



Coles Myer Ltd.

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

The Secretariat,

RE: Review of the Australian Consumer Product Safety System

Thank you for the opportunity to respond to the above discussion paper. Coles Myer Ltd (CML) prides itself on being a highly reputable business that is committed to providing safe quality products to its many valued customers, and invests significant resources in its efforts to do so. As a major retailer of consumer products in Australia, Coles Myer Ltd. is supportive of the proposal to review and strengthen the legislation relating to consumer product safety.

Of the two major areas identified for improvement by the Standing Committee of Officials of Consumer Affairs (SCOCA), the issue of regulatory resources is considered to be the most critical. There is a need for a greater level of resources to be allocated to consumer product safety in Australia, and for existing government resources to be utilised more effectively.

Another significant problem for manufacturing and retail businesses is the lack of uniformity in legislation and enforcement across the different States and territory. We also agree that the system needs to be changed to allow potential safety hazards to be dealt with more quickly, and to cover all relevant sectors.

More specific comments about each of the objectives of the reforms, as outlined in Chapter 4 - Options for Enhancing Australia's Consumer Product Safety System, are provided below. Answers to most of the questions raised on p 47 of the discussion paper are indirectly covered by this submission.

Objective 1 – Safe Products and informed consumers

General Safety Provision (GSP)

There is a statement in the discussion paper that the current system relies too heavily on governments identifying and reacting to safety hazards. Government's have a pivotal role in setting safety policy and a responsibility for enforcement. While we accept that a large amount of resources are required for this purpose, it is still industry that bears the most significant cost burden with regard to hazard identification and control. Again, it seems to be the larger companies with the greatest (perceived) amount of resources that tend to identify and resolve the majority of product safety hazards. This has probably lead retailers to take on a greater sense of responsibility.

The discussion paper suggests that adoption of GSP would “impose a legal obligation on businesses to supply only safe consumer products on the market”. With or without a GSP, we believe that we are already obligated in this regard. Given our belief that industry already has this burden of responsibility and is focused on the production of safe products, we don't see how adoption of a GSP would address the reactive nature of the current system. Advising governments of possible product safety problems may however, enable them to be more proactive (i.e. take precautionary action). The discussion paper also refers to the resource savings that the introduction of a GSP would have for Government, and mentions that the funds could be redirected to educate business. But who will determine which priorities and businesses/product categories that resources should be spent on? Will this be based on risk, volumes sold, consumer concerns, or a combination of factors?

SCOCA has identified the need to deal with hazards but this may not be necessary for all sectors of the marketplace, as many sectors have been through this process and are controlling hazards well. A better approach may be to identify those sectors of the market that currently do not traditionally respond to their obligations and at least initially, tailor some of the reforms and/or direct the bulk of the resources, to the needs of those sectors.

Given the existing compliance culture within the CML brands, and the quality & safety management processes already in place, the introduction of a GSP is not likely to cause any major problems for us as a retailer. CML already has various Quality Assurance Teams that conduct ongoing assessment of products from a safety and compliance perspective. Introduction of a GSP could however, increase costs for smaller businesses, and those businesses that may not be currently complying, but these do not appear to be valid reasons for inaction.

If a GSP was to be adopted in Australia, the level and nature of the obligations placed on businesses need to reflect their roles in the supply chain and be commensurate with the degree of control that they are able to exercise. To ensure the system is adequately managed in a cost effective manner, each party within the supply chain must have clear accountabilities. e.g.: an outline of what is the manufacturer's/importer's responsibility versus the retailer's. The GSP must also provide business with a guideline as to what would constitute 'foreseeable' & reasonable 'abuse' testing that may be required to determine a product is safe. A clear explanation about the requirements of mandatory & voluntary standards and their relationship to product safety is also important as retailers may need to consider hundreds of product categories. Whatever the outcome, Government should allow a prolonged phase-in period, inclusive of a recognised "learning period" for all stakeholders (including regulators).

We would be interested to know how 'safety' is defined in other countries already using this GSP system (i.e. UK), and how successful this type of system has been for them.

Revised Definition of unsafe products

We support the idea of amending the definition of unsafe products to include goods which may be 'unsafe' as a result of foreseeable misuse by consumers. But we do not believe the manufacturer, importer and/or retailer should have to take responsibility for the outcome if all reasonable safety precautions have been taken.

(i.e. consumer should not be able to seek redress or compensation if the product was rendered unsafe as the result of misuse or abuse.)

Coverage of services & second hand goods

Product safety legislation should be amended to specifically provide for services and second hand goods in all jurisdictions. It would however, seem reasonable to only apply this requirement to those that are operating commercially in second hand goods & services (for profit); which may include second hand shops, equipment hire companies, market stalls, & fetes. Second hand traders should be obligated to only on-sell goods that are safe according to the “standards of the day”. Individuals having a garage sale or selling an item through a newspaper, and also non-profit organizations (i.e. schools, churches etc), should be exempt from these provisions. It would be almost impossible to try and regulate these activities. It is hoped most services will be covered through registration/licensing arrangements

It may also be worth considering whether a GSP should cover information standards (i.e. care instructions) and “loss and damage issues” (Part VA of Trade Practices Act) as these are not always safety related?

Objective 2 & 3 – Detection & Reporting of Unsafe Products, and removing unsafe products from the market

Monitoring, reporting and recall obligations

We support the concept of requiring businesses to monitor the ongoing safety of their products, as this represents good industry practice. The food industry in particular, already does this very well, mainly through the implementation of food safety programs (a legal requirement in high risk sectors). Although monitoring may increase costs for some businesses, it is expected that this increase will be offset by a reduction in costs associated with customer dissatisfaction, recalls/withdrawals etc. The issue of reporting however is more complex.

The requirement for businesses to monitor the ongoing safety of products and report to governments, any products which are under investigation for possible safety risk, those that have been associated with serious injury and death, &/or have been the subject of a successful product liability claim, appears to be fairly onerous, time consuming and costly. Very clear guidance would need to be given in supporting documentation as what constitutes a 'possible' safety risk, (i.e. would one customer complaint regarding a product result in it being considered unsafe?). A risk assessment model that assists stakeholders to evaluate safety risks, and determine whether a recall is warranted, would be very useful.

While we agree that governments should have access to information about unsafe products at an early stage, and that this may improve its ability to prevent harm to others, this reporting should only be mandatory after it has been properly established that there is a problem. (i.e. the recall or ban has occurred). Up until that point, provision of information to regulators should be voluntary; most responsible retailers would withdraw the product anyway. Warning notices could still be used to alert consumers about the possible risks associated with use of the product, after the information has been voluntarily supplied.

Businesses must be afforded the opportunity to investigate product safety issues and initiate action in due course. If businesses are not able to conduct a comprehensive

investigation prior to making a decision on whether a product is safe or unsafe then they may be forced into an unnecessary product recall situation. Using the recent incident involving the Ironhawk electric ride-on toy as an example, Target &/or the supplier would have been obligated to conduct a recall immediately after the incident occurred, rather than being given the opportunity to conduct a full and comprehensive investigation, which ultimately revealed the product was not unsafe. Clear direction about product recalls must be provided (i.e. the type of investigation and timeframes that are considered adequate will need to be specified)

We agree that government should be able to audit a business's recall process and success rate, irrespective of whether the recall was mandatory or voluntary. Information about the post recall audit process should be readily available to all stakeholders.

Information Strategies

Considering there are currently no comprehensive national statistics on product related injuries and deaths in Australia, we agree that resources need to be specifically directed toward collection of statistical data, about complaints & subsequent injuries. We also support the suggestion to conduct further research into the costs associated with product safety injuries and their causes, development of a centralized database and the establishment of an early warning system at hospitals.

One of the other reform options proposed is improved product safety information either via a 'one-stop shop' advice service, or via targeted advertising campaigns. While these are great suggestions, this type of service will only be effective if there is a consistent approach to enforcement between states & territories.

Another possible information strategy could be that regulators (State and Federal) place regulations and bans on their websites (i.e. like Fair Trading, NSW), rather than charging for access to this information. The website could also have links to other department sites containing regulations and information on consumer safety that may be useful. It has been our experience that many smaller businesses (i.e. many of our suppliers) find it extremely difficult to navigate the regulatory environment, so whatever is provided should be able to be sourced quickly, easily and at little or no cost.

Objective 4 – Consumer redress and compensation

Although the discussion paper did not specially ask for a response on this objective, we believe that no reform is required to improve the access of Australian consumers to redress and compensation, for the reasons outlined by the Ministerial Council on Consumer Affairs (MCCA) in Chapter 2.

Objective 5 - Efficient markets and efficient use of government resources

It is agreed that a more proactive system would be of benefit to all stakeholders.

Harmonisation of product safety legislation

The restrictions on the application of the Trade Practices Act 1974, and the fact that the responsibility for consumer product safety regulations is shared by the

Commonwealth, and states and territory governments, is not a tenable situation for businesses. Inconsistencies (i.e. bans applying in one state but not another) also cause confusion to the consumer who doesn't know whether a product really is or isn't safe.

A single set of rules governing consumer product safety Australia-wide, which harmonises legislation, administration and enforcement has to be the main priority of the reforms. While it is accepted that there may still be some variations in enforcement practices across jurisdictions, this single set of rules alone, will provide both industry and consumers, with the greatest clarity and benefits. Achieving legislative consistency is far more important than the desire of jurisdictions to remain flexible. Other improvements such as better reporting can be fixed a little further down the track if necessary.

Harmonisation of administration and enforcement

As a business that operates across all State & territory jurisdictions, Coles Myer Ltd. is frustrated and concerned about the inconsistencies in product safety standards, administration and enforcement of regulations, that currently occurs. A safety framework that eliminates the inefficiencies associated with having to cater for the jurisdictional differences would be welcomed. Unless state and territories can improve their level of administration and enforcement through better coordination of their activities and data collection etc, then it is definitely worth considering that the ACCC undertake these duties. Presumably the right of appeal would then sit with the Minister.

Duplication of effort to address product safety issues is also not a good use of scarce resources. CML would also like to see Federal regulators to respond to acknowledged product safety problems in a more timely manner. The ability for prompt action at a national level may help to suppress the desire by State bodies to introduce their own policies, often done so in isolation of other States.

Decision making at the Australian Government level

At minimum, we support the concept of the ACCC having powers over administration & enforcement decisions. ACCC decisions should be made following extensive consultation with relevant stakeholders. It would also be preferable for the relevant government body (i.e. ACCC) to have full responsibility for bans & (compulsory) recalls, and establishing mandatory safety standards. The Minister does not need to be involved in these decisions but could play a role in hearing appeals. By separating these duties this process may be more effective and also viewed as being more independent.

A lot of product safety related Australian standards are developed and/or updated because of public or industry pressure placed on both state and federal governments. Consideration needs to be given as to who would be responsible for the review of existing and development of new non-mandatory standards, if a GSP was developed & implemented.

We would also be interested to know whether there are plans to include New Zealand in this reform process given other common product safety legislation (i.e. Australia New Zealand Food Standards Code), already exists?

Wider international context

As long as reforms do not hinder international competitiveness, then all options should be considered.

In relation to imported products, we would be interested to know whether consideration has been given to a program (similar to the AQIS system that exists for imported foods) whereby an importer of a consumer product that is deemed as "high risk" may only be licensed to import after demonstrating a clear understanding of the safety risks associated with the product in that industry, and compliance to relevant Australian legislation on an ongoing basis? Eg: An importer of toys for children under 3 years old must provide adequate information to ensure the toys they import will be tested in accordance with ISO toy standard.

It is our view that regulating authorities are vastly under resourced and we have concerns that many of the proposals outlined in this document may not eventuate unless there is greater involvement by government (mainly federal), the community (consumer groups) and industry. The actions of consumers and businesses have already been identified as playing an important role in minimizing the harm caused by unsafe products. Sustainable resources that match these strategies must be secured before, or at the same time that improvements in product safety are being considered. Under the present system, a lack of resources has tended to lead enforcement agencies toward targeting major companies to get maximum effect from their activities both at the Federal and State level.

It is also our opinion that a lot of the expertise required to develop and maintain independent consumer technical standard/s is diminishing; i.e. has gone offshore. Retailer input, and the mechanism by which this happens also appears to be declining. While major retailers such as Coles Myer Ltd can represent themselves, this could be a significant issue for smaller players in the longer term. We are concerned that whilst the MCCA is presumably directly receiving the views of national retailers who are generally well resourced to understand and deal with product safety, and will submit responses to the discussion paper, it is not apparent whether industry responses are also being collected from small and medium enterprises.

Given the large number of small and medium sized businesses in retail, manufacturing and importing that may not have the resources themselves nor access to the same through an industry body or statutory authority, Coles Myer Ltd would be concerned if there was not a robust process to gain feedback from small & medium size businesses. As we know from our experience with food safety, the problems are more likely to occur in the small to medium sized businesses, and because these enterprises had input into the requirements for food safety, FSANZ was able to get 'buy in' from these groups as well as practical outcomes/processes that small & medium businesses could implement.

Although 'piggybacking' on bench marks and standards developed by other countries seems to be the easiest and most cost effective way forward, if we were to rely totally on this approach, it could also mean losing some control over what, when & how documents/standards are created. If however, Australia chooses to use other countries standards as a guide, or as the basis for development of appropriate Australian Standards, then this should help to reduce turnaround times.

In summary, the current consumer product safety system appears to be in a poor state, particularly with regards to resources, so this review is both timely and welcome. Again we would like to reiterate the need for a single set of rules. This will ensure the most efficient use of scarce resources, and provide clear direction to manufacturers and retailers as to what is required, thereby reducing consumer risk. We also request that genuine consideration be given to the development of a centre of expertise on product safety.

Coles Myer Ltd appreciates the ongoing efforts of the Council to consult with stakeholders, and supports its plan to implement a more fair and equitable Product Safety System. We are most interested in the progress of these reforms and would like to offer the involvement of our staff in some capacity, going forward.

Should you like to discuss any matter raised in this correspondence please contact me on (08) 9227 6577 or via email at gillian.parton@coles.com.au

Yours sincerely

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