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Product Safety and the Australian Consumer Law

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Australian Competition & Consumer Commission

ACCC ACL Product Safety Webinar
12 November 2010



Overview

- Australian Consumer Law (ACL) reforms
- Single national law, based on the existing provisions of the TPA
- New national product safety regime
 - Substantiation, infringement and public warning notices
 - New remedies
 - Mandatory reporting
- Commonwealth to have sole responsibility for making safety standards and permanent bans (which will apply nationally)
- Commonwealth, States and Territories to have the power to make interim safety bans (60 days unless extended for up to another 60 days)
- Joint (national) enforcement of safety bans, standards and mandatory recalls



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When will the ACL commence?

1 January 2011



How does the ACL impact on Product Safety?

The ACL contains provisions that provide a national regulatory regime for the supply of safe **consumer goods** and **product related services**



What are the Product Safety provisions under the ACL:

- Interim and Permanent bans
- Making and declaring of product safety standards
- Recall of consumer goods (mandatory and voluntary)
- Publishing of safety warning notices by a Minister
- Mandatory Reporting

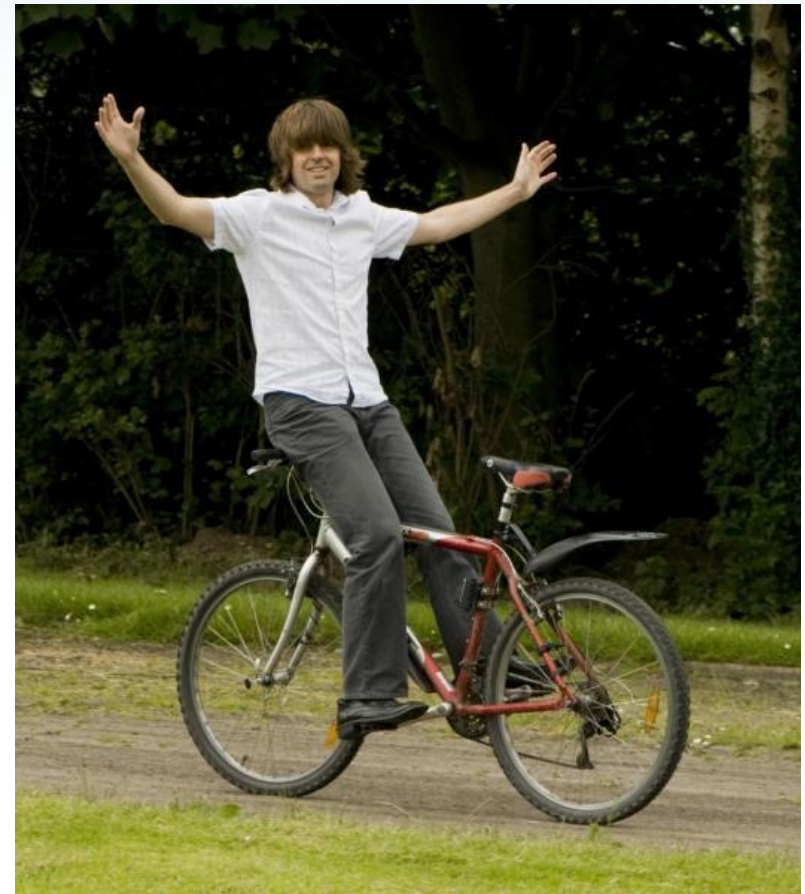


How does this law affect suppliers?

Any person, who, in trade or commerce supplies consumer goods or product related services is responsible for ensuring they comply with all relevant requirements.

Reasonably Foreseeable Use

- The manner in which products are used appears to be a more substantive causal factor in accidents compared to product defects.



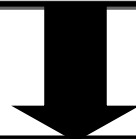
Safety Bans





Who can impose a ban?

Only **Commonwealth Minister**
can impose **PERMANENT** safety bans
Australia-wide
on
Consumer goods
Product related services



State and Territory Ministers
Can only impose **INTERIM** safety bans
60 days → 120 days





What are the reporting responsibilities for bans?

Ministers imposing bans must publish on the internet

COMMONWEALTH
Federal register of
Legislative Instruments

<http://www.frli.gov.au>

NOTIFY SUPPLIERS
(If no imminent risk
to public)

Call Conference with ACCC

STATES/TERRITORY

(tba)

**No requirement
to
notify suppliers**

Some banned products under the harmonised system



Candles with lead wicks



Projectile toys



Flashing imitation dummies



Smokeless tobacco



Gas masks with asbestos breathing device



Spa/swimming pool skimmer boxes



Glucomannan in tablet form



Tinted headlight covers



Mini jelly cups containing conjac



Yo-yo water balls



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Mandatory Safety Standards





Mandatory Standards

Goods

- Way they are made
- What they contain
- How they work
- What tests they need to pass
- Is there a need for warnings to be displayed

Product Related Services

- How are the services supplied
- Supplier skills or qualifications required
- Materials used
- What tests must be passed

Some mandatory standards under the harmonised system



Motor vehicle recovery straps



Corded internal window coverings



Moveable soccer goals



Children's toys containing magnets



Vehicle jacks



Lead and other elements in toys and finger paints



Flotation and aquatic toys



Hot water bottles



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Goods Recalls

<http://www.recalls.gov.au>



Home - Windows Internet Explorer provided by ACCC

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites SnagIt

Address <http://www.recalls.gov.au/content/index.phtml/itemId/952401> Go Links SnagIt

Skip to content

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Product Safety Recalls Australia

Welcome

This site contains information about Australian product safety recalls.

Recall categories

- [Agricultural & veterinary](#)
- [Beauty, health](#)
- [Cars, boats, bikes](#)
- [Fashion & clothing](#)
- [Food & groceries](#)
- [Hobbies, sporting, recreation](#)
- [Home & garden](#)
- [IT, phones, multimedia](#)
- [Industrial, business](#)
- [Kids](#)

Hot topics

 **Action on Maclaren Strollers**

On 10 November 2009 Maclaren distributor CNP Brands announced that it was offering free elbow joint cover kits for a range of Maclaren strollers currently on the Australian market. This follows similar action taken by Maclaren USA.

 **Children's nightwear**

The ACCC warns parents and carers to check the brand and labelling on children's pyjamas and nighties after Big W recalled 27 styles incorrectly labelled as low fire danger.

 **New features on the Product Safety Recalls Australia website**

Welcome to the new Product Safety Recalls Australia website. We hope you will enjoy the site's new features including: email subscriptions, RSS feeds, and online recalls notification.

[more hot topics](#)

Frequently asked questions

- [Who is responsible for product recalls in Australia?](#)
- [Where did the information on this website come from?](#)
- [Who must be told about recalls?](#)

[more FAQs](#)

Site features

- [Submit a recall](#)
- [Advanced search](#)
- [Subscribe to email alerts & RSS](#)
- [FAQs](#)
- [Hot topics](#)
- [Recalls - last 30 days](#)

[Login](#)

Most recent recalls

- [Wah Lien Trading Pty Ltd—Shui Kou Preserved Bean Curd \(Chilli\)](#)
- [Honda—VT750C motorcycles—Positive Battery Cable](#)
- [Citroën—C5 \(X7\) Vehicles—Engine running poorly](#)
- [Citroën—C5 \(X7\) Vehicles—Steering wheel mounted controls](#)
- [Citroën—C5 \(X7\) Vehicles—Windscreen side trim](#)

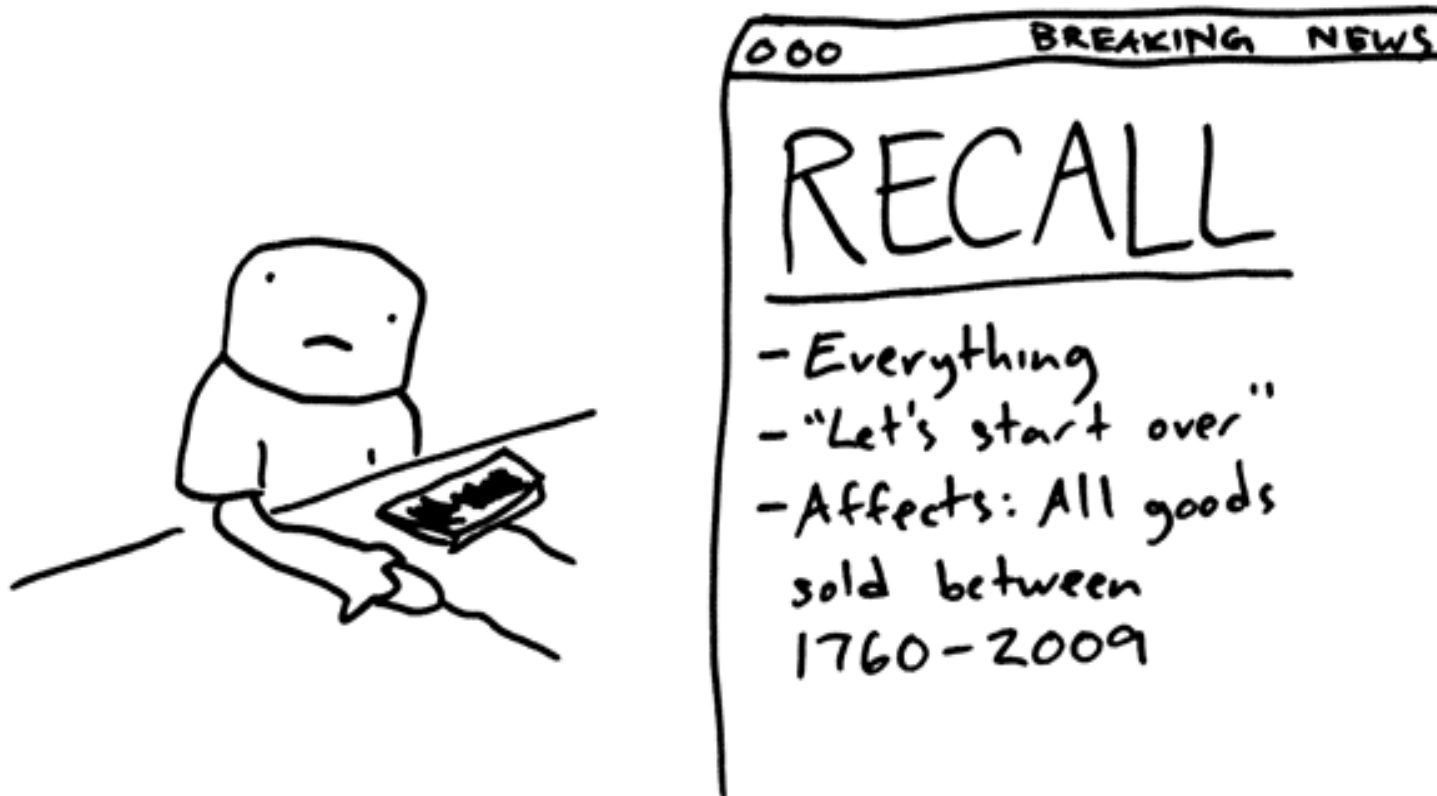
[Recalls - last 30 days](#)

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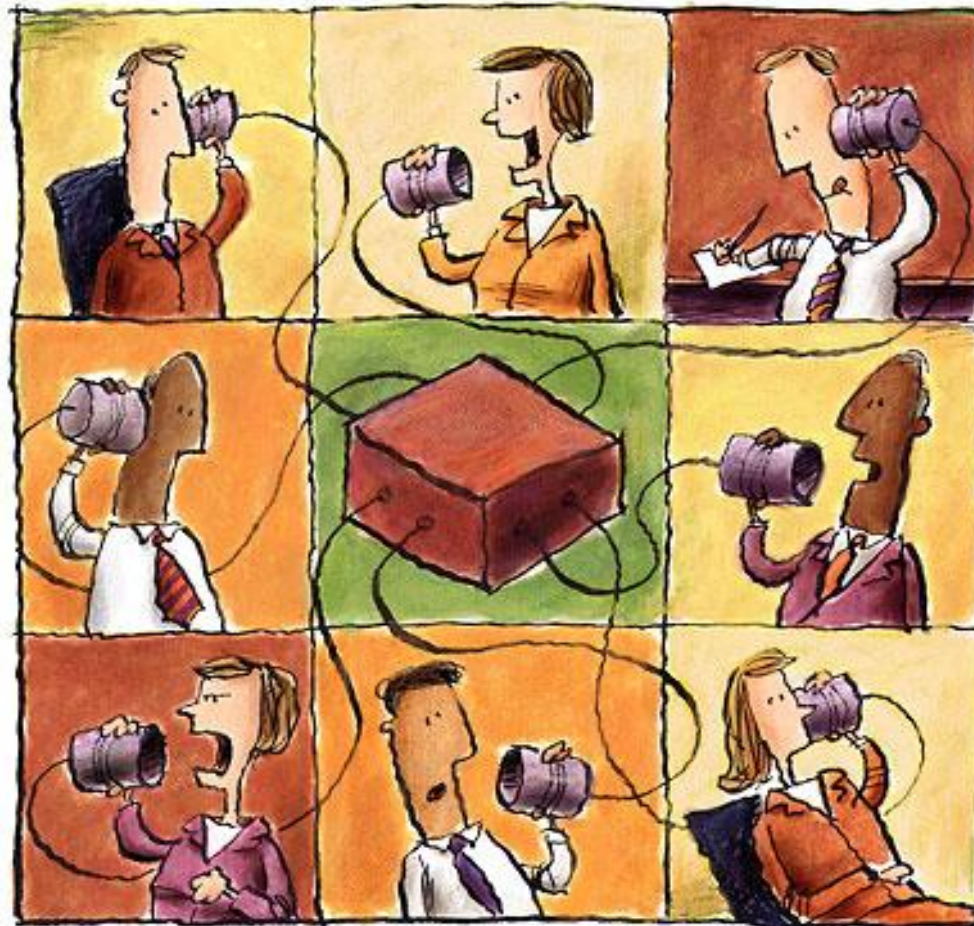
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Internet

Notification



Communication





Recall Notice

Minimum Requirements

The recall notice should:

- be a minimum size of 12 cms x 3 columns
- use the red hatched boarder with the red safety triangle in the upper left hand corner – this is an internationally recognised safety symbol
- use the headline 'Product Safety Recall' in red and 16 point font
- use 10 point, Sans serif typeface in the body with bold section headings as above
- include the words 'See www.recalls.gov.au for Australian product recall information' at the base of the notice in bold 14 point font
- include a photograph of the product

The image shows a template for a Product Safety Recall notice. It features a red hatched border and a red safety triangle in the upper left corner. The text is as follows:

Product Safety Recall

Drawing or Photograph of product

Product Description - a clear description of the product, including the name, make and model and any distinguishing features, batch or serial numbers. Include dates the product was available for sale.

Defect - describe the defect in basic terms that can be easily understood by consumers

Hazard - describe the hazard and associated risk

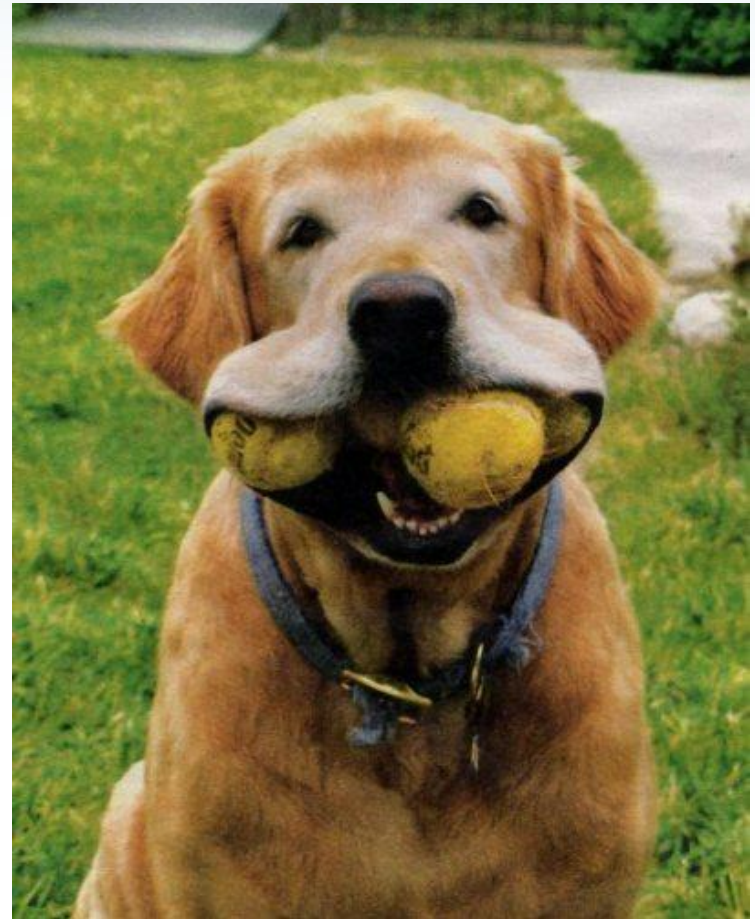
What to do - what immediate action consumers should take (eg. cease use immediately and return to the place of purchase for a full refund).

Contact Details - who consumers should contact to receive a refund or have the product repaired or replaced. Business and after hours telephone numbers for further information, preferably toll free.

See www.recalls.gov.au for
Australian Product Recall Information

Retrieving the product

- Marking products for ease of identification
- Systems to track products through the supply chain
- Tracing the product into the hands of consumers.





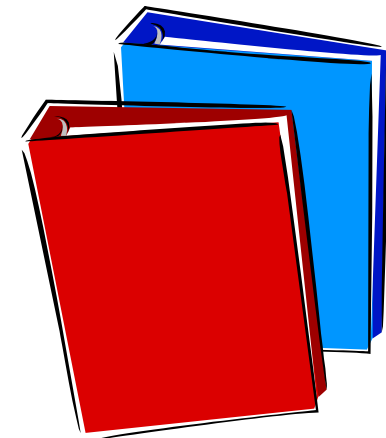
Closure





Mandatory reporting of incidents where good/product related service may have caused:

- **Death**
- **Serious injury**
- **Illness**





When is a supplier required to report?

- **When supplier or another person (eg affected consumer) considers that death/serious injury or illness was/may have been caused by use/foreseeable misuse of consumer goods or product related service**

**Supplier must report to
COMMONWEALTH MINISTER
within
2 days of becoming aware of the
incident**





What is a serious injury or illness?

- **Serious injury or illness is defined to mean an acute physical injury or illness requiring medical or surgical 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 where in the circumstances hospitalisation may not be possible.**





When does a supplier 'become aware'?

- A supplier will 'become aware' of a death or serious injury upon receiving information from any source.
 - direct notification by a consumer, through a complaint or simply through information the consumer provides in a letter or through anecdote
 - direct notification by a non-government organisation, for example, an industry or consumer organisation
 - direct notification by a supplier, for example, an international headquarters
 - through information associated with a recall or other measure being initiated by a different organisation
 - direct notification by a re-supplier, repairer, or insurer of the consumer goods
 - receipt of reports from experts, test reports, scientific or other relevant information.



What to report

The mandatory reporting laws prescribe certain information that is to be included in the written notice.

- Identify the consumer goods; or the product related services and the consumer goods to which the services relate; and
- The following details, to the extent that they are known by the supplier at the time of reporting:
 - when and in what quantities the consumer goods were manufactured, supplied in Australia or imported into Australia or exported from Australia;
 - when the product related services were supplied (where relevant);
 - the circumstances surrounding how the death, serious injury or illness in question occurred;
 - the nature of any serious injury or illness suffered;
 - any action the supplier has taken or intends to take in relation to the consumer goods and/or the services.



How to report

- An electronic mandatory reporting notification form will be made available via the Product Safety Australia website



When is a supplier not required to report?

- **DOES NOT APPLY** if the supplier/other person is reporting under another law or an injury code of practice that is specified in the regulations.
- The laws currently specified were the subject of a recent consultation process managed by the Commonwealth Treasury.

How is this information treated?



Notice is treated as confidential and cannot be disclosed without consent of supplier/other person

EXCEPT

The Commonwealth Minister:

- **Discloses to another Minister or regulator**
- **Considers it is in the public interest**

The disclosure is:

- **Made by staff of regulator in performance of duty**
- **Is required by law**



What if the supplier fails to notify the Commonwealth Minister?

**Failure to notify
Commonwealth Minister within
2 days
incurs a fine:
Individual – max \$3,330
Corporation – max \$16,650**



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**Some
tips
on
how
to
comply**





How to comply with the new regime

- Be aware of any safety requirements relating to products you supply, or are considering supplying
- Have a compliance program in place
- Where relevant, conduct product testing
- Implement internal processes to ensure that if you become aware that a product you supply has caused, or may have caused, death, serious injury or illness, you are able to notify the ACCC within two days



Where to go for more information

- Product Safety Australia website (www.productsafety.gov.au)
- Recalls Australia website (www.recalls.gov.au)
- Follow us on Twitter: @ProductSafetyAU

Welcome to Product Safety Australia

This website is for everyone who buys and uses consumer products and for businesses that make, import and sell them. By working together we can all help minimise injuries, illness and death related to unsafe goods. The ACCC administers this site on behalf of all state and territory consumer product safety regulators.

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Product Safety Recalls Australia

Advanced recall search

Welcome
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Recall categories	Hot topics	Frequently asked questions
<ul style="list-style-type: none">Agricultural & veterinaryBeauty, healthCars, boats, bikesElectricalFashion & clothingFood & groceriesGasHobbies, sporting, recreationHome & gardenIT, phones, multimediaIndustrial, business	<ul style="list-style-type: none">FREE Seminar & Webinar: Product Safety & Your Business in 2011 Australian Competition and Consumer Commission is inviting Australian businesses to hear first-hand what the new Australian Consumer Law (ACL) will mean for them in terms of meeting their legal obligations and developing better quality management practices.National Recall of Wicked Fizz Sour Head Lickers Sweetman's Wicked Fizz Sour Head Lickers have been recalled nationally after reports of an 8 year-old child in Queensland choking on the confectionery.Mattel recalls over 86,500 Fisher-Price toys and high chairs in	<ul style="list-style-type: none">What does a closed recall mean?Do I still have rights to a remedy if a recall has been closed?Who is responsible for product recalls in Australia?Who must be told about recalls?Where did the information on this website come from?

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