## Consumer Product Safety - A New System For Australia?

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As you know, the Australian Consumers' Association, publisher of CHOICE, is an independent, not-for-profit organization with a long involvement in research and advocacy on consumer issues.

Today I'm going to talk to you about a real bread and butter issue for consumers — product safety. I'm going to set out why ACA is strongly arguing for major reform to Australia's product safety system, and I'll also provide today the results on the most recent CHOICE tests of children's cots.

CHOICE has a long history of involvement in consumer product safety, and has conducted research and published in this area since 1960. During the last few decades we've seen some significant improvements in product safety as a result of consumer pressure. A major example is in the manufacture of cars, which are, in general, safer now for passengers than ever before. However, in many other areas we seem to make very little progress, despite obvious problems and ongoing injuries to consumers. A major reason for this is Australia's hopeless consumer product safety system. It really is a mess. We've got a hodge-podge of federal, state and local government regulations and agencies with ill-defined responsibilities and inadequate powers. Too often there seems little willingness or capacity to act.

As a result, it is a policy area that seems to be continuously under review. In fact submissions are due tomorrow for the latest of these review efforts under the oversight of the Ministerial Council of Consumer Affairs (MCCA), which involves all governments at the state and federal level. However, you'd easily be forgiven for not knowing that such a review was underway. You also probably don't know that there was a similar review in 2000 that went absolutely nowhere. At CHOICE we're sick of this situation. We're sick of finding faulty and dangerous products and we're sick of hearing about injured children. We're deeply frustrated with the lack of action in this vital area of consumer protection. So we're taking this opportunity to call for some real progress in reforming our product safety system.

The MCCA review paper itself points out that consumer product related injuries are believed to be associated with seventy per cent of all unintentional injuries receiving medical attention in Australia. Total annual *government* outlays on *direct* treatment of injuries caused by consumer products have been estimated to exceed \$200m, and our belief is that this is a very conservative figure. Direct outlays by *consumers*, as well as indirect costs, are likely to be significantly higher (indirect costs arise, for example, from parents staying home from work to look after injured children). Interestingly, the figure I've just quoted is almost ten years old, but that's the best figure the review team could find. You know you're looking at a problem area when you can't even rely on the responsible agencies to produce useful, up-to-date information.

Consumer product safety affects us all, but is particularly acute in the area of children's products. These are the sorts of products that consumers ought to be able to trust. Kidsafe NSW estimates that each year injuries *from nursery products alone* result in 6,500 children needing medical attention, 540 children being admitted to hospital, and 10 child deaths. Again, this doesn't cover injuries that parents just have to deal with at home.

Behind all of these figures there are of course individual traumas and tragedies. These are often the most significant outcomes of poor product safety. However, they are often the most difficult to attach a dollar figure to, and hence they also tend to get neglected.

ACA is not suggesting that we cocoon ourselves or our children in cotton wool, that we stop buying anything that may possibly pose a risk. That is unrealistic and unnecessary. Rather, we are arguing for basic safety standards to be applied consistently across the community to everyday products. We are arguing for reforms to a system of product safety that almost all participants recognize is not working. It's incoherent, the responsible agencies are slow to react to problems, and the law does not place enough responsibility on industry to ensure they get it right. ACA is also arguing for consistent *enforcement* of product safety regulations, something we do not currently enjoy in Australia. In other words, we are asking for sensible reforms to a system that is failing Australian consumers.

Today CHOICE is in the position of providing yet another example of these failures. Today we are announcing the results of our most recent test of children's cots, and again we are pointing to multiple failures in safety standards in products that consumers should be able to trust. Five out of ten cots tested failed the mandatory safety requirements in the Australian Standard. In our view this should not be allowed to occur, and we are today calling on the Australian Competition and Consumer Commission to enforce the standard. It is the view of CHOICE that buying a safe children's cot should not be a lottery, especially when accidents from cots are still one of the most common causes of injury, and unfortunately deaths still occur.

The most common cot-related injuries to children occur when kids climb or fall out of costs, so there should be no footholds, and dropsides or other similar features should be childproof. Entrapment injuries can also happen when a child's head, limbs or fingers get caught between the bars or panels. The cots that failed our test tended to fail on entrapment hazards and in some cases insecure dropdown features.

The "good" news is that this result is an improvement on our last test in 2002! At that time only 2 out of 10 cots passed. So I suppose we should say that a 50% failure rate means that things are getting better! But the reality is it's a disgrace. This is a standard that has been *mandatory* since 1998 – it's been illegal since that time to sell cots, including secondhand cots, that don't comply. So it's simply unacceptable to be in a situation where we still have half the cots tested by CHOICE fail a mandatory standard. The argument that not all of these failures are life-threatening, which we've heard at times from industry, is not good enough. The entrapment problems we found, for example, can still severely injure young children. Yet we seem to have a culture of tolerance on the part of government agencies for repeated and widespread consumer safety failures in some product areas under the current system. There's also the problem of labeling – our testing suggests yet again that not all cots with labels claiming they meet the standard actually do past basic safety tests, and they are arguably misleading for consumers shopping for products for their babies.

Unfortunately this experience with cots is not unusual. The results from this test follow closely on the heels of several other CHOICE tests of products where safety concerns have arisen. As an example, earlier this year we found *jogger strollers* that failed standard tests.

In August we published the results of our test of the strength of *pool fences* against the Australian Standard. Again, the results demonstrated multiple failures. Fourteen out of sixteen widely available metal flat top fences failed to pass a test designed to check whether they were strong enough to prevent an opening being made that could allow a small child to gain entry. Four out of fifteen loop top fences also failed this test. Now insufficiently strong fences are not the primary cause of children drowning around pools – faulty installation or gates being left open are a more common contributor. Nonetheless, fences that can be breached too easily have been implicated in several tragedies.

Furthermore, it is impossible for a consumer to tell whether the fence they buy passes the Australian Standard or not. Again, relying on labeling is not always a good indicator.

It's important to note that in many of these areas, the types of changes required to make a product safe are not dramatic or expensive. Let me give you one example — many of the problems associated with "toppling televisions", which we recently identified in CHOICE, could be largely addressed through two simple requirements. One is a simple requirement that an anchor point be built into the back of TVs, which could then be attached to the wall or the stand. The other is to require TV stands to pass a very basic stability test. It's not rocket science. The current TV standard does not include such a requirement. This could perhaps have prevented the recent death of a NZ boy as a result of a television falling on him.

The bottom line is that these are products that consumers ought to be able to buy without worrying about whether they meet basic safety standards. Yet what response have we had to these results? Generally we get very little or no response from relevant agencies. We have at times tried to pressure agencies such as fair trading departments or the ACCC into taking action (for example arranging recalls). It's terrible to have to say this, but in too many instances you'd be forgiven for thinking they will not act unless you can point to the bodies. That sounds crass, but it's unfortunately the situation we face today.

So where do we go to from here? We need to have a system that deals with safety hazards more rapidly. We need a system with a greater emphasis on prevention. We need a system where the rules are actually enforced. We need a nationally consistent approach – preferably through a single national agency - so it doesn't matter where you live in Australia, you'll get the same level of protection when purchasing products for yourself or your kids.

This leads me back to the current review. As I noted, the 2004 review of the product safety system is being conducted by the Ministerial Council of Consumer Affairs (MCCA) – the policy body with all state, territory and federal consumer affairs ministers.

Many of the ideas raised in the MCCA review paper are sound. ACA strongly supports a new product safety system for Australia with the following elements:

- The introduction of a general safety provision that legally requires businesses to only provide safe products to the market.
- A single, national regulator that is properly resourced to take on this role and is willing and able to enforce the law
- Tougher penalties for knowingly or negligently failing to ensure consumer safety, including in the area of recalls
- The application of safety standards to some *services* in a nationally consistent way, such as the installation of pool fences
- The application of safety standards to a limited range of second hand products, such as motor vehicles and bicycles, lawn mowers or children's products
- The introduction of new information requirements and an early warning system so that we actually know where the problems are

Let me say a little more about the idea of a general safety provision. This would impose a legal obligation on businesses to only place safe products on the market. At present, we have a system where, in most cases, the businesses that generate the safety problem bear little of the costs. Instead the costs are incurred by individual consumers, by parents, and by taxpayers through the health system. This is bad economics, as the party responsible for the problem does not have the right cost incentives to fix things. This must change, and a fairer allocation of responsibility would arise out of a general safety requirement.

So the MCCA paper should be commended for raising some good ideas. Many of them are already in place in the UK and Europe, and Canada is going down this path. But will these proposals go anywhere in Australia? There has been much talk since the Federal election by politicians of all persuasions about greater cooperation between the states and the commonwealth government, about less buck-passing and more making things work. Well here's an issue where we can test whether that actually amounts to something or whether it's just rhetoric.

Unfortunately the track record on this issue is not promising. We've had too much rhetoric and insufficient action on this issue in the past. When it comes to reform of product safety, MCCA has unfortunately come to resemble the "tar-pit" of consumer policy, the place where promising policy initiatives get stuck in the sticky mud of political inertia and die. This is what happened earlier efforts such as the 2000 review of consumer product safety. But let's be optimistic - we now have a great opportunity for MCCA to demonstrate that it can take action to generate policy reform in a reasonable timeframe. We have a new Minister at the Federal level and it would be a great opportunity to show leadership on an issue that's important to all Australian families. After all, achieving a more integrated, national approach should be easier in the product safety arena than in many other policy areas. And the benefits are clear.

The risks of failure in this area are great. If we don't achieve sensible reforms, we run the very real risk of going backwards rather than standing still, as developments in other areas affect the environment that consumers face in dealing with unsafe products. I'll give two examples that demonstrate the potentially problematic impact of other policies on this area that could further erode the already weak system we have.

The first example concerns imports from New Zealand. As some of you may be aware, the Productivity Commission is currently looking at Trans-Tasman competition and consumer protection – that is, the economic and trade relationships we have with New Zealand. ACA supports open trade, and for the most part the trans-Tasman arrangements have been beneficial. However, it's worth pointing out that anything that can be legally sold in NZ can be sold here, and vice versa, unless a "special exemption" is put in place. There is only one such exemption, and that's for infant restraints in cars, where we require imports to meet our higher standards.

In this context it's worth noting that while our current consumer safety standards are far from comprehensive, they're better than those of New Zealand. We may have only 27 mandatory product safety standards, but this is better than the 6 that exist across the Tasman. Open trade is to be encouraged, but it's important that we don't inadvertently provide a backdoor for lower safety standards in the name of free trade – after all, free trade is not an end in itself but a vehicle for greater consumer welfare, and we need to make sure that it passes that test.

The second point relates to current federal government proposals for reform of defamation law. We support a nationally consistent approach to defamation law. However, and without going into detail today, one of the impacts of the current proposals from the Federal Attorney General would be to make it more difficult for CHOICE to disseminate information about product safety problems, including those that potentially pose risks of serious injury or death, without risk of litigation. The proposals, if enacted, would increase the rights of corporations to sue for defamation. The proposals would likely result in the abolition of the qualified privilege that the courts confirmed we currently enjoy as a result of a landmark product safety case involving a dangerous home heater. They would have the effect of narrowing the test surrounding our ability to express opinions on key consumer matters, despite that fact that our opinions are based on rigorous research. Corporations will no doubt be happy with these proposals, but it is difficult to see how the public interest will be served if independent bodies cannot bring consumer safety matters to the public's attention for fear of increased litigation.

In summary, we need a complete overhaul of Australia's consumer product safety system. It gives CHOICE no satisfaction to continually point to failures. It does not reflect well on either state or federal governments that consumers, including children, continue to be injured and die as a result of accidents involving consumer products that could easily be prevented. And we'll continue as a community to face very substantial economic costs unless this situation is resolved. So let's not allow this current MCCA review to disappear like previous efforts. We hope you can help ensure that this is an issue that gets the profile it deserves.