

Manager
Communications
The Treasury
Langton Crescent
PARKES ACT 2600

Email: ACLReview@treasury.gov.au



Dear Madam/Sir

Accord is pleased to provide the following comments to the Australian Consumer Law (ACL) Review Issues Paper (March 2016).

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 Members market fast-moving consumer and commercial goods primarily in Australia and New Zealand. Accord has just over 100 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).

Headline features and statistics¹ for our industry's economic footprint include:

- Estimated annual retail-level sales of industry products nudging the \$10 billion mark.
- Accord member companies directly contribute more than 15,000 full-time equivalent jobs.
- Nationally more than 180 offices and more than 60 manufacturing sites are operated by Accord member companies.

The formulated chemical products consumer goods sector is heavily regulated. This has resulted in an overly complex system made all the more difficult through the duplication of roles and responsibilities for chemical management between Commonwealth entities, state and territory governments as well as some local government bodies. Governments have recognised the complexity of the regulatory system and the chemicals and plastics sector has been the focus of multiple reform efforts including the Productivity Commission (PC) study into chemicals and plastics regulation, July 2008.

In general the new national consumer policy framework is working well. However, from experience, Accord has found that jurisdictions can respond to the same issue differently, leading us to recommend that further education is required to ensure nationally consistent outcomes. Industry would also benefit from further information and clarity on how to identify the issues which are best dealt with at the national level through the ACCC and those matters best dealt with through state and territory fair trading agencies.

Accord's main concern has been with the actions undertaken by the ACCC in relation to our members' products which can be characterized as fast moving consumer goods and generally of low risk. These concerns, which are relevant to the issues raised in the Issues Paper, are addressed in Attachment 2.

Accord continues to work with the ACCC on a range of industry issues. While we are grateful for the access provided to us and our members, we continue to hold concerns on the general approach to implementing elements the product safety elements of the ACL. In particular, consistent with information from the PC study, Australian regulators are found to be very risk averse. The seemingly zero tolerance of risk disproportionately increases the cost of doing business in Australia. As the economy becomes increasingly global, so too must our regulators adopt harmonised and proportionate approaches to regulation and risk management. We strongly support the government's Accepting Trusted International Standards policy and acknowledge that the ACCC is making efforts to implement this policy in relation to product safety.

¹ Results from Accord Industry Size and Scale Survey 2016

We look forward to working constructively with government in articulating its risk appetite commensurate with business practices and international trends.

The contact officer for this submission is Ms Dusanka Sabic, Accord's Director Regulatory reform. Should you have any questions in relation to the matters raised please do not hesitate to contact her at 02 9281 2322, 0422569222 or dsabic@accord.asn.au.

Yours sincerely



Bronwyn Capanna
Executive Director

27 May 2016

Members

Consumer, Cosmetic and Personal Care

Advanced Skin Technology Pty Ltd	KAO Australia Pty Ltd
Amway of Australia Pty Ltd	Keune Australia
AVON Products Pty Limited	Kimberly-Clark Australia
Beiersdorf Australia Ltd	La Biothetique Australia
BrandPoint Pty Ltd	La Prairie Group
Chanel Australia	L'OCCITANE Australia Pty Ltd
Clarins Group/Trimex Pty Ltd	L'Oréal Australia Pty Ltd
Clorox Australia Pty Ltd	LVMH Perfumes and Cosmetics
Colgate-Palmolive Pty Ltd	Mary Kay Cosmetics Pty Ltd
Combe Asia-Pacific Pty Ltd	Muk Haircare Pty Ltd
Cosimer Pty Ltd	Natural Australian Kulture Pty Ltd
Cosmax Prestige Brands Australia Pty Ltd	Nutrimetics Australia
Coty Australia Pty Limited	NYX Pty Ltd
De Lorenzo Hair & Cosmetic Research Pty Ltd	Pacific SMM Pty Ltd
Edgewell Personal Care	Panamex Group
Elizabeth Arden Australia	Procter & Gamble Australia Pty Ltd
Emeis Cosmetics Pty Ltd	PZ Cussons Australia Pty Ltd
Estée Lauder Australia	Reckitt Benckiser
Frostbland Pty Ltd	Revlon Australia
GlaxoSmithKline Consumer Healthcare	SC Johnson & Son Pty Ltd
Hairjamm Pty Ltd	Scental Pacific Pty Ltd
Helios Health & Beauty Pty Ltd	Skin Health Pty Ltd
Henkel Australia Pty Ltd	Syndet Works Pty Ltd
Inglot Cosmetics Pty Ltd	The Heat Group Pty Ltd
iNova Pharmaceuticals – A Valeant Company	Ultraceuticals
Integria Healthcare (Aus) Pty Ltd	Unilever Australasia
International Beauty Supplies Pty Ltd	Vitafive
Johnson & Johnson Pacific	Weleda Australia Pty Ltd

Commercial/Hygiene & Specialty Products

A S Harrison & Co Pty Ltd	Lab 6 Pty Ltd
Albright & Wilson (Aust) Ltd	Novozymes Australia Pty Ltd
BP Castrol Australia Pty Ltd	Nowra Chemical Manufacturers Pty Ltd
Brenntag Australia Pty Ltd	Peerless JAL Pty Ltd
Castle Chemicals Pty Ltd	Recochem Inc
Chemetall (Australasia) Pty Ltd	Rohm and Haas Australia Pty Ltd
Clariant (Australia) Pty Ltd	Schulke Australia Pty Ltd
Crisp Solutions	Solvay Interlox Pty Ltd
Deb Australia Pty Ltd	Sopura Australia Pty Ltd
Dominant (Australia) Pty Ltd	Symbio Australia Pty Ltd
Ecolab Pty Limited	Tasman Chemicals Pty Ltd
E.D. Oates Pty Ltd	Thor Specialties Pty Limited
Huntsman Corporation Australia Pty Ltd	True Blue Chemicals Pty Ltd
Jet Technologies Australia Pty Ltd	Whiteley Corporation Pty Ltd

Associate Members

Corporate Travel Services

Platinum Travel Corporation

Graphic Design and Creative

Ident Pty Ltd

Legal and Business Management

FCB Lawyers

K&L Gates

KPMG

TressCox Lawyers

Logistics

Bolloré Logistics Australia Pty Ltd

Recruitment

On Q Recruitment Pty Ltd

Regulatory and Technical Consultants

Clare Martin & Associates Pty Ltd

Competitive Advantage

Davoren Environmental

Engel, Hellyer & Partners Pty Ltd

Robert Forbes & Associates

Seren Consulting Pty Ltd

Sue Akeroyd & Associates

Tudor Chem Pty Ltd

Specialist Laboratories and Testing

Dermatest Pty Ltd

D.Lab Solutions Pty Ltd

Eurofins ams Laboratories Pty Ltd

April 2016

1 Removing unnecessary duplication in Australian legislation for cosmetic products

PC Recommendation 4.3 stated that:

The Australian Government should generally limit the role of NICNAS to the scientific assessment of the hazards and risks of industrial chemicals. The power to annotate the Australian Inventory of Chemical Substances to ban or phase out chemicals, and the responsibilities for administering the Cosmetics Standards 2007, and for implementing the Rotterdam Convention, should be removed from NICNAS.

In terms of administering and enforcing the ACL, greater benefits could be derived to consumers and businesses alike if the Australian legislation consolidated the regulation of cosmetic products and their ingredients under the ACL rather than the current division of ingredients and certain products under the industrial chemicals regime and other products regulated as consumer goods. This recognizes that national consumer product safety provisions apply to all products, as do ingredient labelling requirements. The streamlining of regulation for these products as recommended by the PC in 2008 should be implemented immediately. This is consistent with the government's Budget decision of 2015-16 for the reform of the National Industrial Chemicals Notification and Assessment Scheme (NICNAS). The transfer of the Cosmetic Standard from the industrial chemicals framework to the Australian Competition and Consumer Commission (ACCC) was agreed as part of the reform process.

Cosmetic control objectives are designed to mitigate risk, primarily through ensuring cosmetic products are formulated to not cause harm, are labelled in a manner that clearly informs the user of the product's contents and ensures that, in applicable circumstances, claims for cosmetics are regulated appropriately.

The ACCC is responsible for a suite of controls that adequately address matters dealing with the safety aspects of cosmetic products. These controls include requirements for cosmetic ingredient labelling under the *Trade Practices (Consumer Product Information Standards)(Cosmetics) Regulations 1991*, a mandatory adverse event reporting regime for cosmetic suppliers and various post-market compliance activities which can include regulatory audits, cosmetic product surveys and national surveillance programs. In terms of its approach to regulation, it is important to note that the ACCC has adopted the European Union (EU) approach to product liability and safety.

Public health issues, which are an important component of safety and complement the ACCC's legislation, are currently dealt with through referral to or identification by State and Territory Health Departments. These agencies possess the necessary risk assessment knowledge to implement appropriate controls to address these concerns. The vast majority of public health issues that arise concerning cosmetics relate to the potential or identified risk of a particular cosmetic product or ingredient. Historically, the primary mechanism used to address these risks is through incorporating controls in the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP).

The enactment of the Cosmetic Standard and the capture of cosmetic ingredients under the industrial chemical framework increased the unpredictability of the regulatory scheme dealing with cosmetic products and their ingredients. The addition of a third agency into the cosmetic product regulatory arena effectively fragments the suite of controls through the development of policy in isolation, thereby increasing the compliance burden on industry. An additional consideration around the introduction of a new legislative instrument and the inclusion of an additional regulatory framework for cosmetics is the inconsistency these arrangements created in relation to other internationally recognised regulatory frameworks that deal with cosmetics. Barriers to trade with major trading partners such as the European Union, the United States, Canada, Japan, the ASEAN economies and New Zealand created by this inconsistency significantly affects the ability of the Australian cosmetic industry to effectively compete locally and in the world market.

Under the government's Accepting Trusted International Standards policy it is appropriate for the ACCC to regulate cosmetic products that would be otherwise available in a comparable advanced economy or via a regulatory system such as in the EU or USA. This is the preferred option in terms of simplifying the current legislative scheme and ensuring that all requirements for cosmetic products and their ingredients reside with one primary regulator. By default, the current Cosmetics Standard 2007 requirements are covered under the TGA's Excluded Goods Order and repealing the Standard will also preclude the requirement to continue to mirror amendments in two legislative documents. This will increase consistency within the schemes.

Recommendation 1

Clarify responsibility for cosmetic products to the ACCC by repealing the Cosmetics Standard 2007 and remove cosmetic ingredients from the scope of the industrial chemicals regulatory framework.

2 Changing the threshold test for mandatory reporting

The current trigger for product safety mandatory reporting under the ACL is inconsistent with other adverse event reporting requirements in Australia and internationally. Under the ACL, all participants in the consumer goods supply chain are required to provide written notification within a mandatory 48 hour notification period of becoming aware of consumer goods which may have caused death, serious injury or illness. Serious injury is defined as one which resulted in the supervision of a qualified doctor or nurse. The definition of serious injury or illness differs in other comparable jurisdictions such as:

- Therapeutic Goods Administration (TGA): *serious adverse events, such as those suspected of causing:*
 - *death*
 - *danger to life*
 - *admission to hospital*
 - *prolongation of hospitalisation*
 - *absence from productive activity*
 - *increased investigational or treatment costs*
 - *birth defects (medicines).*
- New Zealand: *Serious reactions include those that are fatal, life-threatening, disabling, incapacitating, or which result in or prolong hospitalisation (medicines).*
- EU: *any serious risk, including the effects of which are not immediate, requiring rapid intervention by the public authorities (GPSD Article 2 (d)).*
- Canada: *An occurrence in Canada or elsewhere that resulted or may reasonably have been expected to result in an individual's death or serious adverse effects on their health, including serious injury (consumer goods).*

Recommendation 2

Change the threshold for mandatory reporting of consumer goods to: *Serious injury is defined as one which may have caused death or hospital admission.*

3 Mandatory safety reporting and regulatory response

The current process does not allow for an adequate risk assessment of the serious injury prior to notification and is inconsistent with the approach required from suppliers in consideration of determining whether to undertake a voluntary recall. The requirement to provide written notification within a mandatory 48 hour notification period of becoming aware of consumer goods which may have caused death or hospitalisation

is consistent with international practices. What is inconsistent is the ability of the supplier to undertake a risk assessment and put forward to the regulator a proposed course of action.

For a voluntary recall, a supplier is obliged to notify the Commonwealth minister within two days of recalling consumer goods. However, a supplier is able to undertake an adequate risk assessment and develop a risk management strategy prior to notification of the action and also has 10 days in which to provide a copy of the notice to the Commonwealth minister following the recall.

The TGA recommends immediate notification of adverse events or reactions, but allows up to 15 calendar days for reporting. The TGA's reporting requirements are aligned with those of the EU and USA. There is an inconsistent reporting treatment for consumer and therapeutic goods in Australia, with the more onerous requirements on those products usually deemed safer in the market place. There appears to be little understanding of proportionate risk management by the ACCC in carrying out its product safety function.

The TGA also makes a distinction between serious adverse reactions and significant safety issues. A significant safety issue is considered to be an unexpected adverse event or reaction which does not meet the test for serious. Any significant safety issue identified by the sponsor must be reported to the TGA within 72 hours. The 72-hour clock starts from the time of awareness of the issue by any personnel of the sponsor². This is considered to have occurred when the sponsor's review and analysis have been completed and a conclusion is drawn that a significant safety issue exists, or when the sponsor becomes aware of the actions of an overseas regulatory agency

Similarly the EU General Product Safety Directive (GPSD) allows for a risk assessment and provides a methodological framework for facilitating consistent risk estimation and evaluation. In Canada suppliers have 10 days in which to provide a written report to Health Canada which includes measures proposed to be taken with respect to the products.

In Australia there appears to be zero tolerance for any reported event. The current reporting requirements promote a "knee-jerk" reaction to incidences and do not allow any time for analysis to separate out incidents that may have potential significant regulatory concerns to those that may not. The system results in over-reporting and duplication. It is yet to be determined whether the mandatory requirements have identified significant consumer safety issues and led to overall improved safety outcomes as opposed to increased incident reporting of which most would not be regarded as significant or even serious adverse events.

Case study 3.1 - Antiperspirant labelling

*The ACCC received a **single** complaint from a consumer in relation to the ingredient list on a roll on deodorant container. The ACCC subsequently undertook an assessment under its mandatory reporting framework and following this wrote to suppliers (March 2014) about the issue and actions which industry should undertake to address this **one** complaint.*

The following is a summary of the relevant parts of the ACCC correspondence.

In summary, the consumer stated that:

- *they rely on the ingredients list on cosmetics to avoid purchasing and using cosmetics with certain ingredients because they are sensitive to certain ingredients including aluminium.*

A sponsor is a person or company who does one or more of the following:

- exports therapeutic goods from Australia
- imports therapeutic goods into Australia
- manufactures therapeutic goods for supply in Australia or elsewhere
- arranges for another party to import, export or manufacture therapeutic goods.²

- *the ingredients list on the product was hidden from them under a flap behind the barcode with no obvious directions to access it.*
- *as they could not see an ingredients list they purchased the product on the basis of the product representations that it is suitable for people who are sensitive and that it does not contain preservatives however, they subsequently learned it contains typical ingredients such as aluminium which can cause irritation and it also contains preservatives.*
- *even when the consumer eventually did access the ingredients list the text was unreasonably small and difficult to read.*

The consumer who made this complaint had purchased a roll on deodorant with a clam shell label design which displayed the ingredient list underneath a flap on the rear side of the container. During the course of investigations into this complaint the ACCC discovered that many roll on deodorant containers use a similar label design to the one that generated this complaint.

The purpose of this letter is to notify you of the compliance issue that clam shell labels on cosmetics present and request advice about steps your company intends to take to ensure your deodorants and other cosmetics comply with the law.

We have conducted a small survey and determined that the ingredients lists on many deodorants, particularly those which use a clam shell design are not prominent and clearly legible as is required by Clause 6 of the Cosmetics Standard. They are generally located on the rear of the packaging and underneath a (clam shell) label that is concealed by the barcode. The directions indicating the back label can be peeled over are quite often very small and obscure. Consumers who wish to read the ingredients list must first understand they have to peel over the outer back label and then have the dexterity to do so. Once revealed, the list of ingredients is often printed in a font that is unnecessarily small and difficult to read. It is clear that in the case of the complaint the ACCC received the label failed to inform the consumer about the ingredients of concern, as intended by the standard.

While the ACCC understands that there are a number of challenges involved in designing and manufacturing cosmetic labels there is often plenty of capacity to prominently and legibly display the ingredients on deodorant labels just as there is capacity for the large and prominent product claims and branding. Many deodorants successfully display the ingredients list on the label. The correct display of a prominent and clearly legible ingredient list is a mandatory requirement that must be given precedence over other label design criteria. Clause 5(3) of the standard is not an available option where the ingredients can be displayed on the product or container. The correct ingredients list is not optional just because a supplier thinks that the display of the ingredients list detracts from the product branding, marketing claims or spoils 'the look' of the product. The use of clam shell labels may result in compliance with the standard however, the design must include overt directions that result in prominent and legible lists.

Accord is concerned that the ACCC appears to have undertaken this action on the basis of only one complaint. These imported products have been successfully marketed throughout the world for a number of years with millions of products having been sold, seemingly without any problems. The ACCC appears unaware of all of the mandatory labelling requirements to make global products meet local requirements which impedes on the space available for product differentiation. This action demonstrates the ACCC's inability to apply proportionate risk management and if it is allowed to proceed in this fashion i.e. requiring Australian specific additional consumer information on global mass marketed products, then Australian consumers will either miss out on the products or pay a premium.

Recommendation 3.1

Following a mandatory reporting incident, allow a supplier 10 days in which to undertake an adequate risk assessment and develop a risk management strategy prior to notification of the proposed action to the ACCC.

Case study 3.2 – poisonings associated with bleach based cleaners

Recently the ACCC released a study on analysis of calls managed by the NSW Poisons Information Centre as part of Poisons Prevention week. As part of the analysis on information provided from the NSW and Victorian Poisons Centre annual report information and a 2006 US study of household cleaning products, the ACCC is now seeking information from industry in relation to poisonings associated with bleach based cleaners. The US study found that 37.1% of cleaning product related injuries were associated with bleach and that the most common source or container was spray bottles. It is important to note that for the Australian data, each record relates to an incident of exposure, but not necessarily an injury or case of poisoning.

The ACCC concluded that household cleaning products are a major source of chemical exposure and may be accessed by infants and toddlers while they are in use or if they are not stored securely. The study did not identify failure with the products.

The ACCC advised that given the high incidence of cleaning product related injuries treated in emergency departments in the US, it is their view that incidents of exposure to bleach based products are foreseeable events and more could be done to reduce the number of such incidents in the community.

The Australian regulatory system already provides a range of control measure to prevent accidental injuries from occurring. The measures based on expert judgement of reasonably foreseeable misuse, include: child resistant closures, safety warnings, first aid instructions, and use instructions. Many products include trigger locking devices. It is not in the interest of companies to manufacture or distribute unsafe goods. As mentioned previously some of these measures are TGA public health controls, which are an important component of safety and outside the ACCC's legislative reach. Other issues such as safety warnings and labelling are dealt with either through the TGA and/or poisons standard which possesses the necessary risk assessment knowledge to implement appropriate controls to address these concerns.

It is unclear what the ACCC will achieve by directly approaching individual companies already compliant with the regulatory requirements as required under the TGA and/or other public health controls. The ACCC would have been better advised to discuss its concerns with the appropriate risk managers in the first instance, and/or to have raised the issue with the industry association.

Recommendation 3.2

The ACCC should work with other regulatory agencies to clearly identify areas of consumer safety regulatory responsibilities. These should be clearly articulated to consumers, industry and other relevant stakeholders.

Further Comment

The Issues Paper seeks views as to whether there should be a prohibition against the supply of unsafe goods (as well as against non-compliance with a safety standard or a ban). The current law provides consumers with redress if the goods have a safety defect if their safety is not such as consumers are generally entitled to expect. We feel that this together with the range of product safety and product liability provisions covered under the ACL do not warrant a general provision as considered in the Issues Paper.

4 Access to remedies - Enforceable undertakings

Section 87B provides a mechanism for the ACCC and a company under investigation for a contravention of the Act to agree on a public undertaking to cease the alleged conduct. The issue with this type of undertaking is that under the *Competition and Consumer Act 2010* (CCA) an agreement to S87B is an

admission of guilt by the company. Under Australia's Model Work Health and Safety (WHS) legislation, an enforceable undertaking is not an admission of guilt. The company enters into a relationship with the regulator in much the same way as a S87B undertaking but there is no admission of guilt. Enforceable undertakings can provide an effective and timely mechanism to address a breach and should be encouraged as a way to resolve issues. There is a greater likelihood of take-up and better compliance outcomes particularly for small business if there is no admission of guilt. S87B of the CCA should be consistent with the Model WHS legislation as it is applied in the states and territories. At the very least an analysis of the application of the two systems should be undertaken with a view to determining the optimal system, particularly for SME's.

Recommendation 4

Amend the *Competition and Consumer Act 2010* so that S87B enforceable undertakings are not an admission of guilt on the part of the person making the enforceable undertaking.

5 Emerging consumer policy issues – transparent safety information for products sold online

Industry supports transparent consumer product information. Through industry's own initiative, Accord has provided an online information service *What's in it?* This provides consumers with ingredient information to aid choice and enhance confidence in household products. The online service is available to Accord member companies as well as non-member companies. Approximately 80% of all air care, automotive cleaners, household cleaners, household floor maintenance products and laundry products on the Australian market are covered by *What's in it?* The site can be found at www.accord.asn.au/whats/.

Case study 5.1 How not to implement policy changes

In March 2014 the ACCC without consulting industry released its publication: Consumer product safety online. The ACCC advised inter alia

2. Online shoppers cannot physically examine the products your business sells. To inspire confidence you need to show and tell your customers all features and information required by Australian safety laws. The ACCC is concerned about the following online business practices that impact on consumer safety and confidence:

- *supply of banned and/or non-compliant products*
- *use of poor product labelling, such as:*
 - *lack of age-grading on products for children*
 - *inadequate product descriptions*
 - *low-quality product images on websites*
 - ***a lack of ingredients lists on websites, particularly in sales of cosmetics and toiletries.***

Compliance tips for online marketplaces

If you operate an online marketplace take the following positive steps to ensure products supplied on your site comply:

- *screen and search your supplier pages to ensure no banned and unsafe products are offered*
- *encourage new sellers to:*
 - *read training materials before they launch their online business*
 - *visit our Product Safety Australia website and subscribe to automated safety alerts*

- encourage your sellers to provide clear product descriptions, good quality product images and ingredient lists. **For some products, such as cosmetics and toiletries, suppliers need to make the ingredients list available to consumers before they pay**
- provide guidance for consumers about safe purchasing decisions
- provide clear contact details for your business and encourage your sellers to do the same. This makes it easy for consumers to report a product safety concern.

Accord members raised concerns about the ACCC's Online Guidance and sought legal advice which indicated that the ACCC did not have the power to require this of online products as the labelling regulations only applied to bricks and mortar retail sales.

Other concerns raised with the ACCC included:

- extending beyond the reach of the current requirements under the Trade Practices (Consumer Products Information Standards) (Cosmetics) Regulations 1991;
- not internationally harmonised as it is not required by comparable economies such as the USA, UK and EUR due to an acceptance of the differences and complexities of such a trading environment and inherent difficulties associated with the on line supply chain of formulated products; and
- the cost to implement such a scheme will be significant – not only impractical but also overly burdensome in regulation and resources.

The ACCC's advice to member concerns was "with the ease of updating contemporary architecture, if changes to the formulation are made they should be actionable with no, or minimal delay. Should there be an unavoidable delay in updating an online product description; online suppliers should take steps to temporarily suspend offering the product for sale."

This advice indicates a complete lack of appreciation in the way the cosmetic industry operates and the significant supply chain issues involved. It also does not provide the confidence, transparency and certainty in the business operating environment which is essential in any modern day economy.

For example, one Accord member company has 10,000 different stock keeping units (SKU). Regularly there are ingredient label changes, not necessarily overt formulation changes, due to updates in naming or to comply with new and changing regulations. Trying to manage an on-line ingredient listing during this transition period can mean that more than one version of the product may be available at any one time.

While the in store consumer can be guaranteed that the product being looked at and purchased is the one taken home, distribution channels for online are not as simple. An online sale will invariably mean a separate warehouse dispatch which, from the time of order/purchase to the time of dispatch can mean the product received may be slightly updated stock – given the unavoidable time line from purchase to dispatch, the online product displayed while in most respects will be the same, may not be an absolute match of the one picked from the distribution centre and dispatched.

Online ingredient disclosure as suggested by the ACCC, in its extreme inflexible interpretation could mean the end of online sales for cosmetic and personal care products, particularly for those companies operating within Australia. And those operating beyond Australia, where the ACCC does not have reach, will not be affected, thus a further unacceptable inequity.

Consumers have access to a wide range of remedies. In addition, many companies will exchange products on a "no questions" asked basis. If the product purchased online is not to the consumer's liking or upon closer examination of the ingredient list not suitable, the consumer is able to return the product and receive a refund or take advantage of any of the other offers by the company. Consumers purchasing goods online are not without redress. Businesses should not be required to develop onerous systems based on existing legislative approaches for bricks and mortar retailing when suitable alternates can be found.

The ACCC subsequently acknowledged that it did not have the legal jurisdiction requiring ingredient labelling for products sold online. While industry recognises that consumer information needs to be timely and accurate, it should also be consulted when there are emerging consumer issues. Indeed, industry is often best placed to respond in a timely way rather than waiting for a legislative response.

Recommendation 5

Upon identification of an emerging issue the ACCC should engage with the relevant stakeholders and/or industry associations to identify the best approach to manage the issues, utilising a proportionate risk based and evidence based methodology.

Further Comment

A further emerging consumer policy issue is the increased incidence of counterfeit products being made available to consumers either through online or bricks and mortar retailing. Counterfeiters are becoming increasingly sophisticated and in many instances it is difficult to differentiate fake products from genuine. However counterfeit is not only misleading and deceptive conduct but in the case of cosmetic products could result in unsafe goods due to unknown ingredients and/or poor manufacturing practices.