



SOCIAL-RISK AND DECENT WORK IN THE HEALTH CARE SECTOR PART 1: PHARMACEUTICAL WHOLESALING AND DISTRIBUTION

AUSTRALASIAN CENTRE FOR CORPORATE RESPONSIBILITY (ACCR)

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ABOUT THIS REPORT

This report has been prepared by Dr Katie Hepworth, ACCR's Director of Workers' Rights. Dr Hepworth has a background in labour rights policy and research.

This report is the first in a series of three reports that will identify the links between workforce issues and operational performance across key sectors in the broader health care sector.



Background

This is the first in a series of three reports that aim to identify the links between workforce issues and operational performance across key sectors in the broader health care sector.

The ASX 200 Health Care Index covers companies who manufacture health care equipment and supplies or provide health care related services, and owners and operators of health care products, providers of basic health care services, and owners and operators of health care facilities and organisations. This second group includes companies primarily involved in the research, development, production and marketing of pharmaceuticals and biotechnology products.¹

This report focuses on pharmaceutical distribution. Two further reports will be released in 2019 which will focus on medical device manufacturing and on aged care and private hospitals respectively.

The overarching theme of this series of reports is the interrelationship between decent work and company performance. Decent work is a core element of the 2030 Sustainable Development Goals (SDGs).² Following the ILO and the SDGs, the UN Global Compact have made “Decent Work in Global Supply Chains” as one of their key Action Platforms.³

In making the investment case for decent work, these three reports will focus on the distinct role that the workforce plays in value creation for companies in the health care sector, and the specific risks that relate to diminished workforce conditions in this sector. While many of the issues in the health care sector are common to all sectors, there are specific workforce issues that are heightened in the health care sector – from the technical expertise required by workers designing and assembling advanced biotech equipment, to the emotional and physical labour provided by care workers and medical staff in aged care and private hospitals.

Executive summary

Two ASX 200 companies were assessed for this report: Australian Pharmaceutical Industries Ltd. (API), and Sigma Healthcare Ltd. (SIG). A third company operating in the Australian pharmaceutical wholesaling and distribution market, EBOS Group Ltd. (EBO), has not been included in this analysis because it is listed on the New Zealand stock exchange. Together, these three companies control over 80% of total prescription pharmaceutical sales in Australia.

There is increasing recognition of the importance of the workforce in delivering the long-term strategic objectives for a company, with some investors arguing that workforce issues can “be proxies for quality of management and potential predictors of future performance”.⁴ Furthermore, given growing political and social attention to companies’ provision of fair and decent work, or conversely to the downward pressures on wages and conditions, there is a growing awareness of the investment case for decent work, particularly amongst pension and superannuation funds.

As this report outlines, there are a number of financial, reputational, procurement and legal risks which may derive from a failure by companies (and investors) to properly engage on workforce issues. However, this engagement is hindered by a lack of reporting on workforce and broader “S” issues. As the Pensions and Lifetime Savings Association (PLSA) argue, current reporting workforce

¹ ASX, ‘Sector indices’, , 2010, <<https://www.asx.com.au/products/sector-indices.htm#healthcare>> [accessed 1 March 2019].

² ILO, “Decent Work and the 2030 Agenda for Sustainable Development,” accessed January 29, 2019, <https://www.unglobalcompact.org/docs/publications/DecentWorkandthe2030Agenda.pdf>.

³ UN Global Compact, ‘Decent Work in Global Supply Chains’, , 2019, <<https://www.unglobalcompact.org/take-action/action-platforms/decent-work-supply-chains>> [accessed 5 February 2019].

⁴ S Rohan, *Valuing Decent Work in your Investments*, Toronto, SHARE, 2017, <https://share.ca/documents/investor_briefs/Social/2017/Valuing_Decent_Work_Investor_Guide.pdf> [accessed 5 February 2019].

issues by companies “is generally not of sufficient quality to enable investors to identify risks or opportunities relating to a company’s workforce and target their engagements accordingly”.⁵

In response to this reporting deficit, this report begins with an analysis of the indicators of a number of key labour rights benchmarking initiatives. It identifies six key workforce themes that are common across most of the initiatives, aggregating the various indicators under each of these themes. It then makes a case for the relevance of each of these themes to operational performance, providing a guide for investors on how to engage on these issues with companies.

This report considers the experience and training required maintain compliance in the heavily regulated pharmaceutical distribution sector, and to the limitations of relying on third party audits and whistleblower hotlines to maintain regulatory compliance. Based on the analysis of the two ASX 200-list pharmaceutical distribution companies examined in this report – Sigma Healthcare Ltd. and Australian Pharmaceutical Industries Ltd. – the report concludes with a number of recommendations for investors engaging these companies.

Recommendations

1. Investors should require companies to provide more detailed reporting on workforce issues, in line with the six workforce themes detailed in this report, to allow for greater transparency on workforce issues and allow for more targeted engagement by investors.
2. Investors should engage Sigma Healthcare regarding their increasing use of non-union agreements, which has implications for the effectiveness of grievance procedures and the ability for staff to provide day-to-day information on regulatory and legislative compliance.
3. Investors should engage Sigma Healthcare on their newly negotiated collective agreements, and whether the loss of employment grades and reduced wages under these agreements, may undermine their ability to attract suitably trained and experienced staff.

Methodology

ACCR conducted a review of major labour rights benchmarking initiatives to identify key workforce issues that are of relevance to investors. Human rights initiatives which included a workforce or labour rights focus have also been included in the review. These indicators were aggregated into six key themes, which have been used to guide the analysis of each company and to determine the key risks in each of the industries examined. The full list of indicators and categories has been provided in section 1, along with engagement guidelines for investors which highlight the relevance of each workforce issue to operational performance.

A number of organisations highlight both the importance of workforce issues to long-term company performance, and the lack of reporting on these issues by the majority of ASX-listed companies.⁶ Due to the insufficient level of reporting on workplace issues by listed companies, this report has drawn on a broad range of publicly available information in its assessment of each company and sector. In addition to company documents (such as sustainability reports, annual reports, and so on), it has also examined media reports and existing reviews by prominent civil society organisations (CSOs). This third-party information has primarily been used to identify key operational risks, the gaps in existing company policies, and the differences between politics and outcomes.

The report was sent to Sigma and API for feedback prior to release and will form the basis of ongoing engagement with both companies.

⁵ Pensions and Lifetime Savings Association, *Understanding the worth of the workforce – a stewardship toolkit for pension funds*, PLSA, 2016, <<https://www.plsa.co.uk/Policy-and-Research/Document-library/Understanding-the-worth-of-the-workforce-a-stewardship-toolkit-for-pension-funds>> [accessed 6 February 2019].

⁶ Pensions and Lifetime Savings Association; NAPF, *Where is the workforce in corporate reporting?*, NAPF, 2015, <https://www.cipd.co.uk/Images/where-is-the-workforce-in-corporate-reporting_tcm18-19910.pdf>.

Decent work: relevance to investors

There is increasing recognition of the importance of the workforce in delivering the long-term strategic objectives for a company, and that workforce issues may even “be proxies for quality of management and potential predictors of future performance”.⁷ Despite this, reporting on workforce issues – like broader “S” issues - “is generally not of sufficient quality to enable investors to identify risks or opportunities relating to a company’s workforce and target their engagements accordingly”.⁸ While the UK Modern Slavery Act has begun to address this, a recent report by the *Business and Human Rights Resource Centre* found only patchy compliance with the requirements of the Act to date.⁹ The Workforce Disclosure Initiative (WDI), which is supported by 79 investor signatories with combined assets under management of \$7.9 trillion, are just one of the initiatives to address this.

Judicious management of the workforce can directly improve value creation, while poor management of the workforce may not only reduce value creation but also may increase a number of risks to the company that have an impact on company growth. These risks can be categorised as systemic risks, direct risks, reputational damage, political risks, and regulatory risks.

However, investors are increasingly taking a broader interest in the treatment of workers, beyond narrow considerations of value creation. As the PLSA notes, there is a currently a:

Heightened societal/political expectation that companies will ensure fair and decent working conditions for their workers, and that investors will act as stewards of investee companies in this respect.¹⁰

This is particularly the case for global pension funds, who must maximise returns for their members as both shareholders and, in many cases, as employees in the same companies that they are engaging.

The International Labour Organisation (ILO) defines “decent work” as:

opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.¹¹

Decent work is a core element of the 2030 Sustainable Development Goals (SDGs).¹² Following the ILO and the SDGs, the UN Global Compact have made “Decent Work in Global Supply Chains” as one of their key Action Platforms.¹³

As the ILO definition makes clear, decent work goes beyond the eradication of the most extreme forms of labour exploitation – forced labour, modern slavery and child labour – and addresses a broader suite of labour rights, as enshrined in internationally-accepted norms, standards and frameworks such as the ILO Fundamental Conventions, the Organisation for Economic Development (OECD) Guidelines for Multinational Enterprises (MNEs) and the UN Guiding Principles for Business and Human Rights (UNGPs).

⁷ Rohan.

⁸ Pensions and Lifetime Savings Association.

⁹ Business and Human Rights Resource Centre, *FTSE 100 and the UK Modern Slavery Act: From Disclosure to Action*, Business and Human Rights Resource Centre, <<https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Briefing%202018.pdf>> [accessed 8 March 2019].

¹⁰ NAPF, , p. 11.

¹¹ ILO, ‘Decent work’, , 2019, <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> [accessed 26 February 2019].

¹² ILO, “Decent Work and the 2030 Agenda for Sustainable Development,” accessed January 29, 2019, <https://www.unglobalcompact.org/docs/publications/DecentWorkandthe2030Agenda.pdf>.

¹³ UN Global Compact.

Workforce Indicators, Company Performance and Material Risks

This section analyses a number of key labour rights benchmarking initiatives to highlight themes that are common to all initiatives. It has also considered human rights initiatives, where those initiatives contain indicators with a labour or worker focus. The initiatives and guidelines reviewed were:

- Committee on Workers' Capital (CWC) Guidelines for the Evaluation of Workers' Human Rights and Labour Standards
- Corporate Human Rights Benchmark (CHRB)
- Ethical Trading Initiative (ETI) Base Code: the ETI Base Code is founded on the conventions of the International Labour Organisation (ILO) and is an internationally recognised code of labour practice
- Global Reporting Initiative (GRI)
- OECD Guidelines for Multinational Enterprises
- UN Guiding Principles on Business and Human Rights: the authoritative global standard on business and human rights. The UNGPs reference the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.
- UN Principles of Responsible Investment (UNPRI)
- Workforce Disclosure Initiative (WDI)

The indicators from each initiative have been grouped into six key themes: workforce composition, turnover, working conditions (wages, working conditions), hours, safety, and worker voice. An analysis of each theme's relevance to operational performance and the provision of decent work is outlined below.

Workforce Composition

CWC 1.1	Proportion of full-time and part-time positions (number) are held by permanent, contract, or temporary workers.
CWC 1.1.1	Number of workers hired through labour-hire agencies.
CWC 1.2	Does the company have a statement of policy that includes a commitment to uphold the working conditions of workers employed through business relationships, including labour agencies, franchises and independent contractors?

A breakdown of the number of full-time, part-time and agency/labour-hire workers is useful in highlighting "potential... problematic issues that have arisen around poor treatment of 'zero hours' or agency staff at certain businesses".¹⁴ Excessive use of temporary/contract workers increases the risk of creating a two-tier workforce, with the contingent workforce not receiving the same wages and conditions as the directly employed or permanent workforce. These conditions may include holiday leave, access to training, security of employment, and even wage rates.¹⁵ For this reason, the CWC calls on companies to report on both the workforce composition and to provide information on the wages and conditions provided to permanent staff that are not provided to contingent staff.

¹⁴ Pensions and Lifetime Savings Association.

¹⁵ CWC, *Guidelines for the Evaluation of Workers' Human Rights and Labour Standards*, CWC, 2017, <https://www.workerscapital.org/IMG/pdf/cwc_guidelines-workers_human_rights_and_labour_standards_final_may17.pdf> [accessed 27 February 2019]; WDI, *Workforce Disclosure Initiative. Improving the Quality of Jobs: Pilot Year Summary*, London, WDI, 2018, <<https://shareaction.org/wp-content/uploads/2018/04/WDI-Pilot-Year-Report-Executive-Summary.pdf>> [accessed 17 December 2018].

The use of labour-hire or agency workers can also heighten a range of risks for a company, as the company “may have less influence over or understanding of the terms and conditions of their agency workers”.¹⁶

Given the growing political, societal and media attention to precarious working conditions, there is an increasing risk of reputational damage from the excessive use of contract labour. Finally, in industries that require skilled and experienced staff, the reliance on high numbers of labour-hire workers may undermine the short-term performance and long-term value creation of a company.

Turnover

CWC 1.5	What is the number and rate – over time - of full-time/part-time/contractor workforce turnover by type of employment and by region?
CWC 1.6	What is the turnover level relative to industry mean?
CWC 1.7	What is the average length of service of full-time/part-time/contractor workers by type of employment and by region?
GRI 401.1	New employee hires and employee turnover.
WDI 4.1.a.	Provide employee turnover rates by seniority level.

Turnover rates are often indicative of stability,¹⁷ and satisfaction (or dissatisfaction) amongst the workforce. They may also indicate structural changes in the organisation. Where disaggregated turnover data is provided by workforce demographics or region, turnover data can be used to highlight incompatibility or inequities in either the workplace or different areas of a company’s operations.¹⁸ The WDI goes beyond the GRI indicators to ask for specific reporting of turnover amongst the contingent workforce, in order to ascertain precarity amongst the contingent workforce. A company’s turnover rates measured relative to sector-wide averages can be useful in identifying whether issues are company specific or relate to sector-wide issues.

The PLSA argue that “a stable, motivated workforce who feel financially secure, professionally fulfilled and appropriately skilled to carry out the responsibilities of their job will greatly increase the chances of long-term success for any company”.¹⁹ High turnover is of particular risk to the creation of long-term value where a company relies on an experienced and skilled workforce.²⁰

Working Conditions – Wages

CHRB D.1.1.a	The company pays its workers a living wage, which is regularly reviewed and negotiated through collective bargaining with relevant trade unions (or equivalent worker bodies).
CWC 1.4	What are the wages and working conditions provided to full-time employees that are not provided to temporary, part-time, labour agency, franchise and independent contractor workers delivering services on behalf of the company?
CWC 6.1	Has the company committed to paying the minimum of a living wage to its workforce?
ETI 5.1 5.1	Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

¹⁶ S Young & S Rawsthorne, *Hidden Talent: What do Companies’ Annual Reports tell us about their Workers?: An Analysis of the FTSE 100*, PLSA, 2017, , p. 15. <<https://www.plsa.co.uk/Portals/0/Documents/Policy-Documents/2017/7160%20Hidden%20Talents%20research%20report%20v4.pdf>>.

¹⁷ Pensions and Lifetime Savings Association; WDI, *Workforce Disclosure Initiative 2018: Guidance Document*, WDI, 2018, <https://shareaction.org/wp-content/uploads/2018/07/WDI_Survey_Guidance_2018.pdf> [accessed 27 February 2019].

¹⁸ GRI, *GRI 401: Employment*, , 2016, <<https://www.globalreporting.org/standards/gri-standards-download-center/gri-401-employment-2016/?g=44744251-f999-4e97-980e-291e1466afd5>>; WDI, *Workforce Disclosure Initiative 2018: Guidance Document*.

¹⁹ Young and Rawsthorne.

²⁰ Young and Rawsthorne, , p. 16.

OECD 4.a	Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.
WDI 3.3.a	Percentage of employees whose basic salary is based on the minimum wage. Does the company pay the Living Wage or make commitments towards it?
WDI 3.4.a	Provide the pay ratio between highest and median pay.
WDI 6.4	How do average company wages compare with minimum wages in significant locations of operation? 6.4.1 Has the company negotiated collective bargaining outcomes that maintain or improve real wages, i.e. annual wage growth which exceeds the nation's price movement index?

There is growing investor and societal attention on wages and increasing inequality. Instances of wage theft and wage payments below a living wage are gathering attention, with controversies leading to reputational damage for companies, as well as potential regulatory and compliance risks. However, wage indicators should not be limited to paying legal minimums. Even where wages are set at or above legal minimums, lower wages – and particularly wages below the living wage – are correlated to higher absentee rates, turnover and lower engagement, while companies with higher wages are likely to have more engaged and productive employees.²¹

Since January 1, 2017, US companies have been required to report on their CEO to median-worker pay.²² According to research by MSCI, companies with a lower ratio – what they define as a lower intra-corporate pay gap – outperformed companies with higher intra-corporate pay gaps between 2009 and 2014.²³

More broadly, downward pressure on wages and growing intra-corporate pay gaps can lead to broader systemic risks. The OECD, S&P and IMF all argue that income inequality can act as a drag on long-term growth. Summarising their arguments, SHARE argue that:

... the weakening of the middle class and growing inequality weakens the economies and can have a harmful effect on economic growth by reducing consumer demand, increasing economic and social instability and facilitating rent-seeking at the expense of productive growth activity. [...] Growing inequality may also negatively affect the financial system in which investors participate, and the world in which beneficiaries live.²⁴

Working Conditions - Overtime

CWC	Does the company have a statement of policy on working hours and compensation for supplier employees?
ETI 6.3	All overtime shall be voluntary. Overtime shall be used responsibly, taking into account all the following: the extent, frequency and hours worked by individual workers and the workforce as a whole. It shall not be used to replace regular employment. Overtime shall always be compensated at a premium rate, which is recommended to be not less than 125% of the regular rate of pay.
ETI 6.5	Working hours may exceed 60 hours in any seven-day period only in exceptional circumstances.
WDI 3.7.a	How does the company ensure that all overtime is voluntary and paid at the correct rate for workers in its critical supply chain?

The GRI defines “adequately remunerated work” as:

...work where wages and compensation for a standard working week, excluding overtime, meet legal and industry minimum standards, and are sufficient to meet the basic needs of workers and their families, and to provide them with some discretionary income.²⁵

²¹ WDI, *Workforce Disclosure Initiative 2018: Guidance Document*.

²² SEC, ‘SEC Adopts Rule for Pay Ratio Disclosure’, in *U.S. Securities and Exchange Commission*, , 2016, <<https://www.sec.gov/news/pressrelease/2015-160.html>> [accessed 27 February 2019].

²³ S Block, *Income Inequality and the Intra-corporate Pay Gap*, MSCI, 2016, p. 14, <<https://www.msci.com/documents/10199/b94ae705-4d36-49e5-8873-b6fe42fdd291>>.

²⁴ Rohan.

²⁵ GRI.

While some overtime is legal, it must not be undertaken to meet minimum wage standards. According to the ILO, excessive overtime is defined by those hours that exceed national statutory regulations on working time or relevant international standards, as well as hours of work that have negative consequences on workers. That is, those hours that greatly diminish a workers' quality of life and ability to participate in family, community and religious life.

Excessive overtime is strongly correlated to workers not being paid a living wage. It is also negatively associated with workplace safety, with increases in accidents linked to an increase in working hours.²⁶ Excessive overtime is an indication that an organisation is not paying a living wage to its employees and contractors and/or has insufficient management practices in place to manage day-to-day operations without requiring overtime in breach of national conventions.

Safety

CWC 5.4	What are the types of injuries and rates of injury, occupational diseases, lost days, absenteeism, and total number of work-related fatalities by region and gender? Information should be disaggregated for direct hires and labour-hire/sub-contracted/contracted staff.
CWC 5.5	What H&S training (at induction and ongoing) is provided to full-time employees that is not provided to temporary, part-time, labour agency, franchise and independent contractor workers delivering services on behalf of the company?
ETI 3.1	A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
GRI 403	Has extensive indicators on implementation of OHS management systems, processes to identify risks and critical incidents, systems to promote worker health (including mental health), number of injuries and fatalities recorded in a reporting period.
WDI 6.1.a	Provide data for injury rates, absentee rates and work-related fatalities and any additional metrics the company reports, incidences of worker related ill-health.

The ILO defines occupational health as: “the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations by preventing departures from health, controlling risks and the adaptation of work to people, and people to their jobs”.

While large scale industrial accidents – like BP’s Gulf oil spill or the Rana Plaza collapse – can massively destroy shareholder value, less visible occupational health issues can also destroy shareholder value in the long-term through increased workers’ compensation premiums, decreased productivity, absenteeism, higher health care costs, potential lawsuits, negative publicity, and a loss of investor and consumer trust.²⁷

Good WHS/OHS requires strong management systems that provide oversight of both physical and mental health, and adequately identify and manage risks in the workplace.²⁸ The initiatives studied here include both metrics for assessing the OHS management systems that a company has put in

²⁶ J-W Seo, *Excessive Overtime, Workers and Productivity: Evidence and Implications for Better Work*, ILO, 2011, <<https://betterwork.org/global/wp-content/uploads/Discussion-Paper-Series-No-2-Excessive-Overtime-Workers-and-Productivity-Evidence-and-Implications-for-Better-Work.pdf>>; A Spurgeon, *Working time: Its impact on safety and health*, ILO, 2003, <https://www.ilo.org/travail/whatwedo/publications/WCMS_TRAVAIL_PUB_25/lang--en/index.htm>; M White, *Working Hours: Assessing the Potential for Reduction*, Geneva, ILO, 1987.

²⁷ N Khushrushahi, *Investor Guidance on Occupational Health and Safety in Canada: An overview of corporate best practices*, SHARE Canada, <http://www.share.ca/files/12-4-27_Investor_Guidance_on_OHS_-_Final.pdf> [accessed 6 February 2019].

²⁸ CWC, , p. 16.

place, as well as the effectiveness of those systems. The effectiveness of these systems can be monitored through injury and accident rates. Some initiatives also require reporting on WHS/OHS training, stating that training indicates a company's long-term commitment to safety.²⁹

Both the GRI and CWC highlight that companies should not just be concerned with the safety of its direct employees. GRI states that companies should report on all direct employees, as well as any worker working in a workplace that it controls. This includes contractors, labour-hire and agency workers. Even in cases where the supplier has no direct control over a workplace but has some leverage or responsibility for working conditions (for example with Tier 1 and Tier 2 suppliers), it is expected that they exercise this leverage to mitigate against WHS/OHS risks.

The CWC calls on companies to disaggregate this data and provide reporting on injury rates and training by the type of employment (e.g. permanent, casual and labour-hire/agency staff). There is a growing social and political focus on non-standard forms of work (e.g. the gig economy) which has highlighted how in many cases companies do not give the same standards of employment to their contingent workforces. By calling on companies to report training and accident rates by type of employment, investors are able to gauge to what extent the contingent workforce faces the same safety risks as the permanent workforce.

Worker Voice

CWC 2.1 - 2.8	Covers social dialogue in detail. It goes beyond the basic right to freedom of association, and specifies broader indicators that could be used to measure antipathy or support for social dialogue (2.7 and 2.8)
CWC 2.7	Does the company encourage, remain neutral or discourage social dialogue and/or employees from joining trade unions?
CWC 2.8	Is the company involved in initiatives or bodies that discourage social dialogue and/or freedom of association at the local, national and/or international level?
ETI 2.1 - 2.4	Cover the right to freedom of association and to collectively bargain in very general terms, aligned with ILO convention.
GRI 407.1	Identify: a. Operations and suppliers in which workers' rights to exercise freedom of association or collective bargaining may be violated or at significant risk either in terms of: i. type of operation (such as manufacturing plant) and supplier; ii. countries or geographic areas with operations and suppliers considered at risk. b. Measures taken by the organization in the reporting period intended to support rights to exercise freedom of association and collective bargaining.
OECD 1.a/1.b	Cover the right to freedom of association and to collectively bargain in very general terms, aligned with ILO convention.
UNPRI 5	To address systemic issues, companies should collaborate with external stakeholders such as trade unions, civil society organisations, human rights experts, governments, and sector peers.
WDI 6.5.a	Provide the number of employees covered by collective bargaining agreements across the company and by location.

The right to freedom of association and collective bargaining is enshrined in ILO standards and international human rights conventions. All labour rights benchmarking initiatives contain at least some reference to these rights – even if they differ on how compliance with these rights are measured or indicated.

The involvement of trade unions can have value beyond ensuring workers' rights are respected. As the UK's National Association of Pension Funds (NAPF) writes: "Unions provide a voice for workers to speak freely without fear or recriminations and can therefore be valuable to companies as a source of information critical of their working practices that may not otherwise be forthcoming."³⁰

²⁹ CWC, , p. 16.

³⁰ NAPF, , p. 20.

In other words, the involvement of trade unions in grievance procedures can be more effective than third party audits in monitoring and ensuring compliance. The International Labour Organisation (ILO) has conducted a comprehensive review of policies and programmes that have been developed to ensure workplace compliance in global supply chains. Their 2016 report *Workplace Compliance in Global Supply Chains* highlights current best practice across multiple industry sectors.³¹ The report is particularly critical of the ability of voluntary self-regulation and “private compliance initiatives” (codes of conduct, auditing, certification schemes or other self-reporting mechanisms such as the UN Global Compact or the Global Reporting Initiative) to sufficiently manage business and operational risks from labour violations in supply chains.³²

Furthermore, reliance on auditing has been criticised as insufficient for understanding workplace issues such as harassment, wage theft, excessive overtime, and freedom of association violations.³³ In addressing the failures of social audits to fully capture issues at particular worksites, the Clean Clothes Campaign argues that “the best auditors are the workers themselves since they are continually present at the production site”.³⁴ Before workers can adequately participate in monitoring their own workplaces, studies show that they must be provided with in-depth education on their workplace rights by trade unions.³⁵

Studies clearly demonstrate that workers and their unions are crucial to an effective due diligence process to mitigate labour rights violations in supply chains. A World Bank study concludes that one of the main barriers to effective code implementation is the “absence of a comprehensive and accountable means of engaging workers as well as their unions”.³⁶

Similarly, a 2017 OECD report states that:

Enterprises should involve workers and trade unions and representative organisations of the workers’ own choosing in the due diligence process as referenced in the section above. Enterprises may also directly enter into agreements with trade unions: (i) to facilitate worker involvement in the design and implementation of due diligence processes, (ii) to implement standards on workers’ rights and hold enterprises accountable to them, or (iii) to raise grievances against enterprises in relation to workers’ rights.³⁷

The involvement of trade unions in worker education and grievance mechanisms gives workers more faith in these mechanisms, and increases the likelihood that they raise new, emerging or endemic workplace issues early on, allowing businesses to resolve these issues “before they escalate into more lengthy and complex disputes that may come at a high cost, predominantly for the worker but also the supplier, and, ultimately, the buyer”.³⁸

³¹ ILO, *Workplace Compliance in Global Supply Chains*, Geneva, ILO, 2017, <https://www.ilo.org/sector/Resources/publications/WCMS_540914/lang--en/index.htm> [accessed 1 March 2019].

³² ILO, *Workplace Compliance in Global Supply Chains*, , pp. 10–15.

³³ ILO, *Workplace Compliance in Global Supply Chains*, , pp. 10–15.

³⁴ Clean Clothes Campaign, *Looking for a quick fix: How weak social auditing is keeping workers in sweatshops*, London, Clean Clothes Campaign, 2005, , p. 79, <<https://cleanclothes.org/resources/publications/05-quick-fix.pdf/view>> [accessed 1 March 2019].

³⁵ Ethical Trading Initiative, *ETI Annual Report 2003/04: Putting Ethics to Work*, London, Ethical Trading Initiative, 2004, <<http://www.ethicaltrade.org/Z/lib/annrep/2004/en/index.shtml>>.

³⁶ World Bank, *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, World Bank, 2003, <http://siteresources.worldbank.org/INTPSD/Resources/CSR/Strengthening_Implementatio.pdf> [accessed 1 March 2019].

³⁷ OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*, Paris, OECD Publishing, 2018, , p. 29.

³⁸ L Curtze & S Gibbons, *Access to remedy - operational grievance mechanisms. An issues paper for ETI*, London, ETI, 2017, , p. 7, <https://www.ethicaltrade.org/sites/default/files/shared_resources/ergon_-_issues_paper_on_access_to_remedy_and_operational_grievance_mechanims_-_revised_draft.pdf> [accessed 3 March 2019].

Pharmaceutical Wholesaling and Distribution

Overview of Sector and Key Companies

Pharmaceutical wholesalers procure, distribute and sell a range of pharmaceutical and medicinal products. The pharmaceutical wholesaling industry in Australia is valued at \$14 billion annually.³⁹

There are two companies listed in the ASX 200 that undertake pharmaceutical distribution in Australia: Sigma Healthcare Ltd. (SIG) and Australian Pharmaceutical Industries Ltd. (API). Together with EBOS Group Ltd. (EBO), which is listed on the NZ stock exchange, these companies control over 80% of total prescription pharmaceutical sales in Australia. There are more players – including international companies – distributing over the counter medications. On the 14th December 2018, Sigma announced to the market that it had received a non-binding indicative proposal from API in October 2018 to acquire all shares in Sigma. At the time of publication of this report, the bid was still active.⁴⁰ All three companies operate a significant number of retail (community) pharmacies and retail pharmacy brands.

Australian Pharmaceutical Industries Limited (API)

API has three main businesses: Pharmacy Distribution, Manufacturing and Retail. API services 3,000 first-line pharmacy customers and operates 9 distribution centres across Australia. The company's main retail presence is its Priceline and Priceline Pharmacy network. It also operates two banner groups (Soul Pattinson and Pharmacist Advice). In total it has over 1,000 aligned pharmacies. API's total company revenue totalled \$4.0 billion in 2017-18. Its wholesaling operations account for over 70% of company revenue.

Sigma Healthcare Ltd. (SIG)

Sigma Healthcare Limited is a full line wholesale and distribution of pharmaceutical products through the pharmacy and grocery sales channels. Sigma has a pharmacy network, including over 700 retail brand members representing the brands Amcal, Guardian, PharmaSave, Chemist King and Discount Drugstores (DDS). Sigma Wholesale is a full line pharmaceutical distributor offering daily delivery services to over 4,000 retail pharmacies from its 13 distribution centres located throughout Australia. In July 2018, Sigma announced the loss of the Chemist Warehouse contract to EBOS, significantly reducing its market share and overall profitability.

Reporting against labour indicators

ACCR conducted a review of websites, annual reports, sustainability reports, codes of conduct, and other related and publicly available documentation for the two companies and found very limited reporting against the workforce indicators. Neither company reported on turnover, wages, working hours, or grievance mechanisms. In its 2015/16 report to the Workplace Gender Equality Agency (WGEA), API reported on the number of workers by type of work, disaggregated by full-time, part-time, casual, permanent and contract labour in its report.⁴¹ It has not reported on these figures since. Sigma does not report on the composition of its workforce. Sigma reports on LTIR in its annual reports. API states that it has a Safety, Health & Wellbeing framework and that it was granted Australian and NZ Standard for Safety management [AS / NZ 4801] accreditation in 2017. API does not report on injury rates or other WHS indicators.

³⁹ Ibis World, *Pharmaceuticals Wholesaling – Australia Industry Report*, 2018, <<http://clients1.ibisworld.com.au.ezproxy.lib.uts.edu.au/reports/au/industry/ata glance.aspx?entid=1873>> [accessed 28 February 2019].

⁴⁰ Sigma Healthcare, *ASX Release: company update*, Sigma Healthcare, 14 December 2018, <<https://www.asx.com.au/asxpdf/20181214/pdf/4417c9gkf7cnh9.pdf>>.

⁴¹ Australian Pharmaceutical Industries, *2015-16 public report form submitted by Australian Pharmaceutical Industries Ltd. to the Workplace Gender Equality Agency*, Australian Pharmaceutical Industries, 2016, pp. 2019-03-03, <http://www.api.net.au/wp-content/uploads/2016/11/API-Public-Report2015-16_signed.pdf>.

Key Risks

Legal and Regulatory Risk

Box 1: Australian Code of Good Wholesaling Practice

Section 3 (Personnel & Training)

- 3.2 Appropriate policies and procedures should be in place for the selection of staff and contractors, as well as requirements for ethical conduct of staff and contractors.
- 3.3 Standard operating procedures should be developed for use by all staff. Staff should be trained in the operating procedures relevant to their responsibilities in such a way that individual responsibilities are clearly understood.
- 3.4 Personnel should be trained to perform assigned duties and functions at an acceptable level. Training records should be kept and training should be repeated or reinforced at appropriate intervals. Adequacy of training should be audited. Approval for staff to perform assigned duties and functions should be recorded.
- 3.5 Specific training should be given for medicines with specific risks, e.g. medicines requiring special storage conditions, fragile products or medicines containing substances that pose high risk to personnel and/or to product quality if package integrity is breached or spillage occurs, e.g. dangerous goods, cytotoxic drugs.

Section 4 (Stock Handling)

- 4.3 Handling and storage of medicines should be in accordance with established procedures designed to prevent contamination or deterioration of the goods, damage to packs or confusion of products. Particular attention should be paid to maintaining the integrity of seals on packs of sterile goods. Attention should also be paid to any special instructions indicated on the TGA approved product packaging relating to handling or storage of the goods.
- 4.10 There should be a system for the recognition and prompt handling of medicines that require special handling or care.

The pharmaceutical wholesale sector is administered through federal and state-based codes and regulations, including the:

- Australian Code of Good Wholesaling Practice for Medicines in Schedules 2, 3, 4, 8;⁴²
- State-based licences to possess (and potentially supply) scheduled substances;⁴³ and
- Community Service Obligation (CSO).⁴⁴

The *Australian Code of Good Wholesaling Practice* is coordinated through the Therapeutic Goods Administration (TGA) and applied through the relevant applicable State and Territory therapeutic goods/drugs and poisons legislation, and/or State or Territory wholesaler licensing arrangements. The code governs a number of key issues relating to the management and storing of drugs. It also includes regulations on personnel. There are additional requirements under the codes for *Controlled Drugs (Schedule 8 or "CD")* and *goods with high illicit value ("GHIV")*. See Box 1 for the parts of the code most relevant to the pharmaceutical wholesaling workforce.

The Community Service Obligation (CSO) was established by the Federal Government in 2005 to ensure that all pharmacies have access to a full range of Pharmaceutical Benefits Scheme (PBS) medications and that all Australians have access to the full range of PBS medications, through their

⁴² Therapeutic Goods Administration, 'Australian code of good wholesaling practice for medicines in schedules 2, 3, 4 & 8', <<https://www.tga.gov.au/publication/australian-code-good-wholesaling-practice-medicines-schedules-2-3-4-8#personnel>> [accessed 28 February 2019].

⁴³ Victorian Department of Health & Human Services, 'Licences and permits to possess (& possibly supply) scheduled substances', , 2019, <<https://www2.health.vic.gov.au:443/public-health/drugs-and-poisons/licences-and-permits-to-possess-and-possibly-supply-scheduled-substances>> [accessed 28 February 2019].

⁴⁴ Australian Government Department of Health, 'Community Service Obligation for Pharmaceutical Wholesalers', Australian Government Department of Health, 2019, <<http://www.health.gov.au/internet/main/publishing.nsf/Content/community-service-obligation-funding-pool>> [accessed 28 February 2019].

local pharmacy, within 24 hours, regardless of their location.⁴⁵ In order to continue to have access to the CSO funding pool, pharmaceutical wholesalers must meet the CSO Service Standards and Compliance Requirements.⁴⁶ The CSO Operational Guidelines state that “CSO Distributors must ensure that Distribution Points receive CSO Products that are in a fit state to be supplied to customers by ensuring that it has been maintained appropriately in accordance with approved storage requirements.”⁴⁷

The proper and appropriate storage, handling and distribution of PBS medications is critical to ensure pharmaceutical wholesalers comply with their obligations under the CSO Deed of Agreement and therefore continue to have access to the CSO funding pool. In the past few years, there has been media coverage of the mishandling and mismanagement of medicines in the pharmaceutical wholesaling distribution and supply chain. For example, in May 2017 the TGA issued a nationwide recall of Diazepam made by manufacturer Roche, as a worker in a major Sydney distribution centre had “swapped out” the drug for different drug.⁴⁸ This example highlights the risks of insufficient vetting of workers employed in distribution centres (DCs) and of insufficient oversight mechanisms.

Non-compliance with the CSO or TGA code could see companies lose their license to distribute PBS and other prescription medicines. This is the most significant part of their revenue stream. As detailed below, the management of the workforce is both a key risk and opportunity for these businesses in managing this regulatory risk.

Workforce Risks

The percentage of the workforce covered by collective agreements is a key indicator of whether workers’ right to freedom of association are respected and promoted. Both API and Sigma have collective agreements that apply to individual distribution centres.⁴⁹ In other words, they have multiple collective agreements across their operations, with conditions that vary between agreements.

The majority of API agreements have been negotiated with the active participation of the relevant union, the National Union of Workers (NUW). While Sigma agreements were previously negotiated with the NUW, more recent agreements have not substantively included the NUW in negotiations.

For example, in 2018, Sigma opened a new distribution centre (DC) in Queensland. This was followed by the closure of the existing distribution centre in that state, with the existing workforce made redundant. The majority of the workforce in the new distribution centre have been hired through labour-hire or other third-party arrangements, under a collective agreement that specifies significantly lower wages and conditions than those provided to workers at the previous DC.

The use of labour-hire and inexperienced labour in the new distribution centres raises concerns regarding Sigma’s ability to meet regulatory requirements regarding personnel and the handling of drugs of dependence. ACCR is concerned about the risks that stem from untrained staff being given access to drugs of dependence and managing the complex supply chain processes to properly secure these drugs.

Table 1 provides a comparison of wage rates between the enterprise agreements where the union actively participated in collective agreement negotiations (Rowville) and where the union had no

⁴⁵ Australian Government Department of Health.

⁴⁶ Australian Government, *Community Service Obligation Operational Guidelines*, Australian Government, 2018, , p. 6, <[https://www.health.gov.au/internet/main/publishing.nsf/Content/BE2CB73EF2EE20D4CA257BF0001DC53C/\\$File/cso-operational-guidelines-commonwealth-october-2017.pdf](https://www.health.gov.au/internet/main/publishing.nsf/Content/BE2CB73EF2EE20D4CA257BF0001DC53C/$File/cso-operational-guidelines-commonwealth-october-2017.pdf)> [accessed 28 February 2019].

⁴⁷ Australian Government, , p. 12.

⁴⁸ ABC, ‘Worker sacked over Valium tampering and possible theft’, in *ABC News*, , 31 May 2017, <<https://www.abc.net.au/news/2017-05-31/valium-recall-worker-sacked-over-roche-diazepam-tampering/8576532>> [accessed 28 February 2019].

⁴⁹ Note: in the Australian context, collective agreements are more commonly referred to as “enterprise agreements” or “enterprise bargaining agreements”. According to the Fair Work Commission, an enterprise agreement is a collective agreement that is made at an enterprise level. For more information see: <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/enterprise-bargaining>

substantive role (Berrinba and Dandenong). The Rowville agreement has wage rates of between 21 – 28% more than the Dandenong agreement, and between 18 – 26% more than the Berrinba agreement.

Significantly, the Berrinba agreement does not provide rates for different levels of experience and training. By comparison, the Rowville agreement includes a number of different grades which reflect levels of training and different roles within the organisation. Given the risks involved in the handling of stock – including drugs of dependence and high value drugs – it is concerning that wages do not reflect the varying levels of responsibility given to workers within the organisation or provide an incentive for workers to gain required training.

Non-union EBA – Sigma Berrinba		Non-union EBA – CHS Dandenong – 12 th March 2019			Rowville EBA - 1st October 2017		
grades	hourly	grade	weekly	hourly	Grade	week (36 hours)	hourly
no grades, only refers to store person	\$ 25.00	warehouse store person	\$ 839.94	\$ 22.66	Grade 1	\$ 1,091.56	\$ 30.32
		warehouse store person - MHE operator	\$ 852.83	\$ 23.00	Grade 2	\$ 1,123.71	\$ 31.21
		-	-	-	Grade 3	\$ 1,145.64	\$ 31.82
		Stock controller	\$ 1,007.93	\$ 27.85	Grade 4	\$ 1,209.56	\$ 33.60
					Grade 5	\$ 1,305.63	\$ 36.27

A new EBA for Sigma Healthcare subsidiary Central Healthcare Services' Dandenong site.⁵⁰ The Fair Work Commissioner raised concerns regarding the previous agreement for this site (approved 2014), which was finalised in June 2014.⁵¹ The Commissioner then had identified areas where the agreement undercut the provisions in the award. Most notably, the Commissioner raised concerns regarding the minimum number of hours to be provided to workers in a single shift. Where the award specifies a minimum of 4 hours per shift, the 2014 agreement had originally proposed a minimum 2-

⁵⁰ Fair Work Commission, *Central Healthcare Services Pty Ltd Employee Collective Agreement 2018*, Fair Work Commission, 2019, <<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae502253.pdf>> [accessed 19 March 2019].

⁵¹ Fair Work Commission, *Central Healthcare Services Pty Ltd Employee Collective Agreement 2014*, Fair Work Commission, 2014, <<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae408750.pdf>> [accessed 5 March 2019]; Fair Work Commission, *Sigma (Berrinba) Enterprise Agreement 2017*, Fair Work Commission, 2018, <<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae427043.pdf>> [accessed 5 March 2019]; Fair Work Commission, *Sigma (Victoria) Enterprise Agreement 2016*, Fair Work Commission, 2016, <<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae424817.pdf>> [accessed 5 March 2019].

hour shift on Sunday. This was revised upwards to a minimum of 4-hour shift on Sunday following an intervention by the Commissioner.

As in the 2014 agreement, the Commissioner raised concerns regarding hours of work and shift arrangements, and whether these would meet the “better off overall test”. Given that the new agreement evidences many of the same issues as other non-union agreements, investors should engage with Sigma to ensure that the company does not undercut conditions at their new sites or exclude the union from negotiations.

Finally, the replacement of permanent, experienced and well-trained staff with a workforce almost exclusively comprising labour-hire workers in their new distribution centres raises concerns about Sigma’s ability to comply with the relevant CSO and TGA requirements regarding personnel. Investors must ask questions about the training provided to new staff, and the steps taken to properly oversee agency hiring processes in order to ensure that recruitment meets the standards required under the regulations.

The failure to substantively involve the NUW in negotiating collective agreements in their new sites also raise concerns about whether workers feel sufficiently supported to raise issues with management. As detailed above, third party social audits and whistleblower hotlines are insufficient in providing oversight of day-to-day operations. Research shows that workforce – with the support of trade unions – is best placed to monitor the day to day operations of a worksite and provide information regarding potential regulatory and other breaches, before they escalate and threaten company compliance.⁵² The absence of the NUW in collective agreement negotiations raises significant question about their ability to access the worksite and provide support to workers to raise operational concerns. Given the operational risks noted above, the failure of companies to support workers to raise concerns should be of serious concern to investors.

Reputational and procurement risk

The loss of the Chemist Warehouse contract to EBOS saw a downgrading of Sigma’s profits, wiping approximately \$322 million off its market capitalisation.⁵³ The impact of the loss of this contract demonstrates the significant financial risks to companies in this market due to the concentrated nature of the industry and industry clients. According to Sigma’s own annual report, they hope to offset the loss of the Chemist Warehouse contract through new aged care and hospital contracts. However, Citi remains unconvinced that these contracts will be sufficient to offset the loss of the Chemist Warehouse contract.⁵⁴

The loss of the Chemist Warehouse contract indicates that there are substantial financial risks from the loss of contracts and broader procurement avenues. A loss of confidence in Sigma’s ability to manage their workforce and maintain regulatory or legal compliance could lead to significant reputational damage and longer-term procurement risk. Investors should engage with Sigma on their management of the workforce to ensure that they are sufficiently addressing workforce risk and flow-on risks to reputation and procurement.

The third report in this series, on *Aged Care and Private Hospitals*, will examine the role of health care providers in ensuring labour rights are respected pharmaceutical and medical device supply chains, and will further the detail the procurement risks to suppliers, manufacturers and wholesalers from failing to deal with labour rights risks in their supply chains.

⁵² ILO, *Workplace Compliance in Global Supply Chains*.

⁵³ Chanticleer, ‘Sigma downgrade shows power of Chemist Warehouse’, in *Australian Financial Review*, , 2 July 2018, <<https://www.afr.com/brand/chanticleer/sigma-downgrade-shows-power-of-chemist-warehouse-20180702-h124d0>> [accessed 5 March 2019].

⁵⁴ Small Caps, ‘Uncertainty Hinders Sigma Pharmaceuticals’, in *FN Arena*, , 11 September 2018, <<https://www.fnarena.com/index.php/2018/09/11/uncertainty-hinders-sigma-pharmaceuticals/>> [accessed 5 March 2019].

CONCLUSION

As this report outlines, there are a number of financial, reputational, procurement and legal risks which may derive from a failure by companies (and investors) to properly engage on workforce issues. However, this engagement is hindered by a lack of reporting on workforce and broader “S” risk issues. This report has examined the experience and training required maintain compliance in the heavily regulated pharmaceutical distribution sector, and the limitations of relying on third party audits and whistleblower hotlines to maintain regulatory compliance. Based on the analysis of the two ASX 200-list pharmaceutical distribution companies examined in this report – Sigma Healthcare Ltd. and Australian Pharmaceutical Industries Ltd. – ACCR makes the following recommendations for investors seeking to engage these companies.

Recommendations

1. Investors should require companies to provide more detailed reporting on workforce issues, in line with the six workforce themes detailed in this report, to allow for greater transparency on workforce issues and allow for more targeted engagement by investors.
2. Investors should engage Sigma Healthcare regarding their increasing use of non-union agreements, which has implications for the effectiveness of grievance procedures and the ability for staff to provide day-to-day information on regulatory and legislative compliance.
3. Investors should engage Sigma Healthcare on their newly negotiated collective agreements, and whether the loss of employment grades and reduced wages under these agreements, may undermine their ability to attract suitably trained and experienced staff.