

# **INFANT & NURSERY PRODUCTS ASSOCIATION OF AUSTRALIA INC (INPAA)**

**SUBMISSION TO:**

**REVIEW OF  
THE AUSTRALIAN  
CONSUMER PRODUCT SAFETY SYSTEM**



**SUBMITTED BY:**

**INFANT & NURSERY PRODUCTS ASSOCIATION OF AUSTRALIA INC  
SUITE 3/12 FLORISTON ROAD  
BORONIA VIC 3155**

## 1. Background

- 1.1 INPAA has as a primary objective to achieve improved safety for nursery products. In pursuing this objective, INPAA recognises that achieving a successful product safety regime requires effective relationships between suppliers, consumers and regulators.
- 1.2 INPAA believes that the current system has generally worked well but there are some major structural flaws that hopefully the review will address.
- 1.3 The Association welcomes the opportunity to participate in the review and strongly supports efforts made by the Ministerial Council to stimulate debate on the matter.

## 2. Current Arrangements

- 2.1 The current product safety framework is not efficient. It is a fragmented mess of federal, state and local regulations. Little incentive exists for collaborative decision making which results in unnecessary confusion for suppliers of products and services.
- 2.2 Consumers, particularly in relation to nursery products, incorrectly assume that there are regulations for all nursery products. The result is often confusion and anxiety when they discover that this is not the case. It is almost impossible for responsible suppliers and industry groups to overcome unfair media representation of the nursery industry being irresponsible, regardless of the fact that the majority of nursery products meet and are tested to world's best practice with respect to product safety.
- 2.3 The safe supply of nursery products in the secondhand market is also a nightmare from a regulatory basis. The vagueness of the framework often leads to the inability to prosecute vendors of unsafe product and an apparent unwillingness of regulators to tackle this market. INPAA

strongly believes that in relation to nursery safety the secondhand market is still the source of a majority of unsafe product. In recent years this problem has been highlighted as responsible suppliers have dramatically improved the safety of new nursery products.

- 2.4 Effectiveness of regulators varies considerably throughout Australia. Some regulators operate proactively and work well with industry groups such as INPAA, to promote product safety. Other regulators operate on a reactive basis and do not place priority on effective management. This places intolerable pressure on industry groups willing to embrace change and promote product safety. It also encourages a fragmented approach to regulatory outcomes.
- 2.5 Product safety, particularly in the nursery industry is a national issue and regional operations have no impact consequently the need for a multi regulated environment is inappropriate.
- 2.6 Attempts to bring regulators together through the Consumer Products Advisory Committee (CPAC), produce few outcomes for industry and consumers. As stated in the review paper, the main role of this group is to promote "a consistent, strategic response to consumer product issues". From the nursery industry perspective this objective is not being achieved. A priority for a revised product safety system should be to make this structure more effective.
- 2.7 The policy framework for product safety is not working effectively in Australia. There does not appear to be an outcome focus nor is there a political urgency to improve results.
- 2.8 Introduction and expansion of technology has significantly altered the Australian marketplace. As a result, increasingly we are moving towards a borderless marketplace with greater market complexity. This problem is particularly prevalent in the nursery products industry as most products are imported. Any person with the resources is able to import product and the products are well and truly in the

marketplace or in consumers hands before any effective regulatory action is possible to prevent unsafe product. Although "fly by night" operators are becoming less frequent, these recalcitrant suppliers can come and go quickly. Existing regulatory framework has a limited ability to address this fundamental change. It is no longer appropriate to have a multi-regulatory approach to product safety.

- 2.9 From an economic perspective the existing regulatory framework does not establish clear links between regulators, business and consumers. The result is duplication of resources and an unnecessary cost to industry to meet different regulatory requirements.
- 2.10 The current system places significant costs on Australian businesses. Frequently Australian Standards and Regulations can lead to Regulations not being updated to reflect standards. A most obvious example in the nursery industry is in relation to cots. The existing Australian regulations relate to a 1998 cot standard but the most recent Australian standard is 2003. Industry must still comply with the regulation but the later standard has been accepted as more appropriate. This conflict between standards is frustrating and does not engender a safer outcome.
- 2.11 Standards Australia is not sufficiently resourced to develop enough standards. INPAA regards this as a fundamental weakness and an impediment to an improved product safety system.
- 2.12 The product recall system in Australia has been quite effective. Existing arrangements result in the quick removal of such products from the marketplace. A bi-product has been the raised consumer awareness of the reason for the recall and some modification of consumer behaviour. Recent examples in the nursery industry of a voluntary recall of a high chair and a cot demonstrates the effectiveness of the existing system. This approach also minimises commercial damage when handled correctly. The voluntary recall

structure is strength of the existing product safety system and should not be significantly altered.

### 3. Future Product Safety System

3.1 INPAA strongly supports a revised product safety system for Australia. Key elements of a revised system that INPAA would support are:

- A single national authority that is properly resourced and with the necessary political strength to achieve its goals;
- The introduction of a General Safety Provision;
- Extension of product safety to include services;
- Application of product safety to the secondhand market, particularly in relation to nursery and toy safety;
- Stronger commitment to smarter regulation with targeted compliance and use of horizontal regulations;
- An enhanced link between effective regulation, business and consumers. This should include promotion of product safety as a shared responsibility through collaborative partnerships;
- Industry monitoring, reporting and recall obligation. No change to existing voluntary recall provisions;
- Strategies to avoid vexatious litigation as a result of a transfer of burden of proof to suppliers of goods and services.

3.2 Consultation on changes to a revised product safety system must occur. INPAA is committed to effective consultation and welcomes the opportunity to become a lead agency in future developments, due to the characteristics of our industry and widespread access to a broad range of consumers.

3.3 Should Australia move to a GSP, it is critical that a single regulatory body similar to the American CPSC be established. The consequences of failing to go down this path under a GSP will be an impossible regulatory environment for business. INPAA is willing to embrace a

GSP because in reality responsible suppliers of nursery products are already working within this paradigm. It is nearly impossible to supply products with appropriate insurance cover without being able to demonstrate compliance to world's best practice in relation to safety.

- 3.4 INPAA is adamant that a revised product safety regime must cover secondhand goods but recognises that the issue raises questions of responsibility. The responsibility for secondhand products that were safe at the point of original supply but suffering from wear and tear thereby rendering them no longer safe, must be addressed. Suppliers cannot guarantee safety for ever especially when consumers modify products or integral parts and instructions go missing. INPAA insists that effective consultation be continued on this matter.
- 3.5 In recent years, nursery product safety has improved considerably. The result is that new products have a far lower incidence of injury associated with them compared to older products. The great challenge for a revised product safety regime is to provide enough resources to fund on-going education. The nursery industry has unique characteristics which see approximately 80,000 births to first time parents each year. As a result, the safety message struggles to maintain consistency yet the real challenge is to get carers to use products correctly. This is the one area where not enough regulatory activity has occurred to deliver safer outcomes. Any new regime must adopt a proactive education component rather than just focusing on product design issues.
- 3.6 The reporting of unsafe products must be carefully assessed under a review of product safety. INPAA is against automatic reporting unless significant safety issues exist. A move to a GSP may be difficult unless the reporting of unsafe products and services operates with degrees of unsafeness. Significant work is required on this matter under any new system.
- 3.7 Australia lacks a national and detailed system to track and analyse injury data. Under a revised system INPAA strongly

supports the need for a central database for injury reporting. This database would promote research and help with the identification of problems. The lack of such a system at the moment is of paramount concern to INPAA.

- 3.8 Changes to the Australian Product Safety System must be administratively straightforward and not create unfair burdens to business. In addition a revised system must be able to promote product innovation hence compliance systems must be practical.
- 3.9 The consequences of a move to a GSP and a transfer of proof to suppliers may result in a rush of vexatious litigation creating claims for compensation and a burden on the Australian legal system. A revised system must be cognisant of this likelihood and develop strategies to address compensation and liability. Without such a safety value, the majority of businesses will not support a transition to a GSP.
- 3.10 A revised system will be difficult for individual companies to embrace. It is important that financial resources be made available to industry associations to assist industries to deliver improved outcomes.

#### **4. Conclusion**

It is INPAA's submission that a changed system of product safety is needed and should be introduced as a matter of urgency. Leadership by Australian Regulators is required and any attempt to review without a commitment to improve the outcome should be avoided. Product safety does not have a high political rating in Australia and as a first step, Regulators must put greater emphasis on raising political awareness of the subject. The timing is appropriate for real change and INPAA is a willing participant in the process.