# Creating a more dynamic and resilient economy

## Interim report

**ACCORD SUBMISSION**

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accord 50 YEARS
hygiene, personal care & specialty products industry
PARTNERSHIP & EXPERIENCE

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# Executive Summary

Accord welcomes the Productivity Commission's focus on building a more dynamic and resilient economy. Our industry—formulated hygiene, personal care, cosmetic, cleaning, and sunscreen products—is a vital contributor to national prosperity, with $28.2 billion in turnover, $5.5 billion in industry value-add, over 72,000 jobs, and $1.5 billion in exports. Despite this, our ability to innovate, invest and compete is being held back by excessive and ill-fitting regulation.

The single greatest productivity drain across our sector is regulatory burden. Australia's rules for cosmetics, sunscreens, personal care and cleaning products diverge markedly from international best practice. Personal care, cosmetics and cleaning products are treated as "industrial chemicals" under AICIS, while sunscreens are regulated as "therapeutic goods" by the TGA. On top of this, there are multitudes of other regulations that apply to the marketing of these products; these are either buried in obscure regulations and/or have no equivalence in other jurisdictions.

These approaches create regulation that is not fit for purpose and is duplicative and out of step with comparable jurisdictions such as the EU, New Zealand, Canada and the USA.

Australia's inconsistent and disproportionate regulatory settings are choking Australian businesses, discouraging investment, stifling innovation and reducing consumer access to safe, affordable products. Other countries achieve safety and quality outcomes through lighter-touch, product-appropriate regulation that leverages trusted international frameworks.

The Commission's recommendations for a whole-of-government statement on regulatory reform, strengthened scrutiny, and adoption of international best practice are essential. But we urge the Commission to prioritise reform of cosmetic and sunscreen regulation as a test case. Quick action here would deliver immediate productivity gains, restore competitiveness, and demonstrate that Australia is serious about removing "regulatory hairballs" that are stifling industry growth.

Our sector is innovative, resilient and globally connected. But without urgent regulatory reform, Australian industry will continue to be restrained by regulatory burden and consumers will pay the price.

# Introduction

Accord is pleased to provide this submission in response to the Productivity Commission's 'Creating a more dynamic and resilient economy' interim report. Accord is the national industry association representing the formulated hygiene, personal care and specialty products industry. For more background on Accord and the industry we represent, please refer to the 'About Accord' section.

We commend the Commission on the interim report and support the various policy remedies it outlines to lift business investment, including the comprehensive roadmap for better regulation.

Accord commends the Commission for its suite of well-constructed policy proposals to help stem the tide of over-regulation. The experience across our sector supports the view that the Commission's recommended policy actions will be effective.

In addition, we request that the Commission consider the cosmetics, personal care and sunscreen products sector as a priority for regulatory reform.

Our industry faces the same issues of disjointed and not fit-for-purpose regulation as other sectors. But in addition, there is no single regulatory or policy body that can drive positive changes for the cosmetics, personal care and sunscreens sector. Accord's attempts for reforms over the last two decades or so have failed to deliver significant results because our regulatory structure is splintered and not fit for purpose for these products, and no one 'owns' the responsibility to make it better. Regulators and policy bodies in various agencies that regulate 'bits' of cosmetics continue to tell us that existing regulations cannot be made fit for purpose for our products.

And yet, the potential benefits of reform could be significant.

This year, Korea's cosmetics exports surpassed US$10 billion[1]. In 2023, Australia's cosmetics exports were US$0.437 billion, while our cosmetics imports were US$1.15 billion[2]. It is disappointing to see that Korea has 20 times the exports that Australia has, when Korea's population is only double ours.

The Australian cosmetics industry has all the right ingredients to be successful on the global market. We have innovative formulators, great contract manufacturers that can assist start-ups and small companies, and a clean and safe image to instill consumer confidence in our products.

For sunscreen products, Australia should absolutely be a market leader—our population understands the importance of sunscreen use and should be a ready 'testing ground' for brands before they venture out on the global market.

[1] https://www.globalcosmeticsnews.com/k-beauty-milestone-korean-cosmetics-exports-surpass-us10-billion/
[2] https://oec.world/en/profile/bilateral-product/beauty-products/reporter/aus

However, local companies face regulatory hurdles that are unnecessarily difficult, costly to navigate and time consuming. For example, to have access to the same ingredients that all other markets have right now for sunscreens, with the current regulatory framework, Australian industry will need to wait a hundred or more years for approvals after spending millions of dollars (see case study 1).

Reforms are needed so that Australia can keep up with innovation in the cosmetic, personal care and sunscreen products sector. This includes highly popular categories like 'functional cosmetics'; these simply do not exist in Australian regulations because our regulations have not kept pace with product developments and innovation.

# Regulating to promote business dynamism

## *Setting a clear agenda for regulatory reform*

### A whole-of-government statement that commits to new principles to drive regulation that supports economic dynamism

During the 20 years since Accord was inaugurated, we have seen a waxing and waning in terms of focus given to regulatory reform by various Australian governments. In past times, there had been ministers specifically appointed to oversee deregulation or better regulation. From 2007 until 2013 under the Rudd-Gillard-Rudd Government there was a specific Minister for Finance and Deregulation. And for a period during the Turnbull Government there was a Minister for Small and Family Business, the Workplace and Deregulation. Though to the best of our knowledge there was no associated overarching national policy goal outlining what should be achieved in terms of regulatory reform.

In this interim report, the Commission makes a salient observation that "the tools and procedures for stock and flow management [of regulation] look attractive but are often not followed in practice". Institutional arrangements like the Office of Impact Assessment have become tick-box exercises rather than tools for the design of better regulatory options. Over the last decade, we have observed an ongoing siloing of regulatory 'reform' activity within the regulators themselves due to a lack of overarching whole-of-government engagement on better regulation.

Last year, Accord experienced a direct example of this. Our association holds an annual Canberra Day seminar at which we invite key departments and regulators to present their policy priorities and agenda to the industry. A presentation by the Finance Department outlined its latest work on regulatory practice frameworks, most of which appeared to have been progressing in a fairly opaque fashion. Of greatest interest and concern to us was the fact that many of the regulators attending also stated that this was the first time they had seen details about this Finance Department work. Clearly, there is a leadership gap across the government and the APS when it comes to championing regulatory best practice.

The Commission's recommendation for a whole-of-government statement that commits to new principles to drive regulation that supports economic dynamism is an essential step to correcting this problem. This would also help broaden the often very narrow focus of regulators and instead create accountability for regulatory outcomes that are better designed to encourage business innovation, investment and competition.

Hand in hand with the whole-of-government statement is the need to establish ministerial leadership at the cabinet level. The appointment of a Minister for Better Regulation should complement the new statement and be progressed as a priority.

Accord hopes that the government will support this recommendation and act quickly to implement it.

## *Bolster high-level scrutiny of regulations*

Including via Cabinet scrutiny, a statutory independent commissioner for the Office of Impact Assessment, greater parliamentary committee scrutiny and greater use of external sectoral reviews of regulatory burden

Our experience has been a siloing of the making of regulations to the point where this has often become an activity exclusively undertaken by the regulators themselves. Regulatory impact assessment often does not occur, or only occurs at the very end of the process—making it meaningless. This creates an environment of regulatory creep, where the stock of regulations and rules is ever-increasing. And within Australia's fully cost-recovered regulators, there is no disincentive to stem ongoing regulatory creep as no external funding is needed for any proposed new regulatory activity. All costs associated with regulatory expansion are firmly baked into the cost-recovery system.

**Case study 1**

*'Regulatory reform' leading to a significant increase in regulatory burden*

At the end of the Medicines and Medical Devices Regulations (MMDR) Review held 2016-2017, the TGA announced that they will continue to regulate sunscreens, then added *'…however a number of* ***ongoing activities will be pursued to reduce regulatory burden associated with these products****. Based on use of overseas reports the TGA will be developing a new, more transparent and predictable pathway for approval of new active ingredients for sunscreens. We will also seek to define alternative quality standards for the non-active ingredients and excipients in sunscreens.'*[3]

The publicly stated objective is the reduction in regulatory burden for sunscreen products. This does not appear to have been made clear to those implementing the changes.

Since that announcement, for the assessment of ingredients used in sunscreens, the changes implemented by the TGA resulted in:

- a 15-fold increase in assessment fees (from approximately $2,000 to approximately $30,000 per ingredient)
- significant increases in assessment timeframes (from approximately 1 month per ingredient to >7 months per ingredient)
- significant increases in data requirements that are unique to Australia (from 3 mandatory and an additional 5 data points [total 8] to 13 mandatory and an additional 16 data points [total 29]), costing an additional hundreds of thousands of dollars per ingredient, which cannot be justified for less than 2% of the global market
- plummeting of ingredient approvals (from up to 45 per year to 0-3 per year).

[3] https://www.tga.gov.au/future-regulation-low-risk-products#:~:text=The%20will%20be%20no%20changes,burden%20associated%20with%20these%20products.

The ingredients that are not allowed to be used in 'therapeutic' sunscreens in Australia are not new ingredients. They are already used in overseas sunscreen products and in Australian 'cosmetic' products, including cosmetic sunscreens.

There are hundreds of ingredients that are allowed in sunscreens in the EU, US and New Zealand, and in low-SPF 'cosmetic' sunscreens in Australia, that cannot be used in TGA - egulated sunscreens. Even if Australian companies could justify the millions of dollars to add these ingredients to the TGA '26BB list', it would take the TGA more than a hundred years (assuming approval of 2-3 sunscreen ingredients per year) just to get to the point where we would have the same ingredients as everyone else has now.

Other regulatory aspects of sunscreens, including efficacy testing, stability testing, labelling, GMP requirements and advertising largely unchanged, with some areas experiencing increase in regulatory burden e.g. advertising.

None of the evidence suggests a reduction in regulatory burden for sunscreens, the objective behind the changes. Rather, the opposite outcome—increased regulatory burden—has occurred.

**Case study 2**

*Regulatory proposals without consideration of regulation impact*

The TGA recently consulted on two UV filter actives used in sunscreens, and one impurity of UV filter actives.[4]

None of the proposals align with international regulations, and one of the proposals suggests a dangerous practice of allowing a UV filter only at a concentration that would not provide necessary levels of sun protection.

There are proposals for different UV filter concentrations (>6-fold difference) depending on whether the sunscreen is 'cosmetic' or 'therapeutic', for similar sunscreen applications. This means that the TGA and AICIS considered the same ingredient, for practically the same use, and came to different conclusions from each other and from international limits.

If the proposals are implemented, approximately 50% of products currently available on the Australian market will be removed. This is the number of products; by volume, it is expected to be far greater, as these ingredients are used in the highest-selling sunscreens.

Our estimation of the cost to formulate new products to replace lost products runs into tens of millions of dollars. That doesn't cover all other costs, such as increased costs of newer ingredients.

[4] https://consultations.tga.gov.au/tga/scheduling-pre-meeting-sunscreen-substances-sep-25/user_uploads/pre-meeting-public-notice---joint-41---homosalate-oxybenzone-benzophenone---sep-2025-1.pdf

A further 25% of sunscreen products will be impacted, but the proposals are unclear on expectations of regulatory compliance, so we cannot gauge the quantum of impact.

The intangible costs of this process are very significant. Sunscreens protect us from UV radiation, a known carcinogen. Two out of three Australians will be diagnosed with some form of skin cancer in their lifetime, with an estimated A$1.7 billion annual cost to the health system[5]. Research published in the *Australian and New Zealand Journal of Public Health* in 2015 showed that in 2010, Australians prevented more than 1700 cases of melanoma and 14,000 cases of non-melanoma skin cancer thanks to regular sunscreen use over the previous decade[6].

Since the release of the TGA consultation, our industry is fielding queries from consumers who are asking whether sunscreens are safe. Some consumers will believe that they are not safe, and will stop using sunscreens.

There has been no regulation impact assessment. We have urged for an impact analysis given the very significant likely impact, not only on product supply, but on public health outcomes. We were informed that this will happen at the end of the process, once the decision is made. And, after potentially more than half of existing sunscreen products are removed from the Australian market.

Without some meaningful form of external scrutiny, the consultation processes that regulators run when proposing new regulations also tend to dismiss outright any suggestions from the regulated industry for alternative approaches or efficiencies.

**Case study 3**

*Regulation impact without external scrutiny*

When the *Industrial Chemicals Act 2019* was enacted, it required a "proper name" for every chemical introduction—used for reporting and record-keeping purposes. However, AICIS interpreted "proper name" narrowly, insisting that only a CAS name or IUPAC name could be used for reporting. AICIS deemed INCI names (International Nomenclature of Cosmetic Ingredients) insufficient for reporting purposes, even though INCI names are mandatory under the ACCC for cosmetic product ingredient lists.

[5] Gordon LG, Shih S, Watts C, Goldsbury D, Green AC. *The economics of skin cancer prevention with implications for Australia and New Zealand: where are we now?* Public Health Res Pract. 2022;32(1):e31502119. First published 22 December 2021.

[6] Olsen CM, Wilson LF, Green AC, Bain CJ, Fritschi L, Neale RE, Whiteman DC. *Cancers in Australia attributable to exposure to solar ultraviolet radiation and prevented by regular sunscreen use.* Aust N Z J Public Health. 2015 Oct;39(5):471-6. doi: 10.1111/1753-6405.12470. PMID: 26437734; PMCID: PMC4606762.

As a result, several cosmetic ingredients—having only an INCI name and lacking a CAS name and unable to have an IUPAC name—were blocked from introduction into Australia, despite meeting all safety criteria. This created unnecessary supply chain disruptions and compliance challenges for cosmetic manufacturers.

Accord, representing industry stakeholders, highlighted this restrictive interpretation as a significant impediment. In response, AICIS amended its guidance to accept "eligible INCI plant extract names"—that is, INCI names based on botanical extracts not chemically altered—where those were appropriate. This adjustment represented a step in the right direction but accepting only "eligible INCI plant extract names" left many legitimate cosmetic ingredients out of scope, without addressing the systemic gap.

Despite this partial change in interpretation, AICIS maintained that broader acceptance of INCI names would necessitate changes to the Industrial Chemicals (General) Rules 2019. Accord disputed this, arguing that if botanical-based INCI names could be accepted under current legislation—and without rule changes—then logically, other INCI formats should also be permissible. The inconsistency raised questions about the rationale behind not applying a more flexible interpretative approach under the Act.

AICIS's rigid stance reflects a misjudgement of its legislative leeway. Rather than adapting its interpretations to facilitate smoother industry operations, the regulator opted to revise the legislation itself. This led to complex, hierarchically structured naming requirements being embedded in rules—resulting in greater bureaucratic burden and confusion, without any corresponding safety benefit.

A more targeted interpretive shift toward inclusively acknowledging all INCI names would have streamlined the regulatory process, better aligned with existing cosmetic industry practices, and reduced administrative friction.

Making impact assessment meaningful by shifting it to the earlier regulatory design phase is an essential step for better regulation. Accord supports the Commission's proposals to bolster high-level scrutiny of regulations.

The observation by the Commission's Chair in her recent National Press Club speech that Australia has 'regulatory hairballs' that it needs to 'cough up', is salient and points to the need for greater use of external sectoral reviews. Some regulatory approaches in various sectors are just not fit for purpose. For our industry, the treatment of formulated cosmetic products as industrial chemicals and the over-regulation of sunscreen products as therapeutic goods stand out as areas for review in order to achieve more appropriate, lighter-touch regulation.

Australia's regulatory treatment of these products differs from international best practice. Therefore, the Commission's recommendation that an Australian whole-of-government statement on regulation should apply the following is therefore also salient here:

> "...an additional principle specifying that regulators and policymakers should, as a default, rely on trusted processes from other regulators in Australia and overseas, and only develop

bespoke rules where there is a clear need to do. What is good enough for Canada or the European Union should, in nearly all cases, be good enough for Australia."

The following illustrates this principle:


## *Enhance regulatory practice*

To deliver growth, competition and innovation including via greater central agency support for regulators and creating a regulatory stewardship approach to prioritise industry growth and dynamism

Creating the right culture within regulators to support better regulation can, as the Commission has recommended, be supported by the active promotion of regulatory stewardship objectives.

Over the last few years, Accord has noted there has been better and more consistent use of ministerial statements of expectations. Though specifically targeting these to direct regulators to prioritise the growth and dynamism of the regulated industry and to embrace regulatory stewardship, and seeking regular updates on progress, would firmly set the direction for needed cultural change.

When the APS stewardship reforms were being implementing a few years ago, Accord was hopeful that the related concept of regulatory stewardship would receive similar policy priority. Unfortunately, this opportunity was missed. The time is now right for a more formalised approach to implement regulatory stewardship. Accord endorses the definition outlined by the Commission in Figure 2.2:

> "Regulatory stewardship is the practice of caring for a regulatory system as an asset that we have been trusted to look after for the benefit of Australians. It promotes a whole-of-system, collaborative view of regulation and requires stewards to prioritise economic growth and the broader objectives of government as well as regulatory outcomes."

**Case study 4**

*Keeping up with scientific progress*

Ethylene oxide, propylene oxide and epichlorohydrin are unavoidable trace impurities in a wide range of products, including ethoxylated surfactants. These surfactants are essential inputs into numerous industrial, consumer and therapeutic goods such as adhesives, coatings, cleaning products, sunscreens and personal care items.

Due to a historic entry in the Poisons Standard, these chemicals are currently listed in Schedule 7 in a way that prohibits any detectable residue in consumer products and requires licensing for industrial use. The progress of analytical science since the historic entry means that we are now able to detect at levels that were not possible back then. Accord asked that the TGA address this issue as part of regulatory maintenance—a regulatory stewardship practice—to keep up with progress in analytical science.

The TGA acknowledged the problem in its 2019 *Review of Chemical Scheduling in Relation to Cosmetic and Fragrance Ingredients*, recommending consideration of improved mechanisms for managing the *low-level presence* of Schedule 7 and Schedule 10 substances. Ethylene oxide was cited as a case study, with the review stating clearly that the capture of such unavoidable impurities "was not the intent of the scheduling process". No work has progressed since then.

Despite this, another section of the TGA gave an ultimatum to the industry to 'fix' the issue or any Listed medicine ingredients (of significant concern for our sector, sunscreens) with these impurities will be removed from the market. This equates to dozens of ingredients and many hundreds of products—close to 1000 sunscreen products are currently Listed on the Australian Register of Therapeutic Goods (ARTG).

With no other choice, in November 2024, Accord made an application to amend the Poisons Standard to introduce a 20 ppm low-level cut-off for ethylene oxide, propylene oxide and epichlorohydrin. The Scheduling Advisory Committee recommended a 10 ppm cut-off. Despite this expert advice—and despite acknowledging in the interim decision that these chemicals are unavoidable impurities of widely used surfactants—the Scheduling Delegate chose to make an interim decision to make no change, thereby maintaining a regulatory anomaly that has widespread and unnecessary compliance consequences.

We are currently awaiting the final decision on this proposal, which has been deferred.

A final decision to not allow any impurities of ethylene oxide, propylene oxide and epichlorohydrin would have an incredibly significant impact for the whole of Australia, not just for sunscreens. Most cleaning products are surfactant-based, and a large majority of surfactants contain these chemicals as unavoidable impurities. Industry in Australia would not be able to continue legally supplying cleaning products to hospitals, nursing homes, schools, food manufacturing, hospitality or households.

**Case study 5**

*Regulatory administration should not place unnecessary regulatory burden*

A reputable FMGC company importing a best-selling personal care product containing a specific ingredient initially introduced the ingredient under the Industrial Chemicals "reported introduction" category, due to its low concentration and low total volume. The total annual volume of the ingredient was well under 1000 kg. However, the company noticed that sales of the product were suddenly increasing—it was theorised that this was due to consumers swapping formats within the personal care category due to the cost-of-living crisis.

If the company introduces over 1000 kg, the ingredient cannot be a reported introduction and must instead be assessed by AICIS. The company submitted an application for ingredient assessment but they reached the 1000 kg introduction cap 10 months into the assessment period, meaning the product could not continue to be compliantly introduced until the assessment had been completed.

During this period, a small amount of product was inadvertently introduced beyond the threshold, triggering compliance action from AICIS. The company was given a series of options, including destruction of the "non-compliant" stock or exporting it out of Australia—both outcomes that would generate unnecessary waste, cost and environmental impact. As a compromise, the company proposed quarantining the stock until the AICIS assessment was finalised.

Compounding the inefficiency, two months later, the annual reporting period reset, meaning the company could legally recommence compliant introductions of the same ingredient until the 1000 kg limit was again reached. Eventually, once AICIS completed the assessment, the quarantined stock was released.

These processes do not enhance safety but instead impose unnecessary cost, inefficiency and uncertainty on Australian businesses.

**Case study 6**

*Providing clarity in regulation*

Azelaic acid is an internationally recognised skincare ingredient, widely used for the treatment of acne and rosacea, plus improvement to skin texture and pigmentation. In 2023, it was scheduled into the *Poisons Standard* in a manner that explicitly permitted its inclusion in both therapeutic and cosmetic dermal products. However, the delegate simultaneously mandated that these same products carry the warning statement *"avoid contact with skin"*.

This contradiction illustrates the systemic risk of the current approach. The delegate's decision, made without impact analysis, effectively created an impossible compliance standard: a product permitted for dermal use, but simultaneously required to advise against dermal contact. This not only delays market access and increases regulatory costs for industry but also reduces consumer confidence in regulatory coherence.

A culture of ongoing reform and continuous administrative improvement, which consider the broad regulation intent and impact over time, needs to be embedded into every regulatory agency.

## *Identify structural issues resulting in regulatory burden*

### Regulatory burden remains the biggest single drain on productivity within our sector

Accord conducts regular surveys of members to identify the priority issues that are adversely impacting their businesses. The increasing complexity, cost and burden of regulation is the most commonly cited problem identified by Accord member businesses.

It has become increasingly apparent that some existing Australian regulatory regimes are not fit for purpose for the products they regulate, mainly because their regulatory rules diverge markedly from standard international best practices.

In our sector, this problem relates most seriously to formulated cosmetic and sunscreen products. In this regard, cosmetics are treated as industrial chemicals and regulated by the Australian Industrial Chemicals Introduction Scheme (AICIS), while primary sunscreen products are regulated as therapeutic goods by the Therapeutic Goods Administration (TGA).

Cosmetics and sunscreens are neither industrial chemicals nor medicines. The decision to regulate them as such has led to divergence from international regulations and unintended regulatory impact. The treatment of cosmetics as industrial chemicals has attracted global attention, including via WTO technical barriers to trade complaints lodged by the European Union.

But this is not all. Accord spends a significant amount of time providing training to our sister organisations overseas, and to our members, on the many different regulations that apply to cosmetics in Australia and how to navigate them. One of the first statements that an SME or a new entrant to the Australian cosmetics market makes to Accord when they contact us is 'there is no cosmetics regulation in Australia'. We then need to explain that cosmetics regulations are 'hidden' in many different regulations.

Below is a summary of the main regulations that apply to cosmetics. Just understanding how to find and navigate to the relevant section of the regulation is a significant challenge for an SME. Many of these regulatory requirements are unique to Australia.

- Some products that are cosmetics overseas are medicines in Australia. To determine where the line is, you need to read the ***Therapeutic Goods (Excluded Goods) Determination 2018***.
- Some products that are cosmetics overseas will be therapeutic goods in Australia with full medicine-level controls applied under the **Therapeutic Goods Act**. Some claims that are allowed on cosmetics overseas will make the product a medicine in Australia, e.g., hair re-growth in Australia (due to the definition of therapeutic good).

- If the product is a cosmetic product, the **Industrial Chemicals Act** will apply at the point of import.
- The **Poisons Standard** applies from the perspective of the risk management of chemicals. It is implemented by **state and territory poisons and medicines laws** with varying supply control regulations, e.g., sampling, child-resistant packaging, storage.
- The **Australian Consumer Law** applies from a consumer protection perspective, including specific requirements for determining the Country of Origin if declaring Country of Origin, and the mandatory information standard for on-label cosmetic ingredient disclosure (references INCI names).
- **Commerce (Trade Descriptions) Regulations** apply for most cosmetic products.
- **Biosecurity regulations** apply – cosmetics with >20% animal-derived materials need a permit, which must be renewed every two years. All other cosmetic products that do not require a permit need a Manufacturer or Supplier Declaration for each cosmetic product linked to the consignment number, and the Declaration cannot be more than six months old.
- **National Measurement Laws** dictate measurement markings, including how to measure, units of measure, placement of markings and measurement rules for 'desiccating goods' like soap and the requirement for the name and address of the manufacturer on the label.
- There is a requirement to supply a Safety Data Sheet for cosmetics in the **Model Work Health and Safety Regulations**, adopted by **state and territory work health and safety regulations** (or occupational health and safety and dangerous goods storage in the case of Victoria).
- The **Dangerous Goods transport regulations/code** applies to the transport of cosmetics that are clarified as dangerous goods, e.g., nail polish, perfume, hand sanitisers, etc. This is **implemented by states and territories**, and separate **air transport regulation** and **sea transport regulation.**
- **Industrial Chemicals Environmental Management Scheme (IChEMS),** yet to be fully implemented by **states and territories.**

Some of these regulations are necessary. But we question whether all of them are necessary—there are opportunities to reduce existing regulatory burden.

The method of reducing regulatory burden will be different in different cases.

In some cases, it will be tidying up existing regulations.

**Case study 7**

*Country of Origin Labelling*

The Country of Origin (CoO) is mandated on labels of cosmetic products unless they are exempted via the *Commerce (Trade Descriptions) Regulations 2016*. Below is a table of some products that are exempt from CoO labelling compared to similar products that are not. To be clear, this is not stated in regulation but is the result of application of the regulation to a range

of products. We have not considered the full range of products that may be captured and exempted—this is a quick 15-minute consideration of some products.

| CoO required | Exempt from CoO |
|---|---|
| Liquid deodorant, antiperspirant (solid or liquid) | Solid deodorant |
| Moisturiser with SPF 15 | Moisturiser with SPF 30 |
| Generic toothpaste | Sensitive teeth toothpaste |
| Liquid foundation | Press powder foundation |
| Multi-application hair dye (professional use) | Single application hair dye (home use) |

The outcome of the regulation is odd. We are not at all clear what the regulatory objective is. One Accord member company spends $0.5M just on compliance with CoO labelling for Australia. But this cost, while significant, is not the worst aspect of the CoO labelling requirement.

Due to the complex supply chain of cosmetic product ingredient supply, formulating, packaging and labelling, it is not easy to work out where the CoO is. And the company cannot disclose a region, e.g. EU, it must be a country.

Getting this wrong can have significant consequences for the company. The Australian Consumer Law sets the procedure/calculations for deciding the CoO, and the company could be found to have engaged in false and misleading conduct if they get this wrong.

One way to solve this issue is to consider the regulatory objective of the *Commerce (Trade Descriptions) Regulations 2016*, that is, whether it is still meeting its objectives, and exempting products that do not require CoO labelling to meet these objectives.

**Case study 8**

*A lot of paperwork for low-risk products*

Cosmetic products with >20% animal-derived materials need a permit, which must be renewed every two years.

All other cosmetic products that do not require a permit need a Manufacturer or Supplier Declaration for each cosmetic product linked to the consignment number, and the Declaration cannot be more than six months old.

There are literally thousands of different cosmetic products imported into Australia every year. There is questionable value in requiring paperwork for each one of them, and that must be re-done regularly, for products that do not change in risk and are already low-risk.

In some cases, it is a matter of the regulation not being fit for purpose for the full range of regulated products.

**Case study 9**

*Multiplication of regulatory effort (or 'tell us many times')*

The Industrial Chemicals Act (IC Act) applies to all 'industrial chemicals', including cosmetics. The IC Act regulates the 'introduction' of chemicals, whether the creation of a new chemical or the import of a chemical. The responsibility lies mainly with the 'introducer' of the chemical—in the case of cosmetics, this is the importer of the cosmetic products.

Because the regulatory obligations sit with the importer, an identical cosmetic product has to be reviewed against the regulatory criteria multiple times under the IC Act— as many times as the number of importers. That is, 'tell us many times'.

This is due to a perverse outcome of applying the IC Act to formulated products like cosmetics: different companies introducing the same product can arrive at a set of completely different categorisations for individual ingredients due to having different annual sales volumes, and therefore can be subject to very different regulatory interventions. For example, a retailer may have a level of sales that means an ingredient that is 5% by weight of the product is below thresholds and therefore categorised as 'reported', while a brand manufacturer with greater sales must instead have the very same ingredient in the very same product 'assessed' by AICIS.

This perverse outcome is amplified because cosmetic ingredients are widely used in thousands of cosmetic products. Again, when calculating the categorisation for an individual ingredient that is used is a multitude of different products by a multitude of different companies, one company that has high sales and is major user of an ingredient across many products may be subject to the 'assessed' category for that ingredient, while another company that uses less of the ingredient may be instead able to follow the 'exempt' pathway. Noting that both companies are usually using the exact same ingredient in similar products in similar ways, this is a warped outcome.

The complexity that the industrial chemicals system displays when regulating fully finished formulated products like cosmetics makes it ill-suited to this purpose. Many of the ingredients in cosmetic products are imported into the country in a few grams to a few kilograms per annum. Consumers can purchase cosmetics products online, or bring them in from overseas, even if their ingredients do not meet the requirements of industrial chemical regulations.

The significant and multiplied regulatory effort invested by companies to comply with industrial chemicals regulations for cosmetic products—ones that are available legally overseas and can be legally purchased online by consumers—increases the cost of goods to consumers without providing significant additional benefit. Much of the risk management for cosmetic products is done through other existing regulations, and by companies themselves.

The regulation was not written for formulated products like cosmetics and continues to be not fit for this purpose.

We also need to ensure that the right level and type of exemptions are in place, recognising that everything, even food, is chemical. It is important to recognise that the same product or ingredient can be regulated differently here and overseas, and make appropriate regulatory adjustments.

**Case study 10**

*Ground coffee is an industrial chemical*

Ground coffee is imported into Australia for consumption as an everyday occurrence. When it is imported as a food, it is covered by the Food Standards (FSANZ). When it is imported as part of an exfoliating body scrub, the coffee grounds become an industrial chemical and must comply within the AICIS regulations. This includes having the correct chemical name, evidence that the coffee grounds are not nanoscale, and human health and environment safety data.

For the EU, the regulations do not capture any chemical until it hits a quantity of 1000 kg. In Australia, although impurities are exempt, any chemical imported that is added on purpose must meet AICIS requirements. This includes cases when less than a teaspoon a year is brought into the country.

**Case study 11**

*Deciding when overseas regulations are good enough*

A French manufacturer is producing orally ingested vitamin tablets and is audited by the French National Agency for the Safety of Medicine and Health Products (ANSM). The audit report can be given to the TGA through the MRA CV pathway for that facility to receive TGA GMP Clearance, at a cost of $781 to the Australian sponsor.

A French manufacturer is producing sunscreen using cosmetic GMP as per the ISO 22716 standard. The sunscreen products are sold globally with no safety or quality issues. To supply the product in Australia, the Australian sponsor cannot go through the MRA CV pathway. Instead, they must fund a TGA-conducted audit, requiring an inspector for multiple days at $1,668/hour/inspector, plus travel and expenses. The total cost is typically around $60,000.

While the TGA accepts that sunscreens are low-risk products and should have lighter-touch regulation, this is not reflective of what actually occurs in the case of GMP. Practical initiatives such as MRA should be encouraged, but we need to ensure that Australia is taking advantage of international work, even when it doesn't fit neatly into our system.

In other cases, we need to increase the clarity and transparency of regulation so that businesses can be certain of compliance requirements and regulations do not become an unnecessary business risk.

**Case study 12**

*Cosmetic/therapeutic interface*

Australian regulations are set up so that something that is a 'therapeutic good' cannot be a cosmetic product. While this seems simple enough, the definition of a therapeutic good encompasses anything that is used to or in connection with 'influencing, inhibiting or modifying a physiological process in persons'.

The problem is that physiological processes are complex biochemical and biophysical activities and functions of a living organism that allow it to survive, adapt and respond to its environment. One interpretation of the regulation could be that anything that elicits a physiological response may be considered as 'influencing' a physiological process. This could be water on the skin making it swell and 'pruny', a sand scrub/exfoliator that stimulates blood flow at that area of skin, something that feels cold or hot on the skin, or vitamins, like vitamins C and E.

There is a level of pragmatism practised by the TGA through interpretation of the regulation to allow some cosmetic products within its remit, and it is recognised that capturing all cosmetic products as therapeutic goods was not the intent of the regulations.

However, constant work is required to ensure that the pragmatism is maintained. Accord has pushed back, through both the TGA and AICIS, against interpretations that would make all cosmetic products therapeutic goods.

This creates an uncertain business environment.

In other countries and economies, there is overt recognition that cosmetics interact with the human system—they must, as everything that comes in contact with humans does.

The EU and the UK do this through a definition of cosmetic products that is less restrictive than the Australian definition:

> *A "cosmetic product" shall mean any substance or mixture intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance and/or correcting body odours and/or protecting them or keeping them in good condition.*

In other regions, there are categories such as 'functional cosmetics' or 'special cosmetics' to allow cosmetic products that may require special care, e.g., to ensure efficacy, address potential concerns with the mode of action, etc., while ensuring safety.

As mentioned in case study 9, what we have also identified is that much of the reason for Australian consumers enjoying safe cosmetic products and sunscreens is due to most Australian industry being good corporate citizens, rather than the existence of these regulations.

We are close to finalising a 'benchmark' for cosmetics that capture good practice in manufacturing, sourcing and supplying cosmetic products that is not mandated in any regulation. This work began when Accord became aware that individuals making cosmetics at home without appropriate knowledge (rather than seeking out reputable contract manufacturers) could successfully market themselves through social media, with some negative consumer impact.

The topics covered in the benchmark are good practice that our industry currently employs, which are not in regulation:

- If manufacturing,
    - Manufacturing controls/quality management systems for consistent product manufacture
    - Supplier credential checks
    - Ensuring appropriate raw material selection for ingredients that are fit for purpose and to control impurity levels
    - Raw material QA and QC
    - Stability and microbiology tests to ensure that products do not 'go off' throughout their intended life span
- If importing,
    - Supplier credential checks
    - Verification of products (what is supplied is what was meant to be supplied)
    - Verification of relevant tests for stability, microbiology, impurity levels, etc.

There are better ways to regulate cosmetic products. An example we provide below is New Zealand, a small economy efficiently leveraging international regulatory work while maintaining sovereignty and allowing New Zealanders to access products available globally at a reasonable cost.

**Case study 13**

New Zealand regulates cosmetic products via the Cosmetic Products Group Standard 2020, which is administered by the NZ EPA. Unlike the splintered Australian regulation, which includes the multi-ingredient complexity of the AICIS system, Poisons Standard ingredients controls implemented through states and territories, ACCC ingredient disclosure requirements, etc., the Cosmetic Products Group Standard is a one-stop-shop that outlines all of the requirements that cosmetic product manufacturers and importers must follow in order to sell their products on the NZ market. This simplicity means companies face a much-reduced burden for determining what their compliance obligations are, and this greatly streamlines and facilitates industry compliance.

A powerful feature of the NZ Cosmetic Products Group Standard is that it leverages the cosmetic regulation in place in key trusted overseas jurisdictions within which cosmetics manufacture is also often a major industry. Most notably, this includes the EU and its European Cosmetic Regulation. For product labelling, the NZ Group Standard accepts products from Australia, the USA, Canada and the EU "if the labelling is compliant with current labelling requirements for cosmetic products of Australia, USA, Canada or the European Union, as if the substance were for sale or supply in those countries". This facilitates trade by allowing safe, quality products to have streamlined access to the NZ market for the benefit of both competition and NZ consumers.

The lists of banned ingredients that are a core part of the NZ Group Standard are derived in the main from the European Cosmetic Regulation, which is considered the most rigorous and risk-averse 'trend-setting' body of regulation for the global cosmetics industry, being also the basis for ASEAN-region cosmetics regulation. This means the NZ system is generally several steps ahead of Australian regulation when it comes to the latest safety action taken globally for any cosmetic ingredients.

International Nomenclature for Cosmetic Ingredients (INCI) names are also fully accepted by the NZ rules. Additionally, international fragrance ingredient standards established by the global body IFRA are also accepted and incorporated into the Group Standard approach.

Global market realities support the NZ approach over the current Australian approach. Australia represents less than 2% of the global cosmetics market. However, our regulators do not look to leverage the work already completed by larger markets, e.g., the EU, which represents 20-25% of the cosmetics market. Due to the size of our market, our local industries and regulatory agencies do not have the depth and breadth of expertise of the larger markets. And yet, our regulators re-review the work of overseas experts and at times come to a different conclusion, without having accessed the full range of information that overseas experts have.

For fully finished formulated cleaning products, the NZ regulatory approach has a variety of Group Standards based on cleaning product hazard classification. This approach also allows for streamlined compliance compared to the annual ingredient volume calculation and classification approach of the Australian industrial chemicals system.

## *Address lack of uniformity across state and territory regulations*

Accord supports the Commission's suite of recommendations, though we note that they apply primarily to federal regulation and regulators. Specific policy areas, such as various aspects of environmental regulation, are a state and territory government responsibility, where the lack of national uniformity also needs to be urgently addressed.

A live example of this is the varying targets, timeframes, measures and even definitions that are being introduced for addressing problematic and/or single-use plastic items. Differing state and territory regulations to address the same problem are an unwelcome burden on businesses that operate nationally.

Priority areas for attention include existing regimes such as dangerous goods transport/storage requirements and WHS regulation, and newer initiatives such as those relating to circular economy and the Industrial Chemicals Environmental Management Scheme (IChEMS).

**Case study 14**

The Industrial Chemicals Environmental Management Scheme (IChEMS) is a relatively new federal regulation that was intended to pull together the existing fragmented state and territory regulations for environmental risk management of industrial chemicals.

We are not seeing the promised consistency and uniformity of rules. Instead, we see a continuation of fragmented approaches by different states and territories, but with increased regulatory burden.

One state that has recognised the IChEMS Register has stated that it should form a part of the risk assessment and management consideration, while another state has stated that everyone should be fully compliant with the IChEMS Register. Neither of these statements is very helpful, as the IChEMS Register contains specific requirements relating to specific chemicals, and states have not clarified who is responsible for what in the supply chain, i.e., there is no clarity on roles and responsibilities for the importer, manufacturer, user (including consumers), recycler, disposal company, etc. It would not make sense to impose the same regulatory requirement on the importer, the end user and the disposal company.

Accord started drafting industry guidance in the absence of clarity from regulators. We now have a first draft that we cannot progress any further without resolving some significant regulatory questions that mostly sit with states to answer. But there is no clear way of engaging with the states in a cohesive manner.

# Corporate tax reform to spur business investment

*Lowering the company income tax rate will make our nation more internationally competitive*

The high rate of company tax in Australia compared to many other advanced economies makes our nation less attractive for much-needed foreign investment. The relatively high rate of 'tax take' from existing companies also provides a disincentive for investment.

The experience within our sector has seen an ongoing decline in the local investment in business operations in Australia by multinationals, often in favour of other lower-tax nations such as Singapore.

The Commission's proposal for a reduced company tax rate of 20% would remove the comparative disadvantage the nation faces. Accord notes though that government would likely seek revenue-neutral options for such tax reform, meaning there will realistically be trade-offs in the form of other taxes. So, while we support the proposition that Australia's company tax rate needs to be lowered, we recognise that this reform would likely go hand in hand with other tax reform changes. However, like other business groups, we do not see the new net cashflow tax of 5% proposed by the Commission as being an effective proposal for reform and do not support this tax proposal.

It is hoped that there will be an ongoing reform effort to create a company tax regime that is more internationally competitive.

# About Accord

Accord is the national industry association representing the formulated hygiene, personal care and specialty products. Our members make and market everyday products for use in homes and in our public facilities to keep them clean, hygienic and functioning well (e.g. laundry products, hard surface cleaners, drain unblockers) and personal care products such as soaps, deodorants, sunscreens and fragrances. A list of Accord member companies is available on our website: http://accord.asn.au/about/members.

We are a significant industry sector contributing to a prosperous Australian economy. Accord commissioned EY to prepare a State of the Industry Economics Report for the Australian Hygiene, Personal Care and Specialty Products industry[7].

Some topline results based on 2021 economic data:

- Total turnover: $28.2bn (17th largest industry sector in Australia),
- Industry value-add: $5.5bn (upstream and downstream value added by our industry to the Australian economy—an indicator of how our sector drives economic activity),
- Jobs: 72,585,
- Wages: $3.5bn,
- Import value: $4.0bn,
- Export value: $1.5bn.

The Report identified several other significant observations regarding our industry, including:

- Diversity in production, with businesses operating across all aspects of the supply chain from production through to the retail of final goods.
- Varied client base, with industry products consumed by a wide range of end-users and spanning a wide range of product types from basic consumer necessities to janitorial cleaning supplies to luxury cosmetics.
- Resilience to changes in economic conditions (likely arising from the above two characteristics).
- The higher growth in our industry's value-add than the Australian GDP over the past five years, meaning that our industry added proportionately more value than some other industries in the economy.

# Contact for this submission


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[7] Hygiene, Personal Care and Specialty Products industry: Economic State of the Industry report Accord Australia Ltd Final report 31 October 2022: https://accord.asn.au/about/economic-state-of-the-industry-report/

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