



Consumer Behaviour – Cause and Effect

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There's perhaps no area that best shows the need for strong consumer protection agencies than child safety.

Kidsafe tells us that every year in Australia, injuries involving nursery equipment result in:

- 6,500 children under three years of age needing medical treatment (125 a week)
- 540 children being admitted to hospital (10 a week)
- 10 child deaths.

Now, it's true that the vast majority of these injuries are in no way due to any fault of products.

But it's also the case that every parent wants to ensure that the cots, bassinets, strollers, change tables, car seats, toys, whatever, are the best they can afford, and, crucially, that these products - regardless of price - in no way put their precious child at risk.

So when it comes to infant and nursery products, consumers are far from passive. They don't necessarily wait for standards to change, or regulators and manufacturers to act – often, they can be the driving force behind change and improved safety.

An interesting example of this is bunk beds.

In the past, government agencies had tried to get voluntary compliance with the full Australian Standard for bunk beds. Suppliers resisted saying that the market was too price-driven to allow bunks with safety features to be competitive.

Ultimately, Australian governments found it necessary to regulate these products. However, not wishing to drive prices unnecessarily high with prescriptive requirements, only the most critical elements of bunk bed safety were included in the regulation: that is, requiring guard rails to prevent head and limb injuries from falling out of the top bunk, and prohibiting protrusions that can lead to strangulation hazards.

This meant that suppliers had a choice whether to comply with other voluntary parts of the Australian Standard, which includes items such as ladder safety, materials and construction.

And suppliers are now finding that things have changed in recent years.

Firstly, consumers are becoming better informed and increasingly safety conscious. Safety is an increasing factor in consumer product choice.

Secondly, some of the demographics are changing. First time parents are often older and more financially secure. And city dwellers are increasingly moving to small inner city apartments. What this may mean is that demand for bunk beds may be driven less by price and more by other factors, such as accommodation considerations as well as safety.

So, there is reason to believe that the safety of bunk beds is increasing both because of regulatory intervention as well as consumer demand – and in my view, will continue to do so.

In the integrated nature of the product safety system in Australia, three sectors have responsibility – business (manufacturers and retailers), government and consumers themselves. Consumers play a key role because use of products is an integral part of an overall hazard reduction system. To continue with our example, even the safest bunk bed still has, by its very nature, hazards for young children. Responsible use is the third part of the equation to minimise the injuries that occur.

This example illustrates the two main themes I wish to talk about today. The first is that understanding how consumers behave – what drives their decision-making, how things might change over time – is a key factor in building competitive advantage for businesses and a key factor in governments understanding how to regulate effectively. And secondly, I'll reinforce the notion that it takes all three sectors – government, suppliers and consumers – working together to make product safety work. I'll also spend some time outlining the changes recently proposed for discussion to our product safety regime.

What consumers do for competition

Ron Bannerman, a former chairman of the ACCC's predecessor, was spot on target when he noted that consumers activate competition, they don't just benefit from it. So, we need to ask not only what competition does for consumers, we also need to ask "what do consumers do for competition?"

It's important not to underestimate the significance of asking the question this way. Industrial economists – the people who provide the evidence for competition law – have concerned themselves primarily with the behaviour of the firm. They commonly assume in their modelling, for example, that consumers will just change their behaviour or allegiances in response to a price change. And in many markets, that is the case. But in other markets, it simply doesn't happen. In fact, consumer behaviour, such as brand loyalty, can often create significant barriers to entry and other frictions in the way a market operates.

We therefore need to better understand the factors that motivate (and de-motivate) consumers, so we can better understand what they do and respond accordingly – whether it be in terms of the sorts of regulation we design, the type of products we

design, the sorts of warnings we attach to products or the sorts of instructions we provide.

I'm pleased to say there has been some good work done on this recently in a Discussion Paper released by the Commonwealth Taskforce on Consumer and Financial Literacy on 11 June this year. In that Discussion Paper are the seeds for the development of a consumer behaviour model designed to help better understand the consumer decision making process and factors that may affect decision making.¹

Factors that have been identified as affecting consumer behaviour include:

- The external environment – or the things that governments and business do, for example economic settings, regulatory and political policy, marketing
- Consumers' background and socio-economic status including income, education, age, gender, cultural background, location, health status
- Consumers' personal characteristics - including needs and aspirations, personal characteristics
- Consumer life events, for example work or unemployment, a long term relationship or marriage, children
- Skills consumers can learn – eg literacy, numeracy, planning skills, investing, saving, borrowing and spending skills; risk management skills and market awareness
- Ways of sourcing information – formal (eg from government agencies or from CHOICE magazine), informal (eg from family and friends) or through intermediaries (eg an agent or broker)

Product safety

I'd now like to turn to some of those factors in the product safety context, starting with the impact of governments and regulation.

In Australia, the differing responsibilities of state and federal governments means this issue is not without its complications. To limit discussion, firstly, to the ACCC's role, the ACCC has a strong role in product safety. We monitor a set of product safety provisions laid down in the Trade Practices Act, including actively monitoring the marketplace in relation to products with mandatory standards.

There is, however, another important way in which the ACCC influences product safety. As you know, the ACCC has responsibilities for both consumer protection and promoting competition. In many countries these two roles are separate, but in Australia we see them as two sides of the same coin.

A simple illustration of why we believe these two roles are complementary in your industry runs as follows.

Jim, a local nursery products retailer puts up a sign saying “top quality cots - all comply with latest Australian mandatory standard – no cot over \$250. Frank, his competitor across the road, knows that the wholesale price of the top model cots suggests that Jim must be seriously loss leading or something else is awry. He checks

¹ Discussion Paper, Commonwealth Taskforce on Consumer and Financial Literacy, June 2004 at 9.

out Jim's cots and realises that some comply with an earlier version of the voluntary standard and others don't comply with any standard at all. Jim is making a motza on cheap unsafe imports.

Consumers lose because they have been conned into buying an inferior, and possibly unsafe, product. Jim's claims breach s52 of the Trade Practices Act which says that a trader shall not mislead or deceive consumers. And that's quite apart from the further breach of failing to comply with a mandatory standard. Frank is also losing out because people are buying his rival's cots, and they are buying them because of misleading and deceptive conduct by a competitor.

So fair competition between retailers isn't just about price and quality. It also requires that information for consumers be truthful and accurate; otherwise, the competition is not fair and both consumers and honest competitors are harmed. This is especially so in an industry like yours, where many consumers are likely to be first time customers, purchasing one-off items they have little prior experience with, and with little understanding of the higher-level technical standards. So ensuring that misleading conduct does not occur – prosecuting Jim might well be what the ACCC would do in this case – helps overall product safety standards in the market by ensuring no one can compete dishonestly by also driving down overall safety outcomes through misleading conduct.

And nursery and infant products are one area of the market where price is often not the overwhelming issue, and customers are looking just as much, if not more so, for quality and safety and may well therefore do as much to drive competition in the quality arena as the manufacturers and retailers.

They will demand better and safer products, and where able, will often be prepared to pay more for them. This in turn will drive manufacturer innovation to compete not by simply slashing prices, but by developing better products. To complete this picture of a competitive market, and because we are a responsible society, we also set minimum safety standards to ensure that baby safety isn't something that is only affordable by the well off; these types of minimum safety standards often stimulate further competition and innovation in the market.

Product safety – a partnership

As I've mentioned, safety has evolved through a partnership: a reliance on industry and market forces to deliver safe products, a requirement on governments instituting legal frameworks to ensure the market supplies safe products, and education and information for consumers to help ensure safe use.

Because the legislative framework provides a means to react to identified safety issues, there is an expectation from consumers that government agencies will use their powers to rectify any problems. Suppliers like this option because it "sets the rules" and provides a level playing field. For government agencies also, legislative action can often be the more direct way of dealing with consumer and supplier demands. It can also be an appropriate political response.

Safety standards have some inherent limitations. They can address identified safety issues, but provide minimum benchmarks only; and in the case of rapidly evolving products, a mandatory standard may not keep up with the development of safer versions of the product.

The Australian standard for pedal bicycles covers a great many features of a bicycle to ensure safety – brakes, pedals, drive chain etc. As we know, the bicycle is a product that evolves continually and, while the standard may provide a minimum set of requirements, the technology can take the product ahead of the standard.

Although a great deal of research is done in product safety, in more recent times the role that consumers themselves play in the area of injury risk and injury prevention has begun to be more actively examined. From the data and commentary provided by the Monash University Report “*Injuries Associated with Nursery Furniture and Bunk Beds*” August 1997, on each of the nursery furniture items, there are strong indications that safe use, correct assembly and safe environment, together with adequate maintenance of the product are as critical as other factors in helping to ensure safety. As the users of the products, consumers are positioned to have a large influence on safety outcomes and also take some of the responsibility for reducing risks.

Media attention on product safety can be very important. I am thinking now of the recent media coverage of the tragic deaths of infants left, even momentarily, unattended in bath seats. This produced a national response from consumers as well as governments, with the likely end result of some form of mandatory warning labelling being introduced in the near future.

The media’s role illustrates the importance of another factor that influences consumer behaviour: the availability of information and how it is sourced.

Clearly then, overall levels of safety can only be improved when all parties involved with consumer products – governments, manufacturers, retailers and consumers - work together and actively contribute to making sure that products are safe and are used safely. The contemporary framework for achieving consumer protection results has endorsed this tripartite approach.

As I’ve noted, the government’s major role is to provide an effective framework of law and regulation ensuring that incentives are in place for safe products to reach the market; but governments also help ensure that consumers and industry are educated about this framework and often about products, and, where necessary, that action is taken to enforce the legislation, such as through recalls of unsafe products and prosecutions.

Industry – including importers, manufacturers and retailers – has the prime responsibility to provide safe products and address issues of safety as they arise. These issues include, as you know, not only the physical characteristics of the product but also an understanding of the likely manner in which they will be used and other factors which may impinge on their safe use. This means an understanding of how consumers are likely to behave. I will come back to this point later.

Consumers as I've noted contribute through their choice in the market and ensuring safe use.

The range of consumer responsibilities includes:

- Buying products that are appropriate for the user.
- Responding to product safety recall notices
- Reading and following instructions
- Using products for their intended purpose only
- Looking for indications that products meet Australian or international product safety standards
- Considering the environment in which the product is being used
- Checking the ongoing condition of the product
- Taking immediate action on safety problems with the supplier and appropriate agencies

So, appropriate consumer behaviour would not include:

- Santa giving 14 year old Jason a chain saw
- Mum reading a kitchen blender recall notice and thinking 'mine works OK, I don't need to stop using it'
- 11 year old Emma putting a real dart in her new suction dart gun
- And Dad setting up the family's new trampoline next to the woodpile

Ideally, all this requires consumers to be able to read and interpret instructions, understand the intended use of products, become aware that some products meet voluntary standards while others might not, pay attention to the "wear and tear" on products which can affect safety, and know of the existence of regulatory agencies and be confident to contact them. That is an ideal that is quite hard to reach.

Since consumers can't know nearly as much about a product as a manufacturer, one important aspect of consumer behaviour is that when it comes to safety, consumers are most likely to associate this not with a specific product, but with the brand image and reputation of a company. For a business, this represents a great opportunity, and of course a great risk.

This reputation will depend on some long term association in the consumer's mind with a range of factors including:

- Product performance and quality
- Ease of use, including quality of assembly instructions
- Product reliability
- Durability
- Responsiveness to complaints
- Responsibility for problems, eg. willingness to recall

Manufacturers and importers clearly can have direct influence on these factors and those that pay attention to such factors will build a good reputation for their brand with consumers. Those that don't, could find that reputation gone overnight. And in

this age of media and internet communication, it's very hard to survive a major "hit" on a powerful brand name.

Part of building a strong reputation – and keeping it – involves the way in which careful manufacturers or importers consider design - design that takes account of intended use and foreseeable abuse.

Good product design bears the following in mind –

- Primary users, which in the case of a children's product includes both the adults who assemble and operate the product and the children who use them.
- Secondary 'users' – others such as siblings who may handle the product. One example is recliner chairs. A few years ago a child was playing on one of these chairs at his grandparents' home. The toddler was caught in the gap between the seat and the footrest and the footrest retracted, asphyxiating him. Manufacturers have now designed that gap out of recliner chairs.
- The environment itself – where is the product to be used? – eg. we know that placing a cot near a window with blind cords can lead to strangulation risk.

Other important factors include:

- Maintenance – does the product need maintenance to remain safe throughout its lifespan? If so, can ease of maintenance be built in?
- Marketing – is the marketing of the product also co-ordinated with its design and promotion and advertising not overstating the potential uses of the product. For example, just as regular passenger vehicles should not feature in ads that suggest they can be used as rally cars, regular street bikes should not be *marketed* as *capable* of BMX style-stunts.
- Normal use - it's also the case that manufacturers are expected to make products that can withstand normal wear and tear – even bikes not made for BMX stunts must be built to withstand the sort of use a teenager might give it. This incidentally is covered by the Trade Practices Act, with Section 75AC explaining the term product 'defect' to also include '(e) what might reasonably be expected to be done with them'.²
- Safe design, as you know, can obviate the need for some warnings and instructions and reduce the reliance on consumers to use the product safely, although products where inherent hazards are present still need strong warnings and clear instructions as part of the manufacturer's safety enhancement regime.

² Neilsen v. Hempston Holdings Pty Ltd (1986) 65 ALR 302 The fact that a person who has been the subject of a misrepresentation has been careless or could have discovered the misrepresentation had he or she made proper inquiries does not absolve the maker of the misrepresentation from liability for breach of s.52.

- Lastly, but certainly not least, comes quality assurance. Compliance with standards, whether mandatory or otherwise, is better achieved and assured with an effective quality assurance system. Manufacturers support safe design with good quality assurance practices in production - it's no good getting a sample to meet the requirements of a standard if production units are not consistent with that tested sample. All the production variables need to be taken into account from the design to the production process and the checking raw materials that go into the product.

I see this complex process of design – from concept to execution in manufacturing to effective consumer liaison and a responsive complaints and monitoring system as an investment for suppliers. It does require investment of time and effort, but ultimately, it's an investment that ensures a sound return.

All suppliers, manufacturer, importer or retailer, can benefit from supplying safer goods. And safer products means avoiding the heavy costs associated with unsafe goods.

Safety can be turned into a market advantage with increased market share and enhanced company reputation. This is especially so in children's goods, as many of you will already appreciate. There are also broader competitive reasons for having good standards which I'll touch upon in a moment.

Disadvantaged and vulnerable/second-hand

Another important aspect of consumers' behaviour – and also an aspect of competition - is whether they buy new or second hand.

Now, when this comes to car seats or capsules, cots, bath tables and so on, there are clearly safety issues here. Standards change, items that were once considered safe may now be banned because of faults discovered later, others may simply have become unsafe through wear and tear.

So it is entirely legitimate to highlight these concerns and ensure consumers are in possession of the most up to date and accurate information when they choose between purchasing new items, or reusing or purchasing second-hand.

But it also must be accepted that many people don't have a lot of money, especially when children come along - for some consumers their choice will be between second-hand nursery furniture or perhaps none at all.

Some of you may know that the ACCC has a campaign that focuses on conduct that targets or seeks to exploit disadvantaged and vulnerable consumers. In preparing to launch that campaign we researched some demographic information regarding Australian consumers. Some of that data provides a timely reminder of the diversity of our society and therefore the range of factors that will impact on the choices of different consumers.

The following data is to illustrate that consumers are not homogenous, will have different levels of income, education, language skills – all of which will in turn impact on decision-making.

In short, we can't assume all consumers can

- afford new products
- understand complex instructions; or
- read warnings.

Here are some examples from both our work and statistics from other sources:

Income

(In 2001)

- 47.69% of the populations earned less than \$400 per week;
- 23% of people of working age were reliant on social security payments in 2000 compared with 16% in 1981;³
- Over 1.1 million households could not pay electricity, gas or telephone bills on time;⁴

Literacy

- 44.1% of Australians have poor or very poor ability to understand and use information from newspapers, magazines and brochures; and
- 44.8% of Australians have poor or very poor skills for locating and using information contained in materials such as tables, schedules, charts, graphs and maps

The courts are also taking this into account as evidenced by the ruling in *Campomar Sociedad, Limitada v. Nike International Ltd* (2000) 202 CLR 45 where the court found:

“The matter must be considered by reference to all people who come within that section of the public [identified as relevant], including the astute and the gullible, the intelligent and not so intelligent, the well-educated and the poorly-educated.”

So it is well for all of us to remember that consumers are not a homogenous group – they have different resources, needs and experience – all of which will impact on their decisions. It also impacts on how you choose to communicate. Manufacturers who have done some serious consideration of this, give time and attention to:

- Thinking about who is the target of messages or instructions – are the messages clear (even to someone who doesn't read very well or speaks English as a second language)
- Who will use the product
- Are the messages or instructions open to more than one interpretation

³ ACOSS, *The Bare Necessities: Poverty and Deprivation in Australia Today*, Submission to the Senate Inquiry into Poverty and Financial Hardship, March 2003 at 5.

⁴ ABS *Income and Expenditure – Expenditure: Households in financial stress*, Australian Social Trends 2002.

- Is there advice for the consumer on where to go if they want or need further information?
- Is there a system set up to resolve consumer complaints where misunderstandings arise?

Ministerial Council on Consumer Affairs

Let me now turn from issues of consumer behaviour and responsibilities, and manufacturer and regulator responsibilities to look at the new proposals for an improved product safety regime in Australia.

Despite more informed consumers and stricter standards, you are no doubt aware that due to the federal jurisdictional divisions of responsibility – with much of the product safety regime in the hands of the States and Territories - there have been instances of unsafe products banned by one state, continuing to be sold in others.

One way all levels of government are seeking to overcome this is through the Ministerial Council of Consumer Affairs (MCCA) that brings together Australian Commonwealth, State and Territory and New Zealand consumer affairs Ministers and their agencies.

Recently, the advisory committees of the Council have been considering a uniform approach to achieving appropriate levels of safety with consumer products in Australia and New Zealand, including the potential development of uniform national legislation.

In a paper released just a week ago, the Council identified the two most significant challenges facing Australia's consumer product safety regulatory system as:

- the need to deal more swiftly, and less reactively, with emerging product safety problems;
- ensuring that government regulation does not interfere unnecessarily with trade in consumer products and that government regulatory resources are used as efficiently as possible.

- A more proactive system

The current system places the onus on governments to identify, assess and regulate each product hazard amongst the large and ever increasing number of products which consumers can purchase. Rapid changes in the market for consumer products are providing consumers with direct access to products sourced throughout the world, while advances in technology and design mean that new and innovative products are continuously being introduced to consumers.

The ability of governments to address potential safety hazards across this great range of products is affected by limitations on their resources and the substantial time and effort required to implement, enforce and review product-specific regulations. Currently, significant resources are devoted to regulating a small proportion of the consumer products available in Australia. For example, under the Trade Practices Act, only twenty-seven products are currently subject to a mandatory standard;

prescribing and maintaining mandatory standards for a significantly larger number of products would require resources far in excess of those available now.

Apart from resource constraints, the ability of governments to regulate unsafe products is also limited by a number of legislative restrictions. A potential problem is that, under the TPA, goods can only be subject to a compulsory ban or recall where they are considered defective and not because they are likely to be used in an unsafe way. Baby walkers and bath seats are two classic examples of this.

There is also a lack of clarity surrounding the legislative coverage of two significant categories of consumer products, namely services and second-hand goods.

The current system also suffers from a weakness in its ability to detect unsafe products at an early stage, before they cause significant harm to consumers. This is, in large part, because regulators do not have access to adequate and timely information on product safety problems. Currently, comprehensive national statistics on product related injuries and deaths are not collected in Australia, nor does an efficient mechanism exist to quickly disseminate information, such as complaint data, amongst regulators in all jurisdictions and to other relevant parties.

The result of all these factors is a regulatory system which reacts, with variable speed and effectiveness, to unsafe products that are manufactured and which come to the attention of governments. There is a need for a system that ensures the clear, comprehensive treatment of products in a way which draws upon the expertise and resources of businesses and is supported by more efficient use of the resources available to government. A strengthened regulatory system could seek to provide businesses with greater incentives to ensure that unsafe products are not manufactured in the first place.

- A more efficient system

The development of product safety legislation over time in each jurisdiction in Australia may also create obstacles and additional costs for businesses that wish to sell their products to consumers throughout Australia. This is partly because, although the product safety provisions of the State and Territory Fair Trading Acts are based on those in the Trade Practices Act, they are not identical and there are inconsistencies in the laws of the different jurisdictions and the way they are enforced. That's not good for either consumers or businesses.

The involvement of multiple jurisdictions in regulating the safety of consumer products also results in wasteful duplication because similar regulatory tasks, such as issuing mandatory standards or bans, are often conducted by each jurisdiction in respect of the same product.

- Options for reform – a more proactive system

One option to overcome these problems proposed in the Discussion Paper released on August 22, is the introduction of a **General Safety Provision (GSP)**, which would impose a legal obligation on businesses to only place safe consumer products on the market. This is the type of system in place in most developed country jurisdictions around the world.

A number of issues would need to be addressed in developing an Australian General Safety Provision, including:

- the standard of safety required;
- whether any products would be exempted;
- the types of businesses affected; and
- whether any additional obligations would be imposed on businesses along with the general safety requirement.

By placing greater responsibility on businesses to ensure that only safe products are marketed, a GSP would seek to address the reactive nature of the current regulatory system under which governments deal with product safety hazards as they come to the attention of regulators. In addition, when potential problems are identified, a GSP could allow governments to take more effective precautionary action to protect consumers.

The introduction of a GSP could also provide businesses with greater flexibility in the delivery of safe products to consumers and result in fewer impediments to product innovation. This is because a GSP would focus on the desired safety outcome for consumers, rather than on the specific means of achieving a safe product; at the same time, specific standards in a range of areas could be maintained.

A GSP would pose some challenges. Businesses may be uncertain about its application and what constitutes a 'safe product'. This uncertainty, combined with the broad coverage of a GSP, may increase the costs to businesses of complying with product safety regulation.

Another option includes a **revised definition of unsafe products**. The ability of the Australian Government to act quickly to remedy product hazards is limited by the requirement in the TPA that a good can only be subject to a compulsory ban or recall if, amongst other things, it 'will or may cause injury'. This restriction means that the Australian Government can act against a good if it is defective, but not if it is unsafe as the result of foreseeable misuse. This could be remedied by introducing more flexible wording into the TPA.

As mentioned earlier, there is a lack of clarity surrounding the current legislative coverage of **services and second-hand goods**. Amending the product safety provisions of the TPA and relevant State and Territory laws to cover services could increase the protection of consumers by allowing all governments to deal with certain services considered unsafe – by possibly banning them or introducing safety and information standards designed to ameliorate the dangers inherent in the provision of certain services.

In respect of second-hand goods, it could be possible for all jurisdictions in Australia to develop, and agree on, a general policy statement concerning the treatment of second hand goods which clarifies the responsibilities of sellers, while allowing regulators to continue to deal with such goods on a case by case basis. An alternative may be to amend product safety legislation to specifically provide for second hand goods..

The ability to respond swiftly to product hazards could be strengthened by requiring businesses to **monitor the ongoing safety** of their products and report to governments about any products which:

- are under investigation for possible safety risks;
- have been associated with serious injury and death; or
- have been the subject of a successful product liability claim.

This approach would reduce the time between when a business begins to investigate a product hazard and the initiation of government action, if this proves necessary.

A further option may be to introduce a requirement for businesses to recall products which they find to be unsafe. This obligation could be accompanied by a power for governments to be able to audit and assess those recalls and other voluntary recalls. These obligations could be introduced independently or accompany the introduction of a GSP.

There are a number of other options aimed at enhancing the ability of regulators to swiftly detect and respond to product safety hazards. One of these is **research**, supported by governments and industry, into product safety injuries and their causes and costs of amelioration. If maintained over time, this research could allow governments to better assess the success of product safety regulations and be able to target their regulatory efforts more effectively. Additionally, such data could be used to support information and advertising campaigns targeted at specific groups of consumers.

Further options could include: the establishment of an early warning information system, possibly based on hospital admissions data; and a centralised electronic data base designed to ensure that consumer complaint data as well as other important product safety information is available to all regulators and other relevant parties.

- Options for reform – a more efficient system

Turning to ways to improve the efficiency of legislation so as not to impede business, several legislative models are discussed which could tackle the problems arising from the lack of consistency in product safety legislation amongst jurisdictions.

These include a ‘single law and regulator’, ‘template legislation’, ‘uniform legislation’ and ‘core consistent provisions’. The first three options could allow for the establishment of a single set of rules governing consumer product safety Australia-wide.

Achieving legislative consistency will not, of course, necessarily prevent businesses from facing significant differences in administrative and enforcement practices across jurisdictions. Consistency in administration and enforcement could be enhanced through improved coordination across jurisdictions, such as through a centralised complaints database. Alternatively, the ACCC could undertake additional enforcement activities on behalf of State and Territory Governments.

At the Australian Government level, one option may be to amend the TPA to provide the ACCC with powers over administrative/enforcement decisions, allowing the

Minister to focus on questions of product safety policy and the appropriate legislative framework.

Decisions taken by the ACCC as a result of this shift in responsibilities could be taken alone or made subject to consultation with an advisory panel representing stakeholders, including businesses and consumers.

In order to ensure that affected businesses have adequate opportunity to appeal decisions of the ACCC or the Minister, such decisions could ultimately be subject to appeal through either a tribunal or the court system.

Finally, it is important to consider the wider international context under which consumer goods are traded when considering options for reform of the product safety system. Reform should support the international competitiveness of Australian businesses and the goods and services they supply.

Conclusion

In discussing proposed changes of this magnitude, business can respond in a couple of ways. One way is to fight any change, the other way is to embrace the challenge. There's good empirical evidence for what successful and competitive businesses do.

In his landmark 1990 book, *The Competitive Advantage of Nations*, Harvard University professor Michael Porter wrote that:

It might seem that regulation of standards would be an intrusion of government into competition that undermines competitive advantage. Instead the reverse can be true....Stringent standards for product performance, product safety, and environmental impact contribute to creating and upgrading competitive advantage.

Firms, like governments, are often prone to see the short-term cost of dealing with tough standards and not their longer-term benefits ... Such thinking is based on an incomplete view of how competitive advantage is created and sustained. Selling poorly performing, unsafe, or environmentally damaging products is not a route to real competitive advantage ... especially in a world where environmental sensitivity and concern for social welfare are rising in all advanced nations.

Many people in business like to paint all regulation and regulators as some sort of impediment to their business. They believe the market alone should be allowed to decide and any intrusion by government is a bad thing.

In fact, as Porter points out, good regulation can be good for business and provide those who work with it, instead of against it, with a competitive advantage.

In no industry is this likely to be more so the case than in infant and nursery products.

When it comes to purchasing items for babies and children, consumers, who in almost all cases will be parents or very close friends and relatives of the child, will demand the safest products possible, even at the expense of cost and convenience.

They will help drive improvements in those standards, and in turn be driven by them when they choose which products to purchase.

Nothing could be more disastrous to the success of a business in your industry than to sell a product which because of its design, quality or use is found to be an unsafe product.

Those businesses which design with consumer behaviour in mind, which work with regulators and consumers to improve product safety will be the ones that reap the competitive advantage.