

# SUBMISSION TO PRODUCTIVITY COMMISSION MAY 2011

From [www.lindysgoodies.com](http://www.lindysgoodies.com)

## a) BACKGROUND

The following submission is based on [www.lindysgoodies.com](http://www.lindysgoodies.com) knowledge, perceptions and understanding of small business and the body piercing market. Whilst every attempt has been made to ensure accuracy of facts and figures we have extremely limited resources and as such rely on third party information.

## b) CONTEXT

[www.lindysgoodies.com](http://www.lindysgoodies.com) was started in 2002 as an online trading name for Lindy Laker. The business was set up with a computer in a bedroom and some basic stock in body jewellery. In 2004 – 2009 [www.lindysgoodies.com](http://www.lindysgoodies.com) was dealing both as an on line store and on auction websites such as Oztion and eBay Australia. During that period [www.lindysgoodies.com](http://www.lindysgoodies.com) was a leader in the market on many on line auction sites and supported emerging auction sites such as “Bang for Bucks” and “Zoomla” in setting up in Australia.

Lindy and Mike Laker have owned and operated three small businesses over the past 30 years, the first two were strictly retail ventures with no on line activity. Every attempt is made to ensure compliance of both company and the products sold but like any small business, resources are limited. Government assistance in 'small' small business development currently is extremely modest as a general lack of quality information is available.

[www.lindysgoodies.com](http://www.lindysgoodies.com) believes in small business and has assisted others in their venture at getting on line and retaining/building small businesses. Many current government business forums do not outline opportunities for 'small' small businesses such as free software, market availability, growth, opportunity etc in the on line world. On- line trading offers a great opportunity for business development as well as buyer satisfaction. We often use the following example in on line trading education.

*Say a retailer in a small town such as Seymour sells a product such as shoes. The market size is less than 5,000 population. If this equates to around 3,000 families and the retailer can expect access of around 10% of the market, that is a 300 base. Say at two sales per customer per year this equals 600 pairs of shoes or around 2 sales per trading day. Take into account rent, wages, electricity and taxes this leaves little for the retailer to recover in actual profit or wages. The same retailer has to purchase several sizes of every shoe style making stock control even more arduous. Now say there is a buyer located in far north Queensland who does not have access to a shoe store but requires (say) a size 2 pair of blue suede shoes. The store in Seymour suddenly can offer the shoes to this person. The scenario is a win-win situation. The store is able to increase range whilst the buyer can access goods not readily available. The retail shop becomes a warehouse for the on line trading.*

In dealing on line there have been significant changes in the way buyers buy and opportunities for small business to compete in a variety of markets. A general observation of our business is that where traditional retail outlets are strong we have little on line/ buyer presence, whilst where there is limited availability to traditional retail our client base is much stronger. As a wholesaler we also find that retail outlets in remote areas feel comfortable with on line trading whilst city based retailers find person to person still the most effective.

The advent of mobile phone access and e-tablets, to emails and selling sites has furthered the opportunity for on line sales recently.

The subsequent implication here relates to competition that has been and will be of major concern to Australian regulators and businesses from overseas (OS) competitors.

In 2006 [www.lindysgoodies.com](http://www.lindysgoodies.com) wrote to the Treasurer noting the influx of overseas sellers on online auction sites. At that time there was an apparent move by sellers predominantly in Thailand and China to get onto sites such as eBay Australia selling. We discussed at length with then eBay Australia CEO and eBay Canadian representatives, during a Melbourne conference the issue of OS sellers into the Australian market, the effect on Australian business and the lack of compliance. Ebay Australia CEO informed that they were simply the catalyst and medium and not the regulator. In 2010 we again wrote to the Treasurer highlighting issues involving OS sellers and was referred to the current Productivity Commission inquiry.

In 2010 our website was 'hacked' by an overseas based group/ individual. We were alerted to this through a repeat customer. Our web provider ( Australian based) was able to identify the ISP to Indonesia. We contacted PayPal Australia and requested that funds be held pending a report to police. They advised that any hold would need to be made from the police and not that of an individual or company. We immediately contacted the Australian Federal Police cyber crimes area who advised that they could only act if a complaint to them was made from Victoria Police. We contacted Victoria Police head office who advised that we would need to make a report at our local police station to 'identify' the crime. We did this and provided all details within 24 hours of 'hack' occurring. Local police advised that they had no way of getting in touch with PayPal Australia and needed more assistance which we provided. At this times funds were still in transfer at PayPal Australia. After 6 months the local police advised that they had not the resources or knowledge to undertake the matter any further, our funds had been cleared to Indonesia and we had no recourse at all. This crime could have been tracked to the person/ company that undertook the 'hack', funds could have been frozen pending further investigation and as a result [www.lindysgoodies.com](http://www.lindysgoodies.com) had to completely shut down the web site and commence rebuilding.

### **c) MARKET SIZE**

An article in a USA business magazine estimated the industry size of body jewellery on line to be in excess of \$6 billion in 2004. This market has grown dramatically over the past 6 years.

In Australia there are currently three main Australian companies trading on online auction sites with combined turnover in excess of \$50,000 per month on one alone. All three of these companies comply fully (as far as we are aware) with Australian law and tax requirements.

In 2009-10 two new companies entered the Australian market, one from Thailand and one from China. Their individual turnover per month currently exceeds the three Australian companies combined.

An independent research/monitoring site provides economic analysis of competitors and this indicates that over the past 12 months a great loss to business to the two OS companies.

Additional to this is the predominance of on line sites now appearing and competing in the market. Many of these sites have no regulation or regulators and subsequently do not comply with current Australian law. An exception to this is USA based companies that continue to follow a similar path to Australian based on line traders.

It is envisaged that on line auction groups such as US based CraigsList and Australian based Trading Post may increase market share in Australia in the future. On line trading B2B such as Alibaba or MadeInChina are far more portals for business leads rather than selling ventures. Australia has no B2B general portal available.

#### **d) THE PRODUCT**

Body jewellery is predominantly made in China, Korea, Thailand and limited made in USA and Europe.

In 2007 [www.lindysgoodies.com](http://www.lindysgoodies.com) placed a significant submission into the Victorian Government inquiry into body piercing in Victoria. One of the main issues within that submission was the ability for overseas groups to sell self piercing kits ( we believe harmful to health) and products that are deemed by our company as unsafe without any responsibility or legal requirements. The response from government centred around the piercing industry and not that of the product.

Many on line auction sites have taken the position that if the government issue a directive then they will comply however it is not up to them to 'police' any matter. A copy of this submission is available upon request to the productivity commission.

Recently [www.lindysgoodies.com](http://www.lindysgoodies.com) complained to one on line auction site about OS sellers promoting 316L surgical steel product as Nickel Free (nickel is a material that can have cause severe allergic reactions). Appendix 1 is the Material Data Sheet for 316L surgical steel that clearly identifies that the product must contain nickel to be deemed 316L surgical steel. The response following our complaint was *“xxx is only a venue, where buyers and sellers meet to trade. It is a seller's responsibility to follow any applicable regulations which may apply to an item.”*. The outcome of our complaint is that there is no reason for the auction site to take any action against a deliberate misleading piece of information that may harm health.

#### **e) LEGALS**

- 1) 1. Body Piecing has several state laws/requirements mostly surrounding the actual piercing and not the jewellery. The opportunity for goods to be purchased OS and avert any legal requirement is totally open at this time. OS companies can trade in goods that may be banned or illegal without any fear of penalty. In fact this very point could be argued that it is the buyers responsibility to ensure that any item conforms with legal requirements. Furthermore products that may harm health such as external battery vibrating tongue bars are not monitored or regulated in any manner. As the companies are OS based any likelihood of claim of liability is extremely unlikely. The claim of surgical steel being Nickel Free is only an example of the problem, that if left, will only increase.
- 2) If any item is purchased at traditional auctions in Australia, say from Fowles or Grays Auction Groups then there is usually a GST component. Even GraysOnLine identify GST as a core component of business on its website. On line Auction sites/ OS sellers appear to be exempt from this basic requirement. OS based on line auction groups with registered business names in Australia do not monitor or collect GST however allow OS traders to openly participate in the Australian market GST free. In the case of Body Jewellery on these sites there is considerable lost revenue to the Australian Government and people of Australia through the two big OS sellers in body jewellery. Body Jewellery is considered one of the smaller categories on these sites.
- 3) Most state governments have a consumer affairs requirement on refunds and returns.  
*“Under ACL, Australian Consumer Law when Victorians buy a service, the person or business that sells the service automatically guarantees to use due care and skill, and that the service will meet its specified purpose. Under the ACL, consumers in Victoria and around the country are offered the same comprehensive set of protections and guarantees for goods and services, which means that consumers who buy gifts interstate are subject to the same protections.*

*The national law guarantees consumers have consistent rights when they buy goods and services. This includes rights to repairs, replacements, refunds and other compensation – regardless of any other warranty,*

*Among the consumer guarantees offered under the law, suppliers and manufacturers are deemed to guarantee that goods are:*

- ▲ safe;*
- ▲ durable and free from defects;*
- ▲ acceptable in appearance and finish; and*
- ▲ able to do the job that they are usually supplied for. “*

Australian companies are bound to comply with this requirement. Many overseas traders are offering post free as a sales incentive. The cost of return of goods can be considerable and country to country post rates vary. If an average consumer is buying goods from overseas they may not be aware of the cost of return of goods. An example of this would be a purchase of body jewellery from China may be \$7 including goods and shipping. The return postage price through Australia Post of a piece of body jewellery to China may cost \$8 including packaging. [www.lindysgoodies.com](http://www.lindysgoodies.com) believe that any return cost to overseas should be highlighted in on line trading on auction sites.

4) We believe that if small businesses are to grow and compete then law enforcement authorities need to have an increased presence in dealing quickly and efficiently with cyber scams and cyber crime. In our case funds could have been recovered, alleged offenders could have been identified and loss of business averted.

## **f) CONCLUSION**

If the Body Jewellery market in Australia is being enveloped by OS traders and this is one of the smaller markets then the estimates and impacts on other categories such as the IT industry or beauty products is significant. Returning goods is expensive, OS compliance with basic regulations being ignored and potential for harm increased dramatically. Governments around Australia have largely ignored the issue of on line business compliance in any form and regulation is considered too difficult.

- 1) [www.lindysgoodies.com](http://www.lindysgoodies.com) would recommend some form of initial process to commence as soon as possible with the outcome being a review in two to four years. This process would need to be monitored and reviewed in line with any best practice model.
- 2) [www.lindysgoodies.com](http://www.lindysgoodies.com) believe that all on line auction site owners should take on the responsibility of claims where they are allowing OS traders into the Australian market. Any associated costs with liability, insurance etc should be placed only back on the overseas traders fees and not that of complaint Australian based companies. All sellers should be compliant with ALL Australian laws/ regulations including public liability and taxes. If OS traders are permitted to trade on these sites then the obligation of total compliance should fall on the venue/ medium offering the trading service.
- 3) In terms of taxes we believe that all sales by traders over say 100 feedback/ seller rating per year should be immediately taxed with GST. Less than 100 feedback/ seller rating are usually individuals not required to pay GST. This could be collected by the venue ( eBay, Trading Post etc) and then disclosed in monthly statement to the seller for reporting in standard Australian BAS statements. If the company is Australian based then they can apply for general exemption and be allowed to continue trading in the manner already undertaken. This basic collection would immediately mean that both OS traders and Australian sellers are paying the same taxes on the products supplied. Any increase in cost for compliance should be placed upon those individuals and companies not complying at this time ( OS

sellers). It would fall to the provider of the auction site to collect the revenue based on total sales and postage and return these funds to the ATO monthly or quarterly. In this there needs to be some monitoring of associated costs from the auction sites as they will immediately increase costs to local sellers.

- 4) On Line financial companies offering services need to be fully open with contact phone numbers to every law enforcement agency (and station) in Australia. Simple customer service call centre access is insufficient for dealing with cyber crimes.

[www.lindysgoodies.com](http://www.lindysgoodies.com) has seen the asset and advantage for both small business and buyers to gain greater market opportunity through on line trading. There is a great opportunity for Australian small business and individuals to sell goods and services to the world but the competition that is faced must also be put on a level playing field and as such the suggestions above are only a start in the road ahead.

## Appendix 1

*Excerpt only*

### MATERIAL SAFETY DATA SHEET DIRECTIVE 91/155/EEC

#### 1. SUBSTANCE/PREPARATION AND COMPANY IDENTIFICATION

1.1 Chemical Nature, Sales Name, Use: Metal, 316L stainless steel attachments including crimpable and slide on hooks, surgical and arch hooks, Straight-Line buccal tubes, lingual sheaths and Beggs Brackets

1.2 Company Identification:

G&H Wire Company

P.O. Box 248

Greenwood, Indiana 46142

Telephone: 317-346-6655

Facsimile: 317-346-6663

1.3 Emergency Contact: 317-346-6655

1.4 Exposure to speciality steel alloys occurs primarily from inhalation of dust or fumes. However, constituents of these alloys may cause effects directly upon the skin or eyes. Certain constituents may also be harmful if swallowed.

#### 2. COMPOSITION/INFORMATION ON INGREDIENTS

Ingredients % PEL/TUV 8 HOUR TWA UNLESS OTHERWISE NOTED

IRON\* Bal PEL 10.0 MG/M3

TLV 5.0 MG/M3

CHROMIUM 16.00/18.00 % PEL 1.0 MG/M3

TLV 0.5 MG/M3

NICKEL 10.00/14.00 % PEL 1.0 MG/M3

TLV 1.0 MG/M3

MANGANESE 2.00 % max PEL 5.0 MG/M3

TLV 5.0 MG/M3

MOLYBDENUM 2.00/3.00 % PEL 0.1 MG/M3

TLV 0.1 MG/M3

\* THESE SUBSTANCES ARE REGULATED IN THEIR OXIDE FORM

△ Other trace elements can be present when their percentage is under 1.0 %