

## Playground Inspection Protection



*“make it safe to play”*

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Childcare and Early Childhood Learning

Productivity Commission

GPO Box 1428

Canberra ACT 2601

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### **Re: Playground Equipment Safety In Licensed Childcare Facilities**

Dear Committee Members

#### **1. Our Concern**

We are concerned at the lack of conformance to Australian Standards and WH&S of a large proportion of playgrounds in licensed childcare facilities.

In many cases these non-conformances have serious safety implications, unbeknown to the facility operator, and unidentified by either the licencing body (DETE), or the playground operator, sometimes for the whole life of the playground (up to 20 years).

We wish to propose potential solutions to that problem and make the committee aware of the structural roadblocks we have identified in trying to bring those solutions to pass.

#### **2. Our Qualifications To Make Comment**

We are a small supplier of playground services to playground operators, especially in Council parks and education facilities, including childcare facilities. We are Australian owned and operated, and have been in business for over 25 years.

We started out as independent contract playground inspectors, inspecting playgrounds to current Australian Standards and later on to WH&S requirements. We have conducted city wide inspections of all council operated playgrounds, or inspection of a selection of playgrounds at council request, for most of Queensland's coastal Councils at least once over the years.

We also train Local Government Council Staff (and anyone else who wants to be trained), to the 3 off national competencies for “Inspection Of Parks Facilities”, under an auspice





agreement with a suitably registered RTO whose scope covers these competencies. The current versions of these competencies are:-

AHCPGD206A - Conduct Visual Inspection Of Parks Facilities

AHCPGD305A – Conduct Operational Inspection Of Parks Facilities

AHCPGD505A – Conduct Comprehensive Inspection Of Parks Facilities

These competencies are based on the Australian Standards for playgrounds, so for many years have been the major resource for delivering safe playgrounds in Australia. We have provided training against these nationally recognized competencies to well over 1000 Council employees over the years, so have had significant input into the practical delivery of playground safety, predominantly in Queensland and northern New South Wales.

As required by our education system, I hold formal qualifications including the following:-

Advanced Diploma In Horticulture (including the above 3 off playground competencies)

Diploma Of Training & Assessment Systems (qualifying me to write training materials)

Diploma Of Frontline Management

Qld WH&S “Representative” Course (including 2 of modules in Risk Management)

QBSA license as “Builder Restricted To Structural Landscaping” (minimum requirement to install playground equipment)

From a practical industry experience perspective

- I have owned and operated Playground Inspection Protection for over 25 years, since its inception.
- Before that I was a full time playground equipment installation contractor for Australia’s largest playground equipment manufacturer of the time.
- My long term roles within the company include
  - Performing all contract playground inspection roles, including writing reports of identified trends and issues, risk assessments, asset management recommendations for playgrounds and repair priorities
  - Designing and drawing all new playground equipment designs, including new innovative play events, fall zones relative to one another and the softfall edging

In summary, there would be very few (if any), people within the playground industry in Australia with the breadth and depth of practical playground industry experience as I have.

### **3. Identifying The Source Of The Problem**



In our day to day operations we are regularly asked to provide spare parts and or to repair playgrounds in childcare facilities. The reason our company is asked is because many large Australian playground manufacturers of the past 20 years have ceased operation, so genuine parts for their playgrounds are unattainable.

Most playground manufacturers, for insurance reasons, will not make parts for playgrounds they did not originally manufacture, so we are one of very few companies who can supply parts for these playgrounds, as we design and manufacture parts conforming to current Australian Standards for all brands of playground equipment

So we are asked to visit childcare facilities on a regular basis. We estimate that in 70-80 per cent of cases, the playground will have major non-conformances that have existed since the playground was installed new. This is still occurring today with new playgrounds that are being installed in licenced childcare facilities.

As a company, we are always very concerned when we discover such unsafe playgrounds in childcare facilities, and finally we have set out to discover why this is happening, so that something can be done about it

- We initiated a meeting with the WH&S department of Education Queensland some time ago, to try to find how these problems may be solved through the education systems own WH&S system. We were told that the head office of their WH&S has a recommendation role only to schools and have no power of enforcing schools to do anything. This did not add up in our minds as in our limited understanding, WH&S has very strong legislated powers to enforce safety and remove or minimize hazards. There seemed nowhere else for us to go so our efforts in that line were effectively ended
- We recently initiated a meeting with senior officers from DETE (Department Of Education Training And Employment Qld), to try to understand why licenced childcare facilities could have non-conforming playgrounds in them when they are licenced.
  - This meeting was very fruitful and the DETE officers were very helpful in explaining how their licencing system operates in relation to playground equipment.
  - After an hour of open discussion, we were able to jointly identify where the problem lies. They are unable to fully address our identified safety concerns due to constraints in the legislation they operate under in licencing childcare facilities
- So in order to fix the problem there would need to be minor changes in the way the legislation is written.
- We are writing this submission in order to make government aware there is a significant safety problem, not only in childcare facilities, but also in schools, and to offer a potential solution.

#### **4. How The Licencing System Works In Qld In Relation To Playgrounds**



- While conducting a licencing inspection of a childcare facility, it seems the inspector relies on a Certificate Of Conformance supplied by the childcare facility for their playground.
- In most cases, these certificates are supplied by the playground manufacturer who supplied and or installed the equipment. This is a standard requirement throughout the playground industry for any new equipment.
- Although there is an assumption that these certificates are issued by a person who is a qualified playground inspector, more often than not this is not the case. Anyone can write and sign a Certificate Of Conformance for a playground if they are employed by a playground supplying company. There is no regulation to the contrary.
- The problem is not that the inspector relies on the Certificate Of Conformance. Such an inspector should not be expected to be an expert in every type of external facility. The problem is the Certificate Of Conformance itself.
- The DETE officers called it “self assessment” of playgrounds.

## **5. How Australia’s Playground Industry Operates**

It would be wonderful to think that our playground industry was a group of co-operative businesses whose first priority was the safety of the users of their product, and if you asked the management of all those businesses, they would affirm that is their first priority.

Whether or not that is truly their goal, the reality is that in practice it turns out not to be the case with most playground suppliers. Many sales driven companies, as most playground suppliers in Australian today are, are more focused on getting the sale than on strictly adhering to the Australian Standards for playgrounds.

All major councils have qualified playground inspectors on their staff, staff we are often intimately acquainted with because we were often involved in their inspection training. As such, when they are not sure how the standards should be interpreted, they often contact us for advice.

Their reports to us time and time and time again, make it very clear that when they raise non-conformance issues with playground suppliers, the standards responses are:-

- To argue that there is no problem citing the fact that the playground was assessed as conforming at the design stage by their own internal staff (qualifications unknown).
- To nod sagely and say yes there may be a problem, but we will “monitor” it. This is code for saying we hope you will forget about it because we don’t want the hassle or expense of fixing it.
- To suggest that the non-conformance is of low risk so that they do not have to fix it. I don’t know any playground owner who would knowingly order a playground that did not conform to Standards and contained Low Risk non-conformances, yet operators of new playgrounds are accepting this situation on many of their new playgrounds, just because the manufacturer insists that is OK.
- To be fair, far more playgrounds being supplied into the Australian market are imported from overseas from large manufacturers that supply to many countries. These manufacturers are not interested in altering their tooling or processes to



comply to an insignificant sized market like Australia. The sales organizations that import this equipment have no local manufacturing capacity, so are unable to provide a solution that the overseas supplier is not concerned about. So they have to talk their way out of problems in such a way that they are still an acceptable supplier to their customer. This results in responses such as those listed above.

If manufacturers were truly committed to the safety of users of their equipment these would not be their responses. They would instead operate on the premise, if there is any doubt, let's fix it and thank you for telling us.

So clearly cost and profit are more important than the safety of the users of their equipment.

#### **6. Why Is This So?**

- The playground industry has no governing body.
- All guard their reputations jealously and object very strongly to perceived criticism. An inspector's identification of non-conformances in their equipment is seen as criticism. The standard industry response is to "shoot the messenger". They do this by means of character assassination and discrediting the qualifications and motives of the inspector. They do this personally to their customer, without the knowledge of the inspector. I have in my possession written examples of this attitude directed at me personally from 2 off Australia's biggest playground suppliers. They are vicious. I will not include them in this publically accessible submission as they are only marginally relevant and I don't wish to publically discredit the playground suppliers who wrote them.
- Unfortunately in most cases, a playground operator will believe the word of the supplier above the word of a third party inspector they have employed to protect their interests.

These are the operating parameters of nearly all playground suppliers in Australia, and these are the same businesses providing "self assessment" that their playgrounds conform.

#### **7. Cheap Playgrounds Directly Imported By The End User**

Commercial playgrounds in Australia are not cheap. The cost of doing business in Australia is way out of hand and is making all locally manufactured products and services very expensive when compared with our Asian neighbours.

In fact, an Asian manufactured playground can be delivered to a premise in Australia for way less than half the price of locally made product. But not all the price difference is to do with the cost of doing business in Australia. I have personally inspected at least 4 off these directly imported playgrounds in the Brisbane area. In every case they have numerous manufacturing faults that can cause injuries, and their designs are downright dangerous to Australian children.

Normally these playgrounds are showing signs of significant rust within the first few months from installation because they are made with "black mild steel" with a single coat of colour sprayed over it. Playgrounds manufactured in Australia are much more corrosion resistant because the big playground customers in Australia require it. The effective lifespan of a cheap playground from Asia, in an application that is aware of the inspection and maintenance responsibilities of a playground owner or operator, would be just a few years at



best. Australian based manufacturers will not touch them to rectify them because then they take on the legal responsibility of the playgrounds safety to some extent when the inevitable accident happens.

The operators of child care facilities, with a few exceptions, are unaware of their inspection and maintenance responsibilities, so many childcare facilities are still using playgrounds that are well beyond their safe operational life.

It is only when the government inspector has reason to question the safety or suitability of the playground that an external inspection is required to verify to the licencing officer that the playground is actually safe (this is not a direct quote from the legislation).

It is our understanding that under Australian law, the importer of a product into Australia is considered to be the manufacturer. So if a child care operator directly imports a playground, as the deemed manufacturer under self certification, they would have the right to write their own Certificate Of Conformance.

We have had one instance where they have done just that. A new cheap Asian manufactured playground was bought by the childcare facility owners, then installed by people not used to installing playgrounds. To their credit they engaged us as an external playground inspector to certify their new \$35,000 playground (including undersurfacing that was not compliant to the Australian standards). Our report laid out all the non-conformances, which were extensive. Our report concluded that the playground was economically unrepairable and should be scrapped, so we could not provide a Certificate of Conformance. Instead we believe the owner forged a Certificate Of Compliance in our name, submitted it to the licencing inspector and received their licence for the premises. To my knowledge (unconfirmed at this point), the playground is still in service, probably without any repairs having been made.

**So self certification in these circumstances cannot be expected to provide safe playgrounds in childcare facilities.**

## **8. The Solution**

It is clear to us that self certification is not a reliable measure of the conformance and safety of a playground for the following reasons:-

- Often, the person certifying the playground is not formally qualified to do so. They rely more on company policy than actual knowledge of the Standards, and sometimes do not even visit the site of the installed playground.
- The licencing officer checking the certificate is not required to make a decision as to its validity, and probably is not qualified to do so. Their role may be historically to just sight the certificate and tick the appropriate box on their licencing form.
- Imported playgrounds may not conform, and the salesperson may have instructions to “do what you have to do to get the sale”. Let us sort out the details later!!!

It seems obvious then that the solution is clear. We would suggest that self certification of the final installation should not be accepted.



Only accept external third party certification as evidence of conformance.

It seems simple, but there are a number of roadblocks to bring that to pass.

**9. Current Queensland Market Playground Inspectors.**

- We are one of 3 off long term recognized contract playground inspection organizations in the Qld market.
- One of the 3 off is based in Perth Western Australia, so can only come over for a group of inspections at the one time. For individual inspections at handover of new playgrounds, it would be expensive and impractical for them to be involved.
- We are aware that other organizations are offering playground inspection, but am unaware as to how well trained they may be, and particularly if they have any practical playground experience. Refer to AS/NZS 4486.1 8.3.3

**10. Why Are There So Few (if any) External Third Party Playground Inspectors Based In Queensland?**

There are significant roadblocks to individual new inspectors entering the market. Some of these are:-

- a. The amount of continuous contract inspection work available to a new inspection organization is intermittent and limited, unless there is an alliance established with playground suppliers. For example, our inspection activities would average 1-2 days per week averaged over a full year and we are an established supplier of playground inspection services.
- b. Up till now, under self certification, most new playgrounds were certified from within the supplying company. On rare occasions, a third party certification is requested, and the existing 3 off inspection organizations mentioned above have been used to fulfil this need as there is little other locally available alternative.
- c. Professional Indemnity Insurance
  - i. It is very very difficult for a playground inspector to source this insurance.
  - ii. Throughout our inspection history, we have been forced to seek new insurance providers every couple of years, as our then current insurer declines to renew even though in our 25 years of performing playground inspections we have not had a single claim against us, let alone a successful claim. Insurance companies perceive the risk to be high.
  - iii. Insurers are loathe to offer the \$5 million cover our industry requires. They will offer amounts like \$1 or 2 million, but then the insurance is not acceptable to our customers.
  - iv. If they can be coerced into offering \$5 million cover, they will only do so with exemptions that are unacceptable.



- v. Premiums quoted are always within the range 10-25% of inspection turnover. This is without the other insurances required to be a playground inspector. This premium must be paid even through the lean periods of inspection work availability.
- vi. Insurance will not be offered to new start-up businesses, so an individual inspector trying to start their own business cannot get the insurance required by clients to operate. This means new inspectors must operate as an offshoot of an existing business in order to get the insurance required.
- vii. We are aware of very good inspectors who are ex council officers who would be available to do contract inspection work a couple of days per week, but this insurance problem means there is no way a playground aligned company can help with the insurance issue.
- viii. Apart from Local Government organizations, very few playground owners or operators get their playgrounds inspected as required by Australian Standards and Qld WH&S. If they did, there would be plenty of work for new inspectors.

## **11. WH&S And Playgrounds**

1. Our company wrote a letter to Qld Division Of WH&S 23rd January 2006 asking when a playground in a school or council park was considered a “workplace”. See Attachment A.
2. The Division Of WH&S answered that in Qld, a playground owned and operated by a business is considered a “workplace” 24 hours a day, 7 days per week. See Attachment B. We have been training inspectors, informing our inspection clients and operating our business accordingly ever since.
3. The implications of a playground being a “workplace”, and defined as “plant” under WH&S regulation, requires a playground to be regularly inspected and maintained to ensure it is safe for users (in this case the public).
4. This mirrors the requirements of Australian Standards. Some playground suppliers and operators take the view that Australian Standards are not law, so they are not really obliged to adhere to them, or they feel they can be selective as to what they choose to implement.
5. WH&S is L A W ! law, and can impose stiff penalties on owners and operators of unsafe equipment. In the case of childcare facilities, I was informed during my discussion with the WH&S official that a WH&S inspector has the power to close down an unsafe playground. This would obviously have major implications to the childcare facility being allowed to continue to operate if the issues were not swiftly remedied.
6. In a worst case, the parents of the injured child could sue the childcare facilities under WH&S law because they would not be able to prove they had an inspection and maintenance regime performed by “competent” people. There may also be a comeback on the licencing department of the Qld Government because they licenced a premises with a non-conforming playground.
7. When a third party playground inspector conducts an inspection and delivers their report, they have no power to make the playground owner or operator do anything.



They have an advisory role only. Surly this is the kind of inspection a playground operator should commission in order to ensure they have fulfilled their obligations under WH&S. An inspection by a Division Of WH&S inspector, who probably has the power to enter any business at will, uninvited, would initiate a much different chain of events.

8. When WH&S issues have been raised during our inspections, then referred back to playground suppliers by our clients, the playground suppliers have generally not believed that the playground comes under Qld WH&S, and proceed to discredit us to our clients accordingly (see point 5 above).
9. Most suppliers within the playground industry still will not accept that a playground is a “workplace” in Qld, and have taken no steps to inform themselves other than to read through the legislation or regulation of Qld WH&S. Because these documents do not specifically mention playgrounds, they take the view that playgrounds are not covered under WH&S unless they are being constructed or maintained.
10. In the past week we were privileged to be able to speak to a senior Qld WH&S official who confirmed that a playground is definitely a “workplace” in Qld and has been for many years. Since harmonization of WH&S with the other states (except Vic & WA who have not signed up to the harmonized WH&S), his advice is that playgrounds in other states are now “workplaces” where they were not before.
11. Any business that provides playgrounds for their clients, is required to have them inspected and maintained on a regular basis.
  - Summarizing the inspection requirements for playgrounds laid out in AS/NZS 4486.1. 8.3.2, The following inspections are required.
    - A Routine Visual Inspection – After a weather event such as a storm, flood, cyclone, if there is a history of vandalism on an as deemed prudent basis.
    - A Operational Inspection - at least every 3 months, more often in high use or high vandalism playgrounds.
    - An Annual Inspection (previously called a Comprehensive Inspection), at least every 12 months.
  - AS/NZS 4486.1 1977 States the following:-
    - 8.3.2. “The inspection of equipment shall be carried out by a competent person in strict accordance with the manufacturer’s instructions”.
    - 5.1. (Definitions) “Competent person – a person possessed of the appropriate knowledge, skills and level of responsibility for that task”.
    - 8.3.3. “*Competence* The manufacturer shall specify if a particular level of competence is necessary for inspection or maintenance or both. It is recommended that the comprehensive inspection be carried out by an engineer, playground or maintenance specialist”.

## **12. Acceptable Qualifications for Playground Inspectors**

- The national competencies for inspection of parks facilities

AHCPGD206A - Conduct Visual Inspection Of Parks Facilities



AHCPGD305A – Conduct Operational Inspection Of Parks Facilities

AHCPGD505A – Conduct Comprehensive Inspection Of Parks Facilities

These are the competencies the training we offer deliver

- ROSPA (Royal Society For Prevention Of Accidents) System

There are a number of organizations offering inspection training under this system, and it seems to be accepted by the playground industry here in Australia.

It is in essence a 3 year licence as after 3 years you need to do a refresher course to renew you qualification, making it a cash cow for the trainers.

### **13. Would Third Party Inspections Incur An Additional Cost Burden**

Costs for a third party inspection can vary from about \$500 to over \$3000, depending on the fee structure of the inspector, plus the distance and time taken to travel to and from the childcare facility.

We would suggest that under WH&S and Australian Standards, a childcare operator is required to pay for these services anyway as part of their ongoing operation costs.

If that is the case, then having a third party inspector provide a Certificate Of Conformance for licencing purposes would add no additional cost burden.

### **14. Commitment To Safety**

Our company has never subscribed to the concept of profit before service. We are genuinely committed to ensuring that playgrounds that are accessible by the public are safe for use, using the Australian Standards for playgrounds and principles of WH&S as our bible.

Any work we perform has to result in the playground being compliant to Australian Standards, if it isn't, we fix it without argument, even if we make a loss on the job because of it.

Our business is a vehicle for making as many public playgrounds as safe as we can, so as to eliminate or minimize the risk of death or serious injury to child playground users. Achieving that is our priority. Obviously we need to remain solvent as a business in order to achieve that goal, and if we make a profit as well that would be great.

Many within the playground industry may vehemently object to a number of the comments we have made in this document. We are used to such comments, usually from people who have not chosen to properly inform themselves. They are entitled to their opinions, just as we are entitled to ours.

### **15. Are There Reputable Playground Suppliers And Providers In The Australian Market?**

The answer to that question is a resounding YES!!!



The remarks I have made always refer to some playground suppliers, never all suppliers. There are very definitely reputable suppliers within the industry, but it would not be ethical for us to give you our opinions as to who they are or are not.

The problem is there are many suppliers who are NOT putting their customer's interests first. Supplier's interests and their companies profit are more important to them than the safety of their clients users.

The old saying "you get what you pay for" is helpful in determining whether the supplier is reputable or not, but is not the whole story. Some more expensive playground suppliers may not always put their clients' interests before their own.

Unfortunately, childcare providers, trying to keep their costs down, tend to choose on the basis of price rather than quality.

A fact of life for all but the more affluent buyer is this. **When we do not have the knowledge to be able to assess quality in a particular item, we will almost always choose the cheapest product.**

Childcare operators usually do not know how to determine what is a quality, safe playground, so they decide on the cheapest. Eventually they will pay the consequences in either service life, injury to the children in their care or both.

## **16. Conclusion**

The self certification system currently in place for playground suppliers is being abused by a growing number of suppliers of playgrounds to the childcare industry, resulting in non-conforming playgrounds on which there is a greater risk of injury to the young children who use them.

DETE is unintentionally complicit in this situation, but does not currently have the power to uniformly insist on a third party Certificate Of Conformance to verify the playground is safe. They have to instead rely on the playground supplier's own Certificate Of Conformance.

Giving DETE the authority to require third party certification would mean that at least all new playgrounds were compliant and safe.

Insisting that childcare operators can prove an effective inspection and maintenance regime on their playgrounds, performed by qualified persons, would go a long way to removing the vast majority of hazards in existing playgrounds. WH&S and Australian Standards already require this but it is not being done by the majority of childcare operators.

P.S. This letter is not written by an academic who would know the right way to present information to a committee such as yourselves. It is written by a very concerned, very experienced industry practitioner, who has an intimate knowledge of the shortfall in what playgrounds in childcare facilities should be like, and what they actually are.

I trust any lacks in my presentation will not affect your reception of the message we are endeavouring to convey.



In anticipation of productive change

Keith Heffernan (*Adv Dip Hort, Dip Frontline Management, Dip Train & Assess*)

Director