

MIND THAT CHILD

A Critical Analysis of Child Safety Legislation in Australia

Quentin Bryce

Quentin Bryce, B.A., LL.B.,
Barrister-at-Law, lecturer in Law
at University of Queensland, and
National President of the
Association for the Welfare of
Children in Hospital.

Every year, but particularly in this International Year of the Child, many words have been spoken about children — their needs, their health and their happiness; and of the responsibility all must assume of seeing to it that young lives are nurtured.

The purpose of this paper is to examine an issue which pertains to the very survival of the child — safety legislation.

This year in Australia about a million children will be hurt and some thousands will die as a result of accident. What can be done to stop this epidemic? Does the law have a role to play?

It is generally agreed by childhood accident prevention experts that the problem must be confronted by a cross disciplinary approach involving three central areas; first, research and co-ordination thereof; secondly, education programmes and thirdly, legislation.

Cohen¹ explains the role of legislation thus: "A number of areas can be defined in which repetitive hazards can be identified and in which it is simplest and most effective to control such hazards by legislation . . . The legislation must be selective and intelligent".

It is submitted that an overview of child safety laws in this country reveals an haphazard response to the need, indeed the right of the child, to protection from the evergrowing dangers of his environment.

As Berfenstam² pointed out "Preventive measures and safety regulations were left behind the development of technology". He provided examples. "Road Safety regulations lagged behind the explosion in motor traffic. Medicines and toxic substances were easily available long before equipment for safe storage of poisons was developed and introduced. Technical equipment in the home was introduced before adequate

regulations came into force". "Such", he said, "was the situation in many industrialized countries".

It certainly has been and still is the situation in this country. The best known example of the past relates to lead poisoning which was first described in two classic papers by Turner and Gibson in 1892 and 1897.

Legislative measures to protect children were slow, e.g. it was not until 1939 that the Queensland Parliament prohibited toys made with lead. As the Secretary for Health and Home Affairs in debate stated "the Act prohibits the sale of toys that are painted with lead or arsenic or other poisonous paint but there is no restriction on the sale of articles made with lead".

As Gandevia³ relates Turner was disillusioned by politicians, administrators, and vested interests, in the course of a long and difficult campaign to control the use of lead in paints. He attributed the eventual success in controlling the disease not so much to legislative action, as to "the education of the public and the discovery by the painting trade that non-poisonous paints on surfaces exposed to weathering age just as well".

The best known examples of the present relate to pool fencing and seat belt legislation. Attempts to reduce accidental drowning in domestic swimming pools by fencing legislation has had limited success⁴. The single purpose of such legislation is to save children's lives yet many children are denied protection. Stated reasons vary from "the hardship which implementation may cause to the owners of existing or proposed swimming pools having due regard to the safety factors involved"⁵ to "it would be grossly irresponsible for the Government to apply compulsion unless the measures chosen were practical and universally effective. That position has certainly not been reached anywhere in the world"⁶.

Studies in Brisbane, Canberra and South Australia have indicated beyond doubt that safety legislation for water hazards is effective⁷.

An examination of compulsory seat belt laws throughout the Commonwealth reveals a similar lack of co-ordination. Four states, Victoria, New South Wales, Western Australia and Tasmania⁸ have legislation for the compulsory restraint of children less than eight travelling in cars. A survey of this legislation and of the studies on the effect of such legislation makes it apparent that much has to be done to increase the level of protection of children to that of adults. The fact of the matter is that in most cases young children run more risk of death or serious injury when they travel unrestrained in a motor vehicle than they do from what are generally considered the worst day to day hazards for the young child, e.g. poisoning, scalding, burning, electrocution, being run over in the street.

It is a serious matter that the Queensland Government has made it clear that it is not following the recommendation of the Australian Transport Advisory Council to introduce compulsory seat belt legislation for children. The latest reason given is that the Queensland Road Safety Council is relying on a publicity campaign to persuade parents to use restraints approved by the Safety Standards Association. It is worthy of note that a recent N.S.W. survey showed that 56% of parents interviewed hadn't seen the Safety Standards Association symbol before.

The Transport Minister said that legislation would be considered only if the education campaign failed to achieve its anticipated approach.

As far as **product safety** is concerned two distinct categories arise for children —

1. those products manufactured specially for children, e.g. their toys, their clothes, car seats;



2. those products not manufactured for children but which are directly or indirectly part of their environment.

In the first category some protection is afforded the child by legislation of varying approaches in all states and the Commonwealth, e.g. toys may be withdrawn from sale by operation of consumer protection provisions, i.e. The Consumer Affairs Acts and the Trade Practices Act. It would appear that toys are not banned until damage has been done. Thus the move announced in February this year, by the Minister for Business and Consumer Affairs, of the Commonwealth Government's special programme for improving the safety of products affecting the welfare and safety of children, as an element of the Government's support for the objectives of IYC, is a salutary one. The Minister announced that unsafe products would be banned from sale, under the Trade Practices Act. Furthermore action is to be taken to declare a number of possible mandatory consumer product safety, and information standards, for a range of child related products.

The Commonwealth State Con-

sumer Products Advisory Committee has been directed to provide reports on the safety requirements of certain products — toys, prams, recreational safety helmets, folding portable cots, carrycots and stands, children's footwear, sunglasses, children's swimming aids, children's playground equipment, flammability of children's daywear, baby pacifiers, pedal bicycles, reflectors for pedal bicycles.

One looks forward to a valuable outcome for children.

An interesting development in the state sphere is the Trade Standards Act of South Australia whereby s.22 provides that "no person shall in the course of a trade or business manufacture or supply any goods that do not comply with any applicable safety standard". S.24 declares that "no person shall in the course of a trade or business manufacture or supply any dangerous goods". Both offences carry a penalty of \$10,000. Prima facie they could be used in the interests of child safety.

In Queensland it appears that the machinery provided by ss.37, 38 of the Consumer Affairs Act is not so

used. The relevant provision of the Health Act s.110 prohibition of sale of injurious articles is seldom used to this purpose. The procedure preferred by the Department is to seek the voluntary co-operation of the manufacturers in withdrawing the dangerous toy from the market. Such approach does have the advantage of speed which may well be of the essence, over the clumsy s.110 procedure. Whatever the legislative provisions in our states, it is necessary that parents, and all those caring for children have knowledge of the steps necessary to have dangerous toys withdrawn from sale as quickly as possible. It is my experience that this is not the case at present.

Much is to be said of uniform action throughout Australia which can be achieved through the Trade Practices Act in nearly all cases⁹ and IYC has had an impact.

Last year prohibitions on the sale and importation of children's hazardous nightwear were gazetted, and some months later Commonwealth requirements for the labelling of children's night clothes for fire hazard were introduced.

In November 1978 an Australia wide safety standard for child restraining devices for use in motor vehicles was declared under s.63 AA Trade Practices Act. It is a serious matter that there is not yet a bassinet restraint system currently available in Australia which meets the requirements of the Australian standard.

Poison Safety Legislation

Various measures have been taken to prevent accidental poisoning in children. The Commonwealth Minister for Health has stated that experience overseas has shown that the only truly effective measure against childhood poisoning involving medicinal products is the use of child resistant packaging. There are two main categories of such packaging. Reclosable containers normally

consist of a bottle with a special closure which requires an appropriate sequence of manipulations to open it. The non-reclosable type includes appropriate strip or blister packs. Under the **Commonwealth Therapeutic Goods Act** certain groups of drugs which are the common causes of accidental poisoning must be so packaged. Comparable legislative measures have been taken by the states. State health legislation controlling the sale and use of poisons and dangerous drugs provides for the labelling and packaging requirements for such substances to be set by regulation¹⁰. Although current regulations are not uniform among the states, generally, they require poisons to be packed in secure containers which if of a capacity of 2 litres or less, must exhibit a ribbed or starred surface so as to enable identification by sight or touch¹¹. In some states the statement "Keep out of reach of children" is required. In the case of certain specified substances special warnings and specified first-aid treatment instructions must also be included¹².

The sale of firearms (including pea rifles and airguns) and explosives¹³ to children is restricted by law. In some states children can purchase fireworks for 15 days before the Queen's birthday weekend, in other states there are restrictions on the variety and maximum contents sold; e.g. roman candles, fountains and sparklers are available, while bungers and rockets are barred from sale!

It is beyond the scope of this paper to refer to every piece of child safety legislation in Australia today. However, it is pertinent to make passing reference to provisions of the criminal law relating to children whereby it is an offence to cause deliberate or negligent physical harm to children. Mandatory reporting of child abuse is being adopted by the states. The first purpose of such law is the identification of the

child in peril. Thus it may be classified as child safety legislation.

Physical safety of children in child care centres is covered by regulations of finest detail. A reading of such provisions causes one to come to the conclusion that a child is safer in a child care centre than she is in her own home, e.g. hazards such as electricity fittings, plastic bags, sharp edges must not by law be accessible to children.

It is the writer's view that child safety legislation in this country is piecemeal, unplanned, uncoordinated and so obscure as to be unknowable. In sum it is inadequate.

Why? Because our laws reflect our attitudes towards children;¹⁴ attitudes which consider children to be the property of their parents and therefore the exclusive responsibility of their parents. Thus it is the parents responsibility to beware of dangers to their children and prevent them. It follows from such thinking that if harm results parents have no one to blame but themselves. All too often that is exactly what they do.

Such attitudes stem from the ideal of the self-sufficient man. As Keniston¹⁵ describes well this myth of self-sufficiency, "Families are not now, nor were they ever the self-sufficient building blocks of society, exclusively responsible, praiseworthy and blamable for their own destiny. They are deeply influenced by broad social and economic forces over which they have little control . . . we live in a society where parents must increasingly rely on others for help and support in raising their children".

Legislation has a significant role to fulfil.

The protection of the child from his environment which is planned for the adult by the adult deserves a far higher priority in our legal system than it now gets.

REFERENCES

1. Bulletin of the Postgraduate Committee in Medicine, University of Sydney. Dec. 1977.
2. Paper presented to the Commonwealth I.Y.C. Conference, Canberra. "Survival of Childhood — Experiences in Sweden in childhood accident prevention during the last twenty-five years". Ragnar Berfenstam Uppsala.
3. "Tears Often Shed" — Child Health and Welfare in Australia from 1788. Sydney 1978 at p.99.
4. Victoria and Tasmania have no pool-safety legislation; only 5 shires in Queensland have fencing requirements (Albert 1974, Atherton, Moreton, Belyando 1977, Gympie 1978); some N.S.W. shires have used s.288C of the Local Government Act 1919 to require fencing. Only S.A. (Swimming Pools (Safety) Act 1972 S.6) and W.A. (Uniform Private Swimming Pool By-laws 1970 enacted by the Governor in Council) have uniform state wide fencing codes.
5. The Minister for Local Government and Main Roads in reply to a question 15th September 1977 in Queensland Parliament.
6. The Minister for Local Government (Vic.) in reply to a representation by a member of the Legislative Council.
7. e.g.
 - (i) Pearn J.H. & Thompson J. 1977 "Drowning and near drowning in the A.C.T.: a total 5 year population study of immersion accidents". Med. J. Aust. Vol. 1 130-133.
 - (ii) Pearn J.H. & Nixon J. 1977 "Prevention of childhood drowning accidents". Med. J. Aust. Vol. 1 p.616-618.
 - (iii) Vunpani G.V. Vunpani A.F. Pearn J. & Nixon J. "Preschool Drowning — Has recent legislation been effective". ANZSEARCH & APHA Scientific Meeting Perth, 1979.
8. Vict. Motor Car Act 1958 (1975 Am) 531 (ac) (children under 8 years in front seat must be restrained by device approved by the SAA) — similar provision in Tasmania. N.S.W. Motor Traffic Regns. No. 110G inserted 1977 (children under 8 years in any seating position must be restrained; if over 12 months, conventional seat belt OK). W.A. — Traffic Act S.1018 (compulsory seat belt wearing reduced to 5 years; any seating position).
9. The Trade Practices Act would not cover home manufacturers selling within the state.
10. Health Act 1937 (Qld.) s.15; Poisons Act 1966 (N.S.W.) s.17; Poisons Act 1962 (Vic.) s.63; Poisons Act 1964 (W.A.) s.46; Poisons Act 1971 (Tas.) s.59.
11. Poisons Regulations 1973 (Qld.) r. VI.02; Poisons Regulations 1966 (N.S.W.) r.9; Poisons Regulations 1963 (Vic.) r.21; Poisons Regulations 1965 (W.A.) r.19; Poisons Regulations 1975 (Tas.) r.46.
12. N.S.W. — r.14; Tas. — r.50; W.A. — r.26; Vic. — r.14; Qld. — r.83.
13. Victoria: Firearms Act 1958 S.29(1); Explosives Act 1960 S.43. S.A.: Explosives Act 1936 S.48, S.51 (xxiii); Firearms Act 1958 S.6, S.7. N.S.W.: Firearms & Dangerous Weapons Act 1973 S.7(5), S.22(4), S.48, S.67. N.T.: Spear-Guns Control Ordinance 1964 S.4(3) (a). Tas.: Firearms Act 1932. S.5(4) (c). A.C.T.: Gun Licence Ordinance 1937 S.19; Fireworks Ordinance 1972 (No. 31). W.A.: Explosives & Dangerous Goods Act 1961 S.30 (3); Firearms Act 1973 S.10, S.23; Spear Guns Control Act 1955 S.4. Qld.: Explosives Act 1952 S.33; Firearms Act 1927 S.3(1), S.5(1), S.14A, S.15, S.15A.
14. Nan Berger develops this argument in "Children's Rights".
15. All Our Children. New York 1977.