

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: ACCC

Question: BET 22

Topic: Formaldehyde Regulations

Reference: Pages 41-42 of Hansard, 4 June 2014

Senator: Madigan

Question:

22. Senator MADIGAN: Can I just clarify this now? I would like direction as to who enforces compliance with the regulations where, for instance, if we have a composite board that is being used for the fabrication of, say, a vanity unit. I know of a case in Melbourne, not far from Senator Ryan's electorate office, where a product has been used which has formaldehyde in it. I know that many people working on that site are bleeding from the nose. These people want to know who it is that they go to see to get this situation dealt with because every time they go to get something done, everybody passes the buck. Some people say it is the ACCC. Some people say it is somebody else. These people go on this bloody merry-go-round and people's health is being unaffected.

CHAIR: Order. I understand your passion but—

Senator XENOPHON: 'Bloody' is all right, Chair!

CHAIR: Not in here, it's not.

Unidentified speaker: It's not the Queen's English, is it, Chair?

Senator MADIGAN: Well, they have got a bloody nose.

Mr Ridgway: If I could try to assist. In looking at the regulatory framework in relation to building and construction products, my team has identified that there is, of course, a role carried by state regulators; there is also a role, in some circumstances, carried by local government in its certification regime. Further to that, in the regime that responds to the building code of Australia's framework, there are some private certifiers who have a role as well.

Unidentified speaker: I think that is probably making your point.

Mr Gregson: If I could clarify something: earlier you referred to matters that had come to the attention of the ACCC in relation to formply. They were considered by the ACCC in the context of representations made, and whether those representations about compliance with various standards was misleading. The more recent one of those that you have referred to in that question on notice was considered by the ACCC. There were changes made and indeed any residual issues were addressed, at least in some part, by communications from the trader to customers, but also a referral from the ACCC to the relevant state worksafe authority. I would have thought one of the worksafe authorities could well have a strong interest if there are risks in a workplace.

Senator Ryan: Senator Madigan, I appreciate this is no longer my portfolio, but were you referring to staff or customers in an area when you mentioned that people were ill? Was that workers on a site, for example?

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Senator MADIGAN: Yes, tradesmen dealing with these products. It is not one instance but multiple instances of people bleeding from the nose because of exposure.

Senator Ryan: Just to clarify: this was product being used and sold business to business for use in construction and staff falling ill? Could I suggest—to help Senator Madigan, in that environment, because that is different to a sale to a consumer—that the commission take on notice what courses of action not just a business might have from purchasing a faulty product or a product that was a risk, but also staff, or potentially future customers if it was a retail area, might have. So a series of steps or something in writing from the ACCC that Senator Madigan could have that they could wave in another regulator's face and say, if they say it was not them, 'No, this is what we've been told', so that the buck cannot be passed. I will endeavour to get back to you on a couple of the matters privately, Senator Madigan, now that you have said that.

Senator MADIGAN: Are the ACCC aware of the November 2013 report by the Australian Industry Group, The quest for a level playing field: the non-conforming building products dilemma, which outlines the safety concerns for instance about formply, amongst other products, when they do not conform with Australian standards and the extensive evidence that the report provides of this. Further to that, is the ACCC resourced, or is it in your charter, to enforce Australian standards?

Mr Sims: Nigel, I was going to say I did not think it was in terms of building standards.

Mr Ridgway: That is correct. The ACCC does not have authority to enforce Australian standards. It has a responsibility—as my colleague Scott Gregson has identified, where there are representations about Australian standards in the supply chain, in the market, in trade or in commerce, then the Australian consumer law expects those representations to be correct.

Mr Sims: What we spend a lot of time on is dealing with product safety issues, whether it is chemicals in bed sheets or cables in houses. We are seeing a lot of low-priced imported goods being sold in retail outlets that do concern us from a product safety point of view. We are the product safety regulator. If someone has an injury with a good, they have to report it to us. We get involved in the recalls, and if we feel people are not adhering to that regime we can take enforcement action. We do put a lot of time into this. The building standards per se are the building regulator's responsibility. But as Senator Ryan said, we will get back to you; we will try to be as helpful as we can about who should be doing what in this area.

Senator MADIGAN: Can you clarify for me: you have acknowledged that there are a lot of goods coming into the country that are substandard—what I refer to as landfill. So you only act on that; you are not proactive, you are just reactive to this product. Is that correct? Senator Conroy made the comment when we were talking about the broadband, that if a company purports to have a service that is 100 units to a consumer, and he suggested that it is only 38, that you say that is misleading the consumer. There are so many products coming into the country, Mr Sims, that people in good faith are buying, assuming that those products meet our standards. So you are

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saying to me that the ACCC is not proactive in looking at products coming into the country as to whether they meet what the community's expectations are—

Mr Sims: That is right, Senator. We do not have a role that is standing at the border and checking whether the goods meet international standards. What we do have a role in is if somebody says—

Senator MADIGAN: No, I am talking about Australian standards.

Mr Sims: If someone says, 'our good meets Australian standards' and it does not, that is misleading conduct; we can take action. If somebody is selling a good that is unsafe, we can take action—and we are very proactive on that. We have testing regimes, and we have, as I say, a mandatory reporting system where we find out about any injuries with goods. So in terms of consumer product safety, we spend a lot of time on that, Senator.

Senator MADIGAN: Would you be able to give me a road map, so I can give it to people? I have got a multitude of these complaints.

Mr Sims: Yes. As I have said, we most certainly will.

Answer:

22. The regulation of chemicals at the national level can include arrangements where the overall compliance and enforcement activities might be shared with state and territory agencies. The five broad categories of regulating chemicals are:

- National Industrial Chemicals Notification and Assessment Scheme (NICNAS) regulates industrial chemicals including the chemical ingredients in cosmetics and other products for domestic use.
- Australian Competition and Consumer Commission (ACCC) regulates consumer goods including cosmetics although cosmetic ingredients are assessed for safety by NICNAS.
- Australian Pesticides and Veterinary Medicines Authority (APVMA) regulates agricultural and veterinary chemicals (agvet) e.g. pesticides and veterinary medicines.
- Therapeutic Goods Administration (TGA) regulates therapeutic products including pharmaceutical drugs and complementary medicines.
- Food Standards Australia New Zealand (FSANZ) regulates food, food ingredients and food packaging including additives (eg preservatives, colourings), processing aids, contaminants and residues.

Additionally, work health and safety policy is managed by Safe Work Australia, which is a national body. Safe Work Australia also manages the Hazardous Substances Information System (HSIS). The HSIS is an internet advisory service that provides information on substances that have been classified as hazardous by an authoritative source such as the NICNAS. The HSIS entry for formaldehyde was recently updated to reflect classification changes recommended by NICNAS. The update includes a change to the carcinogen classification from category 3 (limited evidence of a carcinogenic effect) to category 2 (may cause cancer by inhalation).

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Workplace safety legislation in the States and Territories references the workplace exposure standards for formaldehyde set by Safe Work Australia. Consequently, notwithstanding that chemicals and chemical products are regulated in a number of broad categories at a national level, it is workplace safety laws that apply where workers in a factory are exposed to hazardous chemicals. The Victorian Workcover Authority (VWA), formerly known as Worksafe Victoria, is responsible for enforcing Victoria's occupational health and safety laws. The VMA can be contacted by phone on 1800 136 089 or emailed at info@worksafe.vic.gov.au.

The ACCC contacted the VWA advising that it had learned of an allegation where workers at an undisclosed manufacturing facility in Victoria were allegedly suffering nosebleeds from formaldehyde released from composite board used in the manufacture of vanity units. The VWA was advised that Senator Madigan had raised this concern during the estimates process.