National Retail Association

SUBMISSION FROM
THE NATIONAL RETAIL ASSOCIATION

In response to ACCC:

Product Safety Priorities Environmental Scan

1. INTRODUCTION

The National Retail Association thanks the ACCC for providing the opportunity to engage on their review of priorities for 2021 and provide our submission on behalf of the retail industry and our members.

Should you have any queries, I can be contacted on 0409 926 066 or d.stout@nra.net.au.

Yours faithfully,

David Stout

Director, Policy

National Retail Association

2. ABOUT THE NATIONAL RETAIL ASSOCIATION

The National Retail Association (NRA) is Australia's largest and most representative retail industry organisation, servicing more than 24,000 stores and outlets nationwide. We are a not-for-profit organisation built on strong relationships with our members.

We exist to help retail and service sector businesses comply with an ever changing and growing regulatory environment. Our services are delivered by highly trained and well-qualified in-house experts with industry specific knowledge and experience. We provide professional services and critical information right across the retail industry, including the majority of national retail chains and thousands of small businesses, independent retailers, franchisees and other service sector employers.

Members are drawn from all of the sub-categories of retail including fashion, groceries, department stores, household goods, hardware, fast food, cafes and personal services like hairdressing and beauty. NRA has represented the interests of retailers and the broader service sector for almost 100 years. Our aim is to help Australian retail businesses grow.

3. DISCUSSION PAPER

2020 Priorities

1. **Which of the 2020 priorities do you believe should continue in the coming year?**

   NRA TSC:

   - Button Battery Safety – the new mandatory standard must be well publicised for all sellers. A published implementation strategy would be very helpful. NRA would be happy to help.
     We anticipate this be one of the most complex standards to date, and it requires a well published implementation campaign.

   - eCommerce – make the product safety pledge widely available and ensure the same ruleset applies to online and bricks-and-mortar retail, including small businesses.

2. **If you feel a priority should continue, do you think we should change the way we address that priority?**

   NRA TSC: Surveillance should not be the only aspect of strategy.

3. **We are also interested in hearing your views on whether priorities should be released on a financial year or calendar year basis in the future.**

   NRA TSC: Either way, but it needs to be clear

COVID-19 impacts

4. **How has COVID-19 impacted you? How has it changed your operating environment?**

   NRA TSC:

   - A shift to online – with that unsafe and/or banned products have become accessible (e.g. high-powered magnets).

   - Limited accessibility to physical product during lock downs. Limitations created by the need to work from home.

   - Delays due to lockdowns in several areas, including supply chain lags, most recently international freight disruptions. This has also affected delays in product testing, incident investigations and created limitations to other regular quality assurance activities.

   - Inability for consumers to return product under a recall due to lock downs.

   - A notable lag of processing recalls by regulators.

   - Regulator focus on certain product categories that have been in high demand due to COVID-19 (hand sanitiser, masks...). There are still areas of uncertainty, as well a shift in regulatory approach over the past months. Example of face masks – lack of clarity where the line is between 'consumer goods' (worn by general population for daily activities such as shopping) and 'medical equipment' (strictly worn in medical settings).

New or emerging issues

5. From your experience, can you identify any new or emerging product safety concerns that you think require action?

NRA TSC:

- Rechargeable lithium batteries used in an increasing variety of products.

- USB powered devices, especially charging cable safety and fitness for use – taking user behaviour into account. Consumers may not use cables provided with the product, or switch cables between products.

- Substance of very high concern (SVHC) such as chemicals emitted from consumer products are not well addressed in Australia.

6. Do you have any evidence that supports taking action?

NRA TSC:

Regular reports to members on related failures. There are a number of recalls related to lithium batteries and USB devices.

This is reflected in other jurisdictions (USA, EU).

7. Do you have any suggestions about how we could address the issue/s?
NRA TSC:

- USB powered devices and cables – clarity for suppliers on requirements as referring to *AS/NZS 3820 Essential safety requirements for electrical equipment* may not be sufficient. Lack of a cable assembly, compliance, and testing standard (national / international, apart from documents published by USB CabCon Workgroup).

- Rechargeable lithium batteries - Align with NZ where these are medium risk, mandate Compliance with *IEC 62133 Secondary cells and batteries containing alkaline or other non-acid electrolytes - Safety requirements for portable sealed secondary lithium cells, and for batteries made from them, for use in portable applications - Part 2: Lithium systems.*

- Substance of very high concern (SVHC) – consideration should be given on a more comprehensive approach. We recommend that the ACCC provide guidance preferencing the European REACH.
  In Australia there is little guidance, and only some work has been done, with non-consequential outcomes other than limited bans, not well aligned with international standards: Dimethyl Fumarate (DMF), certain Azo Dyes, Formaldehyde, DEHP.
- We are also interested in your views on:

  o Which products the ACCC should conduct surveillance?
  NRA TSC: We are supportive of surveillance.

  o It should apply to high risk products and emerging trends. Low-level technical breaches and low-level hazards even on 'high-risk products' need not be pursued for enforcement. The same applies to recall return rates, recall reporting and recall strategy changes.

  o Surveillance should apply without prejudice to all sizes of retailers (online and instore). ACCC activities should focus on "at risk" industry sectors or retailers. "At risk" retailers are likely to be the smaller retailers that are not resourced to have product safety and compliance teams and are more likely to be unaware of obligations. The actual objective is to improve product safety.

8. **Which mandatory standards should the ACCC prioritise for review?**
   NRA TSC:
   - o Care labelling (to revoke or at least reduce requirements). This would free up retail compliance resources for safety.
   - o Children's nightwear 2x amendments to AS1249:2014.
   - o Folding cots – relative to playpens.
   - o Toys for children under 3 - once the mandatory standard for products with button batteries is implemented.
   - o Action on previous reviews appears outstanding, refer to the **Appendix**.

9. **Which product safety laws should be considered a priority?**
   NRA TSC:

   - General Safety Provision: The industry needs some clarity about the GSP: Likely or not? What is likely timing? What will it look like? etc.

     Whilst it may not be directly in the control of the ACCC, the ACCC could help to alleviate the uncertainty hovering over all retailers/traders.

   - Border Controls: The current product safety framework in Australia has very few border controls to prevent unsafe products from flowing into the country.

     Surveillance and enforcement occur only when/after goods are offered for sale/trade.

     The ACCC could collaborate with Border Force to implement a safety/compliance review process at the border and prior to release of goods (somewhat similar to in USA). We would expect surveillance at border to be substantially more effective than once goods have been disseminated for sale.

Data and research

10. **We are interested to hear of any work, research or projects you have undertaken or are aware of relating to product safety more generally.**

    NRA TSC:

    - Guidelines for product safety – discussion paper sent to CAANZ in September 2020
    - Children's' apparel product safety guidelines published in November 2020

    - The NRA is represented on various standards committees to support the development of national and international product safety standards.
      The best outcomes are achieved, where stakeholder groups include regulators. We would like the ACCC engage further in the Standards process. A good example is the ACCC participation in CS-118 Button Battery Safety.

      Requirements developed by this process are a determiner of acceptable quality or can be referenced in specific regulation when justified.

11. **We are also interested to hear about any projects relating to improving the quality of product safety data.**

    NRA TSC:
    We do not have any data related projects but would highly welcome the sharing of incident and injury data by the ACCC, so we can proactively develop preventative steps based on factual information.

12. Please note any other matters you would like to discuss in relation to product safety.
NRA TSC:

- Australia's regulatory environment is highly complex and has areas where there is lack of clarity.

  Improvement to product safety regulation that enhances a focus on product safety, simplicity and clarity are needed.

  Example: The electrical equipment safety system is still lacking a national approach. With variation of regulatory requirements between jurisdictions, the system has a focus on 'ticking boxes' instead of truly addressing product safety.

- Collaboration between regulators and industry associations can enhance product safety message penetration, and work towards outcomes that benefit our communities.

The NRA TSC has reached out for true engagement before, and the offer still stands.

We hope the ACCC become a more open, accessible and active participant in the product safety community: By increasing representation on Australian Standard Committees, Industry Associations, etc.

- We would like the ACCC to examine and provide clarity on the idea of easier adoption of the most recently published standard. The government's policy will need to consider how compliance with different versions would apply under a GSP.

  This is something we understand would need to be raised with Treasury, but we wanted to also to raise it with the ACCC in the meantime.

- We recommend a review of the management of recalls for start to finish.
  At times there is a lad between notification to the regulator and a recall notice going 'live'.

  Regular reporting and request for changes to a recall strategy should be focussed on high risk products. That way internal resources can be better utilised to work on prevention.

  We recommend formally closing out recalls in some from where there is a low safety risk, and no evidence that any further customer returns can be expected.

4. APPENDIX

Key outstanding reviews of mandatory standards – as of November 2020
The following table lists the key outstanding reviews of mandatory standards, with notes as to the need for review, based on their current negative impact on safety or on the market. The table's contents are not fully researched but provide an indicative summary.

Priority order	Mandatory standard	Consultation date	Last reviewed	Product changes?	Improvements in published standards	Notes
1	Care labelling	Mid-2019	2003	NA	NA	Repeal or reduce - to free up safety resources. Review should be quick to do.
2	Children's nightwear	NA	2017	NA	Yes – fixed undue market restrictions	Two important amendments overdue for adoption. Review would be very quick to do.
3	Toys for u 3s	2017	2003	Some	Yes – safety in (in 2016, or later?)	
4	Folding cots	NA	2008	Significant changes, never reviewed	Yes – safety (in 2010)	Modern playpens within scope?
5	Blind cords	2019	2010	Limited	NA	Safety/scope issues to be addressed
6	Bunk beds	2016	2003	Major changes	Yes – safety (in 2010)	
7	Household cots	2014	2005	Limited	Yes – safety (in 2013)	
8	Cosmetics	Early 2020	2008	Some	Likely - health	A primary subject of mandatory injury reports
9	Bicycles	2016	2004	Major changes	Likely	
10	Bike helmets	2016	2010	Major changes	Likely	
11	Lead in toys	2017	NA (2009)	Some	Yes – safety (in 2012/13)	

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