



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

CONSUMER PRODUCT SAFETY – IMPACT OF REFORM OPTIONS

*ACCI SUBMISSION
TO THE
PRODUCTIVITY COMMISSION*

MAY 2005

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Background

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. ACCI's members are employer organisations in all States and Territories and all major sectors of Australian industry.

Through our membership, ACCI represents over 350,000 businesses nation-wide, including the top 100 companies, over 55,000 enterprises employing between 20-100 people, and over 280,000 enterprises employing less than 20 people. This makes ACCI the largest and most representative business organisation in Australia.

Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. A list of these members is provided in Appendix A.

Introduction

This submission is provided to the Productivity Commission in response to the request for comment on proposals outlined in the *Productivity Commission Circular 'Consumer Product Safety'*. In this submission, ACCI specifically addresses items for comment in the *Issues Paper* provided with the *Circular*.

The Productivity Commission has been asked to undertake a research study to examine the impacts of options for reforming Australia's general consumer product safety system.

The options for reform were presented in the Ministerial Council on Consumer Affairs (MCAA) discussion paper entitled *Review of the Australian Consumer Product Safety System*. ACCI provided a submission in response to the discussion paper in December 2004. A copy of this submission is included at Appendix C.

ACCI notes that the Productivity Commission will draw upon ACCI's previous submission provided to the MCCA and thus it is unnecessary to fully restate ACCI's previous response and comments.

The following responses are numbered according to the corresponding enumeration in the *Issues Paper*.

2 The Commission's Approach

Participants are also asked to provide any relevant information and data that may assist the Commission to evaluate the size of impacts

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on groups and the nature of impacts of the current system and the reform options (eg, other compliance costs/red tape; cost and availability of insurance; innovation/research and product development).

Compliance costs/red tape

Introducing regulations to create a General Safety Provision [GSP] would greatly increase business compliance costs and red tape.

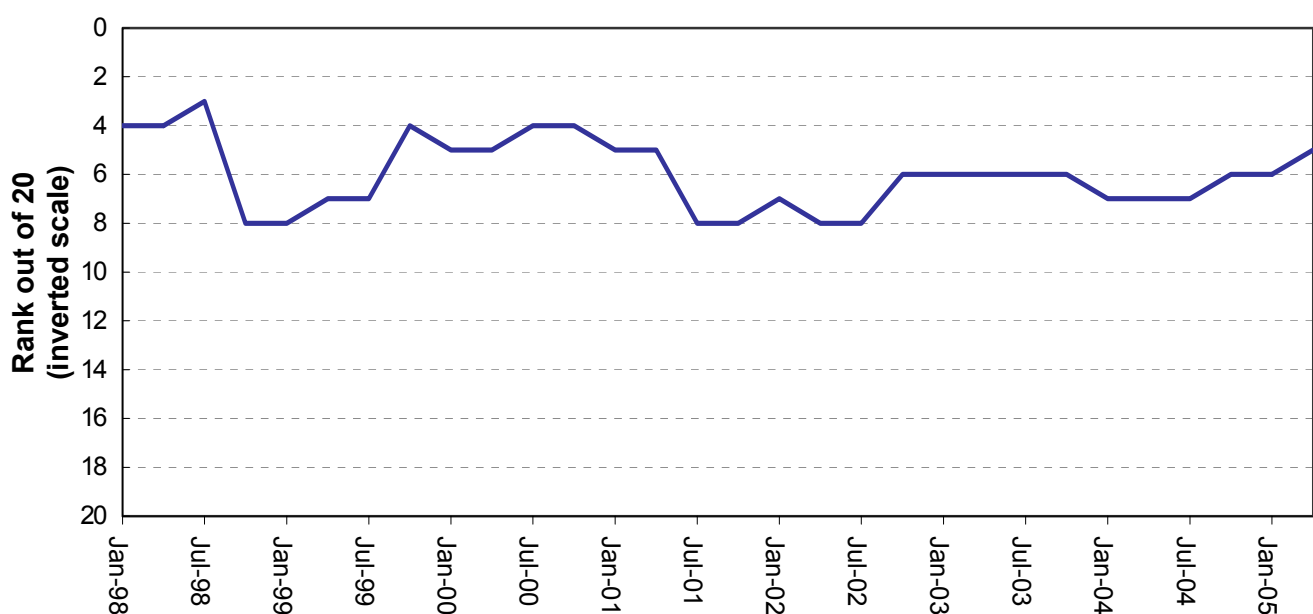
Government regulation is already a significant concern for business, as evidenced through the quarterly ACCI *Survey of Investor Confidence*.

Part of the *Survey* asks businesses to rank constraints on their investment. The final ranking is derived by ordering the magnitudes of a list of 20 constraints to business investment relative to each other. Appendix B lists the 20 categories of constraint on investment surveyed. Respondents to the survey are from all the major Australian industries and cover businesses of all sizes.

The graph below shows the relative movement of the federal government's impact on business investment decisions. It demonstrates that federal government regulations have consistently ranked within the top ten constraints on business investment.

Graph 1: Survey of Investor Confidence

Federal Government Regulations

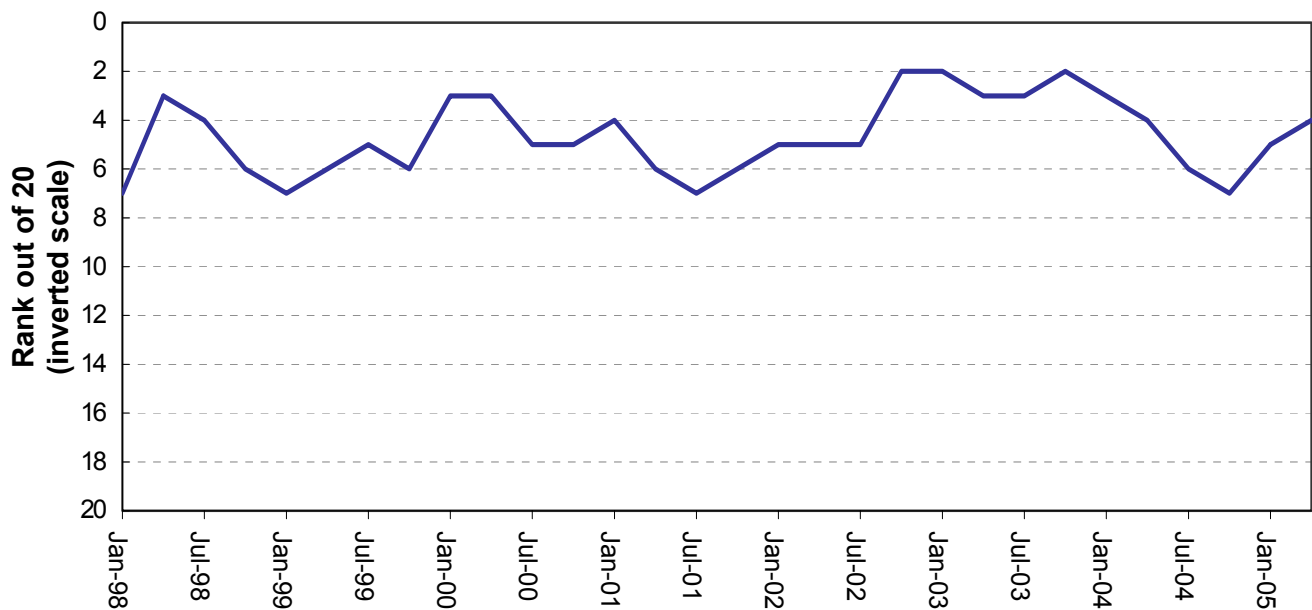


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State Government Regulations have also consistently ranked within the top ten business constraints on business investment. The graph below shows the relative movement of federal government’s impact on business investment decisions.

Graph 2: Survey of Investor Confidence

State Government Regulations



The graphs clearly demonstrate, that federal and state government regulations substantially impact on business investment confidence. Introduction of a GSP would increase this impact, creating uncertainty and greatly increasing compliance costs and red tape. As stated in our previous submission (included at Appendix C),

“The introduction of a GSP would impose a range of complicated and onerous rules, regulations and procedures. Not only would business have to grapple with the precise definition of what constitutes a “safe” product, but it would also have to provide greatly increased information, monitoring, corrective actions and notification procedures. The compliance costs for business would be substantial and detrimental.”

The regulatory impact on small business in particular, through compliance time and costs, would be substantial. Several Australian publications document and discuss the considerable impact of existing regulation on small business. Examples include the Small Business Deregulation Taskforce’s 1996 report *Time for*

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Business (the ‘Bell Report’) and the Productivity Commission’s 1998 Staff Research Paper *Design Principles for Small Business Programs and Regulations*.

These findings are supported by overseas studies. For example, a report developed for the United Kingdom Small Business Service, looking at regulatory burdens on small business in the United States, the United Kingdom, the European Union, Australian and New Zealand found that regulation was a significant cost for small business.¹ Specifically, “...for businesses with less than 20 employees, the compliance costs borne are at least 35% higher than for firms with more than 500 staff (e.g. ENSR 1995). This figure must be seen as an absolute minimum... In the majority of cases the costs borne by small firms are relatively much higher.”²

The authors also state, that “...in all the countries reviewed government had accepted that the burden of regulation has a disproportionate impact on small firms. All governments stated that they were taking action to reduce this burden.”³ However this had not been achieved, as in “...the countries reviewed it seems that governments have yet to discover how to reduce the relatively higher burden of compliance costs on small firms in a substantive way.”⁴

Clearly regulation, and associated compliance time and costs, is of considerable concern to business of all sizes and particularly to small business. The proposed GSP will significantly add to this concern. It will also add to the compliance costs of all business.

Cost and availability of insurance

It is foreseeable that the introduction of a GSP would also significantly increase the amount and cost of insurance required by businesses.

Only four years has passed since the collapse of HIH. Insurance industry restructuring that occurred in response to the collapse has only recently witnessed insurance products return to more affordable and accessible levels.

¹ F. Chittenden, S. Kauser and P. Poutziouris, *Regulatory Burdens of Small Business: A Literature Review*, Manchester Business School, The University of Manchester, 2002, <http://www.sbs.gov.uk/content/analytical/research/Regulation-Report.pdf>.

² Chittenden, Kauser and Poutziouris, p. 4.

³ Chittenden, Kauser and Poutziouris, p. 3.

⁴ Chittenden, Kauser and Poutziouris, p. 5.

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In May 2002, ACCI made the following observations in a submission to the Senate Economics Reference Committee on Public Liability and Professional Indemnity Insurance:

“Without doubt, the issues concerning PLI [Public Liability Insurance], PII [Public Indemnity Insurance] and D&O [Directors and Officers Insurance] are increasingly affecting all businesses, but it is being most keenly felt in the small business sector. ACCI believes that the limited accessibility to these insurances, combined with the recent premium increases, has the potential to significantly increase small business operating costs to an unsustainable level, and/or, force small businesses to operate with no cover at all. The consequences of this being many small businesses may choose not to take out insurance (leaving themselves, their customers and their creditors vulnerable to financial hardship in the event of an incident); may leave the industry, sector or market altogether; or may be forced to absorb the high liability premiums, placing pressure on their ability to expand. Furthermore, it is likely that as businesses on-forward these higher operating costs as higher prices, or perhaps poorer service, the community at large will ultimately also be disadvantaged.”

Anecdotal evidence provided by the ACCI Small Business Committee suggests that a number of small businesses are still unable to obtain certain types of insurance, or, are choosing not to obtain insurance as premiums are simply unaffordable.

The ACCC completed their fourth monitoring report into public liability and professional indemnity insurance in January 2005. The ACCC reported that for the six-month period between December 2003 and June 2004 the average public liability insurance “...premium decreased by 15 per cent, reversing the trend of substantial increases experienced since 2000.”⁵

The ACCC reported that for the same period the average professional indemnity insurance “premium fell by 17 per cent, counter to the trend since 2000.”⁶

The following graphs demonstrate the ACCC findings:

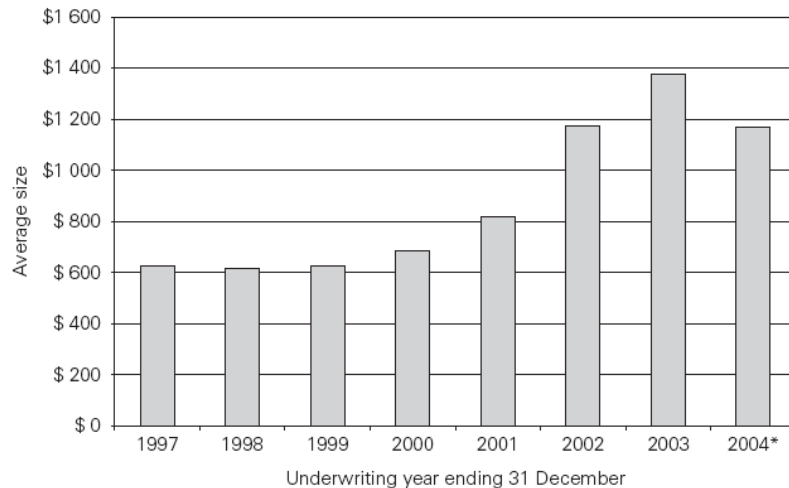
⁵ ACCC, *Public liability and professional indemnity insurance – Fourth Monitoring Report*, January 2005, page viii.

⁶ ACCC, page ix.

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Graph 3 ACCC Public liability and professional indemnity insurance – Fourth Monitoring Report January 2005, page 15

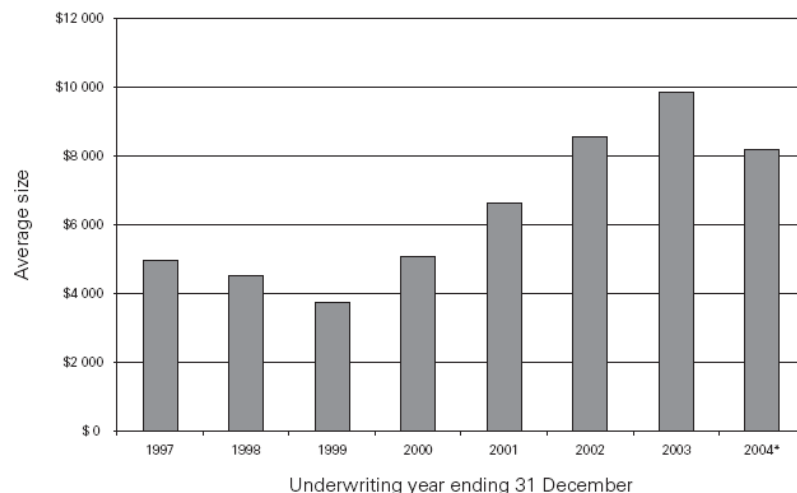
Chart 3.4 Average premium—real terms—public liability—1997 to 2004*



Notes: * 1 January to 30 June 2004.
Data is shown in real terms adjusted to 30 June 2004 values using AWE index.
Derived by ACCC from responses provided by seven insurers.

Graph 4 ACCC Public liability and professional indemnity insurance – Fourth Monitoring Report January 2005, page 28

Chart 4.4 Average premium—real terms—professional indemnity—1997 to 2004*



Notes: * 1 January to 30 June 2004.
Data is shown in real terms adjusted to 30 June 2004 values using AWE index.
Derived by ACCC from responses provided by five insurers.

It should be noted that the graphs represent average premiums and do not reflect the more severe premium increases experienced in some sectors.

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The ACCC monitoring report demonstrates that for the first time since 1999, prices have decreased, though only slightly. Introducing a GSP would risk destabilising the Australian insurance market again, just as it begins to stabilise after four years of restructuring. Significant detrimental impacts on business, especially small business, could also result, as these businesses are still adjusting to the higher insurance prices of the past four years.

Innovation/research and product development

The Productivity Commission's 1998 Staff Research Paper *Design Principles for Small Business Programs and Regulations* succinctly describes a range of the costs that regulation can impose on a business, including

“reduced incentives for efficiency, entrepreneurship and innovation that feed into lower productivity levels and growth rates. For example, Wedder (1996) estimated that regulation cut productivity growth by about 1 percentage point per year in the US from 1963 to 1993.”⁷

Recently this problem has been receiving increasing regard within the United Kingdom in reaction to copious European Union regulations. For example, a 2005 United Kingdom report states “...all too often, regulations (and their enforcement by officials) become over-burdensome or even counter-productive. Over-regulation depresses corporate profits, consumes valuable management time and saps entrepreneurial morale.”⁸

Australian business innovation, research and product development must not be thwarted or risked by radical changes to the system that have not been proven as warranted. It is likely that a GSP would compromise innovation, research and product development.

How significant are the differences between Australian consumer product safety standards and those in place in other developed nations?

Australia currently has a sensible regulatory framework involving Commonwealth and State Governments, industry, consumer groups and other organisations, including Standards Australia, that have an interest in promoting consumer product safety arrangements.

In the absence of a proper case being made to change this system it is difficult to see why Australia would want to move from the

⁷ Productivity Commission, Staff Research Paper, *Design Principles for Small Business Programs and Regulations*, 1998, p. 176.

⁸ T. Ambler and K. Boyfield, *Route Map to Reform: Deregulation*, Adam Smith Institute, 2005, <http://www.adamsmith.org/pdf/deregulation.pdf>, p. 6.

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current mix of legislative measures and industry regulation to more onerous models which may apply in other jurisdictions.

To date ACCI is unaware of any evidence that suggests consumers would be any better off or accidents may be reduced were there more specific consumer product safety provisions.

Instead consumers would probably find themselves faced with decidedly less product choice and an economy hampered by excessive litigation.

What are the benefits and challenges associated with greater harmonisation of product safety systems and standards between Australia and New Zealand? What impact do trans-Tasman mutual recognition obligations have on reducing the practical variations in standards between the two countries?

ACCI notes that the Productivity Commission released a report entitled *Australia and New Zealand Competition and Consumer Protection Regimes* on 13 January 2005.⁹ The report addressed issues of consumer product safety. The objective of the report was to:

- Assess how competition and consumer protection laws and their administration affect trans-Tasman business; and
- Identify and evaluate options to harmonise further the operation, administration and enforcement of Australian and New Zealand competition and consumer protection policy and law for the purpose of facilitating an integrated economic market.

The report found that

- “There has already been significant convergence of Australia’s and New Zealand’s competition and consumer protection regimes, particularly by international standards.
– Consequently, the regimes are not significantly impeding businesses operating in Australasian markets.
- Major changes to the two regimes are not warranted at this stage.”

⁹ Productivity Commission 2004, *Australian and New Zealand Competition and Consumer Protection Regimes*, Research Report, Canberra.

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ACCI considers that the findings of the report sufficiently address the issues posed by the *Issues Paper* and that it is unnecessary to revisit these matters at this time.

Recommendations

ACCI:

- Considers that introducing regulations to create a General Safety Provision [GSP] would greatly increase business compliance costs and red tape.
- Views the regulatory impact of a GSP on small business in particular, through compliance time and costs, as substantial.
- Considers it foreseeable that the introduction of a GSP would significantly increase the amount and cost of insurance required by business. This would result in significant detrimental impacts on business, and especially small business, who are still adjusting to the higher insurance prices of the past four years.
- Considers it likely that a GSP would compromise Australian innovation, research and product development.
- Believes that Australia currently has a sensible regulatory framework involving Commonwealth and State Governments, industry, consumer groups and other organisations, including Standards Australia, that have an interest in promoting consumer product safety arrangements.
- Considers that the findings of the Productivity Commission's *Australia and New Zealand Competition and Consumer Protection Regimes* report sufficiently address the issues posed by the *Issues Paper* and that it is unnecessary to revisit these matters at this time.

ACCI reiterates its recommendations contained in the submission to the MCCA (included at Appendix C), whereby ACCI:

- Does not support the introduction of a General Safety Provision (GSP).

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- Does not support the introduction of legislation or regulation to cover services and second-hand goods as suggested in the Discussion Paper.
- By and large, believes that consumers receive adequate product information. Where there are deficiencies in information to consumers those specific problems should be addressed case-by-case.
- Opposes the imposition of any further ‘one-size-fits-all’ requirements on business regarding the reporting of unsafe products to government and opposes the introduction of government auditing of product recalls.
- Would consider, in principle, the establishment of a centralised electronic database to achieve product safety goals, funded and managed by government.
- Supports, in principle, the minimisation of overlaps, duplication and conflicts between legislation and regulations in differing jurisdictions that govern product safety and enforcement.
- Considers it essential that any proposals are rigorously analysed to ensure that costs and benefits are identified, adequately quantified and their impact on Australian business and consumers fully evaluated.

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APPENDIX A:

**AUSTRALIAN CHAMBER OF COMMERCE AND
INDUSTRY MEMBERS**

ACT & Region Chamber of Commerce and Industry
Australian Business Limited
Business SA
Chamber of Commerce and Industry of Western Australia (Inc)
Chamber of Commerce Northern Territory
Commerce Queensland
Employers First™
State Chamber of Commerce (NSW)
Tasmanian Chamber of Commerce and Industry Ltd
Victorian Employers' Chamber of Commerce and Industry
Agribusiness Employers' Federation
Association of Consulting Engineers Australia
Australian Beverages Council Ltd
Australian Consumer and Specialty Products Association
Australian Entertainment Industry Association
Australian Hotels Association
Australian International Airlines Operations Group
Australian Made Campaign Limited
Australian Mines and Metals Association
Australian Paint Manufacturers' Federation Inc
Australian Retailers' Association
Housing Industry Association
Insurance Council of Australia
Investment and Financial Services Association Ltd
Master Builders Australia Inc
Master Plumbers' and Mechanical Services Association of Australia
National Electrical and Communications Association
National Retail Association Ltd
NSW Farmers Industrial Association
Oil Industry Industrial Association
Pharmacy Guild of Australia
Plastics and Chemicals Industries Association Inc
Printing Industries Association of Australia
Restaurant & Catering Australia
Standards Australia
Victorian Automobile Chamber of Commerce

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APPENDIX B:

**SURVEY OF INVESTOR CONFIDENCE – CONSTRAINTS
ON INVESTMENT**

LABOUR RELATED CONSTRAINTS

Wage costs

Non-wage labour costs (ie on-costs)

Resistance to workplace change from:

 Unions

 Employees in general

Availability of suitably qualified employees

Availability of training facilities

FINANCIAL CONSTRAINTS

Current Levels of Debt

Cost of Finance

 Interest rates

 Charges made by lending institutions

Availability of Finance

 Raising loans from financial institutions

 Raising equity capital

 Insufficient retained earnings

MACROECONOMIC CONSTRAINTS

Insufficient demand

Local competition

Import competition

Exchange rate too high

PUBLIC SECTOR CONSTRAINTS

Federal Government regulations

State Government regulations

Local Government regulations

Business taxes and government charges

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APPENDIX C:

**REVIEW OF THE CONSUMER PRODUCT SAFETY
SYSTEM DISCUSSION PAPER – ACCI SUBMISSION TO
THE MINISTERIAL COUNCIL ON CONSUMER AFFAIRS**