



# **Australian Toy Association Limited**

## **Submission to**

## **Review of the Australian Consumer Product Safety System**

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## **Review of the Australian Consumer Product Safety System**

The Australian Toy Association Limited refers to the review of the Australian consumer product safety system being conducted by the Ministerial Council on Consumer Affairs (MCCA) and the resultant Discussion Paper dated August 2004.

Members of the ATA's Safety Committee have considered the discussion paper and the issues raised therein.

The Australian Toy Association Limited (ATA), for itself, and on behalf of its members, makes the submissions set out below.

## **1. Preamble**

The ATA recognises that one of its most important functions is to promote the highest possible standards of safety in design and manufacture of children's products.

The ATA continues to work closely with regulatory authorities, both Federal & State, on all issues of safety and standards and through this involvement ATA members are recognised as having accepted safety as their prime responsibility.

ATA Members are bound by the ATA's Code of Practice a copy of which is provided in Appendix I.

The ATA was also a key participant in the development of the ISO Global Toy Standard first published in 2000.

## **2. Concerns**

The ATA welcomes this review as in our considered opinion the current Australian Consumer Product Safety System is unwieldy and raises some issues for business relating to safety.

### **Costs on Business**

The current system places significant compliance costs on Australian business, and also to the consumer:

- Multiple and overlapping jurisdictions and Agencies – leads to variations between regulations and activity between states creating uncertainty for suppliers;
- Variations between Standards and Regulations can often lead to Regulations not being updated to reflect current standards;
- Variations in standards between Australia and the rest of the world means that goods that pass standards in other countries cannot be imported, although the variations are slight and offer no greater protection to the consumer.

### **Effectiveness of standards**

- The work of Standards Australia appears to be determined by the sale of standards, rather than reducing public risk or increasing market awareness,
- Without an effective data collection mechanism it is not possible to determine public risk;
- Market awareness depends on the effective distribution of information. Selling of Standards seems to be counter-productive to this aim.

In now responding to the specific issues raised in the Discussion Paper, the ATA strongly recommends that the above concerns be addressed by means of consultation with industry representatives.

### 3. Response to Issues Raised in Discussion Paper

1. *What, if any, are the major problems confronting Australia's consumer product safety system? (Please support your views with any evidence or examples).*

- In the view of the ATA there should be one regulatory body instead of separate bodies for each State. The political nature of multi-jurisdictions is confusing, time consuming and costly.
- The manner in which legislation references Standards is often confusing. Also the fact that a Regulatory Impact Statement is required in order to update legislation (eg new Standard reference) seems unwieldy and unnecessarily onerous.
- Toy industry standards are in the main voluntary.
- Government has indicated its preference that the toy industry be self-regulated.
- ACCC has previously been provided with well structured guidelines.
- ACCC needs to exercise caution and restraint in the use of its powers and their use of the media.

2. *How should governments address these problems?*

- Same comments as above:
  - there should be a single Federal regulatory body instead of separate bodies for each State;
  - Trade Practices Act should be updated to allow for a single regulatory body.

3. *Would a GSP be of benefit to Australia's consumer product safety system?*

While on the surface a GSP could be seen to be appealing, in our opinion a GSP would create considerable uncertainty for business. We see no benefit and do not understand how the introduction of a GSP will resolve problems.

In reality Australia already has a GSP under the Trade Practices Act through the product liability provisions. In our opinion it would be better to "clean up" the TPA rather than introduce a new GSP.

A GSP could also create uncertainty as to what is considered safe, eg trampolines will be always unsafe in themselves, however that does not mean a trampoline manufacturer is producing "unsafe" product in itself.

If there were a single regulatory body similar to the US CPSC, there then would be no need for a GSP.

If the European experience with their Directive is studied it will be apparent that there has been considerable increase in costs without any offsetting advantage relating to the safety of goods. The requirements of the legal system brought about by this directive are such that there is an additional level to the testing and inspection required which is controlled through Notified Bodies which can effectively almost double the costs imposed on manufacturers.

The British DTI have recently reviewed the effect of Notified Bodies and found there has been no appreciable change in the safety in goods, however they have decided to retain the system at this time due mostly to difficulty with dismantling this requirement.

The requirements of the European Directive have been a bonanza for the legal fraternity and trade consultants due to the fact that it is widely open to interpretation and there is a distinct great lack of guidelines.

4. *If a GSP were to be introduced, how should governments address any concerns you may have?*

In our view a GSP is not desirable therefore it should not be introduced as this is an extremely time consuming process for government; is costly for industry and provides no better protection for the consumer. As with any proposed legislative/regulatory change, there would need to be considerable consultation before agreement could be met.

In the event that a GSP were introduced, provision of a clear implementation plan with realistic timelines would be essential, and the provision of a simple Q&A on what needs to be tested would be very useful.

5. *What products/services should be exempt from a GSP and why should they receive an exemption?*

The blunt response would be that there should be no exemptions; however this may be too simplistic in the absence of details on the GSP. (See point 7)

Consideration must be given to chain of custody supply and certification.

6. *How could a GSP be applied to businesses? For example, what level of safety should businesses be held accountable for under a GSP and to what extent should GSP obligations be placed on businesses throughout the product supply chain?*

This is too difficult to answer without full details on the requirements of a GSP; however consideration would need to be given to chain of custody supply and certification.

Product which complies with current standards should be accepted as having being produced using due care.

7. *Should services be covered by the TPA product safety provisions? If so, would you adjust the existing product safety provisions in any way to account for the regulation of services?*

As a rule the toy industry normally doesn't provide services. We are concerned however to clarify whether providing customer advice could be considered to be a service. Eg Would a sales assistant's advice to a shopper regarding a toy be considered providing a service?

If a service could supply an unsafe product then it should be covered.

8. *How should the regulation of consumer product safety be altered to provide for second-hand goods?*

As a first reaction, the ATA is of the opinion that if second hand goods are sold through a standard point of sale they should be covered by consumer product safety regulations in some way. We believe it is important that second hand good shops be able to show their products are safe.

The sale of second hand goods is not limited to standard shops however and we have concerns as to how other outlets such as markets would be covered. There are a number of tiers to the problem and more details would need to be provided for further comment.

The second hand goods trade raises questions of responsibility. For instance who is accountable for a product sold second hand that is in inferior condition (unsafe), when the product was originally sold by an importer/distributor in a safe condition? There is then no relationship between the importer/distributor and the second hand seller. What happens to warranties/ toy safety guidelines?

The charitable sector will be impacted if the second hand goods trade were to be covered by consumer product safety regulations. The ATA believes however that even if it would be restrictive for charitable organisations, it is important that any toys sold be safe.

9. *Are consumers receiving sufficient product safety information? How should such information be delivered to consumers?*

From our industry's perspective, we do believe we provide enough information as it is on the product and/or packaging. Important information is provided in warnings in conformity with standards.

Consumers may want access to broader safety information. The ATA recommends that this information be posted to the web as this is more publicly available, 24/7.

10. *Should businesses be required to report unsafe products to governments?*

Clearly businesses should be required to report products that are proven to present an identifiable risk to a consumer safety central authority. For significant risk the current recall system provides for appropriate reporting.

At a secondary level however, where there is no need for a recall, the more embracing term of "unsafe" raises more issues than it answers. At what level of "Unsafety" should a report be made? Would this be based in a number of instances of failure or the like?

The American CPSC has a system of act and report. At its simplest level if there is a non-hazardous fault in a toy the retailer takes the toy off the shelf and doesn't have to notify anyone.

Reporting instances of injury should be recorded in an appropriate database so that it may be referenced for research purposes. Currently there is no centralised database on injury in Australia.

The concept of a hush clause (where it is stated that no one is to know about the incident/problem/fault) as part of a settlement should be illegal.

11. *What type of product safety early warning systems should be developed in Australia?*

The single Federal body (as discussed above) will require adequate funding so that it can properly conduct its business. One major responsibility of this body would be to administer a centralised data collection system. Clear analysis of the data collected would provide information about products presenting possible hazards.

12. *Do you favour the development of a centralised electronic data base to achieve product safety goals? How would the type of data base you envisage contribute to product safety outcomes?*

Yes, an electronic database detailing injury statistical data and anthropometric data would be most beneficial. The data would be useful for an early warning system and also for the development of standards. It could also help judge the relative success of specific initiatives.

*13. What type of product safety research would be beneficial?*

In our opinion there is no need for research in Australia as this is very costly and duplicates efforts overseas. It is important however to access International research through formal links with international groups and research facilities.

*14. Should the TPA make provision for an Australian Government recall audit power?*

Yes, and we believe this currently exists.

*15. What difficulties are consumers experiencing in relation to obtaining redress for product safety problems?*

At present, we believe there are adequate means available for consumers to be able to obtain redress either through the retailer or the distributor.

*16. What is the best approach to achieving harmonisation of product safety legislation and enforcement?*

The adoption or recognition of International Standards improves safety of product and removes technical barriers to trade.

In addition a single regulatory body with a faster update of regulations to reflect new standards will assist in the harmonisation of product safety legislation and enforcement.

#### **4. Compliance costs**

Cost to business in complying with the multiple and overlapping jurisdictions and Agencies along with monitoring the variations between regulations involves a significant impost on business. Costs involved in compliance do not add value and do not benefit the consumer or the economy.

In implementing any new Consumer Product Safety System, it is important that this factor be considered and that compliance costs are not increased unnecessarily.

In addition, the more complex the system is and the higher its cost, the more opportunity and benefit there is in attempting to avoid it. A simple system will make businesses more amenable to comply and facilitate the utilisation of their resources for product development.

Moreover, any change to the Consumer Product Safety System must take into account administrative practicality from a business point of view. The less practical administratively, both from businesses' and regulators' point of view, the greater uncertainty and cost in compliance.

## 5. Conclusion

The Australian Toy Association Limited (ATA), for itself, and on behalf of its members, submits that in any proposal for change in the Australian Consumer Product Safety System:

- There be ease of understanding;
- Businesses are able to comply economically;
- Consumers can readily and economically access information

In particular, it is proposed that:

1. There be a single National Authority, possibly under TPA;
2. Product Safety Standards to be publicly funded and freely available;
3. There must be valid and verifiable reasons for any variation from International Standards.

### Further Consultation

It is the opinion of the Australian Toy Association Limited that there has been insufficient time and publicity to consider, be informed and understand the issues presented by the Discussion Paper.

We also submit that because the Review has far reaching effects on both business and the public and because of the potential impact of any consequences both intended and unintended that further consultation and discussion for all industry and business groups is required.

**We therefore strongly recommend that no change should be considered without full and comprehensive consultation with all affected parties.**

The Australian Toy Association would be pleased to participate in this consultation process.

## ATA Code of Practice



The members of the association are committed to the promotion of a safe play environment for children. To achieve this members will do all things necessary to adhere to all relevant safety standards, to observe the ethical advertising of children's products and maintain free and fair trade in children's products throughout the country.

All members of the Association are subscribers to the ATA Code of Practice as follows:

1. We are firmly committed to the development and promotion of a safe play environment for children, and to place only safe products on the market.
2. We agree to adhere strictly to national and international safety standards and to take prompt, effective and appropriate action should a safety problem arise. Further we agree to notify the Association immediately of any allegation by an enforcement authority that my/our product(s) contravene relevant safety regulations.
3. We are committed to the principle of ethical standards in regard to the advertising to children and adhere to government regulations and requirements. Further we agree to operate under the AANA Principles and Advisory Notes on Advertising to Children (August 1999).
4. We support and encourage research conducted in regard to any aspect of children's products and will be involved where possible and offer full co-operation.
5. We oppose strongly the practice of counterfeiting not only as an unfair trading practice but one which may expose children to products which do not comply with safety standards. Further we declare that we do not knowingly market counterfeit product(s) and we understand that a judgement against us whether brought privately or otherwise for copyright or trade mark infringement may render us liable to review under ATA procedures.
6. We recognise we have a duty to ensure lawful, fair, safe and healthy working conditions for those employed in the contract manufacture of children's products. We support the production of safe product in compliance with the Code of Business Practice of International Council of Toy Industries. To discharge this duty, we agree to have arrangements with vendors or their agents which require and maintain such conditions.
7. We understand that a successful prosecution under relevant safety regulations will be regarded by the Association as a breach of this code and may render us liable to review under ATA procedures
8. We understand that wilful breaches of the code may lead to my/our expulsion from the Association and the denial of space at the Australian Toy, Hobby & Nursery Fair.
9. We shall actively support appropriate children's causes.