

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

REVIEW OF THE AUSTRALIAN CONSUMER PRODUCT SAFETY SYSTEM DISCUSSION PAPER

Thank you for the opportunity to comment on the above Discussion Paper released by the Department of the Treasury on behalf of the Ministerial Council on Consumer Affairs.

The Small Business Development Corporation (SBDC) is an independent statutory authority established to assist and promote the growth and viability of the small business sector in Western Australia. The issue of product safety has relevance to small businesses both as consumers of products purchased and manufacturers, suppliers and retailers of products.

We therefore reviewed the Discussion Paper with interest and offer the following comments on a consumer product safety system in Australia from the perspective of the possible implications for small business.

Current Situation

Consumer confidence in the safety of products placed on the market is critical to the viability of many small businesses. The SBDC therefore supports a consumer product safety system that ensures only safe products are placed on the market in a way which best promotes the overall welfare of the Australian community.

As noted in the Discussion Paper, there already exists a comprehensive regulatory scheme embodied primarily in the *Trade Practices Act 1974* (TPA) and the State Fair Trading Acts by which the Australian Government and State and Territory Governments can act to protect consumers against unsafe products. Governments can set mandatory safety or information standards for particular products, or can ban products from the market outright. Further, under the TPA, the Fair Trading Acts and the common law, consumers have rights to redress and compensation for the physical or economic harm caused to them by unsafe products. This, together with voluntary industry standards, places obligations on business and gives them the incentive not to put unsafe products on the market.

However, from a business perspective, arguably the greatest incentive against putting unsafe products on the market is the bad publicity or the threat of bad publicity which is likely to arise by doing so. Adverse publicity can cause a small business significant reputation damage and financial detriment. In some cases, the bad publicity connected to the selling of unsafe products makes it more costly to a business than manufacturing, supplying or retailing the product. This sensitivity is evidenced by there being approximately 6,600 voluntary recalls and only 5 compulsory recalls since 1986¹.

Clearly, from a consumer and business perspective, the existing product safety system has been working successfully in Australia. It is therefore difficult to argue that a case has been made to suggest a change is required to the structure of the current system.

Product Safety System Reform Options

In light of the above, we have concerns about the overall gain to be achieved from the introduction of a General Safety Provision (GSP) as canvassed in the Discussion Paper and do not believe an adequate case has been made that this is the most appropriate way forward. A GSP would impose a positive legal obligation on businesses to ensure consumer products placed on the market are safe. As part of the reforms raised in the Discussion Paper, businesses could be required to monitor the ongoing safety of the products they sell and report to governments. The report would include information about any products which are under investigation for possible safety risks, have been associated with serious injury and death, or have been the subject of a successful product liability claim.

The SBDC agrees with the statement in the Discussion Paper that some businesses could be reluctant to report this information for fear that it may compromise their position in any potential legal proceedings related to the product. Placing greater responsibility on businesses to ensure only safe products are placed on the market would also impact on both business operations and costs, and could unnecessarily interfere with trade in consumer products, restrict competition and disadvantage consumers through increased costs.

In addition, no basis exists to suggest a better outcome might be achieved in terms of improving the conduct of irresponsible and unscrupulous businesses. It is likely that the few rogue business operators that might place unsafe products on the market under the current system are also the ones most unlikely to report safety issues and conduct under a GSP system that places responsibility on them to do so.

¹ see Discussion Paper, page 55

The Discussion Paper raises a key issue of how to best manage the ever increasing and rapid changes in technology and the market with regard to product safety. This demands a system that allows for more efficient allocation and use of Government resources to deal with the increasing volume in products requiring safety considerations. As recognised in the Discussion Paper however, it is unlikely a GSP that shifts responsibility onto business would reduce pressures on regulatory resources and facilitate rapid action by Government. Problems are likely to be compounded, for example, by the increase in Government resources needed to process, audit and assess GSP requirements. Accordingly, the goal of protecting consumers while promoting the efficient operation of markets in consumer products and the efficient use of government regulatory resources would not necessarily be progressed.

For the reasons above, the SBDC remains to be convinced that a GSP, which would result in the majority of responsible businesses being subjected to an unnecessarily onerous and burdensome regulatory environment, is warranted or would mean more efficient use of Government resources. Rather, the SBDC believes that, as a first step, issues related to uniformity and fragmentation of product safety regulation and its administration, which places greater costs on businesses wanting to supply across borders, and improved interaction and time periods for exchange of information between jurisdictions, should be addressed to assist the efficiency of the product safety system. This will assist small business, reduce duplication of Government effort, provide better utilisation of resources, assist Government in dealing with safety hazards more swiftly and overall facilitate a more viable product safety system.

Conclusion

In conclusion, the SBDC does not consider that, from a consumer or business perspective, change in the product safety regulatory system structure is warranted, or that if it is, a GSP as canvassed in the Discussion Paper is the best solution. If there is to be any change in product safety regulation, a significant burden should not be imposed on small business in terms of cost and administration and any obligations placed on small business should be commensurate with the degree of control they have in the process that brings the product to the consumer (eg, a retailer should not be subjected to the same obligations as the product manufacturer).

Should you require further information on this submission, please contact Mr Jim Mouzalidis on (08) 9220 0201.

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1 November 2004