

australian
consumer law

Consumer product safety

A GUIDE FOR BUSINESSES AND LEGAL PRACTITIONERS

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Introduction

About this guide



What do the consumer product safety laws cover?

The consumer product safety laws apply to consumer goods and services.

These are defined in the glossary on the website, but in simple terms:

Consumer goods are things:

- intended for personal, domestic or household use or consumption; or
- likely to be used for personal, domestic or household use or consumption.

Consumer services are services for or relating to:


- installation of consumer goods
- maintenance, repair or cleaning of consumer goods
- assembly of consumer goods; or
- delivery of consumer goods.

Any person who, in trade or commerce, supplies consumer goods or product-related services is responsible for complying with ACL consumer product safety requirements.

This means all suppliers in the supply chain (including manufacturers, wholesalers, hirers and retailers) must keep up-to-date with the law and comply with any standards or bans.

Suppliers can subscribe for email updates about Australia's list of mandatory safety standards and bans. To subscribe, go to the Product Safety Australia website <https://www.productsafety.gov.au>, click on 'subscribe to email alerts' and enter your details.

All suppliers in the supply chain must keep up-to-date with the law.



use is defined in the glossary on page 10. In simple terms, it covers the predictable ways a consumer good might be used—including using it the wrong way (misuse).

Bans on consumer goods or

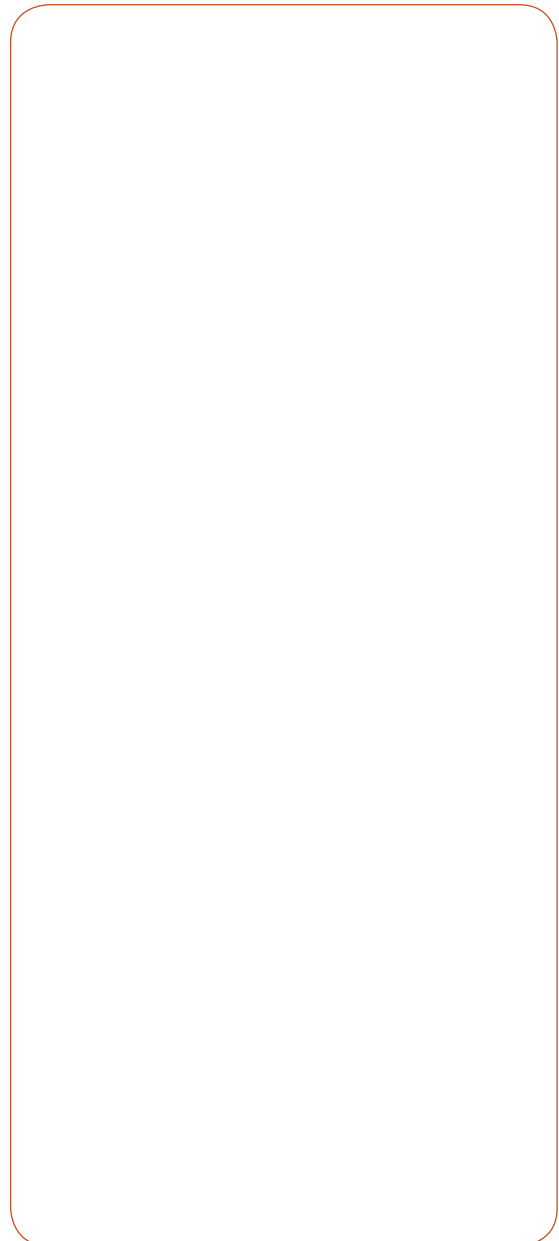




Mandatory safety standards

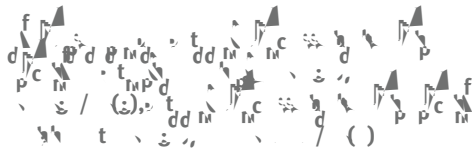
The Commonwealth minister can impose mandatory safety standards that set specific requirements for consumer goods or product-related services.

It is an offence to supply consumers .4 (su)-1.3 (28o)-11.9 (o)-9.5 (d)-1.9 (s o)-e



CASE STUDY

An import and wholesale company that directly imports goods for sale to retail outlets for the Australian marketplace was issued with a number of warning letters and infringement notices regarding children's toys that had breached safety standards in October 2017. Some of the products had also been permanently banned from sale. The products included children's toys containing magnets, projectile toys and children's plastic products containing more than 1% DEHP. A spot check was undertaken on the company in July 2018 and a number of non-compliant goods were identified, seized and removed from sale. The company was fined \$100,000, and a conviction was recorded. The Director of the company was also fined \$10,000, and directed to pay court and product testing costs.



Australian ministers can also regulate goods or services by imposing information standards. These can require that certain information is provided about a good or service—for example, washing instructions for clothing.

Suppliers must comply with information standard requirements. For more about information standards, see another guide in this series *Avoiding unfair business practices: a guide for businesses and legal practitioners*, available from



How to comply

A supplier must not supply or offer to supply goods or services that do not comply with a mandatory safety standard.

If a standard applies to consumer goods, and the goods do not meet that standard, a supplier also must not in or for the purposes of trade or commerce:

- manufacture
- possess; or
- have control of those goods.

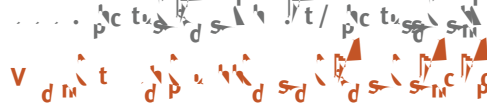
Special rules may apply if the consumer goods are intended for export. Businesses that intend to export consumer goods that fail to meet a mandatory safety standard should seek legal advice.

It is the supplier's responsibility to ensure consumer goods comply with relevant mandatory safety standards.

A supplier should obtain a copy of:

- the specific safety standards that apply, from the Product Safety Australia website <https://www.productsafety.gov.au>
- any documents the standard refers to—for example, an Australian Standard. Australian Standards are available from the SAI Global website <https://www.sai-global.com>

Product testing can help assure suppliers that they are supplying safe goods or services. See the Guide to Product Testing, available from the Product Safety Australia website <https://www.productsafety.gov.au>



When there are two or more sets of requirements for a product, some mandatory safety standards allow suppliers to choose one to comply with.

EXAMPLE

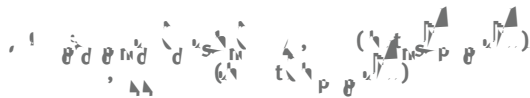
Suppliers can choose one of several variations to the standard for child restraints. A supplier must

Recall of consumer goods

A recall can be initiated by a supplier or ordered by a minister. Most Australian recalls are initiated by suppliers.

When a supplier initiates a recall, they are required by law to notify the Commonwealth minister via the Recalls Australia website (www.recalls.gov.au) within two days of taking action to recall the consumer goods. Supplier initiated recalls are referred to as 'voluntary recalls'.

Any responsible minister can also order a recall when a product poses a safety risk and the supplier has not taken satisfactory action to recall the goods voluntarily. Recalls by a responsible minister are 'compulsory recalls'.



When should a supplier recall consumer goods?

Suppliers should recall consumer goods they have supplied if they realise the goods:

- will or may injure someone, or using the goods in a reasonably foreseeable way (including misuse) will or may injure someone
- do not comply with a safety standard; or
- are the subject of an interim or permanent ban.

For detailed information about the recall process, Consumer Product Safety Recall Guidelines are available from the Product Safety Recalls Australia website (www.recalls.gov.au).

Who should a supplier notify about a recall of consumer goods?

A supplier must give the Commonwealth minister a written notice by completing the 'Submit recall notification' form on the Product Safety Recalls Australia website (www.recalls.gov.au) within two days after taking action to recall the consumer goods.

The information required will depend on the reasons for the recall. For instance, for a recall due to:

- a defect or dangerous characteristic, the notice must describe the defect or dangerous characteristic
- dangers posed by using the goods in a reasonably foreseeable way (e.g. -TF) ()Tj EMC 2 (t)pf (I) smag5cti(h)-1.2 (e g)-15.8 A gcc, -3.2

When can a minister order a compulsory recall?

A Commonwealth, state or territory minister responsible for administering the ACL can issue a compulsory recall notice when they consider that the consumer goods:

- will or may injure someone, or using them in a reasonably foreseeable way will or may injure someone
- do not comply with a safety standard; or
- are the subject of an interim or permanent ban.

The minister can only issue a compulsory recall notice if it appears a supplier has not taken satisfactory action to prevent the consumer goods injuring someone.

The Commonwealth minister must notify suppliers in writing of a proposed recall (a proposed recall notice). This must be published on the internet.

Unless there is an imminent danger to the public, the minister must also give suppliers an opportunity to request a conference with the ACCC before publishing the notice.

When the Commonwealth minister recalls consumer goods already recalled by a state or territory minister, the state or territory recall ceases as soon as the Commonwealth minister's recall comes into force.

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What can a compulsory recall notice require a supplier to do?

Using a compulsory recall notice, a responsible minister can require suppliers to:

- recall the consumer goods
- disclose to the public, or to a particular group of people, that the consumer goods have a defect or dangerous characteristic, and what the defect or dangerous characteristic is
- disclose to the public, or to a particular group of people, the circumstances when a reasonably foreseeable use or misuse of the goods is dangerous
- explain to the public, or to a particular group of people, how to dispose of the goods.

The notice can also include:

- how the supplier must take action
- deadlines for doing so.

If a minister issues a compulsory recall notice, suppliers must:

If a minister issues a compulsory recall notice, suppliers must:

- give notice to anyone outside of Australia that they have supplied with the consumer goods stating the consumer goods are subject to recall and provide the reasons why
- give a copy of this notice to the relevant minister within days of its issue.

A compulsory recall notice will also require suppliers of consumer goods to:

- replace the goods
- repair the goods, unless recalled due to a dangerous characteristic; or
- refund the purchase price. The notice can specify a reduced refund for goods supplied more than months before issue of the recall notice.

The supplier must pay any cost of repair or replacement, including transportation costs.

If a supplier is required to destroy goods that have been returned, the supplier should keep a record of the goods before destroying them.

When a supplier cannot be found

When a supplier cannot be found

When a supplier cannot be found, a minister can require the relevant regulator to recall the goods.

Penalties—recalls ordered by a minister

A supplier who does not comply with a compulsory recall notice may be found guilty of a criminal offence. The maximum fine is \$, for an individual or \$. million for a body corporate.

A supplier who does not notify a person outside Australia of a recall may also be found guilty of a criminal offence. The maximum fine is \$, for an individual or \$, for a body corporate.

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Civil penalties of the same amounts are also available.

When consumer goods or product-related services may have caused death, serious injury or illness

Suppliers must notify the Commonwealth minister within two days of becoming aware that a person suffered serious injury, illness or death associated with a consumer good or product-related service they supplied—either in Australia or overseas.

This applies even if the consumer goods or product-related services were misused.

To notify the minister, suppliers should complete the online mandatory reporting form on the Product Safety Australia website

Failing to comply is an offence.

When must a supplier notify the Commonwealth minister?

Suppliers must notify the Commonwealth minister when they become aware a consumer good or product-related service they supplied has caused, or may have caused:

- death
- serious injury; or
- serious illness.

A serious injury or illness is an acute physical injury or illness requiring treatment by, or under the supervision of, a qualified doctor or nurse. The medical or surgical treatment can be provided in a hospital or clinic, or in a similar place such as a regional or rural clinic.

Suppliers must notify the minister within two days of becoming aware of the incident, regardless of whether the goods were used before or at the time of the incident.

For goods, suppliers must identify the goods and include all they know about:

- when, and in what quantities the goods were manufactured or supplied in, imported to; or exported from Australia
- the circumstances of the death, serious injury or illness
- the nature of the serious injury or illness
- any action the supplier has taken, or intends to take, in relation to the goods.

For services, suppliers must identify the services and the related consumer goods, and include all they know about:

- when the services were supplied
- the circumstances of the death, serious injury or illness
- the nature of the serious injury or illness
- any action that the supplier has taken, or intends to take, in relation to the services.

This reporting requirement:

- applies when the supplier or another person—for instance, the affected consumer—considers the death, serious injury or illness was caused, or may have been caused, by use or foreseeable misuse of the consumer goods
- does not apply if it is clear that the death, serious injury or illness was not caused, or was very unlikely to have been caused, by the use or foreseeable misuse of the consumer goods
- does not apply when the supplier has to report the death, serious injury or illness under another law or an industry code of practice specified in the ACL Regulations. This includes the following Acts and their associated Regulations:

- Agricultural and Veterinary Chemicals Act 1994
- National Health Security Act 2007
- Therapeutic Goods Act 1989

- Coroners Act 2009
- Public Health Act 1991
- Road Transport (Safety and Traffic Management) Act 1999

- Coroners Act 2008
- Public Health and Wellbeing Act 2008
- Road Safety Act 1986

- Coroners Act 2003
- Motor Accident Insurance Act 1984
- Public Health Act 2005
- Transport Operations (Road Use Management—Road Rules) Regulation

- Coroners Act 1996
- Food Regulations 2009
- Health Act 1911
- Road Traffic Act 1974

- Coroners Act 2003
- Road Traffic Act 1961

- Coroners Act 1995
- Public Health Act 1997
- Traffic Act 1925

- Coroners Act 1997
- Road Transport (Safety and Traffic Management) Act 1999

- Coroners Act
- Notifiable Disease Act
- Traffic Act

For more detail on mandatory reporting, see the Guide to the mandatory reporting law in relation to consumer goods, or product-related services, associated with death or serious injury or illness. The guide and a video on meeting mandatory reporting requirements are available from the Product Safety Australia website.

How is the information treated?

Information provided when notifying a minister is confidential and cannot be disclosed unless the

Product liability

Consumers who suffer loss or damage because of safety defects in a manufacturer's goods can:

- make a complaint to a regulator; and
- take the manufacturer to court. A court can award compensation to cover these losses



When can a consumer seek compensation?

A consumer can seek compensation from a manufacturer who has supplied goods having a safety defect, if the goods caused loss or damage.

A manufacturer is a person or business that:

- makes, grows or puts goods together
- has their name on the goods; or
- imports the goods, if the maker of the goods does not have a place of business in Australia.

'Loss' and 'damage' can include:

- injuries to the person making the claim, or to another individual
- economic loss caused by damage to, or destruction of another good, land, a building or a fixture.

The court will consider the safety of the goods by looking at all relevant circumstances, including:

- marketing of the goods
- the warnings and instructions for use
- what may reasonably be expected to be done with the goods
- the time when they were supplied.

If a person takes a manufacturer to court and wins, the court decides how much compensation is due.

A consumer must take action within three years of becoming aware, or from when they should have become aware, of all of the following:

- the alleged loss or damage
- the safety defect of the goods
- the identity of the person who manufactured the goods.

They must also claim within 3 years of when the goods were originally supplied.

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Legal defences for suppliers and manufacturers

Legal defences available for suppliers and manufacturers include:

- the safety defect did not exist at the time the goods were supplied
- the state of scientific and technical knowledge at the time of supply did not enable the supplier or manufacturer to discover the defect
- the good was part of another good, and the defect only arose because of the design, markings, instruction or packaging of that other good
- the defect only existed because a mandatory standard was complied with. In this case, the Commonwealth may have to pay any compensation.

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A consumer can seek compensation from a manufacturer who has supplied defective goods, if the goods caused loss or damage.

Glossary and abbreviations

TERM	DEFINITION
body corporate	includes a company registered under the Corporations Act 2001(Cth), an incorporated association, a co-operative or an owners corporation.
consumer	<p>a person who buys:</p> <ul style="list-style-type: none">• any type of goods or services costing up to \$, (or any other amount stated in the ACL Regulations)• goods or services costing more than \$, , which would normally be for personal, domestic or household use; or• goods which consist of a vehicle or trailer used mainly to transport goods on public roads. <p>Australian courts have said that the following are not normally used for personal, domestic or household purposes:</p> <ul style="list-style-type: none">• an air seeder—Jillawarra Grazing Co v John Shearer Ltd [FCA]• a large tractor—Atkinson v Hastings Deering (Queensland) Pty Ltd [] FCR• an industrial photocopier—Four Square Stores (QLD) Ltd v ABE Copiers [] ATPR – at , .
consumer goods	goods intended, or likely, to be used for personal, domestic or household use or consumption.
liability	an obligation to put right a problem—for example, fixing a defective product, providing compensation or taking other action.
manufacturer	includes a person who: <ul style="list-style-type: none">•

TERM	DEFINITION
reasonably foreseeable use	<p>includes using consumer goods for their primary, normal or intended purpose, using the goods for an unintended purpose, or misusing the goods.</p> <p>This reminds suppliers that they need to take into account the way a consumer good might be used—rather than just whether it is free from defects—when considering their responsibilities to consumers.</p>
regulator	the Australian Competition and Consumer Commission or state/territory consumer protection agencies.
responsible minister	



Contacts

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Australian
Consumer
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www.act.gov.au/accessCBR

New South
Wales
Fair Trading

PO Box
Parramatta NSW
T.
www.fairtrading.nsw.gov.au

North
Territory
Consumer
Affairs

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Casuarina NT
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