



ACT Office of Fair Trading

Promoting Consumer Confidence

Product Safety Review
Competition and Consumer Policy Division
Department of the Treasury
Langton Crescent
CANBERRA ACT 2600

Dear Sir/Madam

Thank you for opportunity to provide comment on the Discussion Paper into the Review of The Australian Consumer Product Safety System. The ACT Office of Fair Trading has product safety responsibilities under the *Fair Trading Act 1973* and maintains a pro-active compliance regime for the Territory.

The paper outlines two main areas of concern that this office agrees requires improvement in the product safety regulatory system. The first being the need to deal with potential safety hazards more swiftly and the second is the impact of the system on the efficient trade in consumer products and the efficient use of government regulatory resources.

Current system issues

A major problem with the current system is that it is too slow to react to potential problems when dangerous products are found in the marketplace. This is because the current system relies on Government regulatory bodies to take action when a dangerous product is found or identified by consumers and brought to the attention of the regulators. The efficiency of this system is faltered by several problems including; the varying legislation responsibilities of each jurisdiction, the lack of resources dedicated to product safety compliance and political differences that dictate budgets, priorities and resource allocation within the jurisdictions.

Compounding this problem is the lack of responsibility placed on manufacturers/distributors to ensure their products are safe before they enter the markets. The Discussion Paper outlines a system of introducing a General Safety Provision (GSP) to place more responsibility on manufacturers and distributors of consumer products to enhance safety conscience industries. This Office would support this initiative.

One of the main issues that continually confront regulators is whether a product is inherently dangerous or is only dangerous if misused. Under a GSP, the level of safety should apply to all non-exempted products (there will need to be exemptions for products that are specifically designed for certain tasks that inherently have a higher level of danger such as nail guns for building work etc. A clear definition of what constitutes a consumer product and what does not, could enhance this).



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ACT DEPARTMENT OF JUSTICE
& COMMUNITY SAFETY

The level of safety under a GSP should be determined by the potential for a product to cause injury and/or death and consideration should be given to where an Australian Standard already exists for a product, the standard should apply automatically without the need to make it mandatory under law.

Safety for services

This Office is not convinced that the product safety provisions of the Trade Practices Act should cover services. Common law provisions concerning duty of care should remain the main deterrent for safety with service providers.

Second hand goods

While consumer law provisions already apply to second hand goods, regulators should have the power to remove potentially dangerous goods from the marketplace, whether or not second hand. Private sales of second hand goods should be exempt however, traders at weekend markets and fairs, cash converters and the like (which are a growing industry in the ACT) should be included. Electricity regulators make it an offence to sell a second hand electrical product unless it has been tested and tagged as correct. Similar regulations could apply to certain other consumer products that may become dangerous over time and use.

Early warning systems

To strengthen the early warning systems in Australia, there needs to be a more sophisticated data collection system in hospitals and emergency rooms. The current system is inadequate and does not promote better safety outcomes. General practitioners should also be allowed to access an electronic database to provide injury and product statistics to assist regulators to act more quickly. Also, an Intranet site should be developed that can be accessed by regulators similar to the Trade Measurement Intranet site (maintained by the Commonwealths Measurement Institute) that will enable field operators and managers to communicate better and reduce duplication of compliance and enforcement action.

This Office would support in principal a proposal for Governments to have recall audit powers, however, it would need to be on the basis that it did not deter businesses from voluntarily undertaking a recall or place too much burden on Government resources.

Harmonisation of legislation

This Department is presently considering the simplification of consumer law provisions. It remains interested in the current work being done by the SCOCA Working Party on National Trade Measurement where several options (not dissimilar to the ones suggested in the Discussion Paper) are currently being explored to produce more uniform means of legislation interpretation and administration.

Should you wish to discuss any of the issues raised above, please contact the Manager of Compliance, Mr Ron Begg on 6207 0419.

Yours sincerely



Brett Phillips
Commissioner for Fair Trading
30 November 2004