

# Consumer product safety

A GUIDE FOR BUSINESSES AND LEGAL PRACTITIONERS

This guide was developed by:

- Access Canberra, Australian Capital Territory
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Consumer Affairs Victoria
- Consumer and Business Services South Australia
- Consumer, Building and Occupational Services, Tasmania
- New South Wales Fair Trading
- Northern Territory Consumer Affairs
- Queensland Office of Fair Trading
- Western Australia Department of Commerce, Consumer Protection

#### **Copyright**

© Commonwealth of Australia 2016

**March 2016**

#### **Ownership of intellectual property rights in this publication**

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

#### **Creative Commons licence**

With the exception of the Australian Consumer Law logo, photographs and images, this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence.



Creative Commons Attribution 3.0 Australia Licence is a standard form license agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. A summary of the licence terms is available from [www.creativecommons.org/licenses/by/3.0/au/deed.en](http://www.creativecommons.org/licenses/by/3.0/au/deed.en). The full licence terms are available from [www.creativecommons.org/licenses/by/3.0/au/legalcode](http://www.creativecommons.org/licenses/by/3.0/au/legalcode)

The Commonwealth's preference is that you attribute this publication (and any material sourced from it) using the following wording: *Source: Licensed from the Commonwealth of Australia under a Creative Commons Attribution 3.0 Australia Licence. The Commonwealth of Australia does not necessarily endorse the content of this publication.*

Inquiries regarding this licence and any other use of this document are welcome at:

Manager  
Communications  
The Treasury  
Langton Crescent Parkes ACT 2600  
Email: [medialiaison@treasury.gov.au](mailto:medialiaison@treasury.gov.au)

# Contents

<b>Introduction</b>	<b>5</b>
About this guide . . . . .	5
About the other guides . . . . .	5
About the Australian Consumer Law . . . . .	5
<b>National consumer product safety laws</b>	<b>6</b>
<b>What do the consumer product safety laws cover?</b>	<b>7</b>
<b>Safety warning notices</b>	<b>8</b>
What a safety warning notice includes . . . . .	8
Publishing investigation outcomes . . . . .	9
<b>Bans on consumer goods or product-related services</b>	<b>10</b>
What does a ban do? . . . . .	10
When can a minister impose a ban?. . . . .	10
Information about bans . . . . .	11
How to comply . . . . .	11
Penalties . . . . .	11
<b>Mandatory safety standards</b>	<b>12</b>
Applying mandatory safety standards. . . . .	12
How to comply . . . . .	13
Penalties . . . . .	13
<b>Recall of consumer goods</b>	<b>14</b>
When should a supplier recall consumer goods? . . . . .	14
Who should a supplier notify about a recall of consumer goods? . . . . .	14
Penalties—supplier-initiated recalls . . . . .	14
When can a minister order a compulsory recall? . . . . .	15
What can a compulsory recall notice require a supplier to do? . . . . .	15
When a supplier cannot be found. . . . .	15
Penalties—recalls ordered by a minister. . . . .	15
<b>When consumer goods or product-related services may have caused death, serious injury or illness</b>	<b>16</b>
When must a supplier notify the Commonwealth minister? . . . . .	16
How is the information treated? . . . . .	17
Penalties . . . . .	17
<b>Product liability</b>	<b>18</b>
When can a consumer seek compensation? . . . . .	18
Legal defences for suppliers and manufacturers . . . . .	19
<b>Glossary and abbreviations</b>	<b>20</b>
<b>Contacts</b>	<b>22</b>



# Introduction

## About this guide

This is one of six guides to the Australian Consumer Law (ACL) developed by Australia's consumer protection agencies to help businesses understand their responsibilities under the law.

This guide will help businesses and legal practitioners understand the consumer product safety requirements of the ACL.

It covers safety standards, recalls, bans, safety warning notices and mandatory reporting requirements.

These guides:

- explain the law in simple language but are no substitute for the legislation
- give general information and examples—not legal advice or a definitive list of situations where the law applies
- include examples of the ACL's application by Australian Consumer Protection regulators and by Australian courts.

## About the other guides

Other guides in this series cover:

- **Consumer guarantees**  
Covers supplier, manufacturer and importer responsibilities when there is a problem with goods and services; refunds, replacements, repairs and other remedies.
- **Sales practices**  
Covers unsolicited supplies, unsolicited consumer agreements (door-to-door and telemarketing), lay-by agreements, pricing, proof of transaction and itemised bills, referral selling, pyramid schemes, harassment and coercion.
- **Avoiding unfair business practices**  
Covers misleading or deceptive conduct, unconscionable conduct, country of origin, false and misleading representations.

- **Unfair contract terms**  
Covers what an unfair term is and which contracts are affected by the law.
- **Compliance and enforcement**  
Covers how regulators enforce the ACL.

Further information and copies of these and other publications are available from the Australian Consumer Law website [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

## About the Australian Consumer Law

The ACL aims to protect consumers and ensure fair trading in Australia.

The ACL came into force on 1 January 2011 and replaced the *Trade Practices Act 1974* and previous Commonwealth, state and territory consumer protection legislation. It is contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (CCA) and is applied as a law of each state and territory by state or territory legislation.

Under the ACL, consumers have the same protections, and businesses have the same obligations and responsibilities, across Australia.

Australian courts and tribunals (including those of the states and territories) can enforce the ACL.

The regulators of the ACL are:

- the Australian Competition and Consumer Commission (ACCC), in respect of conduct engaged in by corporations, and conduct involving the use of postal, telephonic and internet services; and
- state and territory consumer protection agencies, in respect of conduct engaged in by persons carrying on a business in, or connected with, the respective state or territory.

Some of the consumer protection provisions in the ACL are mirrored in the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) in relation to financial products and services. The Australian Securities and Investments Commission (ASIC) is responsible for administering and enforcing the ASIC Act.

# National consumer product safety laws

The ACL includes national consumer product safety laws. It sets out the responsibilities of the Commonwealth, state and territory ministers and suppliers.

Under the ACL, Australian ministers can regulate unsafe consumer goods and product-related services by:

- issuing safety warning notices
- banning products, either on an interim or permanent basis
- imposing mandatory safety standards; and
- issuing compulsory recall notices.

The ACL also outlines the responsibilities of suppliers, including:

- what to do when a minister bans a product, issues a compulsory recall or imposes a safety standard
- when and how to voluntarily recall consumer goods
- when to report an incident associated with consumer goods or product-related services to the Commonwealth minister; and
- when manufacturers may be liable for loss or damage caused by a consumer good with a safety defect. A ‘manufacturer’ is not just the company that made the goods—see **Glossary and abbreviations on page 20**.

The ACL also allows Australian governments to regulate consumer goods or product-related services by imposing information standards. These standards require that certain information is provided about a good or service.

Please note that the ACCC is responsible for product safety in the Northern Territory.

In addition to this guide, information to help suppliers with these responsibilities is also available from:

- **[www.recalls.gov.au](http://www.recalls.gov.au)**  
—when and how to recall consumer goods
- **[www.productsafety.gov.au](http://www.productsafety.gov.au)**  
—including mandatory reporting guidelines.

# What do the consumer product safety laws cover?

The consumer product safety laws apply to **consumer goods and product-related services**.

These are defined in the glossary on **page 20**, 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.

**Product-related 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 **[www.productsafety.gov.au](http://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.

# Safety warning notices

A safety warning notice is a formal warning issued by a Commonwealth, state or territory minister responsible for administering the ACL. It informs consumers and suppliers about consumer goods or product-related services that may cause injury and/or are under investigation.

When a warning notice is published, suppliers do not have to stop supplying that good or service. However, they should stay informed about its status.

A safety warning notice should not be confused with an information standard, which may require a supplier to give advice about safe use, or a safety warning, on a product.

**ACL reference: sections 129–130**

## What a safety warning notice includes

A safety warning notice:

- states that the goods or services are being investigated to determine whether the goods, used in a ‘reasonably foreseeable’ way, may injure someone either directly, or as a result of the supply of related services; and/or
- warns of possible risks in using the goods or services.

---

### EXAMPLE

A dishwasher (a ‘consumer good’) may have been reported to have a defect that results in an electrical problem occurring when it is installed. The safety warning notice would advise of an investigation into that type of dishwasher, and warn consumers, electricians and plumbers of the risks of installing that particular model.

---



**Reasonably foreseeable** use is defined in the glossary on **page 20**. In simple terms, it covers the predictable ways a consumer good might be used—including using it the wrong way (misuse).

Suppliers do not have to respond to a safety warning notice. However, they must comply with any bans or recalls resulting from any investigation announced in the safety warning notice, so suppliers should stay informed. The Product Safety Australia website **www.productsafety.gov.au** has updates on investigations and further developments.

A Commonwealth, state or territory minister responsible for administering the ACL (a ‘responsible minister’) can publish a safety warning notice online about consumer goods or product-related services.

## Publishing investigation outcomes

If the safety warning notice announced an investigation, the minister must publish the outcome online as soon as possible.

This outcome can include proposed action—for instance, plans to impose a ban, a standard or a mandatory recall.

A state or territory minister does not have to announce results if the Commonwealth minister has already published a notice either:

- proposing a ban or mandatory recall of the good or service and giving suppliers the opportunity to call a conference with the ACCC; or
- imposing an interim ban or mandatory recall. An interim ban is one imposed without delay if the Commonwealth minister considers the goods create an imminent risk of death, serious illness or serious injury.

# A safety warning notice is a formal alert to consumers and suppliers...

# Bans on consumer goods or product-related services

Bans can be placed on consumer goods or product-related services in certain circumstances.

There are two types of bans:

- **An interim ban**—imposed by any responsible minister, which lasts for 60 days and can be extended twice for up to another 30 days each time (up to another 60 days in total).
- **A permanent ban**—imposed only by the Commonwealth minister.

Failing to comply with a ban is an offence.

**ACL reference: sections 109–119**

## What does a ban do?

A ban on a consumer good makes it unlawful for anyone, in or for the purposes of trade or commerce, to:

- supply it
- offer to supply it
- manufacture it
- possess it
- have control of it.

Special rules apply to consumer goods intended for export only. Businesses that intend to export consumer goods subject to a ban should seek legal advice.

A ban on a product-related service makes it unlawful for anyone, in trade or commerce, to supply or offer to supply that service.

## CASE STUDY

In 2012, the ACCC and state and territory regulators became aware of small, high-powered magnets found in various products such as desk toys, games, puzzles, modelling kits and jewellery. If a child swallows more than one of these magnets, the magnets can stick together across the walls of the intestine or other digestive tissue. Ingestion of these magnets can lead to tissue death, perforation or fistula formation and even the death of the child.

A number of state and territory ministers imposed interim bans on the supply of these products. The Commonwealth minister subsequently took action to permanently ban the supply of these goods in Australia.

## When can a minister impose a ban?

Relevant Commonwealth, state and territory ministers can impose interim bans on consumer goods or product-related services in certain circumstances.

All ministers can impose an interim ban if they consider:

- the goods may injure someone, including as a result of the supply of product-related services
- using or misusing goods, including those related to a service, in a ‘reasonably foreseeable’ way may injure someone; or
- another minister has imposed a similar ban, which is still in force.

Interim bans last for 60 days and can be extended by the minister twice for up to another 30 days each (60 days in total).

**ACL reference: sections 109–111**

## Commonwealth minister

The Commonwealth minister responsible for administering the ACL can impose permanent bans, as well as interim bans. A permanent ban does not have an expiry date.

Any ban imposed by the Commonwealth minister applies throughout Australia.

If the Commonwealth minister proposes to introduce any sort of ban (interim or permanent), the minister must notify suppliers (a ban notice). The proposed ban notice must, among other things, be in writing and 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 imposing the ban.

**CCA reference: sections 132, 132J**

To learn about proposed bans:

- subscribe to receive automatic updates from the Product Safety Australia website [www.productsafety.gov.au](http://www.productsafety.gov.au)
- keep in touch with your industry association
- follow consumer product safety updates on social media via [www.twitter.com/ACCCProdSafety](https://www.twitter.com/ACCCProdSafety) and [www.facebook.com/ACCCProductSafety](https://www.facebook.com/ACCCProductSafety)

## State and territory ministers

State and territory ministers can only impose interim bans that apply in their state or territory.

There is no requirement to notify suppliers or give them an opportunity to call a conference before imposing an interim ban. Suppliers are responsible for staying informed about their legal obligations.

## Commonwealth ban following a state or territory ban

A state or territory ban on consumer goods or product-related services ceases immediately before a Commonwealth minister's ban on the same goods or services comes into force.

## Information about bans

All bans are listed on the Product Safety Australia website [www.productsafety.gov.au/bans](http://www.productsafety.gov.au/bans)

## How to comply

A supplier must not supply or offer to supply a banned consumer good or product-related service.

When the ban applies to consumer goods, a supplier also must not, for the purposes of trade or commerce:

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

If a supplier realises they have supplied consumer goods in breach of a ban, they should recall the goods—see **Recall of consumer goods on page 14**.

It is the supplier's responsibility to ensure that consumer goods and product-related services are not subject to any bans. This means that all suppliers should be aware of current bans and understand how to comply with them. For more information, visit the 'bans' section of the Product Safety Australia website [www.productsafety.gov.au/bans](http://www.productsafety.gov.au/bans)

Product testing can help assure suppliers that they are supplying safe goods or services. A publication titled *Guide to Product Testing* and a video titled *The why & how of product testing* are available on the Product Safety Australia website [www.productsafety.gov.au/producttesting](http://www.productsafety.gov.au/producttesting)

Special rules apply in relation to goods supplied for export only. Businesses that supply consumer goods for export only should seek legal advice when those goods are subject to a ban.

## Penalties

A supplier who fails to comply with a ban may be found guilty of a criminal offence.

The maximum fine is \$220,000 for an individual or \$1.1 million for a body corporate. Civil penalties for the same amounts also apply.

A court does not have to consider whether or not the person intended to comply with their obligations in order to find them guilty.

**ACL reference: sections 197, 198, 224**

# 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 consumer goods or product-related services that do not comply with mandatory safety standards.

**ACL reference: sections 104–108, 194–196**

## Applying mandatory safety standards

A mandatory safety standard for a consumer good can set requirements including:

- the way the good is made
- what it contains
- how it is designed
- what tests it needs to pass; and/or
- whether any warnings or instructions need to accompany the good.

---

### EXAMPLE

A number of children in Australia have died after becoming entangled in the cords used to open and close curtains and blinds. These cords are not inherently dangerous but, when not properly secured, can present a strangulation hazard to young children. A mandatory safety standard for curtains and window blinds requires:

- the goods and their packaging to have warnings clearly displayed on them to increase awareness of the dangers
  - the goods to be accompanied by instructions, specifying how they should be installed to avoid a strangulation hazard
  - any components mentioned in the instructions as necessary for cord safety to be included in the package.
- 

A mandatory safety standard for a product-related service can specify:

- how the services are supplied
- the skills or qualifications of a person supplying the service
- the materials used in supplying the service; and/or
- the tests the services must pass.

### CASE STUDY

A routine compliance check was undertaken at a maternity and children's retailer. Three products supplied failed to comply with a relevant mandatory safety standard:

- » two latex soothers failed to comply with a standard requiring the packaging carry a warning regarding the strangulation hazard associated with the product.
- » a cot failed to comply with a standard requiring that the top surface of the mattress base provide information about the manufacturer, importer or distributor, the recommended mattress size, a warning notice about the mattresses thickness, a warning notice regarding adjustable bases and the month and year of manufacture
- » a stroller failed to comply with a standard requiring a warning notice to be permanently and conspicuously marked in a prominent position in characters no less than 2.5mm high.

The retailer agreed to provide the regulator with an undertaking to demonstrate its commitment to compliance with its obligations under the ACL. The regulator worked collaboratively with the retailer to establish and implement a national consumer product safety standards compliance program to ensure future compliance nationally.

## 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 2011. 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 2012 and a number of non-compliant goods were identified, seized and removed from sale. The company was fined \$60,000 and a conviction was recorded. The Director of the company was also fined \$15,000 and directed to pay court and product testing costs.

**Legal reference:** Queensland Office of Fair Trading v Sunrise Imports [2013] MAG-218235/12(3), Queensland Office of Fair Trading v Xibo Zhu [2013] MAG-211484/12(8)

## Information standards

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 [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

**ACL reference:** sections 134–135

## 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 [www.productsafety.gov.au/mandatorystandards](http://www.productsafety.gov.au/mandatorystandards)
- any documents the standard refers to—for example, an Australian Standard. Australian Standards are available from the SAI Global website [www.saiglobal.com](http://www.saiglobal.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 [www.productsafety.gov.au/producttesting](http://www.productsafety.gov.au/producttesting)

## When suppliers choose the safety standard

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 be able to identify which variation of the child restraint standard they are complying with, if asked by a regulator.

It is a criminal offence for a supplier to fail to nominate a standard if required to do so by a regulator.

## Penalties

A supplier may be found guilty of a criminal offence if they fail to:

- comply with a mandatory safety standard. The maximum fine is \$220,000 for an individual or \$1.1 million for a body corporate
- nominate a standard if required to do so by a regulator. The maximum fine is \$4,400 for an individual or \$22,000 for a body corporate.

A court does not have to consider whether or not a person intended to comply with their obligations in order to find them guilty of these offences.

**ACL reference:** sections 194–196

Civil penalties for the same amounts also apply in relation to failure to comply with a mandatory standard.

**ACL reference:** section 224

# 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](http://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'.

**ACL reference: sections 128, 201 (voluntary recall); 122–127, 199–200 (compulsory recall)**

## 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](http://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](http://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, the notice must set out the use or misuse that poses the danger
- a failure to comply with a safety standard in force, the notice must state how the goods do not comply
- an interim or permanent ban, the notice must state that the goods are subject to an interim or permanent ban.

A supplier must also give a notice about the recall to anyone they have supplied the goods to outside of Australia, as soon as practicable. The supplier must also give a copy of this notice to the Commonwealth minister within 10 days of issue.

For assistance, contact the ACCC's Infocentre on 1300 302 502.

## Penalties—supplier-initiated recalls

A supplier who fails to notify the minister as outlined above may be found guilty of a criminal offence.

The maximum fine is \$3,330 for an individual or \$16,650 for a body corporate (ACL reference: section 201). Civil penalties for the same amounts also apply.

**ACL reference: section 224**

A court does not have to consider whether or not a person intended to comply with their obligations in order to find them guilty of this offence.

## 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.

**CCA reference: section 132A**

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.

**ACL reference: section 126**

## 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.

**ACL reference: section 123**

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 10 days of its issue.

**ACL reference: section 125**

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 12 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.

**ACL reference: section 124**

## 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 \$220,000 for an individual or \$1.1 million for a body corporate.

**ACL reference: section 199**

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 \$3,330 for an individual or \$16,650 for a body corporate.

**ACL reference: section 200**

A court does not have to consider whether a person intended not to comply with their obligations before finding them guilty of these offences.

Civil penalties of the same amounts are also available.

**ACL reference: section 224**



# 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

**[www.productsafety.gov.au/mandatoryreporting](http://www.productsafety.gov.au/mandatoryreporting)**

Failing to comply is an offence.

**ACL reference: sections 131–132A, 202**

## 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 consumer 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 product-related 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:



### **Commonwealth**

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

### **New South Wales**

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

### **Victoria**

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

### **Queensland**

- *Coroners Act 2003*
- *Motor Accident Insurance Act 1984*
- *Public Health Act 2005*
- Transport Operations (Road Use Management—Road Rules) Regulation 2009

### **Western Australia**

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

### **South Australia**

- *Coroners Act 2003*
- *Road Traffic Act 1961*

### **Tasmania**

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

### **Australian Capital territory**

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

### **Northern Territory**

- *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

[www.productsafety.gov.au/mandatoryreporting](http://www.productsafety.gov.au/mandatoryreporting)

## **How is the information treated?**

Information provided when notifying a minister is confidential and cannot be disclosed unless the person giving the information consents. The only exceptions are when the:

- Commonwealth minister shares the information with another minister or the appropriate regulator(s)
- employees of the regulator share the information with the employees of other regulators in the performance of their duties
- Commonwealth minister makes the disclosure in the public interest; or
- disclosure is required or authorised under law, or is necessary (within reason) to enforce criminal law or a law imposing a financial penalty.

A supplier does not admit liability by notifying the minister.

## **Penalties**

A supplier who fails to notify the Commonwealth minister within 48 hours of becoming aware of the incident may be found guilty of a criminal offence.

The maximum fine is \$3,330 for an individual or \$16,650 for a body corporate.

### **ACL reference: section 202**

A court does not have to consider whether or not a person intended not to comply with their obligations in order to find them guilty.

Civil penalties of the same amounts also apply.

### **ACL reference: section 224**

# 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

**ACL reference: Part 3–5**

## 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 10 years of when the goods were originally supplied.

**ACL reference: section 143**

## 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.

**ACL reference: section 142**

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 <i>Corporations Act 2001</i> (Cth), an incorporated association, a co-operative or an owners corporation.
consumer	<p>a person who buys:</p> <ul style="list-style-type: none"> <li>any type of goods or services costing up to \$40,000 (or any other amount stated in the ACL Regulations)</li> <li>goods or services costing more than \$40,000, which would normally be for personal, domestic or household use; or</li> <li>goods which consist of a vehicle or trailer used mainly to transport goods on public roads.</li> </ul> <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"> <li>an air seeder—<i>Jillawarra Grazing Co v John Shearer Ltd</i> [1984] FCA 30</li> <li>a large tractor—<i>Atkinson v Hastings Deering (Queensland) Pty Ltd</i> [1985] 6 FCR 331</li> <li>an industrial photocopier—<i>Four Square Stores (QLD) Ltd v ABE Copiers</i> [1981] ATPR 40-232 at 43,115.</li> </ul>
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	<p>includes a person who:</p> <ul style="list-style-type: none"> <li>grows, extracts, produces, processes or assembles goods</li> <li>holds him/herself out to the public as the manufacturer of goods</li> <li>causes or permits his/her name, business name or brand mark to be applied to goods he/she supplies</li> <li>permits him/herself to be held out as the manufacturer by another person; or</li> <li>imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia.</li> </ul>
product-related services	<p>means a service for or relating to:</p> <ul style="list-style-type: none"> <li>the installation</li> <li>the maintenance, repair or cleaning</li> <li>the assembly</li> <li>the delivery</li> </ul> <p>of consumer goods of a particular kind.</p> <p>Without limiting any of the above, the definition also includes any other service that relates to the supply of consumer goods of that kind.</p>

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	the Commonwealth, state or territory minister responsible for administering the Australian Consumer Law.
serious injury or illness	<p>an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place).</p> <p>It does not include:</p> <ul style="list-style-type: none"> <li>• an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or</li> <li>• the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.</li> </ul>
services	<p>include duties, work, facilities, rights or benefits provided in the course of business, for example:</p> <ul style="list-style-type: none"> <li>• dry cleaning</li> <li>• installing or repairing consumer goods</li> <li>• providing swimming lessons</li> <li>• lawyers’ services.</li> </ul>
supplier	someone who, in trade or commerce, sells goods or services and is commonly referred to as a ‘trader’, ‘retailer’ or ‘service provider’.
supply	<p>includes:</p> <ul style="list-style-type: none"> <li>• in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase</li> <li>• in relation to services—provide, grant or confer.</li> </ul>

### Abbreviations

<b>ACCC</b>	Australian Competition and Consumer Commission
<b>ACL</b>	Australian Consumer Law
<b>CCA</b>	<i>Competition and Consumer Act 2010</i> (Cth)
<b>MAG</b>	Magistrate Court

# Contacts



Australian  
Competition &  
Consumer  
Commission

## Australian Competition and Consumer Commission

GPO Box 3131  
Canberra ACT 2601  
T. 1300 302 502  
[www.accc.gov.au](http://www.accc.gov.au)



Access  
Canberra.

## Australian Capital Territory Access Canberra

GPO Box 158  
Canberra ACT 2601  
T. 13 22 81  
[www.act.gov.au/accessCBR](http://www.act.gov.au/accessCBR)



Fair  
Trading

## New South Wales NSW Fair Trading

PO Box 972  
Parramatta NSW 2124  
T. 13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

NORTHERN TERRITORY



## Northern Territory Northern Territory Consumer Affairs

PO Box 40946  
Casuarina NT 0811  
T. 1800 019 319  
[www.consumeraffairs.nt.gov.au](http://www.consumeraffairs.nt.gov.au)  
**Please note that the ACCC is responsible for product safety in the Northern Territory.**



Queensland  
Government

## Queensland Office of Fair Trading

GPO Box 3111  
Brisbane QLD 4001  
T. 13 QGOV (13 74 68)  
[www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading)



**Government  
of South Australia**

Attorney-General's  
Department

## **South Australia** **Consumer and Business Services**

GPO Box 1719  
Adelaide SA 5001  
T. 131 882  
[www.cbs.sa.gov.au](http://www.cbs.sa.gov.au)



**Tasmanian  
Government**

## **Tasmania** **Consumer Building and Occupational Services**

PO Box 56  
Rosny Park TAS 7018  
T. 1300 654 499  
[www.consumer.tas.gov.au](http://www.consumer.tas.gov.au)



## **Victoria** **Consumer Affairs Victoria**

GPO Box 123  
Melbourne 3001  
T. 1300 55 81 81  
[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)



Government of **Western Australia**  
Department of **Commerce**  
**Consumer Protection**

## **Western Australia** **Department of Commerce**

Locked Bag 14  
Cloisters Square WA 6850  
T. 1300 30 40 54  
[www.commerce.wa.gov.au](http://www.commerce.wa.gov.au)



**ASIC**

Australian Securities & Investments Commission

## **Australian Securities and Investments Commission**

PO Box 9827 (in your capital city)  
T. 1300 300 630  
[www.asic.gov.au](http://www.asic.gov.au)

