



Australian
Competition &
Consumer
Commission

A guide for business

Consumer product safety online

March 2014



This Australian Competition and Consumer Commission (ACCC) report is for Australian and overseas-based businesses that supply, or intend to supply, products to Australian consumers via the internet. It tells you steps you can take to address product safety issues and foster better outcomes for consumers.

www.accc.gov.au

Key points

The ACCC wants to help businesses build confidence in e-commerce so that Australian consumers experience the same safety protections and outcomes when shopping online as they do when shopping with traditional, 'bricks and mortar' retailers.

1. All businesses supplying products to Australian consumers, including online businesses, must comply with the Australian Consumer Law (ACL) which covers:
 - Australia's product safety laws—bans and mandatory safety standards, product recalls, mandatory reporting of product-related illness, injury or death
 - other consumer protection laws—including consumer guarantees, laws against misleading or deceptive conduct and false or misleading claims.
2. Online shoppers cannot physically examine the products your business sells. To inspire confidence you need to show and tell your customers all features and information required by Australian safety laws. The ACCC is concerned about the following online business practices that impact on consumer safety and confidence:
 - supply of banned and/or non-compliant products
 - use of poor product labelling, such as:
 - lack of age-grading on products for children
 - inadequate product descriptions
 - low-quality product images on websites
 - a lack of ingredients lists on websites, particularly in sales of cosmetics and toiletries.
3. It is wise to embed effective safety compliance measures into your online business model. Getting safety right from the start can avoid the costs of:
 - fixing your business system after something's gone wrong
 - recalling unsafe products
 - providing redress to consumers
 - damaging your reputation.

Find out about product safety bans, standards and recalls

As an online business supplying goods to Australian consumers, regardless of where you are located it is your responsibility to understand Australian regulations and safety issues that affect your products.

For a full list of product bans and mandatory safety standards ('safety standards') in place in Australia, visit our Product Safety Australia website:

[Bans](#)

[Safety standards](#)

[Recalls](#)

Product safety compliance makes good business sense

For all online businesses supplying products to Australian consumers, compliance with Australian product safety requirements is not just good business—it's the law.

Most products available to Australian consumers are safe because most businesses take active steps to create a compliance culture and to build safety measures into their business models and everyday dealings with manufacturers, suppliers and consumers.

But when safety issues arise, they can have a major impact on consumers and businesses.

Unsafe products can cause serious injuries to consumers and in the worst cases lead to death.

The impact on your business can be costly and result in:

- a loss of business and reputation
- exposure to legal liability
- costs associated with product redesign.

Your online product safety responsibilities

All businesses selling products online

Under the product safety provisions of the ACL, your business:

- must comply with mandatory safety standards
- must not supply banned products
- must report the death or serious injury or illness of a person that occurred as a result of the consumer products you have supplied
- must comply with any recall notices issued under the ACL.

Businesses at all levels of the supply chain must ensure their products comply with Australia's product safety laws. While you may be able to take action against a manufacturer if they have misled you about the safety of products they supply, it's wise to do some checking before you buy stock. This will prevent harm to consumers, and protect you from compliance issues and the cost of consumers returning products.

Remember, the way an 'ordinary consumer' will experience your website is a key compliance point. Businesses and consumers experience online shopping differently to the way they shop in traditional retail settings. While some are avid, experienced online shoppers, others are new to e-commerce so you need to cater for all levels of experience. Following our compliance tips will help you give ordinary consumers enough information to make a safe, confident choice.

Business that make and sell online products

Online suppliers who also manufacture products should be aware that Australia has product liability laws covering products with safety defects.

- Suppliers should ensure that all products they sell are safe.
- Consumers who suffer loss or damage because of safety defects in a product can take the manufacturer to court or make a complaint to a consumer protection agency.
- A court can award compensation to cover loss or damage related to unsafe products.

Australia's product liability laws are a mixture of common law and federal and state legislation. For more details on product liability visit our [Product Safety Australia website](#).

Online marketplaces

Online marketplaces (such as eBay, Fishpond, etc) sell goods at fixed prices or through online auctions. They play a major role in international and Australian online shopping by drawing many products together for sale on one website. This enables consumers to conveniently compare the range, price and quality of products. Recent analysis of web traffic identifies these marketplaces as the most significant online shopping channels for Australian consumers.

Most online marketplaces respond well when we raise product safety concerns with them. Some have worked with us to:

- ensure product safety is a priority for their suppliers
- directly remove banned, dangerous products from sale via their websites
- put measures in place to prevent the sale of unsafe products via their websites.

While several key online marketplaces have made positive changes in response to concerns the ACCC has raised with them, there is still room for improvement. We encourage online marketplace operators to follow our compliance tips.

Compliance tips for online businesses

1. To ensure your manufacturers and suppliers comply with Australian safety regulations, always ask them for clear information that shows their products comply, such as:

- valid test reports
- proof that products have any labelling or safety features required by Australian standards.

For more details on product testing visit our [Product Safety Australia website](#)

2. To ensure you do not supply banned or non-compliant products you should:

- check the requirements of any safety standard for the product to ensure you comply (for example, some safety standards require suppliers to display certain information about a product at the point of purchase)
- conduct regular reviews of product design and production processes
- implement and review quality assurance procedures
- test products regularly to relevant safety standards, including batch testing
- record and follow up on consumer complaints and feedback about the safety and quality of your products
- if necessary, conduct a prompt voluntary recall of any products that are defective or unsafe
- stay up to date with product safety developments in Australia by subscribing to our email alerts and RSS feeds at our:
 - [Product Safety Australia website](#)
 - [Product Safety Recalls Australia website](#)
- lock banned and non-compliant products that you sell from being sold in Australia (for example, give an explanation to Australian consumers in your website product description, or delivery information so they can understand why they can't buy the product).

3. Take steps to ensure online consumers can properly assess whether the product is safe and right for them before they make the final click. This helps to reduce consumer requests for a return, refund or exchange. More importantly, it also helps reduce the risk of consumer injuries. To help consumers make a safe and confident purchase, always provide:

- clear product descriptions
- good quality product images that consumers can zoom in on to see details of the labelling and any other relevant information
- images of required labels, warnings and safety features
- lists of ingredients
- clear instructions for use.

Compliance tips for online marketplaces

If you operate an online marketplace take the following positive steps to ensure products supplied on your site comply:

- screen and search your supplier pages to ensure no banned and unsafe products are offered
- encourage new sellers to:
 - read training materials before they launch their online business
 - visit our [Product Safety Australia website](#) and subscribe to automated safety alerts
- encourage your sellers to provide clear product descriptions, good quality product images and ingredient lists. For some products, such as cosmetics and toiletries, suppliers need to make the ingredients list available to consumers before they pay
- provide guidance for consumers about safe purchasing decisions
- provide clear contact details for your business and encourage your sellers to do the same. This makes it easy for consumers to report a product safety concern.

Australia's product safety framework

Product safety is important to everyone. Manufacturers, importers, distributors and retailers all have responsibilities for ensuring products in the Australian market meet safety requirements. Consumers play a vital role in choosing safe products, using products safely and reporting unsafe products. This includes reading instructions and any warning labels. By working together we can help minimise injury, illness and death related to unsafe products.

All businesses who supply products to Australian consumers must comply with Australian product safety laws. This applies whether the business operates:

- online
- in traditional retail settings
- in Australia
- overseas.

The ACCC's role

The ACCC is Australia's national competition and consumer regulator. We administer Australia's fair trading, consumer protection and product safety laws under the *Competition and Consumer Act 2010* (Cth), which incorporates the ACL. We work with state and territory fair trading regulators to:

- enforce Australia's product safety laws
- recommend where product safety regulation is required
- enforce and encourage compliance with the laws
- increase consumer awareness about product safety hazards.

The ACCC can investigate and take the following actions against businesses that don't comply with product safety laws:

- issue a substantiation notice requiring a business to provide documents and information
- issue a written notice warning the public of the supply of products that may not comply with mandatory product safety standards or are banned
- issue infringement notices of \$102 000 for a listed corporation and \$10 200 for a body corporate if we consider the corporation has breached a product safety law
- take legal action against a business for breaches of the ACL, including:
 - seeking court-imposed penalties of up to \$1.1 million for serious breaches
 - seeking orders to implement a compliance program or stop a business from supplying a certain product.

The Minister can:

- issue a safety warning notice about a consumer product and related services under investigation or warn of possible risks associated with the product
- order a compulsory recall of a product if it appears unsafe, does not comply with safety standards or is being supplied contrary to a ban.

Banned and regulated products in Australia

It is not reasonable to expect that individual consumers can assess whether a particular product meets appropriate safety standards. That is why we have bans and mandatory safety standards to ensure products for Australian consumers meet appropriate safety, quality and performance standards. These apply to children's toys and clothing, cosmetics, bicycles, blinds, curtains and window coverings, hot water bottles and sunglasses, to name a few.

Bans

Consumer products and related services are banned if there is a risk that the product may cause serious injury, illness or death. If a product is banned, it is unlawful for anyone to:

- supply into Australia
- offer to supply into Australia
- manufacture
- possess, or
- have control of the product.

This applies to anyone in trade or commerce, including outside Australia.

Mandatory safety standards

Safety standards are made for products that have hazards that can be made safe if certain minimum requirements are met. When a standard applies to a product, businesses must ensure they meet each safety requirement before they can legally supply the product in Australia.

Product safety online

As cross-border online shopping becomes more popular, the ACCC's intention is to ensure that Australian consumers experience the same safety protections and outcomes when shopping online as they do in traditional retail environments.

Consumers increasingly use internet shopping because it enables them to conveniently seek the best deal, variety and choice. Buying from overseas businesses is easier than it's ever been before, with markets generally growing steadily on a global basis.¹ Research released by PayPal in July 2013 shows the US, the UK, Germany, Australia, China and Brazil are the 'six key markets in the world for online cross-border shopping'.² Australian Bureau of Statistics data estimates that Internet commerce has tripled from \$40 billion in 2004 to \$143 billion in 2009-10.³

Consumer trust in new and emerging markets is a key element in encouraging consumer engagement and healthy levels of business innovation and development.

This includes competition on price, choice and service. Consumers are more likely to engage with new online markets, products and services if they have positive experiences buying safe products online. While the expansion of online markets creates new opportunities, it also raises concerns about the potential for product safety hazards and unsafe goods to enter the Australian market.

Most businesses ensure their products comply with Australian safety laws. But those who supply unsafe or defective products can cause negative flow-on impacts for consumers and the broader community, including:

- physical and psychological injury
- financial burden, including income lost due to incapacity for work
- costs of medical treatment.⁴

These poor safety experiences can have broader impacts on industry and the economy, resulting in loss of consumer confidence in and engagement with markets.

We have identified some online business practices that could cause consumer injury and detriment. For example, cosmetics and toiletries that lack or have inaccurate ingredients labels can expose consumers with chemical sensitivities to harmful allergic reactions. There is a mandatory standard setting out labelling requirements for cosmetics and toiletries.

The ACCC has worked with several businesses to address concerns about the supply of banned or non-compliant products. As a result, most businesses have made positive changes to their websites or business practices, including removing unsafe products from sale.

We encourage online businesses that supply goods to Australian consumers to follow our compliance tips. If businesses adequately describe and display products and their safety features on their websites, consumers will be better able to make safe and confident purchasing decisions.

ACCC product safety action

The ACCC addresses product safety issues by educating online businesses and consumers about their rights and obligations, undertaking market surveillance and taking action against online businesses who don't comply with Australian laws.

To ensure that Australian and offshore businesses comply with Australian product safety laws, the ACCC:

- works extensively through international product safety networks
- coordinates efforts to address common online problems
- disrupts the supply chain of dangerous products, including those that cross international borders
- makes online businesses aware of their obligations and empowers consumers to make safe and confident choices.

We regularly undertake broad market surveillance to detect dangerous products and address non-compliance in targeted regulated products. For example, during the 2012 pre-Christmas trading period we worked with state and territory fair trade regulators to conduct surveillance of 1442 individual sites, including bricks and mortar and online sellers. We inspected or tested over 16 000 consumer products, resulting in removal of over 100 product lines from the market.

1 Organisation for Economic Co-operation and Development, Background Report, *Empowering and protecting consumers in the internet economy* (5 February 2013, DSTI/ICCP(2012)2/Final).

2 PayPal, *Modern Spice Routes—The Cultural Impact and Economic Opportunity of Cross-Border Shopping* (July 2013).

3 Australian Bureau of Statistics, *Summary of IT Use and Innovation in Australian Business, 2009-10*, Cat. no. 8166.0.

4 Productivity Commission, *Review of Australia's Consumer Policy Framework—Productivity Commission Inquiry Report*, Volume 2, 30 April 2008, p. 172.

Recent action

Small high powered magnets

There is a ban on supply of small high powered magnets in Australia because if a child swallows more than one magnet this can cause death, serious injury or illness.

In June 2013 the ACCC identified online businesses that were still supplying these to the Australian market. These online businesses responded to ACCC concerns by recalling the banned products. For details see:

- [Mad About Science-Magnetic Stones recall notice](#)
- [Gadget Box-Neotoms High Strength Magnets recall notice](#)

Sky lanterns

Sky lanterns are miniature, unmanned hot air balloons. Lighting an open fuel source in the lantern creates a flame that lifts the lantern into the atmosphere. Sky lanterns can start an uncontrolled fire if the flame contacts combustible material, particularly in areas prone to bushfire. To minimise risks, there is a permanent ban on supplying sky lanterns in Australia.

In 2013, the ACCC became aware of an offshore business supplying banned sky lanterns at an online marketplace. The ACCC and the online marketplace worked together to remove the banned items from sale to Australian consumers.

As new sellers enter these marketplaces, we will continue to work with the relevant marketplace to remove these products from sale.

Children's sleepwear

When children wear nightwear that fails requirements of the mandatory standard they face increased risk of severe burns and death if their nightwear catches fire.

In 2011, the ACCC took action in the Australian Federal Court against a sole trader, Mr Phillip Robinson, who sold non-compliant infant Grobag sleeping bags via eBay. The sleeping bags did not comply with the mandatory standard for children's nightwear because they didn't have the required fire hazard information labels attached. Mr Robinson pleaded guilty to eight counts of supplying non-compliant goods. He received a criminal conviction and was ordered to pay nearly \$15 000 in fines and costs.

In December 2012, the Australian Federal Court fined Cotton On Kids Pty Ltd a total of \$1 million. They were fined \$800 000 for supplying children's nightwear that did not comply with the mandatory standard and \$200 000 for misrepresenting the children's nightwear as low fire danger when the garments were in fact high fire danger. ACCC investigations had found that despite the 'low fire danger' label, the nightwear was so flammable that it should not have been supplied in Australia at all. These breaches are serious because they place the safety of young children at risk.

Child car restraints

When children are not properly restrained in a safe car seat, they are more likely to suffer serious injuries or die in car accidents.

In 2009, the ACCC initiated the recall of child restraints by an Australian eBay seller, protecting Australian consumers from an unsafe product.

Unsafe baby walkers

Children can suffer head injuries and other serious injuries such as fractures if the baby walker they are in tips over or falls down stairs. Head injuries are the most frequent and serious injuries associated with baby walkers. Since the safety standard came into force, the number of injury cases per year related to baby walkers has dropped dramatically.

In 2012, the ACCC obtained a court-enforceable undertaking and payment of three infringement notices totaling \$19 800 from G & R Wills Holdings Pty Ltd. This was because the business had supplied baby walkers and offered two models of strollers that did not comply with the relevant safety standards to consumers in remote Indigenous communities in the Northern Territory. G & R Wills agreed to initiate a \$25 000 bi-lingual product safety campaign for parents of young children living in remote Indigenous communities about the potentially harmful features of prams and baby walkers. Radio broadcasts in Yolnu Matha and English have now been produced and broadcast on the Aboriginal Resources and Development Services radio network which covers many of the affected communities.

Contacts

Australian Competition and Consumer Commission

Product safety

For more information about mandatory standards, bans, recalls and emerging issues—and to subscribe to email alerts and RSS feeds—visit our websites:

www.productsafety.gov.au

www.recalls.gov.au

[ACCC website](#) and [Small business webpages](#)

[ACCC Compliance and Enforcement Policy](#)

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