

Wright, Dean

From: Makkinga, Elizabeth
Sent: Friday, 3 February 2012 2:58 PM
To: Jessica Mohr (jessica.mohr@treasury.gov.au)
Cc: Clancy, Sharon; Ayres, Lisa Anne; Greene, Nicole; Justin Koek; Seibert, Krystian
Subject: Executive Minute - 4 of 2012 - Compulsory recall of teeth whitening products supplied by Pro Teeth Whitening (Aust) [SEC=IN-CONFIDENCE]
Importance: High
Attachments: Executive Minute - 4 of 2012 - Compulsory recall of teeth whitening products supplied by Pro Teeth Whitening _.pdf

Dear Jess

Please find attached Executive Minute 4/2012 concerning compulsory recall of teeth whitening products supplied by Pro Teeth Whitening (Aust) Pty Ltd. The Minute includes draft Consumer Protection Notices 1 and 2 of 2012 for signature by the Parliamentary Secretary to the Treasurer.

Regards
Liz

Elizabeth Makkinga
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**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
EXECUTIVE MINUTE**

Minute No 4/ 2012

Parliamentary Secretary to the Treasurer

3 February 2012

Subject: Compulsory recall of teeth whitening products supplied by Pro Teeth Whitening (Aust) Pty Limited

Timing: Urgent

Recommendation:

That you

- agree to the compulsory recall of two teeth whitening products
- sign Consumer Protection Notice 1 of 2012 (Attachment 1) to certify that a recall notice should be issued without delay for two do-it-yourself teeth whitening products that contain unsafe concentrations of hydrogen peroxide
- sign Consumer Protection Notice 2 of 2012 (Attachment 2) which is a recall notice to compel Pro Teeth Whitening (Aust) Pty Limited to recall the two do-it-yourself teeth whitening products
- approve the attached Explanatory Statement (Attachment 3)
- consider points for inclusion in a possible media release to publicise the recall to affected consumers (Attachment 4).

Noted/Signed:

/ / 2012

ISSUE

In early December 2011, the ACCC provided you with a briefing about a series of voluntary recalls of do-it-yourself (DIY) teeth whiteners and the associated media release issued by the ACCC on 9 December 2011.

Since then the ACCC has contacted the known suppliers of DIY teeth whiteners and eight suppliers have voluntarily recalled 22 DIY teeth whitening products that contained unsafe concentrations of hydrogen peroxide and/or carbamide peroxide.

While most suppliers have cooperated with the ACCC, Pro Teeth Whitening (Aust) Pty Limited continues to supply products with declared concentrations of hydrogen peroxide in excess of the recognised safe limits.

This Minute seeks your agreement to issue a compulsory recall notice for two teeth whitening products supplied by Pro Teeth Whitening (Aust) Pty Limited.

BACKGROUND

- Teeth whitening has become a common cosmetic procedure and numerous products are available directly to the public for DIY teeth whitening. The main active bleaching ingredients in these products are hydrogen peroxide and carbamide peroxide. The concentrations of these ingredients in DIY consumer products available in Australia have increased over recent years.
- Typical injury complaints from teeth whitening kits are: tooth sensitivity and gum and throat irritation. More serious injuries reported include:
 - painful chemical burns to the gums, mouth tissues and the oesophagus
 - blistering or ulceration of the mouth and throat
 - marbled or unnatural coloured teeth
 - sensitive and painful teeth, tissue “tingling”, and headaches
 - potential increased risk of mouth and tongue cancer for tobacco users.
- The Australian Dental Association has also reported that dentists are seeing an increasing number of patients presenting with mouth injuries attributed to at-home teeth bleaching. Some cases have also been treated in emergency departments of hospitals. Poisons Information Centres in Queensland, New South Wales and Victoria have received a combined total of at least 58 reports of injuries involving teeth whiteners since 2004.
- The ACCC is also aware of regulatory action being taken in the European Union and overseas injury reports associated with the use of these products.
- In Australia, the *Poisons Standard 2011* classifies preparations containing more than 6% hydrogen peroxide as Schedule 6 “POISONS”. This classification limits products intended to be taken into the mouth to below this concentration. Enforcement of the *Poisons Standard 2011* is the responsibility of State and Territory health authorities.
- The 6% hydrogen peroxide limit is also supported by expert clinical advice published by the Dental Board of Australia, the Australian Dental Association, and a scientific risk assessment published by the European Union Scientific Committee on Consumer Products.
- The ACCC has advised consumers who have purchased a DIY teeth-whitening kit to check the label and immediately cease using the product if it contains more than 6% hydrogen peroxide.

PRO TEETH WHITENING (AUST) PTY LIMITED

- Pro Teeth Whitening (Aust) Pty Limited supplies two DIY products containing syringes labelled as 9%, 12% and 16% hydrogen peroxide:

- "brightwhite express - Advanced Teeth Whitening Kit" and
 - "PROTEETHWHITENING - Professional Teeth Whitening Pen".
- The ACCC first raised safety concerns with Pro Teeth Whitening (Aust) Pty Limited on 12 December 2011 and has made several unsuccessful approaches to this supplier aimed at stopping the supply of the unsafe goods and recalling the goods already supplied.
 - The ACCC correspondence with Pro Teeth Whitening (Aust) Pty Limited has been with a Director of the company, Mr Gavin Harrison. Pro Teeth Whitening (Aust) Pty Limited is one of 9 member companies of the Australian Cosmetic Teeth Whitening Association.
 - Pro Teeth Whitening (Aust) Pty Limited has refused to halt supply or to voluntarily recall the goods, arguing that:
 - there had been no reports of injury associated with their products
 - a small level of risk is normally associated with any consumer good and this does not necessarily mean that such goods are unsafe
 - the ACCC had unfairly targeted the non-dental teeth whitening industry without similar action against dental practices
 - a 2004 clinical study for another supplier's product containing 14% hydrogen peroxide was provided in support of the safety claim
 - the supplier argued that the *Poisons Standard 2011* limits relate to labelling requirements only and do not represent safety limits for teeth whitening.
 - The ACCC accepts that to date there have been no known reports of injury associated with this supplier's products. However, many teeth whitening injuries are not reported and injuries have been reported to Poisons Information Centres from products very similar to those supplied by Pro Teeth Whitening (Aust) Pty Limited.
 - The ACCC clarified with Pro Teeth Whitening (Aust) Pty Limited that recent actions have been directed at DIY teeth whitening products supplied for unsupervised home use, and not directed at teeth whitening products intended for consumers under the direct supervision of a trusted intermediary such as a dental professional or trained beautician.
 - Despite this clarification, the products in question continue to be specifically marketed as 'At-Home Products' with instructions for use by consumers and no reference to administration under the supervision of a trusted intermediary. In responses to the ACCC, the supplier has not indicated that the products are supplied in any manner other than for consumers to use 'at-home'.
 - The 2004 clinical study relates to a different supplier's dental strips that contained very small volumes of hydrogen peroxide. The 2004 study is not transferable to

the products in question which are gels applied to the teeth in much larger quantities.

- Furthermore, health authorities have confirmed that in addition to stipulating labelling requirements, the *Poisons Standard 2011* reflects the hydrogen peroxide limits currently considered to be safe.
- The ACCC will also consider in due course whether enforcement action is warranted in relation to possibly misleading claims and undeclared ingredients in teeth whiteners supplied by Pro Teeth Whitening (Aust) Pty Limited. The ACCC will also work with State and Territory health authorities to enable enforcement of the *Poisons Standard 2011* in relation to teeth whitening products.

COMPULSORY RECALL

- Subsection 122 (1) of Schedule 2 of the *Competition and Consumer Act 2010* (CCA, see Attachment 5) provides that you may issue a compulsory recall notice for consumer goods of a particular kind when it appears to you that:
 - the goods will or may cause injury to any person, and
 - the supplier has not taken satisfactory action to prevent the goods causing injury to any person.
- A compulsory recall notice is a legislative instrument and therefore must be registered on the Federal Register of Legislative Instruments (FRLI) and must be accompanied by an Explanatory Statement.
- Section 123 of Schedule 2 of the CCA (Attachment 5) further provides that the compulsory recall notice may require the supplier to action the recall in the manner specified in the notice. The supplier nonetheless still has discretion in choosing to either replace or refund the price of the recalled goods.
- The ACCC considers that the risk to consumers from these products is so significant that it warrants the recall of the products without delay. The recall should apply to all supplied units of these products since they appear to be exclusively marketed for unsupervised use by consumers 'at-home'.
- Subsection 132J (1)(b) of the CCA (Attachment 5) allows that you may certify that a recall notice should be issued without delay, and without a conference process, if it appears to you that the goods create an imminent risk of serious injury. A notice under section 132J is not a legislative instrument but must be published on the internet.
- The ACCC recommends that you exercise your powers under the CCA and issue both a compulsory recall notice and a notice that the recall must occur without delay to compel Pro Teeth Whitening (Aust) Pty Limited to recall two do-it-yourself teeth whitening products on the basis that the goods create an imminent risk of serious injury.

- Consumer Protection Notices have been drafted for your consideration and signature (Attachments 1 and 2).
- A draft Explanatory Statement that includes a 'Statement of Compatibility with Human Rights' as required by Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is also attached for your consideration (Attachment 3).

NEXT STEPS

- Once signed, the recall notice would be registered on FRLI by the ACCC.
- The ACCC would also arrange to publish both notices on the Product Safety Australia website and as a 'hot-topic' on the Recalls Australia website.
- The ACCC would also then ensure a copy of the recall notice was given to Pro Teeth Whitening (Aust) Pty Limited within 2 days as required under section 132K of the CCA (Attachment 5).
- The recall notice could also be publicised with a media release that emphasised the hazards and that also encouraged consumers to comply with the recall. Points for inclusion in such a media release are also attached (Attachment 4).

Ruth Mackay
General Manager
Product Safety Branch

Attachments

1. Draft Consumer Protection Notice No. 1 of 2012 (recall without delay)
2. Draft Consumer Protection Notice No. 2 of 2012 (compulsory recall)
3. Draft Explanatory Statement for Consumer Protection Notice No. 2 of 2012
4. Points for Possible Inclusion in a Media Release
5. Relevant Sections of the *Competition and Consumer Act 2010*

ATTACHMENT 1

DRAFT CONSUMER PROTECTION NOTICE NO. 1 OF 2012 (RECALL WITHOUT DELAY)

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010

Consumer Protection Notice No. 1 of 2012

**CERTIFICATION THAT A RECALL NOTICE FOR CONSUMER GOODS SHOULD
BE ISSUED WITHOUT DELAY IN CASE OF DANGER TO THE PUBLIC**

I, DAVID BRADBURY, Parliamentary Secretary to the Treasurer, pursuant to subsection 132J (1)(b) of the *Competition and Consumer Act 2010*, CERTIFY that a recall notice for consumer goods of a kind specified below should be issued without delay as it appears to me that such goods create an imminent risk of serious injury.

Particulars of Goods:

“bright white express - Advanced Teeth Whitening Kit” and
“PROTEETHWHITENING - Professional Teeth Whitening Pen”

supplied by Pro Teeth Whitening (Aust) Pty Limited.

Dated this day of 2012

DAVID BRADBURY
Parliamentary Secretary to the Treasurer

ATTACHMENT 2

**DRAFT CONSUMER PROTECTION NOTICE NO. 2 OF 2012 (COMPULSORY
RECALL)**

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010

Consumer Protection Notice No. 2 of 2012

COMPULSORY RECALL OF CONSUMER GOODS: TEETH WHITENING PRODUCTS SUPPLIED BY PRO TEETH WHITENING (AUST) PTY LIMITED

Whereas

- (i) the person specified in Division 1 of the Schedule to this Notice (“the supplier”), in trade and commerce, is the supplier of consumer goods of a kind specified in Division 2 of this Notice (“the goods”);
- (ii) it appears to me that the goods are goods of a kind which will or may cause injury to a person; and
- (iii) it appears to me the supplier has not taken satisfactory action to prevent the goods causing injury to any person;

I, DAVID BRADBURY, Parliamentary Secretary to the Treasurer, pursuant to subsection 122 (1) of Schedule 2 of the *Competition and Consumer Act 2010*, issue this NOTICE which, pursuant to section 123 of Schedule 2 of the *Competition and Consumer Act 2010*, REQUIRES the supplier take the actions specified in Division 3 of the Schedule to this Notice in the manner specified in Division 4 of the Schedule to this Notice.

THE SCHEDULE

Division 1: The Supplier

Pro Teeth Whitening (Aust) Pty Limited
ACN 135 042 107
Unit 3, 16 Mary Street, Birkdale Qld 4159

Division 2: Particulars of the Goods

“bright white express - Advanced Teeth Whitening Kit” and
“PROTEETHWHITENING - Professional Teeth Whitening Pen”

Division 3: Action

Take action within three (3) days commencing on the day on which this Notice is registered on the Federal Register of Legislative Instruments to:

- a) recall the goods;
- b) disclose to the public the nature of a dangerous characteristic of the goods, specifically that the goods, as set out on their labeling, contain 9%, 12% or 16% hydrogen peroxide, which exceeds the recognised safe limit of 6% weight/weight as set by the *Poisons Standard 2011*, expert clinical advice, and published scientific risk assessments; and
- c) inform the public that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) replace the goods;
 - (ii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.

Division 4: Manner in which the actions are to be taken

- a) Publish a written product safety notice prominently on the website www.proteethwhitening.com.au for a period of at least 90 days, in the terms and form of Annexure A to this Notice and which shall, in addition, include the following:
 - (i) a photograph or drawing of the goods;
 - (ii) a section titled 'What to do', which explains the immediate action customers are to take. For example, to cease use immediately and return product to the place of purchase for a full refund;
 - (iii) a section titled 'Contact details', which explains who customers should contact to receive a refund or have the product replaced, including business and after hours telephone numbers, and email and website addresses;
- b) Send a letter to all customers to whom the supplier has supplied the goods, which must:
 - (i) inform such customers of the issuance of this Notice;
 - (ii) enclose a copy of this Notice;
 - (iii) enclose a copy of the product safety notice specified in paragraph (a) above;
- c) Use best endeavours to ensure that all retailers to whom the supplier has supplied the goods, or which it is otherwise aware was a retailer of the goods, publicly display the product safety notice specified in paragraph (a) above at their places of business for a period of at least 90 days;
- d) If the supplier undertakes to replace the goods, in accordance with section 124 of Schedule 2 of the *Competition and Consumer Act 2010*:
 - (i) it must replace the goods with similar consumer goods which:
 - A. do not contain the dangerous characteristic identified in this Notice; and

- B. comply with any safety standards in force in respect of the goods; and
- (ii) the cost of the replacement, including any necessary transportation costs, must be paid by the supplier;
- e) Arrange for the safe disposal of all goods returned pursuant to the recall at a safe chemical disposal facility;
 - f) Maintain records of all actions taken as specified in paragraphs (a) to (e) above;
 - g) Maintain records of all customers and traders to whom the supplier has supplied the goods;
 - h) Maintain records of the numbers of the goods recalled, returned, replaced, refunded or disposed of; and
 - i) Provide copies of the records referred to in paragraphs (f) to (h) above relating to the recall of the goods to officers of the Australian Competition and Consumer Commission within two (2) days of being requested to do so.

Dated this day of 2012

DAVID BRADBURY
Parliamentary Secretary to the Treasurer

ANNEXURE A



Product Safety Recall

Images of Products

bright white express - Advanced Teeth Whitening Kit
PROTEETHWHITENING - Professional Teeth Whitening Pen

Sold by **Pro Teeth Whitening (Aust) Pty Limited**
Including online via www.proteethwhitening.com.au

Dangerous Characteristic The goods, as set out on their labelling, contain 9%, 12% or 16% hydrogen peroxide, which exceeds the recognised safe limit of 6% weight/weight as set by the Poisons Standard 2011, expert clinical advice, and published scientific risk assessments.

Hazard Users of the goods may suffer irritation or inflammation to the gums and mouth due to the excessively high concentration of hydrogen peroxide.

What to do

Contact Details

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

ATTACHMENT 3

DRAFT EXPLANATORY STATEMENT FOR CONSUMER PROTECTION NOTICE NO. 2 OF 2012

EXPLANATORY STATEMENT

Competition and Consumer Act 2010

Consumer Protection Notice No. 2 of 2012

COMPULSORY RECALL OF CONSUMER GOODS: TEETH WHITENING PRODUCTS SUPPLIED BY PRO TEETH WHITENING (AUST) PTY LIMITED

**Issued by the authority of the Parliamentary Secretary to the Treasurer responsible for
Competition Policy and Consumer Affairs**

Subsection 122 (1) of Schedule 2 of the *Competition and Consumer Act 2010* provides that the Minister responsible for Competition Policy and Consumer Affairs may issue a compulsory recall notice for consumer goods of a particular kind when it appears to him that:

- the goods will or may cause injury to any person, and
- the supplier has not taken satisfactory action to prevent the goods causing injury to any person.

Background

Teeth whitening has become a common cosmetic procedure and numerous products are available directly to the public for do-it-yourself (DIY) teeth whitening. The concentrations of bleaching ingredients in DIY teeth whitening products available in Australia have increased over recent years. A common active bleaching ingredient in these products is hydrogen peroxide.

Typical injury complaints from teeth whitening kits include tooth sensitivity and gum and throat irritation. More serious injuries reported include:

- painful chemical burns to the gums, mouth tissues and the oesophagus
- blistering or ulceration of the mouth and throat
- marbled or unnatural coloured teeth
- sensitive and painful teeth, tissue “tingling”, and headaches
- potential increased risk of mouth and tongue cancer for tobacco users.

The Australian Dental Association has also reported that dentists are seeing an increasing number of patients presenting with mouth injuries attributed to at-home teeth bleaching. Some cases have also been treated in emergency departments of hospitals. Poisons Information Centres in Queensland, New South Wales and Victoria have received a combined total of at least 58 reports of injuries involving teeth whiteners since 2004.

The Australian Competition and Consumer Commission (ACCC) is also aware of regulatory action being taken in the European Union, as well as overseas injury reports associated with the use of these products.

In Australia, the *Poisons Standard 2011* classifies preparations containing more than 6% hydrogen peroxide as Schedule 6 “POISONS”. This classification limits DIY consumer products intended to be taken into the mouth to this concentration.

The 6% hydrogen peroxide safety limit for DIY teeth whiteners is also supported by expert clinical advice published by the Dental Board of Australia, the Australian Dental Association, and a scientific risk assessment published by the European Union Scientific Committee on Consumer Products.

In early December 2011, the ACCC contacted the known suppliers of DIY teeth whiteners and advised them of safety concerns in relation to DIY teeth whitening products that contained unsafe concentrations of bleaching agents.

Most suppliers of DIY teeth whitening products that contained unsafe concentrations of bleaching agents immediately ceased supply of the products and voluntarily recalled them.

Conditions for Issuing the Compulsory Recall Notice Have Been Met

The Parliamentary Secretary to the Treasurer has determined that
“bright white express - Advanced Teeth Whitening Kit” and
“PROTEETHWHITENING - Professional Teeth Whitening Pen”

(the Products)

supplied by Pro Teeth Whitening (Aust) Pty Limited, are consumer goods supplied in trade and commerce and it appears to him that

- the goods will or may cause injury to a person; and
- the supplier has not taken satisfactory action to prevent the goods causing injury to any person.

Consultation

The ACCC first wrote to Pro Teeth Whitening (Aust) Pty Limited on 12 December 2011 informing them of the safety concerns about DIY teeth whitening products containing concentrations of hydrogen peroxide greater than 6%.

Correspondence from Pro Teeth Whitening (Aust) Pty Limited subsequently confirmed that the company was supplying two DIY teeth whitening products (the Products) that contained concentrations of hydrogen peroxide greater than 6% and in the range from 9% to 16%.

The ACCC contacted Pro Teeth Whitening (Aust) Pty Limited on several occasions during December 2011 and January 2012 and explained the basis for the safety concerns and the obligations for suppliers of consumer goods under the *Competition and Consumer Act 2010*.

The ACCC also informed Pro Teeth Whitening (Aust) Pty Limited that the Parliamentary Secretary to the Treasurer could exercise his powers under the *Competition and Consumer*

Act 2010 to protect consumers and that these powers included ordering a compulsory product safety recall.

Pro Teeth Whitening (Aust) Pty Limited did not cease to supply the Products or recall the Products on a voluntary basis, despite the ACCC approaching the company on a number of separate occasions.

Pursuant to subsection 132J (1)(b) of the *Competition and Consumer Act 2010* the Parliamentary Secretary to the Treasurer certified, by Consumer Protection Notice 1 of 2012, that a recall notice for the Products should be issued without delay, and without a conference process, as it appeared to him that such goods created an imminent risk of serious injury. A notice under section 132J of the *Competition and Consumer Act 2010* is not a legislative instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Overview

The Legislative Instrument orders a compulsory recall of certain ‘do-it-yourself’ teeth whitening products that contain concentrations of hydrogen peroxide greater than 6% w/w. High concentrations of hydrogen peroxide in a DIY consumer good intended to be taken into the mouth may cause serious injury to consumers.

Human Rights Implications

The legislative Instrument engages the right to health and the rights of the child.

The *International Covenant on Economic, Social and Cultural Rights* recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The *Convention on the Rights of the Child* recognises the right of the child to the enjoyment of the highest attainable standard of health.

The Legislative Instrument promotes these rights by requiring a supplier to recall particular consumer goods which will or may cause harm or injury to people, including children. The effect of recalling a good is to remove it from sale and to notify consumers who have purchased the good that it should be returned to the supplier.

Conclusion

The Legislative Instrument does not limit human rights and is compatible with human rights because it advances the protection of human rights by requiring a supplier to recall particular consumer goods that will or may cause harm or injury to people, including children.

Details of the Legislative Instrument as Set Out in the Schedule to Consumer Protection Notice No. 2 of 2012

Division 1: Provides details of the supplier of the goods subject to the compulsory recall notice, namely:

Pro Teeth Whitening (Aust) Pty Limited
ACN 135 042 107
Unit 3, 16 Mary Street, Birkdale Qld 4159

Division 2: Provides particulars of the goods subject to the compulsory recall notice, namely:
“bright white express - Advanced Teeth Whitening Kit” and
“PROTEETH WHITENING - Professional Teeth Whitening Pen”

Division 3: Directs that the supplier must take action within three (3) days of the recall notice being registered on the Federal Register of Legislative Instruments.

Division 4: Directs the manner in which the recall is to be conducted by the supplier.

ATTACHMENT 4

POINTS FOR POSSIBLE INCLUSION IN A MEDIA RELEASE

- Effective immediately, I have ordered the compulsory recall of two 'do-it-yourself' or DIY teeth whitening treatments supplied by Pro Teeth Whitening (Aust) Pty Limited.
- The affected products, which have labels declaring unsafe levels of the bleaching agent hydrogen peroxide, are "brightwhite express – Advanced Teeth Whitening Kit" and "PROTEETHWHITENING – Professional Teeth Whitening Pen."
- Consumers are advised to immediately cease using the products and visit the Recalls Australia website www.recalls.gov.au for more information on returning the goods for replacement or refund.
- Since December 2011, a total of 22 teeth whitening products with unsafe levels of hydrogen peroxide and/or hydrogen carbamide have been recalled by suppliers.
- Those suppliers have taken the appropriate action of removing products that do not meet safety requirements from the marketplace, thus protecting consumers.
- Teeth whitening has become a common cosmetic procedure and numerous products are available directly to the public for DIY teeth whitening.
- The main active bleaching ingredients in these products are hydrogen peroxide and carbamide peroxide. The Australian *Poisons Standard* 2011 has set the maximum safe level of these ingredients in teeth whitening products at 6% for hydrogen peroxide and 18% for carbamide peroxide.
- These maximum safe limits are supported by expert advice from the the Dental Board of Australia, the Australian Dental Association and the European Union Scientific Committee on Consumer Products. They are designed to ensure consumer safety when undertaking DIY teeth whitening.
- Typical injury complaints from teeth whitening kits are tooth sensitivity and gum and throat irritation. More serious injuries reported include:
 - painful chemical burns to the gums, mouth tissues and the oesophagus
 - blistering or ulceration of the mouth and throat
 - marbled or unnatural coloured teeth
 - sensitive and painful teeth, tissue "tingling" and headaches
 - potential increased risk of mouth and tongue cancer for tobacco users.
- The Australian Dental Association has also reported that dentists are seeing an increasing number of patients presenting with mouth injuries attributed to home teeth bleaching. Some cases have also been treated in emergency departments of hospitals.

- Poisons Information Centres in Queensland, New South Wales and Victoria have received a combined total of at least 58 reports of injuries involving teeth whiteners since 2004.

ATTACHMENT 5

RELEVANT SECTIONS OF THE *COMPETITION AND CONSUMER ACT 2010*

132A Commonwealth Minister must issue a proposed recall notice

(1) The Commonwealth Minister must issue a *proposed recall notice* if the Commonwealth Minister proposes to issue a recall notice for consumer goods of a particular kind.

(2) Subsection (1) does not apply in relation to a recall notice if the Commonwealth Minister has issued a notice under section 132J certifying that the recall notice should be issued without delay.

(3) The proposed recall notice must:

- (a) be in writing; and
- (b) be published on the internet; and
- (c) set out a copy of a draft recall notice; and

(d) set out a summary of the reasons for the proposed issue of the recall notice; and

(e) invite any person who supplies, or proposes to supply, consumer goods of that kind to notify the Commission, in writing and within a period specified in the notice, if the person wishes the Commission to hold a conference in relation to the proposed issue of the recall notice.

(4) The period specified in the proposed recall notice under paragraph (3)(e):

- (a) must be a period of at least 10 days, or such longer period as the Commonwealth Minister specifies in the notice; and
 - (b) must not commence before the day on which the notice is published.
- (5) A proposed recall notice is not a legislative instrument.

132J Interim ban and recall notice without delay in case of danger to the public

(1) If it appears to the Commonwealth Minister that consumer goods of a particular kind create an imminent risk of death, serious illness or serious injury, he or she may, by written notice published on the internet, certify that:

(a) an interim ban on consumer goods of that kind should be imposed without delay; or

(b) a recall notice for consumer goods of that kind should be issued without delay.

(2) If it appears to the Commonwealth Minister that product related services of a particular kind create an imminent risk of death, serious illness or serious injury, he or she may, by written notice published on the internet, certify that an interim ban on services of that kind should be imposed without delay.

(3) If:

(a) the Commonwealth Minister publishes a notice under subsection (1) or (2);
and

(b) action of any kind has been taken under Subdivision A of this Division in relation to the interim ban or recall notice, but no recommendation has been made under section 132D;

the Commonwealth Minister may impose the interim ban, or issue the recall notice, without regard to that action.

(4) A notice under subsection (1) or (2) is not a legislative instrument.

132K Copy of notices under this Division to be given to suppliers

(1) If the Commonwealth Minister:

- (a) issues a proposed ban notice; or
- (b) issues a proposed recall notice; or
- (c) publishes a notice under subsection 132E(2); or

(d) publishes a notice under subsection 132J(1) or (2);

he or she must cause a copy of the notice to be given to each person who, to the knowledge of the Commonwealth Minister, supplies the consumer goods, or the product related services, to which the notice relates.

(2) The copy must be given:

- (a) within 2 days after the publication or issue of the notice; or
- (b) if it is not practicable to give the copy within that period—as soon as practicable after the end of that period.

(3) A failure to comply with subsection (1) does not invalidate the notice.

Division 3—Recall of consumer goods

Subdivision A—Compulsory recall of consumer goods

122 Compulsory recall of consumer goods

(1) A responsible Minister may, by written notice published on the internet, issue a *recall notice* for consumer goods of a particular kind if:

- (a) a person, in trade or commerce, supplies consumer goods of that kind; and
- (b) any of the following applies:
 - (i) it appears to the responsible Minister that such goods will or may cause injury to any person;
 - (ii) it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury to any person;
 - (iii) a safety standard for such goods is in force and the goods do not comply with the standard;
 - (iv) an interim ban, or a permanent ban, on such goods is in force; and
- (c) it appears to the responsible Minister that one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person.

(2) It is not necessary for the purposes of subsection (1)(c) for the responsible Minister to know the identities of any of the suppliers of the consumer goods of that kind.

(3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.

123 Contents of a recall notice

(1) A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no such supplier is known to the responsible Minister who issued the notice) the regulator, to take one or more of the following actions:

- (a) recall the goods;
- (b) disclose to the public, or to a class of persons specified in the notice, one or more of the following:
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;
 - (ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous;
 - (iii) procedures as specified in the notice for disposing of the goods;
- (c) if the identities of any of those suppliers are known to the responsible Minister—inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) unless the notice identifies a dangerous characteristic of the goods—repair the goods;

- (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.
- (2) The recall notice may specify:
- (a) the manner in which the action required to be taken by the notice must be taken; and
 - (b) the period within which the action must be taken.

(3) If the recall notice requires the regulator to take action to recall the consumer goods, the responsible Minister may specify in the notice that the regulator must retain, destroy or otherwise dispose of the goods.

(4) If the recall notice requires a supplier of the consumer goods to take action of a kind referred to in subsection (1)(c), the responsible Minister may specify in the notice that, if:

- (a) the supplier undertakes to refund the price of the goods; and
- (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of a refund may be reduced by the supplier by an amount calculated in a manner specified in the notice that is attributable to the use which a person has had of the goods.

124 Obligations of a supplier in relation to a recall notice

(1) This section applies if a recall notice for consumer goods requires a supplier to take action of a kind referred to in section 123(1)(c).

(2) If the supplier undertakes to repair the consumer goods, the supplier must cause the goods to be repaired so that:

- (a) any defect in the goods identified in the recall notice is remedied; and
- (b) if a safety standard for the goods is in force—the goods comply with that standard.

(3) If the supplier undertakes to replace the consumer goods, the supplier must replace the goods with similar consumer goods which:

- (a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the recall notice—do not contain that defect or have that characteristic; and
- (b) if a safety standard for the goods to be replaced is in force—comply with that standard.

(4) If the supplier undertakes:

- (a) to repair the consumer goods; or
- (b) to replace the consumer goods;

the cost of the repair or replacement, including any necessary transportation costs, must be paid by the supplier.

125 Notification by persons who supply consumer goods outside Australia if there is compulsory recall

(1) If consumer goods of a particular kind are recalled as required by a recall notice, a person who has supplied or supplies those consumer goods to a person outside Australia must give the person outside Australia a written notice that complies with subsection (2).

(2) The notice given under subsection (1) must:

(a) state that the consumer goods are subject to recall; and

(b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and

(c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and

(d) if the consumer goods do not comply with a safety standard for such goods that is in force—set out the nature of the non-compliance; and

(e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.

(3) The notice under subsection (1) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.

(4) A person who is required to give a notice under subsection (1) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister who issued the recall notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

126 Interaction of multiple recall notices

If:

(a) a recall notice (the *original recall notice*) for consumer goods of a particular kind (the *recalled goods*) is issued by a responsible Minister other than the Commonwealth Minister; and

(b) while the original recall notice is in force, the Commonwealth Minister issues a recall notice (the *Commonwealth recall notice*):

(i) for the recalled goods; or

(ii) for consumer goods of a kind that includes the recalled goods;

the original recall notice, to the extent that it relates to the recalled goods, ceases to be in force immediately before the Commonwealth recall notice is issued.

127 Compliance with recall notices

- (1) If:
 - (a) a recall notice for consumer goods is in force; and
 - (b) the notice requires a person (other than the regulator) to do one or more things;

the person must comply with the notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If a recall notice for consumer goods is in force, a person must not, in trade or commerce:

(a) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supply consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or

(b) in any other case—supply consumer goods of the kind to which the notice relates.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:
 - (a) a person contravenes subsection (1) or (2) in relation to consumer goods; and
 - (b) another person suffers loss or damage:
 - (i) because of a defect in, or a dangerous characteristic of, the goods; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of the goods; or
 - (iii) because, contrary to the recall notice, the other person was not provided with particular information in relation to the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of the contravention.