

Analysis of this option has not identified any clear benefits of continuing the status quo.

Impact on Industry

Packaging controls across the Australian jurisdictions appear similar and therefore are likely to impose a similar level of compliance action to businesses that package Schedule 5, 6 or 7 chemicals. However, businesses that operate across jurisdictions are required to understand and adhere to multiple sets of regulation, therefore may be affected by the status quo.

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. It is expected that the cost of this impact would be relatively minimal.

There are approximately 35,000 businesses operating in Australia that may be subject to packaging controls.

\(^4\) With respect to this control, a multi-jurisdictional business would be one which sells packaged products across borders (which is likely to be a high proportion of manufacturers and wholesalers), rather than just businesses with operations located in more than one jurisdiction.
Impact on Consumers

As noted above, business stakeholders have been unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to continue to be passed onto consumers in higher prices. The presence of these controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

Conclusion

This is not the preferred option as it maintains the inconsistencies that currently exist across jurisdictions and the associated costs of inconsistencies.

Packaging - Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP [Preferred Option]

The regulatory control would require that businesses in all jurisdictions adopt the wording of the SUSMP.

Impact on Industry

All jurisdictions currently refer to the SUSMP in their individual legislation. Some jurisdictions offer alternatives to the SUSMP which is contingent on approval by an appropriate person. However, these alternatives do not appear to vary significantly from the SUSMP. Minimal cost will be incurred by businesses in the Australian Capital Territory, Queensland, Tasmania and Western Australia who currently offer additional alternatives which will have to be removed. The number of potentially affected businesses is difficult to quantify, as it would only include those manufacturers and wholesalers in those jurisdictions which do not sell any packaged products inter-state.

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. The other impact would be a minor output impact for businesses that make package poisons in any changes they
would be required to make to the packaging they use. It is expected that the costs of these impacts would be relatively minimal.

The benefits of implementing this option is improved uniformity and is therefore likely to outweigh any forgone opportunities to use alternative packaging just for Australian Capital Territory, Queensland, Tasmania or Western Australia. In Western Australia the current controls in place for packaging of Schedules 5, 6 and 7 chemicals are slightly more onerous than the SUSMP, therefore, the adoption of the preferred option is likely to decrease the level of regulation in this case.

The SUSMP references the Australian Standard. While this is not ideal, as the Standards are not freely available, currently all jurisdictions reference the SUSMP (and thus the Australian Standard) so businesses would be expected to already have access. Moreover, the Australian Standards are put together by expert groups that focus on their specialty area, in this case chemical packaging, to ensure effective policy development. Further, reference to the Australian Standards ensures up-to-date, effective packaging requirements.

Option Three below provides an alternative to solve this potential problem.

**Impact on Consumers**

This option would remove some additional controls in Australian Capital Territory, Queensland, Tasmania or Western Australia. There are expected to be small savings to businesses in those jurisdictions and who operate nationally as a consequence. These savings would be expected to ultimately be passed onto consumers in lower prices. As the differences are relatively minor, the extent of cost savings is also expected to be minimal.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is the preferred option as all jurisdictions currently refer to the SUSMP. For jurisdictions that offer alternatives or include additional requirements the impact
of adopting the SUSMP would be minimal while still achieving the objective of the control.

**Packaging - Option Three: Adopt a prescriptive control**

The SUSMP is a prescriptive control; however, it currently references the Australian Standard AS 2216 -1997 which is not seen by some as good legislative drafting practice. This is largely due to the fact that all requirements in the SUSMP are not clearly spelt out in the one resource, nor freely available.

This option would involve including all the specific packaging requirements in the SUSMP in a way that is consistent with the intent and outcomes currently articulated in the Australian Standard. In terms of current compliance cost, there would likely be no practical difference from the current SUSMP. However, the Australian Standard is able to draw on packaging expertise nationally to keep the Standard up to date, and it would be costly and duplicative to repeat this analysis to keep the SUSMP current.

**Impact on Industry**

In practice, it is expected that this option would not substantially change the impact of regulation on industry. This is because the SUSMP would be amended to reflect the outcomes and intent of the current Australian Standard. However, if the SUSMP and the Australian Standard diverged over time (as the Standard was updated), this may impose additional costs on firms that package both poisonous chemicals subject to the SUSMP, and other products where their retailer or other clients require packaging consistent with the Australian Standard. Minimal cost will be incurred by those businesses in Australian Capital Territory, Queensland, Tasmania and Western Australia who have utilised the additional alternatives currently offered which will have to be removed.

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. The other impact would be a minor output impact for businesses that make package poisons in any changes they would be required to make to the packaging they use. It is expected that the costs of these impacts would be relatively minimal.

Were it adopted, this option would address some industry association concerns about SUSMP referencing Australian Standards, as these are not freely available. However it would also mean that the packaging requirements would not benefit from the technical expertise present in the Australian Standards.

**Impact on Consumers**

This option would remove some additional controls in Australian Capital Territory, Queensland, Tasmania or Western Australia and make minor amendments to the
regulation in the other jurisdictions. There are expected to be small savings to businesses in those jurisdictions and who operate nationally as a consequence. These savings would be expected to ultimately be passed onto consumers in lower prices. As the differences are relatively minor, the extent of cost savings is also expected to be minimal.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories. However, keeping this option updated be more costly for government than relying on the Australian Standard, that is revised as new developments in packaging occur. Governments would need to fund their own analysis of developments in packaging and undertake separate consultation outside Standard Australia’s processes.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is not the preferred option. This is because the outcome this control seeks to achieve is essentially the same as Option Two. However, it eliminates the reference to the Australian Standard. As the Australian Standard is maintained and updated by expert groups that focus on this specialty area, eliminating the reference will not capture updates to Australian Standard, or would be costly to continually update the SUSMP to reflect changes to the Australian Standard.

**Packaging - Option Four: Adopt an outcome-based control**

This option would state the control as an outcome-based standard. Potential wording could be:

‘Schedule 5, 6 and 7 chemicals must be packaged in a way that minimises the risk of contamination and does not pose a risk to public health and safety.’

**Impact on Industry**

This option would provide businesses with a level of flexibility to achieve the specific outcome, without referencing the current requirements of the SUSMP, and thus the Australian Standard. This would only yield a saving to business if the
Australian Standard was overly prescriptive. None of the business input during this regulatory reform process has argued that this is the case.

An outcome-based control that didn’t explicitly reference the Australian Standard may increase the level of complexity on how to achieve the outcome and therefore may create uncertainty. Therefore, the cost of this uncertainty and complexity is considered to outweigh the benefit of any greater flexibility from offering an outcome-based standard.

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. The other impact would be a minor output impact for businesses that make package poisons in any changes they would be required to make to the packaging they use. It is expected that the costs of these impacts would be relatively minimal.

Impact on Consumers

An outcome-based approach would only benefit consumers with improved health and safety outcomes if the current Australian Standard did not provide sufficient controls. No input to this regulatory reform process argued this.

As noted above, offering additional flexibility by allowing businesses to achieve safety outcomes while not to complying with the Australian Standard would only yield a saving to business and thus consumers, if the Australian Standard was overly prescriptive. None of the business input during this regulatory reform process has argued that this is the case.

This option would remove some additional controls in Australian Capital Territory, Queensland, Tasmania or Western Australia and make minor amendments to the regulation in the other jurisdictions. There are expected to be small savings to businesses in those jurisdictions and who operate nationally as a consequence. These savings would be expected to ultimately be passed onto consumers in lower prices. As the differences are relatively minor, the extent of cost savings is also expected to be minimal.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.
This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred as the potential ambiguity may pose significant risk to public health and safety.

**Packaging - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision**

This option would provide an outcome-based standard, with an additional provision included that outlines the specific activities businesses could undertake to comply with the standard. This option would provide businesses with the option of either complying in the manner they saw fit, or complying by adhering to more prescriptive requirements.

**Impact on Industry**

This option would be similar to the current legislation in the Australian Capital Territory, Queensland, Western Australia and Tasmania, leaving approximately 25,000 businesses unaffected by the change. In these jurisdictions a similar level of flexibility is provided by allowing compliance with the SUSMP or compliance if consent is given by the relevant chief officer or Minister. This option would have minimal effect on the aforementioned jurisdictions. There would also be minimal effect on the other jurisdictions.

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. The other impact would be a minor output impact for businesses that make package poisons in any changes they would be required to make to the packaging they use. It is expected that the costs of these impacts would be relatively minimal.

However, there is a risk of providing an outcome-based standard, that it may provide a level of flexibility that could be considered unnecessary as it would increase the complexity of existing regulation. In addition, this increased flexibility could potentially lead to increased ambiguity.

There is increased risk that the desired public health and safety outcome is not achieved if packaging is left to the discretion of businesses.

**Impact on Consumers**

As mentioned above, the risk of an outcome-based control, containing a prescriptive deemed-to-comply provision may create confusion or ambiguity for
retailers, distributors and manufacturers which may result in decreased public health outcomes.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not the preferred option as it may increase complexity by providing options to businesses unnecessarily. The packaging requirements would be at the discretion of businesses and manufacturers which may increase the risk to public health and safety.

**Packaging - Option Six: Remove existing provisions or standards**

This option would mean that there are no explicit regulatory controls over the packaging of Schedule 5, 6 and 7 chemicals. This would require all jurisdictions to remove their controls in this area.

**Impact on Industry**

The removal of this legislation would mean that there are no regulatory costs imposed by jurisdictions. There is no other legislation that may regulate packaging of Schedule 5, 6 and 7 chemicals for use outside workplaces.

The impact of this option would be an education impact for businesses as they are required to learn their new regulatory requirements. The other impact would be a minor output impact for businesses that make package poisons in any changes they would be required to make to the packaging they use. It is expected that the costs of these impacts would be relatively minimal.

To the extent that businesses choose to voluntarily package poisons in accordance with the relevant Australian Standard (AS2216-1997 ‘Packaging for poisonous substances’) there would be limited savings, but equally no adverse impacts on
public health. Major suppliers would be expected to adopt this approach.\textsuperscript{85} However, some firms may choose to adopt packaging that is not consistent with the Australian Standard but it is not possible to assess the likely savings, which in any event may be offset by the costs of any legal proceedings if their customers or others were subsequently harmed as a consequence of inadequate packaging.

\textit{Impact on Consumers}

As all jurisdictions currently have legislation regarding the packaging of Schedule 5, 6 and 7 chemicals it would appear that removing this legislation may increase the risk of public health and safety. For this option to be chosen, evidence would need to show that the cost of the regulatory burden of having packaging requirements is greater than the cost to public health and safety that would result if there are no packaging requirements.

As this option would remove any controls, there are expected to be small savings to business. These savings would be expected to ultimately be passed onto consumers in lower prices. However it is not clear that the lower prices would outweigh the potential detrimental impact of having no packaging controls.

\textit{Impact on Government}

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, removing controls where they exist – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

To the extent that some businesses chose to use less effective packaging and this led to more poisoning events, there would be a substantial cost to government. These costs would include those costs incurred by the health system and to the extent that it lead to any disability to the welfare system. It has not been feasible to quantify these costs.

Conclusion

This is not the preferred option. This is because the cost of the regulatory burden of having packaging requirements is considered to be less than the cost to public health and safety that would result if there are no packaging requirements.

Indicative impact of each option on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>↓</td>
<td>-</td>
<td>↓</td>
</tr>
<tr>
<td>Consumers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
</tr>
<tr>
<td>Government</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Jurisdiction specific impact

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for packaging by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACT  NSW  NT  QLD  SA  TAS  VIC  WA</td>
</tr>
<tr>
<td>1</td>
<td>-      -      -      -      -      -      -      -</td>
</tr>
<tr>
<td>2</td>
<td>-      -      -      -      -      -      -      -      ↓</td>
</tr>
<tr>
<td>3</td>
<td>-      -      -      -      -      -      -      -      -</td>
</tr>
<tr>
<td>4</td>
<td>↓      ↓      ↓      ↓      ↓      ↓      ↓      ↓      ↓</td>
</tr>
<tr>
<td>5</td>
<td>-      ↑      ↑      -      ↑      -      ↑      -      -</td>
</tr>
<tr>
<td>6</td>
<td>↓      ↓      ↓      ↓      ↓      ↓      ↓      ↓      ↓</td>
</tr>
</tbody>
</table>

Consultation

PACIA were in support of the preferred option. Accord had some concerns about the continued use of an Australian Standard which must be purchased. Despite this concern Accord thought the option would be acceptable to their members.
For industry stakeholders, especially members of Accord in the cosmetics and therapeutic goods industry there are issues relating to the packaging of parallel-imported products and consistency of labelling which are unrelated to this RIS.

**Conclusion**

In conclusion, the preferred option is Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP. This option is preferred as the SUSMP, with a reference to the widely adopted Australian Standard, is considered to achieve the objective of the control in a manner that minimises costs based on industry input into the Standard. Moreover, all jurisdictions currently refer to the SUSMP which would indicate minimal implementation costs.

4.9 Record keeping for Schedule 7 chemical transactions

Record keeping controls prescribe how businesses document the inward and outward movement of Schedule 7 chemicals. The following section describes and analyses options to achieve uniformity of record keeping controls across jurisdictions for Schedule 7 chemicals. Record-keeping controls would apply to all transactions involving Schedule 7 chemicals along the supply chain.

The analysis reviews each option and assesses the benefits and costs for government, consumers and industry. Current requirements in each jurisdiction are outlined in Appendix D.

This section will consider the different options to achieve uniformity of the control.

**Purpose of the control**

The purpose of record keeping is to allow government to have regulatory oversight over the supply chain for highly dangerous chemicals. It ensures that suppliers and purchasers can be identified or located if necessary and that clear transaction records are maintained. In addition, record keeping controls ensure that information can be retrieved when required and understood by a third party.

**Businesses affected by this control**

Changes to the control Record keeping of Schedule 7 chemicals could affect up to 3,200 Australian businesses across all States and Territories who are authorised to handle Schedule 7 chemicals.
Figure 4-G: Number of businesses likely to be affected by a record keeping control for Schedule 7 chemicals

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Number authorised to have, supply or use Schedule 7 chemicals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>3 research and education licences</td>
</tr>
<tr>
<td>New South Wales</td>
<td>81 authorised sellers</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>214 licences or permits issued for following sectors/uses: 117 industrial; 56 pest control; 30 retail; 8 wholesale; 3 manufacturing. Additional 89 agricultural and veterinary Schedule 7 authorisations</td>
</tr>
<tr>
<td>Queensland</td>
<td>100 licenced sellers</td>
</tr>
<tr>
<td>South Australia</td>
<td>280 sellers; 2032 purchasers&lt;sup&gt;86&lt;/sup&gt;</td>
</tr>
<tr>
<td>Tasmania</td>
<td>36 licences: 31 for possession and use and 5 wholesalers</td>
</tr>
<tr>
<td>Victoria</td>
<td>436 licences to sell, 292 licences to purchase or obtain</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Information not available</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,271 authorised businesses, individuals or researchers</td>
</tr>
</tbody>
</table>

Source: State and Territory Government health departments

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control [Preferred Option]
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations

<sup>86</sup> The number of persons authorised in South Australia to use Schedule 7 chemicals includes all licensed pest control operators and businesses. The licence permits the holder to use Schedule 5, 6 and 7 chemicals, not Schedule 7 only: some licence holders may not use Schedule 7 chemicals.
Options analysis

Record keeping - Option One: Maintain the status quo

The status quo would continue the inconsistencies between jurisdictions. Seven of the eight jurisdictions require some form of record keeping. There is slight variation across jurisdictions, as some jurisdictions require records to be kept for the sale of all poisonous chemicals, and some jurisdictions require extra details to be noted or only require records for Schedule 7 chemicals.

In addition, details that need to be recorded vary slightly between jurisdictions and include either some or all of: name, address, occupation, telephone number, signature, date of purchase, the name of the poisonous chemical, its strength and quantity and purpose. Most jurisdictions require the records to be retained for a period of two years, except Victoria which requires three years.

Maintaining the status quo would result in continuation of the existing problems outlined in the problem section of this RIS. Some of these include continued costs of inconsistency between jurisdictions such as compliance costs for multi-jurisdictional businesses, costs of time devoted to understanding the complex differences in controls.

Analysis of this option has not identified any clear benefits of continuing the status quo.

Impact on Industry

Record keeping controls across the Australian jurisdictions appear similar (except New South Wales where there are no controls) and therefore are likely to impose a similar level of compliance action to the approximately 3,200 businesses that handle Schedule 7 chemicals. However, businesses that operate across jurisdictions are required to continue to understand and adhere to multiple sets of regulation, therefore may be affected by the status quo.

The impact of this option is an education impact for affected businesses that are required to ensure that they comply with their regulatory requirements. There may also be an administrative impact for businesses that operate across jurisdictions and who are required to create forms and processes to ensure compliance with different sets of requirements and data points that need to be collected. Businesses have not been able to provide information to quantify the impact of this problem; however they seem to be relatively minor in nature.

Impact on Consumers

As noted above, business stakeholders were unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to continue to be passed on to
consumers in higher prices. The presence of extra controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

**Impact on Government**

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

**Conclusion**

This option is not preferred as there are currently clear inconsistencies between jurisdictions, which would continue. These inconsistencies and associated costs from national inconsistency would remain if the status quo were maintained.

Record keeping - Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP

Implementation of the provisions of the SUSMP would have a similar effect on stakeholders as Option Six: Remove the provisions of the SUSMP and any State or Territory variations, as the SUSMP does not contain any explicit requirements for record keeping.

**Impact on Industry**

The removal of current regulations would likely reduce the regulatory burden and compliance costs in each State. The degree of this reduction would depend on the level of detail prescribed by existing controls. It is expected that this would see a reduction in costs for business. The other impact of this option is an education impact for affected businesses that are required to ensure that they remain up to date with their regulatory requirements.

There is no evidence to suggest that there have been issues in New South Wales without explicit record keeping regulation to supplement other legislation such as Agricultural and Veterinary Acts and Regulations.⁸⁷ Agricultural and Veterinary Acts

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⁸⁷ NSW have undertaken to provide more information on record-keeping for Agricultural and Veterinary Acts and Regulations.

With the removal of current regulations and standards all States may be able to rely on Agricultural and Veterinary Acts and Regulations to some extent, although these regulations do not always regulate chemicals at the ‘point of sale’.

It would be expected that at least some form of record keeping would take place as standard business practice to maintain stock control, and computerised systems for small business are increasingly enabling firms to readily track which customers purchased which products. However, normal business processes may not involve retention of records for a minimum of two to three years as required by the majority of jurisdictions, which allows tracing of transactions.

\textit{Impact on Consumers}

As this option would remove any controls, there are expected to be small savings to business. These savings would be expected to ultimately be passed onto consumers in lower prices. As there is no evidence of a benefit of reduced poisoning in those jurisdictions with record-keeping controls, removing these controls nationally is not expected to adversely affect consumers. However, there are benefits for regulators and other people who may be affected by the adverse use of Schedule 7 chemicals, and therefore public health outcomes, from the retention of records of transactions of Schedule 7 chemicals.

To the extent there is compliance with current record keeping requirements and this would be diminished by the lack of legal controls, this option would hinder the ability of regulators to track purchasers of Schedule 7 chemicals, where this is necessary to protect public health and safety. The extent of any resulting harm on consumers is not quantifiable.

\textit{Impact on Government}

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.
This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This is not the preferred option as it would not necessarily facilitate regulatory oversight over the supply chain for poisonous chemicals. The details kept by businesses would be at their discretion which may not involve sufficient information for suppliers and purchasers to be identified or located if necessary.

**Record keeping - Option Three: Adopt a prescriptive control [Preferred Option]**

This option would involve the adoption of regulatory requirements for record keeping that are prescribed in the majority of jurisdictions. The information required would be as follows:

- Name and address of supplier and purchaser
- Date of order and supply
- Trade or approved name of chemical
- Quantity of chemical
- Product code*
- Proof of authorisation of purchaser*

*These information requirements were added after they were suggested during the consultation process by PACIA and the South Australian Government respectively.

In addition, records would be kept for five years, in either paper or electronic form, consistent with the record retention requirements of the ATO.

**Impact on Industry**

The above requirements would ensure that clear transaction records were maintained to allow identification and location of suppliers and purchasers. Gathering this information means that there are consistent details being recorded about the individuals in possession of poisonous chemicals along the supply chain. This would make it easier for information or evidence to be gathered where there is need to investigate the misuse of chemicals.

The principal impacts of this option are education impacts as businesses learn their new regulatory requirements, administrative impacts as businesses must ensure that their processes align to the new control, and possibly an IT/software impact if businesses update their reporting software to account for the new information requirements. However as the specific changes suggested in this option are not
considered to be very much over the typical recordkeeping requirements, these impacts and potential associated increased costs are likely to be minimal.

Prescriptive regulation for this level of record keeping is likely to reduce the additional regulatory burden for businesses, as it is expected that they would typically include this level of information in tax invoices.89

Although the length of time for records to be kept for will increase with this option, the requirements would be consistent with the length of time that businesses are required to retain taxation documents for potential audit by the Australian Tax Office,90 which means that there is no expected additional regulatory requirement to keep the records. There would be other ancillary benefits from retaining records for longer as well in terms of any compliance or tracking activities that may be carried out by regulators.

While it is estimated that implementing this option would have little impact on businesses in jurisdictions that have existing regulation in this area, it would result in an increase in regulation for 200 businesses in New South Wales as they do not currently have any regulation relating to record keeping of chemicals. Tasmania’s 36 businesses currently have minimal requirements for record keeping of Schedule 7 chemicals and therefore this option is likely to slightly increase the level of regulation in this jurisdiction.

For businesses operating in Western Australia, the amount of data points required to be collected is lower, while the method of keeping the record remains the same. For this reason the impact on businesses in Western Australia is considered to be neutral.

The main benefit of prescriptive regulation is that it provides clear guidelines for compliance, therefore reducing the risk of inconsistencies in interpretation by businesses and compliance officers. The benefit of mandating a five retention period is purely that it offers some simplicity for firms, as it is in line with their taxation record keeping requirements.

**Impact on Consumers**

As noted above, business stakeholders were unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are any increased costs from this option these would be expected to be passed on to consumers in higher prices.

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89 The ATO requires that valid tax invoices are retained for five years, and contain among other information: the supplier’s identity and ABN; a brief description of what is sold, including the quantity (if applicable) and the price of what is sold; the date the document is issued. ATO 2012, *Valid Tax Invoices and GST Credits*, (http://www.ato.gov.au/content/downloads/BUS50913n12358.pdf accessed 7 November 2012)

There is no evidence to suggest that consumers would otherwise be substantially affected by the adoption of a new prescriptive standard to regulate record keeping of chemicals.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is the preferred option because it is a practical option to achieve uniformity. The above requirements would ensure that clear transaction records were maintained to allow identification and location of suppliers and purchasers. Gathering this information means that there are consistent details being recorded about the individuals in possession of poisonous chemicals along the supply chain. This would make it easier for information or evidence to be gathered where there is need to investigate the misuse of chemicals. The majority of jurisdictions currently require that the listed details and the period of retention aligns with the requirements of the ATO which would indicate minimal impact on businesses.

**Record keeping - Option Four: Adopt an outcome-based control**

This option would involve adopting an outcome-based standard. This would require businesses to document the inward and outward movement of Schedule 7 chemicals in a manner they saw fit to ensure clear recording of transactions. This option would ensure extraction of information when required without prescribing direct requirements for doing so.

**Impact on Industry**

This option would be likely to increase the regulatory burden on businesses within New South Wales, as currently minimal regulatory controls exist. However, it would be expected that documenting inward and outward movement of chemicals would be standard business practice, and therefore this increase is likely to be marginal.

The principal impacts of this option are education impacts as businesses learn their new regulatory requirements, administrative impacts as businesses must ensure
that their processes align to the new control, and possibly an IT/software impact if businesses update their reporting software to account for the new information requirements. However as the specific changes suggested in this option are not considered to be largely consistent with the typical recordkeeping requirements, these impacts and potential associated increased costs are likely to be minimal.

Businesses within jurisdictions with existing legislation would experience greater flexibility and therefore may have reduced regulatory and compliance costs. However, Western Australia already has a high level description of the outcome being sought from its regulation; therefore for businesses operating in that State the effect would be neutral.

The number of businesses likely to be most impacted is 230, the number of businesses likely to be affected in New South Wales and Tasmania.

**Impact on Consumers**

As noted above, business stakeholders were unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are any increased costs from this option these would be expected to be passed on to consumers in higher prices.

There is no evidence to suggest that consumers would otherwise be substantially affected by the adoption of a new standard to regulate record keeping of chemicals.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is not the preferred option as this would leave record keeping at the discretion of businesses which would not necessarily facilitate an adequate level of government oversight over the supply chain for dangerous chemicals. For a prescriptive activity such as record keeping, it was not considered that an outcome-based control was appropriate.
Record keeping - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

This option would provide businesses with the choice of adhering to the prescriptive requirements or determining their own appropriate record-keeping system.

Impact on Industry

This option would offer businesses with the flexibility of complying with a prescriptive requirement, or keeping records in the manner they saw fit.

However, by providing the option of an outcome-based standard, there is a risk that some businesses may not retain sufficient information to trace suppliers and purchasers if necessary. In addition, an outcome-based standard would not ensure clear record keeping that could be understood by a third party, or be consistent across Australia.

The principal impacts of this option are education impacts as businesses learn their new regulatory requirements, administrative impacts as businesses must ensure that their processes align to the new control, and possibly an IT/software impact if businesses update their reporting software to account for the new information requirements. However as the specific changes suggested in this option are not considered to be very much over the typical recordkeeping requirements, these impacts and potential associated increased costs are likely to be minimal.

This may represent an increase in regulatory burden for 200 businesses in New South Wales, as they currently do not have any existing regulation. However, it would be expected that documenting inward and outward movement of chemicals would be standard business practice, and therefore this increase is likely to be marginal.

Impact on Consumers

As noted above, business stakeholders were unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are any increased costs from this option these would be expected to be passed on to consumers in higher prices.

There is no evidence to suggest that consumers would otherwise be substantially affected by the adoption of a new standard to regulate record keeping of chemicals.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative
drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

Therefore, this option is not the preferred option as it provides flexibility to businesses which may not facilitate the achievement of the objective.

Record keeping - Option Six: Remove the provisions of the SUSMP and any State or Territory variations

This option would result in no regulatory control over recording the inward and outward movement of Schedule 7 chemicals. This would affect seven of the eight jurisdictions as most jurisdictions have existing regulations, except for New South Wales.

Impact on Industry

The removal of current regulations would likely reduce the regulatory burden and compliance costs in each State. The degree of this reduction would depend on the level of detail prescribed by existing controls. It is expected that this would see a reduction in costs for business.

There is no evidence to suggest that there have been issues in New South Wales without explicit record keeping regulation to supplement other legislation such as Agricultural and Veterinary Acts and Regulations.91 Agricultural and Veterinary Acts and Regulations require maintenance of accurate records for agricultural use of all chemical products.92

It would be expected that at least some form of record keeping would take place as standard business practice to maintain stock control, and computerised systems for small business are increasingly enabling firms to readily track which customers purchased which products. However, normal business processes may not involve retention of records for a minimum of two to five years as required by the majority of jurisdictions, which allows tracing of transactions.

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91 NSW have undertaken to provide more information on record-keeping for Agricultural and Veterinary Acts and Regulations.
An associated risk of removing legislation regarding record keeping is that some businesses may not retain sufficient information to trace suppliers and purchasers if necessary. In addition, an outcome-based standard would not ensure clear record keeping that could be understood by a third party or consistent across Australia.

**Impact on Consumers**

As this option would remove any controls, there are expected to be small savings to business. These savings would be expected to ultimately be passed onto consumers in lower prices. As there is no evidence of a benefit to date of reduced poisoning in those jurisdictions with record-keeping controls, removing these controls nationally is not expected to adversely affect consumers. However, there are benefits for regulators and other people who may be affected by future adverse use of Schedule 7 chemicals, and therefore public health outcomes, from the retention of records of transactions of Schedule 7 chemicals.

To the extent there is compliance with current record keeping requirements and this would be diminished by the lack of legal controls, this option would hinder the ability of regulators to track purchasers of Schedule 7 chemicals, where this is necessary to protect public health and safety. The extent of any resulting harm on consumers is not quantifiable.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, to remove controls where they exist – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

With the removal of current regulations and standards all States may be able to rely on Agricultural and Veterinary Acts and Regulations to some extent, although these regulations do not always regulate chemicals at the ‘point of sale’.

**Conclusion**

This is not the preferred option as it would not necessarily facilitate regulatory oversight over the supply chain for dangerous chemicals. The details kept by businesses would be at their discretion which may not involve sufficient information for suppliers and purchasers to be identified or located if necessary.
Indicative impact of each option on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
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<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
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<td>↓ (except NSW and TAS)</td>
<td>↓ (except NSW, TAS, WA)</td>
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<td>↓ (except NSW)</td>
</tr>
<tr>
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<td>-</td>
<td>-</td>
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<tr>
<td>Government</td>
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Jurisdictional impact

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for record-keeping controls by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
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Consultation

Industry is generally supportive of options to continue record-keeping requirements. In the consultation phase some additional points of information were added to the list of what regulated businesses would be required to record, following suggestions from industry and government stakeholders. The South Australian Department of Health, and PACIA, suggested the inclusion of the proof of authorisation of purchaser and the product code identifier respectively.

Conclusion

In conclusion, Option Three: Adopt a prescriptive control is the preferred option as it will facilitate uniformity whilst achieving the objective of the control. In addition, the
majority of jurisdictions currently require the details listed in this option and the period of retention aligns with the requirements of the ATO indicating minimal impact on businesses.

4.10 Advertising of Schedule 7 chemicals

Advertising requirements stipulate control of activities that may draw attention to Schedule 7 chemicals in a public medium, in order to promote sales. There is currently only one jurisdiction that has regulation regarding advertising. Consequently, the preferred option to achieve uniformity has been identified as the removal of that existing regulation.

The options to achieve uniformity are described and assessed below by considering their general impact on government, consumers and industry.

This section will consider the different options to achieve uniformity of the control.

Purpose of the regulatory control

The purpose of advertising controls is to prevent inappropriately targeted advertising of Schedule 7 chemicals. These chemicals are prohibited from domestic use and therefore advertising of these chemicals to the domestic market would be inappropriate.

Businesses affected by the control

Changes to the control Advertising of Schedule 7 chemicals could affect up to 3,200 Australian businesses across all States and Territories.

*Table 4-H: Number of businesses likely to be affected by advertising control for Schedule 7 chemicals*

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Number authorised to have, supply or use Schedule 7 chemicals</th>
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<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>3 research and education licences</td>
</tr>
<tr>
<td>New South Wales</td>
<td>81 authorised sellers</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>214 licences or permits issued for following sectors/uses: 117 industrial; 56 pest control; 30 retail; 8 wholesale; 3 manufacturing. Additional 89 agricultural and veterinary Schedule 7 authorisations</td>
</tr>
<tr>
<td>Queensland</td>
<td>100 licenced sellers</td>
</tr>
</tbody>
</table>
South Australia | 280 sellers; 2032 purchasers
---|---
Tasmania | 36 licences: 31 for possession and use and 5 wholesalers
Victoria | 436 licences to sell, 292 licences to purchase or obtain
Western Australia | Information not available
TOTAL | 3,271 authorised businesses, individuals or researchers

Source: State and Territory Departments of Health

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations [Preferred Option]

Options analysis

Advertising - Option One: Maintain the status quo

Currently seven of the eight jurisdictions have no standard outlined in their respective relevant Act or regulations. Therefore, the status quo would mean that there are no explicit regulatory controls over the advertising of Schedule 7 chemicals in any jurisdiction except for Queensland.

Impact on Industry

Businesses in all jurisdictions, except Queensland, are not affected by the status quo as there are currently no controls relating to advertising of Schedule 7 chemicals.

Wholesale businesses that operate in Queensland, however, are subject to regulatory requirements relating to advertising. Whilst these requirements are minimal and unlikely to affect the actions of these businesses, having a control set out creates complexity and leads to national inconsistency.

93 The number of persons authorised in South Australia to use Schedule 7 chemicals includes all licensed pest control operators and businesses. The licence permits the holder to use Schedule 5, 6 and 7 chemicals, not Schedule 7 only: some licence holders may not use Schedule 7 chemicals.
This regulatory requirement prevents Queensland businesses from advertising but also creates an education impact because of inconsistency. Businesses operating across jurisdictions are required to be aware of the differing requirements in Queensland.

There would be a continuation of the problem of inconsistency between Queensland and the other States and Territories from maintaining the status quo.

**Impact on Consumers**

As noted above, business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices. The presence of these controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

**Impact on Government**

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

**Conclusion**

This option is not preferred as it retains national inconsistency and associated costs of national inconsistency.

**Advertising - Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP**

There are no outlined restrictions on advertising Schedule 7 chemicals in the SUSMP. Hence, implementation of the SUSMP would have the same effect on stakeholders as the removal of existing standards and provisions.

**Impact on Industry**

As there are no outlined restrictions on advertising Schedule 7 chemicals in the SUSMP requiring the implementation of the provisions of the SUSMP would have the same effect on stakeholders as Option Six: Remove the provisions of the SUSMP and any State or Territory variations. This is the preferred option.
Impact on Consumers

As this option would remove any controls, there are expected to be small savings to businesses in Queensland and that operate across jurisdictions. These savings would be expected to ultimately be passed onto consumers in lower prices. As there is no evidence of a benefit of reduced poisoning in those jurisdictions without controls, removing these controls nationally is not expected to adversely affect consumers.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, of removing controls in Queensland – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is effectively the same as Option Six, which is the preferred option.

Advertising - Option Three: Adopt a prescriptive control

This option would involve outlining specific requirements for the regulatory control. It would specify in detail the permitted form, media, language, format and location of advertising of Schedule 7 chemicals.

Impact on Industry

This may hinder the promotion of new chemicals to specialist users; however it is unlikely to affect public advertisements for Schedule 7 chemicals due to their hazardous nature and associated risk, and limited users.

The impact on industry would be an education impact as they would have to learn their new regulatory requirements. There would also be a limitation on their activities as they would no longer able to advertise Schedule 7 chemicals. The extent to which Schedule 7 chemicals and products are advertised is not clear which means the effect of this cannot be quantified.

There is no evidence to suggest that advertising of Schedule 7 chemicals takes place in such a manner as to pose public health and safety risks in those jurisdictions without regulatory controls. Therefore, imposing prescriptive regulatory
requirements would be likely to increase the regulatory burden with no clear benefits.

Impact on Consumers
Consumers are also unlikely to be affected by this option due to the improbability of current advertising benefitting consumers. Due to the nature of these chemicals it is expected that consumers of the product are aware of their availability in the market place.

As noted above, business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices. The presence of controls in one jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

Impact on Government
The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion
This option is not preferred as it would significantly increase the level of legislation in each jurisdiction and increase costs to government associated with enforcing compliance.

Advertising - Option Four: Adopt an outcome-based control
This option would require that businesses do not inappropriately target advertising of Schedule 7 chemicals. In addition, businesses would be required to avoid activities that may draw attention to Schedule 7 chemicals in a public medium, in order to promote sales. The level of advertising would be at the discretion of businesses.

At present, it is unlikely that industry would advertise Schedule 7 chemicals in a public medium to unauthorised persons due to the risks associated with misuse. In
addition, this is unlikely to affect the majority of jurisdictions as the lack of regulatory control in this area indicates that businesses already achieve an appropriate level of advertising.

**Impact on Industry**

This option would offer businesses with the flexibility of complying with the regulation in the manner they saw fit. However, adopting an outcome-based control would increase regulation with no clear benefit. At present, there are no regulatory controls regarding advertising of Schedule 7 chemicals in the majority of jurisdictions and there is no evidence to suggest that this has led to undesired public health and safety outcomes.

The impact on industry would be an education impact as they would have to learn their new regulatory requirements. There would also be a limitation on their activities as they would no longer able to advertise Schedule 7 chemicals. The extent to which Schedule 7 chemicals and products are advertised is not clear which means the effect of this cannot be quantified.

**Impact on Consumers**

As noted above, business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices. The presence of controls in one jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

In addition, due to the nature of these chemicals it is expected that consumers of the product are aware of their availability in the market place, therefore the level of advertising is unlikely to be affected by this option.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.
Conclusion

This option is not preferred as it would increase the level of legislation whilst having the same effect as having no regulatory controls due to the unlikelihood of businesses advertising Schedule 7 chemicals inappropriately.

Advertising - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

This option would see advertising controls as an outcome-based standard, with an additional provision that would outline the specific activities businesses could do to comply with the standard.

Impact on Industry

This option would impose a regulatory cost on seven of the eight jurisdictions (all States and Territories except for Queensland) that do not currently have any advertising controls for Schedule 7 chemicals. However, much of this cost would seem to align with standard business practices, as advertising Schedule 7 chemicals may pose risks to public health and safety due to misuse by unauthorised persons.

The impact on industry would be an education impact as they would have to learn their new regulatory requirements. There would also be a limitation on their activities as they would no longer able to advertise Schedule 7 chemicals. The extent to which Schedule 7 chemicals and products are advertised is not clear which means the effect of this cannot be quantified.

This option, while offering both certainty and flexibility to businesses by providing the choice on how businesses comply, would be considered excessive as there is no evidence to suggest that no regulatory controls is problematic.

Impact on Consumers

As noted above, business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices. The presence of controls in one jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

In addition, due to the nature of these chemicals it is expected that consumers of the product are aware of their availability in the market place, therefore the level of advertising is unlikely to be affected by this option.
**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred as results in a substantial increase in the amount of regulation for the majority of jurisdictions. The substantial increase would appear to be unjustified as no evidence exists to suggest that no regulatory control over advertising of Schedule 7 chemicals is problematic.

**Advertising - Option Six: Remove the provisions of the SUSMP and any State or Territory variations [Preferred option]**

This option would result in no explicit regulatory controls over advertising of Schedule 7 chemicals. This would only impact Queensland as no other jurisdiction has a control in place.

It is unlikely that industry would advertise Schedule 7 chemicals to the general public, including persons not endorsed to buy use or sell the chemical due to the limited market, their dangerous nature (advertising standards may not allow their advertisement) and the risks associated with misuse.

**Impact on Industry**

This option would facilitate a nationally consistent approach to control over advertising of Schedule 7 chemicals. There is no evidence to suggest that an absence of regulatory controls regarding this practice poses a risk to public health and safety. While chemical suppliers may wish to advertise in specialist trade magazines or other media that are read by users of these chemicals, any public advertisement of Schedule 7 chemicals would also be likely to attract the concern of the Advertising Standards Bureau (ASB) due to the hazardous nature of these chemicals. The ASB has withdrawn tobacco and alcohol advertisements due to the health issues associated with their consumption and therefore it would be expected...
that the advertisement of products that could cause serious harm, such as Schedule 7 chemicals, would unlikely be permitted.94

This is likely to reduce the regulatory burden for wholesale businesses in Queensland which is approximately 2,000 businesses.

**Impact on Consumers**

As this option would remove any controls, there are expected to be small savings to businesses in Queensland and that operate across jurisdictions. These savings would be expected to ultimately be passed onto consumers in lower prices. As there is no evidence of a benefit of reduced poisoning in those jurisdictions without controls, removing these controls nationally is not expected to adversely affect consumers.

In addition, due to the nature of these chemicals it is expected that consumers of the product are aware of their availability in the market place, therefore the level of advertising is unlikely to be affected by this option in any jurisdiction.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, removing controls in Queensland – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is preferred as the majority of jurisdictions currently do not have regulatory controls over advertising. In addition, it is unlikely that removal of this control would increase the level of advertising; it would be unlikely to have an impact on consumers or businesses in Queensland.

**Indicative impact of each option on stakeholder groups**

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
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Jurisdictional impact

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

**Impact variation of options for advertising controls by State/Territory**

<table>
<thead>
<tr>
<th>Option</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
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<td>6</td>
<td>-</td>
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<td>-</td>
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</tbody>
</table>

Consultation

Stakeholders, in particular industry associations and the Queensland Department of Health were in support of the preferred option for this control.

This issue was considered to be of minor importance to stakeholders. The control only exists in one jurisdiction, and it seemed from consultation that there is little advertising of scheduled chemicals occurring in the other jurisdictions despite there being no explicit controls.

Stakeholders thought that it would be reasonable for sellers of Schedule 7 chemicals to be able to advertise this in trade journals and similar publications.
Conclusion

In conclusion, Option Six: Remove the provisions of the SUSMP and any State or Territory variations is preferred, as the majority of jurisdictions currently do not have regulatory controls over advertising and there is no evidence to suggest that this is problematic.

4.11 Hawking or supply of product samples (Schedules 5, 6 and 7)

Hawking and supply of product samples regulation controls selling chemicals through the act of hawking, or calling aloud in public. There are jurisdictional differences that currently exist for Schedules 5, 6 and 7 chemicals, which are regulated under the same standards for each State. This section describes and analyses options to harmonise these controls. The preferred option identified is to partially prohibit hawking or supply of product samples.

Definitions:

These controls relate to restrictions – typically bans – on:

- **Product Samples**: the supply of sample sized packages of Schedule 5, 6 and 7 chemicals. Consumer samples are a means by which businesses, particularly new entrants, introduce consumers to new products, and consequently restrictions on such samples can adversely affect competition; and/or

- **Hawking**: the sale of Schedule 5, 6 and 7 chemicals door-to-door or in a public place. Hawking is an alternative form of retail distribution, and could cover sales at public event such as fairs, markets or agricultural shows. Restrictions on hawking affects retail competition and the ability of new suppliers to enter markets by bypassing established retailers.

The Galbally Review examined the issue of product samples and recommended that:

> State and Territory drugs and poisons legislation be amended to provide that, for consumer samples of Schedule 5 and 6 poisons, distribution should be permitted provided such supply takes place in accordance with a Code of Conduct for the Supply of Consumer Samples of Poisons (p. 100).95

The Review also recommended that an industry developed code should include standards for: the substance which may be supplied as consumer samples; the way in which the consumer samples may be distributed; to whom they may be distributed; the size of the sample packs and the quantities which may be distributed.

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distributed to a consumer; the labelling and packaging requirements for the samples; and disposal.

The AHMAC working party that developed the response to the review noted that it supported the concept that it is not unreasonable for poisonous chemicals included in Schedules 5 and 6 to be supplied as a free sample to the general public in a public place where they have a right of refusal.

The working party noted that there would be a need to prohibit any unsolicited supply such as through letterbox drops, or supply to children. Supply of these chemicals, free of charge, could always occur at the retail premises normally supplying the chemical where the supply would be subject to the usual restrictions for labelling, packaging and age of purchaser.96

However, the working party concluded that it would be impractical to develop, implement, and enforce an industry developed code. Instead, it recommended rejection of the review’s proposals to relax restrictions on distribution of product samples of Schedule 5 and 6 chemicals. The AHMAC working party’s response to the Galbally Review was unanimously approved by COAG on 28 June 200597.

The alternative of adopting national regulatory controls that allow the distribution of product samples to consumers, subject to specified restrictions such as those outline above, has not been pursued to date, and a variety of State and Territory based controls remain in place.

Purpose of the regulatory control

The purpose of hawking and supply of product sample controls is to control for inappropriate public access to Schedule 5, 6 and 7 chemicals. Hawking and provision of product samples in public places is likely to provide access to chemicals by children. In the case of Schedule 7 chemicals, which are prohibited from domestic use, it may also provide access to chemicals by the domestic market.

Businesses affected by this control

Changes to the control Hawking/Supply of product samples of Schedule 5, 6 & 7 chemicals could affect up to 19,000 Australian businesses across all States and Territories, with New South Wales, Queensland and Victoria collectively being home to 82 per cent of potentially affected businesses. Collectively, the four wholesaling business areas make up 82 per cent of the likely affected businesses.

The following table shows a breakdown of the number of affected business areas by jurisdiction.

<table>
<thead>
<tr>
<th>Main affected business areas</th>
<th>Business count by jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Manufacturing - Chemical Manufacturing</td>
<td>6</td>
</tr>
<tr>
<td>Manufacturing - Human Pharmaceutical and Medicinal Product</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Pesticide Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Cosmetic and Toiletry Preparation Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Paint and Coatings Manufacturing</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing - Jewellery and Silverware Manufacturing</td>
<td>11</td>
</tr>
<tr>
<td>Wholesale - Industrial and Agricultural Chemical Product</td>
<td>15</td>
</tr>
<tr>
<td>Wholesale - Other Hardware Goods</td>
<td>42</td>
</tr>
<tr>
<td>Wholesale - Pharmaceutical and Toiletry Goods</td>
<td>13</td>
</tr>
<tr>
<td>Wholesale - Grocery Wholesaling</td>
<td>30</td>
</tr>
<tr>
<td>Total</td>
<td>117</td>
</tr>
</tbody>
</table>

**Options for the regulatory control**

The options that will be assessed for hawking and supply of samples are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control [Preferred Option]
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations
Options impact analysis

**Hawking/Supply of samples - Option One: Maintain the status quo**

Seven of the eight jurisdictions (all but the Northern Territory\(^{98}\)) prohibit hawking and supply of samples. For each of those jurisdictions the prohibition is differently set out and uses differing terms and definitions. Although the outcome may be the same, this presents a complex set of requirements for businesses to be aware of, which in turn creates unnecessary costs.

The costs of this option are the continuation of the existing problems outlined in the problem section of this RIS. Some of these include continued costs of inconsistency between jurisdictions such as compliance costs for multi-jurisdictional businesses and continued costs of time devoted to understanding the complex differences in controls.

Analysis of this option has not identified any clear benefits of continuing the status quo.

**Impact on Industry**

Businesses that operate in jurisdictions outside the Northern Territory are subject to increased regulation that may be unnecessary, and therefore are likely to be affected by the status quo.

In addition, businesses that operate across jurisdictions are subject to an education impact, as they are required to understand and adhere to multiple sets of regulation. They are therefore likely to be affected by the status quo.

The concerns that businesses expressed about the status quo and raised in consultation were unrelated to the national inconsistency of controls.

**Impact on Consumers**

As businesses in different jurisdictions are subject to different restrictions regarding hawking and product samples, consumers will accordingly be exposed to different levels of hawking and supply of samples.

As noted above, business stakeholders were unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed on to consumers in higher prices. The presence of these controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

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\(^{98}\) The Northern Territory has provisions relating to hawking in Section 48 of its therapeutic and cosmetics legislation, although this is therapeutic goods, which may or may not cover scheduled poisons.
Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

Conclusion

This option is not preferred as it would continue a level of national inconsistency around the level of prohibition over hawking and supply of product samples for chemicals.

Hawking/Supply of samples - Option Two: implement the provisions of the SUSMP as they are written

There are no outlined restrictions on door to door sales or provision of product samples of Schedule 5, 6 or 7 chemicals in the SUSMP. Therefore, for the seven jurisdictions (all but the Northern Territory) that currently restrict hawking and supply of samples, this option would have a similar impact as Option Six: remove all regulatory controls. There would be a neutral impact for the Northern Territory.

Impact on Industry

This option would facilitate national consistency and thereby reduce current costs caused by inconsistencies. However, as there are no outlined restrictions on door to door sales or provision of product samples of Schedules 5, 6 or 7 chemicals in the SUSMP requiring the implementation of the provisions of the SUSMP may cause confusion. The requirement to reference the SUSMP would indicate that a requirement exists in the SUSMP, which may be misleading.

There are currently no restrictions on door-to-door sales or provision of product samples of Schedule 5, 6 or 7 chemicals in the SUSMP. This would result in the removal of regulatory requirements for business that are currently subject to regulation (Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia), and accordingly, a reduced compliance cost. As the Northern Territory does not currently have any provisions relating to hawking or product samples, there will be no change to these businesses if this option is implemented. Further, as consumer samples may adversely affect competition, some businesses may be disadvantaged through the lack of regulation.

There would be an education impact on businesses arising from this option, as businesses would be required to be aware of and continue to adhere to new regulatory requirements.
Impact on Consumers

As the SUSMP does not contain any provision relating to hawking or product samples, consumers may be exposed to an increased level of hawking and supply of samples. This may increase the risk of compromising public health, especially where young children are exposed to chemicals, or where businesses are able to supply chemicals through unsolicited means.

As this option would remove any controls, there are expected to be small savings to business. These savings would be expected to ultimately be passed on to consumers in lower prices. As there is no evidence of a benefit of reduced poisoning in retail settings in those jurisdictions without controls, removing these controls nationally is not expected to adversely affect consumers.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This is not a preferred option as it would allow hawking and provision of samples of dangerous poisonous chemicals, without the controls that apply in retail settings.

Hawking/Supply of samples - Option Three A: Adopt a prescriptive control: control permits some hawking and supply of product samples [Preferred Option]

Under this option the States and Territories could allow the supply of product samples of Schedule 5 and 6 chemicals under specified restrictions, and prohibit the supply of product samples for Schedule 7 chemicals. The controls could also prohibit hawking of products in Schedules 5, 6 and 7.

This would align with the view relating to samples of the AHMAC Working Party that believed it was not unreasonable for Schedules 5 and 6 chemicals to be supplied as samples in public where members of the public have the right of refusal and under reasonable restrictions.
This option, by including proposed national (and mostly less restrictive controls) in the form of traditional government regulation rather than by industry developed self-regulation, would also address the Working Group’s concerns about the means that Galbally proposed to develop and enforce controls.

These proposed restrictions would include:

- those substances which may be supplied as consumer samples
- the size of the sample packs and the quantities which may be distributed
- the prohibition of any unsolicited supply, particularly where access by children cannot be controlled, such as through letterbox drops or attached to magazines.
- where samples can be provided
- samples would be subject to restrictions on labelling and packaging; and
- provisions relating to disposal.

The specifics of these restrictions would be settled in consultation with industry.

**Impact on Industry**

This option would result in uniform controls that allow provision of samples, consistent with the recommendations of the Galbally Review. This would allow manufacturers, distributors and retailers for the first time to introduce samples as part of national marketing strategy, particularly when introducing new products. Consequently, this option is considered to be less burdensome and more straightforward than the status quo to businesses, as it would allow marketing strategies involving supply of samples to be implemented nationally. This option would allow businesses to more efficiently deliver advertising campaigns.

In addition, this option would retain the controls on hawking of poisonous chemicals that currently exist in most jurisdictions which would minimise the costs to industry of identifying requirements as current requirements would be maintained in many cases. Consequently, this option is considered to impose similar costs to the status quo with respect to hawking.

This would result in an increase in the level of regulation in the Northern Territory, who do not currently have any controls over hawking or sample supply. This could reduce flexibility for businesses in New South Wales and Tasmania which currently can seek exemptions within their current legislation.

There are approximately 18,000 businesses operating in Australia that may be subject to an additional cost imposed by this option.
**Impact on Consumers**

Consumers will no longer be exposed to any hawking or product samples of Schedule 7 chemicals. The aim of this option is to reduce the likelihood of consumers being exposed to dangerous chemicals and consequently reduce the likelihood of chemical related incidents.

As noted above, business stakeholders have been unable to quantify the costs of complying with new controls. However, to the extent there are costs these would be expected to ultimately be passed on to consumers in higher prices. The presence of these controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is the preferred option as it would include mostly less restrictive controls, whilst maintaining requirements to reduce the risk of negative impacts on public health and safety.

**Hawking/Supply of samples - Option Three B: Adopt a prescriptive national control: Control prohibits all hawking and product samples**

This option would involve a blanket national ban on hawking and supply of product samples.

This would result in an increase in the level of regulation for the Northern Territory, who do not currently have controls over hawking or sample supply. This would potentially reduce flexibility for businesses in New South Wales and Tasmania which currently have exemptions within their legislation. It would also reduce flexibility for businesses in jurisdictions in which legislation only exists in relation to hawking or in which no legislation exists for hawking or supply of product samples.
Furthermore, a blanket ban would incorporate hawking and supply of product samples for Schedule 5, 6 and 7 chemicals. Currently the regulation in Queensland only refers to Schedule 7 chemicals, therefore regulatory and compliance costs may increase for businesses in Queensland in relation to Schedule 5 and 6 chemicals.

**Impact on Industry**

This option could potentially have a negative impact on competition as it would restrict the introduction of products to consumers by way of hawking or supply of product Schedule 5 and 6 chemicals as samples including domestic use products such as hair dye and rat chemicals. This is unlikely to restriction competition in the market for Schedule 7 chemicals as these restricted access products are considered to be less likely to be offered as free samples or sold via hawking.

There would also be an education impact as businesses would be required to learn about and adhere to their new regulatory requirements.

**Impact on Consumers**

The benefits of strengthening restrictions on hawking and supply of product samples would largely be to consumers as it would reduce the likelihood of access by children (and, in the case of Schedule 7 chemicals, to members of the public) to whom the products should be restricted. Furthermore, in the case of samples it is considered that consumers that do not actively seek out the product are less likely to consider the risks outlined on the labelling of the products and therefore the risk of misuse are higher.

As noted above, business stakeholders have been unable to quantify the costs of complying with new controls. However, to the extent there are costs these would be expected to ultimately be passed on to consumers in higher prices. The presence of these controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.
This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This is not the preferred option as it would impose a greater regulatory burden on industry and increase costs associated with compliance. Further, it could potentially have a negative impact on competition as it would restrict the introduction of products to consumers by way of hawking or supply of product Schedule 5 and 6 chemicals as samples. This option does not support the AHMAC working party’s view that it is not unreasonable for poisonous chemicals included in Schedule 5 and 6 to be supplied as a free sample to the general public in a public place where they have a right of refusal.

**Hawking/Supply of samples - Option Four: Adopt an outcome-based control**

An outcome-based control option would focus on the outcome that restrictions on provision of samples and hawking was aiming to achieve.

It was not considered feasible to achieve both safe regulation of hawking and supply of samples and national consistency of controls through an outcome-based control.

This is due to the specific nature of any requirements controlling supply of samples or selling goods in public, and the potential harm that may occur if poisonous chemicals are not supplied to the public safely and in a manner that allows them to make a conscious decision on whether or not to take the chemical.

No alternative outcome-based controls have been identified.

**Impact on industry**

This option is not considered feasible and therefore the costs and benefits are not able to be determined.

**Impact on Consumers**

This option is not considered feasible and therefore the costs and benefits are not able to be determined.

**Impact on Government**

This option is not considered feasible and therefore the costs and benefits are not able to be determined.
Conclusion

This option is not considered feasible and therefore is not possible to implement.

**Hawking/Supply of samples - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision**

This option would be based on an outcome-based control, with a prescriptive deemed to comply provision. As described above, no outcome-based controls have been identified for this control, consequently no option is provided.

**Impact on Industry**

This option is not considered feasible and therefore the costs and benefits are not able to be determined.

**Impact on Consumers**

This option is not considered feasible and therefore the costs and benefits are not able to be determined.

**Impact on Government**

This option is not considered feasible and therefore the costs and benefits are not able to be determined.

**Conclusion**

This is not the preferred option as no outcome-based control has been identified for this control.

**Hawking/Supply of samples - Option Six: Remove the provisions of the SUSMP and any State or Territory variations**

Removing existing provisions or standards would result in no regulatory controls over hawking or supply of product samples. This would impact the majority of jurisdictions as currently six of the eight prohibit hawking.

Currently, hawking and supply of product samples is prohibited in the Northern Territory under the Therapeutic Cosmetics Act; however, this act will be removed after the adoption of new legislation. Therefore, there will be no explicit legislation to prohibit hawking or supply of product samples if existing provisions or standards are removed.

**Impact on Industry**

The removal of current regulations would be likely to provide greater freedom to industries in those seven States by allowing hawking and supply of product samples. This may allow the introduction of consumers to new products providing...
Deregulating hawking and supply of product samples may also allow the domestic market to gain access to Schedule 7 chemicals. This is problematic as Schedule 7 chemicals are prohibited for domestic use. However, there is no evidence to suggest that in States or Territories where there are currently no regulatory controls regarding hawking and supply of product samples that this is a problem.

In addition, removal of explicit regulatory controls regarding hawking and supply of product samples of chemicals may have the consequence of allowing suppliers to provide access to chemicals in vending machines, which would give the public unrestricted access.

There would also be an education impact as businesses would be required to learn about and adhere to their new regulatory requirements.

**Impact on Consumers**

There is a potential risk involved in deregulating hawking and provision of product samples as this may facilitate access by children and other members of the public to whom the products may pose a risk. Samples may include hazardous products such as hair dye which, when used without appropriate knowledge of the product, could cause significant harm.

As this option would remove any controls, there are expected to be small savings to business. These savings would be expected to ultimately be passed on to consumers in lower prices.

For some poisonous chemicals, labels and packaging should be sufficient to prevent misuse. However, if consumers do not actively seek out the product they may not observe nor understand potential risks.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, removing controls in the jurisdictions that currently prevent or control hawking or supply of samples – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.
Conclusion

This is not the preferred option as it may increase risks to public health and safety by facilitating greater access by children or members of the public to whom products may pose a risk.

Indicative impact of each option on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3A</th>
<th>Option 3B</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>-</td>
<td>↓ (except NT)</td>
<td>↑ (except QLD, SA, WA, VIC)</td>
<td>↑ (except SA, WA, VIC)</td>
<td>N/A</td>
<td>N/A</td>
<td>↓</td>
</tr>
<tr>
<td>Consumers</td>
<td>-</td>
<td>↑</td>
<td>↓</td>
<td>↑</td>
<td>N/A</td>
<td>N/A</td>
<td>↑</td>
</tr>
<tr>
<td>Government</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>N/A</td>
<td>N/A</td>
<td>-</td>
</tr>
</tbody>
</table>

Jurisdictional impact

The following table illustrates the regulatory impact that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for Hawking/Supply of product samples by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>1</td>
<td>-</td>
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<tr>
<td>2</td>
<td>↓</td>
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<td>4</td>
<td>↓</td>
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<tr>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>6</td>
<td>↓</td>
</tr>
</tbody>
</table>
Consultation

Accord supported the preferred option, noting in particular endorsement of the requirement that mailing out Schedule 5 or 6 chemicals was not appropriate and did not represent adequate duty of care.

Conclusion

In conclusion, the preferred option for this control is Option 3A: adopt a prescriptive control: control permits some hawking and supply of product samples. This option would deliver national consistency of control; it would not represent a material regulatory increase in the Australian Capital Territory, Northern Territory, New South Wales or Tasmania and it would maintain an acceptable level of benefit to consumers in terms of restricting access to chemicals by children.

In addition, this option would retain the controls on hawking of poisonous chemicals that currently exist in most jurisdictions which would minimise the costs to industry of identifying requirements as current requirements would be maintained in many cases. Consequently, this option is considered to impose similar costs to the status quo with respect to hawking and is mostly less restrictive, while maintaining requirements that will reduce risks of negative impacts on public health and safety.

4.12 Appendix C: substances other than those included in Schedule 9, of such danger to health as to warrant prohibition of sale, supply and use

Appendix C in the SUSMP contains a list of poisonous chemicals or preparations which should be prohibited from sale, supply or use due to their dangerous nature. The SUSMP recommends that the provisions of Appendix C be included in appropriate State and Territory legislation. Some general exemptions, listed in Appendix A of the SUSMP, may apply to these poisonous chemicals. However, the nature of any variations in these exemptions is not considered by this report.

Purpose of the regulatory control

The purpose of Appendix C in the SUSMP is to outline dangerous poisonous chemicals that ought to be prohibited from sale, supply or use. This is to prevent misuse and to reduce risks of harm caused by these hazardous chemicals.

This Appendix is included in the scope of the controls considered in the RIS because at times States and Territories append Appendix C chemicals as a second part of Schedule 7, or implement it in other ways. This is so that they can continue to effectively implement the regulatory control of a ban on the chemicals, while maintaining the internal consistency of their own legislative architecture or conventions.
This is nationally inconsistent and adds complexity to businesses that are subject to regulatory controls of Schedule 7 chemicals in particular.

In addition, the NCCTG have been informed that chemicals contained in Appendix C may not be sufficiently current and a review of chemicals may be necessary. This review could be conducted under any of the proposed options where Appendix C is proposed to be retained.

**Businesses affected by this control**

As the chemicals included in this Appendix are prevented from being used, it is not possible to determine what the number of businesses which would otherwise use these chemicals or be affected by changes to this control.

**Options for the regulatory control**

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP
3. Adopt a prescriptive control [Preferred Option]
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations

**Options analysis**

**Appendix C - Option One: Maintain the status quo**

The outcome of maintaining the status quo would be that all jurisdictions refer to Appendix C and effectively adopt the list as restricted or prohibited poisonous chemicals. The exception is Western Australia, which has not updated its reference to Appendix C since a proclamation in 2008. However, jurisdictions do not always refer to the Appendix and use different mechanisms to adopt it. States and Territories implement or refer to this Appendix inconsistently in their respective legislation and regulations, and this inconsistency would continue. These can be seen in more detail in the regulatory mapping outlined in Appendix C of this RIS.

The costs of this option relate to the continuation of the existing problems outlined in the problem section of this RIS. Some of these include associated costs of inconsistency between jurisdictions such as continued compliance costs for multi-jurisdictional businesses and continued costs of time devoted to understanding the differences in controls.

While the status quo has problems, there do not appear to have been any adverse events that have been caused by inconsistent implementation of Appendix C.
However, there are no clear ongoing benefits that have been identified from maintaining the status quo.

**Impact on Industry**
Current inconsistencies that exist between jurisdictions would continue to create confusion for businesses operating across multiple jurisdictions about chemicals they are being specifically prevented from using. The number of businesses is indeterminable, as the demand for the prohibited chemicals listed in Appendix C is unclear. The impact on industry is an education impact as they are required to understand and adhere to their regulatory requirements.

Business stakeholders made few comments on this topic and were unable to provide any kind of quantification of the costs associated with the status quo.

**Impact on Consumers**
As noted above, business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices. The presence of differing levels of control in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls.

**Impact on Government**
There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

**Conclusion**
The status quo is not preferred as it leads to the continuation of national inconsistency. This may lead to a level of ambiguity or confusion, and additional costs, which can mean that the purpose of Appendix C may not be achieved.
Appendix C - Option Two: Implement the provisions of the SUSMP as they are currently written

This option would involve the adoption of Appendix C across all jurisdictions as it is written in the SUSMP. The general exemptions set out in Appendix A of the SUSMP would be expected to continue.\(^99\)

**Impact on Industry**

This would result in more understandable legislation for businesses, consumers and compliance officers as the legislation would be consistent, clearer and simplified across jurisdictions. This would be expected to reduce the cost impact on industry as they would only be required to understand one set of regulations.

The costs of adopting this option to all stakeholders would be minimal as the majority of States refer to Appendix C in some form and acknowledge that these chemicals are highly dangerous and require special precautions or prohibition.

Benefits of this option are that the system will be less confusing and therefore potential risks of misuse or misunderstandings regarding the nature of the chemicals will be reduced.

For Western Australia, New South Wales and Tasmania it would be simpler to directly adopt Appendix C into their current or future legislation if they were able to find a mechanism for doing so. However, in these jurisdictions there are legislative drafting and style restrictions on adopting appendices.

South Australia has specific exemptions under certain therapeutic use circumstances for Amygdalin, a chemical listed in Appendix C. These exemptions are for activities conducted under therapeutic goods and customs regulations. The adoption of Appendix C may have an effect on businesses in South Australia; however, these exemptions are outside the scope of this discussion.

**Impact on Consumers**

As this option would clarify and simplify controls, there are expected to be small savings to business. These costs would be expected to ultimately be passed on to consumers in lower prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they

\(^{99}\) As previously noted, the exemptions in Appendix A are not being considered in this Regulatory Impact Statement.
wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

However this option is not considered feasible as it would appear likely that it will retain the inconsistencies present in the status quo, due to the differing drafting styles and conventions in the different jurisdictions.

**Conclusion**

This option is not preferred as it is impractical for achieving national consistency. In addition, legislative drafting and style restrictions on adopting appendices would prevent some jurisdictions from implementing this option.

**Appendix C - Option Three: Adopt a prescriptive control [Preferred option]**

This option would involve removing Appendix C from the SUSMP and creating a new Schedule of poisonous chemicals in the SUSMP.

The purpose of the new Schedule would be to list poisonous chemicals that are banned for a specific purpose and to list the purpose for which they have been banned.

Decision-making around moving poisonous chemicals into or out of a Schedule involves a risk or hazard based assessment. This is similar to the type of assessment required to determine if a poisonous chemical should be in or out of what is now Appendix C. Therefore it may be considered more appropriate for decisions about prohibitions to be included in scheduling decisions.

Furthermore, inclusion of the Appendix into a Schedule may make it easier for some States and Territories to directly reference this part of the SUSMP in their legislation or regulations. This would assist to increase uniformity.

The impact of this decision on business would be minimal – it is not expected that the levels of control will materially change with the creation of a new Schedule.

**Impact on Industry**

The preferred option is unlikely to affect industry as the majority of jurisdictions currently reference Appendix C; rather, it is likely to implement the existing appendix more effectively, decrease confusion and decrease the likelihood of misinterpretation.
The level of regulation is unlikely to change in the majority of jurisdictions as they already reference Appendix C. For New South Wales and Western Australia there is likely to be only a slight increase in the level of regulation as these jurisdictions reference Appendix C but allow for exemptions, but this effect is considered to be negligible.

There would be an education impact on businesses as they would be required to understand and adhere to their new regulatory requirements. However this is expected to be a minimal impact on business and is outweighed by the greater simplicity and consistency that this option would achieve.

**Impact on Consumers**

As this option would clarify and simplify controls, there are expected to be small savings to business. These costs would be expected to ultimately be passed onto consumers in lower prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is the preferred option as it would create national consistency.

The cost of this option will revolve around the decision-making framework. The option will likely deliver the benefit of harmonisation and further clarity around the poisonous chemicals that are banned.

Although this is the preferred option, it is appropriate that a decision to implement this option should be considered by the planned review of the current chemical and medicines scheduling arrangements, which are due for review in 2013.

**Appendix C - Option Four: Adopt an outcome-based control**

This option would involve creating a new control that sets out general outcomes for the prohibition of certain poisonous chemical which is not feasible.
Impact on Industry

There would be a cost from this control to business as they would be required to know and understand the general nature and level of toxicity of all chemicals.

There would be an education impact as businesses would be required to learn about and adhere to their new regulatory requirements.

Impact on Consumers

As this option would make control of chemicals in Appendix C more complicated, there are expected to be small cost increases to business. These costs would be expected to ultimately be passed onto consumers in higher prices.

However, this option may lead to a significantly increased risk to public health and safety outcomes. In this case the costs outweigh the possible benefits.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is not preferred as implementing this option is not considered feasible.

Appendix C - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply’ provision

This option would involve creating a new control that sets out general outcomes for the prohibition of certain poisonous chemical, alongside a prescriptive control setting out conditions of the prohibition which is not feasible.

Impact on Industry

Having both an outcome and prescriptive based control may create confusion in terms of banned poisonous chemicals without providing a clear benefit. In addition, there would be a cost from this control to business as they would be required to know and understand the general nature and level of toxicity of all chemicals.
There would be an education impact as businesses would be required to learn about and adhere to their new regulatory requirements.

Where prohibitions on particular poisonous chemicals are decided upon, it is not appropriate to make the provisions of those prohibitions general in nature. Further to this, having both general and specific conditions could make the regulatory control more confusing and ambiguous for industry.

**Impact on Consumers**

Having both general and specific conditions could make the regulatory control more confusing and ambiguous for consumers. It is not considered beneficial to make controls of banned substances more ambiguous.

As this option would make control of chemicals in Appendix C more complicated, there are expected to be small cost increases to business. These costs would be expected to ultimately be passed onto consumers in higher prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred as implementing this option is not considered feasible.

**Appendix C - Option Six: Remove the provisions of the SUSMP and any State or Territory variations**

This option would remove all existing provisions or standards, including Appendix C in the SUSMP. This would potentially create health and safety risks due to misuse or misunderstandings regarding the degree of risk associated with the use of these chemicals.
Impact on Industry
To some extent, this would be a regulatory simplification. However, some of the associated risks may prove too high, as removal of regulation may be insufficient to ensure public health and safety.

Removing regulation over these chemicals may decrease costs to industry. This would be caused by an increase in flexibility over sale, supply or use of Appendix C chemicals.

It seems that it would be unlikely for industry to adopt using these chemicals as practice, given their level of potential harm, and general levels of duty of care and responsibility that are expected of business.

Impact on Consumers
With this option, costs to consumers would increase as Appendix C chemicals may not be explicitly identified as highly dangerous chemicals in any form of legislation. This has a small potential to cause misunderstandings regarding the level of toxicity of these chemicals. This may lead to insufficient caution being applied, increasing the likelihood of misuse.

The outcomes of misuse or misunderstanding could cause public health and safety concerns which would outweigh the benefits and potential reduced costs associated with regulatory simplification.

Impact on Government
The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion
This is not the preferred option as the outcomes of misuse or misunderstanding could cause public health and safety concerns which would outweigh the benefits associated with regulatory simplification.
Indicative impact of each option on stakeholder groups

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<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
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Jurisdictional impact

The following table illustrates the regulatory impact on industry that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for Appendix C by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
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</tbody>
</table>

Consultation

Accord supported this appendix appearing as a Schedule reflecting the controls that are associated with it. It was indicated that this would be preferable to adding complexity to either Schedules 4 or 7, and that the control was necessary in the system.

Conclusion

The preferred option for Appendix C is Option Three: Adopt a prescriptive control. The cost of this option will revolve around the decision-making framework. The option will likely deliver the benefit of harmonisation and further clarity around the poisonous chemicals that are banned.
Although this is the preferred option, it is appropriate that a decision to implement this option should be considered by the planned review of the current chemical and medicines scheduling arrangements, which are due for review in 2013.

4.13 Appendix I: Uniform Paint Standard

This section provides a detailed outline of how Appendix I of the SUSMP is implemented differently by the States and Territories. It then describes the purpose of the Uniform Paint Standard, and considers the available options for achieving uniformity of regulation.

This section will consider the different options to achieve uniformity of the control.

Purpose of the regulatory control

The objective of Appendix I: Uniform Paint Standard is to limit the proportion of dangerous chemicals in paint that is applied to specific surfaces. The Uniform Paint Standard specifies the dangerous chemical to paint ratio that must not be exceeded. This proportion differs according to the toxicity of the chemical. The two most toxic chemicals, and hence most stringent restrictions that are included in the Uniform Paint Standard, are cadmium and lead. Exceeding these proportions is expected to pose a risk to public health and safety, especially to manufacturers and consumers. The Australian Paint Manufacturers’ Federation has confirmed that the system is unevenly effective with regard to ensuring public health outcomes.

Seven of the eight jurisdictions place some restrictions on the chemicals contained in paints, and four of the eight jurisdictions reference the Uniform Paint Standard. Queensland references the Uniform Paint Standard, but in their Public Health Act rather than their poisons regulations.

The Productivity Commission recommended in its Chemicals and Plastics report that provisions relating to poisons controls in the workplace be applied through work health and safety legislation rather than poisons regulation. A decision on this poison control should consider applying it only for paint intended for domestic use.

Businesses affected by the control

Changes to the control Appendix I could affect up to 394 Australian businesses across all States and Territories, with the exception of the Australian Capital Territory and Northern Territory. Only one business area is likely to be affected by changes to this control: paint and coatings manufacturing. Businesses from New

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100 Australian Paint Manufacturers’ Federation Inc. 2008, Submission in response to the Productivity Commission’s Study into Chemicals and Plastics Regulation
101 South Australian Department of Health, Submission in response to the Consultation RIS, September 2012.
South Wales make up 36 per cent of this business area. The following table shows a breakdown of the number of affected business areas by jurisdiction.

Table 4-I: Number of businesses likely to be affected by controls for the Uniform Paint Standard

<table>
<thead>
<tr>
<th>Main affected business areas</th>
<th>Business count by jurisdiction</th>
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<td>ACT</td>
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<tr>
<td>Manufacturing - Paint and Coatings</td>
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</tr>
<tr>
<td>Manufacturing</td>
<td></td>
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<tr>
<td>Total</td>
<td>0</td>
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Source: Affected business types were identified by public health officials, and numbers of businesses are from Australian Bureau of Statistics (2011) Counts of Australian Businesses, including Entries and Exits, Jun 2007 to Jun 2011, Report. 8165.0.

Options for the regulatory control

The options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP [Preferred Option]
3. Adopt a prescriptive control
4. Adopt an outcome-based control
5. Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provisions of the SUSMP and any State or Territory variations

Options analysis

Appendix I - Option One: Maintain the status quo

If the status quo were maintained, there would be a continuation of national inconsistency, with not all of the States and Territories implementing the Uniform Paint Standard, and those jurisdictions who do implement the paint standard implementing the standard differently from each other. Two of the eight jurisdictions have no standard or lower requirements for chemicals in paint. Five jurisdictions reference the SUSMP. The Australian Capital Territory has a number of clauses in the relevant regulation, some mirroring those in the SUSMP and some with differing requirements.

There are no clear benefits from continuing a nationally inconsistent regulatory regime.
Impact on industry

Businesses in the paint industry, manufacturing, wholesale, distribution and retail sectors are affected by the status quo. This may also include businesses in the hardware distribution and retail industry.

The costs of this option arise from the continued education impact due to complexity for business of understanding the differing regulations in States and Territories. There are 394 businesses in this industry across Australia who would likely to bear this cost.

Business stakeholders have been unable to quantify the costs of the current inconsistencies.

Impact on Consumers

As noted above, business stakeholders were unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices.

There is no clear benefit for consumers from maintaining the status quo.

Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.

This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

Conclusion

This option is not preferred as it does not lead to a nationally consistent approach to control over chemical concentrations in paints and does not remove the costs to businesses created by national inconsistency.

Appendix I - Option Two: Implement the provisions of the SUSMP as they are written with no additions [Preferred Option]

The regulatory control would require that all jurisdictions adopt the wording of Appendix I in the SUSMP. This will see the continued prohibition on importation, manufacture and use of lead and cadmium in paint.

Impact on Industry

Implementing this option would require four jurisdictions to adopt the Uniform Paint Standard. The level of regulation will increase for three of these jurisdictions, however as the Australian Capital Territory has relatively similar requirements in
their current legislation, it appears that changing legislation to reference the Uniform Paint Standard will have little, if any, regulatory change impact.

There would be an education impact from this option as businesses would be required to learn and adhere to new regulatory requirements. This is considered to be relatively straightforward and therefore have a minimal cost impact on businesses.

The benefits of this option would be that it would provide greater clarity and consistency in regulatory environment to the approximately 394 businesses affected by the Paint Standard.

**Impact on Consumers**

As this option would reduce inconsistency, there are expected to be small savings for some businesses that operate nationally, and some small costs to businesses that do not currently adhere to Appendix I. these costs and savings would be expected to ultimately be passed on to consumers in either lower or higher prices. It is expected that the costs of learning new requirements would be offset by the savings of achieving national consistency of the Uniform Paint Standard.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This Option would deliver national consistency as well as greater consumer protection from paints, and is the preferred option.

**Appendix I - Option Three: Adopt a prescriptive control**

A prescriptive control for paint standards is not likely to be materially different from what is currently outlined in Appendix I of the SUSMP. That means that this option is not different from Option Two, which is the preferred option.
Impact on Industry

The costs and benefits of this option will be largely similar to those of Option Two. The regulatory burden will increase for two of these jurisdictions, however as the Australian Capital Territory has relatively similar requirements in their current legislation, it appears that changing legislation to reference the Uniform Paint Standard will have little, if any, regulatory change impact. The benefits of this option would be that it would provide greater clarity and consistency in regulatory environment to the approximately 394 businesses affected by the Paint Standard.

There would be an education impact from this option as businesses would be required to learn and adhere to new regulatory requirements. This is considered to be relatively straightforward and therefore have a minimal cost impact on businesses.

Impact on Consumers

As this option would reduce inconsistency, there are expected to be small savings for some businesses that operate nationally, and some small costs to businesses that do not currently adhere to Appendix I. these costs and savings would be expected to ultimately be passed on to consumers in either lower or higher prices.

It is expected that the costs of learning new requirements would be offset by the savings of achieving national consistency of the Uniform Paint Standard.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This Option would deliver national consistency as well as greater consumer protection from paints, and is effectively the same as the preferred option.

Appendix I - Option Four: Adopt an outcome-based control

The regulatory control would require that paint does not contain dangerous levels of toxic chemicals and is not applied to certain surfaces. It would then be up to
individuals or businesses to decide what concentrations of dangerous chemicals constitute a dangerous level and to what surfaces the paint can be applied.

**Impact on Industry**

This option would impose costs and an additional regulatory burden on industry in the jurisdictions that do not currently have any regulation, namely Victoria. While it may provide a benefit by way of flexibility to jurisdictions that currently adopt the Uniform Paint Standard, it would also impose a cost to industry because it would be more difficult to comply with the requirements. This is because requirements would be less clear. A result of this may be unintentional non-compliance with requirements.

There would be an education impact from this option as businesses would be required to learn and adhere to new regulatory requirements. This is considered to be relatively straightforward and therefore have a minimal cost impact on businesses.

**Impact on Consumers**

As this option would reduce inconsistency, there are expected to be small savings for some businesses that operate nationally, and some small costs to businesses that do not currently adhere to Appendix I. these costs and savings would be expected to ultimately be passed on to consumers in either lower or higher prices. It is expected that the costs of learning new requirements would be offset by the savings of achieving national consistency of the Uniform Paint Standard.

There is a further potential cost to consumers of paint from this option. If the regulation for preventing lead and cadmium in paint is outcome based and too flexible, the potential for dangerous proportions of chemicals in paint may result in a risk to public health and safety.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.
Conclusion

An outcome-based control is not the preferred option as it would provide less certainty for paint businesses and consumers and may increase risk of non-compliance leading to unacceptable levels of lead or cadmium in paint.

Appendix I - Option Five: Adopt an outcome-based control, with a prescriptive ‘deemed to comply’ provision

The regulatory control would contain a high-level outcome that would require that paint does not contain dangerous levels of toxic chemicals and is not applied to certain surfaces, alongside a prescriptive provision that would explain the black-letter rules that a business could do to be deemed to be in compliance with the outcome.

Impact on industry

A prescriptive control for paint standards is not likely to be materially different from what is currently outlined in Appendix I of the SUSMP. That means that this option is not different from Option Two, which is the preferred option.

The benefits of this option would be that it would provide greater clarity and consistency in regulatory environment to the approximately 394 businesses affected by the Paint Standard.

There would be an education impact from this option as businesses would be required to learn and adhere to new regulatory requirements. This is considered to be relatively straightforward and therefore have a minimal cost impact on businesses.

Impact on Consumers

As this option would reduce inconsistency, there are expected to be small savings for some businesses that operate nationally, and some small costs to businesses that do not currently adhere to Appendix I. These costs and savings would be expected to ultimately be passed on to consumers in either lower or higher prices. It is expected that the costs of learning new requirements would be offset by the savings of achieving national consistency of the Uniform Paint Standard.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change
would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This Option would deliver national consistency as well as greater consumer protection from paints, and is effectively the same as the preferred option.

Appendix I - Option Six: Remove the provisions in the SUSMP and any State or Territory variations

This option would mean that there are no explicit regulatory controls of the proportion of dangerous chemicals contained in paint. This would require seven of the eight jurisdictions to remove their reference to the Appendix I: Uniform Paint Standard from their legislation, as well as any other associated legislation.

Impact on Industry

The removal of this legislation would mean that there are no regulatory costs for dangerous chemicals in paints across all jurisdictions. However, as seven jurisdictions currently have legislation regarding the level of dangerous elements in paint; it would appear that removing this legislation may increase the risk of public health and safety.

For this option to be chosen, evidence would need to show that the cost of the regulatory burden of having a Uniform Paint Standard outweigh the cost to public health and safety that would result if the Uniform Paint Standard were removed. As the Uniform Paint Standard is highly supported by industry and reflects global efforts to reduce the use of lead in paint by bodies such as the United Nations, there is no clear case for removing the Uniform Paint Standard.

Impact on Consumers

This option would mean that consumers could potentially be exposed to paint or painted surfaces with lead and cadmium in them. Given the toxicity of both of those chemicals, this is an undesirable outcome from a public and environmental health perspective.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, removing Appendix I controls where they exist – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting
resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

The removal of this Appendix may still allow other areas of legislation to control the contents of paint. Other legislation that may impose restrictions on the contents of paint may include: Workplace Health and Safety legislation (will vary between jurisdictions), Environmental Protection legislation (will vary between jurisdictions), and the *Competition and Consumer Act 2010*. Regulators in this area also include the ACCC, which involved in chemical and product safety aspects of the regulatory regime that controls the importation of products into Australia.

The removal of this Appendix would also have no impact on the other Appendices that currently control lead and lead-based products such as Appendix C of the SUSMP.

### Indicative impact of each option on stakeholder groups

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<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
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<th>Option 3</th>
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### Jurisdictional impact

The following table illustrates the regulatory impact that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

### Impact variation of options for Appendix I by State/Territory

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<thead>
<tr>
<th>Option</th>
<th>Impact variation across States and Territories</th>
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Consultation

This option is supported by the Australian Paint Manufacturers’ Federation, being the peak industry association for paint manufacturers in Australia. They noted that the United Nations is currently leading efforts to remove lead from paint formulations worldwide. This has occurred in Australia already. The APMF are concerned that the status quo and any options that may provide for some flexibility in this area could result in no regulatory control over dangerous chemicals in paints, which is not supported by industry.

Conclusion

The preferred option for Appendix I is Option Two: to implement the provisions of the SUSMP as they are currently written, with no amendment. This option will achieve national consistency with minimal change from States and Territories, and is an appropriate level of control over dangerous chemicals in paints.

4.14 Appendix J: Conditions for availability of Schedule 7 chemicals

Appendix J ensures that only authorised or licensed persons are given access to certain chemicals.

Purpose of the regulatory control

The focus of the Appendix J – Conditions for availability and use of Schedule 7 chemicals is to ensure that only authorised or licensed persons are given access to certain chemicals. Authorising certain people access to certain Schedule 7 chemicals is intended to reduce misuse.

All of the eight jurisdictions control the availability and use of the listed Schedule 7 chemicals in Appendix J of the SUSMP. However the way this is achieved by each jurisdiction differs. Some jurisdictions refer to Appendix J, some jurisdictions mirror the Appendix in their legislation, and some achieve the same goals through licensing provisions.

A recommendation to be included with each of the proposed options (except for the status quo) would be that where Appendix J is retained, the relevant authority reviews the chemicals that are currently included in Appendix J, and updates the list as appropriate. The review would include an assessment of the risk posed by
the chemicals. It is anticipated that the update would mean that Schedule 7 chemicals included in a future Appendix would reflect those chemicals which are currently subject to chemical regulatory controls.

**Businesses affected by the control**

Changes to the control Appendix J could affect up to approximately 7,500 Australian businesses across all States and Territories. The likely affected business areas would be nursery production, gold ore mining and both wholesale and retail garden supplies. The following table shows a breakdown of the number of affected business areas by jurisdiction.

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<thead>
<tr>
<th>Main affected business areas</th>
<th>Business count by jurisdiction</th>
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<tr>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Nursery Production (Under Cover)</td>
<td>9</td>
</tr>
<tr>
<td>Nursery Production (Outdoors)</td>
<td>4</td>
</tr>
<tr>
<td>Gold Ore Mining</td>
<td>0</td>
</tr>
<tr>
<td>Wholesale - Industrial and Agricultural Chemical Product Wholesaling</td>
<td>15</td>
</tr>
<tr>
<td>Retail - Garden Supplies Retailing</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td>54</td>
</tr>
</tbody>
</table>

**Options to achieve uniformity**

The four options outlined in this section are as follows:

1. Maintain the status quo
2. Implement the provisions in the SUHMP as they are currently written with no additions
3. Adopt a prescriptive control [Preferred option]
4. Adopt an outcome-based control
5. Adopt an outcome-based control, with a prescriptive ‘deemed to comply or satisfy’ provision
6. Remove the provision in the SUHMP and any State or Territory variations
Options Analysis

Appendix J - Option One: Maintain the status quo

Seven out of eight States and Territories are consistent with the standard set out in Appendix J, as they require that a person or business be licensed or otherwise authorised to be able to access certain or all Schedule 7 chemicals. Victoria has a separate list for regulated Schedule 7 chemicals. There are substantial differences between the types of licences that the States offer, which creates a separate complication, and in turn a cost for business in terms of ensuring compliance with the requirements of the States and Territories in which they operate.

Stakeholders reported that the differences can be frustrating for business and indicated that they preferred options that would result in consistency of controls.

This option would not include a review of the chemicals in Appendix J.

Impact on Industry

The impact on industry from maintaining the status quo would be continued inconsistency in requirements for industry, and continued education costs to industry as a result of differences between the jurisdictions in how the chemicals on Appendix J are referred to or handled in each respective jurisdiction’s legislation and regulation. As Appendix J chemicals are Schedule 7 chemicals, it is expected that this will affect businesses that sell or supply agricultural or horticultural chemicals. This may also include retailers and wholesalers of farm products and plant nursery products, of which there are approximately 4,000 across Australia.

Business stakeholders have not been able to quantify the costs of the current inconsistencies.

Impact on Consumers

As noted above, business stakeholders were unable to quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices. The presence of differing controls in some jurisdiction is not considered to provide a benefit to consumers through protection from poisoning, as there is no evidence of poorer outcomes in those jurisdictions without controls or with different controls.

There are no clear benefits that have been identified from the status quo.

Impact on Government

There will be no impact on government from the status quo as it does not require that there be any changes to legislation or regulation in any of the States and Territories.
This option would not have a resourcing impact on Government as it does not require new systems or increased compliance activities.

**Conclusion**

As this option would retain the current confusion and inconsistency across jurisdictions, it is not the preferred option.

**Appendix J - Option Two: Implement the provisions of the SUSMP as they are currently written with no additions**

The regulatory control would require that all jurisdictions adopt the wording of the Appendix J of the SUSMP.

This option could include a review of the chemicals in Appendix J.

**Impact on Industry**

The requirement that all jurisdictions adopt Appendix J of the SUSMP will only change the structure of the legislation. Currently, all jurisdictions are aligned and achieve the same objectives of Appendix J, whether it is through explicit reference or through other means, such as licensing requirements. In cases where licensing or other legislation duplicates Appendix J, duplication will be a cost of achieving uniformity across jurisdiction. Consequently the impact of this option on industry would be minimal.

**Impact on Consumers**

To the extent that this option achieved uniformity and reduced the costs associated with inconsistency of regulation, there are expected to be small savings to business, these savings would be expected to ultimately be passed on to consumers in lower prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.
Conclusion

While this option would achieve national consistency, there are legislative drafting conventions that prevent this from occurring and these conventions make this option impractical to implement. In addition to this, if all jurisdictions adopt the wording of the Appendix J in the Poison Standard, this does not necessitate the updating of chemicals included in Appendix J – as is achieved in Option 3, and therefore is not the preferred option.

Appendix J - Option Three: Adopt a prescriptive control [Preferred option]

For this option, Appendix J would be retained. However, the recommendation would be to review the chemicals that are currently included in Appendix J, and to update the list as appropriate. The review would include an assessment of the risk posed by the chemicals. It is anticipated that the update would mean that Schedule 7 chemicals included in the Appendix would reflect those chemicals which are currently subject to chemical regulatory controls. This would clarify the Appendix.

Impact on Industry

Appendix J has not been an actively used or amended component of the SUSMP in recent years. A review, reassessment and update would ensure that this aspect of the SUSMP would be current and relevant to business and consumers.

The proposed review would mostly focus on the scope of chemicals that are included in Appendix J rather than a comprehensive risk assessment of the chemicals themselves. Stakeholders were concerned to note that a review of the chemicals in Appendix J not duplicate efforts that currently occur at the APVMA and other areas of chemical regulation.

There would be an education impact from this option on industry, as they would be required to learn and adhere to new regulatory requirements.

Impact on Consumers

To the extent that this option achieved uniformity and reduced the costs associated with inconsistency of regulation, there are expected to be small savings to business, these savings would be expected to ultimately be passed on to consumers in lower prices.

Impact on Government

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they
wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion

This option is preferred as it is the most straightforward method available for achieving national consistency.

Appendix J - Option Four: Adopt an outcome-based control

This option would involve creating a new control that sets out general outcomes for the conditions of availability of Schedule 7 chemicals.

This option was not considered feasible, as it is appropriate that for some specific Schedule 7 chemicals the government deems is dangerous, specific conditions for availability exist.

Impact on Industry

As this option is not considered feasible, the costs and benefits to industry could not be determined.

Impact on Consumers

As this option is not considered feasible, the costs and benefits to consumers could not be determined.

Impact on Government

As this option is not considered feasible, the costs and benefits to government could not be determined.

Conclusion

This option is not preferred because it is not viable for this particular control. Where particular conditions are being placed on particular poisonous chemicals, it is not appropriate to make the provisions of those restrictions or conditions general in nature, or open to interpretation.

Appendix J - Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply’ provision

This option would involve creating a new control that sets out general outcomes for the prohibition of certain chemical, alongside a prescriptive control setting out conditions of the prohibition.
This option would include a review of the chemicals included in Appendix J.

**Impact on Industry**

The impact of this option would not be materially different in outcome from the status quo. Where conditions or restrictions are placed upon particular chemicals, it is not appropriate to make the provisions of those prohibitions general in nature. Further to this, having both general and specific conditions could make the regulatory control more confusing and ambiguous for industry. Therefore, this option would impose a regulatory cost and an education impact on businesses, with no perceived associated benefit.

**Impact on Consumers**

Having both general and specific conditions could make the regulatory control more confusing and ambiguous for consumers. In terms of costs and benefits, there would be minimal impact on consumers from this option. The only expected cost to consumers may arise from businesses that have increased compliance costs. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices.

**Impact on Government**

The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

**Conclusion**

This option is not preferred as it would deliver the same outcome as the preferred option, Option Four, while being more complex to develop.

**Appendix J - Option Six: Remove provisions from the SUSMP and any State or Territory variations**

This option would mean that Appendix J would be removed from the SUSMP and all jurisdictions would remove it from their legislation. The removal of this Appendix J however, would still allow other areas of legislation to influence the availability of certain Schedule 7 chemicals.
This option would not include a review of the chemicals in Appendix J.

Impact on Industry
The impacts on industry from this option are not clear and are highly dependent on the extent to which other areas of legislation and regulation in individual jurisdictions influenced industry’s ability to access the chemicals listed in Appendix J.

The costs and benefits of this impact are indeterminable and unquantifiable.

Impact on Consumers
As noted above, business stakeholders were unable quantify the costs of complying with existing controls, or accommodating differences. However, to the extent there are costs these would be expected to ultimately be passed onto consumers in higher prices.

Impact on Government
The one-off cost of implementing legislative and regulatory amendments to implement a control decision from this RIS – for this option, removing controls relating to Appendix J where they exist – is not expected to be substantial and would be resourced by re-prioritisation of existing public health and legislative drafting resources. There will be savings in the future if governments decided they wished to amend the level of control, as it would be anticipated that the change would be done once nationally, rather than by each of the eight States and Territories.

This option would not result in any changes to a jurisdiction’s regulatory compliance activities. As a consequence there is not expected to be a budgetary impact on governments related to compliance.

Conclusion
In order to fully understand the true costs of removing Appendix J, it is necessary to understand what, if any, licensing requirements in jurisdictions, or any other legislation, achieves the same goal as Appendix J seeks to achieve. If there is regulatory duplication, that is, if jurisdictions already prohibit the availability and use of those chemicals listed in Appendix J, then removing it will reduce duplication and therefore provide a benefit to the regulated community. If however, no other regulation or licensing requirement achieves the outcomes of Appendix J, removing Appendix J may increase the chance of misuse or create a risk to the public health and safety. The indicative impact of each option on stakeholder groups and in jurisdictions is highlighted in the tables below.
Indicative impact of each option on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative Impact</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
<th>Option 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>-</td>
<td>↑</td>
<td>↓</td>
<td>n/a</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Consumers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>n/a</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Government</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>n/a</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Jurisdictional impact

The following table illustrates the regulatory impact that is estimated will occur for each option in each jurisdiction. Further analysis of the impact of different options in each jurisdiction can be found in Appendix I.

Impact variation of options for Appendix J by State/Territory

<table>
<thead>
<tr>
<th>Option</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
</tr>
<tr>
<td>5</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
</tr>
<tr>
<td>6</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
<td>↓</td>
</tr>
</tbody>
</table>

Consultation

The only stakeholder to comment specifically on Appendix J was AgSafe, which provides accreditation and training in chemical safety and compliance to the agricultural sector. AgSafe were supportive of the preferred option. The proposed review of Appendix J was also widely supported.

Conclusion

In conclusion, a prescriptive control is preferred for a consistent approach to Appendix J. The prescriptive control outlined above would effectively retain Appendix J. A review of the chemicals that are currently included in Appendix J, would allow an update to the list.
5 Implementation and decision-making

This chapter outlines the options and impact of implementation and decision-making arrangements that will deliver the preferred regulatory controls outlined in the previous chapter. The discussion is separated between the institutional approach and the decision-making arrangements. Institutional approach is defined in terms of the legislative or regulatory approach that will be used to deliver reform. Decision-making arrangements have been defined according to the persons who would be authorised to make decisions, and aspects such as how decisions should be made, timeliness and frequency of decisions and decisions in emergency situations.

In considering the relative merits of each option, attention has been paid to the potential preferences of each key stakeholder group, which are set out in the table below.

<table>
<thead>
<tr>
<th>Government</th>
<th>Industry</th>
<th>Consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Clear roles and responsibilities</td>
<td>• Clear rules and expectations</td>
<td>• Consistency of regulations may increase the clarity of guidance on dangers</td>
</tr>
<tr>
<td>• Authority to act</td>
<td>• Degree of consistent uniformity</td>
<td>• Protection from health risks</td>
</tr>
<tr>
<td>• Responsive to emerging issues</td>
<td>• Responsive to new products and issues</td>
<td>• A system able to respond to any problems</td>
</tr>
<tr>
<td>• Is the system effective at delivering public health objectives?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5.1 Options for implementing preferred regulatory controls

Options for implementation of national regulatory reform were considered by the Productivity Commission in its 2009 National Approaches to Regulation supplement to the Plastics and Chemicals Regulation research report. The Commission noted that in general chemicals regulation, the most common legislative mechanisms for achieving national consistency have been to use template or model legislation, regulations and codes of practice.

Options for the implementation of agreed regulatory controls that are considered in this chapter are:
1. Maintain the status quo
2. Template ‘reference’ legislative approach
3. Model legislation and regulations
4. Referral of powers
5. Adoption of a national standard by reference [Preferred option]
6. Harmonising subordinate law
7. Mutual recognition
8. Implementing agreed principles
9. Memorandums of Understanding
10. Service level agreements
11. Industry self-regulation

5.2 Options analysis

The purpose of considering the structural approach is to ensure that the controls are nationally consistent across the States and Territories, and that the agreed approach can be maintained into the future.

Option One: Maintain the status quo

Under the status quo, decisions on controls would continue to be made independently by each State and Territory Government.

Under this model, even if Governments were to agree on consistent national controls, overtime as new information about risks, and the effectiveness (or ineffectiveness) of controls emerged, States and Territories could make different changes, or the same changes at different times. This would impose additional costs on businesses that operate across borders. States and Territories which would have to each repeat some or all of the analysis and prepare the regulatory changes.

This option is not considered to be a feasible or practicable method for achieving consistency of regulatory controls.

Option Two: Template legislative approach

The template approach would involve one jurisdiction enacting a law that is then applied by other jurisdictions as their law. This approach can be applied to regulations, standards or codes of practice.

The Galbally Review recommended that all regulatory controls (including scheduling/risk assessments) for chemicals and poisons be implemented by
reference legislation. Although COAG supported the policy of regulatory consistency, in their response they agreed at the time to aim for uniformity via ‘other means’ as an alternative to template legislation. No reasons were given for preferring an alternative approach, but it would allow States and Territories to continue to implement variations if they wish.

The template and reference approaches have strengths and weaknesses. Their greatest advantage is that if the original legislation is applied or referred to without amendment by the States and Territories, regulation is nationally uniform. Also, if all jurisdictions reference the template regulation as amended from time to time, these approaches facilitate the consistent uptake of amendments.

On the other hand, the use of template legislation constrains the scope that individual State (and Territory) parliaments have in enacting laws for the good governance of their jurisdictions. It also limits the role of individual regulatory assessment procedures in the oversight of regulation. Another potential weakness of the template and reference approaches is that the development of templates that are acceptable to all jurisdictions can be time consuming, and adoption can be staggered over time.

Consultation with State and Territory governments indicated that referring to another jurisdiction’s laws in State or Territory law was not considered to be a feasible option, as it would infringe upon the sovereign rights of State and Territory governments.

**Option Three: Model legislation and regulations**

The ‘model’ approach to legislation, regulations, standards and codes of practice involves the drafting of a model document that each participating jurisdiction draws on in drafting its own legislative instruments. The model may be drafted in various ways: as a bill of a particular jurisdiction, or as an attachment to an agreement or an act. The jurisdictions might also decide that there are core provisions that need to be adopted consistently and non-core provisions that don’t.

This approach allows jurisdictions to adapt the model to suit their circumstances (including their regulatory architecture), drafting styles and political priorities, without necessarily creating inconsistencies between jurisdictions.

The flexibility of the model approach can, however, result in inconsistencies. These can arise in the first instance when adapting the model, and over time as each jurisdiction sees fit to amend its own legislation, and do so in its own timeframe.

The Productivity Commission noted that the experience in chemicals and plastics suggests that the model approach can be sufficient to deliver nationally consistent outcomes, although consistency has not always been achieved.
Work health and safety reform is ongoing. States and Territories are committed to the adoption of model Work Health and Safety legislation and related regulations through a COAG intergovernmental agreement in 2008. Safe Work Australia prepared the model act and model regulations for adoption by the jurisdictions, based on feedback from the Workplace Relations Ministerial Council.

Although a model law can seem a straightforward option, there remains potential for a problem with inconsistency of adoption by the jurisdictions. Under this approach, the legislation must pass through the Parliament of each jurisdiction. This process gives each State or Territory the opportunity to amend the legislation to suit local issues or policy priorities. While this approach can help to achieve a greater level of uniformity, model laws can still lead to inconsistencies between jurisdictions.

**Option Four: Referral of powers**

States may refer legislative powers to the Commonwealth. For example, all States having referred powers to the Commonwealth relating to trade measurement.102

While this option would provide for nationally consistent controls, it may be deemed more appropriate for control over poisonous chemical use and supply to remain a State-level control.

This option is not considered to be a feasible option. Consultation with State and Territory governments indicated that referring powers to the Commonwealth was not feasible as it would infringe upon the sovereign rights of State and Territory governments.

**Option Five: Adoption of a national standard by reference [Preferred option]**

This is an approach that is closely related to template legislation and involves jurisdictions referring in primary or subordinate legislation to instruments that have not been enacted by any jurisdiction. Each State and Territory calls up a national standard or code into its own regulations.103

This option would address an issue raised by stakeholders that decision-making and adoption of the SUSMP do not always occur in a timely manner.104

Drafting the controls that are a national standard would be conducted by either a Commonwealth level or a State and Territory Government intergovernmental level body or committee, and would be the responsibility of all Australian Health Ministers.

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103 ibid.
104 Responses to NCCTG Industry Survey, 2011.
The Australian Building Codes Board uses a reference model for the adoption of the National Construction Code by the States and Territories. The Australian Building Codes Board is responsible for the maintenance and drafting of the code, which was developed to incorporate all on-site building construction requirements into a single code. The published Code is updated annually, after being approved by a national ministerial council (Legislative and Governance Forum on Food Regulation).

States, Territories and local Governments are responsible for the legislative and regulatory framework for the regulation of building construction, using the Code as a technical reference. This means that States and Territories retain some autonomy with respect to the regulatory, compliance and enforcement framework they set up; but the building standards themselves are nationally consistent.

Food safety standards have seen the successful adoption of many regulatory controls by reference. There is an inter-governmental agreement between the Commonwealth and the States and Territories that stipulates that food safety standards, agreed to by the ministerial council, will be adopted by reference.

This provides certainty for food businesses operating across the States and Territories as to what basic standards they are required to comply with, particularly with regard to labelling, chemicals added to food and processing requirements.

This was reformed to ensure uniformity of key food standards across Australia. Local, State and Territory Governments remain responsible for enforcement.

South Australia indicated a preference to implement the Productivity Commission recommendation to allow jurisdictions the power to vary from the national standard. This is considered to be not preferred as it risks not delivering a nationally consistent approach over time.

**Option Six: Harmonising subordinate law**

Where it is too challenging to harmonise legislation, an option is available of harmonising regulations and subordinate legislation. Significant levels of national consistency can be achieved through harmonising subordinate legislation. Differences in regulatory architecture can be a barrier to harmonising subordinate laws as each jurisdiction has its own legislative drafting conventions and structure. Differences can include:

- Jurisdictions may have Acts that do not exist in other jurisdictions.
- The scope of legislation can vary.
- Penalties for non-compliance and appeal mechanisms may differ.
- Interpretation Acts vary across jurisdictions.

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105 ibid.
• Terms used in legislation may have different definitions in different jurisdictions.
• Sections of Acts are numbered differently.

This option is not considered to be a feasible option. These differences mean that there would be considerable potential for inconsistency to exist in the construction of a nationally consistent set of regulatory controls.

**Option Seven: Mutual recognition**

Mutual recognition of standards and approvals of other jurisdictions can deliver many of the benefits of national uniform regulation. It needs to be underpinned by an acceptance that the regulations and standards in one State or Territory meet community expectations in another.\(^{106}\)

Mutual recognition reduces the burden on businesses that operate in more than one jurisdiction by removing some of the technical barriers they face. Firms only need to satisfy one set of regulations to be permitted to sell a good in all jurisdictions. This has the potential to increase opportunities for trade and economies of scale.

Broader mutual recognition of qualifications, accreditations and products that comply with regulations in one of the participating Australian jurisdictions would make a significant contribution to national consistency in chemicals and plastics regulation. Mutual recognition offers a workable but limited form of cooperation across independent jurisdictions. In this respect it is relevant not only to harmonising regimes in Australia, but also some international harmonisation.

This is not considered to be a feasible option as the objective sought in this RIS is to adopt nationally consistent controls in all jurisdictions and this option would not deliver this.

**Option Eight: Implementing agreed principles**

This option was seen by the Productivity Commission as less rigorous than the other methods, as it involves agreeing on a set of principles that governments would then implement as they see fit.\(^{107}\)

The agreed principles approach can establish a high-level commitment to national consistency. However, while this can be a useful starting point in situations where urgent national regulatory action is warranted, unless backed by effective institutions and incentives for implementation, it may not deliver nationally consistent regulations.

\(^{106}\) ibid.
\(^{107}\) ibid.
This is not considered to be a feasible option as the objective sought in this RIS is to adopt nationally consistent controls in all jurisdictions and this option may not deliver this.

**Option Nine: Memorandums of Understanding**

These tend to operate horizontally (within a single layer of government) rather than vertically. Memorandums of Understanding (MOUs) are generally not used to establish governance frameworks. They can, however, be effective for laying the foundations for successful coordination between regulatory agencies. MOUs in chemicals regulation include one between the APVMA and FSANZ, which includes a protocol for risk assessments used in the determination of maximum residue limits for agricultural and veterinary chemicals.\(^\text{108}\)

Vertical MOUs in chemicals and plastics regulation have not been widely used. The only example identified by the Commission — the NICNAS MOU — has had limited impact. A States and Territories Memorandum of Understanding Group was established to assist in the flow of information between NICNAS and the States and Territories on OHS, environmental and health matters. However, the members of this group all come from OHS agencies, and its focus has been predictably narrow. Even then, it has not been a very effective forum for promoting the national uptake of NICNAS recommendations.

Although this option was outlined by the Productivity Commission in its supplementary paper to the Plastics and Chemicals research report, this option is not a feasible option as it is not designed to deliver consistent regulatory controls.

**Option Ten: Service level agreements**

These are also often used for coordination and cooperation between government agencies. They could assist to achieve a uniform approach to regulation. If, for example, the APVMA were to take responsibility for control of use regulation for agvet products, they could enter into service agreements with the State agencies to also enforce the regulations.\(^\text{109}\)

Although this option was outlined by the Productivity Commission in its supplementary paper to the Plastics and Chemicals research report, this option is not a feasible option as it is not designed to deliver consistent regulatory controls.

**Option Eleven: Industry self-regulation**

Standards for the control of chemicals could be set and administered directly by the relevant industries. This would allow business to set its own regulatory requirements within particular parameters.

\(^{108}\) ibid.
\(^{109}\) ibid.
Although the Productivity Commission considered this option, it is not viable. It would only be feasible if the preferred option for all controls were to remove regulation.

This option is not considered feasible. There is no clear single peak body for businesses that use chemicals. It would be a challenge to identify the most appropriate group of people to set up the system. Retail storage of Schedules 5 and 6 chemicals was previously the subject of industry work to create a code of practice for storage. This process was unsuccessful in creating a new code.

### Indicative impacts on stakeholders

From the options considered by the Productivity Commission as outlined above, the two options that are considered to be the most practical and feasible for delivery of nationally consistent regulatory controls are Option Three: Model Legislation and Regulations, and Option Five: Adopt a national standard by reference. The table below describes the impact that each option would have on each of the three key stakeholder groups.

#### Indicative impact of the feasible options on stakeholder groups

<table>
<thead>
<tr>
<th>Indicative regulatory Impact</th>
<th>Option Three: Model legislation</th>
<th>Option Five: Adopt a national standard by reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>Can still lead to variation between States and this becoming more different over time, is a cost to industry</td>
<td>No direct impact from this method of implementation</td>
</tr>
<tr>
<td>Consumers</td>
<td>No direct impact from this method of implementation</td>
<td>No direct impact from this method of implementation</td>
</tr>
<tr>
<td>Government</td>
<td>Allows for some variation (potentially positive from State and Territory Govt perspective)</td>
<td>Requires giving up some level of State government sovereignty Difficult to vary for local issues</td>
</tr>
</tbody>
</table>

The preferred implementation option is Option Five: adopt a national standard by reference. This is preferred because it is the option that is most likely to achieve a set of controls that are nationally consistent, thereby meeting the objectives for this RIS.

#### 5.3 Options for decision-making

As well as the institutional arrangements, decision-making for scheduling and the SUSMP is due to be reviewed in the 2013 review of the governance of chemicals and medicines scheduling. However, one of the issues for this paper and the RIS to
discuss is how and by whom decisions will be taken in future, after the preferred approach for national consistency has been agreed to or implemented.

Currently, the DOHA Secretary (or delegate) takes into account matters of public health and the advice from the ACCS and the ACMS in making decisions relating to scheduling. Other decisions in the SUSMP are also made by the DOHA Secretary (or delegate) under the Therapeutic Goods Act.

Scheduling decisions are risk assessments that are generally based on a technical understanding of the chemicals, while decisions on regulatory controls could generally be characterised as policy decisions.

Options available include whether decisions about future changes to regulatory controls should be made by a:

- Committee of technical experts,
- Commonwealth Secretary (or delegate),
- Committee of State and Territory officials, or
- Ministerial Council.

The following section considers the different types and aspects of decisions that are commonly made by government in relation to regulatory controls over chemicals, and assesses what type of decision maker would be best placed to make the decision. The following aspects are considered:

- Technical decisions
- Policy decisions
- Timeliness of decisions
- Frequency of decisions

Policy versus technical decisions

The decision on scheduling is made by the DoHA Secretary (or delegate), as a technical judgement. Controls are more consistent with policy choices that might best be made by Ministers. The technical decisions and regulatory control decisions are discussed below.

Types and aspects of decision-making

Technical decisions

Poisons are scheduled by the DoHA Secretary or delegate, with advice from the ACCS and the ACMS. The ACCS committee membership is made up of State and Territory officials from health departments with a level of experience in chemical and medicines policy and other chemicals or medicines experts. These scheduling
decisions are largely technical in nature and are based on a risk assessment of the nature of the chemical itself, and then by making a Risk/Benefit Analysis against the following questions:

- What is the hazard?
- How widespread is the hazard?
- In what circumstances will the hazard arise?
- What is the likelihood of the hazard occurring?
- Who or what is at risk?
- What are the consequences of the hazard in terms of severity (morbidity and mortality) and duration?

Because these decisions are technical in nature and require detailed thinking about individual chemicals, it is arguably more appropriate for these decisions to be made at an official rather than a ministerial level.

**Regulatory controls**

While scheduling can be said to be a technical or objective decision, decisions about regulatory controls such as packaging, labelling, storage and other controls are generally more reflective of the policy priorities of a jurisdiction. This is often based on the appetite for risk in a particular jurisdiction and could be considered to be more of a policy decision than a technical decision.

For this reason it may not be as appropriate to allow decisions like this to be made by a committee of officials and signed off by a Commonwealth official. While the Advisory Committees are well-placed to offer advice as to the appropriate level of regulatory control, it may be preferable to allow these policy decisions to be agreed to at a ministerial level, either by an individual minister or a Ministerial Council.

**Timeliness- addressing urgency**

National approaches to regulation and legislation are inherently complicated. This means that the process to make decisions can sometimes be quite time-consuming and potentially insufficiently responsive to changes or emerging issues.

While this is not necessarily a problem, it means that there need to be contingencies set out for making rapid decisions in a timely fashion in particular circumstances. This may mean, for example, that urgent decisions are able to be made by a delegated official, but that these decisions must be reviewed by Ministers within a prescribed length of time.
Frequency of change

When setting out the structure and governance of decision making in a new environment, one of the factors to consider will be how often the relevant officers or ministers should meet, and how often they should be able to make changes to Schedules or to a standard. Currently the NCCTG meets twice per year. The 2011 SUSMP was amended five times in 2011, mostly to account for new chemicals and other chemicals being added to Part 4 of the Standard.

It is not anticipated that the regulatory controls outlined in this RIS would be amended frequently once they have been agreed and implemented.

Industry and government stakeholders raised rapid decision-making and possibility for appeals on decision making. However, both appeals and rapid decision making typically occur on a per-substance basis, and this is allowed for in the Scheduling Policy Framework. The NCCTG cannot envisage a circumstance where a regulatory control – that is, a control over a whole Schedule of substances or indeed all Schedules – would be required to be implemented rapidly in order to protect the public from imminent harm.

Purpose of decision-making

The purpose of decision-making arrangements is to ensure that decisions are made by the most suitable person or body, in an appropriately timely and responsive fashion.

Options for allocation decision-making authority\textsuperscript{110}

The following options for decision-making have been considered.

1. A Commonwealth delegate to make decisions, on the advice of an Advisory Committee (this is the status quo)
2. Establish a statutory board as the decision-maker.
3. Establish a standard-setting body (based on a model such as food regulation)
4. Through an intergovernmental agreement (via a committee similar to the NCCTG) with a Ministerial Council (such as the SCOH) as the decision-maker. [Preferred Option]

Options Analysis

If a nationalised process is commenced, careful consideration needs to be given as to who is the most appropriately placed decision-maker for the process. It has been

\textsuperscript{110} The preferred option for decision-making of regulatory controls is best chosen by Health Ministers at SCOH. The preferred option will be noted in the final Consultation RIS when it is published in August.
noted that a dedicated decision-maker may be the best option, as Health Ministers and bureaucrats often have other priorities.\(^{111}\)

However, in the first instance, agreement of Health Ministers to implement the new controls is required. The most effective method for doing this will be through an intergovernmental agreement.

**Indicative impact of each option on stakeholder groups**

<table>
<thead>
<tr>
<th>Indicative regulatory Impact</th>
<th>Commonwealth Delegate</th>
<th>Statutory board or authority</th>
<th>Standard-setting body</th>
<th>Intergovernmental agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>No direct impact</td>
<td>No direct impact</td>
<td>No direct impact</td>
<td>No direct impact</td>
</tr>
<tr>
<td>Consumers</td>
<td>No direct impact</td>
<td>No direct impact</td>
<td>No direct impact</td>
<td>No direct impact</td>
</tr>
<tr>
<td>Government</td>
<td>May not be best placed to sign off on future policy standards Is a slow system</td>
<td>Option has clear roles and responsibilities, be responsive and act in a timely fashion One or two statutory bodies able to conduct both policy and scientific analysis</td>
<td>Requires that Governments still refer to or adopt the standard somehow Decisions likely to be timely</td>
<td>Ministers are the most appropriate delegated party to make decisions on regulatory controls, because decisions on controls are policy rather than technical decisions. Potential cost of this option is that the process can be slow, however this is a very low cost impact, as decisions to modify controls will be made very infrequently</td>
</tr>
</tbody>
</table>

\(^{111}\) PACIA 2007, Submission to the Productivity Commission Plastics and Chemicals Research Report
6 Consultation

This chapter outlines the method used for consultation, and responses to the RIS.

6.1 Stakeholders

Chemical regulation affects a large number of people and organisations. Feedback on the RIS has been received by:

1. Government entities
2. Industry stakeholders
3. Consumer groups
4. Environmental and public health groups

6.2 Consultation

Policy development

In developing options for uniform regulatory controls of chemicals across Australia, the NCCTG considered options for uniform controls and how to implement them.

Preparation of the RIS

In preparing this RIS, the NCCTG has engaged with stakeholders. In addition, members of State and Territory departments and regulators have provided ongoing advice and feedback.

Industry stakeholders and regulators responded to surveys, designed to obtain data to inform the analysis of options by identifying key concerns with current inconsistencies in chemical regulation across jurisdictions.

A Consultation RIS was released in August 2012. Written responses were sought by interested stakeholders. Eight responses were received. To support this process, a stakeholder meeting was held, with three additional follow up interviews with affected businesses.

Poisons information centres provided recent data on reported poisonings. Their views on the relative importance of particular controls were also sought. The information reported did not distinguish between poisonings in commercial settings and in the home. While they noted that it was important to have regulatory controls for poisons, many incidents of unintentional poisoning were due to thoughtless or careless behaviour, which presents a challenge for regulators.
A short questionnaire was circulated to the States and Territories on implementation issues, to assist the NCCTG Working Group in its consideration of implementation and governance arrangements.

6.3 Industry survey

In the initial stages of this project, Queensland Health conducted an industry survey on behalf of the NCCTG. The short survey was sent out to 25 industry and other stakeholders. Responses were received by Queensland Health from:

- ACCORD – an organisation representing chemical and cosmetics manufacturing firms
- Australian Competition and Consumer Commission (ACCC)
- Australian Self-Medicating Industries (ASMI) – an organisation representing sponsors of non-prescription medicines
- National Industrial Chemical Notification and Assessment Scheme (NICNAS)
- Plastics and Chemicals Industry Association (PACIA) – an organisation representing plastics and chemicals manufacturing firms

A summary of responses to the questions is detailed below:

**What are the most significant issues you experience with inconsistency and non-uniformity of regulatory controls and scheduling decisions over poisonous chemicals?**

Respondents identified misinterpretation, non-compliance and enforcement as the most significant issues experienced with inconsistency and non-uniformity in chemical regulation across jurisdictions.

The main areas of confusion and inconsistencies were identified as:

- licensing and storage requirements
- requirements for sampling of medicines
- variations in definitions and terminology

Respondents highlighted public health risks and costs to businesses as significant consequences of misinterpretation and non-compliance. These risks were not considered to be sufficiently managed to ensure public health protection.

In addition, approaches to regulation across jurisdictions were also identified as problematic due to inconsistencies in timeliness of dealing with non-compliance and resolution of compliance matters.
Describe in detail any particular issues or problems you have with the interaction between different legislation across jurisdictions to provide consistent and uniform controls?

Communication with the collective jurisdictional health agencies responsible for chemical regulation and enforcement, as well as communication amongst the collective, was noted as a key concern for respondents. This issue prevents efficient and effective communication of risk notifications to the media and public. It was further noted that the variation in terminology and definitions across jurisdictions contributed to communication problems.

The absence of efficient lines of communication inhibits the achievement of uniform responses from the collective in addressing risks and hazards and uniform enforcement of breaches of regulation. Inconsistency in compliance monitoring is largely attributable to the perceived lack of clarity surrounding responsibilities of the varying regulatory authorities.

Timeliness in setting public health standards and the adoption of these standards across jurisdictions was also a matter of concern. To facilitate timeliness across national borders, it is noted that efficient lines of communication are required.

Where possible, provide any estimates or other evidence of the additional compliance or transaction costs to your organisation of inconsistent and non-uniform regulation over poisonous chemicals?

No quantitative responses were given by respondents, however a number of qualitative answers were provided. Answers included:

- Compliance costs and penalties associated with non-compliance such as:
  - interpretation of nine different sets of Acts and Regulations (8 jurisdictions plus the Commonwealth) plus any additional requirements in the Therapeutic Goods legislation. Respondents identified that significant amounts of time are spent clarifying the requirements set out in legislation and communicating these, particularly with respect to sampling to health professionals and consumers and the definition of a healthcare professional
  - staff training
- multiple licensing costs for States and Territories
- confusion between differences of a Schedule 5 and a Schedule 6 chemical. Further, some retailers demand that all Schedule 5 and Schedule 6 chemicals adopt the most stringent standard when it comes to packaging. They therefore require substances to be provided in child resistant packages to ensure every State and Territory meets their requirements
What are the three key outcomes you would like to see result from uniform regulatory controls over poisonous chemicals?

The results of the survey showed that there are many outcomes that could be achieved through uniform regulatory controls over poisons. The most common answers included:

- increased compliance and reduced business costs
- timely and consistent investigation and enforcement of non-compliance by businesses
- a single central and accessible contact point for matters relating to SUSMP, including interpretation and advice
- timeliness of decision making and adoption of standards
- enhanced reputation of the poisons regulatory system, with a perception that it is responsive and effective

Do you have any initial ideas or suggestions for improving the efficiency and effectiveness of regulatory controls over poisonous chemicals?

Respondents suggested that the development of efficient lines of communication within the collective of jurisdictional health agencies responsible for regulating chemicals was a crucial step in achieving national cohesiveness in compliance and enforcement.

Furthermore, uniformity in areas such as licensing and storage, in which considerable inconsistencies exist between jurisdictions, would simplify aspects of regulation that cause the most confusion and consequently pose the highest risk.

Terminology and definitions used in legislation should be uniform, which would be assisted by the expansion of the glossary of terms in the SUSMP.

In addition, the development of a clear framework outlining the roles and responsibilities of regulatory authorities would not only streamline communication by avoiding the deference of queries and concerns to multiple agencies, but also increase the efficiency of monitoring and enforcement. In doing so, it would also aim to reduce the inconsistencies in compliance monitoring.

Concerns regarding the inconsistencies in the scope and criteria of scheduling should be clarified to allow potential risks to be properly addressed and not overlooked.
6.4 Consultation following publication of the Consultation RIS

The consultation phase that followed publication of the Consultation RIS in August 2012 comprised both targeted meetings and interviews with stakeholders and consideration of written submissions.

6.5 Consultation meetings

Meetings have been held with representatives of:

- Accord
- Australian Food and Grocery Council
- Australian Paint Manufacturers Federation
- Competitive Advantage
- Croplife
- Engel Hellyer and Associates
- L’Oreal
- Plastics and Chemicals Industry Association (PACIA)
- Reckitt Benckheiser
- Revlon

A summary of the views expressed at those meetings is outlined below. Where relevant, comments and the response to comments have been included in the previous chapters of the RIS.

Storage of Schedule 5 chemicals

Stakeholders reported that with the current status quo it is difficult for a national wholesaler providing for all jurisdictions to comply with those that have requirements. Most Schedule 5 chemicals are packaged in child-resistant closures so that it is compliant with all jurisdictions. Otherwise, the industry expectation is that Schedule 5 chemicals do not have controls.

Stakeholders asked what evidence there was of the need for this i.e. are there many poisonings occurring in a retail environment from Schedule 5 chemicals? Possible sources are ACCC mandatory reporting and companies keeping incident reporting data. Accord noted that they find it problematic when there are controls through the whole supply chain.

L’Oreal reported they had never had an incident involving accidental poisoning (in a retail environment).
In 2006, Bunnings reportedly were concerned with the potential for poisonings in its stores and dealt with this by declaring that all chemicals needed to be in child resistant packaging and stored at or above 1.2 metres, and that this was to be implemented within two weeks. This put NDPSC in a position where they were required to contact Bunnings retailers to tell them that these requirements were additional to the legal requirements.

**Views on the preferred option:**

The view of the group was a preference toward option 6 and to allow self-regulation.

It was noted that New South Wales is the biggest market and has no controls on Schedule 5 chemicals; where there are controls these are dealt with on an exceptions basis.

In addition, Accord and PACIA argued that there was little evidence to suggest that controls on storage in a retail environment had an effect on poisoning events. Furthermore, Accord raised the point that without a control there would still be protection through Australian Consumer Law and supplier responsibilities.

As a result, the preferred option in the Consultation RIS was changed to option six.

### Storage of Schedule 6 chemicals

Stakeholders expressed a view that differences between Schedule 5 and Schedule 6 chemicals are reflected in the labelling, in particular the header of the label. There was agreement that there should be a difference between how Schedule 5 and Schedule 6 chemicals are treated.

Stakeholders reported that Schedule 6 chemicals are presented differently in the market or retail environment. This is due to packaging differences as well. The extra packaging requirements mean that in a retail environment there would be a delay between, for example, a child picking up the product and having access to the poison.

**Views on the preferred option**

Both PACIA and Accord preferred removal of existing controls for storage of Schedule 6 chemicals as it would minimise the regulatory burden on businesses and they argued there is no evidence to suggest that more stringent controls have more positive outcomes.112

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112 Accord, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012
However, Accord recognised that the preferred option may also deliver an acceptable outcome.\textsuperscript{113}

The South Australia Health broadly supported the preferred option.\textsuperscript{114}

The Victorian Department of Health, on the other hand, noted that there is no evidence to suggest that the implementation of controls for storage of Schedule 6 chemicals are necessary and that the labelling requirements ‘keep out of reach of children’ provide sufficient control.\textsuperscript{115}

However, the NCCTG agreed that Schedule 5 and Schedule 6 chemicals should be treated differently due to the greater risks associated with Schedule 6 chemicals. It is believed that the preferred option will impose minimal additional costs to businesses and will prevent perceived flow-on effects to householders of being too relaxed in their storage of poisonous chemicals in the home if there are no storage restrictions on these poisonous chemicals in a retail environment.

\section*{Storage of Schedule 7 chemicals}

\textit{Stakeholders reported the following views on the status quo:}

One consultant reported that the current system is not unreasonably onerous and that he was not certain that there needed to be any change.

Croplife reported that the stewardship programs look after storage in distribution networks and that parties affected seem satisfied with that system.

Schedule 7 chemicals are a very particular market. All suppliers are Agsafe accredited and all have lockup areas or cages.

\textit{Stakeholders expressed the following views on the preferred option:}

\textbf{Purchasing decision}

Farmer/purchaser visits retailer and seeks guidance in most instances. In general they will decide on the product based on the function they need the product to perform. The retailer will detail the options available and then the farmer/purchaser can read the labels and ingredients.

Croplife viewed the preferred option as manageable.

In response to concerns that guidelines or guidance provisions would not filter through to retailers, it was reported that accreditation requires regular contact between AgSafe and accredited parties. Updates and advice can be disseminated easily.

\begin{flushleft}
\textsuperscript{113} Accord, Submission in response to the Consultation RIS, September 2012
\textsuperscript{114} South Australian Department of Health, Submission in response to the Consultation RIS, September 2012
\textsuperscript{115} Victorian Department of Health, Submission in response to the Consultation RIS, September 2012
\end{flushleft}
Views on preferred option:

MT and Accord agreed that purchasers think they do need to have access to the product before purchase, and that it relates to the process by which purchasing decisions are made.

There was no opposition to the preferred option. PACIA and Accord noted in their submissions the importance of showing product labels to customers to ensure that the product meets their needs, and therefore, were supportive of the preferred option.116

In addition, the Victorian Department of Health and South Australia Health support the preferred option.117

Disposal

Accord reported that for Schedule 7 industrial chemicals, disposal is usually covered by licensing arrangements. Other relevant regulatory schemes include environmental requirements and workplace safety requirements

Views on preferred option:

Accord’s view was that the disposal of Schedule 5, 6 and 7 chemicals are likely to be covered by other regulations. The Victorian Department of Health agreed with this and argued that the implementation of the preferred option may create duplication.118

However, the NCCTG agreed that this duplication is unlikely to increase costs to businesses and will serve to give guidance to regulated businesses. Furthermore, having no controls in relation to Schedule 5, 6 and 7 chemicals may diminish the importance of disposal of chemicals and flow-on to householders who may become too relaxed about this issue.

Therefore, the benefits of uniformity are deemed to outweigh costs which are likely to be minimal, if any.

Labelling

Stakeholders reported the following views on the status quo:

Accord report that from their perspective the most important issue relating to labelling is enforcement of requirements: parallel imported products with no proper

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116 Accord, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012
117 Victorian Department of Health, Submission in response to the Consultation RIS, September 2012 and South Australian Department of Health, Submission in response to the Consultation RIS, September 2012
118 Victorian Department of Health, Submission to the Consultation RIS, September 2012
labelling are being made available in Australia and it can take a long time to resolve this problem.

Accord suggestion was to consider global harmonisation for labelling.

Position is that if the unlabelled/less labelled parallel imported products are not considered from a health perspective, then why are the requirements in place?

Signal headings can be problematic (i.e. Caution or Poison) as they do not represent the hazard accurately.

Risk labelling not hazard labelling is preferable

Views on preferred option:

Industry and the State health departments support the preferred option. The provisions of the SUSMP are well understood by industry and a single set of requirements would increase uniformity, reduce compliance costs and have no adverse effects on health outcomes.\(^\text{119}\)

Packaging

Stakeholders reported the following views on the status quo:

- Industry argued that issues relating to packaging are similar to labelling.
- There are some technical issues in terms of how you achieve this

Risk manager should be the NCCTG/SUSMP.

Views on preferred option:

PACIA were in support of the preferred option, however, whilst Accord deemed the preferred option acceptable, it identified that the SUSMP references the Australian Standards which are not freely available and therefore, may increase costs to industry.\(^\text{120}\)

However, the NCCTG agreed that the benefits of implementing the preferred option are likely to outweigh the additional costs identified due to improved uniformity. In addition, Australian Standards are put together by expert groups that focus on their specialty area, in this case chemical packaging, to ensure effective policy development.

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\(^\text{119}\) Accord, Submission to the Consultation RIS, September 2012

\(^\text{120}\) Accord, Submission in response to the Consultation RIS, September 2012
Record keeping

Views on preferred option:

PACIA suggested the inclusion of the product code which would increase the degree of uniformity, as Schedule 7 chemicals have different names across jurisdictions.\(^{121}\) Although the majority of jurisdictions do not currently require this piece of information to be recorded, this is unlikely to increase the level of regulatory burden for industry and was suggested by to increase the level of uniformity and clarity in record keeping.\(^{122}\)

The inclusion of the product code also satisfied the concerns of Accord relating to varying definitions for Schedule 7 chemicals across jurisdictions.

The South Australian Department of Health suggested the inclusion of proof of authorisation supported by their data which showed that 50 to 75 per cent of record audits revealed at least one unauthorised sale.\(^{123}\) Therefore, proof of authorisation was also included in the preferred option.

Advertising of Schedule 7 chemicals

Views on preferred option:

Stakeholders agreed with the preferred option.

Accord and PACIA note that advertising of Schedule 7 chemicals in mainstream media is unlikely to occur and that advertising to authorised persons such as in relevant trade journals or other media that are read by users of Schedule 7 chemicals should be allowed.\(^{124}\)

This option is further supported by the Victorian, South Australian and Queensland health departments.

Hawking or supply of product samples

Stakeholders reported the following views on the status quo:

Some of the problem relates to when something is designated a therapeutic good. It is confusing for members to determine what they can do, and this often centres on question of whether or not something is a therapeutic good or a poison.

One stakeholder reported a disinfectant that was treated like a medicine, which means it could be restricted for this purpose.

\(^{121}\) PACIA, Submission in response to the Consultation RIS, September 2012
\(^{122}\) PACIA, Submission in response to the Consultation RIS, September 2012
\(^{123}\) South Australian Department of Health, Submission in response to the Consultation RIS, September 2012
\(^{124}\) Accord, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012
Views on preferred option:
The preferred option was supported by both industry and State health departments. Accord position was that the proposal is fine and is an improvement on the status quo.
No members have raised the issue of unsolicited supplying.
It was noted that Schedule 5 and Schedule 6 being prohibited from mail outs was a standard duty of care.

Appendix C
Views on preferred option:
Accord supported this appendix appearing as a Schedule reflecting the controls that are associated with it.
Whilst PACIA agreed that the RIS preferred option would assist national uniformity, an applied law framework may be more effective. However, the view held by the NCCTG was that the preferred option provided more certainty, more transparency and would be easier to amend than the adoption of an applied law framework.
It is preferred to use a new Schedule to using Schedule 4 or 7.
This control is necessary in the scheduling system.

Appendix I
Views from APMF were sought separately. APMF were in support of the preferred option and all work towards creating greater national consistency.
The NCCTG agreed that, as the majority of jurisdictions reference Appendix I at present, the preferred option would create minimal, if any, cost. As the preferred option is strongly supported by industry, the preferred option was retained.

Appendix J
Views from Croplife were sought separately. Croplife were in support of the preferred option and all work towards creating greater national consistency.
Industry and the State health departments were supportive of the preferred option, with the exception of the Victorian Department of Health. The Victorian Department of Health prefers option three, the adoption of a prescriptive control. The benefits of the adopting option three were unclear, therefore, it was agreed that the preferred option would remain. The preferred option would involve a review of Appendix J to

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125 PACIA, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012
ensure it was available as a contemporary regulatory tool rather than not actively used.

In addition, PACIA noted that a complete review of Appendix J in conjunction with a review of licence requirements for Schedule 7 chemicals to establish the need for a more synergistic approach with other regulations/mechanisms. However, licensing is out of the scope of this RIS.

**Governance**

*Views on preferred option:*

Accord deemed the preferred option acceptable, however, preferred option four, referral powers. While this option would provide for nationally consistent controls, it may be deemed more appropriate for control over poisonous chemical use and supply to remain a state-level control.

PACIA suggested the adoption of template legislation; however, the use of template legislation constrains the scope that individual state (and territory) parliaments have in enacting laws for the good governance of their jurisdictions. It also limits the role of individual regulatory assessment procedures in the oversight of regulation. Another potential weakness of the template and reference approaches is that the development of templates that are acceptable to all jurisdictions can be time consuming, and adoption can be staggered over time.

Government departments who submitted responses to the RIS both supported the implementation option.

Accord noted that now that Australia-New Zealand collaboration is an option, this context should be considered for this project.

### 6.6 Written submissions

On the public release of the Consultation RIS, stakeholders were invited to either participate in consultation sessions or to submit their response to the RIS in person. Written submissions were received by:

- Accord
- Australian Paint Manufacturers’ Federation
- Department of Health, South Australia
- Department of Health, Victoria
- Queensland Health
- Royal Australian Chemical Institute
- Safe Work Australia
The questions that were included in the Consultation RIS have been retained in Appendix A of this report.

**Questionnaires**

State-based poisons information centres received a short questionnaire relating to poisonings information. Information has been included in the RIS where relevant. Detailed answers to the questionnaire are included at Appendix J.

State and Territory representatives responded to a survey relating to governance and legislative arrangements for the changes considered in the RIS. Information has been included in the RIS where relevant. The answers to this questionnaire are included at Appendix H.

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**Types of information collected during the consultation phase**

One challenging issue faced during the preparation of the Consultation and Decision RIS was the lack of quantified information on the costs and benefits of the different options. This was a challenge for all interested stakeholder - industry, community groups and governments.

One hundred and fifty-five questions were included in the Consultation RIS to highlight were additional information would assist RIS process reach a conclusion on the preferred option. The same information was sought from stakeholders during the targeted consultations.

Despite these attempts very limited information was gathered.

What was established through the consultation was that industry expects there will be on-going savings from implementing a nationally consistent approach to poisons controls (largely in line with those presented in the Consolation RIS).

The RIS has also sought information from jurisdictions on their public health outcomes. This has been a particularly useful comparison in situations where one or more jurisdictions have historically maintained a higher regulatory control than other jurisdictions. If there was no evidence that the jurisdiction with a lower regulatory control was experiencing worse public health outcomes, then the RIS has assumed that this lower control could be applied in other jurisdictions with no impact.
7 Evaluation and conclusion

This chapter outlines the preferred option for each of the regulatory controls and provides reasons why each preferred option is considered the preferred option.

To undertake this analysis, existing controls in each jurisdiction were compared with the preferred option. The table below indicates whether implementation of the preferred option would result in a change which represents an increased, unchanged or decreased regulatory impact.

Impact of implementing the preferred option

<table>
<thead>
<tr>
<th>Control</th>
<th>Schedule</th>
<th>Preferred Option</th>
<th>Impact variation across States and Territories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>ACT</td>
</tr>
<tr>
<td>Storage</td>
<td>5</td>
<td>6</td>
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<td>Storage</td>
<td>6</td>
<td>4</td>
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<tr>
<td>Storage</td>
<td>7</td>
<td>5</td>
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</tr>
<tr>
<td>Disposal</td>
<td>5, 6 and 7</td>
<td>4</td>
<td>↑</td>
</tr>
<tr>
<td>Labelling</td>
<td>5, 6 and 7</td>
<td>2</td>
<td>↓</td>
</tr>
<tr>
<td>Packaging</td>
<td>5, 6 and 7</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Record keeping</td>
<td>7</td>
<td>3</td>
<td>↑</td>
</tr>
<tr>
<td>Advertising</td>
<td>7</td>
<td>6</td>
<td>-</td>
</tr>
<tr>
<td>Hawking/Supply of product samples</td>
<td>5, 6 and 7</td>
<td>3A</td>
<td>↑</td>
</tr>
<tr>
<td>Appendix C: substances prohibited from sale, supply or use</td>
<td>n/a</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Appendix I: Uniform Paint Standard</td>
<td>n/a</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Appendix J: conditions for availability</td>
<td>7</td>
<td>3</td>
<td>-</td>
</tr>
</tbody>
</table>

It should be noted that this table illustrates a different impact from that in the Statement of the Problem. The table in Chapter 2 highlighted inconsistencies
between jurisdictions, by comparing controls in each jurisdiction with the SUSMP. Instead, the table below demonstrates how the level of regulation would change in each jurisdiction if the preferred option were implemented.

7.1 Storage of Schedule 5 chemicals

This option would mean that there are no explicit regulatory controls over the storage of Schedule 5 chemicals outlined in a national standard.

The preferred option in the Consultation RIS was originally to adopt an outcome-based control. This changed after the consultation process as it was evident that implementing a control over storage of Schedule 5 chemicals would be unlikely to improve public health and safety outcomes.

**Impact**

The majority of jurisdictions currently have no controls in place for storage of Schedule 5 chemicals. Therefore, removal of existing provisions would have no effect on the level of regulation in those jurisdictions.

For Queensland, South Australia and Western Australia, removal of existing controls would decrease the level of regulation. This change would reduce the level of regulatory burden and allow greater flexibility for businesses.

**Stakeholder opinion**

The Victorian Department of Health has no evidence to suggest that the implementation of controls for storage of Schedule 5 chemicals is necessary.\(^{126}\)

This aligns with the view of Accord, which notes that current controls for storage of Schedule 5 chemicals are unnecessary and increase the regulatory burden for businesses, without improving public health and safety outcomes.\(^{127}\)

Accord noted in their submission to the NCCTG that this is further supported by the 2006 Australian Institute of Health and Welfare (AIHW) National Injury Surveillance Unit (NISU) Briefing, which reported that the majority of poisonings of children between the ages of zero and four occur in domestic environments.\(^{128}\) In addition, less than 1 percent of reported poisonings occurred in ‘trade or service’ areas\(^{129}\) which indicates that regulation regarding storage of chemicals in retail and wholesale environments is unlikely to affect the incidence of poisonings.

\(^{126}\) Victorian Department of Health, Submission in response to the Consultation RIS, September 2012

\(^{127}\) Accord, Submission in response to the Consultation RIS, September 2012


\(^{129}\) Ibid
Conclusion

There is no evidence to suggest that those jurisdictions with more stringent regulatory controls relating to storage in a retail or wholesale environment have more positive health outcomes in terms of preventing poisonings than jurisdictions without prescriptive controls. This is supported by the fact that the majority of poisonings of children occur in the domestic environment.
7.2 Storage of Schedule 6 chemicals

The option to adopt an outcome-based control would prescribe that storage of Schedule 6 chemicals occur in a manner that would prevent access by children.

Impact

In Queensland, South Australia and Western Australia, the preferred option would reduce the level of regulation by providing greater flexibility.

For these jurisdictions this is due to the proposed option having no specific reference to food, drink or condiments in the proposed option and a shift away from more prescriptive requirements.

For businesses within the remaining jurisdictions, which are currently without regulatory controls, this option may increase the regulatory burden. However, while the requirement would be formalised, on a practical level this increase is likely to be minimal in terms of additional activities that businesses do. It is expected that preventing access to poisonous chemicals by children would be standard business practice due to the associated risks of not doing so.

Stakeholder opinion

Both PACIA and Accord prefer removal of existing controls for storage of Schedule 6 chemicals as it would minimise the regulatory burden on businesses and they argue there is no evidence to suggest that more stringent controls have more positive outcomes.130

However, Accord recognises that the preferred option may also deliver an acceptable outcome.131

The South Australia Health broadly supports the preferred option.132

The Victorian Department of Health, on the other hand, notes that there is no evidence to suggest that the implementation of controls for storage of Schedule 6 chemicals is necessary and that the labelling requirements ‘keep out of reach of children’ provide sufficient control.133

Conclusion

The preferred option is to include an outcome-based control. This will impose minimal additional costs to businesses operating in five different jurisdictions.

130 Accord, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012
131 Accord, Submission in response to the Consultation RIS, September 2012
132 South Australian Department of Health, Submission in response to the Consultation RIS, September 2012
133 Victorian Department of Health, Submission in response to the Consultation RIS, September 2012
However these costs are weighed against the benefit of a nationally consistent approach to storage, which will assist to make compliance more straightforward for regulated companies.

This option is also preferred to no regulation of retail storage because there are perceived flow-on effects to householders of being too relaxed in their storage of poisonous chemicals in the home if there are no storage restrictions on these poisonous chemicals in a retail environment.
7.3 Storage of Schedule 7 chemicals

This option would contain an outcome-based control with a deemed-to-satisfy provision. The deemed-to-satisfy provision would include elements such as: that only appropriately authorised personnel would be allowed access to the facility or area, and those interested in purchasing the chemicals would be supervised while accessing dangerous poison chemical.

Impact

The preferred option would have no impact on the level of regulation in the majority of jurisdictions. For Queensland, South Australia and Western Australia, the implementation of the preferred control would result in a decrease in the level of regulation as it is an outcome-based control with a ‘deemed to comply or satisfy provision’ with no specific reference to food, drink or condiments or methods of storage during transportation.

Stakeholder opinion

Industry is broadly supportive of the preferred option as it provides clear guidance as well as flexibility.\textsuperscript{134} PACIA and Accord noted in their submissions the importance of showing product labels to customers to ensure that the product meets their needs, and therefore, were supportive of the preferred option.\textsuperscript{135}

In addition, the Victorian Department of Health and South Australia Health support the preferred option.\textsuperscript{136}

Conclusion

This option is preferred because it would not only improve uniformity, but also provide retailers with the option to store Schedule 7 chemicals within view of potential purchasers. In addition, it would allow customers access to Schedule 7 chemicals under appropriate supervision.

\textsuperscript{134} Accord, Submission in response to the Consultation RIS, September 2012
\textsuperscript{135} Accord, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012
\textsuperscript{136} Victorian Department of Health, Submission in response to the Consultation RIS, September 2012 and South Australian Department of Health, Submission in response to the Consultation RIS, September 2012
7.4 Disposal of Schedule 5, 6 and 7 chemicals

The preferred option would require that businesses dispose of poisonous chemicals in a manner that does not constitute, or is unlikely to constitute, a risk to public health or safety.

*Impact*

The preferred option is unlikely to have an effect on the level of regulation in New South Wales, South Australia or Western Australia as existing controls are outcome-based with no additional provisions.

One jurisdiction noted that such regulations have existed in their jurisdiction for over thirty years. The NCCTG has agreed that the risk of duplication is more acceptable than the risk of a gap. The possibility of regulatory duplication can be managed through well-described protocols of relevant agencies and/or Memorandums of Understanding.

The Australian Capital Territory, the Northern Territory, Tasmania and Victoria currently have no controls in place for the disposal of Schedules 5, 6 and 7 chemicals, therefore, the preferred option would result in an increase in the level of regulation in those jurisdictions.

However, for these jurisdictions the preferred option is unlikely to increase the costs to businesses as it is expected that good business practice would encompass safe disposal of poisonous chemicals in line with other regulatory control (for example, workplace health and safety and/or environmental standards).

Queensland currently has relatively prescriptive controls in place for the disposal of Schedules 5, 6 and 7 chemicals; therefore, the preferred option would result in a decrease in the level of regulation.

*Stakeholder opinion*

The disposal of Schedule 5, 6 and 7 chemicals are likely to be covered by other regulations, therefore, the Victorian Department of Health argued that the implementation of the preferred option may create duplication.\footnote{Victorian Department of Health, Submission to the Consultation RIS, September 2012}

However, this duplication is unlikely to increase costs to businesses. It will not be inconsistent; rather it will serve to give guidance to regulated businesses. Furthermore, having no controls in relation to Schedule 5, 6 and 7 chemicals may diminish the importance of disposal of chemicals.
In the submission received from Safe Work Australia, they did not make specific reference to the preferred option in disposal and expressed the importance of uniformity.\textsuperscript{138}

Therefore, the benefits of uniformity are deemed to outweigh any costs for those few jurisdictions that many experience them.

\textit{Conclusion}

This option is preferred because it will have little effect on businesses, while still ensuring that public health and safety standards are upheld.

\textsuperscript{138} Safe Work Australia, Submission to the Consultation RIS, September 2012
7.5 Labelling of Schedule 5, 6 and 7 chemicals

The regulatory control would require that businesses in all jurisdictions adopt the labelling requirements as they are outlined in the SUSMP.

Impact

Queensland, Northern Territory, South Australia, Western Australia and Victoria all refer to the SUSMP in their legislation in some way. While some impose additional requirements, they do not appear significant, therefore, are likely to have a negligible impact on the level of regulation.

Tasmania refers to the SUSMP and also requires that an additional label with the sellers name and address is affixed to the product. Therefore businesses in manufacturing and wholesale industries that operate in Tasmania (approximately 230 businesses) would experience a regulatory impact.

The Australian Capital Territory and New South Wales are less specific in their requirements for labelling than the SUSMP, therefore, the preferred option would be likely to increase the level of regulatory burden.

For example, in New South Wales, the legislation just requires that ‘a dealer must not supply any substance in a container that has a label that states or implies that the substance is a poison’ whereas the SUSMP requires specific wording on a label. However, the increase in regulatory burden would be minimal and the benefits of uniformity are likely to outweigh this minimal increase.

Stakeholder opinion

In addition, industry supports the preferred option as the provisions of the SUSMP are well understood by industry and a single set of requirements would increase uniformity, reduce compliance costs and have no adverse effects on health outcomes.

South Australia Health and the Victorian Department of Health are in support of the preferred option.

Conclusion

This option is preferred as it would achieve greater national consistency while still achieving the objective of the regulatory control.

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139 Refer to Appendix D
140 Accord, Submission to the Consultation RIS, September 2012
141 Victorian Department of Health, Submission in response to the Consultation RIS, September 2012 and South Australian Department of Health, Submission in response to the Consultation RIS, September 2012
7.6 Packaging of Schedule 5, 6 and 7 chemicals

The regulatory control would require that businesses in all jurisdictions adopt the wording of the SUSMP.

Impact

All jurisdictions currently refer to the SUSMP in their individual legislation. Some jurisdictions offer alternatives to the SUSMP which is contingent on approval by an appropriate person. However, these alternatives do not appear to vary significantly from the SUSMP. Therefore, the preferred option is unlikely to affect the level of regulation in the majority of jurisdictions.

In Western Australia the current controls in place for packaging of Schedules 5, 6 and 7 chemicals are slightly more onerous than the SUSMP, therefore, the adoption of the preferred option is likely to decrease the level of regulation in this case.

Stakeholder opinion

There were mixed responses from industry regarding the preferred option for packaging of Schedules 5, 6 and 7 chemicals. PACIA were in support of the preferred option, however, Accord identified that the SUSMP references the Australian Standards which are not freely available and therefore, may increase costs to industry.142

However, the benefits of implementing the preferred option are likely to outweigh the additional costs identified due to improved uniformity. In addition, Australian Standards are put together by expert groups that focus on their specialty area, in this case chemical packaging, to ensure effective policy development.

Conclusion

The regulatory impact of adopting the provisions of the SUSMP would be minimal while still achieving the objective of the control. In addition, reference to the Australian Standards ensures up-to-date, effective packaging requirements.

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142 Accord, Submission in response to the Consultation RIS, September 2012
7.7 Record keeping of transactions of Schedule 7 chemicals

This option would involve the adoption of regulatory requirements for record keeping that are prescribed in the majority of jurisdictions. The information required would be as follows:

- Name and address of supplier and purchaser
- Date of order and supply
- Trade or approved name of chemical
- Quantity of chemical
- Product code*
- Proof of authorisation of purchaser*

In addition, records should be kept for five years, in either paper or electronic form.

*These information requirements were added after they were suggested during the consultation process.

Impact

The preferred option is unlikely to have a considerable impact on industry as it is a requirement in seven out of eight jurisdictions (all but New South Wales) to record transactions involving Schedule 7 chemicals. However, it should be noted that the number of years that the records are required to be kept is greater in the preferred option but this is unlikely to make a difference as the period of retention aligns with the requirements of the ATO.

New South Wales does not have provision for recording transactions of Schedule 7 chemicals, while Tasmania has minimal requirements for record keeping of Schedule 7 chemicals; therefore the preferred option is likely to slightly increase the level of regulation in those two jurisdictions. However, this is unlikely to increase the costs to businesses as it is expected that they would typically include the level of information noted in the preferred option in tax invoices, apart from the product code and proof of authorisation.

Stakeholder opinion

The inclusion of the product code would increase the degree of uniformity, as Schedule 7 chemicals have different names across jurisdictions. Although the majority of jurisdictions do not currently require this piece of information to be recorded, this is unlikely to increase the level of regulatory burden for industry and
was suggested by PACIA to increase the level of uniformity and clarity in record keeping.\textsuperscript{143}

The inclusion of proof of authorisation was suggested by South Australia Health, which noted that 50 to 75 per cent of record audits revealed at least one unauthorised sale.\textsuperscript{144} This highlights that there are potential risks that may be associated with a relaxation of regulatory requirements for recording sales of Schedule 7 chemicals.

\textit{Conclusion}

The above requirements would ensure that clear transaction records were maintained to allow identification and location of suppliers and purchasers. Gathering this information means that there are consistent details being recorded about the individuals in possession of poisonous chemicals along the supply chain. This would make it easier for information or evidence to be gathered where there is need to investigate the misuse of chemicals.
7.8 Advertising of Schedule 7 chemicals

The preferred option is to remove the provisions of the SUSMP and any State or Territory variations.

Impact

The preferred option will not have an impact on the level of regulation in the majority of jurisdictions as they do not currently have regulatory controls over advertising.

In Queensland, the level of regulation will decrease due to the removal of existing controls.

There is no evidence to suggest that an absence of regulatory controls regarding advertising of Schedule 7 chemicals poses a risk to public health and safety for the jurisdictions that do not have controls.

Stakeholder opinion

Accord and PACIA note that advertising of Schedule 7 chemicals in mainstream media is unlikely to occur and that advertising to authorised persons such as in relevant trade journals or other media that are read by users of Schedule 7 chemicals should be allowed.\(^{145}\) Therefore, Accord and PACIA support the preferred option.

This option is further supported by the Victorian, South Australian and Queensland health departments.

Conclusion

Schedule 7 chemicals are not available to the public and would be unlikely to be advertised in mainstream media; therefore, the preferred option to remove provisions where they exist is unlikely to pose a risk to public health and safety.

\(^{145}\) Accord, Submission in response to the Consultation RIS, September 2012 and PACIA, Submission in response to the Consultation RIS, September 2012
7.9 Hawking and supply of Schedule 5, 6 and 7 chemicals

This option would result in uniform controls that allow provision of samples, consistent with the recommendations of the Galbally Review. This would allow manufacturers, distributors and retailers for the first time to introduce samples as part of national marketing strategy, particularly when introducing new products. Consequently, this option is considered to be less burdensome than the status quo with respect to samples.

In addition, this option would retain the controls on hawking of poisonous chemicals that currently exist in most jurisdictions which would minimise the costs to industry of identifying requirements as current requirements would be maintained in many cases. Consequently, this option is considered to impose similar costs to the status quo with respect to hawking.

Impact

This would result in an increase in the level of regulation for the Northern Territory, who do not currently have any controls over hawking or sample supply. This could reduce flexibility for businesses and therefore increase the level of regulation in New South Wales and Tasmania which currently can seek exemptions within their current legislation.

Stakeholder opinion

Given the risks associated with Schedule 7 chemicals, industry deemed banning hawking and supply of product samples of Schedule 7 chemicals appropriate.\(^{146}\) For Schedule 5 and 6 chemicals, industry was also supportive of the preferred option. Industry recognised the benefits of driving consistency in this area and noted the preferred option would also allow industry to more efficiently deliver advertising campaigns.\(^{147}\)

Conclusion

This option is the preferred option as it would include mostly less restrictive controls, whilst maintaining requirements to reduce the risk of negative impacts on public health and safety.

\(^{146}\) Accord, Submission in response to the Consultation RIS, September 2012

\(^{147}\) Accord, Submission in response to the Consultation RIS, September 2012
Appendix C – Substances of such risk as to be prohibited from use or sale

This option would involve removing Appendix C from the SUSMP and creating a new Schedule of poisonous chemicals in the SUSMP.

**Impact**

The preferred option is unlikely to affect industry as the majority of jurisdictions currently reference Appendix C; rather, it is likely to implement the existing appendix more effectively, decrease confusion and decrease the likelihood of misinterpretation.

The level of regulation is unlikely to change in the majority of jurisdictions as they already reference Appendix C. For New South Wales and Western Australia there is likely to be only a slight increase in the level of regulation as these jurisdictions reference Appendix C but allow for exemptions but this effect is considered to be negligible.

**Stakeholder opinion**

Stakeholders were broadly supportive of the preferred option as it will not affect the level of regulation and will increase the level of uniformity.\(^{148}\)

**Conclusion**

This option is the preferred option as it would create national consistency and involve an update of out of date legislation.

The cost of this option will revolve around the decision-making framework. The option will likely deliver the benefit of harmonisation and further clarity around the poisonous chemicals that are banned.

Although this is the preferred option, it is appropriate that a decision to implement this option should be considered by the planned review of the current chemical and medicines scheduling arrangements, which are due for review in 2013.

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\(^{148}\) South Australian Department of Health, Submission in response to the Consultation RIS, September 2012; Accord, Submission in response to the Consultation RIS, September 2012, Victorian Department of Health, Submission in response to the Consultation RIS, September 2012
7.11 Appendix I – Uniform Paint Standard

The regulatory control would require that all jurisdictions adopt the wording of Appendix I in the SUSMP. This will see the continued prohibition on importation, manufacture and use of lead and cadmium in paint.

Impact

Implementing this option would require five States to adopt the Uniform Paint Standard (New South Wales, Queensland, South Australia and Victoria). The regulatory burden will increase for four of these jurisdictions, however as the Australian Capital Territory has relatively similar requirements in their current legislation, it appears that changing legislation to reference the Uniform Paint Standard will have little, if any, effect on the level of regulation.

This would possibly increase regulation in some states (Victoria, New South Wales, Queensland) without quantitative evidence of need for increased regulation but consistency is the preference and the relevant industry group supports this option.

Good governance will be required to ensure that these controls in particular are kept well updated and based on best available evidence. Despite the increase in the level of regulation, the preferred option would be deemed beneficial as it would provide greater clarity and certainty to business and consumer stakeholders.

Stakeholder opinion

The Australian Paint Manufacturers’ Federation Inc supports the preferred option for Appendix I. 150 Although this is likely to increase the level of regulation in four jurisdictions, the benefits of clarity and ensuring the prohibition of lead from paint formulations have been noted to outweigh the costs. 151

Conclusion

The preferred option would deliver national consistency as well as greater consumer protection from paints.

149 In addition it is consistent with a United Nations- and World Health Organisation- led project to eliminate the use of lead in paints., Global Alliance to Eliminate Lead Paints. http://www.unep.org/hazardoussubstances/LeadCadmium/PrioritiesforAction/LeadPaints/tabid/6176/Default.asp

150 Australian Paint Manufacturers’ Federation Inc

151 Australian Paint Manufacturers’ Federation Inc
7.12 Appendix J – Conditions of availability for Schedule 7 chemicals

For this option, Appendix J would be retained. However, the recommendation would be to review the chemicals that are currently included in Appendix J, and to update the list as appropriate. The review would include an assessment of the risk posed by the chemicals. It is anticipated that the update would mean that Schedule 7 chemicals included in the Appendix would reflect those chemicals which are currently subject to chemical regulatory controls. This would clarify the Appendix.

**Impact**

There would be an administrative impact on the jurisdictions that do not currently reference Appendix J, as they would then have to refer to it or implement it in some way. However, this is unlikely to affect the level of regulation in any jurisdiction. Seven of the eight jurisdictions are consistent with the standard set out in Appendix J and, although Victoria has a separate list for regulated Schedule 7 substances; it still requires that certain chemicals not be available except to an authorised or licensed person.

**Stakeholder opinion**

The preferred option was broadly supported by stakeholders. In relation to Appendix J, licensing was raised as significant concern; however, licensing is out of the scope of this RIS.

**Conclusion**

The preferred option would have minimal effect on the level of regulation in any jurisdiction and a review, reassessment and update of Appendix J would ensure that this aspect of the SUSMP would be current and relevant to business and consumers.

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152 Options for implementation of agreed controls are discussed in Chapter Five of this RIS
153 Accord, Submission in response to the Consultation RIS, September 2012 and South Australian Health Department, Submission in response to the Consultation RIS, September 2012
7.13 Governance

It is preferred that regulatory controls would be implemented through adoption of a national standard by reference.

The national standard will be a legislative instrument, with the legislation establishing the document likely to be hosted by the Commonwealth.

Impact

For businesses, the impact of this RIS is caused by the agreed amendments to regulatory controls rather than the governance around those controls.

This option will provide certainty to businesses because they will know that each jurisdiction will have the same rules for regulatory controls over poisonous chemicals.

There will be a resourcing impact on the Commonwealth, State and Territory governments while the arrangement is implemented.

Stakeholder opinion

One industry stakeholder reported that their preferred option for implementation of the regulatory controls was an applied laws model, which is closely aligned to Option Three: model legislation. This approach allows jurisdictions to adapt a model law to suit their individual circumstances (such as legislative drafting styles and regulatory architecture). However, this means that jurisdictions may amend the legislation, which can create inconsistencies in the long term.

Government departments who submitted responses to the RIS both supported the implementation option.

Conclusion

A national standard is the preferred option because it means that there will be a single document for regulatory controls that States and Territories will refer to.

In order to comply with the preferences and legislative policies of multiple jurisdictions, the standard will be a legislative instrument.

Decision-making

The preferred decision-making body for making current and future decisions on appropriate regulatory controls for poisonous chemicals is through an intergovernmental agreement via a committee such as the NCCTG with a Ministerial Council such as SCoH.
Impact

For businesses, the impact of this RIS is caused by the agreed amendments to regulatory controls rather than the governance around those controls.

Stakeholder opinion

Stakeholders did not report a view on who or what should be the key decision making body.

Conclusion

As an intergovernmental agreement will ensure that all jurisdictions are jointly responsible for the agreed upon controls, this should create a nationally consistent approach.
7.14 Preferred options summary

This chapter summarises the preferred options

Table 6.1 – Preferred options for uniformity of structure and governance of chemical controls

<table>
<thead>
<tr>
<th>Area of reform</th>
<th>Preferred option</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance arrangements</td>
<td>Five</td>
<td>Adoption of a national standard by reference</td>
</tr>
<tr>
<td>Decision making structures for controls</td>
<td>Four</td>
<td>Intergovernmental arrangement (via a committee similar to the NCCTG) with a Ministerial Council (such as the SCoH) as the decision-maker.</td>
</tr>
</tbody>
</table>

Note: The preferred option for decision-making of regulatory controls is best chosen by Health Ministers at SCoH. The preferred option will be noted in the final Consultation RIS when it is published in August 2012.

Table 6.2 – Preferred options for each regulatory measure

<table>
<thead>
<tr>
<th>Regulatory control</th>
<th>Preferred Option</th>
<th>Details and impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage of Schedule 5 chemicals</td>
<td>Six</td>
<td>Remove existing provisions or controls. This option will assist to achieve national consistency and help prevent access to chemicals by children, while not representing a material increase in the regulatory burden on business.</td>
</tr>
<tr>
<td>Storage of Schedule 6 chemicals</td>
<td>Four</td>
<td>Adopt an outcome-based control. This option would mean that businesses would be required to keep Schedule 6 chemicals out of reach of children. As an outcome-based control, businesses would be able to decide how best to achieve this outcome.</td>
</tr>
<tr>
<td>Regulatory control</td>
<td>Preferred Option</td>
<td>Details and impact</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Storage of Schedule 7 chemicals</td>
<td>Five</td>
<td>Adopt an outcome-based control, with a prescriptive ‘deemed to comply or satisfy’ provision. The impact of this option would be that Schedule 7 chemicals are kept in a facility or area which is secured, along with detailed guidance provisions for how this may be implemented.</td>
</tr>
<tr>
<td>Disposal of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Four</td>
<td>Adopt an outcome-based control for disposal Reduction in the overall amount of regulation covering chemicals, while still requiring that public and environmental health and safety standards are upheld.</td>
</tr>
<tr>
<td>Labelling of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Two</td>
<td>Implement the labelling provisions of the SUSMP as they are written with no additions This option would achieve greater national consistency while still achieving the objective of the regulatory control. There is not expected to be any additional regulatory burden for businesses in the majority of States and, for Tasmania, the Australian Capital Territory and New South Wales, the increase in regulatory burden would be minimal.</td>
</tr>
<tr>
<td>Packaging of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Two</td>
<td>Implement the provisions of the SUSMP as they are written with no additions For jurisdictions that offer alternatives or include additional requirements the impact of adopting the SUSMP would be minimal while still achieving the objective of the control.</td>
</tr>
<tr>
<td>Record keeping of Schedule 5, 6 &amp; 7 chemicals</td>
<td>Three</td>
<td>Adopt a prescriptive control Minimal impact: the majority of jurisdictions currently require the listed details and the period of retention aligns with the requirements of the Australian Tax Office.</td>
</tr>
<tr>
<td>Regulatory control</td>
<td>Preferred Option</td>
<td>Details and impact</td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Advertising of Schedule 7 chemicals                   | Six              | Remove existing provisions or controls  
This option would achieve national consistency. It is unlikely that removal of this control would have a material impact on consumers or businesses in Queensland |
| Hawking/Supply of product samples of Schedule 5, 6 & 7 chemicals | Three A          | Adopt a prescriptive control  
This option is preferred because it would deliver national consistency of control; it would not represent a material regulatory increase in the Australian Capital Territory or the Northern Territory, and it would maintain an acceptable level of benefit to consumers in terms of restricting access to chemicals by children. |
| Appendix C                                            | Three            | Adopt a prescriptive control  
This option would involve removing Appendix C from the SUSMP and creating a new Schedule of chemicals in the SUSMP.  
The impact of this decision on business would be minimal – it is not expected that the levels of control will materially change with the creation of a new Schedule. |
| Appendix I                                            | Two              | Implement the provisions of the SUSMP as they are written with no additions  
This option will achieve national consistency with minimal change from States and Territories, and is an appropriate level of control over dangerous poisonous chemicals in paints. |
| Appendix J                                            | Three            | Adopt a prescriptive standard  
This option will achieve national consistency, and includes a requirement to review, evaluate and update the chemicals that are currently included in Appendix J. |
8 Implementation and review

This chapter provides an outline of the expected implementation process, and other transitional or monitoring arrangements.

8.1 Implementation and legislative change

Implementation

This RIS will lead to a decision on what should be the key regulatory controls for poisonous chemicals in Schedules 5, 6 and 7, and the manner in which they are implemented. The consequent change that will occur is that some of those controls will no longer be included in the SUSMP, and may not be decided upon by the DoHA Secretary.

The final Decision RIS will be submitted to the Australian Health Ministers’ Advisory Council and the Standing Council on Health for approval on Friday 19 October 2012, following which a decision is expected to be made on Friday 9 November 2012.

States and Territories were consulted on approaches to implement the agreed changes to regulatory controls. The key finding from this consultation was that it would be necessary for any new national standard to be a legislative instrument in one jurisdiction in order that all jurisdictions can reference it.

Stakeholders have suggested that it would be useful to provide a single central and accessible point of contact for matters relating to the SUSMP, including interpretation and advice. This is a reasonable idea and should be considered in light of any governance or structural changes that occur following the review of scheduling arrangements in 2013.

Legislative change

Subject to approval by the Standing Council on Health, regulatory or legislative change that needs to occur to effect the decision of SCoH will be implemented by all States and Territories and the Commonwealth. The tables in the next pages provide a summary of indicative potential timelines for implementation that will occur as a result of the preferred options outlined in Chapter Four of this RIS.
Table 8.1 – Summary of expected implementation processes for each preferred option in each jurisdiction

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Legislative change required (Y/N)</th>
<th>Regulatory change required (Y/N)</th>
<th>Time required (months/years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth</td>
<td>-</td>
<td>-</td>
<td>There is some difficulty in providing a time frame for the legislative and regulatory changes to Commonwealth legislation. Depending on the agreed options and what COAG decides to do, changes to the Therapeutic Goods Act and Regulations may need to occur. With any primary legislative change this could take up to 12-24 months if not longer. In relation to the SUSMP (SUSMP), changes will most definitely need to occur. The SUSMP is a legislative instrument registered on FRLI and we currently update this 3 times a year.</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>No</td>
<td>Yes</td>
<td>Refer to table 7.2</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Refer to table 7.2</td>
<td>Refer to table 7.2</td>
<td>Refer to table 7.3</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>No change required</td>
<td>Yes. New regulations in draft form at present will include changes.</td>
<td>Uncertain. Drafting stopped at present due to a change in Government.</td>
</tr>
<tr>
<td>Queensland</td>
<td>Yes</td>
<td>Yes</td>
<td>12 – 18 months estimated to complete</td>
</tr>
<tr>
<td>South Australia</td>
<td>Refer to table 7.3</td>
<td>Refer to table 7.3</td>
<td>Refer to table 7.4</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Refer to table 7.4</td>
<td>Refer to table 7.4</td>
<td>Refer to table 7.5</td>
</tr>
</tbody>
</table>
| Victoria              | Yes                               | Yes                              | Within 2 years* *Timeline for any legislative or regulatory change will depend upon:  
  - Ministerial approval; and  
  - Requirement, if any, for a regulatory impact statement under the Victorian Subordinate Legislation Act 1994 |
| Western Australia     | Refer to table 7.5                | Refer to table 7.5               | Refer to table 7.5                                                                           |
Table 7.2 – Australian Capital Territory– Expected implementation process for each preferred option

<table>
<thead>
<tr>
<th>Control</th>
<th>Preferred Option</th>
<th>Legislative Change</th>
<th>Regulatory Change</th>
<th>Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage S5</td>
<td>Remove all regulation</td>
<td>None anticipated</td>
<td>No</td>
<td>18 months subject to resources and ACT legislative processes.</td>
</tr>
<tr>
<td>Storage S6</td>
<td>Outcome based for children</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Storage S7</td>
<td>Secure area, access under authorised supervision</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Disposal</td>
<td>Outcome based</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Labelling</td>
<td>SUSMP provision – States adopt</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Packaging</td>
<td>SUSMP provision – States adopt</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Record Keeping S7</td>
<td>New control – agreed data set</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>Remove State provisions</td>
<td>None anticipated</td>
<td>None anticipated</td>
<td></td>
</tr>
<tr>
<td>Hawking</td>
<td>New control for samples – States adopt</td>
<td>None anticipated</td>
<td>Yes- new restrictions on hawking may be included in regulation and linked to existing supply offences in legislation.</td>
<td></td>
</tr>
<tr>
<td>Appendix C</td>
<td>Banned substances in new Schedule – States adopt</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Appendix I: Paint</td>
<td>SUSMP provision</td>
<td>None anticipated</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Appendix J: S7</td>
<td>Amend SUSMP</td>
<td>None anticipated</td>
<td>None anticipated</td>
<td></td>
</tr>
</tbody>
</table>
Table 7.3 – New South Wales – Expected implementation process for each preferred option

<table>
<thead>
<tr>
<th>Control</th>
<th>Regulatory Change</th>
<th>Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage S5</td>
<td>Remove all regulation</td>
<td>No change required</td>
</tr>
<tr>
<td>Storage S6</td>
<td>Outcome based for children</td>
<td>Requires modification to Reg. wording of existing requirements</td>
</tr>
<tr>
<td>Storage S7</td>
<td>Secure area, access under authorised supervision</td>
<td>Requires modification to Reg. wording of existing requirements</td>
</tr>
<tr>
<td>Disposal</td>
<td>Outcome based</td>
<td>Minor Reg. wording amendment for national consistency?</td>
</tr>
<tr>
<td>Labelling</td>
<td>SUSMP provision – States adopt</td>
<td>NSW currently adopts SUSMP. Will required removal of cl 8 of the Regulation</td>
</tr>
<tr>
<td>Packaging</td>
<td>SUSMP provision – States adopt</td>
<td>NSW currently adopts SUSMP. Will require removal of cl 21 of the Regulation</td>
</tr>
<tr>
<td>Record Keeping S7</td>
<td>New control – agreed data set</td>
<td>Will require specific change to wording and duration of keeping records</td>
</tr>
<tr>
<td>Advertising</td>
<td>Remove State provisions</td>
<td>No impact</td>
</tr>
<tr>
<td>Hawking</td>
<td>New control for samples – States adopt</td>
<td>Change to Act required – would need to see what is proposed</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Banned substances in new Schedule – States adopt</td>
<td>It is unclear what will be the effect. Possible Act amendment</td>
</tr>
<tr>
<td>Appendix I: Paint</td>
<td>SUSMP provision</td>
<td>Will require adoption of this by reference in the Reg. plus removal of cl 22 of the Regulation</td>
</tr>
<tr>
<td>Appendix J: S7</td>
<td>Amend SUSMP</td>
<td>Will require adoption of this by reference in the Reg.</td>
</tr>
</tbody>
</table>
### Table 7.3 – South Australia – Expected implementation process for each preferred option

<table>
<thead>
<tr>
<th>Control</th>
<th>Preferred Option</th>
<th>Legislative Change</th>
<th>Regulatory Change</th>
<th>Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage S5</td>
<td>Remove all regulation</td>
<td>Changes to Poisons Regulations required to implement this and remove current requirements that protect food from contamination **</td>
<td></td>
<td>12 months*</td>
</tr>
<tr>
<td>Storage S6</td>
<td>Outcome-based standard for restriction of access by children</td>
<td>Changes to Poisons Regulations required to refer to this standard and remove current requirements that protect food from contamination **</td>
<td></td>
<td>12 months*</td>
</tr>
<tr>
<td>Storage S7</td>
<td>Secure area, access under authorised supervision</td>
<td>Changes to Poisons Regulations required to mirror model wording and remove current requirements that protect food from contamination **</td>
<td>Changes to licence conditions</td>
<td>12 months* (1-3 yr licence cycle)</td>
</tr>
<tr>
<td>Disposal</td>
<td>Outcome-based standard for safe disposal</td>
<td>Changes to Poisons Regulations required to refer to this standard **</td>
<td></td>
<td>12 months*</td>
</tr>
<tr>
<td>Labelling</td>
<td>SUSMP provision</td>
<td>SA complies by referring to SUSMP as written with no additions</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Packaging</td>
<td>SUSMP provision</td>
<td>SA complies by referring to SUSMP as written but with additions: Changes to Poisons Regulations required to remove these additions **</td>
<td></td>
<td>12 months*</td>
</tr>
<tr>
<td>Record-keeping S7</td>
<td>New control to record agreed data set</td>
<td>Changes to Controlled Substances Act and Poisons Regulations to refer to the new control and remove additional requirements and to extend duration of record-keeping **</td>
<td>Changes to licence conditions</td>
<td>24 months+ (1-3 yr licence cycle)</td>
</tr>
<tr>
<td>Advertising</td>
<td>Remove existing provisions</td>
<td>SA complies</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Hawking/Supply of product samples</td>
<td>New control to permit controlled provisions of S5 and S6 product samples</td>
<td>Changes to Poisons Regulations required to refer to this new control **</td>
<td></td>
<td>12 months*</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Banned substances in new Schedule</td>
<td>Changes to Poisons Regulations required to refer to this new Schedule **</td>
<td></td>
<td>12 months* (after Schedules are changed)</td>
</tr>
<tr>
<td>Appendix I</td>
<td>SUSMP provision</td>
<td>Changes to Poisons Regulations required to enable enforcement of Appendix I provisions **</td>
<td></td>
<td>12 months*</td>
</tr>
<tr>
<td>Appendix J</td>
<td>Amend SUSMP (review, evaluate and update chemical list)</td>
<td>Possible changes to Poisons Regulations if chemicals listed in SUSMP Pt 3 para 41(3) are affected by the review</td>
<td></td>
<td>12 months*</td>
</tr>
</tbody>
</table>

* SA election in 2014 will impact on time frame for legislative amendments – it is not possible to predict the exact time impact
** wording of all legislative (Act and Regulation) amendments need to be acceptable to State drafters
Table 7.4 – Tasmania – Expected implementation process for each preferred option

<table>
<thead>
<tr>
<th>Control</th>
<th>Preferred Option</th>
<th>Legislative Change</th>
<th>Regulatory Change</th>
<th>Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage S 5</td>
<td>Remove any regulation</td>
<td>Needs no legislative change</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Storage S 6</td>
<td>Outcome-based regulation</td>
<td>Needs a regulation change</td>
<td></td>
<td>6 months from National agreement</td>
</tr>
<tr>
<td>Storage S 7</td>
<td>Secure area, access under authorised supervision</td>
<td>Possible wording change required as Tas already require separate storage and out of access by Public</td>
<td></td>
<td>6 months</td>
</tr>
<tr>
<td>Disposal</td>
<td>Outcome based</td>
<td>Regulation change as currently rely on environmental legislation</td>
<td></td>
<td>6 months from National agreement</td>
</tr>
<tr>
<td>Labelling</td>
<td>SUSMP provision – States adopt</td>
<td>Tas complies / references SUSMP</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Packaging</td>
<td>SUSMP provision – States adopt</td>
<td>Tas complies / references SUSMP</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Record Keeping</td>
<td>New control – agreed data set</td>
<td>Reg change required to model wording</td>
<td>Change to permit / licence conditions</td>
<td>6 months Leg from National agreement 12 months (permit cycle)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Change to duration of record keeping in licences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>Remove State provisions</td>
<td>Tas complies</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Hawking</td>
<td>New control for samples – States adopt</td>
<td>Change to Act required</td>
<td></td>
<td>12-24 months</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Banned substances in new Schedule – States adopt</td>
<td>Change to Act may be required – We now adopt Part 4 of the SUSMP by reference in a recent change to the Poisons Act, however this lists the Schedules as 1 to 9 so if there is a new Schedule this would need an Act amendment.</td>
<td></td>
<td>12-24 months (after Schedules changed)</td>
</tr>
<tr>
<td>Appendix I: Paint</td>
<td>SUSMP provision – States adopt</td>
<td>Tas complies / references SUSMP in the Public health Act</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Appendix J: S7</td>
<td>Amend SUSMP – States adopt</td>
<td>Tasmania adopts appendix J. As long as changes do not alter there being an appendix J no changes required. If a new appendix then there would need to be a regulatory change.</td>
<td></td>
<td>6 months (if a new appendix)</td>
</tr>
<tr>
<td>Control</td>
<td>Preferred Option</td>
<td>Legislative Change</td>
<td>Regulatory Change</td>
<td>Time Frame</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
<td>-------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Storage S 5</td>
<td>Remove any regulation</td>
<td>WA currently has a control for storage of Schedule 5, to be removed</td>
<td></td>
<td>3-6 months</td>
</tr>
<tr>
<td>Storage S 6</td>
<td>Outcome based for Children</td>
<td>WA complies. May need minor wording amendment for national consistency?</td>
<td></td>
<td>3-6 months</td>
</tr>
<tr>
<td>Storage S 7</td>
<td>Secure area, access under authorised supervision</td>
<td>Reg change required to model wording – wording would need acceptable to State drafters</td>
<td></td>
<td>3-6 months</td>
</tr>
<tr>
<td>Disposal</td>
<td>Outcome based</td>
<td>WA may comply. Minor wording amendment for national consistency?</td>
<td></td>
<td>3-6 months</td>
</tr>
<tr>
<td>Labelling</td>
<td>SUSMP provision – States adopt</td>
<td>WA complies / references SUSMP</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Packaging</td>
<td>SUSMP provision – States adopt</td>
<td>WA complies / references SUSMP for industry 5, 6, 7 poisons: Removal of prohibited containers (redundant if SUSMP compliant) ? some tidy amendment required for public / health professionals</td>
<td></td>
<td>3-6 months</td>
</tr>
<tr>
<td>Record Keeping</td>
<td>New control – agreed data set</td>
<td>Reg change required to model wording Change to duration of record keeping (major increase)</td>
<td>Change to permit / licence conditions</td>
<td>3-6 months Leg 12 months (permit cycle)</td>
</tr>
<tr>
<td>Advertising</td>
<td>Remove State provisions</td>
<td>WA complies</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Hawking</td>
<td>New control for samples – States adopt</td>
<td>Change to Act required – would need to see what is proposed (and required by WA - defence clause etc)</td>
<td></td>
<td>12-24 months +</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Banned substances in new Schedule – States adopt</td>
<td>Change to Act required</td>
<td></td>
<td>12-24 months + (after Schedules changed)</td>
</tr>
<tr>
<td>Appendix I: Paint</td>
<td>SUSMP provision – States adopt</td>
<td>WA complies / references SUSMP</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Appendix J: S7</td>
<td>Amend SUSMP – States adopt</td>
<td>Changes required - or amend Section 24 notice to adopt by reference ? WA interprets authorised person as permit/licence holder.</td>
<td></td>
<td>3-6 months (after appendix changed) notice – 12-24 months if Act requires changes</td>
</tr>
</tbody>
</table>
Implementation will be overseen by SCoH through the NCCTG. It will be NCCTG members’ responsibility to establish a work plan for implementing the options outlined in this RIS, and regularly reporting against the plan.

Implementation will involve the establishment of reporting arrangements to the NCCTG, and the clear articulation of the objectives for and indicators of this policy change.

8.2 Monitoring

The implementation of this regulatory reform will be monitored. There are currently monitoring arrangements in place through the Standing Committee on Chemicals’ reporting to the BRCWG. Further to this, the COAG Reform Council will continue their monitoring of the reform against previously agreed milestone dates as part of their continuous monitoring of the implementation of the Seamless National Economy National Partnership.

The NCCTG should consider liaising with Poisons Information Centres to establish methods to monitor changes in poisoning incident numbers and causes of poisonings. Post-reform monitoring would assist in determining the effectiveness of regulatory controls.

8.3 Evaluation and review

The NCCTG, acting for SCoH and SCoC\(^{154}\) will conduct an Evaluation Review, two years following implementation of legislation and regulations by States and Territories. This review will focus on identifying any areas in which inconsistencies still exist between States and Territories.

It would be useful to enhance the comprehensiveness of this evaluation if an evaluation review were designed to include some monitoring of public health outcomes and costs to business, the indicators for which were decided on and initially measured in the implementation phase for benchmarking purposes.

\(^{154}\) SCoC was established with a five-year expected duration, so may not be available to be involved in evaluation of the implementation.
Appendices

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A Consultation

Questions put to stakeholders in the consultation regulation impact statement

The following questions were contained in the Consultation RIS that was published and consulted on in August and September 2012. The questions were designed to gather any available further data from stakeholders on the impact of the current national inconsistencies, and to seek opinions on the possible options and preferred option set out in the RIS.

A.1 Chapter 2: Statement of the problem

2.4 Considering the cost of the problem

1. Are you able to quantify the nature and extent of the burden on your business of the additional compliance activities that arise from the inconsistencies associated with chemicals regulation?

2.5 Benefits or rationale behind maintaining variations across jurisdictions

2. Are there benefits from variations that have not been identified in this paper?
3. Are you aware of any examples where a variation between jurisdictions has led to a reduction in cost or delivered benefits (i.e. better health and safety outcomes)?

2.6 Rationale for government intervention in this project

4. Are there any controls missing from the list of identified controls that should be included in the scope of a project to achieve uniformity?

2.7 Rationale for government regulation of chemicals

5. Have the objectives of consistent poisonous chemical controls been accurately outlined?
A.2 Chapter 4: Poisonous chemical controls: options and impact analysis

4.1 Identification of options for the regulatory controls

6. Are there any other high-level approaches available to States and Territories that could be adopted to achieve the objectives?

4.2 Storage of Schedule 5 chemicals

Option One: Maintain the status quo

7. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

Option Two: Implement the provisions of the SUSMP

8. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control

9. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Four: Adopt an outcome-based control [Preferred Option]

10. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy provision’

11. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
**Option Six: Remove the provisions of the SUSMP and any State or Territory variations**

12. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

13. Is there an alternative level of regulation that has not been discussed here that could be used to control storage of Schedule 5 chemicals?

14. Are there any costs or benefits that have not been considered above?

15. Are there any risks associated with these options?

16. Are you able to provide any evidence of the benefits of any of these controls?

17. Which option do you believe best delivers the policy objective, and why?

---

### 4.3 Storage of Schedule 6 chemicals

**Option One: Maintain the status quo**

18. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

**Option Two: Implement the provisions of the SUSMP as they are currently written**

19. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Three: Adopt a prescriptive control**

20. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Four: Adopt an outcome-based control [Preferred Option]**

21. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
Option Five: Adopt an outcome-based control containing a prescriptive ‘deemed to comply or satisfy’ provision

22. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Six: Remove the provisions of the SUSMP and any State or Territory variations

23. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

24. Is there an alternative level of regulation that has not been discussed here that could be used to control storage of Schedule 6 chemicals?

25. Are there any costs or benefits that have not been considered above?

26. Are there any risks associated with these options?

27. Are you able to provide any evidence of the benefits of any of these controls?

28. Which option do you believe best delivers the policy objective, and why?

4.4 Storage of Schedule 7 chemicals

Option One: Maintain the status quo

29. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

Option Two: Implement the provisions of the SUSMP as they are currently written

30. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control

31. What criteria should be used to categorise someone as an appropriately deemed person?

32. How beneficial is it to allow members of the public to have supervised access to Schedule 7 chemicals?
33. Is there any evidence that allowing public access to Schedule 7 chemicals results in a material risk to the community?

34. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Four: Adopt an outcome-based control**

35. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Five: Adopt an outcome-based control containing prescriptive ‘deemed to comply or satisfy’ provisions** [Preferred option]

36. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Six: Remove the provisions of the SUSMP and any State and Territory regulations**

37. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

38. Is there an alternative level of regulation that has not been discussed here that could be used to control storage of Schedule 7 chemicals?

39. Are there any costs or benefits that have not been considered above?

40. Are there any risks associated with these options?

41. Are you able to provide any evidence of the benefits of any of these controls?

42. Which option do you believe best delivers the policy objective, and why?

4.5 Disposal of Schedules 5, 6 and 7 chemicals

**Option One: Maintain the status quo**

43. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?
Option Two: Implement the SUSMP as it is written

44. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control

45. Are there pre-existing industry standard practices for disposal of Schedule 5, 6 and 7 chemicals?

46. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Four: Adopt an outcome-based control [preferred option]

47. Do you see any potential for an outcome based standard for disposal of chemicals to be seen as regulatory duplication?

48. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Five: Adopt an outcome-based control that contains a ‘deemed to comply or satisfy’ provision

49. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Six: Remove the provisions of the SUSMP and any State and Territory variations

50. How effective are controls over disposal of poisons, where they exist?

51. What other incentives exist for business to adhere to the standards intended in the disposal requirements (i.e. are there environmental regulations or do general corporate responsibility and sustainability practices influence behaviour) if there were no explicit regulation of disposal of Schedules 5, 6 and 7 chemicals?

52. Is there alternative legislation or regulation that could be relied upon to control disposal of scheduled chemicals?

53. Are there any costs or benefits that have not been outlined above?
54. Are there any risks associated with these options?
55. Are you able to provide any evidence of the benefits of any of these controls?
56. Which option do you believe best delivers the policy objective, and why?
57. For your industry or firm, do you consider the transitional or future costs of this option could exceed any benefits of achieving a nationally consistent approach? If so, can you please provide details of the costs that you expect you would incur.

### 4.6 Labelling of Schedules 5, 6 and 7 chemicals

**Option One: Maintain the status quo**

58. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

**Option Two: Implement the provisions of the SUSMP [Preferred Option]**

59. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Three: Adopt a prescriptive control**

60. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Four: Adopt an outcome-based control**

61. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision**

62. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
Option Six: Remove the provisions of the SUSMP and any State or Territory variations

For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Are there any costs or benefits that have not been outlined in any of the options above?

Are there any risks associated with these options?

Are you able to provide any evidence of the benefits of any of these controls?

Which option do you believe best delivers the policy objective, and why?

4.7. Packaging of Schedules 5, 6 and 7 chemicals

Option One: Maintain the status quo

Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP [Preferred Option]

For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control

For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Four: Adopt an outcome-based control

For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

72. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Six: Remove existing provisions or standards

73. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

74. Are there any costs or benefits that have not been outlined in any of the options above?

75. Are there any risks associated with these options?

76. Are you able to provide any evidence of the benefits of any of these controls?

77. Which option do you believe best delivers the policy objective, and why?

4.8 Record keeping for Schedule 7 chemical transactions

Option One: Maintain the status quo

78. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP

79. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control [Preferred Option]

80. Is this level of information ordinarily recorded on tax invoices or other standard business records, and if not, what is the additional cost of capturing and retaining this information?
81. Are there any costs or benefits that have not been outlined in any of the options above?

82. Are you able to provide any evidence of the benefits of any of these controls?

83. Which option do you believe best delivers the policy objective, and why?
84. Other requirements prescribed in some jurisdictions, but not the majority, are as follows:

- Phone number of supplier and purchaser
- Occupation of purchaser
- Form of chemical
- Strength of chemical
- Purpose of purchase
- Signature of supplier and purchaser
- Issuer authority
- Accessibility of records

85. Should any of these be included in a new control? If so, why?

86. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Four: Adopt an outcome-based control**

87. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision**

88. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Six: Remove the provisions of the SUSMP and any State or Territory variations**

89. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
90. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

4.9 Advertising of Schedule 7 chemicals

Option One: Maintain the status quo

91. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

Option Two: Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP

92. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control

93. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Four: Adopt an outcome-based control

94. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

95. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
Option Six: Remove the provisions of the SUSMP and any State or Territory variations [Preferred option]

96. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

97. Are there any costs or benefits that have not been outlined in any of the options above?

98. Are there any risks associated with these options?

99. Are you able to provide any evidence of the benefits of any of these controls?

100. Which option do you believe best delivers the policy objective, and why?

4.10 Hawking or supply of product samples (S5, 6 and 7)

Option One: Maintain the status quo

101. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

Option Two: implement the provisions of the SUSMP as they are written

Costs and benefits

102. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three A: Adopt a prescriptive control: control permits some hawking and supply of product samples [Preferred Option]

103. Can you provide any information on the costs and/or benefits of the current bans on hawking? Could these benefits be achieved at a lower cost?

104. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three B: Adopt a prescriptive national control: Control prohibits all hawking and product samples

105. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs
that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Four: Adopt an outcome-based control**

106. Can you suggest an outcome-based control that would achieve the objectives of the current restrictions on hawking and distribution of product samples at a lower cost?

107. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision**

108. If supply of samples is permitted, subject to restrictions, are the proposed restrictions appropriate?

109. If they are not appropriate, why are they not appropriate?

110. Are proposed restrictions such as a restriction on labelling and packaging, feasible?

111. Are there alternative restrictions that could be proposed?

112. Can you provide examples of where the existing restrictions limit your organisation’s ability to market its products?

113. Are there any costs or benefits that have not been outlined in any of the options above?

114. Are you able to provide any evidence of the benefits of any of these controls?

115. Are there any risks associated with these options?

116. Are there jurisdictions overseas that allow product samples, and if so, under what conditions?

117. Is there evidence of increased access by children to dangerous chemicals through product sampling?

118. Which option do you believe best delivers the policy objective, and why?

119. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
Option Six: Remove the provisions of the SUSMP and any State or Territory variations

120. Is there any interaction between hawking/supply controls with controls by regulators such as the APVMA?

121. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

4.11 Appendix C: substances other than those included in Schedule 9, of such danger to health as to warrant prohibition of sale, supply and use

Option One: Maintain the status quo

122. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

Option Two: Implement the provisions of the SUSMP as they are currently written

123. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control [Preferred option]

124. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Four: Adopt an outcome-based control

125. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply’ provision

126. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs
that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Six: Remove the provisions of the SUSMP and any State or Territory variations**

127. Are you able to provide any evidence of the benefits of any of these controls?

128. Are there any risks associated with these options?

129. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

4.12 Appendix I: Uniform Paint Standard

**Option One: Maintain the status quo**

130. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?

**Option Two: Implement the provisions of the SUSMP as they are written with no additions [Preferred Option]**

131. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

**Option Three: Adopt a prescriptive control**

132. For your industry or firm, do you consider the transitional or future costs of this option could exceed any benefits of achieving a nationally consistent approach? If so, can you please provide details of the costs that you expect you would incur.

**Option Four: Adopt an outcome-based control**

133. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
Option Five: Adopt an outcome-based control, with a prescriptive ‘deemed to comply’ provision

134. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Six: Remove the provisions in the SUSMP and any State or Territory variations

135. Is there an alternative regulatory control that could be used to manage the concentration of chemicals in paints?

136. If there is an alternative regulatory control, is this level of control effective?

137. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

138. Are there any alternative chemicals which should be included in the Uniform Paint Standard?

139. Are the proportions of chemical allowed in paint reflective of dangerous toxicity?

140. Could these proportions be amended to achieve a better outcome?

141. If an alternative standard was identified above, what would be the associated costs and benefits?

142. Are there any costs or benefits that have not been outlined in any of the options above?

143. Are there any risks associated with these options?

144. Which option do you believe best delivers the policy objective, and why?

4.13 Appendix J: Conditions for availability of Schedule 7 chemicals

Option One: Maintain the status quo

145. Are you able to provide information on the nature and magnitude of the costs (if any), over and above the costs of normal business practices, that the status quo places on your business?
Option Two: Implement the provisions of the SUSMP as they are currently written with no additions

146. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Three: Adopt a prescriptive control [Preferred option]

147. Are there any alterations that could be made to Appendix J to better achieve the desired outcomes?
148. Are there any costs or benefits that have not been outlined in any of the options above?
149. Which option do you believe best delivers the policy objective, and why?
150. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Four: Adopt an outcome-based control

151. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Five: Adopt an outcome-based control, containing a prescriptive ‘deemed to comply’ provision

152. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?

Option Six: Remove provisions from the SUSMP and any State or Territory variations

153. Of the chemicals in Appendix J currently, are any of them being regulated by another regulatory agency at a State or federal level (e.g. APVMA)?
154. If Appendix J Schedule 7 chemicals are being regulated elsewhere, is this level of control effective?
155. For your industry or firm, do you consider there will be transitional or future additional costs of this option? If so, can you please provide details of the costs that you expect might be incurred. Would the costs of this option exceed the savings to your industry or firm of the resulting nationally consistent controls?
A.3 Chapter 5: Implementation and decision-making

156. Are the key issues for each stakeholder group an accurate reflection of the considerations that each stakeholder would make?
157. Have any key considerations been missed?

5.1 Options for implementing preferred regulatory controls

158. Do you think there are particular benefits or disadvantages from using one institutional framework over another?
159. Is there a framework you support more than others?
160. Are the described impacts accurate?
161. Are there any other impacts on stakeholders not detailed here?
162. Are the key issues for each stakeholder group an accurate reflection of the considerations that each stakeholder would make?
163. Have any key considerations been missed?

5.2 Options for decision-making

164. What alternative options could there be for rapid decision making in the future?
165. Are there any aspects of decision-making that have not been captured in this analysis?
B Scheduling of chemicals in Australia

Variations in chemical scheduling between the States and Territories are considered to be a problem of the current chemical regulation arrangement. The scheduling arrangements that were put in place following the Galbally Review will be the subject of review by the NCCTG in 2013, as per an agreement between the States and Territories. At this time the decision-making processes and practices will be assessed, which means that they are out of the scope of this RIS. However, brief description of the problem of inconsistent scheduling has been provided below.

The Productivity Commission recommended that State and Territory Governments should ‘adopt poisons scheduling decisions made by the Department of Health and Ageing directly by reference, as published in the SUSMP.’ COAG agreed this recommendation in 2008 and consider it is no longer a problem.155 However, scheduling decisions from the SUSMP are not consistently directly referenced by all States and Territories.

The differences that occur with the scheduling of chemicals are:

- additions and deletions to the Schedule
  - For example, Western Australia has added groups of carcinogenic substances and chemical precursors to Schedule 7.
- differences in legislative drafting styles across the jurisdictions leading to inconsistent references to the Schedules in legislation and regulations.
  - For example, Appendix C chemicals are included in Schedule 7 in New South Wales, and Tasmania and New South Wales use a separate Poisons List or Code, which is not always immediately updated to reflect changes in Part 4 of the SUSMP.

Before a chemical is subject to regulatory controls by the Commonwealth and the States and Territories, its relative risk levels are assessed by the Advisory Committee on Chemicals Scheduling. The substance is then included in a Schedule of the SUSMP if that is the advice of Committee and subsequently the decision of the delegate of the Commonwealth Secretary. The Productivity Commission recommendation (5.1) that scheduling of drugs (medicines) and poisons (chemicals) be informed by different specialist committees has been achieved: the Advisory Committee on Chemicals Scheduling and the Advisory Committee on Medicines Scheduling were established in 2010 under the new scheduling structure.

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Some variation in the adoption of the Schedules remains. Consultation with government and industry has suggested that variations are not extensive; however they still need to be understood by industry so that compliance can be achieved. Local issues often lead to variations in chemical scheduling. For example, in Western Australia several precursor chemicals (that is, chemicals used in illicit drug manufacture) are regulated through poisons controls. In all other jurisdictions these regulatory controls are implemented through alternative specific controlled substances legislation.\textsuperscript{156}

Variations have been reported to the TGA by the NCCTG since 2008 and published on the TGA website, and any proposed additional variations are a standing item on agendas for meetings of the Standing Council on Health.\textsuperscript{157} However, there is no comprehensive information published on the rationale behind these differences, nor evidence that they are delivering benefits to the jurisdiction that are in excess of the cost of the inconsistency.

While reporting of the variations has helped to make the process more open and transparent, in a recent submission industry stakeholders have indicated that there has not been a lot of effort put into potentially removing some of these differences.\textsuperscript{158}

There are also differences in the way the Schedules in the SUSMP are put into effect in each jurisdiction. Victoria is able to adopt the Schedules and appendices in the SUSMP by reference. However New South Wales is not able to adopt the appendices of the SUSMP by reference. For example, in order to put a sufficient level of control on the poisons listed in Appendix C into effect, they have added those chemicals referred to in Appendix C of the SUSMP to a subsection of Schedule 7. This allows them to place controls on those chemicals. Differences such as this may further add to the administrative cost to industry due to the inconsistency and the complexity of the regulatory framework.

\textsuperscript{156} This is still to be confirmed with Western Australia.


\textsuperscript{158} ACCORD 2011, Response to Industry Survey
<table>
<thead>
<tr>
<th>Schedule 5</th>
<th>Schedule 6</th>
<th>Schedule 7</th>
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<tbody>
<tr>
<td>Consistent among all Australian jurisdictions</td>
<td>Consistent among all Australian jurisdictions</td>
<td>Poisons in Appendix C of the Poisons Standard (NSW + TAS)</td>
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<tr>
<td></td>
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<td>“Nicotine in tobacco prepared and packed as nasal snuff” (Western Australia)</td>
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<tr>
<td></td>
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<td>Chemical precursors:</td>
</tr>
<tr>
<td></td>
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<td>Gamma-Butyrolactone</td>
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<td>1-Phenyl 2 – Propanone Oxime (Western Australia)</td>
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<td>Carcinogenic substances:</td>
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<td></td>
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<td>4-Nitrophenyl</td>
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<td></td>
<td></td>
<td>N-Nitrosodimethylamine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Toxaphine (Camphechlor) (Western Australia)</td>
</tr>
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</table>
C  Mapping of chemical controls

C.1  Sources referenced in legislative mapping

**Standard for Uniform Scheduling of Medicines and Poisons – SUSMP**

**Australian Capital Territory legislation**
Medicines, Poisons and Therapeutic Goods Act 2008
Medicines, Poisons and Therapeutic Goods Regulations 2008

**New South Wales legislation**
Poisons and Therapeutic Goods Act 1966
Poisons and Therapeutic Goods Regulation 2008

**Northern Territory legislation**
Poisons and Dangerous Drugs Act
Poisons and Dangerous Drugs Regulation

**Queensland legislation**
Health Act 1937
Pest Management Act 2001
Health (Drugs and Poisons) Regulation 1996
Health Regulation 1996
Pest Management Regulation 2003

**South Australia legislation**
Controlled Substances Act 1984
Controlled Substances (Poisons) Regulations 2011
Controlled Substances (Pesticides) Regulations 2003

**Tasmania legislation**
Poisons Act 1971
Poisons Regulations 2008

**Victoria legislation**
Drugs, Poisons and Controlled Substances Act 1981
Drugs, Poisons and Controlled Substances Regulation 2006

**Western Australia**
Poisons Act 1964
Poisons Regulations 1965
## Regulatory controls over chemicals

### D.1 Retail storage of Schedule 5 chemicals

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>ACT</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>NSW</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>NT</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
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</tbody>
</table>
| QLD           | ⬆       | Safe keeping of poisons  
  A person must not store a poison within reach of children.  
  A person must not carry, handle or store a poison in a way that may allow the poison to mix with, or contaminate, food, drink or a condiment or a drug or poison for human or animal use even if the container in which the poison is carried, stored or handled breaks or leaks. |
| SA            | ⬆       | Must not be stored in a retail premises unless:  
  - it is stored in an area where the public is not permitted access;  
  - if it is stored in an area where the public has access:  
    - it is stored not less than 1.2m above the floor level; or  
    - is enclosed in a child-resistant package or container approved by the Minister; or  
    - enclosed in a blister pack; or  
    - is stored in a container that has a capacity of not less than 5 litres; or  
    - stored in a container that has a gross weight of not less than 5 kg.  
  Must not be transported in a vehicle in which any food or component of food for human or animal consumption is being transported unless the poison is carried in a part of the vehicle effectively separated from that part of the vehicle containing the food. |
| TAS           | -       | No standard outlined in the relevant Act or regulations. |
| VIC           | -       | No standard outlined in the relevant Act or regulations. |
| WA            | ⬆       | Any person having a poison, other than those specified in regulation 56 (drugs of addiction), in or on any premises for the purpose of sale or use in his profession, business, trade or industry shall keep that poison in such a manner as to preclude contamination of any food, drink or condiment by the poison; and to preclude access to the poison by children. |

### Jurisdictional differences
<table>
<thead>
<tr>
<th>Storage Schedule 5</th>
<th>Poison Standard – There is no Poison Standard prescribed for storage of Schedule 5 poisons.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only SA, QLD and WA have specific storage requirements for Schedule 5 poisons.</td>
<td></td>
</tr>
</tbody>
</table>

**Key**

↑ More onerous than Poison Standard
- Consistent with Poison Standard
↓ Less onerous than Poison Standard

**Notes:**
## D.2 Retail storage of Schedule 6 chemicals

<table>
<thead>
<tr>
<th>Storage Schedule 6</th>
<th>Poison Standard – There is no SUSMP prescribed for storage of Schedule 6 chemicals.</th>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| NSW                | ↑                                                                               | Must be kept in a place where: |         | • the public does not have access; or  
|                    |                                                                                 | • in a place that is at least 1.2m above the floor and at least 1.2m away from any step, stairway, ramp or escalator to which the public has access.1 |
| NT                 | -                                                                               | No standard outlined in the relevant Act or regulations. |         |         |
| QLD                | ↑                                                                               | Safe keeping of poisons |         | A person must not store a poison within reach of children.  
|                    |                                                                                 | A person must not carry, handle or store a poison in a way that may allow the poison to mix with, or contaminate, food, drink or a condiment or a drug or poison for human or animal use even if the container in which the poison is carried, stored or handled breaks or leaks. |
| SA                 | ↑                                                                               | Must not be stored in a retail premises unless: |         | • it is stored in an area where the public is not permitted access; or  
|                    |                                                                                 | • if it is stored in an area where the public has access: |         | - it is stored not less than 1.2m above the floor level; or  
|                    |                                                                                 | - is enclosed in a child-resistant package or container approved by the Minister; or  
|                    |                                                                                 | - enclosed in a blister pack; or  
|                    |                                                                                 | - is stored in a container that has a capacity of not less than 5 litres; or  
|                    |                                                                                 | - stored in a container that has a gross weight of not less than 5 kg.2 |
|                    |                                                                                 | Must not be transported in a vehicle in which any food or component of food for human or animal consumption is being transported unless the poison is carried in a part of the vehicle effectively separated from that part of the vehicle containing the food. |
| TAS                | -                                                                               | No standard outlined in the relevant Act or regulations. |         |         |
| VIC                | -                                                                               | No standard outlined in the relevant Act or regulations. |         |         |
| WA                 | ↑                                                                               | Any person having a poison, other than those specified in regulation B6 (drugs of addiction), in or on any premises for the purpose of sale or use in his profession, business, trade or industry shall keep that poison in such a manner as to preclude contamination of any food, drink or condiment by the poison; and to preclude access to the poison by children. |         |         |

### Jurisdictional differences

ACT, VIC, NT, and TAS do not impose specific storage requirements in the Acts or regulations for poisons. NSW and SA regulations provide that Schedule 6 poisons are kept out of reach from children and are not accessible to the public. WA and QLD requires that poisons are kept out of the reach of children and that they are stored in a way that does not allow contamination of any food, drink, condiment or any other substance intended for human or animal (QLD only) use.

### Key

↑ More onerous

### Notes:

1. This clause does not apply to any of the following: any therapeutic substance for internal use in animals, any substance in a container that is fitted with a child resistant...
| than Poison Standard | closure, any substance in a pressurised spray dispenser that is fitted with a cap that can be removed only be using a levering instrument applied through a slot in the cap, any substance in a container that has a capacity of 5 litres or more or a weight of 5 kilograms or more, any hair dye in a container that has a capacity of 50 millilitres or less, any cockroach bait that is enclosed in a complex welded plastic structure. In this clause, child-resistant closure means (a) a child-resistant closure within the meaning of the current SUSMP, or (b) a closure of a design approved for the time being by the Director-General. 2. This does not apply to hair colouring preparation Schedule 6 poisons. |
| Consistent with Poison Standard | |
| Less onerous than Poison Standard | |
## D.3 Retail storage of Schedule 7 chemicals

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACT</strong></td>
<td>-</td>
<td>The poison must be kept in a part of the premises to which the public does not have access, and so that the prescribed person, or a person under the supervision of the prescribed person, has access to the poison.</td>
</tr>
<tr>
<td><strong>NSW</strong></td>
<td>-</td>
<td>A dealer in possession of a Schedule 7 poison must keep the substance in a room or enclosure to which the public does not have access.¹</td>
</tr>
<tr>
<td><strong>NT</strong></td>
<td>↑</td>
<td>Should be stored in an area in such a manner to prevent unauthorised access to it and take measures that are reasonably necessary to prevent unauthorised access to that substance, whether or not the premises are open for business.</td>
</tr>
</tbody>
</table>
| **QLD**       | ↑       | Safe keeping of poisons  
A person must not store a poison within reach of children.  
A person must not carry, handle or store a poison in a way that may allow the poison to mix with, or contaminate, food, drink or a condiment or a drug or poison for human or animal use even if the container in which the poison is carried, stored or handled breaks or leaks.  
A person who sells a Schedule 7 poison by retail must store the poison in a receptacle or storeroom that is kept locked, or in another place the chief executive is reasonably satisfied is a secure place and keep personal possession of the key to the place or ensure the key is in the possession of another responsible adult authorised by the person.  A poison wholesaler must store the poison in a way that ensures the poison is not accessible to the public. |
| **SA**        | ↓       | The poison must not be stored in premises where such a poison is sold by retail unless it is stored in part of the premises to which the public is not permitted access.  
Must not be transported in a vehicle in which any food or component of food for human or animal consumption is being transported unless the poison is carried in a part of the vehicle effectively separated from that part of the vehicle containing the food. |
| **TAS**       | -       | The poison must be kept in a part of the premises that is partitioned off or otherwise separated from any part of the premises that is readily accessible to the public. |
| **VIC**       | ↓       | A person who sells or supplies by retail all Schedule 7 poisons in his/her possession in a storage facility which is not accessible to the public, unless access to that area or facility is under the personal supervision of that person or a person acting under his or her direction. |
**Storage Schedule 7**

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
</table>
| WA            | ↑       | Any person having a poison, other than those specified in regulation 56 (drugs of addiction), in or on any premises for the purpose of sale or use in his profession, business, trade or industry shall keep that poison in such a manner as to preclude contamination of any food, drink or condiment by the poison; and to preclude access to the poison by children. Must not be stored in any area or in any manner that allows physical access to that substance by any person other than:
  - the owner of the business;
  - employees of the premises; and
  - a person authorised to purchase substances in Schedule 7. |

**Jurisdictional differences**

Despite wording differences, most jurisdictions are aligned to the standards and require Schedule 7 poisons to be kept away from public access. QLD requirements differ according to the method of sale (wholesale vs retail) and are more prescriptive of the method of storage. WA explicitly specifies the individuals who are able to access the area where Schedule 7 poisons are stored. VIC allows access under supervision.

**Key**

- ↑ More onerous than Poison Standard
- Consistent with Poison Standard
- ↓ Less onerous than Poison Standard

**Notes:**

1. Poison must also be kept away from food intended for consumption by humans or animals, and in such a way that, if its container breaks or leaks, the poison cannot mix with or contaminate any food intended for consumption by humans or animals.
## D.4 Disposal of Schedules 5, 6 and 7 chemicals

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>NSW</td>
<td>↑</td>
<td>Poisons must be disposed of safely: a person must not use or dispose of a poison in any place or in any manner likely to constitute a risk to the public.</td>
</tr>
<tr>
<td>NT</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
</tbody>
</table>
| QLD           | ↑       | A person must not discharge, place or otherwise dispose of a poison:  
  • in or on an alley, street, public land or public place; or  
  • in or on other land or premises or another place without the permission of the owner or occupier of the land, premises; or  
  • place or into or on a channel, creek, dam, drain, river, road, street, watercourse or another body of water.  
  Further, a person must not discharge, place or otherwise dispose of a poison in a way that:  
  • endangers the life or safety of a person or a domestic animal; or  
  • exposes food, drink or a condiment or another poison or a drug to the risk of contamination by the poison; or  
  • gives access to the poison to someone not endorsed to possess it. |
| SA            | ↑       | A person must not dispose of or use, or cause to be disposed of or used, a poison in any place or manner that constitutes or is likely to constitute, a risk to public health or safety. |
| TAS           | -       | No standard outlined in the relevant Act or regulations. |
| VIC           | -       | No standard outlined in the relevant Act or regulations. |
| WA            | ↑       | Poisons must not be disposed in any place or manner likely to constitute a risk to the public. The CEO has the power to order the quarantine or destruction of poisons in certain circumstances. |

### Jurisdictional differences

NSW, SA and WA, despite slight wording differences, are aligned and require that poisons are disposed of in a manner that does not pose a risk to public health and / or safety. While this is an outcome-based approach, QLD has adopted a more prescriptive approach.

It is possible that the States with no specific references to disposal in their respective poisons acts have controls through other legislative instruments, such as environmental health and protection legislation or regulation, or in the case of Schedule 7 poisons through the associated licences.
<table>
<thead>
<tr>
<th>Disposal Schedule 5, 6 and 7</th>
<th>SUSMP – There are no standards set out in the Poison Schedule for disposal for Schedule 5, 6 or 7 poisons.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key</td>
<td>Notes: Regulations regarding disposal, if any, are uniform across all Schedules of poisons.</td>
</tr>
<tr>
<td></td>
<td>1 This does not apply to:</td>
</tr>
<tr>
<td></td>
<td>• a person laying baits for pest destruction; or</td>
</tr>
<tr>
<td></td>
<td>• a person applying herbicides for the destruction of noxious weeds or unwanted vegetation; or</td>
</tr>
<tr>
<td></td>
<td>• a local government applying insecticides for horticultural purposes; or</td>
</tr>
<tr>
<td></td>
<td>• a person applying insecticides to a creek, dam, river, watercourse or other body of water for the control or destruction of mosquitoes; or</td>
</tr>
<tr>
<td></td>
<td>• a person applying insecticides to an alley, lane, place, public place or public land, road or thoroughfare for the control or destruction of midges or mosquitoes.</td>
</tr>
<tr>
<td></td>
<td>It only does not apply if the person is doing the aforementioned act:</td>
</tr>
<tr>
<td></td>
<td>• under a permit or approval granted by the chief executive or a local government; or</td>
</tr>
<tr>
<td></td>
<td>• under the Land Protection (Pest and Stock Route Management) Act 2002.</td>
</tr>
</tbody>
</table>

Key

↑ More onerous than Poison Standard

- Consistent with Poison Standard

↓ Less onerous than Poison Standard
### D.5 Labelling of Schedule 5, 6 and 7 chemicals

<table>
<thead>
<tr>
<th>Labelling Schedule 5, 6 and 7</th>
<th>Poison Standard – See Part 2 (Labels and Containers) of the SUSMP outlines the full detailed list of requirements for labelling of poisons.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standards require the wording on a label:</td>
</tr>
<tr>
<td></td>
<td>• “Caution” (for Schedule 5 poisons);</td>
</tr>
<tr>
<td></td>
<td>• “Poison” (for Schedule 6 poisons); and</td>
</tr>
<tr>
<td></td>
<td>• “Dangerous Poisons” (for Schedule 7 poisons)</td>
</tr>
<tr>
<td></td>
<td>Part 2 Paragraph 13 of the SUSMP exempts the following poisons from the labelling requirements of the SUSMP</td>
</tr>
<tr>
<td></td>
<td>• Poisons packed and sold solely for dispensary, industrial, laboratory or manufacturing purposes and is labelled in accordance with workplace regulation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>↑</td>
<td>A person commits an offence if-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the person uses a container for a regulated substance; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the container is permanently marked with the name of a different regulated substance.</td>
</tr>
<tr>
<td>NSW</td>
<td>-</td>
<td>A dealer who supplies a restricted substance must ensure that the substance is packaged and labelled:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• in accordance with the relevant provisions of the current Poisons Standard</td>
</tr>
<tr>
<td>NT</td>
<td>-</td>
<td>Part 2 of the SUMP applies in relation to labels and containers for Scheduled substances.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A person must not contravene Part 2 of the SUSMP.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Food in poison containers: A person shall not use a container as a container for food or drink where words indicating that the container is not to be used as a food container or the contents of the container are not the be taken are clearly and prominently embossed or clearly, prominently and indelibly written on it.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Food not to be placed in container where words indicate that the container is not to be used as a food container or the contents of the container are not to be taken are clearly and prominently embossed or clearly, prominently and indelibly written on it.</td>
</tr>
<tr>
<td>QLD</td>
<td>-</td>
<td>A package containing a controlled drug, restricted drug or a poison must bear a label that complies with part 2 of the current SUSMP.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A person must not use an immediate container permanently marked with the name of a controlled or restricted drug or a poison as a container for a different drug or poison. (Immediate container includes all forms of containers in which a poison is directly packed but does not include any such container intended for consumption or any immediate wrapper.)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Drugs and poisons to be labelled:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Every package containing any drug or poison for sale shall bear a</td>
</tr>
</tbody>
</table>
| Schedule 5, 6 and 7 | Poison Standard – See Part 2 (Labels and Containers) of the SUSMP outlines the full detailed list of requirements for labelling of poisons. Standards require the wording on a label:  
- “Caution” (for Schedule 5 poisons);  
- “Poison” (for Schedule 6 poisons); and  
- “Dangerous Poisons” (for Schedule 7 poisons)  
Part 2 Paragraph 13 of the SUSMP exempts the following poisons from the labelling requirements of the SUSMP  
- Poisons packed and sold solely for dispensary, industrial, laboratory or manufacturing purposes and is labelled in accordance with workplace regulation.  
- label which complies in all respects with what is prescribed under a regulation.  
- A person shall not sell a package containing any drug or poison unless the package bears such a label complying in all respects as aforesaid.  
Regulations state that:  
- A person must not change, cover, deface or remove a brand, declaration, label, mark or statement that is required under this chapter to be fixed or shown on the container of a poison.  
- A person must not soak, wash or otherwise treat a bottle or container used, or of a type commonly used, to hold a poison, or that has a brand, mark or label on it stating that the bottle or container has been used to hold a poison, in a tank or receptacle used to soak, wash or treat bottles or other containers of a type commonly used to hold human or animal food or drink or condiment.  
SA  
- A package or container in which a poison for human or animal therapeutic use is sold by retain on prescription, or is supplied on prescription must:  
- Have affixed to it a label that complies with Appendix L part 1 of the Uniform SUSMP; and  
- In the case of a poison that is listed in column 1 of Appendix L Part 2 of the Uniform Poison Standard have affixed to it a label that contains the warning statements prescribed for the poison by Appendix F Part 1 of that Standard; and  
- In the case of a preparation for internal use by humans that contains a poison listed in Appendix K of the Uniform SUSMPs, have affixed to it a label that contains the sedation warning statement 39, 40 or 90 as specified in Appendix F Part 1 of that Standard.  
For the purposes of section 24(c) of the Act, a package or container in which a poison designed for human or animal therapeutic use (other than a prescribed S3 poison) is sold by retail or is supplied—  
- must have affixed to it the label appearing on the package or container for the poison as supplied by the manufacturer (being a
### Labelling Schedule 5, 6 and 7

Poison Standard – See Part 2 (Labels and Containers) of the SUSMP outlines the full detailed list of requirements for labelling of poisons.

Standards require the wording on a label:
- “Caution” (for Schedule 5 poisons);
- “Poison” (for Schedule 6 poisons); and
- “Dangerous Poisons” (for Schedule 7 poisons)

Part 2 Paragraph 13 of the SUSMP exempts the following poisons from the labelling requirements of the SUSMP
- Poisons packed and sold solely for dispensary, industrial, laboratory or manufacturing purposes and is labelled in accordance with workplace regulation.

<table>
<thead>
<tr>
<th>Label</th>
<th>Tasmanian regulations require compliance with SUSMP labelling requirements.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>There is an additional record keeping requirement regarding labelling of poisons in a poison book, (Section 82. Labelling of poisons in poison book, in Division 3 of the Tasmanian Poisons Regulations 2008) which includes a requirement for an additional label to appear on the product: A person must not sell any poison, the sale of which requires an entry to be made in the poisons book, unless the person so selling has first affixed to the container in which the poison is sold a label on which is written the seller’s name and address which may appear on a label separate from the principal label.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Label</th>
<th>Victorian regulations.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A person must not sell or supply a poison or controlled substance with a label that does not comply with the SUSMP. Except in the course of actual use of a poison or controlled substance, a person must not remove that poison or controlled substance from the container in which it was dispensed, sold or supplied to put that poison or controlled substance-</td>
</tr>
<tr>
<td></td>
<td>• into an unlabelled receptacle or container; or</td>
</tr>
<tr>
<td></td>
<td>• into a receptacle or container which does not accurately identify that poison or controlled substance.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Label</th>
<th>Western Australian regulations.</th>
</tr>
</thead>
</table>
|       | Containers of poisons are to be marked or labelled: A person shall not sell any poison unless the package or container immediately containing it is marked or labelled in such a manner and with such particulars as
Labelling Schedule 5, 6 and 7

Poison Standard – See Part 2 (Labels and Containers) of the SUSMP outlines the full detailed list of requirements for labelling of poisons.

Standards require the wording on a label:
- “Caution” (for Schedule 5 poisons);
- “Poison” (for Schedule 6 poisons); and
- “Dangerous Poisons” (for Schedule 7 poisons)

Part 2 Paragraph 13 of the SUSMP exempts the following poisons from the labelling requirements of the SUSMP
- Poisons packed and sold solely for dispensary, industrial, laboratory or manufacturing purposes and is labelled in accordance with workplace regulation.

Jurisdictional differences

Labelling of poisons is uniform across Schedule 5, 6 and 7. ACT, NSW and TAS generally only require that poisons are labelled and correctly identified. VIC requires labelling to be as per the SUSMP; decanted containers must at least have a label that accurately identifies the chemical or controlled substance. NT, QLD, SA and WA require that labelling procedures follow those set out in the SUSMP. QLD and WA, whilst aligned to the SUSMP, also provide for an extra specification, however under most circumstances, these do not pose an extra burden.

Key

↑ More onerous than Poison Standard
- Consistent with Poison Standard
↓ Less onerous than Poison Standard

Notes:
## D.6 Packaging of Schedule 5, 6 and 7 chemicals

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

- Section 17 of the *Medicines, Poisons and Therapeutic Goods Act 2008* automatically adopts packaging standards from the SUSMP.
- A person commits an offence if –
  - the person is authorised to supply a regulated substance; and
  - the person supplies the substance to someone else; and
- the substance is not packed –
  - as prescribed by regulation or;
  - in accordance with an approval under section 193 (approval of non-standard packaging and labelling)
- A manufacturer’s pack of a supplied low harm or dangerous poison or moderate harm poison must be packaged—
  - in accordance with the medicines and SUSMP, paragraphs 21 to 27; or
  - in a container in which the poison may be sold under a relevant law.
- However, if the poison is camphor or naphthalene for domestic use, it must also be packaged in a way that, in normal use, prevents—
  - removal of the camphor or naphthalene from the packaging; or
  - ingestion of the camphor or naphthalene.
- Section 193 of Act - Approval of non-standard packaging and labelling:
- The chief health officer may approve the packaging or labelling of a regulated substance that does not comply with the medicines and SUSMP if satisfied that the use of the packaging or labelling is as safe as using the packaging or labelling allowed under the standard for the substance.
- The chief health officer may approve a form of packaging or labelling for a regulated therapeutic good if satisfied that the use of the packaging or labelling is safe.
- An approval may be conditional.
- An approval is a notifiable instrument.
### National Coordinating Committee on Therapeutic Goods

**Strategies to implement a national approach to poisonous chemical controls**

**November 2012**

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<table>
<thead>
<tr>
<th>Packaging Schedule 5, 6 and 7</th>
<th>SUSMP – The requirements of the Poison Standard refer to parts of the Australian Standard or require the poison to be packaged in a manner that achieves the same objectives of the Poison Standard. Camphor and Naphthalene are subject to specialised packaging requirements. The SUSMP sets have unique requirements for Schedule 5 poisons.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NSW</strong></td>
<td>A dealer who supplies a poison must ensure that the poison is packaged and labelled in accordance with the relevant provisions of the current SUSMP. ‘Particular use’ poisons may only be supplied in original containers: This clause applies to any Schedule 5, 6 or 7 substance that is specified in the Poisons List as being a substance that is manufactured or supplied for a particular use. A dealer (other than an authorised practitioner or pharmacist) who supplied a substance to which this clause applies must supply the substance, unopened, in the container in which it was received by the dealer.</td>
</tr>
</tbody>
</table>
| **NT** | Part 2 of SUSMP: labels and containers

- Part 2 of the SUSMP applies in relation to labels and containers for Scheduled substances.
- A person must not contravene Part 2 of the SUSMP. |
| **QLD** | Packaging of controlled or restricted drugs or poisons

- A person must not sell a controlled drug, restricted drug or a poison, unless the way it is packed complies with part 2 of the current SUSMP.
- However, subsection (1) (above paragraph) does not apply to a person if the controlled or restricted drug or poison is packed in a way certified under this section.
- The chief executive may certify a container for packing a controlled or restricted drug or a poison only if—
  - it does not comply with the current SUSMP because—it is uncoloured; or its shape or dimensions differ from a shape or dimension permitted under the current SUSMP; or it is designed for a particular purpose; and
  - the chief executive is reasonably satisfied using the container as a package for a controlled or restricted drug or a poison is as safe as using a container permitted under the current SUSMP.

Certain containers not to be used: A person must not sell any of the following in a container of a kind mentioned in paragraph 21, 22 or 23 of the current SUSMP or a container that is a certified container under section 10(3) of this regulation—

- a drug for internal human use;
- a medicine for internal human use;
- a poison for internal human use;
- food;
- drink;
- a condiment. |
### SUSMP – The requirements of the Poison Standard refer to parts of the Australian Standard or require the poison to be packaged in a manner that achieves the same objectives of the Poison Standard.

Camphor and Naphthalene are subject to specialised packaging requirements. The SUSMP sets have unique requirements for Schedule 5 poisons.

<table>
<thead>
<tr>
<th>Packaging Schedule 5, 6 and 7</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
</tr>
</thead>
</table>
| A person must not sell camphor or naphthalene in ball, block, disc or pellet form for domestic use, unless it is in a device that, in normal use, prevents removal or ingestion of the camphor or naphthalene. | A person must not store a poison in a container that—
| • is normally used for containing food or beverages; or
| • is similar to a container that is normally used for containing food or beverages. |
| A person must not sell camphor or naphthalene in ball, block, disc or pellet form for domestic use, unless the blocks, balls, discs or pellets are enclosed in a device that restricts removal or ingestion of its contents. |
| A person must not sell by wholesale or by retail or supply to a person a poison, medicine or medical device unless - it is enclosed in a package or container, and the package or container conforms with the regulations, and the package or container is labelled in accordance with the regulations. |
| The package or container must comply with the requirements set out in the Uniform SUSMP, and must –
| • be impervious to, and incapable of chemical reaction with, the poison when the package or container is under conditions of temperature and pressure that are likely to be encountered in normal use; and
| • have sufficient strength and impermeability to prevent leakage of the poison during handling, transport and storage of the package or container under normal handling conditions; and
| • in the case of a package or container intended to be opened more than once - be able to be securely and readily closed and reclosed. |
| Subject to subregulation (3) and to any provision to the contrary in these regulations, Part 2, paragraph 41 in Part 3 and Appendices E, F and J in Part 5 of the Uniform Standard (in this regulation referred to as "the applied provisions") have effect as if they were provisions of these regulations. |
| Subregulation (3) - The Minister may, by permit signed by the Minister, in such circumstances as the Minister thinks fit, authorise the sale or supply of a scheduled substance the labelling or packaging of which does not comply with a requirement of the applied provisions. |
| A person must comply with paragraph 2 in Part 2 of the Uniform Standard. |
| Child-resistant packaging of certain medicines |
| If goods to which the Therapeutic Goods Order No. 65, made under the Therapeutic Goods Act 1989 of the Commonwealth, as amended from time to time, applies consist of, or include, a scheduled substance, the provisions of that order, or any order made in substitution of that order, have effect for the purposes of the Act in relation to those goods as if those provisions were provisions of these regulations. |
| • A person must not sell or supply a poison or controlled substance that has not been stored or packaged or known to be stored or packaged |

---

**281**
## SUSMP – The requirements of the Poison Standard refer to parts of the Australian Standard or require the poison to be packaged in a manner that achieves the same objectives of the Poison Standard.

Camphor and Naphthalene are subject to specialised packaging requirements. The SUSMP sets have unique requirements for Schedule 5 poisons.

### Otherwise than in accordance with the SUSMP

A person shall not sell or supply any drug or medicine which is for internal use or any food drink or condiment in a container:

- of the like description to that prescribed by the regulations for a container in which any poison or controlled substance intended for external use may be sold; or
- of such a description as not to be readily distinguishable by sight and touch or by either sight or touch from a container in which a poison or controlled substance intended for external use may be sold.

Nothing in this section shall affect any other requirements of this Act, the Commonwealth standard, the Poisons Code or the regulations with respect to the containers in which drugs or medicines which are or contain poisons or controlled substances may be sold.

A person who sells or supplies a poison or controlled substance by wholesale or retail must sell or supply that poison or controlled substance only in the original unopened pack as received from the person who supplied that wholesaler or retailer.

### WA

- Containers and their labels to comply with SUSMP:
- Except as provided by these regulations a person shall not store, supply or transport a poison unless the immediate container in which the poison is stored, supplied or transported complies with Part 2 of the SUSMP.
- Except as provided by these regulations a person shall not store, supply or transport a poison unless the container referred to in subregulation (1) bears or has securely affixed to it a label which complies with Part 2 of the SUSMP.
- For the purposes of this regulation, the interpretation provisions of Part 1 of the SUSMP shall be used to interpret Part 2 of the SUSMP as adopted by this regulation.
- Use of certain containers prohibited:
- An immediate container on which the name of any poison is embossed or otherwise permanently marked shall not be used except to contain that poison.
- A paper or plastic bag or envelope, or a cardboard box shall not be used as a container for a Schedule 2, 3, 4, 8 or 9 poison whether dispensed or not, unless the poison is also presented to the purchaser in foil or in individually sealed, measured amounts, commonly described as strip packaging, or unless the container is approved by the CEO.
- A paper bag shall not be used as the sole container of any poison unless it has been approved by the CEO.
Packaging Schedule 5, 6 and 7

SUSMP – The requirements of the Poison Standard refer to parts of the Australian Standard or require the poison to be packaged in a manner that achieves the same objectives of the Poison Standard. Camphor and Naphthalene are subject to specialised packaging requirements. The SUSMP sets have unique requirements for Schedule 5 poisons.

- Food etc. containers to be distinguishable from poison containers
- A person shall not sell any food, drink, or condiment, or any drug or medicine for internal use, in a container —
  - of a description which is not readily distinguishable by sight and touch from a container in which a poison intended for external use may be sold; or
  - of a like description to that prescribed for a container in which a poison intended for external use may be sold.

Jurisdictional differences

The Australian Standards which are referenced in the SUSMPs were unavailable, which has prevented us from having a clearer understanding of how jurisdictional standards vary. However, jurisdictional standards have similarities. All of the jurisdictions reference the SUSMP, with four jurisdictions allowing for an alternative if consent is given by the relevant chief officer or Minister. Three of the jurisdictions require adherence to further standards, however these appear to be simple and would therefore impose little or no extra burden.

Packaging standards do not vary significantly for Schedules 5, 6 and 7. They have therefore been presented in a single table. Differences result from the treatment of Camphor and Naphthalene. This is further discussed in the “Notes” section below.

Key
- More onerous than Poison Standard
- Consistent with Poison Standard
- Less onerous than Poison Standard

Notes:
- Note: Camphor may be a Schedule 5 or Schedule 6 poison
- Note: Naphthalene is a Schedule 6 poison
- Due to the unavailability of the Australian standards, it is unclear what the differences are between the SUSMP and jurisdictional standards.
## D.7 Record keeping of Schedule 7 chemicals

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
</table>
| ACT           | ↑       | • A person commits an offence if—the person must keep a register for regulated substance; and the person does not keep the register as prescribed by regulation.  
• (1)A person mentioned in table 740, column 2 who possesses a dangerous poison must keep a dangerous poisons register. A person to whom subsection (1) applies must keep a dangerous poisons register for a dangerous poison at the place prescribed in table 740, column 3 for the person.  
• Table 740 Keeping dangerous poisons registers |

<table>
<thead>
<tr>
<th></th>
<th>column 1 item</th>
<th>column 2 prescribed person</th>
<th>column 3 place where register to be kept</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>approved analyst</td>
<td>the analyst’s laboratory</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>dangerous poisons manufacturers licence-holder</td>
<td>the licensed premises under s 675</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>dangerous poisons suppliers licence-holder</td>
<td>the licensed premises under s 685</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>medicines and poisons inspector (other than police officer)</td>
<td>the place directed in writing by the chief health officer</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>person mentioned in sch 4, col 2</td>
<td>the person’s business premises</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>supervisor of program under dangerous poisons research and education program licence</td>
<td>the premises where program is being conducted</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>supervisor of program</td>
<td>the premises where program</td>
<td></td>
</tr>
</tbody>
</table>
SUSMP – The SUSMP does not contain any provision relating to record-keeping

- under dangerous poisons
- research and education
- authorisation under div 17.3.3

Each page in a dangerous poisons register must relate to a single form and strength of a dangerous poison. If a dangerous poisons register is kept electronically, a separate record must be used for each form and strength of dangerous poison kept.

- The following details for a dealing with a dangerous poison are prescribed:
  - the nature of the dealing;
  - the date of the dealing;
  - the poison, and the form, strength and quantity of the poison, dealt with;
  - if the dealing is receiving the poison—the name and address of the supplier;
  - if the dealing is supplying the poison—the name and address of the person to whom it is supplied;
  - if the poison is supplied on a purchase order—the date of the purchase order;
  - the quantity of the poison held after the dealing.

A dealing with a dangerous poison must be entered in the dangerous poisons register the person must keep.

A person commits an offence if - the person is required under this Act to record something in relation to a regulated substance, and the person does not record the thing in writing and in a way that is easily retrievable.

Supplying dangerous poisons on purchase orders: The following are the requirements for the supply of a dangerous poison on a purchase order:

- if the dangerous poison is delivered in person by the supplier to the buyer - the poison is delivered to an adult, and the delivery is acknowledged by the adult signing and dating a copy of the purchase order;
- if the dangerous poison is not delivered in person by the supplier to the buyer - the poison is delivered to the buyer by a person whose procedures require the delivery of the poison to be signed for by the buyer or an adult employee of the buyer.

General requirements for dangerous poisons purchase orders –

A purchase order for a dangerous poison must be –
### Record Keeping Schedule 7

**SUSMP** – The SUSMP does not contain any provision relating to record-keeping

- signed by the person (the issuer) issuing the order; and
- if the issuer amends the order - initialled and dated by the issuer beside the amendment.

- A purchase order for a dangerous poison must include the following:
  - the issuer’s name and business address and telephone number;
  - the issuer’s authority to issue the order;
  - the dangerous poison, and the form, strength and quantity of the poison, to be supplied on the order.

Recording supply of dangerous poisons on purchase orders: A person who supplies a dangerous poison to someone else on a purchase order must make a written record of the following information:

- the date of the order;
- the issuer’s authority to issue the order;
- the name, and the business address and telephone number, of the person to whom the dangerous poison is supplied;
- the date the order is supplied;
- the dangerous poison, and the form, strength and quantity of the poison supplied.

Dangerous poison in ACT is defined as a Schedule 7 poison.

| NSW | - No standard outlined in the relevant Act or regulations.  
|     | - However records of supply for all regulated foods must be kept for two years. |

| NT | ↑ Manufacturers to keep records: A person responsible under this Act for the operations carried out on premises registered under Part 2 shall keep a record, in a form approved by the Chief Health Officer, of:  
|     | • the date of receipt and the quantity and the name and address of the supplier, of each shipment of a poison received into the premises,  
|     | • the quantities of poisons manufactured, produced or compounded with other substances on the premises, together with the quantities of preparations containing a poison that are produced on the premises,  
|     | • the date and quantity of each supply as a poison from the premises, together with the name and address of the person to whom the supply was made.  
|     | • Such other matters as the Chief Health Officer requires to be recorded.  
|     | Wholesalers to keep records: A person responsible for the storage of poisons on premises registered, or deemed to be registered, under part 3 shall keep a record, in a form approved by the CHO of:  
|     | • the date of receipt and the quantity, and the name and address of the supplier, of each shipment of a poison received into the premises,  
|     | • the date and quantity of each supply of a poison from the premises,  

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<table>
<thead>
<tr>
<th>Record keeping Schedule 7</th>
<th>SUSMP – The SUSMP does not contain any provision relating to record-keeping</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>together with the name and address of the person to whom the supply was made, and</td>
</tr>
<tr>
<td></td>
<td>• such other matters as the CHO requires to be recorded.</td>
</tr>
<tr>
<td>Retailers to keep records: A licensed retailer shall:</td>
<td></td>
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<tr>
<td></td>
<td>• retain all delivery dockets and invoices relating to the receipt by the retailer of a poison,</td>
</tr>
<tr>
<td></td>
<td>• enter in a register kept for that purpose, in a form approved by the CHO, details of each receipt and supply by the retailer of a Schedule 7 substance, and</td>
</tr>
<tr>
<td></td>
<td>• where the retailer supplies a Schedule 7 substance to fill a written order, retain the written order.</td>
</tr>
<tr>
<td>Pharmacists to keep records: The pharmacist shall:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• retain all delivery dockets or invoices relating to the receipt by the pharmacist of a Schedule 7 substance; and</td>
</tr>
<tr>
<td></td>
<td>• enter in a register kept for that purpose, in a form approved by the CHO, details of each supply by the pharmacist.</td>
</tr>
<tr>
<td>Authorised persons to keep records: A person authorised by or under this Act to possess and use a Schedule 7 substance, other than a person obtaining that substance on the prescription of a medical practitioner, dentist or veterinarian, must:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• retain all delivery dockets or invoices relating to the receipt by him or her of that substance,</td>
</tr>
<tr>
<td></td>
<td>• enter in a register kept for that purpose, in a form approved by the CHO, details of the supply or administration by him or her of that substance, and</td>
</tr>
<tr>
<td></td>
<td>• where that substance is supplied or administered by him or her to fill a written prescription retain the prescription.</td>
</tr>
<tr>
<td>Retention of records: A record, invoice, delivery docket, written order or prescription required by this Part to be kept or retained shall be retained for 2 years after the date of the last entry in the record in which it is recorded.</td>
<td></td>
</tr>
</tbody>
</table>

**QLD**

When a poison manufacturer or wholesaler sells an S2, S3 or S7 poison to a person, the manufacturer or wholesaler must give the person an invoice for the poison sold.

The manufacturer or wholesaler must ensure the invoice has a unique number and states—

• the date of the sale; and

• the name and address of the person to whom the poison is sold; and

• the name of the poison and the quantity or volume of it sold.

The manufacturer or wholesaler must keep a record of the details contained in an invoice for 2 years after the date of the invoice.

If the manufacturer or wholesaler has more than 1 licence and the manufacturer’s or wholesaler’s records are kept on a computer at the manufacturer’s or wholesaler’s central or main office, records for each licence must be kept at the relevant business premises.

A person must not sell an Schedule 7 poison by retail unless, at the time of the
<table>
<thead>
<tr>
<th>Record keeping Schedule 7</th>
<th>SUSMP – The SUSMP does not contain any provision relating to record-keeping</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>sale, the person makes an accurate record of the sale</td>
</tr>
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<td></td>
<td>• by making an entry in a book (a poisons sale book), or</td>
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<tr>
<td></td>
<td>• by giving the person buying the poison (the purchaser) an invoice that has a</td>
</tr>
<tr>
<td></td>
<td>unique number.</td>
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<tr>
<td></td>
<td>A person selling the Schedule 7 poison must include in the poisons sale book</td>
</tr>
<tr>
<td></td>
<td>or invoice</td>
</tr>
<tr>
<td></td>
<td>• the date of sale;</td>
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<tr>
<td></td>
<td>• the name and quantity or volume of the poison sold;</td>
</tr>
<tr>
<td></td>
<td>• the purpose for which the poison is required;</td>
</tr>
<tr>
<td></td>
<td>• the purchaser’s name and address;</td>
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<td></td>
<td>• if the purchaser buys the poison in person, the purchaser’s signature;</td>
</tr>
<tr>
<td></td>
<td>• if the order for the poison was a telephone or written order - a note about</td>
</tr>
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<td></td>
<td>the way the order was placed where the purchaser would sign the book or</td>
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<td></td>
<td>invoice if it was a personal sale; and</td>
</tr>
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<td></td>
<td>• for a record of the sale made by giving the purchaser an invoice - keep a</td>
</tr>
<tr>
<td></td>
<td>copy of the invoice.</td>
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<td></td>
<td>If the order for the Schedule 7 poison was a written order, the person selling</td>
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<tr>
<td></td>
<td>the poison must keep the written order for 2 years from the day the person</td>
</tr>
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<td></td>
<td>received it.</td>
</tr>
<tr>
<td></td>
<td>Keeping records</td>
</tr>
<tr>
<td></td>
<td>A person who, under this chapter, must keep a document or record of</td>
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<td></td>
<td>transactions in poisons must—</td>
</tr>
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<td></td>
<td>• ensure it is kept in good condition, as far as practicable; and</td>
</tr>
<tr>
<td></td>
<td>• keep it for 2 years after the last entry that is made in it.</td>
</tr>
<tr>
<td>SA</td>
<td>A person who sells poisons to which this section applies must keep a record of</td>
</tr>
<tr>
<td></td>
<td>the names of the purchasers of those poisons, and the stated purposes for</td>
</tr>
<tr>
<td></td>
<td>which they were purchased, and such other matters as may be prescribed.</td>
</tr>
<tr>
<td></td>
<td>The additional matters that a person who sells Schedule 7 poisons must keep</td>
</tr>
<tr>
<td></td>
<td>a record of are - the dates of the purchases, and the addresses and usual</td>
</tr>
<tr>
<td></td>
<td>occupations of the purchasers, and the trade names or approved names of the</td>
</tr>
<tr>
<td></td>
<td>poisons purchased, and the forms, strengths and quantities of the poisons</td>
</tr>
<tr>
<td></td>
<td>purchased. Licence conditions require that Schedule 7 retailers record proof</td>
</tr>
<tr>
<td></td>
<td>of a purchaser’s authorisation.</td>
</tr>
<tr>
<td></td>
<td>Keeping of records etc: Subject to these regulations, a person who is required</td>
</tr>
<tr>
<td></td>
<td>by these regulations to keep records must –</td>
</tr>
<tr>
<td></td>
<td>• in respect to any entry in the records, retain the records at the registered</td>
</tr>
<tr>
<td></td>
<td>address of the business in this State for a period of 2 years from the day</td>
</tr>
<tr>
<td></td>
<td>on which the entry was made, and</td>
</tr>
<tr>
<td></td>
<td>• have the records readily available for inspection at all reasonable times,</td>
</tr>
<tr>
<td></td>
<td>• during that period, take all reasonable steps to ensure that the records are</td>
</tr>
<tr>
<td></td>
<td>protected against deterioration, loss, theft and unauthorised access,</td>
</tr>
<tr>
<td></td>
<td>modification or use.</td>
</tr>
<tr>
<td>Record keeping Schedule 7</td>
<td>SUSMP – The SUSMP does not contain any provision relating to record-keeping</td>
</tr>
<tr>
<td>--------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>If the information contained in the records is available only after the record is subjected to an electronic or other process, it is sufficient for the purposes of subregulation for the person to produce for inspection a reproduction or computerised record of any entry in the records.</td>
</tr>
<tr>
<td></td>
<td>If details are to be recorded under these regulations in respect of drugs of dependence, they must, unless otherwise specified, be recorded in a drugs of dependence register in a form by the Minister.</td>
</tr>
<tr>
<td></td>
<td>A receipt required to be provided to a person under these regulations must be kept by that person in the manner set out in this regulation as if it were a record.</td>
</tr>
<tr>
<td>TAS</td>
<td>↑ A person who sells or supplies any poison or restricted substance must keep any invoice and prescription record relating to that poison or restricted substance for no less than 2 years from the latest date on which the invoice or prescription record was made or acted upon.</td>
</tr>
<tr>
<td>VIC</td>
<td>↑ A person who sells or supplies by retail any Schedule 7 poison must keep an accurate record of the sale or supply, setting out the following details-</td>
</tr>
<tr>
<td></td>
<td>• the name and address of the person who purchases or obtains the poison or controlled substance;</td>
</tr>
<tr>
<td></td>
<td>• the date of sale or supply;</td>
</tr>
<tr>
<td></td>
<td>• the name and quantity of the poison or controlled substance purchased or obtained.</td>
</tr>
<tr>
<td></td>
<td>No legislative time limit for maintaining the record, but charges for an offence must be filed within three years from when the matter occurs.</td>
</tr>
<tr>
<td>WA</td>
<td>↑ A person who sells, by retail, any poisons included in Schedule 7 shall, in addition to any conditions and restrictions imposed by notice issued in accordance with these regulations, keep a record of sale by keeping and maintaining a register in accordance with this regulation.</td>
</tr>
<tr>
<td></td>
<td>(2) A person recording a sale for the purposes of subregulation (1) shall, before delivering the poison to the purchaser, record in a register kept for that purpose particulars of —</td>
</tr>
<tr>
<td></td>
<td>(a) the date of sale; and</td>
</tr>
<tr>
<td></td>
<td>(b) the name and address of the purchaser; and</td>
</tr>
<tr>
<td></td>
<td>(c) the nature and quantity of the poison sold; and</td>
</tr>
<tr>
<td></td>
<td>(d) the address to which the poison is to be delivered, if that address differs from the address recorded under paragraph (b); and</td>
</tr>
<tr>
<td></td>
<td>(e) the place of intended use, and obtain the signature of the purchaser to the entry in the register.</td>
</tr>
<tr>
<td></td>
<td>(3) The register shall be kept in one of the following forms —</td>
</tr>
<tr>
<td></td>
<td>(a) a book with each recording written in ink; or</td>
</tr>
<tr>
<td></td>
<td>(b) in a form of electronic means; or</td>
</tr>
<tr>
<td></td>
<td>(c) such other form as the CEO approves in writing.</td>
</tr>
<tr>
<td></td>
<td>(4) A person keeping a register for the purposes of this regulation shall —</td>
</tr>
<tr>
<td></td>
<td>(a) keep that register for a period of at least 2 years at the licensed premises; and</td>
</tr>
<tr>
<td></td>
<td>(b) produce the register for inspection on demand by an authorised officer.</td>
</tr>
</tbody>
</table>
**Record keeping Schedule 7**

<table>
<thead>
<tr>
<th>Jurisdictional differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUSMP – The SUSMP does not contain any provision relating to record-keeping</td>
</tr>
</tbody>
</table>

Seven of the eight jurisdictions require some form of record keeping. There is slight variation across jurisdictions, as some jurisdictions require records to be kept for the sale of all poisons, and some jurisdictions only require records for, or extra details to be noted for Schedule 7 poisons. Details that need to be recorded vary slightly between jurisdictions and include either some or all of: name, address, occupation, telephone number, signature, date of purchase, the name of the poison, its strength and quantity and purpose. Most jurisdictions require the records to be retained for a period of two years.

<table>
<thead>
<tr>
<th>Key</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>↑ More onerous than Poison Standard</td>
<td></td>
</tr>
<tr>
<td>↓ Less onerous than Poison Standard</td>
<td></td>
</tr>
<tr>
<td>- Consistent with Poison Standard</td>
<td></td>
</tr>
</tbody>
</table>
### Advertising of Schedule 7 chemicals

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>NSW</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>NT</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>QLD</td>
<td>↑</td>
<td>A person must not advertise, or cause someone else to advertise, an offer to obtain or sell a Schedule 7 poison unless the person is endorsed under this regulation to sell the poison.</td>
</tr>
<tr>
<td>SA</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations</td>
</tr>
<tr>
<td>TAS</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>VIC</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>WA</td>
<td>-</td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
</tbody>
</table>

#### QLD is the only jurisdiction that prohibits the advertisement of Schedule 7 poisons.

### Key

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>↑</td>
<td>More onerous than Poison Standard</td>
</tr>
<tr>
<td>-</td>
<td>Consistent with Poison Standard</td>
</tr>
<tr>
<td>↓</td>
<td>Less onerous than Poison Standard</td>
</tr>
</tbody>
</table>

### Notes:

- No standard outlined in the relevant Act or regulations.
D.9 Hawking and supply of product samples

<table>
<thead>
<tr>
<th>Hawking/Supply of product samples Schedule 5, 6 and 7</th>
<th>Poison Standard – There is no provision included in the SUSMP for Hawking or product samples.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdictions</td>
<td>Summary</td>
</tr>
<tr>
<td></td>
<td>Details</td>
</tr>
<tr>
<td>ACT</td>
<td>↑</td>
</tr>
<tr>
<td></td>
<td>• The Medicines, Poisons and Therapeutic Goods Act and regulations are silent on the selling of poisons through an act of hawking. The Act and regulation contain restrictions for persons dealing with dangerous poisons. Selling or supplying a dangerous poison outside these restrictions is an offence, which would include the act of hawking or calling aloud in public.</td>
</tr>
<tr>
<td>NSW</td>
<td>↑</td>
</tr>
<tr>
<td></td>
<td>• Hawking of poisons and therapeutic goods</td>
</tr>
<tr>
<td></td>
<td>• (1) A person who:</td>
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<tr>
<td></td>
<td>• goes from house to house supplying regulated goods, or</td>
</tr>
<tr>
<td></td>
<td>• while in a public street or other public places, supplies regulated goods,</td>
</tr>
<tr>
<td></td>
<td>• is guilty of an offence.</td>
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<tr>
<td></td>
<td>• (2) Subsection (1) does not apply to a person or a person of a class of persons, or regulated goods or regulated goods of a class, exempted by an order under subsection (3).</td>
</tr>
<tr>
<td></td>
<td>• (3) The Minister may, by order published in the Gazette, exempt any person or class of persons, or any regulated goods or class of regulated goods, from the operation of subsection (1). Such an exemption may be unconditional or subject to conditions.¹</td>
</tr>
<tr>
<td></td>
<td>• Any person:</td>
</tr>
<tr>
<td></td>
<td>• Who is engaged in the manufacture, or supply by wholesale, of any poison or restricted substance for therapeutic use, or</td>
</tr>
<tr>
<td></td>
<td>• Who is acting as an agent of a person so engaged, must not supply any such poison or restricted substance by way of distribution of free samples otherwise than in a manner approved for the time being by the Director-General.</td>
</tr>
<tr>
<td></td>
<td>¹ House means any premises where people reside, whether permanently or not.</td>
</tr>
<tr>
<td></td>
<td>Public place means any place where members of public are lawfully entitled, invited or permitted to be present in their capacity as members of the public, whether conditionally or unconditionally, but does not include:</td>
</tr>
<tr>
<td></td>
<td>• a shop, or</td>
</tr>
<tr>
<td></td>
<td>• premises where a medical practitioner, nurse practitioner authorised under section 17A, midwife practitioner authorised under that section, dentist, optometrist, veterinary practitioner or pharmacist carries on the practice of his or her profession.</td>
</tr>
<tr>
<td>NT</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>No standard outlined in the relevant Act or regulations.</td>
</tr>
<tr>
<td>Hawking/Supply of samples</td>
<td>Poison Standard – There is no provision included in the SUSMP for Hawking or product samples.</td>
</tr>
<tr>
<td>------------------------</td>
<td>------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Schedule 5, 6 and 7</td>
<td></td>
</tr>
</tbody>
</table>

**QLD**

↑ Hawking of poisons
A person must not sell an S7 poison in a street or from place to place unless the person has an approval to sell the poison in a street or from place to place.

Samples of poisons
A person must not distribute a sample of a poison in a street or from place to place.

**SA**

↑ Offences relating to sale or supply of poisons
A person must not sell or supply a poison in any residential premises, or from door to door, or in a public place.²

² Public places include:
- a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and
- a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and
- a road, street, footway, court, alley or thoroughfare that the public are allowed to use, notwithstanding that the road, street, footway, curt, alley or thoroughfare is on private property.

**TAS**

↑ Hawking [...] of scheduled substances prohibited
A person shall not:
- sell or supply a scheduled substance, or distribute a scheduled substance free or as a sample, in any street or from place to place;
- hawk or peddle a scheduled substance; or
- whether by appointment or otherwise, go from place to place selling, supplying, or distributing (whether free or as a sample) a scheduled substance.

This does not apply to any wholesale dealing or in relation to the free distribution of clinical samples of a scheduled substance (other than a narcotic substance) to medical practitioners, dentists, or veterinary surgeons by persons engaged in the manufacture of, or dealing in, any such substance, where the distribution is made to the medical practitioner, dentist, or veterinary surgeon personally or by posting, by registered post, a letter or parcel containing the substance addressed to him.

**VIC**

↑ House to house sale of poisons or controlled substances prohibited
(1) A person shall not:
- sell or supply in any street or from house to house; or
- hawk or peddle, or distribute or cause to be distributed as samples, in any street or public place or from house to house any poison or controlled substance.

A person shall not purchase or accept or offer to purchase or accept any poison or controlled substance offered for sale or hawked or peddled pursuant to subsection (1).
### Hawking/Supply of samples

<table>
<thead>
<tr>
<th></th>
<th>Poisson Standard – There is no provision included in the SUSMP for Hawking or product samples.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>WA</strong></td>
<td>▲ Prohibition against hawking etc:</td>
</tr>
<tr>
<td></td>
<td>• sell or attempt to sell, or</td>
</tr>
<tr>
<td></td>
<td>• hawk or peddle, or distribute or cause to be distributed as a sample,</td>
</tr>
<tr>
<td></td>
<td>any poison in any street or public place or from house to house.</td>
</tr>
</tbody>
</table>

### Jurisdictional differences

Seven of the eight jurisdictions prohibit hawking and supply of samples.

#### Key

<table>
<thead>
<tr>
<th></th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>▲</td>
<td>More onerous than Poison Standard</td>
</tr>
<tr>
<td>-</td>
<td>Consistent with Poison Standard</td>
</tr>
<tr>
<td>▼</td>
<td>Less onerous than Poison Standard</td>
</tr>
</tbody>
</table>
### D.10 Appendix C: substances other than those included in Schedule 9, of such danger to health as to warrant prohibition of sale, supply and use

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>SUSMP</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>-</td>
<td>Appendix C is adopted as it appears in the SUSMP by virtue of Section 17 of the Medicines, Poisons and Therapeutic Goods legislation (MPTG.) Appendix C is defined as a regulated substance under Section 13 in Chapter 3 of the MPTG. • The meaning of an Appendix C substance is described in Chapter 3 of the MPTG. • Controls for prohibited and Appendix C substances are described in Chapter 21 of the MPTG.</td>
</tr>
<tr>
<td>NSW</td>
<td>↓</td>
<td>The NSW Poisons List is constituted under Section 8 of the NSW Poisons and Therapeutic Goods Act 1966. Section 8 (1… The Poisons List shall contain 8 Schedules and the substances included in the list shall be classified as follows: … Schedule 7 Substances of exceptional danger which require special precautions in their manufacture or use. S… (6) The Poisons List may be amended or replaced by proclamation made on the recommendation of the Minister and published on the NSW legislation website. (7) An amendment of the Poisons List may be made by applying, adopting or incorporating, with or without modification, the current SUSMP (within the meaning of Part 5B of the Commonwealth Act) or any other published standard, as in force at a particular time or as in force from time to time.” (Proclamations amending the Poisons List were previously published in the Government Gazette – references to these are given under “Historical Notes” at the end of the Act.) Schedule 7 of the NSW Poisons List is currently as follows: – Each entry appearing in Schedule 7 of Part 4 and Appendix C of Part 5 of the current SUSMP (known as the “Standard for the Uniform Scheduling of Medicines and Poisons”) prepared for the purposes of the Therapeutic Goods Act 1989 of the Commonwealth. EXEMPTIONS: Any substance listed in this Schedule is exempted from the operation of this Schedule when contained in any product listed or described in Appendix A of Part 5 of the current SUSMP.”</td>
</tr>
<tr>
<td>NT</td>
<td>-</td>
<td>Section 6A (3) (b) of the Poisons and Dangerous Drugs Act applies</td>
</tr>
</tbody>
</table>
Appendix C | SUSMP
--- | ---
Appendix C in the NT

(3) Each of the following Appendices in Part 5 of the SUSMP applies in relation to poisons or hazardous substances in the manner specified in the Appendix:
(a) Appendix A;
(b) Appendix C;
(c) Appendix D (excluding item a);
(d) Appendix G;
(e) Appendix J;
(f) and any other Appendix specified by the Minister by notice in the Gazette.

PaDDA Regulations includes other Appendices – E, F and I.

Our Medicines, Poisons and Therapeutic Goods Bill as follows:

Subdivision 2 Medicines and SUSMP
14 Meaning of medicines and SUSMP
(1) The medicines and SUSMP is the SUSMP as in force from time to time as modified under this section.
(2) A regulation may declare a substance is taken to be included in, or excluded from, a provision of the medicines and SUSMP.
(3) The declaration may impose restrictions in relation to dealings with the substance.
(4) For subsection (1), but subject to a modification under this section:
(a) an amendment of a current SUSMP takes effect on the date of effect of the instrument of amendment under the Legislative Instruments Act 2003 (Cth); and
(b) a new SUSMP takes effect on the date of effect of the standard under the Legislative Instruments Act 2003 (Cth).
(5) In this section: current SUSMP means the current SUSMP as defined in section 52A of the Therapeutic Goods Act. New SUSMP means a document prepared under section 52D(2)(b) of the Therapeutic Goods Act. SUSMP means the document prepared under section 52D(2) of the Therapeutic Goods Act.

15 Interpretation provisions in medicines and SUSMP – application to Act
(1) A term defined in the medicines and SUSMP has the same meaning in this Act.
(2) A provision of the medicines and SUSMP relating to the interpretation of the standard applies in the interpretation of this Act.
Examples for subsection (2)
1 Subject to stated exceptions, a reference in the medicines and SUSMP to a substance in a Schedule or Appendix to the standard includes:
(a) a substance prepared from natural sources or artificially; and
(b) every salt, active principle or derivative of the substance; and
(c) a preparation or admixture containing any proportion of the substance.
2 Accordingly, subject to the exceptions, a reference to the substance in this Act includes a reference to those things.
3 In addition, unless there is a contrary intention, the standard does not apply to the following:
(a) a substance in stated preparations or products;
(b) stated substances;
(c) some low concentrations of stated substances;
National Coordinating Committee on Therapeutic Goods  
Strategies to implement a national approach to poisonous chemical controls  
November 2012

### Appendix C

| Queensland’s Health (Drugs and Poisons) Regulation 1996 | Incorporates Appendix C of the SUSMP through its definition of poison in its Appendix 9 Dictionary. The definition of poison is:  
(a) an S2, S3, S5, S6, S7 or S9 substance; or  
(b) a substance mentioned in appendix C of the standard [where standard is defined as the SUSMP]. |
|------------|------------------------------------------------------------------------------|
| Controlled Substances Act 1984 | Section 12 - Declaration of poisons, prescription drugs, drugs of dependence, controlled drugs etc  
(1) The Governor may, by regulation, declare, individually or by class, any substance that in the Governor’s opinion has the potential to be harmful to humans to be a poison for the purposes of this Act.  

Section 27—Use  
A person must not—  
(a) use a poison, medicine or medical device for a purpose or in a manner prohibited by the regulations; or  
(b) sell, supply, prescribe, or purchase a poison, medicine or medical device for a purpose prohibited by the regulations. |
| Controlled Substances (Poisons) Regulations 2011 | Part 2—Controlled substances  
Regulation 5—Declaration of poisons (section 12(1) of Act)  
(1) Pursuant to section 12(1) of the Act, the following substances (whether in a pure form, |
National Coordinating Committee on Therapeutic Goods
Strategies to implement a national approach to poisonous chemical controls
November 2012

<table>
<thead>
<tr>
<th>Appendix C</th>
<th>SUSMP</th>
</tr>
</thead>
<tbody>
<tr>
<td>or contained in a preparation or admixture) are declared to be poisons: (a) the primary substances listed in Schedules 1 to 8 and Appendix C of the Uniform SUSMP;</td>
<td></td>
</tr>
</tbody>
</table>

Regulation 30—Prohibition on use of certain poisons for certain purposes (section 27 of Act)
(1) For the purposes of section 27 of the Act, a person must not sell, supply, purchase or use an S7 poison for a domestic purpose or domestic gardening purpose.
(2) For the purposes of section 27 of the Act, a person must not sell, supply, prescribe or use a poison listed in Appendix C of the Uniform SUSMP for the purpose or purposes indicated in relation to that poison in that Appendix (other than amygdalin for human therapeutic use).

Regulation 31—Prohibition on use of certain poisons
(1) A person must not sell, supply, prescribe or use amygdalin for human therapeutic use unless—
(a) special access to amygdalin has been authorised in accordance with the requirements of sections 18 and 31A of the Commonwealth Act and regulation 12A of the Therapeutic Goods Regulations 1990 made under that Act; and
(b) permission for the importation of amygdalin (subject to special access authorisation) has been granted under regulation 5H and Schedule 8 item 12AA of the Customs (Prohibited Imports) Regulations 1956 of the Commonwealth.

32—Restrictions on advertising (section 28 of Act)
(1) Section 28 of the Act applies to—
(a) all poisons listed in Appendix C of the Uniform SUSMP; and
(b) all S3 poisons other than those listed in Appendix H of the Uniform Poisons Standard; and
(c) all S4 poisons and S8 poisons; and
(d) all controlled drugs other than drugs of dependence.

<table>
<thead>
<tr>
<th>TAS</th>
<th>-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inclusion of Appendix C by reference under Regulation 73 of the Poisons Regulations 2008. Namely a person may not have possession of a substance in Appendix C of the Uniform Standard otherwise than in accordance with the approval in writing of either the Secretary or the Secretary of the Commonwealth Department. Further Appendix C substances are included in our Schedule 7 (Part 2) for the provisions of the Act and Regulations. We are in the process of amending our Act which will allow for adoption parts 1-4 of the SUSMP and Appendix C by reference, this means that we do not have to update our Poisons List when changes occur in the SUSMP. The Bill has passed the lower house but is yet to go through the Legislative Council (upper house).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VIC</th>
<th>-</th>
</tr>
</thead>
<tbody>
<tr>
<td>The way Vic implements Appendix C of the Standard for the Uniform Scheduling of Medicines and Poisons is as follows:</td>
<td></td>
</tr>
</tbody>
</table>
1. Drugs, Poisons and Controlled Substances Act 1981 Section 4 Definitions |
<table>
<thead>
<tr>
<th>Appendix C</th>
<th>SUSMP</th>
</tr>
</thead>
<tbody>
<tr>
<td>poison or controlled substance means:</td>
<td>(j) a regulated poison other than a Schedule 7 poison;</td>
</tr>
<tr>
<td>regulated poison means:</td>
<td>(a) a Schedule 7 poison; or</td>
</tr>
<tr>
<td>(b) a substance included in the Poisons Code in the list of substances that are not for general sale by retail;</td>
<td></td>
</tr>
<tr>
<td>Poisons Code means the Poisons Code prepared under section 12 as amended or substituted and in force from time to time;</td>
<td></td>
</tr>
<tr>
<td>2 Drugs, Poisons and Controlled Substances Regulations 2006</td>
<td></td>
</tr>
<tr>
<td>Regulation 4 Definitions</td>
<td></td>
</tr>
<tr>
<td>special Schedule 7 substance means a substance listed as a special Schedule 7 substance in Part 2 of Chapter 1 of the Poisons Code;</td>
<td></td>
</tr>
<tr>
<td>67 Licences, permits or warrants required for special Schedule 7 substances A person must not possess or use a special Schedule 7 substance unless he or she holds a licence, permit or warrant issued under the Act.</td>
<td></td>
</tr>
<tr>
<td>Penalty: 100 penalty units.</td>
<td></td>
</tr>
<tr>
<td>PS Licences, permits and warrants are covered under the Drugs, Poisons and Controlled Substances Act 1981, Division 4.</td>
<td></td>
</tr>
<tr>
<td>3 Poisons Code</td>
<td></td>
</tr>
<tr>
<td>Chapter 1 - Poisons list</td>
<td></td>
</tr>
<tr>
<td>Part 1 - The poisons list</td>
<td></td>
</tr>
<tr>
<td>Part 2 - List of substances that are not for general sale by retail</td>
<td></td>
</tr>
<tr>
<td>1.2 The substances that are not for general sale by retail are the substances listed below -</td>
<td></td>
</tr>
<tr>
<td>SPECIAL SCHEDULE 7 SUBSTANCES, the following - the substances listed in Appendix C of Part 5 of the Commonwealth standard as in force from time to time.</td>
<td></td>
</tr>
<tr>
<td>Part 3 - Exemptions</td>
<td></td>
</tr>
<tr>
<td>1.3 A substance is not included in a Schedule of the Commonwealth Standard in the circumstances described in items (h), (i), (j) and (k) of paragraph 1(2) of Part 1 and Appendices A and G of Part 5 of the Commonwealth standard as in force from time to time.</td>
<td></td>
</tr>
<tr>
<td>Chapter 2 - Interpretation</td>
<td></td>
</tr>
<tr>
<td>2.1 The interpretations included in Part 1 of the Commonwealth standard as in force from time to time are incorporated by reference for the purposes of this Code.</td>
<td></td>
</tr>
<tr>
<td>Chapter 3 - Revocation</td>
<td></td>
</tr>
<tr>
<td>3.1 Previous Poisons Code revoked</td>
<td></td>
</tr>
</tbody>
</table>
## Jurisdictional differences

All jurisdictions refer to Appendix C and effectively adopt the list as restricted or prohibited substances except for WA which has not updated its reference to Appendix C since a proclamation in 2008.

### Key

| ↑ More onerous than Poison Standard | Consistent with Poison Standard | ↓ Less onerous than Poison Standard |

### Note:

NT will adopt the SUSMP with minor exceptions in a bill that is currently before the Parliament; therefore Appendix C will soon be adopted to NT legislation in its current form.

### Appendix C

|-------|-----------------------------------------------------------------------------------------------------------------------------------|

### WA

The only mechanism to adopt Appendix C is under the Poisons Act which allows the Governor to make a proclamation. This requires the substances to be individually listed by WA from time to time as they change. Last proclamation to add to the list was 2008.

22. Sale of any poison may be prohibited

(1) The Governor, on the recommendation of the Advisory Committee, may at any time and from time to time by proclamation prohibit the sale, supply or use of any poison or substance, whether included in a Schedule or not, either absolutely or except upon and subject to such conditions and for such period or periods as the Governor may think fit.

(2) A proclamation made under this section may be cancelled or from time to time varied, or an error in a proclamation may be rectified, by a subsequent proclamation.

[Section 22 amended by No. 48 of 1995 s. 9.]
### Appendix I: Uniform Paint Standard

<table>
<thead>
<tr>
<th>Uniform Paint Standards</th>
<th>Poison Standard – this outlines the appropriate concentrations of chemicals that can be included in paints and the circumstances under which the paint can be used.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdictions</td>
<td>Summary</td>
</tr>
</tbody>
</table>
| ACT | - | Manufacture, supply and use of paints containing white lead—Act, s 70 (1) (b), (2) (b) and (3) (b)  
A paint containing basic lead carbonate (white lead) may be manufactured, supplied or used for application as a mirror backing if the paint—  
• contains not more than 15% lead in the non-volatile content of the paint; and  
• is applied not more than 40μm thick; and  
• is covered by a paint that does not contain lead.  
• Manufacture, supply and use of paints for certain purposes—Act, s 71 (1) and (3)  
• A first Schedule paint must not be manufactured, supplied or used for application to—  
• a roof or other surface to be used for the collection or storage of potable water; or  
• furniture; or  
• a fence, wall, post, gate or building (including the interior of a building), other than a building that is used only for industrial purposes or mining or as an oil terminal; or  
• premises used for the manufacture, processing, preparation, packing or serving of products intended for human or animal consumption.  
• A third Schedule paint must not be manufactured, supplied or used for application to—  
• a roof or other surface to be used for the collection or storage of potable water; or  
• furniture; or  
• a fence, wall, post, gate, building (including the interior of a building), bridge, pylon, pipeline, storage tank or similar structure; or  
• premises, equipment or utensils used for the manufacture, processing, preparation, packing or serving of products intended for human or animal consumption.  
• Manufacture, supply and use of paints for toys—Act, s 72 (b)  
• A paint that complies with the specification for coating materials in AS/NZS ISO 8124.3:2003 (Safety of toys - Migration of certain elements), as in force from time to time, may be manufactured, supplied or used for application to toys.  
• Manufacture, supply and use of paints containing pesticides—Act, s 73 |
### Uniform Paint Standards

Poison Standard – this outlines the appropriate concentrations of chemicals that can be included in paints and the circumstances under which the paint can be used.

<table>
<thead>
<tr>
<th>Uniform Paint Standards</th>
<th>Poison Standard – this outlines the appropriate concentrations of chemicals that can be included in paints and the circumstances under which the paint can be used.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>The following pesticides are prescribed:</td>
</tr>
<tr>
<td></td>
<td>• an algicide;</td>
</tr>
<tr>
<td></td>
<td>• an antifouling agent;</td>
</tr>
<tr>
<td></td>
<td>• a bactericide;</td>
</tr>
<tr>
<td></td>
<td>• a fungicide.</td>
</tr>
<tr>
<td></td>
<td>• This does not apply in relation to paint for human therapeutic use.</td>
</tr>
</tbody>
</table>

| NSW                     | ↓ No. Not by reference.                                                                         |
|                         | Supply of art materials, toys, furniture and the like containing poisons                        |
|                         | A person must not supply any pencil, crayon, finger colour, poster paint, school pastel or show card colour or other such article or substance if the article or substance contains a Schedule 2, 3, 5, 6 or 7 substance. |
|                         | (2) This does not apply to the supply of artists’ oil colours.                                  |
|                         | (3) A person must not supply any painted toy, furniture or other item of household goods if the paint contains a Schedule 6 or 7 substance. |

| NT                     | - Appendix I: paint standards                                                                  |
|                         | (1) Appendix I applies in relation to the manufacture, supply and use of paint.                |
|                         | (2) A person must not contravene Appendix I.                                                    |

| QLD                    | - Prohibition of sale of chalk etc. containing poison                                           |
|                         | A person must not—                                                                            |
|                         | • sell chalk, crayons, finger colours, pencils, poster paints, school pastels or show-card colours containing a poison; or |
|                         | • sell an artist’s brush or pencil containing a poison in the outside lacquer of the brush or pencil. |
|                         | Queensland refers to Appendix I of the SUSMP in its Public Health Act 2005                    |

| SA                     | ↓ The Uniform Paint Standard means the current SUSMP as defined in the Commonwealth Act and as modified by deleting Part 3 and Appendices B, D and J but there are no associated regulations referring to Appendix I to enable enforcement of controls over paint in accordance with Appendix I. |

| TAS                    | - Tasmania adopts the Uniform Paint Standard by reference in its Public Health Act.           |

| VIC                    | ↓ No standard outlined in the relevant Act or regulations.                                     |

| WA                     | - Certain paints, restrictions on manufacture, sale and use of                                |
|                         | • If a paint contains a substance listed in the First, Second or Third Schedule to Appendix I of SUSMP, a person shall not manufacture, sell or use that paint except in accordance with that Appendix. |
|                         | • For the purposes of this regulation the interpretation provisions of Part 1 of the SUSMP shall be used to interpret Appendix I of the SUSMP. |
### Uniform Paint Standards

Poison Standard – this outlines the appropriate concentrations of chemicals that can be included in paints and the circumstances under which the paint can be used.

### Jurisdictional differences

Three of the eight jurisdictions have no standard or lower requirements for chemicals in paint. Four jurisdictions reference the SUSMP. The ACT has a number of clauses in the relevant regulation, some mirroring those in the standard and some with differing requirements.

<table>
<thead>
<tr>
<th>Key</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>↑ More onerous than Poison Standard</td>
<td></td>
</tr>
<tr>
<td>- Consistent with Poison Standard</td>
<td></td>
</tr>
<tr>
<td>↓ Less onerous than Poison Standard</td>
<td></td>
</tr>
</tbody>
</table>
### D.12 Appendix J: Conditions for availability of Schedule 7 substances

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Summary</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>-</td>
<td>Yes.</td>
</tr>
<tr>
<td>NSW</td>
<td>-</td>
<td>Yes. However this is not done by reference.</td>
</tr>
<tr>
<td>NT</td>
<td>-</td>
<td>Yes.</td>
</tr>
<tr>
<td>QLD</td>
<td>-</td>
<td>Yes. Not by reference, however Appendix J provisions are largely mirrored in Appendix 7 of the Health (Drugs and Poisons) Regulation 1996.</td>
</tr>
<tr>
<td>SA</td>
<td>-</td>
<td>Yes. Not by reference, however Appendix J provisions are largely mirrored in section 22 of the Controlled Substances Act 1984.</td>
</tr>
<tr>
<td>TAS</td>
<td>-</td>
<td>Yes.</td>
</tr>
<tr>
<td>VIC</td>
<td>-</td>
<td>No. However, the Victorian list of Regulated Schedule 7 poisons contain substances that can only be supplied by a wholesale licence holder if they check that the person they are supplying the substance to is authorised under the Victorian Act/Regulations or holds a permit, licence of warrant issues under the Act to obtain the substance by wholesale.</td>
</tr>
<tr>
<td>WA</td>
<td>-</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

**Jurisdictional differences**

Seven out of eight States and Territories are consistent with the standard set out in Appendix J, as they require that a person or business be licensed or otherwise authorised to be able to access certain or all Schedule 7 chemicals. Victoria has a separate list for regulated Schedule 7 substances. There are substantial differences between the types of licences that the States offer, which creates a separate complication for business in terms of ensuring compliance with the requirements of the States and Territories in which they operate.

**Key**

↑ More onerous than Poison Standard
- Consistent with Poison Standard
↓ Less onerous than Poison Standard

**Notes:**
Part 2 of the SUSMP – Labels and containers

PART 2
LABELS AND CONTAINERS

LABELS

2. A person must not sell or supply a poison unless it is labelled in accordance with paragraphs 3 to 19 of this Standard.

General requirements

3. Any word, expression or statement required by this Standard to be written on a label or container must be written:
   (1) on the outside face of the label or container; and
   (2) in the English language; and
   (3) in durable characters; and
   (4) in a colour or colours to provide a distinct contrast to the background colour; and
   (5) in letters at least 1.5 millimetres in height.

4. Sub-paragraph 3(5) does not apply to a word, expression or statement on a container which has a capacity of 20 millilitres or less, or on the label of such a container if:
   (1) an appropriate authority approves the use of smaller letters; and
   (2) the letters are at least 1 millimetre in height.

5. The label must be printed on, or securely attached to:
   (1) the outside of the immediate container; and
   (2) if the immediate container is enclosed in a primary pack, the outside of that primary pack.

Immediate wrapper

6. (1) A poison enclosed in an immediate wrapper must be contained in a primary pack labelled in accordance with paragraph 7 of this Standard; and
   (2) the immediate wrapper must be conspicuously labelled with:
(a) the name of the manufacturer or distributor or the brand name or trade name used exclusively by the manufacturer or distributor for that poison; and

(b) the approved name of the poison; and

(c) a statement of the quantity or strength of the poison in accordance with paragraph 8.

**Primary packs and immediate containers**

7. (1) The primary pack and immediate container of a poison must be labelled as follows:

(a) with the signal word or words relating to the Schedule in which the poison is included and the purpose for which it is to be used, as shown in the following table:

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Purpose</th>
<th>Signal words required</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>for any purpose</td>
<td><strong>PHARMACY MEDICINE</strong></td>
</tr>
<tr>
<td>3</td>
<td>for any purpose</td>
<td><strong>PHARMACIST ONLY MEDICINE</strong></td>
</tr>
<tr>
<td>4</td>
<td>for human use</td>
<td><strong>PRESCRIPTION ONLY MEDICINE</strong></td>
</tr>
<tr>
<td>4</td>
<td>for animal use</td>
<td><strong>PRESCRIPTION ANIMAL REMEDY</strong></td>
</tr>
<tr>
<td>5</td>
<td>for any purpose</td>
<td><strong>CAUTION</strong></td>
</tr>
<tr>
<td>6</td>
<td>for any purpose</td>
<td><strong>POISON</strong></td>
</tr>
<tr>
<td>7</td>
<td>for any purpose</td>
<td><strong>DANGEROUS POISON</strong></td>
</tr>
<tr>
<td>8</td>
<td>for any purpose</td>
<td><strong>CONTROLLED DRUG</strong></td>
</tr>
</tbody>
</table>

written:

(i) on the first line or lines of the main label; and

(ii) in bold-face sans serif capital letters of uniform thickness; and

(iii) in letters at least half the height of the largest letter or numeral on the label but need not be larger than:

(A) 6 millimetres on labels for packages having a nominal capacity of 2 litres or less; or

(B) 15 millimetres on labels for packages having a nominal capacity of more than 2 litres;

and
(iv) if the poison:

(A) is a Schedule 5 poison, with nothing, other than a Class label as specified in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* or a statement of the principal hazard of the poison, written on that line; or

(B) is not a Schedule 5 poison, with nothing, other than a Class label as specified in the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, written on that line;

(b) if the poison is a Schedule 8 poison, with the cautionary statement –

**POSSESSION WITHOUT AUTHORITY ILLEGAL**

written:

(i) on a separate line or lines immediately below the signal words required by sub-paragraph 7(1)(a); and

(ii) in bold-face sans serif capital letters of uniform thickness; and

(iii) in letters at least four tenths the height of the letters used for the signal words; and

(iv) with no other statement written on the same line;

(c) with the cautionary statement –

**KEEP OUT OF REACH OF CHILDREN**

written:

(i) on a separate line or lines:

(A) immediately below the signal word or words required by sub-paragraph 7(1)(a); or

(B) where the cautionary statement “**POSSESSION WITHOUT AUTHORITY ILLEGAL**” is required by sub-paragraph 7(1)(b), on the line immediately below that statement; and

(ii) in bold-face sans serif capital letters of uniform thickness; and

(iii) in letters at least four tenths the height of the letters used for the signal word or words; and

(iv) with nothing, other than a Class label as specified in the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, written on the same line;

(d) if the poison is a dry chlorinating compound containing more than 10 per cent of available chlorine, *except* for preparations certified by a relevant State or Territory authority as not being a Dangerous Good of Class 5.1 (oxidising
substances) as specified in the Australian Code for the Transport of Dangerous Goods by Road and Rail, with the cautionary statement –

**FIRE AND EXPLOSION HAZARD**

written:

(i) on a separate line or lines immediately below the cautionary statement —KEEP OUT OF REACH OF CHILDREN‖ as required by sub-paragraph 7(1)(c); and

(ii) in bold-face sans serif capital letters of uniform thickness; and

(iii) in letters at least four tenths the height of the letters used for the signal word or words; and

(iv) with nothing, other than a Class label as specified in the Australian Code for the Transport of Dangerous Goods by Road and Rail, written on the same line;

(e) if the poison is an alkaline salt in a dishwashing machine product, with the cautionary statement –

**BURNS SKIN AND THROAT**

written:

(i) on a separate line or lines immediately below the cautionary statement —KEEP OUT OF REACH OF CHILDREN‖ as required by sub-paragraph 7(1)(c); and

(ii) in bold-face sans serif capital letters of uniform thickness; and

(iii) in letters at least four tenths the height of the letters used for the signal word; and

(iv) with nothing, other than a Class label as specified in the Australian Code for the Transport of Dangerous Goods by Road and Rail, written on the same line of the main label;

(f) if the poison is an aqueous solution of paraquat, with the cautionary statements –

**CAN KILL IF SWALLOWED**

**DO NOT PUT IN DRINK BOTTLES**

**KEEP LOCKED UP**

written:

(i) on separate lines immediately below the cautionary statement —KEEP OUT OF REACH OF CHILDREN‖ as required by sub-paragraph 7(1)(c); and

(ii) in bold-face sans serif capital letters of uniform thickness; and
(iii) in letters at least four tenths the height of the letters used for the signal words; and

(iv) with nothing, other than a Class label as specified in the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, written on the same lines of the main label;

(g) for any poison other than a poison for human therapeutic use labelled in accordance with the *Required Advisory Statements for Medicine Labels*, if safety directions are required on the label by sub-paragraph 7(1)(n), with the cautionary statement –

**READ SAFETY DIRECTIONS BEFORE OPENING**

**OR USING**

or with the cautionary statement –

**READ SAFETY DIRECTIONS**

written:

(i) on a separate line or lines;

(A) immediately below the cautionary statement —KEEP OUT OF REACH OF CHILDREN‖ as required by sub-paragraph 7(1)(c); or

(B) if one or more other cautionary statements is required to be on the line immediately below KEEP OUT OF REACH OF CHILDREN‖, immediately below that statement or those statements; and

(ii) in bold-face sans serif capital letters of uniform thickness; and

(iii) in letters at least four tenths the height of the letters used for the signal word or words; and

(iv) with nothing, other than a Class label as specified in the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, written on the same line;

(h) if the poison meets the criteria for a ‗flammable liquid‘ in the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, with the cautionary statement –

**FLAMMABLE**

written on the main label in bold-face sans serif capital letters of uniform thickness, unless already present in accordance with the requirements of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*;

(i) if the poison is for the treatment of animals, with the cautionary statement –
FOR ANIMAL TREATMENT ONLY
written on the main label in bold-face sans serif capital letters of uniform thickness;

(j) if the poison is a Schedule 5 poison intended for any purpose other than internal or pesticidal use, with the cautionary statement –

    DO NOT SWALLOW

written in sans serif capital letters on the main label or as part of the directions for use;

(k) with the approved name of the poison and a statement of the quantity, proportion or strength of the poison in accordance with paragraph 8:

(i) if the poison is for human therapeutic use, written in accordance with orders made under section 10(3) of the Commonwealth Therapeutic Goods Act, 1989; or

(ii) if the poison is not for human therapeutic use, written in bold-face sans serif capital letters on the main label, unless:

    (A) a list of approved names is required; and

    (B) it is impractical to include the list on the main label; and

    (C) an appropriate authority has authorised its inclusion on another part of the label; or

(iii) if the poison is a Schedule 5 poison referred to in column 1 of the following table the appropriate name opposite thereto in column 2 may be used as the approved name:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alkaline salts</td>
<td>Alkaline salts</td>
</tr>
<tr>
<td>Amines for use as curing agents for epoxy resins (unless separately specified in the Schedules)</td>
<td>Aliphatic amines or aromatic amines</td>
</tr>
<tr>
<td>Epoxy resins, liquid</td>
<td>Liquid epoxy resins</td>
</tr>
<tr>
<td>Hydrocarbons, liquid</td>
<td>Liquid hydrocarbons</td>
</tr>
<tr>
<td>Quaternary ammonium compounds</td>
<td>Quaternary ammonium compound(s)</td>
</tr>
</tbody>
</table>
(iv) if a poison contains a mixture of designated solvents in excess of 25 per cent of the total volume of the poison but the proportion of one or more individual designated solvents in the mixture is equal to or less than 25 per cent, the approved names of those solvents may be expressed as follows:

(A) where the designated solvent is a liquid hydrocarbon as liquid hydrocarbons; or

(B) where the designated solvent is a ketone as ketones; or

(C) in any other case as solvents or other solvents;

(l) if the poison is an organophosphorus compound or carbamate for pesticidal use or for the treatment of animals, with the following expression written immediately below the approved name or the list of declared contents –

AN ANTICHLINESTERASE COMPOUND

(i) the requirements of sub-paragraph 7(1)(l) do not apply to:

(A) dazomet, mancozeb, metiram, propineb, thiram, tri-allate, zineb or ziram; or

(B) an organophosphorus compound or carbamate contained in impregnated plastic resin strips, medallions or granules; or

(C) an organophosphorus compound or carbamate contained in a pressurised spray pack for household use;

(m) for any poison other than a poison for human therapeutic use labelled in accordance with Therapeutic Goods Order 69 General requirements for labels for medicines or in an agricultural or veterinary chemical product labelled in compliance with the Agricultural and Veterinary Chemicals Code Act 1994, if the poison is prepared, packed or sold for a specific purpose, with clear and adequate directions for use unless:

(i) the poison is included in Schedule 4 or Schedule 8; or

(ii) it is impractical to include such directions on the label and:

(A) the primary pack and the immediate container are labelled with the statement —DIRECTIONS FOR USE: See package insert; and

(B) an appropriate authority has authorised the directions for use to be written on a package insert instead of the label; and

(C) the insert is enclosed in the primary pack;

(n) for any poison other than a poison for human therapeutic use labelled in accordance with the Required Advisory Statements for Medicine Labels, if use of the poison may be harmful to the user, with appropriate safety directions
(see Appendix F), grouped together as a distinct section of the label and prefaced by the words –

SAFETY DIRECTIONS

written in bold-face capital letters;

(o) for any poison other than a poison for human therapeutic use labelled in accordance with the Required Advisory Statements for Medicine Labels, if any warning statement or statements are required for the poison (see Appendix F), with that warning statement or those statements grouped together:

(i) if safety directions are included on the label, immediately after the words —SAFETY DIRECTIONS—; or

(ii) if there are no safety directions, immediately preceding the directions for use;

(p) if the poison is not for human internal use and is not a Schedule 3, Schedule 4 or Schedule 8 poison, with appropriate first aid instructions (see Appendix E):

(i) grouped together and prefaced by the words –

FIRST AID

written in bold-face capital letters; or

(ii) if a primary pack contains two or more immediate containers of poisons each requiring different first aid instructions:

(A) written on each immediate container as specified in sub-paragraph 7(1)(p)(i); and

(B) replaced on the primary pack with the statement –

FIRST AID: See inner packs;

(q) with the name and address of the manufacturer or distributor.

(2) For the purposes of sub-paragraph 7(1)(a)(iii) the term —largest letter or numeral— does not include:

(a) a single letter or numeral which is larger than other lettering on the label; or

(b) an affix forming part of the trade name; or

(c) in the case of a poison for therapeutic use, numerals used to distinguish the strength of a preparation from the strengths of other preparations of the same poison.
Statements of quantity, proportion or strength

8. The statement of the quantity, proportion or strength of a poison must be expressed in the most appropriate of the following forms:

(1) if the poison is for human therapeutic use, in the manner prescribed by orders made under section 10(3) of the Commonwealth Therapeutic Goods Act 1989;

(2) if the poison is for a purpose or purposes other than human therapeutic use and:
   (a) if the poison is in a pressurised spray aerosol preparation, as the mass of the poison per stated mass of the preparation;
   (b) if the poison is a liquid in a liquid preparation, as the mass or volume of the poison per stated volume of the preparation;
   (c) if the poison is a liquid in a solid or semi-solid preparation, as the mass or volume of the poison per stated mass of the preparation;
   (d) if the poison is a solid or semi-solid in a liquid preparation, as the mass of the poison per stated volume of the preparation;
   (e) if the poison is a solid or semi-solid in a solid or semi-solid preparation, as the mass of the poison per stated mass of the preparation;
   (f) if the poison is a gas in a liquid preparation, as the mass of the poison per stated volume of the preparation;
   (g) if the poison is a gas in a solid or semi-solid preparation, as the mass of the poison per stated mass of the preparation;
   (h) if the poison is a gas in a gaseous preparation, as the mass of the poison per stated mass of the preparation;

(3) if the poison is a solution of a mineral acid, the proportion of the acid (un-neutralised by any bases present in the preparation) in a preparation may be expressed as the un-neutralised mass of the acid per stated mass of the preparation;

(4) if the poison is an inorganic pigment, the proportion may be expressed as a percentage of the metal present using one of the following expressions as appropriate: contains not more than 10 per cent \((\text{name of the metal})\); or contains not more than 30 per cent \((\text{name of the metal})\); or contains more than 30 per cent of \((\text{name of the metal})\);

(5) if the poison is included in a paint, other than a paint for therapeutic or cosmetic use, the proportion may be expressed as a range provided that the limits of the range do not differ by more than 5 per cent of the product;
(6) if the poison is a lead-based pigment included in automotive paint, the proportion may be expressed as the maximum content of the lead that may be present in the non-volatile content of the paint;

(7) if a preparation contains more than one derivative of a poison, the quantity or proportion of the poison may be expressed as the equivalent quantity or proportion of one of the derivatives present which it would contain if all of the derivatives were that derivative.

(8) For the purposes of sub-paragraph 8(7) —derivative || includes alkaloid.

Exemptions

Selected containers and measure packs

9. The requirements of paragraph 7 do not apply to an immediate container that is a measure pack or a selected container (other than an ampoule, a pre-filled syringe or an injection vial to which paragraphs 10 or 11 apply) when:

(1) the immediate container is for a therapeutic good and is labelled in the manner prescribed by orders made under section 10(3) of the Commonwealth Therapeutic Goods Act 1989; or

(2) the immediate container is:

(a) packed in a primary pack labelled in accordance with paragraph 7; and

(b) labelled with:

(i) the signal word or words relating to the Schedule in which the poison is included and the purpose for which it is to be used, as shown in the table to sub-paragraph 7(1)(a); and

(ii) the approved name of the poison and the quantity, proportion or strength of the poison in accordance with paragraph 8; and

(iii) the name of the manufacturer or distributor or the brand name or trade name used exclusively by the manufacturer or distributor for the poison; and

(iv) if the poison is for the treatment of animals, with the cautionary statement –

FOR ANIMAL TREATMENT ONLY

written in sans serif capital letters.

Ampoules, pre-filled syringes and injection vials

10. The requirements of paragraph 7 do not apply to a selected container, or an ampoule (other than an ampoule to which paragraph 11 applies) when:
National Coordinating Committee on Therapeutic Goods
Strategies to implement a national approach to poisonous chemical controls
November 2012

(1) the selected container or ampoule is for a therapeutic good and is labelled in the manner prescribed by orders made under section 10(3) of the Commonwealth Therapeutic Goods Act 1989; or

(2) the selected container or ampoule is:
   (a) packed in a primary pack labelled in accordance with paragraph 7; and
   (b) labelled with:
      (i) the approved name of the poison and the quantity, proportion or strength of the poison in accordance with paragraph 8; and
      (ii) with the name of the manufacturer or distributor or the brand name or trade name used exclusively by the manufacturer or distributor for the poison; and
      (iii) if the poison is for the treatment of animals, with the cautionary statement –

      FOR ANIMAL TREATMENT ONLY

      written in sans serif capital letters.

11. The requirements of paragraph 7 do not apply to a selected container that is a plastic ampoule that is continuous with a strip of the same material and opens as it is detached from the strip when:

   (1) the selected container is a plastic ampoule that is continuous with a strip of the same material and opens as it is detached from the strip, is for a therapeutic good and is labelled in the manner prescribed by orders made under section 10(3) of the Commonwealth Therapeutic Goods Act 1989; or

   (2) the selected container is a plastic ampoule that is continuous with a strip of the same material and opens as it is detached from the strip, is:

      (a) packed in a primary pack labelled in accordance with paragraph 7; and

      (b) the strip is labelled in accordance with paragraph 10; and

      (c) the ampoule is labelled with:

         (i) the approved name of the poison or the trade name of the product; and

         (ii) the quantity, proportion or strength of the poison in accordance with paragraph 8.
Transport containers and wrappings

12. The labelling requirements of this Standard do not apply to a transparent cover, or to any wrapper, hamper, packing case, crate or other cover used solely for the purposes of transport or delivery.

Dispensary, industrial, laboratory and manufacturing poisons

13. The labelling requirements of this Standard do not apply to a poison that:

(1) is packed and sold solely for dispensary, industrial, laboratory or manufacturing purposes; and

(2) is labelled in accordance with Worksafe Australia’s National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)].

Exemptions from label requirements in certain circumstances

13A. (1) The labelling requirements of paragraphs 7-12 do not apply to a poison where an appropriate authority has granted a labelling exemption in whole or in part for these sections for a specified product; and

(2) the labelling exemption from an appropriate authority referred to in sub-paragraph (1) is limited to no more than 12 months from the effective date of the decision for retail supply of the product; and

(3) for the avoidance of doubt this paragraph does not apply to exemptions issued under sub-paragraph 7(1)(m)(ii)(B) of this Standard.

Dispensed medicines

14. Unless otherwise specified by regulation:

(1) The labelling requirements of this Standard do not apply to a medicine that:

(a) is supplied by an authorised prescriber or other person authorised to supply and is labelled in accordance with the requirements of Appendix L Part 1 of this Standard; or

(b) is supplied on and in accordance with a prescription written by an authorised prescriber and is labelled in accordance with the requirements of Appendix L Part 1 of this Standard; or

(c) is prepared and supplied by a pharmacist for an individual patient and is labelled in accordance with the requirements of Appendix L Part 1 of this Standard.

(2) A person must not supply a dispensed medicine for human use containing:
(a) a poison listed in column 1 of the table at Appendix L Part 2 of this Standard unless it is clearly labelled with the warning statement(s) specified in column 2 of that table; or

(b) a poison listed in Appendix K unless it is clearly labelled with a sedation warning (being statement 39, 40 or 90 as specified in Appendix F Part 1 of this Standard).

**Gas cylinders**

15. The requirements of sub-paragraphs 7(1)(a)(iv), 7(1)(c)(iv), and 7(1)(g)(iv) do not apply to a cylinder containing a poison that is a compressed gas.

**Paints**

16. The requirements of paragraph 7 do not apply to:

(1) paint (other than a paint for therapeutic or cosmetic use) which:

(a) contains only Schedule 5 poisons; or

(b) is a First Schedule or Second Schedule paint that is labelled with:

(i) the word —WARNING‖, written in bold-face sans serif capital letters, the height of which is not less than 5 mm, on the first line of the main label with no other words written on that line; and

(ii) the expression —KEEP OUT OF REACH OF CHILDREN‖, written in bold-face sans serif capital letters, the height of which is not less than 2.5 mm, on a separate line immediately below the word —WARNING‖; and

(iii) the appropriate warnings specified for the paint in Appendix F, written immediately below the expression —KEEP OUT OF REACH OF CHILDREN‖; and

(iv) the name and proportion of the First Schedule or Second Schedule poisons it contains, provided that where the substance is a metal or metal salt the proportion is expressed as the metallic element present —calculated on the non-volatile content‖ or —in the dried film‖ of the paint; or

(2) a tinter which contains:

(a) only Schedule 5 poisons; or

(b) a poison included in the First Schedule or Second Schedule to Appendix I, provided that it is labelled with the name and proportion of that poison, and where the poison is a metal or metal salt, the proportion is
expressed as the metallic element present as —calculated on the non-volatile content‖ or —in the dried film‖.

**Camphor and naphthalene**

17. The labelling requirements of sub-paragraph 3(4) and paragraph 7 do not apply to a device that contains camphor or naphthalene in block, ball, disc or pellet form if the device:

(1) complies with paragraph 28; and

(2) is sold or supplied in a primary pack labelled in accordance with paragraphs 3 and 7.

**Prohibitions**

18. A label used in connection with any poison must not include:

(1) any reference to this Standard, or any comment on, reference to, or explanation of any expression required by this Standard that directly or by implication contradicts, qualifies or modifies such expression; or

(2) any expression or device suggesting or implying that the poison is safe, harmless, non-toxic, nonpoisonous, or is recommended or approved by the Government or any government authority unless required by legislation; or

(3) any expression or device which is false or misleading in any particular concerning the safety of the poison or any of its ingredients; or

(4) any trade name or description that:
   (a) represents any single constituent of a compound preparation; or
   (b) misrepresents the composition or any property or quality of the poison; or
   (c) gives any false or misleading indication of origin or place of manufacture of the poison.

19. A label must not be attached to the immediate container or primary pack used in connection with any poison in such a manner as to obscure:

(1) any expression required by this Standard to be written or embossed on the container or pack; or

(2) any of the ribs or embossed or printed words required by paragraph 21, 22 or 23 as appropriate.
F  Packaging (containers) of the Poison Standard

CONTAINERS

20. A person must not sell or supply a poison unless the immediate container complies with the requirements of paragraphs 21 to 28 of this Standard.

Containers for poisons other than Schedule 5 poisons

21. If a poison, other than a Schedule 5 poison, is sold or supplied in a container with a nominal capacity of 2 litres or less, the container must comply with Australian Standard AS 2216-1997, entitled *Packaging for poisonous substances*.

21a. Notwithstanding subparagraph 21, a poison which is in Schedule 6 and is an essential oil may be packed in an amber glass container which does not comply with the tactile identification requirements of Australian Standard AS 2216-1997, entitled *Packaging for poisonous substances*, if:

(1) the other safety factors are not diminished; and

(2) the container has a restricted flow insert and a child-resistant closure.

22. If a poison, other than a Schedule 5 poison, is sold or supplied in a container with a nominal capacity of more than 2 litres, the container must:

(1) comply with sub-section 1.4 (General Requirements) of Australian Standard AS 2216-1997 entitled *Packaging for poisonous substances*; and

(2) have the word —POISON—:

(a) in sans serif capital letters the height of which is at least one thirty second part of the length, height or width of the container, whichever is the greatest:

(i) embossed; or

(ii) indelibly written in a colour in distinct contrast to the background colour;

(b) on the side or shoulder of the container.
Containers for Schedule 5 poisons

23.(1) The container in which any Schedule 5 poison is sold or supplied must:

(a) comply with the container requirements of paragraph 21 or paragraph 22; or

(b) be readily distinguishable from a container in which food, wine or other beverage is sold; and

(i) comply with sub-section 1.4 (General Requirements) of Australian Standard AS 2216-1997 entitled Packaging for poisonous substances, excluding paragraph 1.4.3;

(ii) be securely closed and, except when containing a preparation for use on one occasion only, be capable of being re-closed to prevent spillage of its contents; and

(iii) have the expression ―POISON‖, ―NOT TO BE TAKEN‖ or ―NOT TO BE USED AS A FOOD CONTAINER‖ embossed or indelibly written thereon, or printed on a permanent adhesive label designed to adhere to a substrate without lifting and which cannot be removed without damaging either the label or the substrate.

(2) Notwithstanding sub-paragraph 23(1), the following Schedule 5 poisons namely:

(a) methylated spirit(s);

(b) liquid hydrocarbons when packed as kerosene, lamp oil, mineral turpentine, thinners, reducers, white petroleum spirit or dry cleaning fluid;

(c) petrol;

(d) toluene; or

(e) xylene,

must not be sold or supplied in a bottle or jar having a nominal capacity of 2 litres or less, unless the immediate container complies with the container requirements specified in paragraph 21.

Approved containers

24. Notwithstanding sub-paragraphs 21, 22 and 23 a poison may be packed in a container that does not comply with the tactile identification requirements of Australian Standard AS2216-1997 entitled Packaging for poisonous substances or the requirements of paragraphs 22(2) or 23(1)(iii) if:

(1) the other safety factors are not diminished;
(2) the container is for a specific purpose; and

(3) an appropriate authority has approved the use of the container for that purpose.

Child-resistant closures

25. (1) If a poison, other than a poison included in a therapeutic good packaged in a manner compliant with orders made under section 10(3) of the Commonwealth *Therapeutic Goods Act 1989*, listed in column 1 of the following table is sold or supplied in a container having a nominal capacity specified for that poison in column 2 it must be closed with a child-resistant closure.

<table>
<thead>
<tr>
<th>Name of the poison</th>
<th>Nominal capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alkaline salts included in Schedule 5, when packed and labelled as dishwashing machine tablets.</td>
<td>All sizes</td>
</tr>
<tr>
<td>Alkaline salts included in Schedule 5, when packed and labelled as dishwashing machine liquids, solids or gels.</td>
<td>5 litres / kilograms or less</td>
</tr>
<tr>
<td>Alkaline salts included in Schedule 5, when packed and labelled as a food additive.</td>
<td>2.5 litres or less</td>
</tr>
<tr>
<td>Anise oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Basil oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Basil oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Cajuput oil when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Cassia oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Cineole when included in Schedule 6.</td>
<td>2 litres or less</td>
</tr>
<tr>
<td>Cinnamon bark oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Cinnamon leaf oil when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Clove oil when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Essential oils when included in Schedule 6 because of their natural camphor component.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Name of the poison</td>
<td>Nominal capacity</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------</td>
</tr>
<tr>
<td>Ethylene glycol when included in Schedule 6.</td>
<td>5 litres or less</td>
</tr>
<tr>
<td>Ethylene glycol when included in Schedule 5 in preparations containing more than 50 per cent of ethylene glycol.</td>
<td>5 litres or less</td>
</tr>
<tr>
<td>Eucalyptus oil when included in Schedule 6.</td>
<td>2 litres or less</td>
</tr>
<tr>
<td>Eugenol when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Hydrocarbons, liquid, when packed as kerosene, lamp oil, mineral turpentine, thinners, reducers, white petroleum spirit or dry cleaning fluid.</td>
<td>5 litres or less</td>
</tr>
<tr>
<td>Hydrochloric acid when included in Schedule 6.</td>
<td>5 litres or less</td>
</tr>
<tr>
<td><em>Leptospermum scoparium</em> oil (manuka oil) when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Marjoram oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Melaleuca oil (tea-tree oil) when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Methylated spirit excluding preparations or admixtures.</td>
<td>5 litres or less</td>
</tr>
<tr>
<td>Methyl salicylate and preparations containing more than 50 per cent of methyl salicylate.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Nutmeg oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Oil of turpentine.</td>
<td>5 litres or less</td>
</tr>
<tr>
<td>Pennyroyal oil when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>PoTASsium hydroxide as such.</td>
<td>2.5 litres or less</td>
</tr>
<tr>
<td>PoTASsium hydroxide in oven, hot plate or drain cleaners when included in Schedule 6 except when in pressurised spray packs.</td>
<td>5 litres or less</td>
</tr>
<tr>
<td>d-Pulegorne when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Sage oil (Dalmatian) when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Name of the poison</td>
<td>Nominal capacity</td>
</tr>
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<td>----------------------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Sodium hydroxide as such.</td>
<td>2.5 litres or less</td>
</tr>
<tr>
<td>Sodium hydroxide in oven, hot plate or drain cleaners when included in Schedule 6</td>
<td>5 litres or less</td>
</tr>
<tr>
<td>except when in pressurised spray packs.</td>
<td></td>
</tr>
<tr>
<td>Thujone when included in Schedule 6.</td>
<td>200 millilitres or less</td>
</tr>
<tr>
<td>Thyme oil when included in Schedule 5.</td>
<td>200 millilitres or less</td>
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(2) The manufacturer or packer of a poison must ensure that the child-resistant closure is appropriate for the container and the poison and that it retains its child-resistant properties for the expected life of the poison.

**Schedule 8 poisons**

25A. (1) A person who supplies any Schedule 8 poison must ensure that the Schedule 8 poison is packaged in such a way that its primary pack is so sealed that, when the seal is broken, it is readily distinguishable from other sealed primary packs.

(2) This paragraph does not apply to the supply of a Schedule 8 poison by an:

(a) authorised prescriber or other authorised supplier;

(b) pharmacist on the prescription of an authorised prescriber;

(c) pharmacist employed at a hospital, on the written requisition of a medical practitioner, a dentist or the nurse or midwife in charge of the ward in which the Schedule 8 poison is to be used or stored; or

(d) nurse or midwife on the direction in writing of an authorised prescriber.

**Exemptions**

26. (1) Paragraphs 21, 22 and 23 do not apply to the immediate container of a poison prepared, packed and sold:

(a) for human internal or animal internal use; or

(b) as a solid or semi-solid preparation for human external or animal external use; or

(c) as a paint, other than a paint for therapeutic or cosmetic use; or

(d) in containers having a nominal capacity of 15 millilitres or less; or

(e) for use in automatic photographic or photocopy processing machines if the container is specifically designed to fit into the machines; or

(f) solely for dispensary, industrial, laboratory or manufacturing purposes.
(2) Paragraph 25 does not apply to a poison prepared, packed and sold solely for dispensary, industrial, laboratory or manufacturing purposes.

27. The tactile identification or embossing required by paragraphs 21, 22 or 23 of this Standard or Australian Standard AS 2216-1997 entitled Packaging for poisonous substances do not apply to a container that is an aerosol container, a collapsible tube, or a measure pack which is a flexible sachet.

**Camphor and naphthalene**

28. The container requirements of paragraph 21 do not apply to a device that contains only camphor or naphthalene in block, ball, disc or pellet form for domestic use, if the device:

   (1) in normal use, prevents removal or ingestion of its contents; and
   (2) is incapable of reacting with the poison; and
   (3) is sufficiently strong to withstand the ordinary risks of handling, storage or transport; and
   (4) has the word —POISON‖ and the approved name of the poison embossed or indelibly printed on it.

**Prohibitions**

29. A person must not sell or supply camphor or naphthalene in ball, block, disc or pellet form for domestic use unless the balls, blocks, discs or pellets are enclosed in a device which prevents removal or ingestion of its contents.

30. A person must not sell or supply a poison in a container which has the name of another poison embossed or indelibly marked thereon.

31. A person must not sell any poison which is for internal use or any food, drink or condiment in a container prescribed by paragraphs 21, 22 or 23 of this Standard.

31A. A person must not sell any poison in a container used expressly for any food, drink or condiment.
Scheduling Policy Framework

G.1 Factors for label use of “warning” (Schedule 5)

1. The substance is non-corrosive and has a low toxicity.
   
   Acute oral toxicity (rat) is between 2000 mg/kg – 5000 mg/kg. Acute dermal LD50 is more than 2000 mg/kg. Acute inhalation LC50 (rat) is more than 3000 mg/m³ (4 hours).
   
   Dermal irritation is slight to moderate. Eye irritation is slight to moderate. Immediate, prolonged or repeated contact with the skin or mucous membranes may cause slight to moderate inflammation. Skin sensitisation is slight or nil.

2. The substance has a low health hazard.
   
   The substance presents a low hazard from repeated use and is unlikely to produce irreversible toxicity. There is no other significant toxicity (e.g. respiratory sensitisation, mutagenicity, carcinogenicity, reproductive toxicity etc).

3. The substance is capable of causing only minor adverse effects to humans in normal use.
   
   Specialised equipment should not be necessary for safe use.

4. The likelihood of injury in handling, storage and use can be mitigated through appropriate packaging and simple label warnings.
   
   Adequate packaging and labelling protects the consumer from the known danger(s) of the substance if it is inhaled, taken internally or if it penetrates the skin. Potential harm is reduced through labelling which informs the consumer about the safety measures to apply during handling and use (including safety directions) and child resistant packaging (where appropriate).

5. The substance has a low potential for causing harm.
   
   Potential harm is reduced through the use of appropriate packaging with simple warnings and safety directions on the label.
G.2 Factors for label use of “Poison” (Schedule 6)

1. The substance has a moderate to high toxicity, which may cause death or severe injury (including destruction of living tissue) if inhaled, taken internally, or in contact with skin or eyes.

   Acute oral LD50 (rat) is between 50 mg/kg – 2000 mg/kg. Acute dermal toxicity is between 200 mg/kg and 2000 mg/kg. Acute inhalation LC50 (rat) is between 500 mg/m³ and 3000 mg/m³ (4 hours).

   Dermal irritation is severe. Eye irritation is severe. Skin sensitisation is moderate to severe.

2. The substance has a moderate health hazard.

   The substance presents a moderate hazard from repeated use and moderate risk of producing irreversible toxicity.

3. Reasonably foreseeable harm to users can be reduced through strong label warnings, extensive safety directions and child-resistant packaging (where appropriate).

   Adequate packaging and labelling protects the consumer from the known danger(s) of the substance. Potential harm is reduced through labelling which informs the consumer about the safety measures to apply during handling and use (including safety directions) and child resistant packaging.

4. The substance has a moderate potential for causing harm.

   Potential harm is reduced through the use of distinctive packaging with strong warnings and safety directions on the label.
G.3 Factors for dangerous poisons (Schedule 7)

1. The substance has a high to extremely high toxicity.

Acute oral LD50 (rat) is 50 mg/kg or less. Acute dermal LD50 is 200 mg/kg or less. Acute inhalation LC50 (rat) is 500 mg/m³ (4 hours) or less. Dermal irritation is corrosive. Eye irritation is corrosive.

2. The substance has a high health hazard.

The substance presents a severe hazard from repeated and unprotected use or a significant risk of producing irreversible toxicity, which may involve serious, acute or chronic health risks or even death if it is inhaled, taken internally or penetrates the skin.

3. The dangers of handling the poison are such that special precautions are required in its manufacture, handling or use.

The dangers associated with handling the substance are too hazardous for domestic use or use by untrained persons and warrant restrictions on its availability, possession or use.

4. The substance has a high potential for causing harm at low exposure.

The substance should be available only to specialised or authorised users who have the skills necessary to handle the substance safely. Restrictions on their availability, possession, storage or use may apply.
## Implementation arrangements

The table below details the responses made by each jurisdiction in response to a short survey on legislative and governance arrangements for poisonous chemical regulatory controls.

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| a) | What are the steps you would be required to take? | b) | How long do you think this would take? | c) | How difficult is the task - do you anticipate any barriers? |

| ACT | In principle, there is no reason why an Act could not reference an instrument published without legislative backing. For example, Australian standards are often referenced in ACT legislation. | It is possible for legislation to be written in a way that would have a national standard, as varied from time to time, automatically operate in this jurisdiction. The decision about whether or not to adopt this approach is a policy matter. | There would be no technical impediment to the ACT performing this role, however generally this would be done through one of the larger jurisdictions because of the significant additional resourcing required. We would strongly advise against ACT being the lead jurisdiction as work could not commence on the necessary amendments with current | What are the steps you would be required to take? |
|     | Ministerial agreement to consider changes and consult. | Potential need to conduct local consultation. | Potential need for a local RIS. |   |   |

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resources until at least mid 2014.  
Regulation drafting.  
Consideration and approval by Minister(s).  

\textit{How long do you think this would take?}\nMinimum 6 months assuming that consultation and RIS not required.  

\textit{How difficult is the task - do you anticipate any barriers?}\nDrafting will be complex therefore may take longer than 6 months. Other workload priorities will mean that work will not be able to commence until at least mid 2014.
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**NSW**

Applied Model laws in recent years generally involve adoption of a legislative instrument, and I would expect any other approach in this area would adopt the same process. As noted above, this is an issue that governments would seek advice on from the senior drafting officers.

Note in NSW veterinary medicines and agvet chemicals are controlled through the Stock Medicines Act and the Pesticides Act rather than through the Poisons & Therapeutic Goods Act.

The approach of the applied model is that changes to the model law come into effect when passed by the parliament of the “host” jurisdiction. Some jurisdictions have however traditionally refused to participate in such an approach, and choose to pass the law itself and any changes through their own Parliament. As such, it is anticipated that any model will be required to accommodate this.

In any event, the systems are predicated on each state and territory agreeing to the amendment before it is made. The benefit of the applied model is that it can reduce the time lag which may otherwise technically any state or territory could “host” the law, subject to whether the content of the legislation falls within its Constitutional power – for example, in some areas the Commonwealth may not have a constitutional head of power to rely on, so it must necessarily be a state jurisdiction that passes the enabling law.

However, more importantly the question of whether a jurisdiction wishes to do so is an implementation issue firmly in the hands of the respective ministers, meaning officers are not in a position to
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### NT

The current legislation, the *Poisons and Dangerous Drugs Act (PaDDA)*, section 6A adopts the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP):  
- Part 4

This could occur by the mechanism under section 93 of *PaDDA* or section 281 (d) of *MPTGA*. However, if a national written standard for poisonous chemical controls was made (provided the substances were included in the SUSMP Schedules) to make a Regulation under PaDDA section 93 or MPTGA section 281 (d) would apply if following in principle agreement, the changes do not come into effect until all states and territories have had the opportunity to pass the changes through their own parliament. That said, the enabling legislation would need to pass all Parliaments for the scheme to start.

The ability to do this is dependent on the resources available required for this process. In the current political climate, it is doubtful that the NT could do this.
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   a) What are the steps you would be required to take?
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- The introduction
- Any provision in Part 4 relevant to the interpretation of that Schedule
- Any other Schedule in Part 4 or any Appendix in Part 5 that is referred to in that Schedule
- Appendix A, C, D (excluding Item 1), G, J and any other Appendix specified by the Minister by notice in the Gazette

The Poisons and Dangerous Drugs Regulations adopt Part 2 of the SUSMP in require a Ministerial, approval from the Ministerial Executive and then be assented by the Administrator.

The initial Regulation could include the wording ‘as in force from time to time’ which would allow for automatic changes. However, this is dependant on what the NT Government decide. They may only wish to have a new regulation for each change.

The time frame for any legislative change takes is dependent on the priority the Government puts on the specific issue/s.
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relation to:
- labels and containers
- Appendix E, F and I
- Part 3 miscellaneous regulations paragraphs 32, 33, 35 (1) and (3), 37 (1) and (3), 39, 40, 41, 42 and 44

Section 93 of PoDDA allows the NT to have a Regulation that may apply, adopt or incorporate (either wholly or in part or with modification) an instrument, as in force at a particular time or as in force from time to time, prescribed or
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published by any authority or body.  

The Medicines, Poisons and Therapeutic Goods Act 2012 (MPTGA) was assented by the NT Administrator on 27 April 2012. However, the Act has not commenced to date. The new Regulations to accompany the Act are being drafted. This process has been held up due to the recent Election in the NT. It is planned to have the new legislation commence in early 2013.  

Section 281 (d) of the MPTGA provides the NT with similar ability to section 93 of PaDDA. Under the MPTGA, the SUSMP is
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<td>QLD</td>
<td>No it does not have to be legislatively created but it needs to be published via a reputable process (rigorous) ministerial endorsement of changes is preferable i.e it could be a Ministerial Council document under State or commonwealth legislation.</td>
<td>This is possible. Qld hosts the NRAS National Registration Act, so in policy terms there is no objection, but the minister would have to approve it. This is a less preferred option though, and could be overkill if stakeholders are happy with a Ministerial Council. Hosting depends on the Minister agreeing. Qld will be amending their Poisons Regs next year so are well prepared to implement RIS changes.</td>
<td>Qld will be amending their Poisons Regs next year anyway so well prepared to implement RIS changes. This RIS is one of multiple drivers, as it is under the regulatory reform State strategy anyway. Amendments are on the departmental work program.</td>
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<td>SA</td>
<td>Section 63(5) of the Controlled Substances Act 1984 (SA) (the Act)</td>
<td>No</td>
<td>Yes – but noting that the applied laws model is the least preferred option on</td>
<td>a) There would need to be amendment of the Act (some cases) and the Poisons</td>
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provides that the regulations may refer to or, by reference, incorporate (with or without modifications) any code, standard, pharmacopoeia or other document published inside or outside of this State, either in force at the time the regulations are made or as in force from time to time. The Controlled Substances (Poisons) Regulations 2011 (SA) (the Poisons Regulations) could refer to an instrument that was published without legislative backing.

The preferred option of SA’s Office of Parliamentary Counsel is to adopt changes to the SUSMP or any separate regulations (all cases) and amendment of the conditions on licences (some cases) issued under the Act.

b) Amendment of the Act is likely to take at least 12 months or longer.

Amendment of the regulations is likely to take at least 6 months.

c) It is likely to be difficult to progress the required change to the Act due to timing of the next State election.
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   b) How long do you think this would take?  
   c) How difficult is the task - do you anticipate any barriers? |

| TAS | Any reference to a standard would require either the standard to have legislative backing or for it to have formal legislative recognition, i.e. by being prescribed. In my view the prescribing approach would be unnecessarily indirect. An effective approach in this jurisdiction is the adoption by reference of the SUSMP as the Poisons List.  
   From a legal policy perspective, any amendment to the Poisons Act would be subject to the consideration of the new standard or code by regulation. |
| Yes, provided the nationally agreed changes amend the ‘standard’ (see for example the adoption of the SUSMP ‘as amended from time to time’). If the nationally agreed changes amend the Act, it is likely the amendments would need to be tabled. See the process in the Health Practitioners Regulation National Law s245/246. Given that this exercise is simply about a national standard, the HPRNL process seems unnecessarily complex.  
   a) n/a  
   b) By having a formal process around determination and amendment |
| Unlikely to be feasible – Poisons Act about to be replaced. Lack of resources to host a national process. |
| a) Usual legislative process; b) 6-24+ months depending on complexity  
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>The RIS proposes a national written standard for poisonous chemical controls. For the purposes of legislative drafting in your jurisdiction, would your Poisons Act need to reference a standard that was created under a state or Commonwealth Act, or could it refer to an instrument that was published without legislative backing?</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>If a national written standard for poisonous chemical controls was made under one State’s legislation, and ‘applied’ by other States, could changes that were agreed nationally (likely by a Ministerial Council) automatically come into force in your jurisdiction?</td>
</tr>
<tr>
<td></td>
<td>a) If no, would there need to be subsequent action in your State?</td>
</tr>
<tr>
<td></td>
<td>b) How could any delays or potential for variations be minimised?</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td>If an applied laws model was adopted (that is, the controls are made under legislation in one State), would your jurisdiction be able to host this instrument within its Poisons Act?</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>Thinking about the steps that you would be required to take to remove your jurisdiction’s controls from your current legislation and regulations:</td>
</tr>
<tr>
<td></td>
<td>a) What are the steps you would be required to take?</td>
</tr>
<tr>
<td></td>
<td>b) How long do you think this would take?</td>
</tr>
<tr>
<td></td>
<td>c) How difficult is the task - do you anticipate any barriers?</td>
</tr>
</tbody>
</table>

parliament. The parliament would need to be satisfied that there was sufficient certainty around the process for developing a standard, such as the certainty attached to the process for determining the SUSMP. I think the process for determining regulatory controls may well require the process envisaged in the preferred option in the RIS – and is therefore more complex of the standard.
1. The RIS proposes a national written standard for poisonous chemical controls. For the purposes of legislative drafting in your jurisdiction, would your Poisons Act need to reference a standard that was created under a state or Commonwealth Act, or could it refer to an instrument that was published without legislative backing?

2. If a national written standard for poisonous chemical controls was made under one State’s legislation, and ‘applied’ by other States, could changes that were agreed nationally (likely by a Ministerial Council) automatically come into force in your jurisdiction?
   a) If no, would there need to be subsequent action in your State?
   b) How could any delays or potential for variations be minimised?

3. If an applied laws model was adopted (that is, the controls are made under legislation in one State), would your jurisdiction be able to host this instrument within its Poisons Act?

4. Thinking about the steps that you would be required to take to remove your jurisdiction’s controls from your current legislation and regulations:
   a) What are the steps you would be required to take?
   b) How long do you think this would take?
   c) How difficult is the task - do you anticipate any barriers?

<table>
<thead>
<tr>
<th>VIC</th>
<th>Would your Poisons Act need to reference a standard that was created under a State or Commonwealth Act?</th>
<th>Yes, in theory, if that was allowed for in the legislation applying it as a law of Victoria. This is a matter for government policy and this type of arrangement is not favoured in Victoria</th>
<th>Yes in theory (if you mean could the Drugs, Poisons and Controlled Substances Act be used to apply it as law of Victoria). This is a matter for government policy and this type of arrangement is not favoured in Victoria</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Could it refer to an instrument that was published without legislative backing?</td>
<td>Yes, it could as the power to do so in explicit in the regulations. This legislative instrument would be subject to the requirements of the Victorian Subordinate Legislation Act 1994.</td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>WA would prefer that the standard for poisonous chemical controls is</td>
<td>The current Government of WA would implement corresponding legislation</td>
<td>As to which State would host the instrument within its Poisons Act would</td>
</tr>
<tr>
<td></td>
<td>The current Government of WA would implement corresponding legislation</td>
<td></td>
<td>Thinking about the steps that you would be required to take to remove your jurisdiction’s controls from your current legislation and regulations:</td>
</tr>
<tr>
<td></td>
<td>As to which State would host the instrument within its Poisons Act would</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Description</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td></td>
<td></td>
</tr>
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<td>The RIS proposes a national written standard for poisonous chemical controls. For the purposes of legislative drafting in your jurisdiction, would your Poisons Act need to reference a standard that was created under a state or Commonwealth Act, or could it refer to an instrument that was published without legislative backing?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 2 | If a national written standard for poisonous chemical controls was made under one State’s legislation, and ‘applied’ by other States, could changes that were agreed nationally (likely by a Ministerial Council) automatically come into force in your jurisdiction?  
   a) If no, would there need to be subsequent action in your State?  
   b) How could any delays or potential for variations be minimised? |
| 3 | If an applied laws model was adopted (that is, the controls are made under legislation in one State), would your jurisdiction be able to host this instrument within its Poisons Act?  
   a) If no, subsequent action in your State?  
   b) How could any delays or potential for variations be minimised? |
| 4 | Thinking about the steps that you would be required to take to remove your jurisdiction’s controls from your current legislation and regulations:  
   a) What are the steps you would be required to take?  
   b) How long do you think this would take?  
   c) How difficult is the task - do you anticipate any barriers? |

Referenced within legislation thus ensuring that the document has legal standing.  
It is not clear what is intended in the second part of Question 1. If the standard is published without inclusion then it may not be legally enforceable.  
(also known as mirror legislation) not “adoption of laws”. Therefore any legislative change would most likely be subject to the Parliamentary process in Western Australia. Amendments under LAW in another jurisdiction would not apply automatically in Western Australia.  
If no, would there need to be subsequent action in your State?  
WA would not automatically adopt legislation from another jurisdiction. WA would implement corresponding legislation and the Parliament of WA would scrutinise all clauses in the Bill. WA may also require additional clauses to be a matter to be considered by the NCCTG and approved by COAG, the Standing Council of Health or the Ministerial Council (if applicable).  
jurisdiction’s controls from your current legislation and regulations:  
   a) What are the steps you would be required to take?  
   b) How long do you think this would take?  
   c) How difficult is the task - do you anticipate any barriers?  
This is dependent on the agreed model. Normal legislative processes (e.g. consultation with stakeholders, Cabinet submissions, drafting instructions, an analysis of consequential amendments to relevant legislation within the Minister for health and other Minister’s portfolios) would need to be undertaken including the analysis of the proposal.
<p>| | |</p>
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<td></td>
<td>c) How difficult is the task - do you anticipate any barriers?</td>
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</table>

apply to local conditions.

_How could any delays or potential for variations be minimised?_

This would be dependent on the legislative timetable of the Parliament of WA and Parliamentary Counsels drafting priorities.

It would be difficult to guarantee that the Parliament of WA would not vary the legislation.

It is not possible to provide a definitive response to this question as any timeframes is dependent on the legislative timetable of the Parliament of WA and other priorities.

_c) _How difficult is the task - do you anticipate any barriers?_

It is unclear what the impact would be at this time.
I Jurisdictional impact analysis

I.1 Storage of Schedule 5 chemicals

**Option 1 - Maintain the status quo**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
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<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders who are required to comply with different sets of regulation. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
</tbody>
</table>

**Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP**

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<td>-</td>
</tr>
<tr>
<td>QLD, SA and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>↓</td>
</tr>
</tbody>
</table>
## Option 3 - Adopt a prescriptive control

<table>
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<tr>
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<tbody>
<tr>
<td>ACT, NSW, NT, QLD, TAS, VIC and WA</td>
<td>This option would increase regulation. In addition there would be less flexibility than exists currently in how businesses may achieve the intended policy outcome. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>↑</td>
</tr>
<tr>
<td>SA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
</tbody>
</table>

## Option 4 - Adopt an outcome-based control

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, TAS and VIC</td>
<td>This option would increase regulation. However it would not seem to impose an additional cost, as it would likely align with standard business practices. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>↑</td>
</tr>
<tr>
<td>QLD, WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
<tr>
<td>SA</td>
<td>This option would require South Australia to remove prescriptive requirements on storage of Schedule 5 chemicals, and would thus represent a reduction in regulatory burden.</td>
<td>↓</td>
</tr>
</tbody>
</table>
Option 5 - Adopt an outcome-based control, containing a prescriptive 'deemed to comply or satisfy' provision

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<td>This option would increase regulation. However it would not seem to impose an additional cost, as it would likely align with standard business practices. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>↑</td>
</tr>
<tr>
<td>QLD and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
<tr>
<td>SA</td>
<td>This option would represent a minor reduction in the regulatory burden on affected retailers in South Australia.</td>
<td>↓</td>
</tr>
</tbody>
</table>

Option 6 - Remove the provisions of the SUSMP and any State or Territory variations [Preferred option]

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, TAS and VIC</td>
<td>As there are currently have no controls over storage of Schedule 5 chemicals, there would be no change to regulatory impact on business. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
<tr>
<td>QLD, SA and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
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</table>
1.2 Storage of Schedule 6 chemicals

**Option 1 - Maintain the status quo**

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<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders who are required to comply with different sets of regulation. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
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</table>

**Option 2 - Implement the provisions of the SUSMP as they are currently written**

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<tr>
<td>ACT, NT, TAS and VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
<tr>
<td>NSW, QLD, SA and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>↓</td>
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</table>

**Option 3 - Adopt a prescriptive control**

<table>
<thead>
<tr>
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</thead>
</table>
Option 4 - Adopt an outcome-based control

<table>
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<tbody>
<tr>
<td>ACT, NT, QLD, TAS, VIC and WA</td>
<td>This option would increase regulation. However it would not seem to impose an additional cost, as it would likely align with standard business practices. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
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</tr>
<tr>
<td>QLD, SA and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
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Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
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<tr>
<td>ACT, NT, TAS and VIC</td>
<td>This option would increase regulation. However it would not seem to impose an additional cost, as it would likely align with standard business practices. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
<tr>
<td>NSW, QLD, SA and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
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</table>

Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

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<tbody>
<tr>
<td>ACT, NT, TAS and VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
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</table>
This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.

### I.3 Storage of Schedule 7 chemicals

#### Option 1 - Maintain the status quo

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</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders that are required to comply with different sets of regulation. Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
</tbody>
</table>

#### Option 2 - Implement the provisions of the SUSMP as it is written

<table>
<thead>
<tr>
<th>Jurisdiction</th>
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</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>Each jurisdiction has similar wording to that in the SUSMP and so a similar outcome would be achieved. A benefit is that customers will have to actively seek and request the Schedule 7 chemical to obtain it. This may result in reduced misuse of the poisonous chemical. However, there is no evidence to suggest that this is or previously has been an issue in Australia and that disallowing public access to Schedule 7 chemicals is an appropriate way to mitigate this risk.</td>
<td>-</td>
</tr>
</tbody>
</table>
There would be a cost to industry because businesses would be required to interpret how to implement the public access outcome.

### Option 3 - Adopt a prescriptive control

<table>
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<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>Time cost of the appropriate person to escort / accompany the customer to the appropriate part of the store if they chose to provide supervised access. Another cost would be the re-design of store/premises if required. The benefits of escorted access would be that customers can read, under supervision, the ingredients and any other information on the packaging of Schedule 7 chemicals in conjunction with receiving guidance from the seller.</td>
<td>↑</td>
</tr>
</tbody>
</table>

### Option 4 - Adopt an outcome-based control

<table>
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</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>The level of regulation across jurisdictions for this option will not change substantially. An associated benefit would be reduced likelihood of inappropriate access (which may lead to inappropriate or unauthorised use) of Schedule 7 chemicals. Another benefit is that customers will have to actively seek and request the Schedule 7 chemical to obtain it. This may result in reduced misuse of the poisonous chemical. However, there is no evidence to suggest that this is or previously has been an issue in Australia and that disallowing public access to Schedule 7 chemicals is an appropriate way to mitigate this risk. There would be a cost to industry as businesses would be required to interpret how to implement the public access outcome.</td>
<td>-</td>
</tr>
</tbody>
</table>
Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

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<tr>
<td>ACT, NSW, NT, TAS and VIC</td>
<td>The potential cost of this option to business would be installation of an appropriately secured storage facility or area where this currently does not exist. The benefit of this option is that retailers can store the Schedule 7 chemicals within view of potential purchasers, which could allow the purchasers to read ingredients and other information disclosed on the label. However they would not be able to access the poisonous chemical products without the knowledge or guidance of the person selling or supplying the product.</td>
<td>-</td>
</tr>
<tr>
<td>QLD, SA, WA</td>
<td>For Queensland, South Australia and Western Australia, the implementation of the preferred control would result in a decrease in the level of regulation as it is an outcome-based control with a ‘deemed to comply or satisfy provision’ with no specific reference to food, drink or condiments or methods of storage during transportation.</td>
<td>↓</td>
</tr>
</tbody>
</table>

Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

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<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. While this may result in reduced compliance costs, it is anticipated that businesses would maintain a similar level of control to ensure that an appropriate amount of ‘duty of care’ is undertaken. It is likely that there is a risk-based justification for controlling access to these chemicals, and that removing this control could create potential risk to public safety.</td>
<td>-</td>
</tr>
</tbody>
</table>
### I.4 Disposal of Schedules 5, 6 and 7 chemicals

#### Option 1 - Maintain the status quo

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<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders who are required to comply with different sets of regulation. No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.</td>
<td>-</td>
</tr>
</tbody>
</table>

#### Option 2 - Implement the provisions of the SUSMP as it is written

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<tbody>
<tr>
<td>NSW, QLD, SA and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.</td>
<td>↓</td>
</tr>
<tr>
<td>ACT, NT, TAS and VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.</td>
<td>-</td>
</tr>
</tbody>
</table>
### Option 3 - Adopt a prescriptive control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
</table>
| ACT, NT, TAS and VIC| This option would increase regulation. In addition there would be less flexibility than exists currently in how businesses may achieve the intended policy outcome.  
To understand the costs, knowledge of whether or not businesses follow these disposal practices without explicit regulation needs to be understood.  
No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear. | ↑                 |
| NSW, SA and WA      | This option would increase regulation, although to a lesser extent than in Australian Capital Territory, Northern Territory, Tasmania and Victoria. In addition there would be less flexibility than exists currently in how businesses may achieve the intended policy outcome.  
To understand the costs, knowledge of whether or not businesses follow these disposal practices without explicit regulation needs to be understood.  
No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear. | ↑                 |
| QLD                 | There are no additional costs to industry associated with this option as the level of regulation will not change.  
To understand the costs, knowledge of whether or not businesses follow these disposal practices without explicit regulation needs to be understood.  
No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear. | -                 |
### Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW, SA, WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>There is potential that duplication and overlap from other regulations could impose additional costs.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.</td>
<td></td>
</tr>
<tr>
<td>ACT, NT, TAS and VIC</td>
<td>This option would increase regulation. There is potential that duplication and overlap from other regulations could impose additional costs. No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.</td>
<td>↑</td>
</tr>
<tr>
<td>QLD</td>
<td>This option would represent a slight reduction in regulatory requirements for business and greater flexibility. This could result in a reduction in compliance cost. There is potential that duplication and overlap from other regulations could impose additional costs. No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.</td>
<td>↓</td>
</tr>
</tbody>
</table>

### Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
There are no additional costs to industry associated with this option as the level of regulation will not change. In addition there would be greater flexibility than exists currently in how businesses may achieve the intended policy outcome.

There is potential that duplication and overlap from other regulations could impose additional costs.

No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.

This option would increase regulation.

There is potential that duplication and overlap from other regulations could impose additional costs.

No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.

This option would represent a slight reduction in regulatory requirements for business and greater flexibility. This could result in a reduction in compliance cost.

There is potential that duplication and overlap from other regulations could impose additional costs.

No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of these specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.

**Option 6 - Remove the provisions of the SUSMP and any State or Territory variations**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NT, TAS</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change.</td>
<td>-</td>
</tr>
</tbody>
</table>
No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.

NSW, QLD, SA and WA

This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost.

Removing this legislation has the potential cost of increasing the risk of public health and safety. However, No evidence has been identified indicating the effectiveness of disposal controls and so the effectiveness of specific disposal regulations in mitigating any risks to public safety and environment in each respective jurisdiction is therefore unclear.

I.5 Labelling of Schedules 5, 6 and 7 chemicals

**Option 1 - Maintain the status quo**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders that are required to comply with different sets of regulation.</td>
</tr>
</tbody>
</table>

**Option 2 - Implement the provisions of the SUSMP**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indicative impact</td>
</tr>
<tr>
<td></td>
<td>-</td>
</tr>
</tbody>
</table>

355
### Option 3 - Adopt a prescriptive control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW, NT, QLD, VIC, SA and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. While Queensland and Western Australia impose additional requirements, it is expected that these bare no additional regulatory burden.</td>
<td>-</td>
</tr>
<tr>
<td>ACT and TAS</td>
<td>This option would decrease regulation as Tasmania and the Australian Capital Territory impose additional labelling requirements to the SUSMP.</td>
<td>↓</td>
</tr>
</tbody>
</table>

### Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility, however, an outcome-based control may increase the level of complexity on how to achieve the outcome and therefore may</td>
<td>↑</td>
</tr>
</tbody>
</table>
create confusion. There may be increased costs associated with setting up structures to demonstrate compliance. Therefore, the cost of this confusion and complexity outweighs the benefit of decreased regulation through an outcome-based standard.

Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility; but with no clear benefit. All jurisdictions currently have prescriptive regulations, and so this option may increase the complexity of existing regulation and lead to ambiguity and misinterpretation. This option may also increase the risk to public health and safety as it would give the option for businesses and manufacturers to label poisonous chemicals differently from each other, which may cause confusion.</td>
<td>↑</td>
</tr>
</tbody>
</table>

Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. However, this option may increase the risk of public health and safety.</td>
<td>↓</td>
</tr>
</tbody>
</table>
I.6 Packaging of Schedules 5, 6 and 7 chemicals

Option 1 - Maintain the status quo

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders who are required to comply with different sets of regulation.</td>
<td>-</td>
</tr>
</tbody>
</table>

Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. Minimal cost will be incurred by Australian Capital Territory, Queensland, Tasmania and Western Australia who currently offer additional alternatives which will have to be removed. The SUSMP references the Australian Standard, which is not recognised as good practice and may cause issues when it comes to implementing this option.</td>
<td>-</td>
</tr>
<tr>
<td>WA</td>
<td>In Western Australia the current controls in place for packaging of Schedules 5, 6 and 7 chemicals are slightly more onerous than the SUSMP, therefore, the adoption of the preferred option is likely to decrease the level of regulation in this case.</td>
<td></td>
</tr>
</tbody>
</table>

Option 3 - Adopt a prescriptive control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative</th>
</tr>
</thead>
</table>
### Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. However, greater flexibility may increase the level of complexity on how to achieve the outcome and therefore may create confusion which may lead to an increase in the risk to public health and safety. Therefore, the cost of this confusion and complexity outweighs the benefit of decreased regulation.</td>
<td>↓</td>
</tr>
</tbody>
</table>

### Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, QLD, TAS and WA</td>
<td>This option would be similar to the current legislation in the Australian Capital Territory, Queensland, Western Australia and Tasmania. In these jurisdictions a similar level of flexibility is provided by allowing compliance with the SUSMP or compliance if consent is given by the relevant chief officer or Minister.</td>
<td>-</td>
</tr>
</tbody>
</table>
This option would represent an increase in regulatory requirements for business as greater flexibility could potentially lead to increased ambiguity. This option may therefore increase the complexity of existing regulation and lead to misinterpretation. The packaging requirements would be at the discretion of businesses and manufacturers which may increase the risk to public health and safety.

### Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
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<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. However, this option may increase the risk of public health and safety.</td>
<td>🔻</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>Available data suggests there would be no material impact on poisoning incidents as poisonings occur more often in a domestic setting. Therefore the potential benefit of this option would be neutral.</td>
<td>-</td>
</tr>
</tbody>
</table>

### I.7 Record keeping for Schedule 7 chemical transactions

#### Option 1 - Maintain the status quo

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders who are required to comply with different sets of regulation.</td>
<td>-</td>
</tr>
</tbody>
</table>
Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. It would be expected that at least some form of record keeping would take place as standard business practice to maintain stock control. There is no evidence to suggest that there have been issues in New South Wales without explicit record keeping regulation to supplement other legislation such as Agricultural and Veterinary Acts and Regulations.</td>
<td></td>
</tr>
</tbody>
</table>

| ACT, NT, QLD, SA, TAS, VIC and WA | This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. It would be expected that at least some form of record keeping would take place as standard business practice to maintain stock control. There is no evidence to suggest that there have been issues in New South Wales without explicit record keeping regulation to supplement other legislation such as Agricultural and Veterinary Acts and Regulations. |                   |

Option 3 - Adopt a prescriptive control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NT, QLD, SA, VIC and WA</td>
<td>This is likely to reduce the regulatory burden for businesses, as it is expected that they would typically include this level of information in tax invoices. There is no evidence to suggest that consumers would be substantially affected by the adoption of a new</td>
<td></td>
</tr>
</tbody>
</table>
prescriptive standard to regulate record keeping of chemicals.
The benefit of this option is that it reduces the risk of inconsistencies in interpretation by businesses and compliance officers.

| NSW and TAS | This option would increase regulation for New South Wales and Tasmania as existing legislation regarding record keeping is minimal in these two jurisdictions. There is no evidence to suggest that consumers would be substantially affected by the adoption of a new prescriptive standard to regulate record keeping of chemicals. The benefit of this option is that it reduces the risk of inconsistencies in interpretation by businesses and compliance officers. |

Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NT, QLD, SA, TAS, and VIC</td>
<td>This option would increase flexibility and therefore could reduce regulatory and compliance costs. There is no evidence to suggest that this option would have any direct impact on consumers.</td>
<td>↓</td>
</tr>
<tr>
<td>NSW</td>
<td>This option would be likely to increase the regulatory burden on businesses within New South Wales, as currently minimal regulatory controls exist. However, it would be expected that documenting inward and outward movement of chemicals would be standard business practice, and therefore this increase is likely to be marginal. There is no evidence to suggest that this option would have any direct impact on consumers.</td>
<td>↑</td>
</tr>
<tr>
<td>WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change.</td>
<td>-</td>
</tr>
</tbody>
</table>
There is no evidence to suggest that this option would have any direct impact on consumers.

**Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>This option would be likely to increase the regulatory burden on businesses within New South Wales, as currently minimal regulatory controls exist. However, it would be expected that documenting inward and outward movement of chemicals would be standard business practice, and therefore this increase is likely to be marginal. There is a risk that some businesses may not retain sufficient information to trace suppliers and purchasers if necessary. In addition, an outcome-based standard would not ensure clear record keeping that could be understood by a third party.</td>
<td>✢</td>
</tr>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC, and WA</td>
<td>This option would represent a slight reduction in regulatory requirements for business and greater flexibility. This could result in a reduction in compliance cost. There is a risk that some businesses may not retain sufficient information to trace suppliers and purchasers if necessary. In addition, an outcome-based standard would not ensure clear record keeping that could be understood by a third party.</td>
<td>✣</td>
</tr>
</tbody>
</table>

**Option 6 - Remove the provisions of the SUSMP and any State or Territory variations**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NT,</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost.</td>
<td>✣</td>
</tr>
</tbody>
</table>
There is no evidence to suggest that there have been issues in New South Wales without explicit record keeping regulation to supplement other legislation such as Agricultural and Veterinary Acts and Regulations. An associated risk of removing legislation regarding record keeping is that some businesses may not retain sufficient information to trace suppliers and purchasers if necessary. In addition, an outcome-based standard would not ensure clear record keeping that could be understood by a third party or consistent across Australia.

There are no additional costs to industry associated with this option as the level of regulation will not change. It would be expected that at least some form of record keeping would take place as standard business practice to maintain stock control.

I.8 Advertising of Schedule 7 chemicals

**Option 1 - Maintain the status quo**

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders that are required to comply with different sets of regulation.</td>
<td>-</td>
</tr>
</tbody>
</table>

**Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders that are required to comply with different sets of regulation.</td>
<td>-</td>
</tr>
</tbody>
</table>
### ACT, NSW, NT, SA, TAS, VIC and WA

There are no additional costs to industry associated with this option as the level of regulation will not change.

This option would require reference to a regulatory requirement that does not exist. This would be likely to cause confusion for industry in identifying requirements. However, this option would facilitate national consistency and thereby reduce current costs caused by inconsistencies.

### QLD

This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost.

This option would require reference to a regulatory requirement that does not exist. This would be likely to cause confusion for industry in identifying requirements. However, this option would facilitate national consistency and thereby reduce current costs caused by inconsistencies.

### Option 3 - Adopt a prescriptive control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, SA, TAS, VIC and WA</td>
<td>This option would increase regulation, and subsequently increase compliance cost. The costs to government may increase slightly due to increased costs associated with enforcing compliance. It is likely that this increase would be minor as currently advertising of Schedule 7 chemicals is not common practice.</td>
<td>↑</td>
</tr>
<tr>
<td>QLD</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially. The costs to government may increase slightly due to increased costs associated with enforcing compliance. It is likely that this increase would be minor as currently advertising of Schedule 7 chemicals is not common practice.</td>
<td>-</td>
</tr>
</tbody>
</table>
## Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, SA, TAS, VIC and WA</td>
<td>This option would increase regulation, however it is not anticipated that business would incur substantial compliance costs as the likely control would be close to standard business practice. This is unlikely to affect the majority of jurisdictions as the lack of regulatory control in this area indicates that businesses already achieve an appropriate level of advertising. No clear benefit can be predicted.</td>
<td>↑</td>
</tr>
<tr>
<td>QLD</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. This is unlikely to affect the majority of jurisdictions as the lack of regulatory control in this area indicates that businesses already achieve an appropriate level of advertising. No clear benefit can be predicted.</td>
<td>↓</td>
</tr>
</tbody>
</table>

## Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, SA, TAS, VIC and WA</td>
<td>This option would increase regulation, however it is not anticipated that business would incur substantial compliance costs as the likely control would be close to standard business practice. This is unlikely to affect the majority of jurisdictions as the lack of regulatory control in this area indicates that businesses already achieve an appropriate level of advertising. No clear benefit can be predicted.</td>
<td>↑</td>
</tr>
</tbody>
</table>
### Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There is no evidence to suggest that an absence of regulatory controls regarding this practice poses a risk to public health and safety.</td>
<td>-</td>
</tr>
<tr>
<td>QLD</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. There is no evidence to suggest that an absence of regulatory controls regarding this practice poses a risk to public health and safety.</td>
<td>↓</td>
</tr>
</tbody>
</table>

### I.9 Hawking or supply of product samples (S5, 6 and 7)

**Option 1 - Maintain the status quo**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
</table>
There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders that are required to comply with different sets of regulation.

**Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW, QLD, SA, TAS, VIC and WA</td>
<td>This option would represent a reduction in regulatory requirements for business and greater flexibility. It is anticipated there would be a reduced compliance cost. The requirement to reference the SUSMP would indicate that a requirement exists in the SUSMP, which may be misleading.</td>
<td>↓</td>
</tr>
<tr>
<td>NT</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. The requirement to reference the SUSMP would indicate that a requirement exists in the SUSMP, which may be misleading.</td>
<td>-</td>
</tr>
</tbody>
</table>

**Option 3A - Adopt a prescriptive control: control permits some hawking and supply of product samples**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD, SA, VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change.</td>
<td>-</td>
</tr>
</tbody>
</table>
and WA

This option is considered to impose similar costs to the status quo with respect to hawking.

NSW and TAS

This could reduce flexibility for businesses in New South Wales and Tasmania which currently can seek exemptions within their current legislation.

This option is considered to impose similar costs to the status quo with respect to hawking.

ACT and NT

This option would increase regulation, and subsequently increase compliance cost.

This option is considered to impose similar costs to the status quo with respect to hawking.

Option 3B - Adopt a prescriptive national control: Control prohibits all hawking and product samples

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. This option could potentially have a negative impact on competition as it would restrict the introduction of products to consumers by way of hawking or supply of product samples. The benefits of strengthening restrictions on hawking and supply of product samples would largely be to consumers as it would reduce the likelihood of access by children (and, in the case of Schedule 7 chemicals, to members of the public) to whom the products should be restricted.</td>
<td>-</td>
</tr>
<tr>
<td>QLD</td>
<td>Regulatory and compliance costs may increase for businesses in Queensland in relation to Schedule 5 and 6 chemicals. This option could potentially have a negative impact on competition as it would restrict the introduction of products to consumers by way of hawking or supply of product samples. The benefits of strengthening restrictions on hawking and supply of product samples would largely be to</td>
<td>↑</td>
</tr>
</tbody>
</table>
consumers as it would reduce the likelihood of access by children (and, in the case of Schedule 7 chemicals, to members of the public) to whom the products should be restricted.

**NSW and TAS**
- This could reduce flexibility for businesses in New South Wales and Tasmania which currently can seek exemptions within their current legislation.
- This option could potentially have a negative impact on competition as it would restrict the introduction of products to consumers by way of hawking or supply of product samples.
- The benefits of strengthening restrictions on hawking and supply of product samples would largely be to consumers as it would reduce the likelihood of access by children (and, in the case of Schedule 7 chemicals, to members of the public) to whom the products should be restricted.

**ACT and NT**
- This option would increase regulation, and subsequently increase compliance cost.
- This option could potentially have a negative impact on competition as it would restrict the introduction of products to consumers by way of hawking or supply of product samples.
- The benefits of strengthening restrictions on hawking and supply of product samples would largely be to consumers as it would reduce the likelihood of access by children (and, in the case of Schedule 7 chemicals, to members of the public) to whom the products should be restricted.

### Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, QLD, SA, TAS, VIC and WA</td>
<td>This option would decrease regulation and increase flexibility. This is likely to decrease regulatory costs. No alternative outcome-based controls have been identified.</td>
<td>↓</td>
</tr>
</tbody>
</table>
This option would increase regulation, and subsequently increase compliance cost. No alternative outcome-based controls have been identified.

### Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>As no outcome-based controls have been identified as feasible, a description for this control has not been provided. If an outcome were found it may benefit businesses by facilitating national marketing campaigns, however it is not considered practical to use outcomes-based regulation to regulate specific activities such as hawking or supply of samples.</td>
<td>-</td>
</tr>
</tbody>
</table>

### Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, QLD, SA, TAS, VIC and WA</td>
<td>This option would decrease regulation and increase flexibility. This is likely to decrease regulatory costs. This option provides greater freedom to industries which may allow the introduction of consumers to new products providing easier access to the market for new suppliers, which would facilitate greater competition. There is considerable risk involved in deregulating hawking and provision of product samples as this may facilitate access by children and other members of the public to whom the products may pose a risk.</td>
<td>▼</td>
</tr>
</tbody>
</table>
I.10 Appendix C: substances other than those included in Schedule 9, of such danger to health as to warrant prohibition of sale, supply and use

**Option 1 - Maintain the status quo**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders and who are required to comply with different sets of regulation.</td>
<td>-</td>
</tr>
</tbody>
</table>

**Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially. The benefit of this option is that the system will be less confusing and therefore potential risks of misuse or misunderstandings regarding the nature of the chemicals will be reduced.</td>
<td>-</td>
</tr>
</tbody>
</table>
### Option 3 - Adopt a prescriptive control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially. The cost of this option will revolve around the decision-making framework. The option will likely deliver the benefit of harmonisation and further clarity around the poisonous chemicals that are banned.</td>
</tr>
</tbody>
</table>

### Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option is not feasible.</td>
</tr>
</tbody>
</table>

### Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option is not feasible.</td>
</tr>
</tbody>
</table>
**Option 6 - Remove the provisions of the SUSMP and any State or Territory variations**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would decrease regulation and increase flexibility. This is likely to decrease regulatory costs. This option could potentially create health and safety risks due to misuse or misunderstandings regarding the degree of risk associated with the use of these chemicals.</td>
<td>⬇️</td>
</tr>
</tbody>
</table>

**I.11 Appendix I: Uniform Paint Standard**

**Option 1 - Maintain the status quo**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders that are required to comply with different sets of regulation.</td>
<td>⬇️</td>
</tr>
</tbody>
</table>
**Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW and VIC</td>
<td>This option would increase regulation, and subsequently increase compliance cost. Howevver it would create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>↑</td>
</tr>
<tr>
<td>ACT, NT, QLD, SA, TAS and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially. It will help to create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>-</td>
</tr>
</tbody>
</table>

**Option 3 - Adopt a prescriptive control**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW and VIC</td>
<td>This option would increase regulation, and subsequently increase compliance cost. Howevver it would create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>↑</td>
</tr>
<tr>
<td>ACT, NT, QLD, SA, TAS and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially. It will help to create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>-</td>
</tr>
</tbody>
</table>
### Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIC</td>
<td>This option would increase regulation, and subsequently increase compliance cost. However it would create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>↑</td>
</tr>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS and WA</td>
<td>This option would decrease regulation and increase flexibility. This is likely to decrease regulatory costs. However it would create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>↓</td>
</tr>
</tbody>
</table>

### Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW and VIC</td>
<td>This option would increase regulation, and subsequently increase compliance cost. However it would create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>↑</td>
</tr>
<tr>
<td>ACT, NT, QLD, SA, TAS and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially. However it would create consistency and would reduce the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>↓</td>
</tr>
</tbody>
</table>
### Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. However it would create potential inconsistency and could increase the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>-</td>
</tr>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS and WA</td>
<td>This option would decrease regulation. This is likely to decrease regulatory costs. However it would create potential inconsistency and could increase the risk that lead is used in paint, thus promoting better public and environmental health outcomes.</td>
<td>↓</td>
</tr>
</tbody>
</table>

### I.12 Appendix J: Conditions for availability of Schedule 7 chemicals

### Option 1 - Maintain the status quo

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change. There would be costs to businesses that operate across State borders who are required to comply with different sets of regulation.</td>
<td>-</td>
</tr>
</tbody>
</table>
Option 2 - Implement the provisions of the SUSMP as they are currently written with no additions or amendments to the SUSMP

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NT, TAS and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change.</td>
<td>-</td>
</tr>
<tr>
<td>NSW, QLD, SA and VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially.\n\nThis option will create a cost in the form of duplication for these jurisdictions.</td>
<td>-</td>
</tr>
</tbody>
</table>

Option 3 - Adopt a prescriptive control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NT, TAS and WA</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change.</td>
<td>-</td>
</tr>
<tr>
<td>NSW, QLD, SA and VIC</td>
<td>There are no additional costs to industry associated with this option as the level of regulation will not change substantially.\n\nThis option would have an administrative impact on these jurisdictions; however it is unlikely that this would be of a substantial size.</td>
<td>-</td>
</tr>
</tbody>
</table>
### Option 4 - Adopt an outcome-based control

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would require legislative change in all jurisdictions with no real associated benefit. This option would decrease regulation and increase flexibility, however is unlikely to impact regulatory costs.</td>
<td>↓</td>
</tr>
</tbody>
</table>

### Option 5 - Adopt an outcome-based control, containing a prescriptive ‘deemed to comply or satisfy’ provision

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would impose a regulatory cost with no additional expected benefit. This option could potentially make the regulatory controls more confusing and ambiguous for industry and consumers.</td>
<td>↑</td>
</tr>
</tbody>
</table>

### Option 6 - Remove the provisions of the SUSMP and any State or Territory variations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Option analysis</th>
<th>Indicative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT, NSW, NT, QLD, SA, TAS, VIC and WA</td>
<td>This option would decrease regulation and increase flexibility. This is likely to decrease regulatory costs. This option would reduce the costs of regulatory duplication for jurisdictions that have other licensing requirements and legislation. However, this option would increase the chance of misuse or create a risk to public health and</td>
<td>↓</td>
</tr>
<tr>
<td>WA</td>
<td>safety for jurisdictions that have no other regulation of licensing requirements that achieve the outcomes of Appendix J.</td>
<td></td>
</tr>
</tbody>
</table>
### State poisons information centre responses

<table>
<thead>
<tr>
<th>Question</th>
<th>Western Australian Poisons Information Centre (WAPIC)</th>
<th>Victorian Poisons Information Centre (VPIC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Is information collected at a specifically detailed level that would allow poisonings to be directly attributed to specific poisons?</td>
<td>Yes. Product names are normally entered into case records.</td>
<td>In most circumstances, yes. Product trade names are collected as part of the VPIC call data. The ingredients of the product can then be obtained from the National Poisons Register.</td>
</tr>
<tr>
<td>2. To what extent are poison information centres able to determine what substance in which environment has caused a reported poisoning? (This Consultation RIS focuses on controls in a retail and wholesale space, and not within the household.)</td>
<td>The WAPIC records the location of the exposure. For location of exposure there are 13 primary categories and some primary categories have secondary categories. For example workplace has seven secondary categories.</td>
<td>VPIC do not record the poisoning environment. Collecting this information has been discussed by the four Australian poisons information centres; however, no agreement has been reached.</td>
</tr>
<tr>
<td>3. How many poisonings have occurred in your state?</td>
<td>Poison information centres record exposures. Not all exposures result in clinical or biochemical features of poisonings.</td>
<td>The table below lists the number of non-medicine, non-drug exposure calls to VPIC for the last 5 calendar years.</td>
</tr>
<tr>
<td>a. please provide in each year from 2007-08 to the most recent data collections year (i.e. the last five years)</td>
<td>The WAPIC handled 58,641 cases over 2009 and 2010.</td>
<td>The following table provides a breakdown of these cases by State.</td>
</tr>
</tbody>
</table>
Western Australian Poisons Information Centre (WAPIC)  

<table>
<thead>
<tr>
<th>State</th>
<th>Number (2009 - 2010)</th>
</tr>
</thead>
<tbody>
<tr>
<td>WA</td>
<td>30,888</td>
</tr>
<tr>
<td>SA</td>
<td>21,606</td>
</tr>
<tr>
<td>NT</td>
<td>2,226</td>
</tr>
<tr>
<td>NSW</td>
<td>1,627</td>
</tr>
<tr>
<td>VIC</td>
<td>919</td>
</tr>
<tr>
<td>TAS</td>
<td>114</td>
</tr>
<tr>
<td>ACT</td>
<td>71</td>
</tr>
<tr>
<td>QLD</td>
<td>729</td>
</tr>
<tr>
<td>Not recorded</td>
<td>449</td>
</tr>
<tr>
<td>other</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>58,641</strong></td>
</tr>
</tbody>
</table>

Of these 47.3 percent were displaying features of toxicity at the time of the phone call to the WAPIC.

Victorian Poisons Information Centre (VPIC)  

<table>
<thead>
<tr>
<th>Year</th>
<th>Non-medicine, non-drug exposure calls to VPIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>16,340</td>
</tr>
<tr>
<td>2010</td>
<td>15,768</td>
</tr>
<tr>
<td>2009</td>
<td>15,849</td>
</tr>
<tr>
<td>2008</td>
<td>16,687</td>
</tr>
<tr>
<td>2007</td>
<td>16,803</td>
</tr>
</tbody>
</table>

VPIC Annual Reports, which contain exposure call data for various chemicals, product types etc, can be accessed at [www.austin.org.au/poisons](http://www.austin.org.au/poisons)
Unfortunately the cases are not followed up; therefore there is no outcome data. It could be assumed that many of the victims who were asymptomatic at the time of the call to the poisons centre would develop features of toxicity at a later stage.

**Of the controls within the scope of the Consultation RIS (listed on the previous page), which do you think are the most important for injury and poisoning prevention?**

<table>
<thead>
<tr>
<th>Western Australian Poisons Information Centre (WAPIC)</th>
<th>Victorian Poisons Information Centre (VPIC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poisonings can and do often occur in drugs that are available in supermarkets and over the counter in pharmacies.</td>
<td>VPIC believe that storage and packaging of Schedule 5, 6 and 7 chemicals, and to a lesser extent labeling, are the key controls for injury and poisoning prevention.</td>
</tr>
<tr>
<td>Accidental paediatric poisonings may be prevented by improved Packaging of Schedules 5, 6 and 7 chemicals and improved storage.</td>
<td>From experience, fatal or significant poisoning episodes involving these chemicals often involve the chemical being stored incorrectly, eg in the fridge or on the verandah in a drink bottle without a child resistant closure. This is despite all the warning and safety labeling that advises against these things. Unfortunately, people often do not read or ignore the labeling.</td>
</tr>
<tr>
<td>Advertising of Schedule 7 chemicals may prevent therapeutic errors and encourage safe storage.</td>
<td></td>
</tr>
</tbody>
</table>

**Do you think the preferred option for these controls outlined in the Consultation RIS would affect poison-related injury rates? If so, how?**

<table>
<thead>
<tr>
<th>Western Australian Poisons Information Centre (WAPIC)</th>
<th>Victorian Poisons Information Centre (VPIC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, it would reduce the rate of accidental poisonings across all age groups.</td>
<td>Ideally the preferred options should be evidence-based. There does not appear to be any robust supportive evidence supporting the options. Perhaps some ‘before and after’ studies could be done to find out what works and what does not.</td>
</tr>
</tbody>
</table>