



Australian
Competition &
Consumer
Commission

ACCC Submission - Response to Draft PC Report

The ACCC provides the following submission in response to the Productivity Commission Draft Chemicals and Plastics Regulation report (PC report) as it relates to issues relevant to the ACCC.

Draft recommendation 5.4

The Ministerial Council for Consumer Affairs should initiate the development of a broadly based hazard identification system, based on clearing house approach in line with the recommendations of the Productivity Commission's 2006 report (recommendation 9.1). It should be coordinated by the ACCC and take account of health and safety issues around chemicals released from consumer articles.

Response

This proposal is already under consideration by the Ministerial Council on Consumer Affairs in consultation with the ACCC.

Draft recommendation 5.5

The ACCC and NICNAS should negotiate formal arrangements for cooperation on issues regarding chemicals in consumer articles. These arrangements should include the establishment of a more systematic research program to identify and deal with risks of chemicals in consumer articles.

Response

Informal arrangements relating to the safety of chemicals in consumer products have existed over the last several years, and there have been exchanges of letters on various issues. The ACCC is open to establishing formal cooperative arrangements, although "a more systematic research program" would need to be properly resourced. The ACCC notes that chemical hazards associated with consumer products are a growing area of concern and attention. The PC report will assist the ACCC in developing strategies to manage this.

Draft recommendation 5.6

The Australian Government should transfer responsibility for the administration and enforcement of the Cosmetics Standard 2007 (Cth) (the Standard) from NICNAS to the ACCC.

Response

The ACCC does not agree with this recommendation.

Chemical regulation is a specialist function of government. Conferring to the ACCC an explicit role in the regulation of chemicals through administration of the chemical cosmetic regulations may lead to inefficiencies arising from an increased need to co-ordinate work between agencies, the division of chemical expertise between agencies, possible duplication of work and stakeholder confusion as to which chemical regulator is appropriate for their circumstances.

The ACCC understands that NICNAS which has primary carriage of this function, developed the Standard as they were able to conduct not only health assessments but also environment assessments of cosmetics products.

The ACCC does not have the chemical or scientific expertise of the National Industrial Chemicals Notification and Assessment Scheme (**NICNAS**).

The ACCC understands that the NICNAS Cosmetics Standard specifically administers secondary sunscreens previously administered by the Therapeutic Goods Administration (**TGA**). The TGA has developed expertise in SPF testing and conducting audits of those tests.

The Trade Practices Act 1974 (**TPA**) already provides for the ACCC to take appropriate action for misleading and deceptive conduct such as misleading and deceptive claims on or about certain products (section 52) and for false representation (section 53). The ACCC has taken such enforcement action in the past in respect of cosmetic products and is able to enforce misleading claims pertaining to chemicals in cosmetics without taking carriage of the NICNAS Cosmetics Standard.

The ACCC considers that NICNAS are better able to maintain this function and are suited to assessing the health and environmental implications of cosmetics products and already have expertise in the field. The efficiency gained in having one agency deal with cosmetic chemical regulation outweighs any benefit which might otherwise accrue if the function was split. In lieu of that if there is still some residual argument, then the TGA may also have the appropriate expertise to conduct such a function.

Draft recommendation 5.7

The Australian Government should add 'deemed to comply' provisions to the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* for fully imported cosmetic products that meet the cosmetic labelling requirements of specified countries that have labelling requirements that produce sufficiently comparable outcomes.

Response

The ACCC does not oppose this recommendation however the proposal will need to be further assessed and developed. Recommendation 5.7 appears to retain a very broad test in "labelling requirements that produce sufficiently comparable outcomes."

At the time of the Review of the Trade Practices Cosmetic Regulations on conducting a careful analysis, the ACCC did not consider that a deeming provision would result in an overall net benefit for consumers, suppliers and government. The ACCC considered that the Trade Practices Cosmetic Regulations is a relatively simple information standard which does not appear to impose any substantial costs on suppliers. Industry were unable to provide any examples of additional substantial costs incurred from complying with the Trade Practices Cosmetic Regulations. When asked for substantiating information it was revealed that industry's additional costs are incurred in complying with other unrelated Australian regulations such as trade measurement regulations. Nevertheless it was noted there could be benefit to industry in having to consider one less Australian regulation and being able to adopt the regulation of the region where they sell the most product.

In the draft report, the PC has noted ACCC's view that a deeming provision would be difficult to enforce due to multiple labelling requirements (where the ACCC would need to have expertise in Australian and other jurisdictions' labelling requirements including a schedule of permitted variations which would be subject to regular amendment).

The ACCC would be pleased to see further detail in relation to the particular type of provision proposed and how it would work in practice to assist it to further assess this proposal.