



Advocate for the Consumer, Cosmetic,
Hygiene and Specialty Products Industry

Mr Robert Fitzgerald
Commissioner
Consumer Product Safety
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Fitzgerald

ACCORD is pleased to provide the following comments in relation to the Productivity Commission's (PC) Review of the Australian Consumer Product Safety System – impact of reform options.

ACCORD Australasia (formerly ACSPA) is the peak national industry association representing the manufacturers and marketers of formulated consumer, cosmetic, hygiene and specialty products, their raw material suppliers, and service providers. ACCORD's members market fast-moving consumer goods primarily in Australia and New Zealand.

Our industry's products play a vital role in:

- keeping our households, workplaces, schools and institutions clean, hygienic and comfortable;
- personal hygiene, grooming and beauty treatments to help us look and feel our best;
- specialised uses that assist production and manufacturing to keep the wheels of commerce and industry turning; and
- maintaining the hygienic and sanitary conditions essential for our food and hospitality industries and our hospitals, medical institutions and public places.

These benefits are essential to safe, healthy living and maintaining the quality lifestyle we all too often take for granted.

With an estimated \$3 billion plus in annual product sales (ex factory), the formulated consumer, cosmetic, hygiene and specialty products industry is a significant part of a prosperous Australian economy. We are a dynamic and growing industry, employing Australians and through our industrial and institutional sector supplying products essential for Australian businesses, manufacturing firms, government enterprises, public institutions and consumers.

Product safety is highly important to ACCORD's members. Market reality ensures that an unsafe product can destroy a brand and have a significant detrimental impact on the company. Some companies can take years to re-establish themselves in the market following a consumer

backlash to an unsafe product. Our members are pro-active in the management of consumer product safety issues.

Our industry has more than 50 manufacturing operations throughout Australia and member companies include large global consumer product manufacturers as well as small dynamic Australian-owned businesses.

A list of ACCORD member companies is provided at *Attachment 1*.

ACCORD, on behalf of its member companies, has a specific and direct interest in the review of Australia's consumer product safety system and welcomes the opportunity to provide this submission for the PC's consideration in the development of its Draft Report.

ACCORD's approach to regulatory efficiency

ACCORD supports the Australian Government's approach to regulatory best practice and recommends that the Council of Australian Governments (COAG) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies (COAG Principles) should be rigorously applied in the consideration of any regulatory response to a perceived market failure. ACCORD supports the following as good regulatory practice principles.

Regulatory solutions should:

- be the minimum required to achieve the stated objectives;
- adopt a risk management approach to forming and administering regulation;
- minimize the impact on competition;
- be compatible with international standards and practices;
- cause no restriction to international trade;
- be developed in consultation with the groups most affected and be subject to regular review;
- be flexible, not prescriptive and be compatible with the business operating environment;
- standardize the exercise of bureaucratic discretion; and
- have a clear delineation of regulatory responsibilities and effective and transparent accountability mechanisms.

Our approach in this regard is consistent with the guiding whole-of-government principles we advocate all departments and agencies should follow whether (and when) considering regulatory action – that is, the COAG Principles and Guidelines for Regulatory Action. ACCORD recognises the importance of well established consumer protection laws to enhance consumer confidence in the market place. ACCORD supports consumer product safety standards and regulations and believes that the current provisions under the *Trade Practices Act 1974* (TPA) along with the enforcement arrangements by the Australian Competition and Consumer Commission (ACCC) and state and territory controls provide a more than adequate level of regulatory control and marketplace intervention.

ACCORD provides the following comments in relation to specific issues raised in the PC's Issues Paper.

Introduction of a General Safety Provision (GSP)

ACCORD does not support the introduction of the GSP on the basis of the information presented in the Ministerial Council of Consumer Affairs (MCCA) Discussion Paper. The Discussion Paper does not provide any evidence or data to demonstrate that this additional regulatory requirement on Australian business is required. Australia has a high level of consumer product safety. A high level of industry awareness and responsiveness to product safety is also demonstrated in the Discussion Paper, by the:

- high number of voluntary and mandatory standards already in place to manage product safety;
- high degree of voluntary industry product recalls; and
- low incidence of official warning notices to industry.

This illustrates that the current system operates well despite the overlap and duplication arising from state, territory and Commonwealth responsibilities in this area.

In applying the COAG Principle for effective minimum regulation to address this issue, one would have to ask the question, why raise the current standard at all? Indeed the first question should be is the current level of regulation excessive given that the MCCA Discussion paper could not identify any significant problems with the current system nor any data to demonstrate their was a failure or regulatory gap in the current arrangements.

ACCORD welcomes the PC's Terms of Reference (TOR) which are aimed at providing a quantitative analysis of the situation and providing cost benefit data on the proposals put forward in the MCCA Discussion Paper. The PC's work should give us a better understanding of the scope for efficiencies in the area of product safety regulation by reducing the regulatory burden currently faced by Australian business.

Measures to harmonise product safety legislation, administration and enforcement

It is well established that Australian businesses face a significant regulatory burden. The recently released study by the Business Council of Australia (BCA) and Access Economics *Business Regulation Action Plan For Future Prosperity*, found that there is a regulatory 'blow-out' which is a major drain on business resources as well as a significant cost to government in administering their rules and regulations. The PC's own work in this area has also identified that the regulatory burden on business, and small business in particular, has increased significantly since 1996 and not reduced by 50% as was the Howard Government's aim when it came to power in 1996.

ACCORD is concerned that there are already more than 144 pieces of specific regulation at the Commonwealth, state and territory level that impact on the chemicals industry and believes that any further regulatory intervention would be a retrograde step and an unnecessary cost on national productivity.

The most significant benefit to business in the area of product safety as in any other area of government regulation would be to reduce duplication of legislation between the various jurisdictions as well as provide consistency in administration and enforcement. ACCORD would prefer a more radical approach than the introduction of uniform legislation. Even with the best will in the world, and a high level of political commitment, jurisdictions rarely, if ever have achieved uniform legislation. It would be preferable if a national model such as exists under corporation law with power being transferred to a single national entity was the model for product safety in

Australia. ACCORD would support a single law, single regulator in the area of not only consumer product safety but consumer protection in general administered by the ACCC.

Proliferation in the use of voluntary standards

ACCORD is concerned with the proliferation of voluntary standards in the area of product safety. The MCCA Discussion paper notes that there are 'around 6,400 voluntary standards' (p51) which may or may not apply in each or all of the jurisdictions. This appears an excessive number. In the Report of the Commonwealth Interdepartmental Committee on Quasi-regulation, *Grey Letter Law* (December 1997) the issue of voluntary standards being used as quasi-regulation was raised. The COAG Principles make recommendations regarding the referencing of standards. However, the proliferation of standards still continues and is of major concern to industry. ACCORD would welcome the PC examining the cost to Australian industry of the use of voluntary standards as a quasi-regulatory approach to manage product safety.

Utilising whole-of government initiatives to enhance product safety

In its submission to the MCCA Discussion Paper, the ACCC points out that the 'hierarchy of risk reduction indicates that the greatest influence in product safety is at the design stage' (p4). It is worth noting that Workplace Relations Ministers endorsed the National Occupational Health and Safety (OHS) Strategy developed by the then National Occupational Health and Safety Commission (NOHSC). The National OHS Strategy was developed to reduce the incidence of work place deaths and injuries. An important element was the development of National Priority Action Plans such as the Safe Design Action Plan to eliminate hazards at the design stage. The work in relation to the Safe Design Action Plan may inform the PC's product safety study. ACCORD is of the view that opportunities exist within government to enhance information exchange and reduce duplication.

ACCORD supports in-principle a whole-of-government initiative for the linking of product safety information systems to provide comprehensive information to industry and consumers as long as there is no additional cost to industry arising from this development. Again, a lot of work has already been undertaken by various government agencies in this area, for example, OHS agencies have developed a system of safety alerts for workplace incidents including unsafe products; various Australian government regulators have developed adverse reporting mechanisms and there is also a national poisons' information network.

A broad range of databases already exists and these could be used to supplement the existing information provided through the ACCC's product recall site. The Therapeutic Goods Administration (TGA) in its submission stated that it 'has a database of all approved products' yet does not support the development of a centralised database. Linking existing data bases through a whole-of-government initiative such as a consumer products safety portal would not be duplicating existing systems, but rather it would make information more accessible to a wider audience thus enhancing consumer knowledge and the consumer's ability to make an informed choice regarding a range of products.

Adoption of COAG principle – review adequacy of existing bodies of law

ACCORD's members are required to deal with a large number of regulatory agencies. In some instances, this is primarily because industry specific legislation has been developed duplicating the existing law of general provision, for example, the therapeutic goods legislation mirrors areas of the TPA regarding product safety, product recall and advertising. ACCORD would suggest that there is an argument for a case study to examine the costs of duplication of these provisions within Commonwealth legislation such as the therapeutic goods and agricultural and veterinary products legislation. ACCORD members have an interface with all the major Australian

Government regulators and any streamlining and/or consistency in these areas has the potential to produce benefits through reduced regulatory burden.

ACCORD is not in a position to comment on the merits of the other proposals contained in the MCCA Discussion Paper in the absence of either more data or cost benefit analysis of the proposals. As previously mentioned ACCORD is of the view that the current system operates well and provides an effective form of regulation and protects consumer interests. Whether the current level of regulation is excessive is yet to be determined. It is hoped that the PC study will shed some light on this issue. ACCORD looks forward to a detailed cost benefit analysis of the options proposed. As they currently stand there is little data to support any change to the current system.

Once again, I thank you for allowing ACCORD to provide comments on this important issue. Should you have any queries in relation to ACCORD's views on this matter, please do not hesitate to contact me on 02 9281 2322.

Yours sincerely

Approved for electronic transmission

Dusanka Sabic
Regulatory Reform Strategist

27 May 2005

ACCORD Australasia Membership

Advance Chemicals Pty Ltd	L'Oreal Australia Pty Ltd
Albright & Wilson (Aust) Ltd	Milestone Chemicals Pty Ltd
Amway of Australia Pty Ltd	Northern Chemicals Pty Ltd
Applied Chemicals Pty Ltd	Novozymes Australia Pty Ltd
Archem Australia Pty Ltd	Nowra Chemical Manufacturers Pty Ltd
Auto Klene Solutions Pty Ltd	Peerless JAL
Beiersdorf Australia Ltd	Procter & Gamble Australia Pty Ltd
Callington Haven Pty Ltd	PZ Cussons Pty Ltd
Campbell Brothers Limited	Reckitt Benckiser
Canpoint International Pty Ltd	Recochem Inc
Castle Chemicals Pty Ltd	Rohm and Haas Australia Pty Ltd
Castrol Australia Pty Ltd	Scental Pacific Pty Ltd
Chemetall (Australasia) Pty Ltd	Selkirk Laboratories Pty Ltd
Ciba Specialty Chemicals	Solvay Interox Pty Ltd
Clariant (Australia) Pty Ltd	Sonitron Australasia Pty Ltd
Cleveland Chemical Co Pty Ltd	Sopura Australia Pty Ltd
Clorox Australia Pty Ltd	Tasman Chemicals Pty Ltd
Creative Brands Pty Ltd	Thor Specialties Pty Limited
Colgate Palmolive Pty Ltd	True Blue Chemicals Pty Ltd
Deb Australia Pty Ltd	Unilever Australasia
Dominant (Australia) Pty Ltd	Whiteley Industries Pty Ltd
DuPont Chemical Solutions Enterprise	Associate Members:
Ecolab Pty Limited	AMS Laboratories Pty Ltd
GlaxoSmithKline Consumer Healthcare	Cintox Pty Ltd
G S B Chemical Co Pty Ltd	Competitive Advantage
Healthcare Manufacturing Group	Dermatest Pty Ltd
Henkel Australia Pty Limited	DSL Packaging
Huntsman Corporation Australia Pty Ltd	E-Three & Associates Pty Ltd
Jalco Group Pty Limited	Hydro Nova Controls
Jasol Australia	Middletons Lawyers
Johnson & Johnson Pacific Pty Ltd	Silliker Microtech Laboratories Pty Ltd
Kao (Australia) Marketing Pty Ltd	Sue Akeroyd & Associates
Lab 6 Pty Ltd	Tonic Creative
	Visy Industrial Packaging