



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

Mr Robert Fitzgerald  
Commissioner  
Study into Standards Setting and Laboratory Accreditation  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Mr Fitzgerald

ACCORD is pleased to provide the following comments in relation to the Productivity Commission's (PC) Draft Research Report on Standard Setting and Laboratory Accreditation (Draft Report).

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

Our industry's products play a vital role in:

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

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

Our industry has more than 50 manufacturing operations throughout Australia and member companies include large global consumer product manufacturers as well as small dynamic Australian-owned businesses. With an estimated \$6 billion in annual turnover, the formulated consumer, cosmetic, hygiene and specialty products industry is a significant part of a prosperous Australian economy.

ACCORD supports the general thrust of the Draft Report's initial findings but remains concerned that the Draft Recommendations will not address ACCORD's concerns regarding the proliferation of regulatory standards and will not stem the growth in 'unique' Australian requirements without further intervention from all governments.

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*Innovative solutions for healthy living and a quality lifestyle*

### ***ACCORD's approach to regulatory efficiency***

As noted in our submission, ACCORD supports the Australian Government's approach to regulatory best practice and recommends that the Council of Australian Governments (COAG) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies (COAG Principles) should be rigorously applied in the consideration of any regulatory response to a perceived market failure. The COAG Principles state that the aim of any national standards setting process should be *to achieve **minimum necessary standards**, taking into account economic, environmental, health and safety concerns* (COAG June 2004, p1).

ACCORD supports the Draft Report's recommendations to improve the process for initiating and developing new standards, both voluntary and those intended for use as regulatory standards. While ACCORD agrees that voluntary standards development is a matter for industry, ACCORD believes that both the Australian Government and Standards Australia have a strong role to play in ensuring that any new, or amended voluntary standards adhere to the COAG Principles.

#### ***Draft Recommendation 6.1***

***The Australian Government should, in conjunction with Standards Australia, improve the effectiveness of Australia's participation in international standards-setting fora by more clearly articulating the national interest objectives to be pursued, Australia's future participation must be focused on those international standardization activities with the potential for the greatest net benefits for the Australian community.***

ACCORD supports this Draft Recommendation and suggests that where the standard has the potential to become a regulatory standard, then the appropriate regulatory agency should take a lead role in pursuing Australia's national interest objectives in line with the COAG Principles.

#### ***Draft Recommendation 7.1***

***Standards Australia's justification process for the development of new or amended standards and the setting of priorities should be made more transparent and robust including by the publication of reasons for decisions, the establishment of a more open appeals process, and ensuring that the primary decision criterion must be a net benefit to the community as a whole.***

ACCORD supports improved transparency and appeals processes in standards making. However, ACCORD believes that Standards Australia should promote the same assessment rigour to apply to voluntary standards as is required for standards which are to be referenced in legislation. Therefore Draft Recommendation 7.2 should also apply equally to the development of voluntary standards. This is particularly important, as many voluntary standards are later picked up by not only regulatory agencies but by local governments as quasi-regulatory tools often in the absence of any impact assessment.

In addition, the tendency by courts and tribunals to recognise voluntary standards as having evidentiary status is also another reason to require voluntary standards to be subject to the same rigour as regulatory standards.

#### ***Draft Recommendation 7.2***

***For standards that are to be referenced in regulation, a rigorous impact analysis must be undertaken by governments in compliance with RIS requirements of the relevant jurisdiction (or COAG requirements for intergovernmental action). In order to best facilitate consideration of other regulatory and non-regulatory alternatives, RISs must be commenced at the earliest practicable opportunity.***

***While the preparation and coordination of the RIS is the responsibility of the regulating government, Standards Australia should provide the technical input and other information as required by the drafters of the RIS and where such input is substantial and additional to normal activities, be compensated accordingly.***

ACCORD supports RISs as mandatory requirements for standards to be referenced in legislation. Further, RISs should also be undertaken when the regulatory standards are reviewed, amended or updated. RISs should also include justification as to why an international standard is not satisfactory and why a unique Australian Standard is required.

***Draft Recommendation 7.3***

***Consistent with the fundamental principle of transparency and accessibility of legal requirements, the Australian Government, or other relevant governments, should fund Standards Australia to provide low cost access to Australian Standards referenced in regulations. The implementation of this recommendation will require further examination by the Australian Government of the current contractual arrangements between Standards Australia and SAI Global (under which SAI Global holds the exclusive rights to sell Australian Standards).***

ACCORD supports the principle of transparency and accessibility of legal requirements and therefore recommends that any standard referenced in legislation should be made freely accessible through the use of appropriate publicly accessible legal databases such as the Australian Government's Federal Register of Legislative Instruments (FRLI). Referenced Standards are legislative instruments and hence would require to be available on FRLI.

***Draft Recommendation 7.4***

***Given the cost of access to Australian Standards, the Australian Government, and other governments, should seek to minimize the number of referenced standards and, in particular, avoid unnecessary cross references to Standards which make it necessary to purchase multiple Standards documents.***

ACCORD supports the principle of transparency and accessibility of legal requirements and therefore recommends that any standard referenced in legislation should be made freely accessible as per our comments for Draft Recommendation 7.3. Not only is cost of accessing the standard a problem, but also obtaining the correct referenced standard, as regulatory agencies tend to reference a standard and then add the phrase – *as in force* or *as amended from time to time*.

The Australian Government's *Guide to Regulation* (December 1998) is quite specific about how external standards which are incorporated into regulation, including but not limited to Australian Standards, should be referenced:

*Where a standard is used, the regulation should not allow the standard to be modified or changed, unless it can be clearly shown that modification or change is necessary. Any modifications to the standard should not be automatically incorporated into regulation. **Where regulation refers to a standard, it should explicitly refer to the type, characteristics and date the standard was made. It should not refer to a standard that could be changed or modified.*** (page E21)

ACCORD recommends that the Draft Report should recognise this practice of not referencing a particular date of the mandatory standard as poor regulatory practice and insist that all regulatory

agencies strictly adhere to the Australian Government's requirements as outlined in its Guide to Regulation.

***Draft Recommendation 9.2***

***The Australian Government should continue to use the Memorandum of Understanding (MoU) as the most appropriate instrument for setting out the basis for its relationship with Standards Australia. While the terms of the current MoU generally remains appropriate, some changes are necessary including to:***

- ***Give effect to many of the specific draft recommendations in this report;***
- ***Improve the clarity of the documents and its objectives in particular by better defining public interest activities;***
- ***Deal with special requirements of regulatory standards; and***
- ***Require public reporting on an annual basis of its performance against the MoU obligations.***

ACCORD supports this Draft Recommendation but suggests that the MoU needs to be enhanced to ensure that Australia's national interests are adequately represented in international standards setting fora. In addition, the Australian Government should insist that Standards Australia adopts the COAG Principles for voluntary as well as mandatory standards in its revised MoU.

***Conclusion***

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

Yours sincerely

Approved for electronic submission

Dusanka Sabic  
**Regulatory Reform Strategist**

12 September 2006