



SUBMISSION

Productivity Commission Review of the Australian Consumer Product Safety System

1. The direction taken to date in the Productivity Commission Review of the Australian Consumer Product Safety System (CPSS) suggests that the final reforms proposed for the CPSS regulatory framework will enhance the competitive advantage of NSW producers who adopt appropriate safety management procedures.
2. The proposed generalised safety provision initiative, or GSP, is considered to be an important initiative to address deficiencies in the current CPSS, insofar as this system is “reactive” in operation, doing little to *prevent* product safety problems.
3. A GSP that provides a competitive advantage for producers who build product safety testing into the development of their early prototypes is highly desirable. It is noted that significant competitive advantage is expected from increased flexibility in innovation following the removal of prescriptive design standards.
4. Without a GSP, the monitoring responsibility of the regulator assumes a greater significance in maintaining safety. The potential liability a GSP will create for anyone who markets unsafe products will therefore indirectly but significantly reduce the cost of those regulatory services that are currently necessary to correct safety problems after they occur, with significant savings for taxpayers.
5. Another benefit of the GSP is that it would create a clearly defined point-in-time from which a manufacturer could be held responsible for harm caused by its product - and that point is the point of first sale, rather than the date of some later and potentially delayed action by the regulator when creating a product specific mandatory standard.
6. It is noted that similar systems have been introduced in many other Western countries.
7. The introduction of a GSP in Australia is therefore supported.
8. However, the case for extending the CPSS to cover “services” is not convincing. The common law doctrine of duty of care in tort and rising insurance premiums are both strong deterrents to potential providers of unsafe “services”.
9. Risk management is a complex problem where there are risks with a low probability of occurrence and/or unusual prerequisite circumstances. This is commonly the situation for unsafe services and may also be true for “goods” that are only unsafe when misused. It is important that the legal obligation to be imposed on suppliers is balanced and is linked to reasonable (eg., industry standard) product testing procedures and use of established design principles as well as commonsense. Commonsense is important because, for example, if a safety risk results only from unintended access to the product by children, it may not be appropriate to require testing that involves such access.



10. "Appropriate testing" is relatively simple where the risk is associated with some mechanical failure of a part of the product, but far more complex where the product is a "service" or where the hazard arises only with misuse or careless use. This is particularly so when the consumer necessarily accepts some level of risk by participation (for example, in a service to train people in horse-riding).
11. In regard to the proposal to extend the CPSS to cover "second-hand" goods, primary producers would be concerned about the potential impact of this proposal for farm "clearing sales". There appears to be little support, probably because of difficulties in regulation, for extension of CPSS liability to individuals selling second hand goods at garages sales or school fetes. Any exemption in this regard should also extend to farm "clearing sales", which are similar in principle to garage sales. Reforms that would expand the liability of farmers conducting an occasional "clearing sale" of used goods to a level beyond the liability of householders conducting "garage sales", are opposed.
12. Original manufacturers and suppliers of unsafe goods should not, however, escape liability to an injured consumer simply because that consumer has purchased the good "second hand". If the injuries arose from an original fault in the product, it would seem appropriate that the liability of the original producer continue to all subsequent owners of the good.
13. Extension of the GSP to licensed "second hand dealers" in a way that would mandate safety inspection of goods they sell is, however, supported. Inspections would disclose any safety hazards for unaware new owners and would be an important deterrent to the common practice where the owner of a good sells that good to a second hand dealer after becoming aware of an emerging safety issue with the product and the second hand dealer then on-sells the good.
14. Whilst safety inspections would add to the market price of such goods, many consumers would prefer to purchase more reliable products with safety assurance, and would be willing to pay accordingly, creating a useful distinction between commercial trading in second hand goods and private sale by the former owner who is readily identifiable by and responsible, at least in common law, to the new owner. It is noted that safety inspections are already required for many second hand products, such as motor vehicles.
15. Given the significance of the CPSS for protection of primary producers and the serious safety risks in many farming businesses, any reforms that might weaken existing protections would be undesirable. A potential concern in this area are the proposals for harmonisation of product safety laws. Harmonisation must not be undertaken in a manner that weakens existing consumer protection.
16. Harmonisation is particularly important with respect to food product safety. Many technical standards that apply uniformly to food products manufactured within Australia are frequently higher than those in other countries from which food products are imported. Compliance with these standards is costly and adds significantly to the price of food products.



17. Food manufacturers adopting lower safety standards may be able to bring their products to the market at a lower cost. Australian consumers, however, clearly do not accept that it is legitimate to obtain a competitive advantage by compromising product safety. Moreover, the competitive advantage obtained is clearly unfair to local producers who bear the costs of meeting the required safety standards.
18. Where potential hazards are difficult for consumers to detect, and delay in recognition of harm is likely, distinction between products from different production systems is appropriate. In many cases, normal manufacturer branding will satisfy this need. For commodity food products and manufactured products using ingredients from different sources, this is however more problematic. In these latter cases, the GSP may provide little consumer protection, and specified certification and labelling standards may be justified unless production has occurred within an audited safety assurance scheme.
19. In considering reform of the CPSS to protect the health and safety of Australian consumers, it is important for the Commission to consider the paramount position of the CPSS provisions *vis a vis* the additional safety regulations for special products such as food. Imposing an identical level of general liability on domestic producers and importers alike for harm caused by unsafe products and linking this to safety assurance certification or testing, would be a desirable strategy.

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