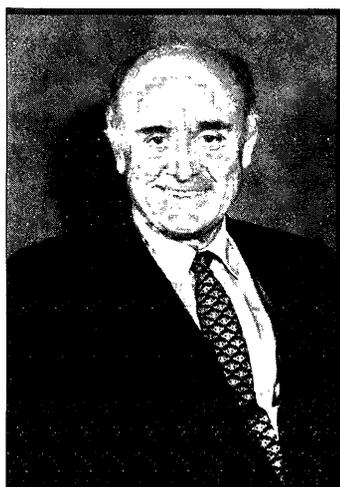

Forum

Product safety — a collaborative approach



ACCC Chairman Professor Allan Fels gave the following address at the Annual Kidsafe Award 2000 corporate luncheon on 1 February 2001. In it he discusses product safety which, he says, is the responsibility of

government, consumers and industry. He explores the Commission's role in promoting and enforcing the product safety provisions of the Trade Practices Act.

Product safety as an integrated system

In Australia an estimated 650 000 injuries occur annually that are associated with design problems or malfunctions in consumer products. Many are avoidable and making safer products is one prevention strategy. Too often companies only become active in product safety when their customers are injured or when governments regulate. With competition increasing, companies will be required to be more consumer conscious if they are to survive commercially.

The key to consumer safety is having an integrated system. Consumer safety encompasses the three community sectors — government, consumers and private.

It requires effective communication and relationships between these sectors to enable advances in the reduction of consumer injuries.

Within the sectors, interaction is essential. A range of agencies within each of the three levels of government in Australia work together in managing the government's role in consumer safety. There is also cooperation and collaboration between governments at the international level. Governments work with all stakeholders in the consumer and business sectors to optimise the effectiveness of policies.

Consumers can work together to help reduce injuries by helping each other in the safe use of products. Family, friends and colleagues can alert one another to any dangers in the home or at work.

At the community level, organisations work on consumer education and advocacy to enhance the safety of consumers. Organisations such as Kidsafe work directly with government, business and other community organisations as a catalyst for developing effective product safety strategies.

Standards Australia draws upon resources from all sectors to develop and produce safety standards that reflect the needs of all.

And in the private sector there is much value in interaction. Between different levels of the supply chain — manufacturers, importers, distributors and retailers — communication and collaboration can enhance the safety of products.

Manufacturers can assist retailers by presenting their goods in a way that clearly conveys their intended and safe use. It is important that the retailer not be in a position to 'talk up' the capabilities of a product by telling the consumer that it can safely perform in ways the manufacturer never intended.

Retailers can contribute to the safety of products by ensuring customer complaints are fed back to the manufacturer or importer.

Within industries as well, representative associations can enhance the position of all members by promoting better product safety management within their industry. This might include promoting standards compliance schemes or developing industry-wide product recall and crisis management strategies.

We have seen how a product safety crisis in one company can have repercussions across the whole industry. One lot of contaminated oysters, for instance, can cause a downturn in the whole shellfish industry.

Industry associations can also work with governments and consumers to address any difficulties in implementing successful safety strategies. Government policies need to allow for advances in technology or design and associations can work with Standards Australia or government agencies to ensure optimum safety of products that are subject to regulation.

With globalisation of trade it is becoming increasingly important for associations and companies to work at the international level. In the toy industry, for example, collaboration this year led to the completion of a single international safety standard for toys. The international standard (which Australia helped develop) will form the basis for voluntary compliance and government regulation across the world. This is a breakthrough in establishing a common standard that could eliminate trade barriers between countries and regions.

Disparate product standards between countries can form a non-tariff barrier to trade. This is especially so with mandatory standards, for which even minor differences can adversely affect freedom of trade. Governments need to manage the balance between providing appropriate levels of consumer safety and allowing competition between suppliers, including local manufacturers and importers. Any gains in international harmonisation of product regulation are significant, given the increasingly global nature of trade and economy.

Individual businesses also require an integrated approach within the company. Systems must ensure good working relationships between departments, including design, production, quality assurance and marketing.

Feedback systems from consumers and retail customers are essential for ensuring continuous improvement and addressing any identified problems.

There are opportunities for the private sector to work with consumer organisations through sponsorship. These are usually mutually beneficial and I am aware that Kidsafe is one organisation that relies on such links with business.

Whether a manufacturer, an importer or a retailer, suppliers can all benefit from supplying safer goods. A smart company will consider the product in the hands of the consumer and look for ways to prevent injuries occurring. By selling safer products, companies avoid the heavy costs associated with unsafe goods. Safety can also be turned into a market advantage with increased market share and enhanced company reputation.

Companies failing to take account of consumer safety in their production and supply of goods are taking significant risks.

Commission's role and work in product safety

As part of its role in consumer protection the Commission has a strong role in product safety. It is very active in its enforcement of the product safety provisions laid down in the Trade Practices Act. These include mandatory standards, bans and recalls. In addition to this the Commission has a role in promoting awareness of the product liability provisions and, where appropriate, taking representative actions on behalf of injured consumers.

The Commission interacts across sectors in promoting effective product safety.

The Commission works with all other government agencies that have a role in product safety, including the food and transport authorities, and with State and Territory counterparts. We are also working internationally on initiatives such as an APEC project to minimise regulatory barriers to trade and the Trans Tasman Mutual Recognition Agreement.

Among the key interactions for product safety is the relationship between the Commission and Consumer Affairs Division of the Treasury. The Treasury is responsible for developing product safety policy, which includes advising the Minister for Financial Services and

Regulation on the need for new standards, bans and recalls. Treasury develops product safety standards with the full involvement of the Commission, to ensure that such standards are achievable and enforceable.

It is this process that ensures that the Commission can actively monitor the marketplace and if necessary implement effective corrective remedies including court orders, recalls and prosecutions.

The Commission has taken a vigorous approach to breaches of the Act that involve consumer safety. While any breach of the Act is viewed seriously by the Commission, when consumers are at risk our response is immediate. Product safety is given the highest priority within the Commission.

The Commission also consults community and consumer representatives in developing its approach to product safety and also promotes awareness of consumers' rights enshrined in the Trade Practices Act.

However, the Commission interacts most with the private sector. The Commission is responsible for ensuring compliance with the product safety provisions of the Act. This means actively enforcing the mandatory standards, bans and recalls set by the Government and promoting use and awareness of the product liability provisions.

The costs to any business of selling unsafe goods are severe. First, you may have the Commission knocking at your door. Costs you may also face include recalling and remedying the product, lost production and sales, damage to reputation, impact on shareholders, product liability suits, legal fees, increased insurance premiums, criminal prosecution and fines.

When a breach of the mandatory safety standards is discovered the Commission has a range of enforcement options available. Prosecution in the Federal Court is one option that can lead to criminal conviction and heavy fines. In addition, the Commission may seek a recall of the product from retailers and consumers and/or corrective advertising. We frequently seek the development of a corporate compliance program within the company to ensure in-house systems exist to prevent recurrence of breaches.

Our most recent prosecution was against Dimmeys Stores for selling a very unsafe children's bicycle and this resulted in record fines for both the retailer and the importer. Dimmeys is now also the subject of further proceedings for the sale of children's nightwear that appear to breach the flammability standard.

Other successful actions by the Commission, with particular reference to children's products, include the following.

- The withdrawal from sale of 'Hot Tuna' and 'Crumpler' brand bean bags that failed to satisfy the mandatory labelling requirements to include warnings on the dangers of suffocating on lightweight beans.
- The successful prosecution of a sports store found supplying exercise cycles that failed to meet the Australian Standard. The exercise cycle had inadequate guards and two points at which a child's finger could be permanently injured.
- Penalties of \$25 000 for supplying swimming aids and sunglasses awarded against a company that failed to comply with the marking requirements specified in the Australian Standards.

Recalls are frequently sought from companies whose products are found to be in breach of the mandatory safety standards. Two of the main objectives of the Commission are to ensure that conduct in breach of the Trade Practices Act is stopped as soon as possible and to make sure the affected parties are given appropriate remedies. With consumer safety, the remedy often requires the supplier to retrieve the unsafe goods from the public. Such recalls are an expensive exercise for any business.

Recent successful recall actions include:

- children's dressing gowns that carried a 'Low fire danger' label when the dressing gowns should have been labelled as highly flammable;
- sunglasses with lenses that failed the minimum size specifications;
- sunglasses that failed the visual performance specifications;
- exercise cycles with gaps that allowed finger entrapment by young children; and

- several brands of car jacks that failed to carry the required warning labels and/or failed the performance specifications.

Before 1995 product safety enforcement was undertaken by the Federal Bureau of Consumer Affairs. Since gaining the function in 1995 the Commission's actions and reputation as an active enforcement agency has led to significant increases in awareness and compliance with the Trade Practices Act.

All of the Commission's regional offices around Australia are actively involved in product safety surveillance, investigations and enforcement. The Commission has pushed hard on compliance with the product safety provisions, as evidenced by the cases cited earlier.

With a range of enforcement remedies available, the Commission ensures that unsafe goods are removed from the market immediately and that goods are recalled from consumers. Companies found in breach of product safety provisions face possible criminal prosecution and penalties.

The Commission can also seek court enforceable undertakings which are a valuable tool for enforcing product safety. Undertakings can require a company to review its policy and procedures, such as quality control systems and staff training as a way of ensuring future compliance. This is particularly effective for large companies, including retailers whose compliance programs can be applied throughout all company branches and outlets. Three car jack suppliers recently gave the Commission court enforceable undertakings after supplying a product that failed to meet the mandatory standard.

The Commission also has the power under the Act to represent injured consumers in product liability actions. The product liability provisions of the Act apply across Australia's estimated range of more than 600 000 individual products. These are civil actions and the pursuit of claims through the courts is most often undertaken by private law firms. Many cases are instituted in Australia, but they are not always publicised because they are settled out of court. Companies involved in liability claims nonetheless have a high price to pay.

The successful action against Glendale Chemicals was the first taken by the Commission under s. 75AD. Glendale was found liable to pay damages to a consumer who had used the company's caustic soda product. The

product label failed to warn against using the caustic soda with hot water and the consumer suffered burns to his eyes and face. This case provides an excellent example to suppliers of the need to heed the product liability provisions.

The Commission has also instituted proceedings against Pacific Dunlop seeking compensation for a consumer who has allegedly developed a serious form of latex allergy through use of the company's Ansell brand of disposable gloves. At the time these gloves were purchased, no warning about risks of latex allergy or appropriate use instructions were provided on the product.

With product safety, prevention is preferable to redress and the Commission liaises constantly with the private sector to promote compliance and effective product safety management. As products change and new technology emerges, the Commission works with suppliers to ensure consumer standards and policies remain achievable and effective.

The Commission is developing a guide that explains to suppliers the benefits of an integrated approach to ensuring effective product safety management. Businesses need to be aware that all aspects of a product's development, production and post-launch processes need to work together to ensure a safe result.

Conclusion

It is undeniably good business practice for suppliers to manage the safety of their products well. A strategy that involves the whole business, from the top down, can deliver a system that ensures good product safety management.

The full version of this paper will be available soon on the Commission's website at <<http://www.accc.gov.au>>.

The ACCC website contains material on product safety and liability, including details of current standards and bans and links to many related sites.