

Mr Gary Banks
Commissioner
Australian Productivity Commission
Trans-Tasman Study
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Dear Commissioner

Accord Australasia is pleased to provide the following submission in response to the joint Australia and New Zealand Productivity Commission issues paper *Strengthening economic relations between Australia and New Zealand* (the Issues Paper) published in April 2012.

We apologise for the lateness of this submission.

Introducing Accord and our Industry

Accord Australasia is the peak national industry association representing the manufacturers and marketers of formulated hygiene, cosmetic and specialty products, their raw material suppliers, and service providers. Accord member companies make and/or market fast-moving consumer and commercial goods primarily in Australia and New Zealand.

Accord has around 95 member companies which range from smaller Australian-owned family businesses to the local operations of large consumer brand multinationals (a full membership list is provided at Attachment 1).

The formulated hygiene, cosmetic and specialty products industry is a significant industry sector contributing to Australia's economy.

Headline statistics for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the \$10 billion mark.
- Collectively, Accord member companies directly contribute more than 12,000 full-time equivalent jobs.
- Nationally, more than 180 offices and more than 66 manufacturing sites are operated by Accord member companies.

Our industry's products include household and commercial cleaning agents; disinfectants; make-up and beauty products; toiletries and personal care products; hair-care products; skincare products, including sunscreens; oral hygiene products; fragrances and perfumes, feminine hygiene products; industrial and agricultural sanitisers; household pest control; and adhesives and sealants.

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Products for healthy living and a quality lifestyle

Our sector's products provide the following benefits:

- *Safeguarding public health*: Maintaining essential standards of hygiene and sanitation in institutions, hospitality, manufacturing and agriculture.
- *Promoting personal well-being*: Helping people keep clean, healthy and shielded from harmful effects of the environment.
- *Maintaining comfortable homes*: Enabling people to keep their everyday surroundings clean and inviting.
- *Enhancing quality of life*: Giving people greater personal freedom through time- and effort-saving technologies.
- *Boosting confidence and emotional wellbeing*: Providing opportunities for self-expression, individuality and pampering.
- *Keeping the wheels of commerce and industry turning*: Fulfilling specialised uses in industry, institutions and agriculture.

Ours is a heavily regulated industry, as recognised by the Productivity Commission (PC) in its 2008 report into chemicals and plastics regulation plus COAG's goal of addressing the chemicals and plastics industry as a national "regulatory hotspot". An Accord survey of members conducted last year showed that:

- 97 percent have dealings with the National Industrial Chemicals Notification & Assessment Scheme (NICNAS)
- 73 percent with the Therapeutic Goods Administration (TGA)
- 51 percent with the Australian Quarantine Inspection Service (AQIS)
- 27 percent with the Australian Pesticides & Veterinary Medicines Authority (APVMA); and
- 29 percent with Food Safety Australia New Zealand (FSANZ).

Additionally, our member companies are regulated by the ACCC (under the Australian Consumer Law) and a range of state and territory health, OHS, environment and transport agencies.

In essence there are three distinct product segments for our industry, each with distinct supply chains through to the product end user:

- Industrial and Institutional products (e.g. commercial cleaning products, agricultural sanitisers) which are mainly sold on a business-to-business or business-to-government basis or through agricultural product resellers.
- Fast-moving consumer goods (e.g. household cleaners, laundry detergents, toothpaste, shampoo, soap) which are sold to consumers primarily via either: grocery retailers, pharmacies, mass-market retailers, direct selling and/or hardware chains.
- Cosmetic and beauty industry products (e.g. make-up, skincare, sunscreens, fragrances, hair dyes) which are sold to consumers primarily via either: department stores, specialty retailers, grocery retailers, pharmacies, mass-market retailers, direct selling, hair salons, beauty salons, spas and on-line.

In our submission we will provide some comments regarding the need for closer alignment of chemicals regulatory regimes to remove one of the major barriers to doing business across the Tasman for our industry sector. We will also provide examples to demonstrate the benefits that could be achieved.

General comments and example

Accord has previously made submissions to the Productivity Commission Review of Mutual Recognition Schemes which included a review of the Trans-Tasman Mutual Recognition Agreement (TTMRA). We opposed the view that regulation of chemicals should be permanently exempted from the coverage of the TTMRA. Often, we find that the word “chemical” in regulation of chemicals can be enough for governments to be convinced that somehow these sets of rules are special – that seeking efficiencies in this area leads to poor outcomes. This is not always true. Efficiencies can be gained while maintaining good regulatory outcomes.

Example 1

All primary sunscreen products are regulated as therapeutic goods in Australia. The Australian government's current position is to continue to regulate these goods as therapeutic. One of the reasons given for this position is that Australia has the highest skin cancer rate in the World. In New Zealand, all sunscreen products are regulated as cosmetics consistent with their treatment in the EU and the ASEAN. New Zealand has a similar skin cancer rate to Australia.

We have seen no evidence to suggest that Australia's higher level of regulatory intervention for sunscreens has helped reduce the skin cancer rate in Australia when compared to New Zealand.

Access to Products

Because it is less costly to introduce cosmetic products, New Zealand consumers have access to new and innovative products such as SPF 50+ rated sunscreen. Australian consumers cannot currently access these products, with the delay being caused by the need for legislative changes as well as the need to assess individual products. Currently primary sunscreens in Australia are regulated to the same level as that of orally ingested medicines, including the Good Manufacturing Practice (GMP) requirements. While Australia cannot gain access to all products available in New Zealand without significant additional cost, all products that are available in Australia can be made available in New Zealand without further work.

Cost of Introducing Products

Further, the regulatory cost of introducing these products (therapeutic in Australia and cosmetic/consumer products in New Zealand) in Australia is far greater than in New Zealand. Under the current fee structure, the annual fee for maintaining a sunscreen on the Australian Register of Therapeutic Goods (ARTG) is currently \$1 210. For a new substance, evaluation of first 50 pages of clinical or toxicological data costs \$8 680, and can go as high as \$60 700 if there are over 3000 pages of information. If there is no clinical or toxicological data to assess, then the sponsor is charged \$8 680 (same as up to 50 pages of data) for new substances. The sponsor is additionally charged an application fee of \$1 300. i.e. the minimum cost of listing a new sunscreen on the ARTG is \$11 190 for the first year, with an on-going annual fee of \$1 210.

In addition to these fees, it is a requirement that all sunscreen manufacturers undergo biennial audits (GMP audits) by the Therapeutic Goods Administration (TGA). The cost of the audit is \$550 per hour, with the audit lasting approximately 10 hours (over two days). If the manufacturing facility is located outside Australia, the sponsor must also pay for the return business class airfare and accommodation for the duration of the audit. So the cost for a local manufacturer can be approximately \$5 000, while the cost for an overseas manufacturer is in the tens of thousands of dollars.

New Zealand does not require any of the above detailed regulatory intervention for sunscreen products – the cost for New Zealand for equivalent work is therefore \$0.

In addition to sunscreen products discussed in Example 1, there are other products such as tampons and household cleaners making disinfectant claims that are regarded as therapeutic in Australia but as consumer products in New Zealand. Again, we have seen no evidence to suggest that the overall regulatory outcome in Australia is any better than in New Zealand.

Currently Australia and New Zealand are in discussions for the second time to form the Australia New Zealand Therapeutic Products Agency (ANZTPA). We understand that the initial discussion was unsuccessful. It is our concern that the ANZTPA will increase the regulatory requirements for these products (sunscreens, household cleaners, tampons, etc.) for New Zealand rather than decreasing the requirements for Australia unless both Australian and New Zealand governments are committed to delivering an efficient system, not only a harmonised one.

As we have stated previously, there is no demonstrable benefit from the higher level of regulation for these products in Australia.

Australia can also derive significant efficiencies for consumer products and industrial chemicals.

In New Zealand, products that pose low to medium risk (most consumer products and a large number of industrial chemicals) can be “grouped” into Group Standards. Group Standards provide detailed risk mitigation directions for a given risk profile. For example, the Cosmetic Products Group Standard closely mirrors the European Commission Cosmetics Regulation in order to manage the risks of cosmetics. There are several different group standards for cleaning products depending on their hazard (e.g. flammability, corrosivity, irritancy, etc.) so that the risks posed by these different hazards can be addressed.

Group Standards are a self-assessable system where introducers of new products assess their products against the hazard criteria then match these products to a Group Standard. Once an appropriate Group Standard hazard has been identified, all necessary information for compliance is available within the Group Standard.

If the introducer of the products is unsure which Group Standard applies to their products, the regulator, the New Zealand Environmental Protection Agency (NZ EPA), offers assistance for a minimal fee, currently \$115.

Most significantly, the NZ EPA only regulates products that are deemed to be hazardous and no regulatory controls are required on non-hazardous products. The NZ EPA also offers a service for determining whether a substance is hazardous, for a fee of \$1 150.

In Australia, the regulation of industrial chemicals, consumer products and cosmetics is fragmented and can lead to duplication or even conflicting requirements.

All industrial chemicals and chemical ingredients in cosmetics and consumer products that are not regulated by the TGA or the Agricultural Products and Veterinary Medicines Authority (APVMA) fall under the control of the National Industrial Chemical Notification and Assessment Scheme (NICNAS). The assessments requirements are reduced for non-hazardous substances, however, the data

required to prove substances to be non-hazardous is extensive - on par with data required for full assessment.

NICNAS can also call for re-assessment of already assessed chemicals, under the Secondary Notification requirements. This can lead to multiple assessments of the same data, which is costly but does not provide any tangible benefits. Also, as Secondary Notification requirements can apply to any assessed chemicals it leads to cost uncertainty for businesses introducing any new chemistry to Australia even if it is a newer, safer technology proven to work in other countries over many years.

Example 2

Australian regulatory system for cosmetic ingredients

Recent secondary notifications of sodium and potassium cocoyl glycinate demonstrate the difficulty faced by industry in introducing “new” chemicals in Australia, whether they are introduced in fully finished formulated consumer products, or as raw materials to be included in formulations in Australia. Sodium and potassium cocoyl glycinate are commonly used cosmetic ingredients. They are used without restrictions in the EU. However, NICNAS not only requested a full assessment of these substances, but has called for multiple secondary notifications.

These two commonly used cosmetic ingredients are analogues of each other – the salts dissociate in water, so the toxicity consideration is based on the organic portion of the chemical.

A summary of the NICNAS assessment history is below:

Notification type	Chemicals	Date	NICNAS Reference number
Limited Notification	Sodium cocoyl glycinate	June 2007	LTD/1306
Limited Notification	Potassium cocoyl glycinate	November 2008	LTD/1382
Standard Notification	Potassium cocoyl glycinate	June 2010	STD/1354
Standard Notification	Potassium cocoyl glycinate	June 2010	STD/1355
Extension of Limited Notification	Sodium cocoyl glycinate	August 2010	EX/130 (LTD/1306)
Limited Notification	Sodium cocoyl glycinate	December 2010	LTD/1490
Secondary notification for EX/130 (LTD/1306)	Sodium cocoyl glycinate	August 2010 (Publication of secondary notification notice)	SN/21? (Report not available on the NICNAS website)
Secondary Notification for LTD/1490	Sodium cocoyl glycinate	May 2011	SN/22
Secondary	Potassium cocoyl	August 2011 (Publication	No report

Notification for LTD/1382	glycinate	of secondary notification notice)	published
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Our members have informed us that there were three separate calls for secondary notification of cocoyl glycinate and three separate fees have been charged. We understand that no additional data was provided for secondary notification assessments.

NICNAS requirements are in addition to the requirements under the Australian Consumer Law.

New Zealand system for cosmetic ingredients

The New Zealand Cosmetic Products Group Standard is closely aligned with the European Commission Cosmetics Regulations and does not restrict the use of either the sodium or the potassium cocoyl glycinate. The European regulatory system is heavily dependent on post-market surveillance and there are limited barriers for introducing new chemistries. The European system is based on manufacturers' safety assessment pre-market with product liability, similar to the Australian requirements under the Australian Consumer Law.

Cost implication

By our estimation, so far, industry has spent at least \$100,000 on NICNAS fees alone for sodium and potassium cocoyl glycinate, commonly used cosmetic ingredients available internationally. This does not include costs involved in putting together the submission and data generation.

This is a clear case of overcharging with no consideration of risk-resource consideration.

The cost incurred by the New Zealand cosmetics industry to introduce products containing these substances is \$0.

Currently, NICNAS is undergoing a major review. Accord made a submission seeking to streamline the Australian regulatory system to delineate roles and responsibilities of the different departments and regulatory agencies involved, and sought to align some of the processes with New Zealand. Disappointingly, the options paper released recently does not appear to address any of our suggestion.

The regulatory control of industrial chemicals in Australia does not end with NICNAS. For industrial chemicals, companies must meet all the requirements for labelling, safety data sheets (SDS) and other chemical storage and handling laws that are mandated by the States and Territories. Despite the recent efforts to nationally harmonise occupational health and safety (OHS) legislations (now the Work Health and Safety (WHS) legislation) by 1 January 2012, this is yet to be realised.

For consumer products, labelling, packaging and other regulatory requirements of the *Standards for the Uniform Scheduling of Medicines and Poisons* (SUSMP) must be met. If consumer products are used and stored in a place of work, then an SDS must also be provided under the State and Territory laws.

For cosmetics, the ingredient disclosure requirements set out in the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* must be met as well as the requirements for consumer products set out above including safety assessments.

In New Zealand, all OHS requirements and assessment of new products for industrial chemicals is done by a single agency – the NZ EPA.

A significant benefit for Australia could be achieved by aligning our industrial chemical assessment model closer to the New Zealand system.

Benefits could also be achieved by better alignment of chemical transport regulations. Even though both Australia and New Zealand base their transport regulations on the *United Nations Recommendations on the Transport of Dangerous Goods* (UNRTDG), the transport of goods between the two countries can require relabelling of goods.

The UNRTDG is updated every two years. As sea and air transport of chemicals are likely to involve international waters and air space, these are regulated by international bodies, the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). Both organisations update their regulations in line with the UNRTDG update. Both IMO and ICAO will amend some clauses in the UNRTDG to suit the mode of transport, generally introducing greater restrictions that can be expected from road and rail transport. It is our understanding that New Zealand will accept marking, labelling, packaging and any other requirements set out for sea or air transport as meeting the requirements for road and rail transport. This is sensible, as it would not be possible to ship goods from the port of entry to its destination otherwise, without first checking and confirming the road and rail rules. This is not the case in Australia.

Although Australia appears to have attempted to introduce a similar clause in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (the ADG Code), the clause only applies to unopened freight containers or tankers of chemicals. If a single box with relevant markings for sea or air transport is imported into Australia, it may require relabelling before being allowed to be sent by road or rail to its final destination. This is particularly problematic since the ADG Code update does not keep pace with the UNRTDG update and can lag behind by many years.

Example 3

Dangerous Goods, because its definition is based on the intrinsic hazard of the chemical and not the risk profile of products, includes many consumer products including nail polish, perfumes, shampoos, some lipsticks, toilet cleaners and all aerosols. Due to their quantity per package and the way they are generally packed for transport (in cardboard boxes), these products can meet the Limited Quantities provisions in the UNRTDG.

With the introduction of the 16th edition of the UNRTDG, the Limited Quantities marking/labelling changed. The sea and air transport regulations were updated accordingly. There was a transition time allowed for both the sea and air transport. For sea transport, there was a transition period of two years – the transition period for the implementation of the 16th edition of UNRTDG ended on 1 January 2012. For air transport, the transition timing was shorter.

In Australia, the ADG Code was and still is based on the 14th and 15th editions of the UNRTDG.

Prior to the changes, Accord alerted the State and Territory Competent Authorities of the upcoming changes. Accord was informed that to use the new marking used by sea and air for road and rail transport, we would have to seek an exemption.

Accord applied for an exemption but was denied. Accord applied again six months later when the

Competent Authorities met again, and received an exemption from the Limited Quantities marking/labelling requirements set out in the ADG Code, provided that the Limited Quantities marking met the requirements of the sea or air transport. Our exemption can be viewed from:

http://www.accord.asn.au/members/resources/regbusinessresources/dg_exemptions/vcap05.

Accord deliberately sought to have the exemption apply to anyone and to apply nationally – without these specifications, the Competent Authorities would have had to assess each individual application for exemptions for the same issue. We understand that at the first meeting where we sought an exemption, there were four organisations seeking basically the same exemption.

Prior to the exemption being issued, some of our multinational member companies had to inform their parent companies that, products being shipped to Australia had to meet the older Limited Quantities marking/labelling requirement. While the exemption was issued a few days prior to the end of transition time set for sea transport (21 December 2011), unfortunately for air transport, companies had to choose between not complying with air marking requirements or road and rail marking requirements, or not bringing products in by air.

Without the exemption, it would not have been possible to ship goods in Limited Quantities between Australia and New Zealand (or for that matter, between the Sydney and Hobart).

Example 4

Accord was recently informed by one of our Member companies that their customer would not accept good transported by road meeting the appropriate air transport markings for Limited Quantities packages. The air transport regulations require additional marking and labelling to the requirements of road and rail transport.

Accord sought an official interpretation from the road and rail transport regulators on behalf of our Member company. We argued that there was nothing specific preventing additional air markings for road and rail transport. The road and rail transport regulators did not agree, although they did not make their positions official, stating that the additional markings and labelling “may be confusing” and there are requirements in legislation not to mark packages that may cause confusion.

Accord has again approached the road and rail transport regulators highlighting that marking and labelling that are Australian and international legislative requirements cannot be considered “confusing” and therefore removed by another Australian regulator. This issue will be discussed again by transport regulators in early July 2012.

As the ADG Code also contains unique Australian requirements, goods imported from New Zealand into Australia may not meet the requirements of the ADG Code even when the ADG Code amendment is based on the UNRTDG. An example of this is provided below.

Example 5

The ADG Code mandates labelling of “inner packages” above a certain size. “Inner packages” can refer to consumer product packaging. This is not a requirement in the UNRTDG, and as far as we are

aware, completely unique to Australia.

One of the reasons given by the Dangerous Goods transport regulators is that they believe there to be no consumer product regulations in Australia. Accord has pointed to the plethora of consumer product legislation without any success in changing the views of transport regulators.

Notwithstanding, we have also pointed out that transport legislation of dangerous goods is not an appropriate place for consumer product labelling requirements since these products are not visible at any time during transport. We have also been unsuccessful with this line of reasoning.

The issues of regulatory divergence are not limited to legislative differences. We believe that lack of Ministerial oversight, and bureaucratic discretion plays a big part in regulatory divergence.

For example, the responsibility to keep the ADG Code up to date sits with the National Transport Commission (NTC). The Australian Transport Council (ACT) provides the oversight to the NTC. Ministers from Department of Transport in each States and Territory are represented on the ACT. In order to update the ADG Code, the NTC must achieve consensus from every State and Territory.

Dangerous Goods transport regulators can be in different department depending on the State/Territory. For example, in Victoria, the Dangerous Goods transport regulation is the responsibility of the workplace regulator. In Western Australia, it's the responsibility of the Department of Mines and Petroleum. In the ACT, it is the Attorney General's office. In NSW, the responsibility is split between the Environmental Protection Agency and the workplace safety regulator.

The level of importance placed on Dangerous Goods transport in each State and Territory varies depending on which department is responsible. Further, the focus may be completely different between a regulator within the Environmental Protection Agency and a regulator within the Department of Mines and Petroleum. However, as there are very few regulators responsible for Dangerous Goods transport regulations that report directly or indirectly to transport Ministers, practically speaking, there is very little Ministerial oversight for the ADG Code update. We believe that examples 3, 4 and 5 above illustrate the results of lack of Ministerial oversight and bureaucratic discretion.

Bureaucratic discretion can be a problem at a national level as well when there is little to no consideration of costs and benefits of regulation.

Example 6

The National Measurement Institute (NMI) which regulates trade measurement markings insists that the unit measure marking must be displayed on the front of pack, unlike our trading partners including New Zealand. Australia, like all other economies including the EU, USA and New Zealand, base their unit measure markings on the *International Recommendation – Labelling requirements for pre-packaged products* (OIML R 79).

One of the requirements set out in OIML R 79 is that:

“Packages shall be manufactured, constructed or displayed in such a manner that a purchaser may not reasonably be misled with respect to the quantity or identity of product contained therein.”

The Principal Display panel is defined as :

“The part of a package that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display.”

The NMI has interpreted the Principal Display Panel as the panel on the front of pack. This has caused major problems for our industry, particularly in the cosmetics sector. Cosmetic products with quantity marking on the back panel had to be individually re-labelled when they arrived in Australia. This is not only costly, but can damage the product package which presents a significant problem for luxury cosmetics.

In New Zealand, the Principal Display Panel is interpreted more liberally - it can be the back panel which provides additional information such as the ingredient list, use directions and/or first aid information.

The benefits of aligning the Australian chemical regulatory system with New Zealand's system are obvious with tangible cost benefits. However, there are also potential benefits, if not as quantifiable, for New Zealand.

While New Zealand consumers currently enjoy a wider selection of products than Australian consumers due to its more liberal regulatory controls, it is a small economy and some international companies choose not to introduce products into small markets. If the Australian regulatory system could be closely aligned with New Zealand, international companies may be more likely to introduce products into the combined Australia/New Zealand market. Also, New Zealand may enjoy the benefits of economies of scale.

Conclusion

The total cost of doing business in Australia is much higher than elsewhere. In the World Bank's survey of Doing Business 2012, Australia is ranked 15th. In 2011 Australia was ranked 11. New Zealand was ranked 3 in 2012 and 2011. This increasing burden is not only as a result of increased compliance costs associated with unique Australian requirements, but the additional costs imposed through cost recovered agencies and lost opportunity costs through an inefficient and overly complex regulatory regime. The growing impost on industry is not sustainable.

Accord believes that the regulation of chemicals currently do not meet the principles detailed on page six of the PC's Issues Paper, i.e. intended to guide the identification and analysis of options to achieve the aims of the single economic market – we believe that all the principles should be met, not only selective principles.

That is, we do not believe that persons in Australia or New Zealand should have to provide the same information twice to two (or multiple) sets of regulators. However, we also do not believe that the regulatory requirements in either country should be increased to achieve this end – outcomes should optimise net trans-Tasman benefit.

Closer alignment of chemical regulations between Australia and New Zealand provides an ideal opportunity for both Australian and New Zealand Governments to achieve significant efficiencies while maintaining a high level of regulatory outcomes. From an Australian perspective, it would also fit in to the chemicals and plastics “regulatory hot spot” reform, provided that the focus is on delivering efficiencies and optimised net benefits, not simply delivering a harmonised regulatory system.

Thank you again for this opportunity to provide comments. If you have any queries, or for more information, please do not hesitate to contact me.

Yours sincerely

[unsigned for electronic submission]

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