

## ACCC Product Safety webinar:

*The “whys” and “hows” of product testing: Responses to questions asked online during the webinar.*

### Online sales/imported products:

**Mike:** How can you provide product safety for items which are being allowed to be imported direct from overseas from online businesses which compete against Australian retailers and Australian online e-tailers?

@Mike: All suppliers into the Australian marketplace, whether they have a shop front or only trade online, are required to comply with the Australian Consumer Law. Regulators have taken action againstetailers who have sold unsafe products online.

**Carmen:** How do we guarantee the safety of parallel imported products distributed in stores that are not tested on a local level, eg. food additives, levels, etc.?

@Carmen: All suppliers into the Australian marketplace, including parallel importers, must comply with the Australian Consumer Law (and all other relevant laws and regulations) and need to satisfy the same requirements for testing to support the safety of their products.

**Robert:** Increasingly ON LINE traders are informing customers that they need to take up warranty related issues with the supplier. Is this correct or do ON LINE traders still have the same obligations apply to them as a conventional shop front trader?

@Robert: All suppliers into the Australian marketplace, whether they have a shop front or only trade online, are required to comply with the Australian Consumer Law. The ACCC has some basic product safety tips for consumers to consider when buying products online - you can find these at [www.productsafety.gov.au](http://www.productsafety.gov.au) and search for 'online shopping.' This is a growing area and we're looking at doing more to educate consumers over the coming year. Under the new consumer guarantees regime, consumers are generally able to seek a remedy from the supplier or the manufacturer. The ACCC web has resources for consumers and businesses which explain the new ACL consumer guarantees provisions - see [www.accc.gov.au/acl](http://www.accc.gov.au/acl).

**Mike:** Whilst Australian importers, retailers and manufacturers are bound by this compliance, consumers are buying online directly from overseas and are immune from these product safety protections and hence are not aware of the danger in purchasing online from overseas manufacturers or retailers. How is the ACCC going to promote the safety aspects of dealing with Australian based Suppliers and the confidence of recourse under Australian Law?

@Mike: Mike: All suppliers into the Australian marketplace, whether they have a shop front or only trade online, are required to comply with the Australian Consumer Law. Regulators have taken action againstetailers who have sold unsafe products online. You can find some basic tips related to product safety when shopping online by going to [www.productsafety.gov.au](http://www.productsafety.gov.au) and searching for "online shopping." This is a growing

area and we intend to do more here over the coming year.

### **ACL and CCA definitions**

**Ian:** FURTHER CLARIFICATION REGARDING 'PRODUCT RELATED SERVICES' - IF A BUSINESS PERFORMS A SERVICE/REPAIR FOR ANOTHER BUSINESS ON A CONSUMER PRODUCT - DO THE PRODUCT SAFETY LAWS APPLY?

@Ian: Yes - under the Australian Consumer Law, the product safety provisions apply to consumer goods and product-related services. The mandatory reporting requirement also applies. This means that if you are a service provider (eg repair technician, installer etc) and you become aware that a product related to the service you provide was involved in an incident resulting in serious injury, illness or death. you have two days to report it to the ACCC. For more information, visit [www.productsafety.gov.au/mandatoryreporting](http://www.productsafety.gov.au/mandatoryreporting). Some of the other provisions of the ACL apply only to business-to-consumer transactions, such as the Consumer Guarantees provisions. For more information on these, visit [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).

**James:** Can you confirm that the term Australian Consumer Law is a generic name for the Competition and Consumer Act - if not what are the differences?

@James: The Australian Consumer Law, or ACL, is contained in a schedule to the Competition and Consumer Act (2010) which replaced the Trade Practices Act (1974).The product safety provisions are contained in this schedule, which is why we talk about the ACL when referring to product safety requirements. For more information about the CCA and the ACL, visit [www.comsumerlaw.gov.au](http://www.comsumerlaw.gov.au).

**Nick:** What of the ACL applies between business to business equipment supply?

@Nick: The product safety provisions of the ACL, including the mandatory reporting requirement, apply to B2B transactions. While some of the provisions of the ACL apply only to business-to-consumer transactions such as unfair contract terms, there are broader protections for B2B equipment supply. For example, the consumer guarantees may apply in circumstances where you purchase equipment for use within your business (i.e. not to resupply etc). For more information, see ACCC education resources at [www.accc.gov.au/acl](http://www.accc.gov.au/acl)

## Mandatory reporting

**Ian:** Does the mandatory reporting obligation only apply to 'consumer goods' - ie. goods intended, or likely, to be used for personal, domestic or household use or consumption (refer page 20 Product safety guide) - or does it apply to all goods a consumer ie private person, trader etc may purchase under the 'up to \$40k', etc? There appears to be some ambiguity surrounding this issue.

@Ian: The mandatory reporting provisions apply to all 'consumer goods' regardless of value: Goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption, and includes any such goods that have become fixtures since the time they were supplied if: (a) a recall notice for the goods has been issued or (b) a person has voluntarily taken action to recall the goods. The \$40,000 limit applicable in some sections of the Australian Consumer Law does not apply to mandatory reporting.

**Erin:** What are some examples of serious injuries from products? Are they things like allergic reactions, transfer of dyes from clothing to skin etc?

@Erin: In relation to mandatory reporting, a serious injury is defined as an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or nurse (whether or not in a hospital, clinic or similar place). It does not include an ailment, disorder, defect or morbid condition (whether sudden onset or gradual development), or the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition. Examples might include a broken bone, serious burn, or allergic reaction.

**Ian:** Mandatory reporting requirements now require suppliers to report any allegation of serious incident/injury. Does ACCC have ability or intention to take action against "consumers" who raise vexatious or mischievous/unfounded allegations of product failure? e.g. customer seeking unfounded personal compensation.

@Ian: Under the Australian Consumer Law, mandatory reports are not considered an admission of liability. The reports are also protected by the most stringent confidentiality requirements of all provisions in the ACL so it would be unlikely for a mandatory report to become part of a personal compensation claim. All mandatory reports received undergo a preliminary screening through the ACCC's product safety Clearinghouse to test the veracity and seriousness of the incident and some reports are not assessed beyond this preliminary screening. The ACCC does not have legislated capacity to take action against alleged vexatious mandatory reports, however - based on 6 months of mandatory reports - this has not been an issue.

**Lindsay:** With product failure as a consumer after notifying the supplier of a failure, what is considered a reasonable time period, what is considered an outrageous time and how does one proceed with the next step and what is that step?

@Lindsay: Suppliers have 2 days to report to the ACCC once a consumer makes them aware that they believe that the use of a product they were supplied caused a death, serious injury or illness. Consumers may also report the incident to the ACCC directly via the Product Safety Australia website [www.productsafety.gov.au](http://www.productsafety.gov.au). This website also has information on product liability provisions for injured consumers and these have their own time periods.

### **Mandatory standards and bans**

**Donna:** When a Mandatory Standard provides that a product must be designed to meet a certain standard and yet to use this product, it relies on being affixing it to a surface but there are no standards on how to do so,..... does the supplier that affixes it need to ensure it meets the standard? An example of this is cord tensioners for Internal Window Coverings.

@Donna: Suppliers must ensure the products they supply meet the relevant mandatory standards. In your example the mandatory standard for corded internal window coverings provides the cord guide must be designed to remain firmly attached to a wall or other structure when subjected to a tension force of 70 Newtons applied in any direction for 10 seconds. It is up to suppliers to ensure they also supply the necessary hardware (such as screws) in order to meet this requirement. The mandatory standard does not cover installation. It is expected that installers will install the products in accordance with the supplier's instructions.

**Antonio:** Some products are not covered by any existing voluntary or mandatory standard. What tests would you recommend?

@Antonio: Your industry association, or a compliance professional may be able to help you with this. You can also look at whether there are any requirements for similar products internationally.

**Denise:** Do all Australian standards have to be followed or only those that are mandated? How do you know which standards are mandated?

@Denise: By law, suppliers are required to comply with all mandatory standards and bans. There is a list of these on the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)). The ACCC does not require compliance with voluntary standards, but many businesses consider it good practice to do so.

**Laura:** Which standards are up for review and will children's & ladies wear sizing standards be updated?

@Laura: Standards Australia develops and reviews published Australian Standards. You can contact them at <http://www.standards.org.au/>. Reviews to mandatory standards under the Australian Consumer Law can be monitored through the website [www.productsafety.gov.au](http://www.productsafety.gov.au).

**Mark:** We have talked about mandatory standards and testing requirements, but what guidance is there about what level of testing should be considered for the large range of goods not subject to mandatory standards?

@Mark: Many products have non-mandated standards that are published which provide guidance and benchmarks for safe design and performance. SAI Global (Australia) [www.saiglobal.com](http://www.saiglobal.com) publishes Australian Standards and lists other international standards. Where these are not available for your products, expert guidance may need to be sought.

**David:** Where can I get mandatory requirements for different products?

@David: Details of mandatory standards and bans are available via the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)).

**Anthony:** How does the ACCC advise industry players that a mandatory standard has become a requirement?

@Anthony: The ACCC consults with relevant industry representatives in the process of developing mandatory standards. The best way to ensure you are kept informed of any consultation, or other relevant changes to product safety laws, is by subscribing to automatic email alerts from the Product Safety Australia website (see 'subscribe to email alerts' on the right-hand side of [www.productsafety.gov.au](http://www.productsafety.gov.au)). You can also follow us on Twitter: @ProductSafetyAU

## **Mandatory standards & labelling**

**Anthony:** What do you class as a 'permanent label' that is part of the mandatory standard?

@Anthony: The issue of permanence in reference to the continued existence of a label generally relates to the capacity of that warning statement to remain both intact, visible and legible for the life of the product to which it is applied. More specifically it is interpreted to mean that the label should not be able to be removed, partially or fully, without the use of a tool (ie not solely by hand).

**Tracey:** Where a label is required to meet a mandatory standard and it is to say ""DO NOT REMOVE THIS LABEL"", is there a requirement to ensure that it cannot be removed easily?

@Tracey: The mandatory requirements are those that are specified in the mandatory standard. For some standards, the mandatory requirement includes that the label is permanently printed or affixed to the product (e.g by being directly printed onto the product). For other mandatory standards where labelling is required, suppliers should ensure that the labels are attached to the product in such a way that

they will not accidentally, or inadvertently, become detached from the product.

### **International standards**

**Paul:** ISO has drafted a new standard ISO/PC 243 N070: Consumer Product Safety: Practical Guidance for Suppliers. Has ACCC or Australia provided any input to this document which is still under development?

**Trudy:** Is there any future plans for the ACCC to work towards aligning Australian standards with other overseas markets standards such as Europe so that test reports such as EN71 are acceptable in Australia rather than having to re-test?

**Monika:** Are there any documents/reports etc that advise similarities or comparisons between Australian Standards, European Standards, US standards etc (e.g EN71 compared to AS/NZS??) and is it satisfactory for a test report to be submitted based on these standards?

### **Testing and test reports**

**Kaan:** I am bringing in a specially designed led lighting do I need to get the last product tested and approved by a special government body?

**Nadine:** How do overseas QA testing companies receive updates about new Australian standards that are introduced?

**Antonio:** In some instances, labs encounter cases wherein the sample is a borderline case between pass and fail. Some labs technically consider it a "pass". In the context of safety, such cases should be considered a "fail". Can this principle of "gray area = fail" be applied?

**Martin:** Would the ACCC accept a test report from a non certified (e.g, NATA) testing service/laboratory? For example XRF testing report for heavy metals where

there are no standard certification against XRF methods.

@Paul: The ACCC participates in Standards Australia technical committee CS106 who in turn contributed to the development of the draft ISO PC243 guidance document.

@Trudy: Yes, the ACCC is currently working with our European and Northern American counterparts on a pilot project to align the requirements of three standards: chair-top booster seats, infant slings and corded window coverings.

@Monika: Some product safety test and consultancy companies provide comparative analyses available for their clients. Testing to another standard may help determine compliance with Australian mandatory standards. The onus is on suppliers to understand the requirements and meet them when supplying to the Australian market.

@Kaan: For questions about the safety of electrical products, contact the electrical regulator in your state or territory. There is more information on the Electrical Regulatory Authorities Council website ([www.erac.gov.au](http://www.erac.gov.au)).

@Nadine: All suppliers and other relevant agencies including test companies are encouraged to keep up-to-date with Australian requirements by subscribing to receive automated updates or RSS feeds any time relevant content on the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)) is changed.

@Antonio: Suppliers are required to ensure their products comply with mandatory requirements. Where a supplier has concerns about the strength of the test results, they may want to retest the products so they can feel confident that the goods are safe and comply.

@Martin: The mandatory standards for many of the products made under the ACL prescribe a set of test procedures to assess those products against the relevant

requirements of the mandatory standard. The ACCC will accept test reports from

agencies which have the necessary expertise and capacity to properly test a product's compliance with a standard, which often includes reports provided by NATA accredited agencies and agencies which may not be so accredited. While the ACCC will 'accept' these reports, this does not preclude it from undertaking further enquiry in appropriate circumstances to vouch or check the information contained in the report.

**Antonio:** When a regulator is presented with 2 conflicting test reports - 1 pass and 1 fail for the same product, which one prevails?

@Antonio: Suppliers are required to ensure their products comply with mandatory requirements. Where a supplier possesses two conflicting test reports, they may want to consider retesting the consumer goods so they can be assured that their products are compliant. The test report assessment factors set out in the new ACCC test guides should be considered when comparing reports.

**Lisa:** Are there penalties (or should there be) for obtaining fake/forged reports? As a testing laboratory, it's hard to compete with cheap competitors who issue certificates at the drop of a hat.

@Lisa: Certain types of fraud, including forging documents and signatures, constitutes a criminal offence. If you suspect that a company may have received fraudulent test certificates, you can contact the company directly, the National Association of Testing Authorities ([www.nata.com.au](http://www.nata.com.au)) or the ACCC.

### PDF security

**Guest:** Gail made a good point on PDF reports, just to expand on that it pays to have the lab provide a "SECURED" PDF as Adobe Illustrator can be used to alter non secured PDF's and is difficult to detect.

@Guest: Good point! Thanks.

**Robert:** Gail correctly made the recommendation that reports should be obtained as a PDF, one step further would be to request "secured" PDF's as non secured PDF's can be amended using Adobe Illustrator with less chance of detecting a variation as it will use existing font / format.

@Robert: Robert: Yes, absolutely!

## Other questions

**Lindsay:** For products sold prior to June 2011 but defects found post 2011 are the obligations covered by old or new legislation?

@Lindsay: Mandatory reporting applies to deaths and serious injury or illness caused by the use of products supplied, or incidents that occurred, at any time in the past but for which the supplier first became aware after 1 January 2011. Need to also address standards and bans. For product safety mandatory standards and bans, products need to comply with the laws that were in place at the time they were sold. The ACL's consumer guarantees provisions apply to purchase on or after 1 January 2011. Implied warranties and conditions from TPA apply to older purchases. For more information about the ACL provisions, visit [www.accc.gov.au/acl](http://www.accc.gov.au/acl).

**John:** My name is John Williamson and I represent the organisation Parents for Window Blind Safety. This forum is great for getting the information out to industry and bodies such as ours, but how is all this going to be provided to consumers who will not be aware of these changes?

@John: The ACCC produces a range of information on the 'safe use' of products targeted at consumers. For example we recently updated our short safety alert brochure on curtain and blind cords (visit the publications section of [www.productsafety.gov.au](http://www.productsafety.gov.au) for a copy of this). We have also recently revised the comprehensive "Keeping baby safe" publication. In order to ensure this information reaches consumers including parents, we are increasingly engaging directly with people via online blogs and forums, as well as working through intermediaries such as child care centres.

**Daran:** How do you envisage substantiation notices being used? Infrequently, (say) as part of ACCC investigations? ...or very frequently, to establish the validity of product performance, compliance & certification claims?

@Daran: Substantiation notices can be used in a variety of circumstances, including to require suppliers to provide information and/or produce documents to confirm that products comply with standards where a claim of compliance to a particular standard has been made by the supplier. These notices can also be used to substantiate any other claims made about a product, such as when a product claims to be free of a particular ingredient, or made in a certain way.

**Kim:** If a product that is already regulated by state safety regulator and covered by relevant from state regulator? Do I still need safety test report?

@Kim: All consumer goods must now comply with the standards and bans under the Australian Consumer Law (ACL) where they exist, regardless of previous standards and bans imposed by individual States and Territories. Enquiries about requirements outside of the scope of the ACL should be directed to the relevant

authorities (e.g. ERAC for electrical safety).

**Donna:** Where a product is supplied as part of a whole, such as in the case of a consumer renting a home that contains newly mandated products, is it the Lessor's responsibility to provide that all products contained in the home are safe and compliant regardless of the age of the products? And, does it depend on when the tenancy agreement commenced?

**Cindy:** Query regarding EMC Compliance of battery operated products:

1. Is it necessary to keep a full EMC Test Report and Declaration of Conformity on file for items that are not marked with a C-tick label (i.e. low level compliance item)?
2. Is it necessary to keep a full EMC Test Report on file for items that are marked with a C-tick label or is it acceptable to keep an EMC Certificate / Declaration of Conformity on file only?
3. Is the age of an EMC Test Report a concern if the result shows compliance with the standards?

**For more information:**

**Monika:** Where can we obtain a copy of the ACCC guides, notices and information?

**Jeff:** Where can the hand out guide be downloaded that was passed out to attendees at the Melb meeting?

@Donna: The ACCC is considering this and will provide a view via the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)) in due course.

@Cindy: For information about electromagnetic compatibility (EMC) compliance, please refer to the Australian Communications and Media Authority ([www.acma.gov.au](http://www.acma.gov.au)).

@Monika: All information is available on the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)).

@Jeff: The Testing Guide is available from [www.productsafety.gov.au/producttesting](http://www.productsafety.gov.au/producttesting).

