



Poisons Schedules 5, 6 & 7 - Discussion Paper

Introduction

This document is supplementary to the document *Medicines and Poisons Regulations 2015 Consultation Regulatory Impact Statement* (CRIS). It is intended to be read in conjunction with this document and provide further background and supporting information on the materials and proposals presented in the CRIS. It has been written to provide a Western Australian (WA) context to current and future regulatory controls surrounding poisons.

In 2012 the former National Coordinating Committee on Therapeutic Goods undertook a national consultation process on national consistency in relation to poisons controls and authored the document *Strategies to implement a national approach to poisons chemical controls Decision Regulation Impact Statement* (DRIS). This compared current controls across Australia, including those present in Poisons legislation in Western Australia. The report included the resulting determined costs and benefits derived from both targeted and public consultations with industry stakeholders as well as State and Territory poisons regulators.

These nationally consistent controls have subsequently been incorporated into a published Commonwealth Poisons Standard for adoption into State law. The standards and their wording from Part 2 of this Standard are including in this document within the boxes at the foot of each section where a control is individually discussed.

The information that follows in this document summarises the impact to WA of the preferred regulatory controls recommended by the Committee and now published in the Commonwealth Poisons Standard. For more information on costs and impacts relating to regulatory poisons controls in Australia, readers are directed to the national DRIS document.

Regulatory issues related to Schedule 5, 6 and 7 poisons

Background

Schedule 5 poisons are those with a low potential for harm which can be reduced by use of packaging and labelling with warnings and safety directions. They can be toxic when ingested or used incorrectly. Schedule 6 poisons have a moderate potential for causing harm but the risk can still be effectively managed with packaging and labelling. The Medicines and Poisons Act 2014 adopts these definitions and the items in the Schedules of the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP). National adoption of these Schedules and the individual listing classifications of substances means that poisons are treated the same way in each State and Territory.

Schedule 5 and 6 substances tend to include items that are commonly used for a range of domestic non-therapeutic purposes. These might include bleaches, acids, alkalis, hydrocarbons and solvents. They have a wide range of uses and use settings. These products are readily available and are usually sold through supermarkets, hardware stores and small outlets without any specific professional advice or direction on safe and appropriate use. Once in use in the home the package and label must serve to protect the individual user.

Due to the potentially extended duration of storage in the home, such protections need to continue long after the purchase of the product.

Schedule 7 poisons are considered to have a much higher risk profile. These are those that are more toxic and may cause more serious harm if misused or ingested. They are considered to require more specialised experience or skill in correct use, based on a more limited range of intended applications, such as specific industrial uses. Examples include chlorine, mercury, arsenic, benzene, paraquat, cyanides, hydrofluoric acid, and strychnine.

Poisons regulatory controls

Existing and traditional controls over these substances include requirements over sale, purchase, storage, packaging, labelling, advertising, record keeping, disposal and hawking.

Current labelling and packaging requirements are taken from the SUSMP (PART 2) and include such issues as durability and breakage resistance of packaging, child resistance, inclusion of contents and concentration, standard text for warnings and safety, size and location of warnings, and so on. National consistency to ensure that a poison is instantly recognisable and treated the same, no matter the setting, is important both for households purchasing poisons and industry manufacturing and supplying poisons.

There has been no suggestion by WA stakeholders during the current regulatory consultation process that these specific controls are ineffective or inadequate.

At present there are no restrictions on the retail sale of S5 or S6 poisons. Under the current Poisons Regulations a wholesale licence is required for Schedule 6 poisons. This is not required for Schedule 5 poisons and not required in other States and Territories. The proposed controls over packaging, labelling, storage and disposal would apply equally to retailing and wholesaling and should be considered adequate in both circumstances. A wholesale licence is suggested to provide little added benefit and is proposed to be removed as a requirement. This would be more consistent with other states, reduce costs for business, without any increase to public risk. Readers are directed to the appropriate section on Licences and Permits in the main body of the Consultation Regulatory Impact Statement.

National consistency

In 2012 the former National Coordinating Committee on Therapeutic Goods undertook a national consultation process on national consistency in relation to poisons controls and authored the document *Strategies to implement a national approach to poisons chemical controls Decision Regulation Impact Statement*¹. This compared current controls across Australia, including those present in Poisons legislation in Western Australia. The report included the resulting determined costs and benefits derived from both targeted and public consultations with industry stakeholders as well as State and Territory poisons regulators. The document did not consider issues of licencing or restrictions over sale, but did examine all other controls. It concluded that although there were differences in design, there were limited substantive differences between States and Territories. The “variations in detail may not affect regulatory outcomes, but can add complexity for business seeking to comply”.

This national DRIS document provided recommendations for adoption of a national standard of controls. By each State adopting these same controls with the same wording, uniformity would be achieved in Regulation. This would provide industry certainty, reduce variation, reduce business costs in compliance and ensure that the public was afforded equal protection from poisons anywhere in Australia. The SUSMP can provide a uniform standard, but these standards only have meaning when adopted into State legislation. The regulatory controls are given effect by legislation in each State and Territory, who then apply, monitor and enforce the

¹ <http://www.health.qld.gov.au/ph/documents/ehu/ris-consult-paper.pdf>

standards as law. The WA Poisons Regulations already adopt the Schedule classifications system and the individual Schedule listings of poisons. For a number of years WA has adopted parts of the standards, including labelling and packaging requirements. In some cases the RIS identified a need for a uniform control to be added to the standard or for the wording to be modified. While the intent of the RIS is accepted, it may be the case that the SUSMP is not modified to provide a specific standard at the time of the enactment of the Regulations. Here, there would be a regulatory gap where the Regulations pointed to a standard that is not yet in place. Where this occurs the standard might be written into the Regulations until such time that the SUSMP control can be safely adopted.

Proposed nationally consistent poisons controls

The following preferred regulatory controls as outlined in the RIS and the expected effect in WA is as below:

Control	Schedule	Preferred option	WA effect
Storage	5	No explicit controls over retail storage	Reduction in controls
Storage	6	Outcome based control to limit retail storage.	Reduction in controls
Storage	7	Outcome based control, with “deemed to satisfy provisions” to limit retail storage	Reduction in controls
Disposal	5, 6, 7	Outcome based control to prevent public harm from unsafe disposal	No effect
Labelling	5, 6, 7	Labelling provisions of the SUSMP as is	No effect
Packaging	5, 6, 7	Packaging provisions of the SUSMP as is	Reduction in controls
Record Keeping	7	Adopt a prescriptive control for keeping of records for supply of S7 poisons	No effect
Advertising	7	Remove controls	No effect
Hawking	5, 6, 7	Adopt a prescriptive control	No effect
SUSMP Appendix C		Adopt a prescriptive control by removing prohibited substances from Appendix and including in a new schedule	No effect
SUSMP Appendix I: Uniform Paint Standard		Implement provisions of the SUSMP Schedule as written	No effect
SUSMP Appendix J: conditions for availability		Adopt a prescriptive standard once appendix J has been subject to review and update	No effect

The proposed national controls listed in this table are each considered individually in detail in the rest of this document.

Need for regulatory controls

Current poisons laws have been in place for many years and are well established as the default norm. They mirror regulatory schemes found in other advanced countries. In Western Australia, the current approach has been since 1964. As such, there is limited contemporary evidence on the likely impact of an increase or

potential decrease in regulation of poisons. For example, there are no known scientific trials of the effect on public harm in Australia from removing poisons controls.

The need for continued controls is evident in the number of poisonings seen annually in Australia. State and Territory Governments maintain publicly funded Poisons Information Centres, manned 24 hours a day, by highly trained health professionals. These are connected to public hospital toxicology units. The number of calls taken by these centres each year suggests that exposure to poisons and poisoning is still a frequent event in our society. The rate is relatively constant suggesting a residual risk associated with access to these substances.

Instances of increased harm serve to illustrate how relaxation of current regulatory controls might be expected to affect public safety. Nicotine is regulated under a number of pieces of legislation. When not contained in a tobacco product or in a regulated therapeutic good for smoking cessation it is captured as a Scheduled poison. Nicotine is highly toxic and is an effective agricultural insecticide. For non-therapeutic use it is included in Schedule 7 of the SUSMP. Small amounts can cause serious acute illness when ingested and there are cases of fatality, especially in children. There are numerous cases every year of poisoning of children through ingestion of discarded cigarettes. Some e-cigarettes use highly concentrated solutions of nicotine, designed to be diluted and decanted into smaller cartridges for vaporisation and inhalation via an electronic device. These solutions are in small bottles (10 to 20 ml), can be flavoured and perfumed with attractive scents (such as peppermint) and have brightly coloured labels. As S7 a substance they cannot be sold in WA, but are known to be imported from countries such as China for personal. Samples seized by the Department are often in packages that are flimsy and non-compliant with Australian packaging expectations. Labels are of similarly poor standard. Information from Australian Poisons Information Centres indicates an acute rise in the rate of child poisoning from these products. This includes published cases in the medical literature.

Local consultation

During preliminary consultation for the Western Australian Medicines and Poisons Regulations there was limited, if any, comment relating to the matters raised in the RIS. It is suggested that the national consultation process was comprehensive, rigorous and provided good opportunity for engagement and comment by all states, including WA. Specific comment was sought from industry groups. The recommendations of the RIS were generally endorsed. No specific WA related deviations were identified. Stakeholders did comment on difference with licencing and permits between jurisdictions. This is covered elsewhere.

Storage – Schedule 5

WA Poisons Regulations currently require poisons to be stored to preclude contamination of food and drug and prevent access by children. Most jurisdictions do not have prescriptive controls for storage of Schedule 5 poisons. There is limited evidence that these controls have an impact on rates of poisoning from these substances. The preferred option is to remove any specific controls. The findings of the national DRIS were that there would be reduced costs to business without likely increase in risk. This may affect up to an estimated 6000 or more businesses in Western Australia.

Storage – Schedule 6

For Schedule 6 poisons, the WA storage controls are currently as for those in Schedule 5. It is acknowledged that by definition Schedule 6 poisons represent an increased risk to the public and the resulting harm to the individual may be greater from any unintended misuse or ingestion.

The national DRIS recommended an outcome based control as the most cost effective for business compliance that would still address the risk posed by Schedule 6 poisons. An outcome based control would seek to legislate that a person supplying a Schedule 6 poisons must prevent access by children. There may be several ways a business, such as through sales barriers, secure display units, height or placement, positioning near sales staff. This would allow different ways of addressing the risk while achieving public protection. There would be little change to the current Regulatory requirement in Western Australia which is already an outcome based statement to this effect and hence no added impost on business. There would be no change to costs to Government in regulating this requirement.

SUSMP SECTION THREE - STORAGE

3.1 General requirements

- (1) a person who sells or supplies Schedule 6 poisons by way of retail sale must keep those poisons in such a way as to prevent access by children.

Storage – Schedule 7

Schedule 7 poisons are considered to have a much higher risk profile. These are those that are more toxic and may cause more serious harm if misused or ingested. They are considered to require more specialised experience or skill in correct use based on more limited applications. For example Schedule 7 poisons are not expected to be routinely employed in a home but are expected to be used for very specific industrial or commercial applications. For this reason the storage of Schedule 7 poisons warrants greater attention and control to prevent public risk. Most States require that public access to these substances is restricted. This is on the basis that retail sales must be to an approved person and that the retailer must ensure that there is no possibility an unauthorised supply can occur.

The RIS identified that controls were deemed necessary to address this risk. An outcome based control would allow industry flexibility to adopt different methods of preventing public access. The provision of guidance on suitable methods of preventing access would assist industry to appropriately comply with this requirement.

In Western Australia alignment with uniform national controls represents a minor reduction in current regulatory requirements. In practice the provision of deemed to satisfy provisions would mean that business have more flexibility while still being required to meet the outcome of preventing public access. For most they should already be safely and securely storing the poisons under current legislation, so that there would be no additional costs in compliance, and in some cases a less costly but suitable method might be employed. There are approximately 200 Schedule 7 retailers in Western Australia that may be affected.

SUSMP SECTION THREE - STORAGE

3.1 General requirements

- (2) a person who sells or supplies Schedule 7 poisons must not keep those poisons for retail sale in any areas or in any area or in any manner that allows physical access by any person unless they are:
 - (a) the owner of the retail establishment; or
 - (b) an employee of the owner; or
 - (c) legally permitted to purchase the substance and are under the supervision of the owner or an employee of the owner.

Disposal - Schedule 5, 6 & 7

WA Poisons Regulations currently require that poisons not be disposed of in any place or manner likely to constitute a risk to the public. There is risk that upon completion of use of a poison that it may be discarded in a way that allows access by another person and subsequently this results in harm. For example the disposal in a public bin of a schedule 7 poison may lead to retrieval and use by an unauthorised person without experience in correct handling and personal protection. Dumping of large quantities may allow poisons to affect many people by entry into food, water or the environment. Work place exposure and environment contamination may be protected by other legislation however it is suggested there are gaps in other areas not covered by these laws. It is important that where there are either instances or repeated practices that pose a broader public risk to people that there are powers to remedy these.

The RIS recommended adopting an outcome based control that makes it an offence to dispose of poisons in a manner that puts public health at risk. Although it was estimated that approximately 3000 or more businesses may be affected, for most with good practices, there would be no additional cost of compliance. This would only affect any business putting public health in danger. This requirement allows enforcement of safe disposal by Government, without added cost to already responsible sectors of industry.

SUSMP SECTION FOUR - DISPOSAL

4.1 General requirements

- (1) a person must not dispose of or cause to be disposed of a Schedule 5, Schedule 6 or Schedule 7 poison in any place or manner that constitutes or is likely to constitute a risk to public health or safety.

Labelling - Schedule 5, 6 & 7

The focus of labelling a poison is to ensure that the supplier and user can positively identify the contents. It must also alert the user to the fact that the contents may be poisonous and that care must be taken. The existing labelling requirements for poisons are well established in Australia. For example, the format of the contents is stated in a certain uniform way regardless of differences between products, the text is of a minimum readable size and certain font style, it has a particular placement on the product, that all signal headings (warning statements) are present, and so on. Clearly, in the case of a person being poisoned, the ability of health care workers to immediately identify the poison is paramount to allow rapid assessment of the likely toxicity and apply the correspondingly correct antidote or treatment. Standard requirements for these needs are outlined in the SUMSP. The need for appropriate labelling is the same regardless of the Schedule of the poison. For example a person must be able to safely identify a poison whether a moderately dangerous Schedule 5 poison or a very toxic Schedule 7 poison. The SUSMP deals with the differences that do exist, through use of different signal headings and cautionary statements. For example, a highly alkaline product requires a label stating that it "burns skin and throat". If not intended for internal use, it requires the statement "do not swallow".

Most large scale medicine and poisons manufacturing does not originate from WA, but these items are still sold across Australia and into WA, where they are distributed widely. For industry, variations in labelling by State and Territory would be difficult to meet without financial penalty. For consumers, the consistency across States and Territories is important, such that a poison stored in the home, anywhere in Australia, is instantly recognisable and appropriate caution can be exercise. The national DRIS assessment was that the most cost effective option to address the risk was for all States and Territories to adopt SUSMP labelling requirements without modification.

WA Poisons Regulations that a person shall not store, supply or transport a poison unless the container complies with Part 2 of the SUSMP. Similarly, any affixed label must comply with Part 2 of the SUSMP. The Regulations state that Part 1 of the SUSMP shall be used when interpreting Part 2 of the SUSMP. WA currently adopts the requirements of the SUSMP for these poisons without change, as do most States and Territories. Maintaining this position is the safest and least costly option. It would have no impact on the current situation in WA. There has been no suggestion during preliminary WA consultation that there is any failure of current labelling standards or that there is any difficulty with compliance.

The quantity and nature of use of a substance in an industrial setting is very different to the home, even though the poison may be exactly the same substance, formulation and concentration. It is noted that for industrial chemicals the risks may be very different. Acute ingestion in the home should be differentiated from risks of chronic but minute daily exposure in the workplace. For example, poisons legislation is not designed to mitigate the risk of airborne exposure to cancer forming substances used every day by a worker in a manufacturing plant. Occupational health and safety laws, which post-date poisons laws in their design, are designed to deal with these matters and place obligations on employers to protect their workers. These laws do not extend beyond businesses and do not adequately cover domestic use. These laws might then be considered complimentary. In many countries, and also in Australia, the labelling system used in industrial settings is based on the Globally Harmonised System of Classification and Labelling (GHS)². It is hazard based and uses pictograms specific to occupational exposure. These may not be appropriate to domestic use. Use of dual systems is expected to be confusing for consumers and dilute potential messages. The most appropriate labelling should be applied in the most appropriate setting according to the specific risk to be reduced. For example very large quantities that cannot be purchased for home use could be hazard labelled for industrial use only. The SUSMP provides for these situations and states that where sold solely for industrial purposes and labelled in accordance with the Safe Work Australia national labelling code (REF).

From time to time there may be a need to grant an exemption to this labelling. For example if there is a supply shortage that affects access to the poison. In these cases alternative sourcing of product with overseas labelling might be the only accessible option. Inability to access the substance might have a dramatic effect on industry and adversely affect consumers. If a pesticide cannot be used because the labelling does not comply, this may even have adverse public health consequences. In these circumstances, where safe to do so, certain short term exemptions, subject to other safety measures, might well be considered appropriate.

Packaging – Schedule 5, 6 & 7

The objective of packaging for a poison is to ensure that any person contacting the poison is kept safe. This includes during transport, during storage by the retailer, storage by the consumer, and during use by the consumer. The packaging needs to be robust enough to protect all of these people from exposure that might lead to poison or harm. For example the packaging for an acid needs to be of a standard that will not allow failure of the container or leakage that would lead to a spill and skin contact where a person might be badly burnt and scarred. Packaging needs to be resistant to damage, prevent leaks, stop contamination of the product, prevent child access and carry the necessary labelling.

Most large scale medicine and poisons manufacturing does not originate from WA and these items are sold across Australia. For consumers the consistency across States is important, such that a poison made and transported from another State or Territory in Australia provides the same protection from spills, ingestion by a child, or other harm, no matter where it ends up. For industry, variations in packaging by State and Territory would be difficult to meet without financial penalty. The national DRIS assessment was that the most cost

² <http://www.safeworkaustralia.gov.au/sites/swa/whs-information/hazardous-chemicals/ghs/pages/ghs>

effective option to address the risk was for all States to adopt SUSMP labelling requirements without modification.

WA Poisons Regulations that a person shall not store, supply or transport a poison unless the immediate container in which the poison is stored complies with Part 2 of the SUSMP. WA currently adopts the requirements of the SUSMP for these poisons without change, as do many other states. Maintaining this position is the safest and least costly option. It would have no impact on the current situation in WA. There has been no suggestion during preliminary regulatory consultation in WA that there is any failure of current packaging standards or that there is any difficulty with compliance. The national DRIS noted that this option would require removal of some additional controls in WA. This should be considered acceptable for the reasons below.

Current WA Poisons Regulations also state that a container on which the name of a poison is embossed may not be used for another poison. If a name of the poison is marked in raised letters in the package then using this package for another poison may lead to incorrect identification.

Currently the WA Poisons Regulations prohibit use of a plastic bag or cardboard box as to sole container to store a poison. A plastic or paper bag would not comply with the SUSMP. For a wholesaler, retailer or supplier adhering to the SUSMP, this regulation requirement would be met in any case. For a person who has purchased a poison it would certainly always be desirable to keep the poison in the original SUSMP compliant packaging. However, as is unlikely to be practicable to identify and prevent all instances of this occurring in the home, alternative means such as education about dangers or label warnings may be more appropriate than retaining this restriction.

Currently the WA Poisons Regulations prohibit selling food, drink, condiment or medicine in a container which is either the same as a container used for a poison for external use or which cannot be distinguished (by sight and touch) from a poisons container. External use would include uses based on application to a surface rather than for human ingestion, such as a cleaner, acid, solvent, paint, pesticide, etc. The intent of this requirement is to ensure that a substance purposely intended to be consumed internally could be confused with a substance that is a poisons intended for external application. A poison that is in a food container would not comply with the SUSMP requirements. A product sold as food that contains a poison or traces of poison that are not food would be a hazard with the potential to cause ill effects under the Australia New Zealand Food Standards Code ³. This is adopted into law in Western Australia under the Food Act 2008 (REF). Furthermore a food in a poisons container may not be compliant with labelling and other requirements of this Code. It is suggested that sufficient public protection exists without the need for this added Regulation.

From time to time there may be a need to grant an exemption to these containers. As with the commercial labelling of a poison, there may also be instances where a container does not fully comply with the SUSMP requirements. In general, this should be considered unacceptable, however if the risks are assessed, and on balance it is more detrimental to the public to be without a certain poisons, and the risk due to the lack of container compliance is low, then in these circumstances, where safe to do so, certain exemptions subject to other safety measures, might well be considered appropriate.

³ <http://www.foodstandards.gov.au/code/Pages/default.aspx>

Record keeping - Schedule 7

Schedule 7 poisons are dangerous poisons for industrial, agricultural, veterinary or farm use. They are highly toxic, intended for specialised use, and can include those specifically used for their toxic properties, such as paraquat and strychnine.

Most states have controls on record keeping for Schedule 7 poisons. This is in contrast to Schedule 5 and 6 poisons, which are intended for general use and require no special expertise to use. As the packaging and labelling is considered adequate to prevent harm, anyone may purchase a Schedule 5 or 6 poison and there are no restrictions on who may be sold one. In this situation there is no useful purpose for keeping a record of sales. In contrast, a Schedule 7 poison is very toxic by nature and must only be sold to and used by an authorised person. For this reason there is an onus on a supplier to ensure that they are authorised to sell and that the person purchasing a Schedule 7 poison is authorised to use. For example, an agricultural supplier might provide a poison intended for widespread animal pest reduction on a farm to a primary producer. They should not provide this same industrial poison to a person in a metropolitan area wishing to kill an animal on their domestic property. Keeping the record of who has been sold a Schedule 7 poison is an appropriate means to ensure and monitor that only authorised persons have been supplied.

The national DRIS noted that record keeping requirements were essentially similar in all States and Territories there was a similar level of compliance for industry cost in all jurisdictions. The least cost to industry in compliance would be adopting the same prescriptive approach in each State. That is that the record keeping, the exact information to be kept and the time to be kept. The national DRIS found the preferred option was to keep records for five years which would be consistent with typical record keeping requirements, such as for taxation purposes.

Current WA Poisons Regulations require that a register of this information is kept. The register must record the date of sale of a Schedule 7 poison, the name and address of purchaser, name and quantity of poison sold, address the poison is delivered to and the intended place of use (if different), and the signature of the purchaser. The information to be stored recommended by the RIS is almost the same as already required. It does not recommend that the place of delivery is recorded, although this might normally be recorded as part of the business transaction. It does not require the intended place of use. As only an authorised person may purchase and use a Schedule 7 poison, they should only be using it at an appropriate location and for an appropriate purpose. This would be the responsibility of the purchaser, not the supplier. As long as the supplier has only provided the poison to an approved person and can identify who this is there should be sufficient accountability and information to ensure that the public is protected from indiscriminate Schedule 7 poisons use.

The register may be kept in writing or electronically. It need not be kept in a purpose designed Register as long as it is collected and readily available for inspection as evidence of only supplying to approved persons. The WA Poisons Regulations require that the record is kept of 2 years. This period of record keeping is longer than current, but may already be required for this duration other business purposes and hence the impact is expected to be limited.

SUSMP SECTION FIVE - RECORD KEEPING

5.1 General Requirements

- (1) a person who sells or supplies Schedule 7 poisons must keep a record of:
 - (a) name and address of seller or supplier and purchaser; and
 - (b) date of order and supply; and
 - (c) approved name or trade name that identifies the poison to be supplied or sold; and
 - (d) quantity supplied or sold; and
 - (e) proof of purchaser authorisation must be recorded in jurisdictions where an authorisation is required for purchase.
- (2) records for sale or supply of Schedule 7 poisons must be kept for a minimum period of five years.

Other controls - Schedule 7

Although not considered in the national consultation, there can be other controls that a State or Territory exerts over individual Schedule 7 poisons, based on specific need or risk.

The Medicines and Poisons Act 2014 provides the ability for the Chief Executive Officer (CEO) of Health to issue a Schedule 7 poisons notice. This notice would set out general conditions deemed necessary to protect users and the community that apply to any use of a particular poison or poisons. A current example would be the Code of Practice for the safe use and management of 1080 published by the Department of Health, Agriculture and Food, and Environment and Conservation⁴. 1080 (also known as sodium fluoroacetate) is used as a vertebrate pest control. It is a selective poison for introduced animal species. As native flora is naturally high in 1080 content native animals are general immune to 1080 as a poison. This poison can be used as an effective way of controlling foxes, rabbits, wild dogs and other pests in agricultural and in environmentally protected areas. For this reason it is an important poison that must be available to a small number of users.

Delivering the poison involves deliberately leaving poisoned baits over large areas with the intent that feral animals will eat them and be poisoned. This then generates a risk that another animal may eat the bait and be poisoned, such as a family dog. Even with the Code in place a number of these dog deaths occur each year. In general, for those incidents the Department investigates where a causative link to baiting is considered probable, the Code has not been fully followed. It is then important to be able to enforce conditions of safe use such as contained in the 1080 Code. It is less likely, but still possible that a human may be poisoned by careful or reckless use of such baits.

The Code provides a framework for controlling manufacture, sales and use of the poison. It dictates where they are used, when they are used, their placement, warning signs, and so on. The Code and the system for issuing permits to use 1080 was updated in 2012 to provide increased flexibility for access by pastoralists, but while retaining other controls over use. There has been no request for change to the current system of notices and no call to update the existing notices. For this reason it is considered that those in place should be retained in place without modification.

⁴ <http://www.public.health.wa.gov.au/cproot/4482/2/1080code.pdf>

Advertising – Schedule 7

The national DRIS recommended that no advertising controls be applied to Schedule 7 poisons. This was on the basis that most States and Territories do not have such a restriction at present and that only an authorised person could purchase a Schedule 7 poison in any case. Advertising of these products would likely be targeted at the authorised group, which would be businesses or industrial users through specialised trade mediums. WA has no current Poisons Regulation that prevents Schedule 7 advertising. On this basis, none is recommended for introduction.

Hawking - Schedule 5, 6 & 7

The Galbally⁵ review recommended that poisons laws be amended to allow consumer samples of Schedule 5 and 6 poisons in accordance with a Code of Conduct. The national DRIS did distinguish between samples and hawking. Hawking was defined as the sale of poisons door to door, at public events as an alternative form of distribution to a shop. Samples were defined as the supply of small packages to introduce users to a product. The DRIS notes that it is undesirable for samples to be provided unsolicited or in a way that may make them available to children, such as through letter drops.

While alternative sales methods could be supported, this should not allow inappropriate public access that could increase poisoning. Still, there may be a commercial and even public advantage to allowing samples. It is noted that any person selling a Schedule 5 or 6 poison would need to meet all packaging and labelling requirements. For Schedule 6 poison, the necessary storage requirements must also be met. As these controls are designed to work in peoples' homes equally as well as in a retail store, they should prove sufficient regardless of the exact location of supply.

The national DRIS recommends that a prescriptive control be adopted that permits some hawking and supply of samples along with a Code of practice that encouraged industry self-regulation. The necessary limits on this permissible activity would be to dictate those substances that could be sold, the amounts that would classify as "samples" and the size of the packets, where this was permitted, and that there was safe disposal. There was also found to be a need to ensure that inappropriate access, such as possible supply to children did not occur.

The Poisons Act 1964 expressly prohibits hawking. That is, it is an offence to sell or try to sell, hawk or peddle, distribute or cause to be distributed as a sample, any poison in a street or public place or from house to house. Hawking is not further defined. Such a prohibition would seem appropriate for medicines that professional expertise and oversight in use. The Medicines and Poisons Act 2014 does not prohibit hawking, but it is an offence to supply a poison of this type where it is reasonable foreseeable that there is a serious threat to public safety. Any sales of Schedule 5 and 6 must be in accordance with Regulations. The Regulations should adopt the prescriptive control as recommended. There may be benefits to consumers and business, but there is no expected impact on consumer safety.

Schedule 7 poisons may only be supplied by a person licenced to do so, in accordance with any Notice or Regulation and only to a person authorised to use them. A person may not be in possession of a Schedule 7 poison unless authorised. Schedule 7 poisons are not suitable for samples and due to the storage requirements and should not be considered safe for supply in public places. For these reasons it is not proposed that hawking or samples of such substances be considered and this was not canvassed in the national DRIS.

⁵ <https://www.tga.gov.au/review-drugs-poisons-and-controlled-substances-legislation-galbally-review>

SUSMP SECTION SIX - SALE, SUPPLY, POSSESSION, or USE

6.1 General Requirements for Schedule 5 and Schedule 6 Product samples

- (1) a person must not sell or supply or distribute free a product sample containing a Schedule 5 or Schedule 6 poison in any manner unless the recipient has the opportunity to refuse at the time of sale or supply.
- (2) a person must not sell or supply or distribute free a product sample containing a Schedule 5 or Schedule 6 poison in an unsolicited manner for example via the post / mailbox or attached to any other product.
- (3) a person must not sell or supply a Schedule 5 or Schedule 6 poison product sample in a manner that does not promote disposal in accordance with section four.

6.2 Schedule 7 Poisons

- (1) a person must not possess or use a Schedule 7 poison for domestic or domestic garden purposes.
- (2) a person must not sell or supply:
 - (a) a Schedule 7 poison for domestic or domestic garden purposes; or
 - (b) a Schedule 7 poison being a liquid preparation containing paraquat unless it is coloured blue or green and contains sufficient stenching agent to produce an offensive smell; or
 - (c) a Schedule 7 poison for which an authorisation to purchase, possess or use is required by the appropriate authority unless the purchaser produces his or her authorisation.
- (3) a person must not sell, supply or distribute free product samples containing Schedule 7 poisons.

SUSMP Appendix C

Appendix C of the SUSMP contains a list of poisonous substances that are of such danger that their use should be not be permitted in any setting. Examples include amygdalin. They may be likened to Schedule 9 substances like heroin, with the difference that there is no abuse potential. Substances in this Appendix are prohibited from sale supply or use. States and Territories use different means to adopt Appendix C, but all have some form of mechanism to achieve consistency in banning these substances.

In WA, Appendix C substances are added to a list of prohibited items through a Notice issued under Section 22 of the Poisons Act. The Notice replicates those items listed in Appendix C. Appendix C is not subject to the same processes for addition of substances as the Schedules and may be problematic to adopt into State legislation for this reason.

The national DRIS recommended adopting a prescriptive control by removing Appendix C and listing these same substances in a newly created Schedule 10. This would subject substances to the same hazard / risk assessment as other scheduled items when listing according to established criteria and expert assessment. This should be considered more robust and would prevent the unnecessary or incorrect prohibition of substances where it is not warranted.

Adoption of Schedule 10 would provide consistency for regulators in all States and Territories, for industry and consumers. It would have the effect of continuing to ban those substances dangerous to life or that do not have any legitimate industrial purpose. The Schedule would prevent the sale or use of these substances and provide a recognised list of those items that would consistent across Australia and readily accessible to allow compliance. The effect on Western Australia would be minimal, where these substances are already prohibited, however uniformity would be improved and there would be a reduction in regulatory costs from automatically adopting the Schedule.

SUSMP Appendix I

Appendix I of the SUSMP aims to limit the proportion of dangerous chemicals in paint. The two most toxic examples are cadmium and lead. Exceeding limits posed in the standard may pose a risk to public health. Most States and Territories control or adopt a control on paints of this nature.

In WA, Appendix I is already adopted by reference into the Poisons Regulations. There has been no suggestion by stakeholders that these specific controls are ineffective or inadequate. The RIS recommended adoption of this option as preferred. This control would have the effect of continuing to prohibit importation, manufacture and use of lead and cadmium based paints. There would be minor impact on industry in the state that did not currently adopt Appendix I, some reduction in complexity and cost for consumers and limited impact for other states.

SUSMP Appendix J

Appendix J of the SUSMP contains a list of Schedule 7 poisons and authorised persons to who the use of these poisons should be limited. The intention is to restrict these substances to certain groups. For the most part this Appendix recommends that these poisons not be available to anyone except authorised or licensed persons. The Appendix does not indicate who may be an authorised or licenced person. The licencing and permitting of persons was beyond the scope of the national DRIS. Each State and Territory achieves controls over availability however these aims are achieved differently in each jurisdiction.

The preferred option of the national DRIS is for all States and Territories to adopt a prescriptive control which is the current Appendix J. The national DRIS further suggested that prior to adoption the Appendix required review of all current entries and assessment of risk and update of any new entries.

WA does not adopt Appendix J into Poisons Regulations. Appendix J could be adopted once updated to reflect current status of those substances listed, however authorised persons would still need to be appropriately defined as part of the regulatory framework, and licences and permits issued as usual, as required. There are approximately 200 Schedule 7 permitted persons in WA that this may affect.