



# **Australian Toy Association Limited**

**Response to**  
**Productivity Commission 2005,**  
***Review of the Australian Consumer***  
***Product Safety System,***  
**Discussion Draft, July.**

*Submitted by:*  
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**Productivity Commission 2005, *Review of the Australian Consumer Product Safety System, Discussion Draft, July.***

The Australian Toy Association Limited is pleased to respond to the Productivity Commission Discussion Draft of the *Review of the Australian Consumer Product Safety System* dated July 2005.

Members of the ATA's Safety Committee have considered the discussion paper and the issues raised therein.

The Australian Toy Association Limited (ATA), for itself, and on behalf of its members, makes the comments set out below.

## 1. Preamble

The ATA believes that one of its most important functions is to promote the highest possible standards of safety in design and manufacture of children's products.

The ATA continues to work closely with regulatory authorities, both Federal & State, on all issues of safety and standards and through this involvement ATA members are recognised as having accepted safety as their prime responsibility.

ATA Members are bound by the ATA's Code of Practice a copy of which is provided in Appendix I.

Members of the ATA Safety Committee are also key participants in the ongoing development of the ISO Global Toy Safety Standard, ISO 8124 parts 1, 2 and 3.

## 2. Response to Issues Raised in Discussion Draft

### General Safety Provision (GSP)

#### ATA Comment

The ATA supports the Commission's findings:

*On balance, the Commission has so far not been convinced that a GSP, as proposed in the options paper, would generate net benefits over and above those currently achieved.*

*The Commission remains to be convinced that the likely benefits of a GSP justify the costs involved. A particular concern is that the GSP may fail to target the areas of biggest risk and may deliver little benefit beyond what might be achieved with appropriate modifications to the existing consumer product safety regime (as discussed in this report).*

The ATA liaises with similar organisations around the world and its members participate, with Standards Australia and representatives from several other countries, in the development of global toy safety standards. It has therefore had the opportunity to share experiences and gain an understanding of the processes in different markets.

The European experience demonstrates how an apparently simple Safety Directive becomes almost unworkable in practice:

- Due to difficulties in interpretation, the simple horizontal safety directive has had to be supplemented by a number of industry or product specific vertical directives.
- In reality, it is impossible for a supplier to be guaranteed compliance with the Directive. If an injury occurs, a product fails almost by definition, regardless of the care a supplier takes beforehand
- The lack of certainty creates the opportunity and environment for mischievous, frivolous and / or ill informed actions
- Because suppliers can never be absolutely certain, they attempt to push all responsibility back to the regulating authority, the Commission. The Commission is continually being asked for interpretations and direction including what category products fall into and their age grade suitability.
- An incredibly complex and costly bureaucracy of documentation, process and "so called" experts has developed in order to give some comfort to all sides
- While these costs are initially incurred by business and government, the final cost is borne by the consumer in more expensive product and higher taxes

There is no evidence that this system provides any better protection to consumers than other simpler systems used in other markets such as the US. In fact common sense principles often get lost in the legal and bureaucratic jungle.

In contrast, the US has a single body, the Consumer Product Safety Commission (CPSC), making specific regulation where required to supplement the application of voluntary standards. The requirement for regulation is driven by injury data collected by the CPSC which in turn assists in the development of standards referred to by the regulation.

The ATA believes that better outcomes will be achieved for Australia by more closely following the US model than the European one. A simplification of the current system will produce more benefits than would be possible by increasing its complexity.

Australian product safety is currently regulated at the Federal level through the Trade Practices Act and at State level by various Fair Trading Regulations. It also has a comprehensive set of National and International Standards readily available. The ATA believes that the system would be just as effective, with reduced cost to the economy, if all regulation was at the Federal level.

## **Harmonise Legislation, Administration and Enforcement**

### **Harmonisation of legislation**

The ATA strongly agrees with the PC's statement: *The Commission sees a strong case for the harmonisation of product safety legislation.*

### **Which model would work best?**

*PC Comment:*

*The Commission has considered four main options, reflecting those contained in the MCCA Discussion Paper, to reduce legislative inconsistencies:*

#### ATA Comment

In the realisation that *Single Law* is basically unattainable, the ATA's preferred model is:

**Uniform legislation** — all jurisdictions would adopt identical pieces of legislation, but would be free to make future amendments, subject to agreements on maintaining national consistency

### **National Models**

*PC Comment:*

*More radical options for achieving harmonisation would involve devising a new appropriate national governance model. Business groups have tended to advocate that the Australian Government take over sole responsibility for product safety regulation. Others propose a national body, with responsibility for policy and standards setting, national bans and recalls — with the States and Territories having a more limited investigative and enforcement capacity, somewhat similar to the food regime.*

*Whether such a body could be the ACCC or a new body, sponsored by all jurisdictions, as with food regulation, is open to further comment.*

#### ATA Comment

The ATA believes that the ACCC is the appropriate body for overall management of product safety regulation. It is already in existence and would appear to have a structure that could be reinforced to accept the role. It may be necessary, however, in certain areas such as food, electrical items or toys, to have a more vertically aligned and expert body working under the ACCC to manage it effectively. This would depend on the complexity and level of risk involved.

## **Enforcement**

*PC Comment:*

*At this preliminary stage, the Commission, while recognising the potential for enhanced efficiency, remains to be convinced that such a radical departure from current regulatory and enforcement regimes is warranted. Given the likely costs involved in the development of such new structures or arrangements, the Commission is seeking further input to assist in its analysis of these options.*

### ATA Comment

In the opinion of the ATA, the ACCC is the logical choice for policy and standards setting. The State Fair Trading Offices could be responsible for enforcement under the overall governance of the ACCC.

This would not require the development of any new bodies and so should be able to be put in place at a relatively low cost.

Clearly if policy & standards setting did reside with ACCC (at a Federal level) then changes to State legislation would be necessary.

The ATA believes that this should generate significant cost savings due to the removal of duplicated effort.

Additionally the ATA strongly suggests that a radical change achieved at reasonable cost is warranted because of the subsequent benefits and ease of use for all stakeholders including consumers.

We understand there are political ramifications, but do not believe that these should be the overriding consideration.

The implementation of a system with demonstrable benefits for the future supply of safe products should prevail.

## **Foreseeable Misuse**

*PC Comment:*

*MCCA has canvassed the proposal that the definition of 'unsafe' be extended to explicitly cover 'reasonably foreseeable misuse'. Under this proposal, goods that can potentially result in harm because of the way they are used, even when the way was not intended by the producer, could be recalled or banned.*

*In the Commission's view, there is a case for foreseeable misuse to be explicitly covered in the definition of 'unsafe' as long as this is limited to cases where the behaviour is not unreasonable.*

### ATA Comment

The existing provisions of the Trade Practices Act can already be argued to include foreseeable abuse. In the case of toys, the voluntary standard and specific regulations already require that products not produce hazards after "reasonable foreseeable use or abuse".

It seems that the requirement is for a clarifying statement to be included in the TPA and the ATA is very comfortable for this to happen.

## **Linking all product safety information**

*PC Comment:*

*Currently the Australian Government and only some jurisdictions require suppliers to report voluntary recalls. The Commission is of the view that legislative amendments should be made to ensure mandatory reporting of all voluntary recalls to the appropriate regulator. All such recalls should be placed on a public national website, possibly administered by the ACCC.*

*The costs of setting up and administering such a system would largely determine whether it is worthwhile.*

#### ATA Comment

There is currently a system in place requiring the reporting of all voluntary recalls to both state and ACCC, (formerly Treasury), authorities. The ACCC's public national website already shows these.

Access to high quality national and international injury data would allow Australia to both make more sensible and cost efficient regulatory and standardisation decisions at a local level and also to participate more fully in the development of international safety requirements.

Without this data, Australia is dependant on other markets for the provision of this information and the implementation of requirements in Australia may therefore be delayed in comparison, eg requirements for projectiles that are small parts were not implemented until a fatal incident occurred in Australia, even though relevant injury data existed overseas.

An alliance with CPSC and access to databases in the EU and UK could provide this information over a much broader base and in a greatly reduced time frame and presumably at a lesser cost.

#### **One Stop Shop - Preliminary Finding 9.1**

*PC Comment:*

*A national internet-based one-stop shop focused on providing information about all product safety laws and regulations (including standards and bans) would provide net benefits.*

#### ATA Comment

In the ATA's opinion while an internet based "one stop shop" would seem to be a good idea, we however believe that to rely solely on this is not desirable and recommend that additional measures be considered.

#### **Product Safety Research**

*PC Comment:*

*Currently consumer product safety research is extremely limited. This limits the scope for informed public debate and policy design. Improved collection and provision of incidence and cost data on product-related injuries, in particular, would improve hazard identification and aid in determining appropriate responses. This could be used to guide regulatory activity and provide information to consumers which may help reduce the number of deaths and injuries. It is difficult, however, to estimate the costs of such research.*

*As a starting point, the Commission sees some value in a baseline study of consumer product-related injuries and deaths. This study should aim to establish the current number of incidents and costs associated with adverse product-related events and analyse the possible roles played by product fault and consumer behaviour.*

#### ATA Comment

This is linked to the comments above. The collection of data requires that work would be done to validate it and then determine appropriate responses to hazards identified.

It would also be useful for regulators and business to be able to see the impact of actions taken and trends over time.

The ATA is concerned that quality data collection relies on consistency in collection methodology and that this needs to be addressed in any data system. Guidance could be sought from CPSC for this.

## **Quality Data - Preliminary Finding 12.1**

*PC Comment:*

*The provision of better quality data on the incidence and cost of product-related injuries would deliver benefits to government in guiding regulatory activity and to consumers in potentially reducing the number of deaths and injuries via improved hazard identification and risk analysis.*

### ATA Comment

The ATA agrees and is of the opinion that this is a government responsibility.

## **Recalls**

### **A Requirement for Business to Recall Unsafe Products**

*PC Comment:*

*To the extent that the current incentives do not induce some recalcitrant firms to recall products, it is questionable whether a formal requirement would do so.*

*Given that any formal requirement that business recall unsafe products would be unlikely to significantly change the behaviour of either responsive or non-responsive suppliers, and that recalls have a mixed success rate, the Commission does not believe that such a proposal is warranted at this time.*

### ATA Comment

Regulators already have the ability and the authority to enforce a recall.

Harmonisation and consolidation would naturally lead to a greater clarity and focus of those powers. It would also enable more cost efficient and consistent application nationally, eg in the current situation a supplier may be required to validate product issues with each individual State in turn. Each State can (and does) also individually mandate a recall incurring a lot of additional cost for little additional benefit, an indication of duplicated effort.

We agree that recalcitrant firms are not likely to be influenced by a threat to their reputation. We therefore suggest that the level of penalties should be increased and consideration be given to the inclusion of jail terms for repeat offenders.

### **Government to Audit Product Recalls**

*PC Comment:*

*Governments already have, or should have, the power to order a mandatory recall of a product (and direct the nature of that recall) if they assess the risk is sufficiently high. As stated above, this provides a considerable enforcement stick with which to encourage voluntary action by suppliers to reveal details about the success of a recall (or even to encourage a 'voluntary' recall in the first place).*

*The Commission considers that, on balance, the benefits accruing from an ability to audit recalls are likely to be limited and would not justify the costs. However, the Commission believes that current recall guidelines could be improved and seeks information on other ways to improve the quality and success of recalls, such as the inclusion of photographs in recall notices, and better methods of tracking the affected consumer products.*

### ATA Comment

Recall guidelines are clear but implementation is complicated by the separate notifications required for State and Federal authorities.

This again would be improved by a harmonised or consolidated approach and also the provision of more public information, eg the advertising of the ACCC website for product recalls.



The ATA is of the opinion that the effectiveness of recalls generally may have been diluted over time by the misuse and perhaps overuse of this tool.

The ATA believes that a distinction needs to be made for recalls for health & safety reasons versus those made for other reasons, eg copyright infringements or labelling requirements.

It is important to regain the credibility of recall notifications for consumers so that when notified of a recall, consumers can make an informed choice.

The low response rates may indicate that consumers do not agree with a particular assessment.

### **Effectiveness of Recalls - Preliminary Finding 13.1**

*PC Comment:*

*While the Commission has received limited evidence on the success of recalls, it appears that their ability to recover unsafe goods is questionable, especially for low value products. Consideration should be given to finding ways to improve the success of recalls, such as including photographs in recall notices.*

*The Commission seeks further information on the effectiveness of recalls in reducing the harm done by unsafe products and on mechanisms for improving the quality and success of recalls in addition to those proposed by MCCA (such as the inclusion of photographs in recall notices).*

#### ATA Comment

See above

### **Services & Second Hand Goods**

*PC Comment:*

*The Commission is seeking further information on the nature and extent of safety problems with second-hand goods, in particular, information on injuries and complaints, both in aggregate and in relation to different types of product*

#### ATA Comment

If a product contains a known hazard, permanent labelling of some items is required, however the permanency of such labelling may need to be reviewed.

This begs the question of available data in the first place and whether the fact that a product was second hand or not was/would be recorded.

### **Targeted Advertising and Education Campaigns - Preliminary Finding 9.2**

*PC Comment:*

*Targeted advertising and education campaigns can improve product safety outcomes but the costs and benefits of each campaign would need to be carefully evaluated.*

#### ATA Comment

Targeted advertising and education campaigns are also desirable and should be provided and funded by government resources across all media types as is the case in many other markets.

### **Reporting Unsafe Goods - Preliminary Finding 10.2**

*PC Comment:*

*The Commission considers the benefits that would flow from a requirement for businesses to monitor and report unsafe goods, as put forward by the MCCA discussion paper, would not justify the associated costs.*

*Nevertheless, the Commission considers that the reporting of goods which have been the subject of a successful liability claim or multiple out-of-court settlements is justified. Further, encouraging businesses to clarify how consumers and retailers can notify them of unsafe or faulty products may improve the flow of information about potentially dangerous goods.*

#### ATA Comment

The US CPSC has an alert reporting system that may be worthwhile replicating for Australia.

### **Early Warning System - Preliminary Finding 11.1**

#### *PC Comment:*

*The Commission's preliminary assessment is that an extensive early warning system, based on a major upgrade of hospital-based data collection, would result in considerable costs, particularly for government. These costs are likely to outweigh the benefits that may be produced by such a system.*

*The Commission invites further comments on the design of a revised early warning system and on the costs and benefits of modifying present data and information collection systems.*

#### ATA Comment

The US CPSC has an alert reporting system that may be worthwhile replicating for Australia.

### **Permanent Bans - Preliminary Finding 14.2**

#### *PC Comment:*

*The Commission considers that permanent bans should only be adopted on a national basis. To achieve this, the process for banning goods should be more closely integrated with the temporary exemption process.*

#### ATA Comment

The ATA strongly agrees with this.

### **Mandatory Standards - Preliminary Finding 14.3**

#### *PC Comment:*

*The Commission considers that mandatory standards should only be adopted on a national basis. To achieve this, mandatory standards should only be implemented using the referral process under the Mutual Recognition Agreement or following a MCCA decision on an interim ban. The referral process should be modified so that an initial decision on whether a mandatory standard should be developed is made within 120 days of a matter being referred to MCCA.*

*The Commission is seeking further comment on whether the above legislative differences are the most significant and the ones that, if harmonised, will deliver the greatest net benefits.*

#### ATA Comment

In the ATA's opinion, harmonisation should ultimately deliver the greatest net benefits to consumers.

### **Risk Analysis - Preliminary finding 15.1**

#### *PC Comment:*

*There needs to be a stronger focus on achieving a genuinely evidence based approach to hazard identification, and risk analysis and management. Further, this evidence based approach needs to flow through to the development of mandatory product standards. At a minimum, only those provisions of a standard specifically dealing with hazard reduction should be mandated, while other design features could be deemed to be only voluntary.*

ATA Comment

The ATA agrees with this in principle however risk analysis is extremely costly and as such is unlikely to be considered by those recalcitrant traders mentioned above!

### **3. Conclusion**

The Australian Toy Association Limited (ATA), for itself, and on behalf of its members, again submits that any proposal for change in the Australian Consumer Product Safety System must:

- Be easily understood by all stakeholders,
- Not increase the cost of compliance to business,
- Not increase the overall cost to government
- Demonstrate an improvement in control over unsafe products and,
- Provide economic and readily accessible information.

#### **Further Consultation**

The Australian Toy Association Limited would be pleased to participate in any further consultation and discussion.

## ATA Code of Practice



The members of the association are committed to the promotion of a safe play environment for children. To achieve this, members will do all things necessary to adhere to all relevant safety standards, to observe the ethical advertising of children's products and maintain free and fair trade in children's products throughout the country.

All members of the Association are subscribers to the ATA Code of Practice as follows:

1. We are firmly committed to the development and promotion of a safe play environment for children, and to place only safe products on the market.
2. We agree to adhere strictly to national and international safety standards and to take prompt, effective and appropriate action should a safety problem arise. Further we agree to notify the Association immediately of any allegation by an enforcement authority that my/our product(s) contravene relevant safety regulations.
3. We are committed to the principle of ethical standards in regard to the advertising to children and adhere to government regulations and requirements. Further we agree to operate under the AANA Principles and Advisory Notes on Advertising to Children (August 1999).
4. We support and encourage research conducted in regard to any aspect of children's products and will be involved where possible and offer full co-operation.
5. We oppose strongly the practice of counterfeiting not only as an unfair trading practice but one which may expose children to products which do not comply with safety standards. Further we declare that we do not knowingly market counterfeit product(s) and we understand that a judgement against us whether brought privately or otherwise for copyright or trade mark infringement may render us liable to review under ATA procedures.
6. We recognise we have a duty to ensure lawful, fair, safe and healthy working conditions for those employed in the contract manufacture of children's products. We support the production of safe product in compliance with the Code of Business Practice of International Council of Toy Industries. To discharge this duty, we agree to have arrangements with vendors or their agents which require and maintain such conditions.
7. We understand that a successful prosecution under relevant safety regulations will be regarded by the Association as a breach of this code and may render us liable to review under ATA procedures
8. We understand that wilful breaches of the code may lead to my/our expulsion from the Association and the denial of space at the Australian Toy, Hobby & Nursery Fair.
9. We shall actively support appropriate children's causes.