

Consumer Product Safety Recall Guidelines

What a supplier should do when conducting a product safety recall

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Australian Competition and Consumer Commission

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Introduction

What is the purpose of these guidelines?

The purpose of the product safety recall guidelines (the Guidelines) is to assist suppliers in effectively conducting a product safety recall in accordance with Australian consumer law. (The Guidelines are provided for guidance only, however, and are in no way legally binding.)

The Guidelines have been developed by the Australian Competition and Consumer Commission (ACCC) in consultation with state and territory product safety regulators.

The product safety recall system that a supplier has in place should be tailored to the specific products they supply and the degree of risk those products may pose to consumers. Suppliers may seek their own independent advice (including legal advice) regarding the systems they develop for conducting a consumer product recall.

What is the scope of these guidelines?

The Guidelines have been developed to help suppliers plan for, and respond to, a safety incident necessitating the recall of a consumer good. It does this by setting out:

- the legal requirements for suppliers in relation to a consumer product recall as specified in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), which is known as the *Australian Consumer Law* (ACL).
- the role and responsibilities of suppliers and government agencies when a recall is necessary
- the essential elements of a successful recall, including:
 - notification
 - recall strategy
 - retrieval of the product
 - reporting on the progress of a recall

Background

A product safety recall is initiated when a consumer good is identified as presenting a safety risk to consumers.

Many recalls are initiated solely by suppliers when they become aware of safety issues presented by their products. Product recalls may also be negotiated by the ACCC or other regulators when suppliers are identified as having sold consumer products that are unsafe.

As a last resort, the ACCC may recommend that the responsible Commonwealth Minister initiate a compulsory recall in order to protect the public from an unsafe good (ACL - ss. 122-127). In this event, the ACCC will direct the manner in which the recall is to occur and will enforce compliance.

Why is the ACCC involved in consumer product recalls?

Suppliers have an obligation under the ACL to notify the responsible Commonwealth Minister when they initiate a recall.

The ACCC receives the notification on behalf of the Minister and oversees the recall to ensure that suppliers effectively remove unsafe products from the marketplace and retrieve them from consumers.

The ACCC enforces and administers the ACL, which applies to corporations and other entities engaged in trade and commerce, whether those activities cross state and territory boundaries, take place solely within a state or territory, or are conducted by electronic means such as e-commerce.

The range of goods covered under the ACL (and to which the product safety requirements apply) is broad and covers any product that is put to personal, domestic or household use.¹

Goods that are monitored by other specialist Commonwealth regulators, such as the Therapeutic Goods Administration (TGA), the Australian Pesticides and Veterinary Medicines Authority (APVMA), Foods Standards Australia and New Zealand (FSANZ) and the Department of Infrastructure and Regional Development (DIRD), also fall within the jurisdiction of the ACCC.

However, as a matter of administration and in recognition of the mandate and specialist expertise of those agencies, goods regulated by specialist Commonwealth regulators are not normally subject to direct action under the ACL.

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See s. 2 of the ACL, which defines "goods" as including ships, aircraft and other vehicles; animals, including fish; minerals, trees and crops, whether on, under or attached to the land or not; and gas and electricity; computer software; second-hand goods; and any component part, or accessory to, goods.

On occasion, the ACCC becomes involved in specialist matters when a regulator's powers are insufficient to satisfactorily address safety issues. In addition, the breadth of the definition of consumer goods under the ACL allows the ACCC to act as a 'safety net' and ensure that there are no gaps in Commonwealth regulatory coverage.

Section 1 – Legal Requirements, Roles and Responsibilities

Legal requirements

Competition and Consumer Act Recall Provisions

Section 128(2) of the ACL requires suppliers voluntarily recalling products for safety-related reasons to notify in writing the Commonwealth Minister responsible for consumer affairs within two days of initiating the recall.

The notice must state that the goods are subject to a recall and set out the nature of the defect in, or dangerous characteristic of, the goods.

A supplier who fails to notify the Commonwealth Minister may be found guilty of an offence under s.201(1) of the ACL.

A voluntary recall occurs when the supplier of a consumer product initiates the recall and voluntarily takes action to remove the goods from distribution, sale, and/or consumption. A voluntary recall may also be negotiated with a supplier following enforcement or compliance action by the ACCC. The word 'voluntary' is not intended to infer that a supplier may choose not to remove the product from sale. When a recall occurs, all of the goods subject to the recall must be removed from the market place.

Section 122 of the ACL empowers the Commonwealth Minister responsible for consumer affairs to order a supplier to recall goods that may cause injury to any person if it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods from causing injury. The Minister's recall order will stipulate the manner and timing of the recall. These are known as 'compulsory' recalls.

Sections 125(3) & 128(5) of the ACL require a supplier who undertakes a voluntary or compulsory recall to give, as soon as is practicable, written notice to any person outside Australia to whom they have supplied the goods.

Depending on the consumer product that is being recalled, suppliers may be obligated to notify other specialist Commonwealth regulators when they initiate a recall. A list of the organisations that are required to be notified is provided in Section 2 of these Guidelines, as well as on the following Recalls Australia website: http://www.recalls.gov.au

Supplier Responsibilities

Responsibility for the supply of safe products

A supplier is the entity that has primary responsibility for the supply of safe consumer products in Australia. 'Suppliers' include manufacturers, importers, distributors and retailers. There will often be more than one supplier responsible for a particular product.

Each entity in the supply chain is responsible for assessing and (if necessary) rectifying potential safety hazards presented by the consumer products that they supply. All suppliers in the supply chain should also be able to *demonstrate* due diligence in the procurement and supply of those consumer goods. The responsibility to ensure consumer goods are safe and fit for purpose may not be discharged to other parties in the supply chain, whether they be domestic or overseas manufacturers, suppliers or distributors.

A safety-related hazard may be identified by a number of different means, including:

- detection by the supplier undertaking the recall or by another supplier within the supply chain
- a complaint from a consumer
- detection by an industry body or consumer organisation
- detection by the ACCC, another specialist Commonwealth regulator, or a State or Territory product safety regulator.

An unsafe product may result from a manufacturing or production error—that is, where the manufacture of the product deviated from its design or material specifications during production.

An unsafe product may also result from a design defect - that is, a product may be unsafe even if the product is manufactured exactly in accordance with its design specifications. A design defect may also be implicated if the risk of injury results from the operation of the product, the reasonably foreseeable misuse of the product, or the failure of the product to operate as intended.

Where the ACCC detects or becomes aware of a safety-related hazard, it will attempt to identify the supplier at the highest level in the supply chain in order to assist in ensuring that all relevant stakeholders, including overseas entities, are identified and advised of the safety hazard relating to the product.

Supplier Recall Responsibilities

A supplier has the following general responsibilities in relation to ensuring that a recall's main objectives are achieved:

• conduct a comprehensive risk analysis of the safety-related hazard

- stop distribution of a product that has been identified for recall
- cease production or modify the manufacturing process
- remove the unsafe product from the marketplace
- notify the relevant regulator/s
- notify the public
- notify international product recipients
- notify others in the domestic supply chain
- facilitate the return of recalled products from consumers
- store and dispose of recalled products safely
- draw up a written recall strategy/plan
- maintain records and establish procedures that will facilitate a recall (records should be in a form that can be quickly retrieved)
- provide progress reports on the conduct of the recall to relevant regulators

In some cases, the risk analysis may indicate that it is not necessary to retrieve products from consumers. However, in order to mitigate the safety risk, some other action by the supplier may be required. These other actions may include initiating a trade level recall or issuing a safety alert.

Where a supplier initiates a trade level recall (if appropriate), the same general responsibilities would apply, except that the supplier would not be required to notify the general public of the recall. Likewise, when issuing a safety alert, a supplier would have the same general responsibilities, but would not be required to remove the unsafe product from the marketplace.

Section 2 – Mitigating a product safety risk

Identifying a consumer product safety hazard

Where suppliers become aware of a possible safety hazard associated with a consumer product that may cause injury to a person, they should immediately conduct the following assessment:

- gather and assess the reliability of all available information relating to the potential hazard
- identify how the problem occurred and exactly which component was faulty and why
- conduct a comprehensive risk analysis
- investigate possible ways of correcting the fault (where appropriate) and decide whether the product can be repaired or modified.

Additional guidance on risk analysis is available in product safety and risk management standards such as *AS/NZS ISO 31000:2009 - Risk Management - Principles and Guidelines*.

The supplier should contact the ACCC when performing such an assessment. This will enable the ACCC to assist the supplier in determining what action (if any) is required to mitigate a safety hazard.

Determining an appropriate course of action

Depending on the outcome of the risk analysis, there are various possible actions a supplier may choose to take in order to mitigate a safety hazard. These include:

- calling back or withdrawing products from the market or distribution chain;
- requesting consumers or other suppliers to:
 - return products for refund, replacement or modification;
 - contact the supplier to arrange for a replacement product or part to be sent to the consumer;
 - send a service agent to a person's home or place of business to repair or modify a product;
 - request a service agent to repair or modify a product when it is next presented for servicing.

The most appropriate recall action will depend on a number of factors, including the nature of the risk, the distribution of the product, and also its expected lifecycle. When

in doubt, the supplier should consult with the ACCC for assistance in determining the most appropriate strategy.

Conducting a recall

What are the objectives of a recall?

The objectives of a recall are to:

- stop the distribution and sale of the affected product as soon as possible
- inform the relevant authorities of the problem
- inform the public of the problem
- efficiently remove from the market place any product that is potentially unsafe
- prevent the further distribution of unsafe products

Conducting a successful recall

The supplier has prime responsibility for implementing a recall. A recall should be implemented in accordance with the supplier's pre-planned recall policy and after consultation with the ACCC.

In order for the ACCC to be assured that the recall will meet its objectives, suppliers should undertake the following actions:

- notify the regulator/s of the recall, which includes providing details of other entities within the supply chain that have been notified
- prepare a recall strategy for submission to the relevant regulator/s
- retrieve the affected product from consumers and from within the supply chain
- submit regular progress reports to the appropriate regulator/s

Notification

Notification of Government authorities

A supplier undertaking a safety-related recall is required under the ACL (s.128(2)) to notify the Minister in writing within two days of commencing a recall action.

The ACCC requires suppliers to notify the ACCC when they decide to take any one of the following actions in order to mitigate a product safety hazard:

- calling back or withdrawing products from the market or distribution chain;
- requesting consumers or other suppliers to:

- (a) return products for refund, replacement or modification, or
- (b) contact the supplier to arrange for a replacement product or part to be sent to the consumer;
- sending a service agent to a person's home or place of business to repair or modify a product;
- making arrangements for a service agent to repair or modify a product when it is next presented for servicing.

A supplier may fulfil the notification requirement by completing and submitting a recall notice via the ACCC's online form. If a business cannot submit a recall notice using the online form, it should contact the ACCC on 1300 302 502.

Submitting a recall notice (Section 128 Notification)

Sometimes it will be necessary to notify another organisation, such as a state or territory consumer affairs authority, of a product recall. Contact details for state and territory product safety regulators are provided on the Recalls Australia website at: State and territory product safety regulators

Where a recall relates to specific product groups, the following organisations should also be notified:

- Food Standards Australia New Zealand (FSANZ) (for food products)
- Department of Infrastructure and Regional Development and Local (DIRD) (for motor vehicles)
- Therapeutic Goods Administration (TGA) (for therapeutic goods)
- Australian Pesticides & Veterinary Medicines Authority (APVMA) (for agricultural and veterinary products)
- State and territory electrical regulators (for electrical products)
- State and territory gas regulators (for gas appliance products)

Notification of international product recipients

A supplier undertaking a voluntary or compulsory safety-related recall is required under the ACL (ss.128(4) & 125(1)) to forward a recall notification to any person outside Australia to whom they have supplied the affected goods.

The notification must state that the goods are subject to a recall and, if the goods contain a defect, have a dangerous characteristic, or do not comply with a prescribed consumer product safety standard, set out the nature of the defect or non-compliance.

Where a supplier has complied with the notification requirements under s.128(4), the supplier is required under the ACL (s.128 (6)) to forward to the responsible Commonwealth Minister within 10 days of providing the notice to the overseas

person(s), a copy of the notice. This requirement can be fulfilled by submitting a notification to the ACCC via email to recalls@recalls.gov.au.

Other entities in the domestic supply chain

Recall effectiveness is largely dependent on the notification of and cooperation between all entities in the supply chain. The ACCC therefore requires a supplier undertaking a safety-related recall of consumer goods to notify in writing any other entity within the domestic supply chain that a recall has been initiated.

Where a supplier has complied with the requirement to notify entities within the domestic supply chain that a recall has been initiated, the supplier should advise the ACCC that it has done so.

Recall strategy

In order for a recall to meet its objectives efficiently, a supplier should submit a recall strategy to the ACCC upon initiating a recall.

A supplier should also negotiate the content of the recall strategy with the ACCC prior to submission.

Submitting the recall strategy for consideration is the first stage of the recall process and will assist the ACCC in assessing whether the product safety risks associated with the product have been adequately addressed.

Some details of the recall strategy should be supplied to the ACCC at the time of initiating the recall. However, other details will not become evident until the recall has progressed, and these are to be provided at agreed intervals.

Elements of a recall strategy

A supplier's recall strategy should include:

- (a) an explanation of the problem, including the hazard associated with the product and the supplier's assessment of the level of risk presented to the user
- (b) the supplier's assessment of how the defect occurred, including detailed identification of the component or materials at fault and at which stage of supply the fault occurred (whether during the design, testing, manufacturing, packing, inspection or shipping stages)
- (c) the number of units supplied to consumers and other entities within the supply chain
- (d) details of any known injuries or incidents associated with the product
- (e) information about the life cycle of the product
- (f) a summary of the proposed communication with consumers, including the method of communication, how frequently it will be repeated and details of the message. This should be negotiated with the ACCC to ensure maximum

- efficacy. Guidance as to the types of factors that a supplier should consider when developing a communication plan is provided in attachment A
- (g) information about the way in which the supplier will manage contact from consumers about the recalled product, including any complaint-handling procedures
- (h) information about the manner in which the recalled product will be collected, destroyed or rectified
- (i) contact details of the manufacturer and/or importer of the product
- (j) contact details of other entities in the domestic supply chain to whom the product has been supplied
- (k) contact details of overseas recipients of the product (such as distributors or retailers)
- (l) a summary of actions taken by the supplier to identify and correct the cause of the hazard, including the outcome of any root cause analysis or the time period in which the analysis will occur.

Communication plan

The purpose of communicating with consumers about a recall is to ensure that product-related injuries are prevented by either removing or rectifying unsafe products. The goal in communicating a product recall is to ensure consumers comply with the recall notification.

It is important to match the communication medium to the consumer in order to achieve the objectives of a recall as efficiently as possible. Communications regarding the recall should therefore be directed towards the particular consumer demographic for the recalled product by using an appropriate communication method.

Although there are various means by which a supplier can convey a recall notification to consumers, there are some minimum requirements for written communication.

A written recall notice should include:

- (a) Product description—a clear description of the product, including the name, make and model and any distinguishing numbers, such batch or serial numbers. Dates the product was available for sale should also be included.
- **(b) Picture of the product**—a photograph or drawing of the product will provide the consumer with a convenient and effective means of identification.
- **(c) Description of the defect**—a clear description of what the defect is. The defect should be described in simple terms so that the average consumer can understand what the problem is. Suppliers should refrain from using overly technical terminology wherever possible.

- (d) A statement of the hazard—a description of the maximum potential hazard and associated risk. Where available, an appropriate hazard symbol should be included.
- (e) A section titled "What to do", which explains the immediate action the consumer should take. For example, "Cease use immediately and return the product to the place of purchase for a full refund". It should be clear that the consumer should return the product and not dispose of it. Suppliers should ensure they minimise the inconvenience to consumers in order to encourage consumer compliance with the recall notice.
- (f) A section titled, "Contact details", which explains who consumers should contact in order to receive a refund or have the product repaired or replaced. Business and after-hours telephone numbers should also be included (preferably toll free), as well as suitable email and website addresses.

The recall notice should **not** include the words 'voluntary recall'.

Figure 1 - sample recall notice:



Design of a recall notice

The design of a newspaper recall notice must:

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

Suppliers should place information relating to a product recall prominently on their websites. The best practice for this form of advertising is to display an image of the product and the words "Product Safety Recall" (or similar) in a clearly visible position on the homepage. The image or words should be hyperlinked to a page that displays the recall notice. Other online forms of communication such as SMS, web forums, blogs and social networking sites may prove effective and should also be considered.

Retrieval of the affected product

The ultimate goal of a recall is to retrieve as many unsafe products from consumers as possible and prevent any further distribution of the affected product in the market place.

Products that are the subject of a recall may be recovered from different entities in the supply chain or directly from consumers.

A supplier is required to make arrangements for the retrieval of the product. These arrangements should include:

- establishing collection points across the distribution network
- notifying the relevant parties, including other entities within the supply chain and consumers, of the intended method of retrieval of the recalled product
- arrangements for disposing of the returned product—this may involve arranging for the returned product to be quarantined until it can be rectified or safely destroyed.

Low value products pose particular challenges for suppliers when recalling them. "Low value" does not of course mean "low risk" and suppliers should seek to achieve effective recalls of such products just as they would any other. A supplier of a low value recalled product should consider offering extra incentives such as a free gift or a discount to consumers who return the recalled product as directed.

Reporting on the recall

Progress reports

In order for the ACCC to be able to monitor the progress of a recall and assess its effectiveness, a supplier should provide progress reports at regular intervals.

The ACCC will develop a reporting schedule with a supplier at the beginning of a recall that appropriately reflects the product risk being addressed. The information that the ACCC requires will depend on the specifics of the recall and will therefore be negotiated on a case-by-case basis. Examples of the types of information that may be required include:

- (a) the number of products returned from within the supply chain and from consumers
- (b) the number of complaints and inquiries that have been received regarding the affected product and the nature of these complaints
- (c) the number of inquiries that have been received from consumers regarding the recall and the nature of these inquiries
- (d) whether the supplier deviated from the original plan as described in the agreed communication strategy and if so, the reasons why.

Final report

When a supplier has taken all reasonable steps to effectively mitigate the risk posed by the unsafe product, the recall can be closed. Closure of a recall does not affect the statutory rights of consumers and the public may continue to access information about the recall through the recalls website at www.recalls.gov.au. However, when a recall is closed, the supplier no longer needs to actively promote the recall and the ACCC's regulatory oversight ceases.

The supplier should submit a final report before a recall can be closed.

A supplier's final report should include:

- (a) confirmation of the total number of items supplied and the final number of units recovered from consumers and from within the supply chain
- (b) evidence to demonstrate that all entities from within the domestic supply chain were notified of the recall
- (c) information about the communication strategy, including copies of any data relating to its effectiveness (for example, the number of 'visitors' accessing the relevant webpage)
- (d) action taken by the supplier to identify and correct the cause of the safety hazard presented by the product, including the outcome of any root cause analysis, whether the defect was caused by a design, testing, manufacturing, packaging, shipping, or other fault, and the steps the supplier has taken to remedy the defect

- (e) information about any known injuries or incidents associated with the product
- (f) the final number of complaints or inquiries that have been received regarding the recall and/or the product
- (g) information about the means by which the recalled product has been destroyed or rectified, including evidence of the destruction or rectification of the unsafe product.