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Responses to Questions of the Standing Committee on Legal and Constitutional Affairs arising from the public hearing of 21 March 2006

Question 1

ACTING CHAIR: Finally from me, in the original submission a number of potentially unsafe electrical products entering the Australian market were identified. The committee would like to know whether you could provide evidence or examples of such potentially unsafe products appearing on the Australian market

Response

Examples of such products can be found at the Product Recalls Australia website http://www.recalls.gov.au/. According to data available on this website, 43 electrical products were recalled in the twelve month period April 2005 to April 2006 for safety reasons. Examples of products and reasons for their recall are:

2005/7707	Super Force 1900 AMP Jump Start	Faulty switch; risk of electric shock
2005/7778	Digitor brand AC Adaptors	Faulty casing; risk of electric shock
2005/7890	240 VOLT Portable Generator 1 KVA MAX	Design fault; risk of electric shock
2005/7990	Window/Wall Air Conditioner	Faulty earth; risk of electric shock
2005/8098	Ultimate Chopper Food Processor	Faulty interlock, can be operated with the lid on; risk of physical injury
2005/8174	Seesaw + 55 & 72 cm Reindeer Rope Lights	Incorrect electrical pins; risk of electric shock
2006/8282	Hi-Lift Hair Straightener, Model E038	Faulty power code swivel; risk of electric shock
2006/8326	HPM "Instant Heat"	Defective lamp holder connectors; risk of fire

It should be noted that such recalls have occurred post-market, ie only after a problem has been noted.

Question 2

Mr MICHAEL FERGUSON—Do you think that you would be able to ask that section or that committee [SIAA's Marketing and Technology Services Working Group] to look at that [relating to *…. having eight jurisdictions in science education in Australia and how you see that fragmentation affecting our capacity as a nation to build up a future generation of scientists and engineers*] and perhaps forward some information to the committee?

and

Mr MICHAEL FERGUSON—Would the SIAA be somewhat concerned about the current state of science in pre-tertiary levels of education in Australia?

and

Mr MICHAEL FERGUSON—When you do come back to us, I would be really grateful if you would address those points and also how you see standards changing in the different jurisdictions in Australia, particularly with the philosophical bent now on outcomes based education which is far less about content knowledge, which of course is the key way that we as scientists work.

Response

Although the Marketing and technology Services Working Group has not met since the public hearing on 21 March 2006, the SIAA has been able to gather some information from several sources regarding science education in Australian schools.

From the information available to the SIAA it appears that the reasons for decreased involvement in science courses at secondary level, particularly in the enabling (hard) sciences (physics and chemistry, and applied mathematics), are multi-factorial.

Matters identified as important include:

- the social/racial backgrounds of the students, eg low take up rates in indigenous areas;
- tertiary qualifications of the parent(s), particularly in a science discipline;
- the proliferation of alternative courses that may be (perceived to be) easier, eg business studies, commerce; and
- the relatively "dry" knowledge-based content of enabling sciences curricula—it appears that students are more attracted to the humanity content inherent in the biological sciences, which are still relatively popular.

At this stage, fragmentation [of curricula] has not been identified as a major factor in deterring secondary school students from studying science subjects.

We understand the lack of interest in the enabling sciences may be addressed through the introduction of *Essential Learnings* curricula, initially in Tasmania but soon to be implemented in the mainland states/territories with the exception of New South Wales.

Essential Learnings appears to be an outcome-based approach to learning, the aim of which appears to be to make school more interesting. Whether it is better for science students or not is unclear at this stage. However, what is clear is that any initiative that attracts students back to the enabling sciences should be supported.

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Responses to Questions of the Standing Committee on Legal and Constitutional Affairs relating to the harmonisation inquiry public hearing, 21 March 2006

1. In its submission SIAA indicates that the State and Territory-based regulation of electrical safety compliance has led to potentially unsafe electrical products entering the Australian market (p.6).

   - *Can SIAA elaborate on how the existence of different regimes has led to the release of potentially unsafe electrical products onto the Australian market?*

Response

Electrical goods/equipment receives little attention from the State/Territory regulators until something goes wrong. Invariably this does result in a product recall but, because the products are usually "no name" there is little market pressure on the (usually) importers/distributors of such goods to protect their brand in the marketplace.

Individual States/Territories, as is their right, have different approaches to the policing of compliance with their respective regulations. Some are more interventionist than others, as you would expect in a situation where local (state) issues drive compliance as opposed to compliance that occurs in support of the national good. In summary, the approaches are inconsistent across Australia and compliance in this are is not seen as a priority.

The outcome is that endogenous manufacturers and importers of brand name electrical goods/equipment are placed at a market disadvantage because they "play the game" and ensure their products comply with all regulations/standards and are therefore deemed to be safe.

One approach that has been used successfully is that prescribed under the *Imported Food Control Act 1992*. This Act requires importers of goods that have been shown to fail a food standard to undergo a series of user-pays testing of a defined number of imported shipments to ensure compliance is in place. This system has worked well over the last ten to fifteen years in increasing the safety of imported food. This component could be managed by Customs by extension of existing legislative powers, thus bring a national perspective to the issue.

   - *As far as SIAA is aware, has the Australian Electrical and Electronic Manufacturers Association (AEEMA) taken the cause of national legislation complementary to Part 5A of the Trade Practices Act any further?*

Response

Our investigations have indicated that AEEMA has not at this stage taken the cause of national legislation any further.

A major reason appears to be that implementation of an appropriate national harmonisation process is "stuck" between two sets of state/territory regulators. These are those represented by membership of the Electrical Regulatory Authorities Council (ERAC) and those represented by the Ministerial Council on Consumer Affairs (MCCA).

The latter initiated a review of all consumer product safety in 2004. A discussion paper, "Review of the Australian Consumer Product Safety System", was released in August 2004. Among other things, this document includes reference to a recommendation by the Standing Committee of Officials of Consumer Affairs (SCOCA) regarding the need for consistency between Commonwealth (Trade Practices Act) and state/territory legislation relating to product safety, both policy making and enforcement.

AEEMA made a joint submission to this review with the Consumer Electronics Suppliers Association (CESA). This submission (available on the MCCA website www.consumer.gov.au) highlighted the lack of action by ERAC in progressing reform.

Although public submissions relating to this review closed on 4 November 2004, there has been no further public action on the issue. It appears that industry's hands are tied until the MCCA releases its report and associated recommendations.

A further impediment to a national approach is that electrical product safety legislation does not necessarily sit within the consumer affairs/fair trading portfolios at state/territory level. For example, electrical products are regulated in South Australia through the Department for Transport Energy and Infrastructure as an "add-on" to the legislation ensuring the safety of electricity supply!

- *If AEEMA has indeed advanced this cause, what has been the outcome of this work?*

Response

See above.

2. In SIAA's view, how feasible would it be for harmonisation to occur in the specific areas identified in its submission (poisons on schedules 4 and 7, drugs and explosives precursors, in vitro diagnostics, weights and measures, and electrical product safety (p.5-7))?

Response

Harmonisation is feasible given the commitment by all stakeholders, at the required level. For example, at the COAG meeting on 10 February 2006, all governments committed to a renewed focus on regulation reform, including the introduction of nationally consistent standards for trade measurement, and a streamlined and harmonised system of national chemicals and plastics regulation. There are precedents that support this. See below

- *If such harmonisation is feasible, is SIAA able to identify possible mechanisms or methods for achieving it (apart from the national measures suggested for harmonisation in the areas of electrical product safety regulation standards)?*

Response

In the case of food regulations, Food Standards Australia New Zealand (FSANZ) was created after COAG agreement to ensure national (and later cross-Tasman) uniformity of food standards. The role of FSANZ is to draft potential changes to the Food Standards Code (and associated frameworks, eg industry codes of practice) with input from government/industry/consumer stakeholders. After agreement by the respective Commonwealth/State/Territory ministers (ANZ Food Regulation Ministerial Council), the changes are adopted by reference into State/Territory food law.

This system was implemented after strong lobbying by industry over many years leading to the passing of the *Food Standards Australia New Zealand Act* in 1991. The States/Territories made complementary changes to their legislation to accept the changed system.

A similar route has been followed for national registration of agricultural and veterinary chemicals. Prior to the mid 1990s, each state/territory assessed and approved chemicals for sale/use within their jurisdiction. This role is now carried out by the Australian Pesticides and Veterinary Medicines Authority (APVMA), again after COAG agreement and passing of relevant Commonwealth and state/territory legislation.

The elements of the above systems already exist in some of the areas referred to, eg States/Territories have a large input to the scheduling of drugs and poisons. The difference, compared to the food sector, is that they then draft their own individual legislation which, in some cases, requires approval within their legislature. The latter step, in particular, can be time consuming (taking up to two years in industry's experience) and being prone to last minute changes due to lobbying by local interest groups.

Hence the resulting legislation is:

- not implemented concurrently across Australia (the changes to the licensing requirements for ammonium nitrate are one example of this); and/or
- changed/modified prior to enactment (lists/important details that invariably impact non-uniformly across Australia on industry and the public); and/or
- the responsibility of varying different government agencies that have different rationales/approaches to compliance/enforcement (eg, illicit drug precursor legislation is under Justice or Health departments, depending on the jurisdiction)

- *Can SIAA elaborate on how harmonised regulation and standards within Australia would impact on trade and commerce in the science industry both within Australia and overseas?*

Response

It is generally accepted that harmonised regulation and standards are necessary to maximise the national benefits arising from trade and commerce.

This is one of the planks underlying the development of multi-lateral (WTO) and bilateral (eg USAFTA) trade agreements, and the efforts to harmonise such regulations/standards within Australia. The benefits at the international level include improved market access and decreased compliance costs due to mutual recognition. The benefits at the national level include the need to comply with a single, rather than multiple, set of "rules".

The science industry would be no different to any other industry in benefiting from harmonisation. It is fair to say that the benefits would not be spread evenly across all segments of the industry. For example, the chemicals segment is subject to more regulation than the scientific instrument segment and therefore would be expected to benefit to a greater extent by harmonisation.

3. SIAA estimates in its submission that the science industry is currently growing at more than 10 per cent per annum (p.3), and indicates that the lack of a single Australian united market is an impediment to industry growth (p.4).

- *In SIAA's view, does this mean that if, there was a single harmonised market in Australia, the science industry's growth rate would be higher still?*

Response

Surveys carried out through Science Industry Australia's membership have identified regulatory reform as a prime impediment to further growth. This impediment is not necessarily because regulation comes at a cost (both direct and indirect) rather it is invariably due to what we have termed the "buggery factor".

The buggery factor can best be described as regulation taking management precedence over strategic matters such as business planning, product development/innovation, marketing and export opportunities. Hence, it is a bugger to have to think about and deal with compliance on a day-to-day basis, especially in an environment where there is a plethora and complexity of national and state (and some cases local) regulations. The buggery factor is large in the case of the science industry as, by its innovative nature, this sector is dominated by SMEs that have low critical masses of senior management staff. Invariably the CEO/MD (usually the intellectual powerhouse behind the company) is intimately involved in the detail of the operational aspects of the company, including compliance with regulations.

We believe the 10% per annum growth rate can be increased by, among other things, harmonisation of regulation across Australia (and internationally), thus freeing the innovation inherently present in the industry.

4. On p.4 of its submission SIAA states that larger companies within the science industry export up to 90 per cent of their production.

   - *Does the lack of regulatory and standards harmonisation in Australia have a differential impact on small to medium-sized firms as compared to larger enterprises?*

Response

Yes, it does.

As indicated in the response to Q3, the Australian science industry is primarily composed of SMEs. A number of national and international studies have shown that regulation impacts more on SMEs than non-SMEs.

The most recent of these was the Report of the Taskforce on Reducing Regulatory Burden on Industry "Rethinking Regulation" released on 7 April 2006. This report includes a number of case studies in support of the proposition that SMEs are impacted differentially and adversely through regulations imposed by government at all levels.

   - *If this is the case, how is this differential impact measured?*

Response

There are published methodologies illustrating the way in which differential impacts have been measured (Chittenden *et al*) and may be measured (Business Cost Calculator).

Professor Francis Chittenden and colleagues used accepted economic modelling approaches to determine the differential cost of regulation in a number of economies including Australia. The report of their study, which was commissioned by the UK Small Business Service and supported by the Leverhulme Trust, is entitled "Regulatory Burdens of Small Business". It is available on the internet at http://www.sbs.gov.uk/SBS_Gov_files/researchandstats/Regulation-Report.pdf?nourl=www.dti.gov.uk/publications/pdflink/&pubpdfdload=02%2F1378.

The Business Cost Calculator was developed by the Office of Small Business within the Department of Industry Tourism and Resources to assist government officers to measure and assess the compliance costs of policy options. The Business Cost Calculator provides six steps to assist officers formulate policy and, for each policy option, estimates the compliance cost on business. The Calculator can be used for a number of purposes, including comparing the compliance cost between target groups. More information on the Business Cost Calculator can be found at http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectid=BA1B2703-B8F9-15A5-D133F9301CDF7C1C&searchID=84565.

5. In its submission SIAA indicates that the science industry considers that Australian regulations and standards should be aligned with those of Australia's major export markets (pp.6-7).

   - *Can SIAA elaborate on the obstacles and problems that face the industry as a result of Australia's lack of alignment with its export markets?*

Response

Currently, many economies invoke technical barriers to trade that require testing of imported goods at the importers' direct (testing and application fees) and indirect (time delays) expense.

On the other hand, Australia has a relatively open market whereby industry either self regulates, especially where safety is not a concern, eg product standards. It then becomes a commercial decision as to what is acceptable in the market. Usually, government only intervenes where safety may be a concern, eg electrical safety, harmful chemicals. This is not always the case with some of

our major trading partners, eg EU and certain Asian countries, who strictly enforce non-safety product standards

Alignment of Australian standards with those operating internationally would facilitate the development of mutual recognition arrangements which should minimise in-country testing/hold-ups and, in turn, facilitate market access and increase export opportunities. State and territory standards should also be aligned with international standards.

This approach is one of the rationales for the development of free trade agreements with, eg USA, Singapore, Thailand and China. This approach is strongly supported by the science industry.

- *Can SIAA detail the benefits that the industry would gain as a result of harmonisation in this regard?*

Response

See the response to Q2, specifically that relating to "*Can SIAA elaborate on how harmonised regulation and standards .... ?*"

- *Are there international codes or treaties in place in the relevant areas?*

Response

There are international treaties present in some areas and absent in others.

In some cases, standards developed by non-government bodies have become international standards under such treaties, eg ISO standards under the World Trade Organization Agreement on Technical Barriers to Trade.

In other cases "historical" standards have become de facto international standards, accepted by industry (and government in some cases), without treaty endorsement. Examples of the latter include the CE Mark, UL Certification and USFDA drug/medical device requirements which are universally acknowledged as benchmark standards in their respective areas.

One international initiative that will impact markedly on the science industry if and when it is completed (and if it is adopted by economies) is the Globally Harmonised System of Classification and Labelling of Chemicals. This is currently under development by a UN body. The timeframe for completion is not known.

However, there are still many holes. As an example, and perhaps because economy/country involvement is limited by the need to pay a yearly fee, there is not universal acceptance of the treaties/codes under which the International Bureau of Weights and Measures and the International Organization of Legal Metrology operate. We believe these treaties could be given more teeth if they received "endorsement" under the WTO or similar over-arching arrangements.

- *If there are codes or treaties, do they already apply in Australia?*

Response

Australia is a signatory to many treaties and codes that impact on the science industry. These include those elaborated under and through the auspices of the United Nations, the World Health Organization and the World Trade Organization. Similarly, we have treaties with many of our trading partners.

However, this does not stop countries/economies invoking technical barriers to trade as a mechanism for protecting their endogenous industries. This situation has been referred to under our response to Q5 and obviously adds to the "buggery factor" referred to under the response to Q3.

- *If Australia's regulations and standards were aligned with those of its major export markets, would this, in SIAA's view, entail a weakening of Australia's regulations and standards?*

Response

This has already occurred in areas that impact on the science industry, eg ISO, CE Mark and UL Certification which are accepted to variable degrees in the US, EU, Japan, Korea, New Zealand, China, etc. This alignment has not entailed a weakening of Australia's regulations and standards.

The primary emphasis within these standards is on product quality, rather than product safety (protective standards). Although product safety can flow from product quality, they are not one and the same. In the science industry's experience, safety is ensconced in other more generic legislation, eg Occupational Health and Safety.

In addition, the elaboration of protective standards is a hallmark of the majority of our trading partners. For example, both the US and EU have been leaders in elaborating standards that ensure the safety of the public. To say that standards developed within these economies are inferior is at variance with their acceptance by a large number of other (developed country) economies).

With respect to product quality, it is the science industry's view that this is a commercial decision to be taken by individual companies. The product will therefore stand or fall in the market depending on the market requirements. This assumes that all safety standards are adhered to.

Alignment of Australia's regulations and standards with those of its major export markets would not only ensure increased market access/export opportunities, it would negate the need for resource hungry development of standards that may or may not align with internationally accepted best practice.

The science industry sees no downside that cannot be managed by supplementary regulation if and when indicated by an appropriate risk assessment process.

- *As far as SIAA is aware, have other countries harmonised their standards with trading partners in the way the industry recommends for Australia?*

Response

Yes. A good example close to home is New Zealand.

Some years ago New Zealand adopted a policy of harmonisation as much as possible with international standards in recognition that it was a small economy and could not afford the bureaucracy associated with "big" regulation.

In fact, New Zealand has gone further and, as the minor partner in the Closer Economic Relations treaty with Australia is utilising Australian resources, eg food regulation, to bolster its own regulatory framework. Of course it pays for this privilege but nothing like it would cost if it decided to go it alone. Similarly with therapeutic goods which is close to finalisation.

6. What, in SIAA's view, are the ramifications of the recently completed Productivity Commission review of the Australian consumer product safety system for SIAA's concerns regarding electrical product safety?

Response

Although the SIAA has not had the opportunity to fully investigate any ramifications, the general thrust of the findings and recommendations are entirely consistent with those of the SIA, ie

- national uniformity in regulation;
- differences create inefficiencies in a resource constrained environment, including duplication of effort and inconsistent approaches to similar risks and hazards;
- the preferred model is to have one national law;

- if this is not achievable, jurisdictions should harmonise core legislative provisions, including a changed requirement that permanent bans and mandatory standards should only be adopted on a national basis;
- consistently making hazard identification and risk management more central to policy making, standard setting and enforcement;
- improving the focus and timelines for the development of mandatory standards;
- providing better regulatory information to consumers and businesses through a 'one-stop shop' internet portal; and
- establishing a national clearinghouse for gathering information and analysis from existing sources to provide an improved hazard identification system.

Such an approach is consistent with another (more?) important area of public safety, that associated with food. Australia has employed performance-based food standards for some years now without comprising the safety of food consumers.

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