

# Senate Economics Legislation Committee

## ANSWERS TO QUESTIONS ON NOTICE

### Treasury Portfolio

Additional Estimates, 16 & 17 February 2005

#### Question: Add 25

**Topic:** ACCC - Product Safety

**Hansard Page:** Written

Senator Lundy asked:

1. Just to give me a bit of an overview on the regulation of product safety in Australia – which agencies have jurisdiction to rule and regulate on issues of consumer safety.
2. What is the Department of Treasury's role in ensuring Australians are not subjected to unsafe products?
3. Is my assumption correct – that there is a lot of doubling up in research and regulation in the current system with so many agencies with a finger in the pie?
4. It was alarming for me to see the CHOICE report late last year which suggested that only 5 in 10 baby cots on the market passed consumer safety product standards. Who is responsible for ensuring that these unsafe products are not placed on the market?
5. How are unsafe products getting on to the market with so much regulation?
6. Do you assist in passing information on product bans between the states?
7. Given that reviews have taken place in the past and there has been no Federal Government action is your department confident that this current review will actually move on from the review stage and work to curb the number of accidents, injuries and fatalities caused by unsafe products in Australia?
8. Have measures ever been discussed to ensure Australia's consumer safety standards are upheld under trans-tasman agreements? What are these measures? The reason I ask the question is that I note that while Australia's consumer safety standards are far from comprehensive - across the tasman only 6 (compared with our 27) mandatory product safety standards exist.

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Answer:

1. At the Commonwealth level, the Australian Competition and Consumer Commission (ACCC) advises the Minister on the appropriate use of available product safety powers in Division 1A of Part V of the Trade Practices Act 1974. These powers include establishing mandatory safety standards, product bans, issuing product warning notices and ordering the recall of unsafe products. The ACCC also enforces product bans, mandatory standards and recall orders. The Trade Practices Act also requires voluntary safety related product recalls to be notified to the Minister. Other specialised Commonwealth agencies advise the relevant Minister on the regulation of specific consumer goods. These include the Department of Transport and Regional Services (motor vehicle safety), Food Standards Australia and New Zealand (food safety) and the Therapeutic Goods Administration (pharmaceuticals and therapeutic devices).

At the State and Territory level, in the general consumer safety area, the Minister responsible for Consumer Affairs has responsibility and is advised by the relevant department or agency (for example, in the ACT it is the ACT Office of Fair Trading which advises the Territory's Attorney General). Most States and Territories have similar powers (to those in the Trade Practices Act) to regulate product safety within their jurisdiction.

2. The majority of the product safety functions formerly performed by Treasury transferred to the ACCC on 16 December 2004. It is now therefore the ACCC which advises the Minister on the use of available product safety powers under the Trade Practices Act. The ACCC undertakes all necessary activities, research and analysis to ensure its policy advice is well developed and soundly based. This includes consultation with stakeholders, preparation of regulation impact statements, participation in the standards development processes, research and analysis of product related injury data and liaison with the States/Territories. The ACCC also receives all voluntary product recall notifications provided to the Minister and publishes these on the Product Recalls Australia website. Appropriate outcomes of voluntary safety related recalls are further facilitated by providing assistance with recall procedures and advertising and by monitoring and assessing recall progress.

The Department of the Treasury's continuing role is to advise the Minister on the appropriate legislative and administrative framework for product safety in Australia and to provide the secretariat to the Ministerial Council on Consumer Affairs and its advisory bodies.

3. The Ministerial Council on Consumer Affairs (MCCA) is a conduit through which the states and territories and the Commonwealth can discuss the regulation of product safety in Australia. The ACCC works cooperatively with various state and territory consumer affairs agencies as the need arises.

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4. Under the Trade Practices Act, manufacturers are responsible for ensuring that their products comply with the mandatory consumer product safety standards. The ACCC and the State and Territory Fair Trading and Consumer Affairs agencies monitor the market, carry out regular surveys and take enforcement action when breaches of the standards are identified.

While CHOICE found breaches in 5 of the 10 cots they tested, the ACCC has analysed these breaches and found them all to represent very minor hazards (i.e. very low likelihood of occurrence of relatively minor injury). CHOICE did find compliance in all ten cots tested with the parts of the standard that deal with critical hazards.

The ACCC has pursued the breaches reported in CHOICE with the 4 suppliers concerned. In each case, the suppliers have taken action to address the reported concerns. All the suppliers were able to provide test certification of compliance.

The ACCC and State and Territory agencies are active in a range of compliance strategies, including supplier education and marketplace monitoring. Enforcement action is taken against suppliers in breach of any standard.

5. Unsafe products may reach the Australian market in a number of ways.

Products may be supplied which do not meet a mandatory standard because of ignorance on the part of a supplier due to a defective component or unintentional design fault. Markets are continually surveyed for compliance with mandatory standards. If breaches are detected, appropriate corrective action is taken. This generally includes a recall of the offending product by the relevant manufacturer or importer. In many cases, enforcement action is taken by the regulatory agency.

Some safety problems arise due to a faulty component which was not detected during the manufacturing and quality control process. For example, a product component may fail some time after the product was supplied, causing a safety concern. Such products are usually subject to a safety related recall.

In other circumstances, a product may be initially considered safe by a supplier, but safety concerns may arise if the product has caused or may cause injury when subjected to some form of alternate use or is abused to some degree.

6. Under the umbrella of the Ministerial Council on Consumer Affairs, there is an advisory body, the Consumer Products Advisory Committee. This Committee meets twice a year face to face and generally monthly via teleconference. Membership includes representatives of Treasury, the ACCC, all states, territories and New Zealand. Information sharing, including on identified product safety hazards and action to ban unsafe products, is a key function of that Committee. Details of unsafe goods are communicated between jurisdictions as they arise.

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7. The existing review of Australia's consumer product safety system is being conducted by MCCA which consists of consumer ministers from the Australian, State, Territory and New Zealand Governments.

However, on behalf of the Australian Government, Treasury is currently supporting an active and comprehensive review of Australia's consumer product safety system. The release of a discussion paper, managed by Treasury, and the recent announcement by the Parliamentary Secretary to the Treasurer of the commissioning of a Productivity Commission research study into Australia's consumer product safety system highlights the strong commitment by the Australian Government and state and territory governments to the review.

8. When the Trans Tasman Mutual Recognition Arrangement (TTMRA) came into operation in 1998 a TTMRA Cooperation Program was established for consumer product safety regulation. Under the Cooperation Program consumer product safety regulations were subject to special exemption while the differences between individual Australian and New Zealand regulations were considered to determine whether they might be harmonised or whether the mutual recognition principle should apply. The Cooperation Program is administered by the Ministerial Council on Consumer Affairs.

Initially there were some 300 consumer product safety regulations administered by various Australian jurisdictions. The Ministerial Council adopted the policy that only those regulations applying in a majority of jurisdictions would be considered under the Cooperation Program, with the other regulations being made subject to mutual recognition. The remainder of the Australian regulations were examined one by one to assess whether trans Tasman trade is likely to result in hazardous products entering the Australian market from New Zealand. All but one of the regulations are now either effectively harmonised, or any supply from NZ to Australia is subject to voluntary compliance with Australia safety requirements. While NZ has less specific consumer product regulations than Australia it controls the level of product safety in the market to a similar level as in Australia but via a somewhat different legislative framework.

The consumer product safety regulation remaining under the Cooperation Program is for vehicle child restraints. The Australian regulation requires compliance with only the relevant Australian Standard, whereas NZ permits compliance with either the Australian Standard, the European Standard or the American Standard. The European Standard is thought inadequate for Australia as currently it does not require a top tether attachment for securing the child restraint in a vehicle. Responsibility for further consideration of this regulation may be transferred to the TTMRA Cooperation Program for motor vehicle regulations.

Should any trans Tasman consumer product safety regulation issue arise in future the parties have undertaken to work together to seek a resolution. If a resolution cannot be agreed, the TTMRA includes provision for member parties to invoke a 12 month temporary exemption for a particular regulation pending consideration of a resolution.