

AUSTRALIAN TOY ASSOCIATION

Submission to the Productivity Commission

Comments to the Draft Report on Consumer Law Enforcement and Administration

Introduction

The Australian Toy Association (ATA) is an industry association representing and servicing suppliers of products for children and family leisure, learning and entertainment. We have approximately 280 members that together represent 90% of the toy industry and \$2.4b in annual retail sales.

Product Safety and compliance is one of our core activities.

- We actively promote the development of standardised requirements for safe toys and the international alignment of those requirements.

To this end, we provide resources to support Australia's participation in the development of ISO Standards for the safety of toys and our subsequent adoption of those as National Standards.

We provide resources to chair the Australian Standards committees for safety of toys, trampolines and dummies. We also participate in several other Australian and International Standards committees.

- We commit our members to adhere to safety standards applicable to their product and provide them with training and support to achieve this.
- We engage with relevant Government departments and agencies on policies and laws that impact our member's businesses.

We appreciate the opportunity to comment on the Productivity Commission's Draft Report on the Consumer Law Enforcement and Administration. Our comments are driven by our goal to support global fair trade in innovative, fun products for kids that are safe for them to use and competitive with alternative forms of entertainment.

Global trade has a number of benefits, including reduced costs, improved speed to market and safer products. To facilitate this, we work to have Australian requirements aligned as far as possible with other major markets for toys.

Within our local market, we lobby to reduce complexity and drive transparency so that members (and others) can more easily know what they need to do. This promotes a fairer market (as greater numbers of suppliers will be following the law correctly), while at the same time reducing the cost of compliance activities for all concerned.

Scope Limitations

The ATA understands that it would not be practical to change the scope of the review at this stage.

However, we missed the opportunity to comment on the issues paper so wanted to bring our views on this to the attention of the Commission.

1. The multiple-regulator model

The ATA notes the Commission's approach on taking the 'multiple-regulator model in its current form as a given', but there is some discussion on the point and a suggestion to revisit the concept as the Australian market becomes more national.

The ATA believes that there is very little difference between our Australian States and Territories in the market for most consumer goods and the restrictions on moving to a single regulator model are probably more political than structural. At the same time, the effort to maintain an effective multiple regulator model creates significant additional cost to the administration of the law.

We therefore suggest that it would have been better to be determining a strategy for moving to a single regulator model rather than finding ways to further support the current multiple regulator model.

Other points to note are:

- There has already been a natural progression towards a single regulator model since the ACL was implemented (as staff involved in related activities in the States and Territories migrated from those departments to the ACCC).
- The resourcing of a single regulator model should be further helped by the fact that the ACCC appears to already have offices operating in each State and Territory.

The ATA believes that the country has benefited greatly from the initial step of consolidating the regulation, but there are more gains to be had by continuing to simplify the administration and enforcement model.

2. Other factors

The ATA suggests that the scope be broadened to include other factors that may impact on the administration and enforcement of the ACL.

An example is that, at different times, it has appeared that the ACCC have been limited in their ability to maintain current regulations (e.g. those that reference outdated Standards) or create new ones, (e.g. to ensure the safety of products containing button batteries).

These limitations have had a significant impact:

- They add cost to goods or reduce levels of compliance by making requirements more complex

- They add risk to consumers by not recognising current requirements for product safety.

The Office of Best Practise in Regulation (OBPR) has often been mentioned as having an impact in this area and it might be that the criteria that they use for evaluating regulatory work needs to be reviewed.

The OBPR could also be relevant to implementing differentiated processes for different regulatory responses, e.g. an interim ban vs a permanent ban.

Other stakeholders would probably have input on different factors and entities.

Recommendations, findings and information requests

1. Performance of the multiple-regulator model

The draft report focuses on the co-ordination and collaboration of the ACL regulators and finds that they are working reasonably effectively together. However, the ATA is concerned that this additional effort to collaborate has had detrimental effects in other areas.

- a. The ATA submits that consultation processes under the multiple-regulator model need to be reviewed to ensure that relevant 3rd parties have appropriate input to the development of new regulations and the maintenance of existing regulations.

External stakeholder consultation is extremely important to the development and implementation of effective product safety requirements. Knowledge and experience is not normally focussed in just one sector and different stakeholders bring different perspectives to an issue.

The ATA agrees that the ACL regulators have made a lot of effort to communicate, consult and collaborate between themselves. While this has helped to manage inconsistencies, it seems to have also reduced the amount of consultation with those outside of the regulator group and thereby possibly contributed to incorrect decisions. For example, a decision to treat wind-up rubber band aeroplanes as projectile toys, resulted in the removal from the market of a perfectly safe product with no record of an injury.

- b. The ATA believes that product safety laws that refer to voluntary Standards should be able to be maintained in a timely manner when the voluntary Standard changes. New regulations should also be able to be added if required to address new hazards or existing regulations removed if no longer relevant.

We have noted that there are currently many outdated regulations and that there seems to be delays in responding to new issues.

The ATA submits that a review is needed to understand whether the complexity of the multiple-regulator model and/or the effort of collaborating and coordinating between them is a contributing factor to this, (along with restrictions put in place by the OBPR).

2. State and Territories to relinquish powers to issue recalls and interim bans

The ATA supports the suggestion that recalls and interim bans should be solely the responsibility of the ACCC.

However, we would urge that this also be considered for certain speciality areas such as electrical goods. The distinction between electrical goods and other consumer goods is not sufficiently clear and the hoverboard example (discussed later) seems to show how confusion about responsibility between the different State regulators and ACCC led to a delayed response for some time after the problem was known. It would be clearer if the ACCC was responsible for the actions and received advice from the specialists.

3. Exempt interim bans from regulatory vetting

The ATA agrees that the process to implement an interim ban should be different to that of a permanent ban or a mandatory standard, but submits that there should still be external consultation.

It is important that external stakeholder experts should have the opportunity to provide input to the regulator on the action to be taken.

The consultation could be in a different format to that for a permanent ban to allow a faster process and there may be other process improvements possible as well.

4. National database of incidents

The ATA supports the call for a national database of product safety incidents to inform the ACL regulators and other stakeholder experts involved in the development of product safety Standards for consumer products. However, there are many issues that need to be considered and resolved in the development of such a database, including:

- Access to the data
There are issues with data that may be private and incorrect being placed in the public domain and this would create barriers to the collection of the data.
There would need to be suitable controls on access.
- Validation of the data
There would need to be a process for validating the data initially and further cleansing it as more information became available
- Detail to be collected

The design of the database will be crucial to the ability to extract meaningful information from it.

The toy industry has worked hard to develop requirements for toys that are 'hazard based' and not design restrictive. In doing this, we have relied heavily on data provided by the US and Europe. It would be of benefit to be able to contribute Australian data to this to ensure that any Australian differences can be understood and addressed.

5. Financial penalties

The ATA notes the discussion on potentially increasing financial penalties to deter breaches, but we are not convinced that this will be particularly effective. The ATA believes that more frequent actions would be a better deterrent than a higher penalty.

We understand that most compliance issues come from short term suppliers that haven't invested in brands. They may also either have given no thought to their obligations under the ACL and other regulations, or they believe that they have only a small chance of being caught. The existing penalties would be sufficient to make these suppliers act to meet their obligations if they believed that they had a good chance of being caught and prosecuted.

Suppliers of recognised brands are more likely to act diligently to protect the equity that has been built up in that name. In the case that they are prosecuted, it is likely that the damage to the brand will have far more impact on their business than the fine.

6. The interaction with specialist regulators

The ATA believes that the interactions of the specialist regimes for product safety and other requirements between each other and the ACL regulators is a significant issue that is important to address.

We note and support the 'No wrong door' concept for consumers and businesses with respect to the interaction with specialist regulators. However, this seems unrealistic to achieve given the number of different regulators (from chemicals to electromagnetic compatibility) and the amount of training that each would need to receive to know what all the others do.

The issues with hoverboards or self-balancing scooters is a good example. In this case, suppliers reported being told by regulators in NSW that there were no requirements applicable to the product; despite there being mandatory requirements for battery chargers in all States, mandatory requirements for extra-low voltage equipment in some States, requirements for acceptable quality under the ACL that should have led to compliance with applicable voluntary Standards and finally that the product couldn't be legally used on public paths.

The ATA suggests that a better concept would be to set up a specific advisory service with the responsibility and expertise to properly advise suppliers or at least direct them appropriately.

Requirements for electrical product are especially complex when the different approaches of the specialist State and Territory electrical product safety regimes are combined with the Electrical Equipment Safety Scheme, requirements for electromagnetic compatibility, requirements for energy efficiency, requirements for marking and requirements for approvals. It is not easy for a new entrant to know what to do and hence more likely that they will ignore specific Australian requirements altogether.

The hoverboard example could be further investigated to understand:

- Why it took so long for product with unapproved battery chargers to be withdrawn?
- Why it was necessary for Energy Safe Victoria to make a new regulation for the product when it seemed to be already covered by their Act?
- Why they needed to do it after the ACCC had already implemented a national regulation?

The ATA accepts that there will be some level of complexity and that there are many areas that justify specialist attention, but there is an urgent need for review and consolidation to make the economy more efficient and enable higher levels of compliance with important safety and other requirements.

7. NSW super complaint pilot

The ATA is not aware of any benefit that has been achieved from the super complaint pilot to consumers or other parties. If the idea is to be developed further, it would be important to include mechanisms to ensure that any actions are the result of a genuine consumer advocacy. There is a risk that complaints are propagated by a lobby group purporting to act on behalf of consumers, but without any genuine remit. As an example, a control could be added to require a certain level of public response to a survey or call to action.