

# **Review of the Australian Consumer Product Safety System – Study by Productivity Commission**

**Submission by Standards Australia – May 2005**

## **The current system – product focused/post market**

A basic belief amongst consumers is that a product offered for sale, must meet some minimum requirements and therefore be safe or have an acceptable, known level of risk. It is not always reasonable to expect that consumers can judge the safety of a product, for themselves. In many instances, the factors relevant to the safety of a product are not readily discernable by inspection or cannot be easily researched.

The current Consumer Product Safety System relies largely on mandatory standards and is product focused. Product focus means that we regulate the product rather than the hazard that that product may present. Many products do not come under a mandatory standard and are covered more generally by the broad Trade Practices Act (TPA) requirements. The TPA requirements place a non-specific requirement for goods, other than those covered by mandatory Standards, to be “fit for purpose” or of “merchantable quality” but do not ensure that a desirable level of safety has been achieved.

This system is reactive and inconsistent – it does not adequately protect the consumer and there is a limited amount of safety testing of products. This is dependant on the existence of a limited number of mandatory Standards or the setting of, and testing to, in-house or other standards, on a voluntary or policy basis by certain major retailers. Additionally, the development of standards for consumer items is often hampered, due to insufficient accident data or indeed, insufficient detail in accident data.

An example of the deficiencies inherent in such a product-focused system is exercise cycles: currently there is a mandatory safety standard on these items. The main hazard is the rotating mass – yet the product is identified as a hazardous product. Fans also have a rotating mass, which can provide a similar potential hazard to the user, yet are not regulated or covered by a mandatory safety standard or have a requirement for the rotating mass. Therefore there is a degree of inconsistency in relation to protection of consumers from a given hazard.

Enforcement: Currently enforcement agencies carry the burden of conducting surveillance, to ensure compliance with TPA requirements or mandatory standards. Prosecutions for failure to comply with mandatory standards under the TPA are often overturned on appeal. Such prosecutions are most likely based on a very technical non-compliance. In reality, with scientific/technical assessments, there is a degree of expert judgment involved in how a sample is taken and which way a product is tested, that makes it difficult to achieve the standard of proof required under law. This allows

defendants broad scope to argue minute technicalities in court and refute the case against them, even in instances where the product has been shown to not comply.

Another problem relates to quality control in manufacture. There may be significant variability in products supplied and only those at one end of the variation range may present a hazard. A supplier often retains such production data, but an enforcement agency can only sample in the marketplace, placing it at a potential disadvantage, depending on when and where the samples are obtained.

Impact on Standards Australia: The use of mandatory standards, under the current system, imparts a significant burden on Standards Australia. In the first instance, Standards Australia bears all of the costs for the development of a new standard, and subsequently, its on-going maintenance costs. Typically, such standards do not sell in quantity and often do not recover their development or maintenance costs. In certain instances, the Australian Competition and Consumer Commission (ACCC), provides information from a mandatory Standard for free, leaving Standards Australia with no viable mechanism for recouping its costs.

It should be noted that Standards Australia receives no Government funding, to subsidize national interest standards, such as mandatory standards.

A revised system based on the increased use of mandatory standards would increase the burden on Standards Australia and would require significant additional resources, physical and financial, to facilitate the development and maintenance of required standards.

It is expected that enforcement agencies would experience a similar increased resourcing requirement for surveillance operations.

Such a system would not resolve the issues that exist with the current system.

## The proposed system – hazard focused/pre-market

Standards Australia believes that any regulatory changes of the Australian Consumer Product Safety System need to be based on pre-market qualification of identified products or services, that is compliance is based on the supplier before becoming available to the market.

It should show adherence to three guiding principles:

1. **Clarity.** The duties of suppliers in relation to product safety need to be clearly defined in terms that suppliers can understand and relate to their products.
2. **Hazard based.** Product safety measures should flow from an assessment of risk and be uniformly applied to all products where a particular hazard is present.
3. **Enforceability.** The basis of any prosecution needs to be a failure to meet expected community norms of behaviour (in this case a directive). If a highly technical argument is to be made, it should fall to the defendant, not the prosecution to sustain the argument and demonstrate its relevance.

This would provide the means of ensuring products sold to the consumer, meet acceptable levels of risk.

The system proposed would be along the lines of that used by EU member countries, which allows broader ranges of products to be covered without excessive burden on relevant organizations or agencies.

Under a hazard-focused system, the responsible agency can perform a risk assessment in relation to an apparent hazard with a class of products or services (essentially the process carried out for a Regulation Impact Statement (RIS)). The agency can then issue a list of hazards that need to be addressed for that class of products or services, with requisite specific performance requirements.

The responsible agency would identify those voluntary standards that adequately address all of the hazards, in terms of the required performance outcomes. In practice, Standards Australia would normally study the RIS and seek to develop a suitable Australian Standard in parallel, dependent on the hazard areas identified. Equivalent overseas or international standards may also be identified.

In the example given in the previous section, a hazard-focused system would identify the hazards inherent in a rotating mass and these would be applicable to various products with such a configuration.

As mentioned, the burden for compliance under the proposed system is placed on the supplier as such a system would require pre-market compliance for a given product. Compliance would be indicated, by successful testing to applicable Standards, by accredited or approved test facilities.

There will be the likelihood of increased compliance costs, particularly for products that are not currently covered by mandatory Standards but become subject to legislative

requirements under the proposed system. There is scope, however, for acceptance of testing to parallel overseas Standards, for compliance.

### **Impact on competition, international trade and trans-Tasman economic integration**

Consumer product safety standards, developed by CEN, tend to be linked to European Directives. CEN receives significant funding to develop Standards in support of European Directives.

CEN standards are harmonized across member states, facilitating trade. The existence of a CE mark, on a product, indicates that the product complies with relevant directives and indicates to the consumer that the product has a certain level of safety.

A similar level of consumer confidence would be expected in Australia with the proposed system and surveillance would be facilitated the requirement for pre-market compliance.

From Australia's perspective, harmonization of Standards should be based on harmonization through ISO. This has enjoyed limited success, as developed economic entities, such as the European Union and the United States of America, share concerns about the possible dilution of their respective, technically robust standards, through the need to accommodate developing nations in the ISO system.

Nevertheless, by adopting the proposed CPSS, a degree of harmonization would be achieved with the European Union as many products classes would have similar requirements and these would refer to appropriate Standards. Such Standards would be based on existing CEN Standards where practical.

In terms of harmonization, trade between Australia and New Zealand is of minor importance and is influenced more by regional requirements, including those of Asia. There would be increased scope for any manufacturers who wish to supply to European Union countries, but Standards Australia cannot comment on the magnitude of such a benefit.

## Summary

An Australian Consumer Product Safety System, based on hazard identification, and safety directives would provide the following benefits:

- Broad coverage of consumer product safety compared with current system
- Scope for inclusion of services
- Gives businesses clear guidelines on safety
- Covers all businesses in the consumer area and reduces the reliance voluntary application of in house Standards.
- Improves effectiveness of enforcement activity
- Minimises scope for overturning prosecutions on the basis of detailed technical argument.
- Provides opportunity for alignment with recognized overseas schemes, eg EU.
- Ensures that products or services are qualified before being sold.
- Allows scope for coverage of second-hand goods.
- Clearly specifies standards of safety for particular classes of goods or services.
- Reduces the need for mandatory Standards but increases the number of voluntary Standards required.
- Brings structure to the selection and development of consumer safety Standards.
- Provides consumers with the confidence that a minimum level of safety is inherent in products or services, in line with general community expectations.