

DRAFT

REGULATION IMPACT STATEMENT



TRADE PRACTICES ACT 1974

CONSUMER PRODUCT SAFETY STANDARD

FOR

DISPOSABLE CIGARETTE LIGHTERS

FEBRUARY 1997

Australian Competition & Consumer Commission

PROBLEM IDENTIFICATION AND SPECIFICATION OF REGULATORY OBJECTIVES

Problem identification

This proposal addresses the significant number of deaths and serious injuries caused by children under five playing with disposable cigarette lighters and the general safety of disposable lighters currently on the Australian market.

Since 1994 nine deaths of children under five have been linked by coronial authorities and fire investigators to the use of disposable cigarette lighters (See attachment A). A recent report in the 'West Australian' of Saturday January 11 linked a Mirrabooka house fire which killed a 13 month old boy on Thursday 9 January to children playing with disposable cigarette lighters. A copy of the article is also at attachment A.

Studies conducted by both the Victorian Injury Surveillance System (VISS) and the National Injury Surveillance System (NISU) demonstrate a high incidence of injury to children under five resulting from the misuse of disposable cigarette lighters. The NISU data were based on only 50 hospitals and do not provide a measure of the national scale of injuries, but do demonstrate the high incidence of injury to young children. During the period 1986-94 from a sample of 128 cases of people obtaining hospital treatment as a result of injuries caused by a cigarette lighter, 33 per cent were children under five years of age (See attachments B and C).

Objective

The objective of this government action is to reduce or eliminate the number of serious injuries and deaths caused by children under five playing with cigarette lighters and to ensure that all disposable cigarette lighters sold in Australia function safely.

Pre-existing policy authority

The Ministerial Council on Consumer Affairs (MCCA) decided at its meeting in September 1996 that a national standard incorporating safety and performance requirements and the child resistant requirements of the United States standard should

be introduced as soon as possible. A copy of the discussion paper considered by MCCA is at Attachment D.

Ministers agreed to introduce a safety and construction standard for all disposable cigarette lighters sold in Australia, to ban the import of non child-resistant disposable lighters from 1 March 1997 and to prohibit their sale from 1 July 1997. The Hon Geoff Prosser, Minister for Small Business and Consumer Affairs, announced this decision on 27 September 1996. A copy of the press release is at attachment E.

IDENTIFICATION OF ALTERNATIVES

The Ministerial Council on Consumer Affairs considered the following options for action.

No specific action

The view that accidents with cigarette lighters could be prevented by parental supervision and no specific regulatory action was required was considered and rejected by the council. The number of coronial inquiries and press reports linking deaths of children under five to their playing with disposable cigarette lighters, and calls by coroners and injury data collection agencies for the introduction of child resistant lighters convinced the council of the urgent need for action (see attachment A).

Requirement for warning labels on either the packaging of disposable cigarette lighters or the lighter itself

Although this would be relatively inexpensive for business, if phased in, in fact the majority of lighters already have warning labels on the packaging, if not on the lighter itself. This option was considered but rejected by US authorities for the following reasons:

- since most lighters in the US already carry warning labels a label-only requirement would only have slight benefits
- no information exists to suggest that mandating additional warning or other labels on an already crowded lighter surface in many instances-would measurably improve the safety afforded.

Most children under the age of five cannot read and therefore would take no notice of the label. Furthermore evidence presented at a forum on child resistant cigarette lighters held in Sydney in July 1996 by the head of the burns unit, Westmead Children's Hospital, indicated that most child burn victims come from low socio-economic groups where there may be less attention paid to the warning labels (A report on the forum is annexure A to the discussion paper at attachment D).

Immediate ban on supply of non child-resistant lighters

Although an immediate ban would have been the quickest way to remove the danger, it would have been very expensive for business and unfair for suppliers caught holding stock. The Australian Lighter Association has indicated that it can respond to the import ban from 1 March 1997.

Warning notice under the Trade Practices Act

Section 65B of the Trade Practices Act gives the Minister for Small Business and Consumer Affairs the power to publish a written notice in the government Gazette warning of the possible risks associated with the use of a particular product.

While this would provide an early alert to the public about the danger, it would be an inadequate response and unlikely to prevent further injuries and deaths. Such a notice could only be expected to influence factors such as parental supervision. This has already been discounted as an effective way to prevent deaths or injuries associated with disposable cigarette lighters.

Mandatory standard under the Trade Practices Act 1974 incorporating safety and performance standards and a requirement for child resistant features

At present the only states which have a safety standard for lighters are South Australia and Western Australia.

The Ministerial Council agreed that the introduction of a mandatory standard incorporating safety and construction requirements and a requirement for all lighters sold in Australia to meet the US Standard requirement for child resistance is the

preferred option. This would have the effect of preventing or at least reducing further deaths and injuries and of ensuring that all lighters sold in Australia are safe. A copy of the draft regulations is at attachment F.

IMPACT ANALYSIS

Impact group identification

Consumers would be directly affected, since they would no longer be able to buy non child resistant disposable lighters. The closest substitute will be a child resistant disposable lighter at approximately double the cost. However they will still be significantly cheaper than the more expensive refillable lighters.

Industry claims that American consumers have been reluctant to accept child resistant lighters. In Australia, child resistant lighters currently represent 1 per cent of disposable lighters sold, which shows a reluctance on the part of Australian consumers to accept them as well. However, since child resistant disposable lighters will be significantly cheaper than the more expensive refillable lighters, they may become more attractive to consumers who are influenced by price. As an alternative consumers might turn to matches, but research conducted by Victorian and NSW fire authorities demonstrates that young children do not have the coordination to light matches, and are less likely to regard the product as a toy.

Furthermore, since disposable lighters will be more expensive, consumers will be likely to purchase fewer lighters, and less likely to leave lighters lying around in positions where they can be easily reached by children. The most recent coronial report, which linked the death of two year old twin boys in a house fire to their playing with disposable lighters, emphasised that lighters were found lying around the house in positions where they could be easily reached by children (see attachment G). The FBCA concludes that the financial impact on consumers will be minimal and their safety enhanced significantly.

Importers and distributors will be affected by the standard. However the Australian lighter industry has indicated they can cope with the import ban from 1 March 1997.

There are no Australian manufacturers of cigarette lighters.

Small business will be directly affected by the standard. After considering representations from retailers, and in particular small retail outlets, for an extension of the retail ban, the Ministerial Council agreed to extend the date from 1 July 1997 to 1 October 1997 to give those retailers the opportunity to clear their existing stocks.

The safety and construction aspects of the standard are based on the international standard and most manufacturers already comply with these requirements. However in mid 1996 there was a recall of Madison disposable cigarette lighters in South Australia and Western Australia because they failed to comply with the labelling requirements of the mandatory standard in force in those states. The appropriate warning notice was not placed on the packaging and the name of the manufacturer/importer/distributor was not permanently marked on the product. These lighters did not comply with the labelling requirements of the international standard.

Although recalled in two states, the lighter has remained freely available in all other states and territories. An Australia-wide standard will prevent the dumping of potentially unsafe products in certain states.

Since the standard accords with an ISO standard it will not act as a barrier to trade.

Assessment of costs and benefits

The US Consumer Product Safety Commission (CPSC) estimated that not all child-play fire casualties would be eliminated by the introduction of the standard. However overall the CPSC considered that the total benefits to the community outweighed any disadvantages. The increased cost to industry of producing child resistant lighters would be passed on to consumers in the form of higher prices.

The CPSC estimated that for the period 1988-90 fires started by children under the age of five playing with lighters caused an annual average of 150 deaths, approximately 1 100 injuries and nearly \$70 million in property damage. The total cost to the public was estimated at roughly \$385 million annually.

In the United States approximately 600 million lighters are sold annually to a population base of 275 million. The CPSC estimated that the standard would cost consumers about \$90 million per year, the total annual value of reductions in deaths (valued for statistical comparison purposes at \$2 million each), injuries and property damage

would be approximately \$205-\$270 million (say \$235 million). Therefore the annual net benefit would be \$145 million.

To extrapolate from these figures and determine an annual net benefit for Australia, annual sales of disposable lighters amount to approximately 35 million per year to a population base of 17 million. The Australian market is therefore approximately 6 per cent that of the United States, which means that the annual net benefit in Australia would be approximately \$8.7 million.

Some indication of the costs of injuries can be obtained from the National Injury Surveillance System. Available data were based on only 50 hospitals and so do not provide a measure of the national scale of injuries, but do show the high incidence of injury to young children. During the period 1986-1994 from a sample of 128 cases of people obtaining hospital treatment as a result of injuries caused by a cigarette lighter and its effects, 33 per cent were children under 5 years of age. Those children were burned more severely than other age groups, typically on the face and chest, were subject to a high incidence of hospitalisation and often required skin grafts.

An indication of the number of deaths that might be avoided may be drawn from findings of coronial courts and fire investigation reports. Such data is not systematically recorded, but even the partial data are quite compelling. From 1994-96 the deaths of nine young children were found to have been attributable to disposable cigarette lighters.

While there are no data on the actual number of fires caused by disposable cigarette lighters, Insurance Statistics Australia Limited (ISA) has provided an estimate of the cost of fire claims under domestic buildings and contents policies in Australia. Data from the Federal Insurance and Superannuation Commissioner for the calendar year 1995 shows that all insurers in Australia (public and private sector combined) received a total of about 940 000 householder and homeowner insurance claims with a cost of \$1 028 million during that year.

Data from the sixteen members of ISA who contributed data to their domestic insurance syndicate in 1995 showed that about 4 per cent of claim numbers and 20% of claim cost was attributable to fire claims. Those member companies represent about 50 per cent of the total Australian market for householder insurance, so ISA would

expect their experience to be a reasonable indicator of the overall experience of all insurers.

Combining this information suggests that there were about 38 000 fire damage claims made against insurers in Australia in 1995, with an insurance payout of around \$210 million. The total cost of fire to the community would exceed this figure, because some homes would be under insured or not insured and some claimants would meet part of the cost in the form of deductibles.

A copy of the advice from ISA is at Attachment H.

OTHER REQUIREMENTS

Consultation

A forum on child-resistant lighters was held in Sydney in July 1996. Representatives of the Australian lighter industry, retailers, distributors, consumer and community groups, fire authorities, the Coronial Service and Federal and State Governments attended. A strong case was made for the introduction of child resistant lighters, with only industry representatives arguing against the proposal (a report on the forum is attached to the discussion paper at Attachment D).

The industry representatives claimed that the United States standard had not resulted in a significant reduction in the number of lighter related deaths and also provided comments from the US Lighter Association Inc. These comments included a statement that during the first year of the US child resistance rule, child-play deaths associated with cigarette lighters rose from 170 to 230. What the document did not mention was that the US banned the **import** of child resistant lighters, but not the **sale** of them. As distributors and retailers typically obtain 12-18 months of stock, non child-resistant lighters were freely available in the US marketplace for the whole of that year.

The industry representatives also claimed that Australia should delay taking action until the first evaluation of the effect of the US standard is available in late 1997. However Ministers decided that such a delay was not acceptable in view of the recent loss of lives.

Officers from the Federal Bureau of Consumer Affairs and the adviser to the Minister for Small Business and Consumer Affairs met with representatives of the lighter industry on 9 October 1996 to discuss the proposed standard (Bryant & May, Tokai Australia Pty Ltd, Bic Australia Pty Ltd, Rothmans, The Alexander Group).

The FBCA also held discussions with the National Injury Surveillance System (NISU) and the Victorian Injury Surveillance System (VISU).

Discussions were held with state and territory authorities through the Consumer Products Advisory Committee (CPAC), the Standing Committee of Officials on Consumer Affairs (SCOCA) and the Ministerial Council on Consumer Affairs (MCCA).

Consultations about the introduction of the standard were also held with the Australian Competition and Consumer Commission (ACCC) and the Australian Customs Service. Importers/distributors and consumer and community groups were all given the opportunity to comment on the draft regulations, and their comments were taken into account.

Administrative simplicity, economy and flexibility

The regulations will be enforced by the Australian Competition and Consumer Commission (ACCC) who have advised FBCA that the regulations are enforceable in their present form. There will also be import controls under the *Customs (Prohibited Imports) Regulations*.

Explanatory material

The following explanatory material is attached to the Regulation Impact Statement:

- Attachment A: Evidence of deaths and injuries caused by disposable cigarette lighters.
- Attachment B: Victorian injury surveillance system study on smoking related injuries.
- Attachment C: National Injury Surveillance Unit-report on injury associated with cigarette lighters, November 1994.

- Attachment D: Discussion paper considered by the Ministerial Council on Consumer Affairs, including:
- Annexure A: Report on the forum on disposable lighters; and
- Annexure B: Press release by the Hon Faye Lo Po' MP, NSW Minister for FairTrading, and
- Annexure C: Report on the ability of young children to use cigarette lighters and matches.
- Attachment E: Press release by the Hon Geoff Prosser, MP, Minister for Small Business & Consumer Affairs.
- Attachment F: Draft Trade Practices (Consumer product safety standard) (disposable cigarette lighters) regulations.
- Attachment G: Victorian record of Coronial investigation into death.
- Attachment H: Advice from Insurance Statistics Australia Ltd.

REVIEW

Mandatory standards are usually based on standards developed by Standards Australia, but such standards normally take at least two years to develop. Because of the need for urgent action the proposed standard is based on the international standard and calls up the child resistant requirements of the US Standard.

It is also proposed to develop an Australian standard through the Standards Australia process. A number of jurisdictions consider that the flame heights specified in the international standard are unnecessarily high. Under Australia's international trade agreements justification is needed for any standard which is set at a higher level than the relevant international standard. Such justification may be provided by the technical committee formed to draft the Australian standard.

The Ministerial Council on Consumer Affairs plans to review the standard in light of the evaluation of the operation of the US Standard which is expected to be in late 1997.