

Mr Robert Fitzgerald
Commissioner
Productivity Commission
PO 80
BELCONNEN ACT 2616

By email: productsafety@pc.gov.au

25 October 2005

Dear Mr Fitzgerald

**Review of the Australian Consumer Product Safety System
Productivity Commission Discussion Draft**

On behalf of the Australian Chamber of Commerce and Industry (ACCI), which represents some 350,000 businesses I would like to provide comments regarding the Productivity Commission Discussion Draft on the Review of the Australian Consumer Product Safety System.

However, I would first like to make some overarching comments regarding regulation generally. Increasing business-related regulation is of priority concern to ACCI, our members, industry and government. The Federal Government's Taskforce on Reducing the Regulatory Burden on Business is evidence of the priority afforded to the problem of regulation.

ACCI considers that some of the pressure to regulate is a direct result of increased wealth within western societies, which has exposed governments to greater demands from the populace for a risk free life. These demands often lead to market intervention and regulation before all available options have been considered.

This disproportionate approach to risk was recognised by the British Prime Minister Tony Blair during a speech to the Institute for Public Policy Research, where he noted:

It is what I call a sensible debate about risk in public policy making. In my view, we are in danger of having a wholly disproportionate attitude to the risks we should expect to run as a normal part of life. This is putting pressure on policy-making, not just in Government but in regulatory bodies, on local government, public services, in Europe and across parts of the private sector - to act to eliminate risk in a way that is out of all proportion to the potential damage. The result is a plethora

of rules, guidelines, responses to 'scandals' of one nature or another that ends up having utterly perverse consequences.¹

This view resonates with the current inquiry into Consumer Product Safety. ACCI considers that evidence to support changes to the current system has not been produced. By the Commission's own admission, using the data available,

it seems clear that the number of injuries and deaths directly caused by consumer products is small relative to some other causes of mortality and morbidity.²

The Commission has estimated the number of deaths and injuries that result directly from products and indirectly, from the behaviour of the user, each year. Using the Commission's maximum estimates, it appears in total that 0.003 percent of the Australian population die from causes directly or indirectly related to products each year.³ A further 0.45 percent sustain injuries directly or indirectly caused by products each year.⁴ The vast majority of the statistics are comprised of indirect injuries arising from the behaviour of the user. ACCI does not wish to understate the devastating effect that any death or injury has on the individuals and families involved, however, any changes to the current system must be proportionate and considered in light of these statistics. Furthermore, any proposed changes to the product safety system must involve a rigorous cost-benefit analysis of the available responses by government.

I have attached an Appendix detailing ACCI's comments on the Draft Discussion Paper.

Either myself or Nicolle Flint are available to further discuss this matter with you if necessary.

Yours sincerely

Greg Evans
Director, Industry Policy and Innovation

¹ Prime Minister Tony Blair, "Common Sense Culture not Compensation Culture", Speech to the Institute of Public Policy Research, 2005.

² Productivity Commission, *Review of the Australian Consumer Product Safety System Discussion Draft*, July 2005, p. XXIII.

³ Productivity Commission, p. XXIV.

⁴ Productivity Commission, p. XXIV.

Appendix A: ACCI comments on the Draft Discussion Paper

ACCI would like to make the following comments relating to the Commission findings:

Evaluation of the current system

Preliminary Findings 5.1-5.2

ACCI supports the Commission's findings that the current system is working well and that there is no evidence to suggest that there is a widespread problem of businesses intentionally releasing unsafe products onto the market.

Preliminary Finding 5.3

ACCI supports this finding.

Preliminary Finding 5.4

ACCI supports this finding and agrees that if cost-effective instruments can be found then addressing the behavioural factors that contribute to product misuse and poor product maintenance and servicing should occur.

Preliminary Finding 5.5

ACCI agrees with this finding.

Preliminary Finding 5.6

ACCI agrees with this finding and emphasises the statistics recording the number of voluntary recalls undertaken by Australian businesses compared to the mandatory recalls ordered.

Preliminary Finding 5.7

No comment.

Preliminary Finding 5.8

ACCI supports this finding.

Preliminary Finding 5.9

ACCI supports this finding, though any such targeting of industries should be subject to robust data, not hearsay.

Preliminary Finding 5.10

No comment.

Preliminary Finding 5.11

ACCI supports this finding.

General Safety Provision (GSP)

Preliminary Finding 6.1

ACCI submits that no case has been made for the introduction of a GSP on a number of grounds.

Firstly, no evidence has been produced to demonstrate that the current consumer product safety system is not working. As stated by the Commission in *Preliminary*

Findings 5.1 and 5.2 it appears that the system is working to ensure a reasonable level of product safety and that businesses are providing safe products.

Combined with the lack of evidence, the experience of the GSP in other countries indicates that it should not be implemented under any circumstances in Australia. As stated by the Commission:

The evidence on the GSP experience overseas does not suggest a clear improvement in safety outcomes and there is some evidence of a significant increase in costs...⁵

The examples provided to elicit ‘lessons learned from other general safety requirements in sector-specific product safety regimes in Australia’ include excellent examples of the perverse outcomes that arise from such regimes. The Food Regulation system remains complex and fragmented, involving a plethora of Commonwealth departments and statutory bodies, State and Territory agencies and local governments, as identified in the Blair report some eight years ago. It imposes significant regulatory burdens on businesses and prevents innovative products from being quickly brought to market due to the lengthy processes involved in Code changes and product approval. Perverse outcomes generated by the OH&S system are documented in detail in ACCI’s *OH&S Blueprint*, released last year. The legislation is too heavily focused upon compliance, rather than safety which should be the primary consideration. The quantity of the legislation must be reduced and increased legislative quality and consistency between jurisdictions must be achieved. Better safety outcomes would result if these points were implemented.

ACCI reiterates our earlier submissions regarding the uncertainty and significant cost that would result from such a radical change to the current system. We also reiterate our comments regarding the inability of a GSP to catch unscrupulous businesses, or ‘fly-by-nighters’. Such businesses would continue to ignore the law regardless of its construction.

A GSP would not create a system that is better equipped to prevent injuries or remove products before injuries occur. As highlighted by the Commission,

...under the existing system *action can be taken* to recall or ban unsafe products, irrespective of whether an injury has occurred.⁶

Finally, as previously argued by ACCI, a GSP would lead to substantial costs for government and business, as well as consumers.

Preliminary Finding 6.2

ACCI does not support a GSP.

Foreseeable misuse

Preliminary Finding 7.1

ACCI does not support this finding. As highlighted by the Commission, the current system is working well. Whilst a ‘widely held view’⁷ exists that the Minister is not

⁵ Productivity Commission, p. 139.

⁶ Productivity Commission, p. 160.

able to act in cases where goods are unsafe as a result of foreseeable misuse, the Commission acknowledges that "...the interpretation of these words does not appear to have been tested in court."⁸ ACCI therefore considers it is reasonable to conclude that it is unnecessary to change the current provision.

Revision to coverage

Preliminary Finding 8.1

ACCI does not support the extension of consumer product safety provisions to cover all services, nor services relating to the installation and maintenance of consumer products. As stated in the Commission's report "[s]ubmissions did not provide any evidence of a significant problem with respect to the safety of consumer services."⁹ Nor was the Commission able to produce other evidence of a problem.

Preliminary Finding 8.2

ACCI supports this finding.

Product safety information

Preliminary Findings 9.1-9.3

ACCI supports these findings. However, ACCI notes that the cost of a 'Smartrisk'-type program may outweigh the benefits, considering the number of organisations and programs that already promote safety. Perhaps as identified by the Commission in the body of the report, government resources would be better used on a case-by-case basis.¹⁰

Requirements to monitor and report

Preliminary Finding 10.1

ACCI supports this finding.

Preliminary Finding 10.2

ACCI supports the finding that business monitoring and reporting of goods would not justify the associated costs. ACCI does not support the clause concerning reporting of goods which have been the subject of a successful liability claim. ACCI considers that this is an impractical suggestion. It would be difficult to enforce and potentially discriminatory to businesses. As noted by the Commission, there are a number of reasons a company may be subject to, and choose to settle a claim, that may not relate to a product being unsafe.¹¹ Consumer or retailer notification must not impose further regulatory burdens upon businesses.

Early warning and information sharing

Preliminary Findings 11.1-11.3

ACCI supports these findings. However, ACCI would like assurances regarding the integrity of the proposed system and the use of data to ensure that businesses cannot be victimised or prejudiced. We also note the quality of data collected is likely to be variable.

⁷ Productivity Commission, p. 175.

⁸ Productivity Commission, p. 175.

⁹ Productivity Commission, p. 192.

¹⁰ Productivity Commission, p. 225.

¹¹ Productivity Commission, pp. 239-240.

Consumer product safety research

Preliminary Findings 12.1-12.3

ACCI supports these findings.

Removing unsafe goods

Preliminary Findings 13.1-13.3

ACCI supports these findings.

Harmonisation

Preliminary Findings 14.1-14.4

ACCI supports the majority of these findings, however, we reiterate our opposition to the coverage of services.

ACCI would also welcome clarification regarding the imposition of a temporary or interim ban. Currently it appears that jurisdictions impose temporary bans ranging from twenty-eight days in Western Australia, the Northern Territory and the Australian Capital Territory, up to three months in New South Wales, Victoria and South Australia. A temporary ban of one hundred and twenty days is significantly longer than the current temporary ban times.

ACCI particularly supports the implementation of standard appeal processes.

Making further progress

Preliminary Finding 15.1

ACCI is not convinced of the requirement for the development of mandatory product standards.

Preliminary Finding 15.2

ACCI supports this finding.

Preliminary Finding 15.3

ACCI supports this finding and in a global marketplace we expect business, without the assistance of government, can move to greater consistency of standards.

Preliminary Finding 15.4

No comment.