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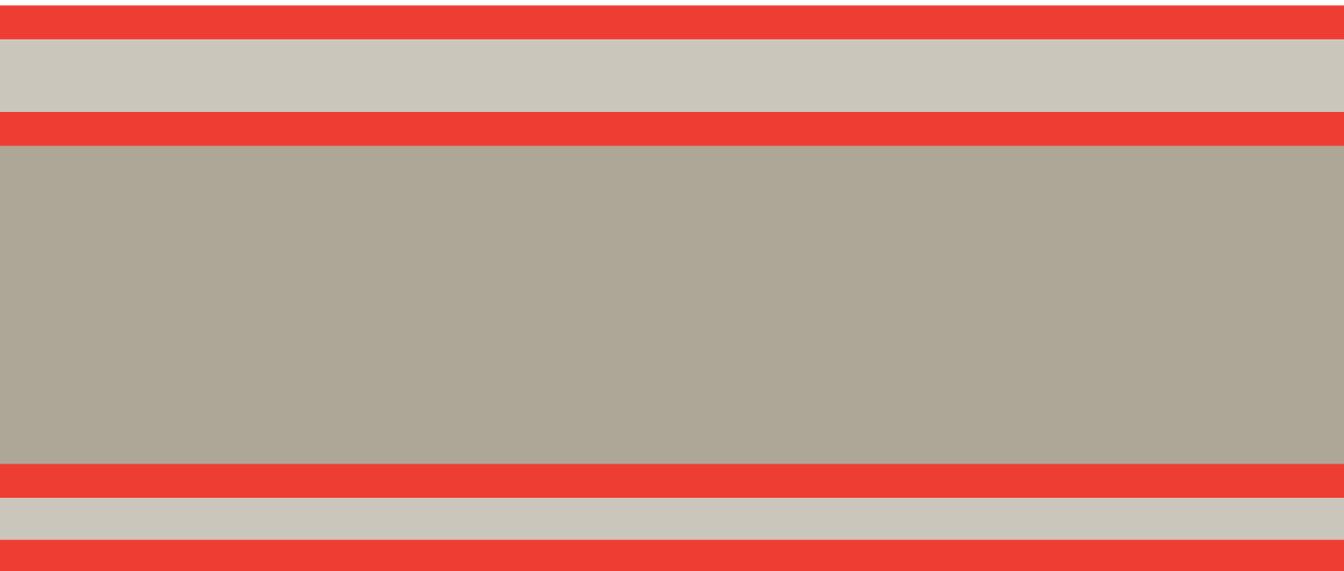
# Review of the Australian product safety recalls system





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Australian Competition and Consumer Commission

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# Abbreviations

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
APVMA	Australian Pesticides and Veterinary Medicines Authority
COAG	Council of Australian Governments
FSANZ	Food Standards Australia New Zealand
Infrastructure	Department of Infrastructure, Transport, Regional Development and Local Government
NICNAS	National Industrial Chemicals Notification and Assessment Scheme
PC	Productivity Commission
TGA	Therapeutic Goods Administration
TPA	<i>Trade Practices Act 1974</i>

# Summary

The Productivity Commission (PC) conducted a review of the Australian consumer product safety system and released its report on 16 January 2006. In July 2008, the Council of Australian Governments approved the recommendations made by the PC in its report. One of those recommendations was for a review of the existing consumer product recall guidelines to ensure that recalls are undertaken in the most effective manner. The Australian Competition and Consumer Commission (ACCC) conducted its review of recall effectiveness pursuant to that PC recommendation.

The ACCC review examined the existing consumer product recalls system, the regulators involved in its oversight and the ways in which the risks associated with unsafe goods can be addressed by suppliers and regulators. While the review did not reveal significant problems with the system, it has enabled the ACCC to consider a number of product recall processes and practices which may improve the effectiveness of the system.

## Recall effectiveness overview

Over 10 000 products have been recalled in Australia in the last 23 years. General consumer product recalls are the responsibility of the ACCC and account for 25 per cent of all safety recalls. Specialist Commonwealth regulators have jurisdiction over the remaining 75 per cent.

The overall average return rate of recalled goods is 56.75 per cent; however, the average return rates vary markedly—from 80 per cent to 36 per cent—between different types of goods overseen by the different Commonwealth regulators. This difference can be attributed to a variety of factors such as the type of product being recalled, the communication methods used, the hazard posed by the product and the level of intervention by regulators.

The review found that some regulators encouraged industry to voluntarily address unsafe products and only intervened in the recall process if industry failed to adequately mitigate the risks, whereas others were more involved and actively managed the process from the outset. Analysis showed that the recall was more effective when the regulator actively managed and had a greater level of involvement in all aspects of the recall process.

The analysis of recall data also found that measuring recall effectiveness only by the percentage of product returned does not provide a complete picture. Factors such as the communication method used to advertise the recall, the type of product being recalled and the hazard posed by the product are also relevant considerations in evaluating recall effectiveness.

The review identified four broad aspects of the recalls system that are influenced by differing levels of involvement of regulators through provision of advice, through oversight or through intervention in the recall process. These are notification of the product recall to the relevant regulator(s), communication of the product recall to consumers, retrieval of the recalled product and closure of the recall.

## Notification

When a supplier decides to recall an unsafe product from within the supply chain or from consumers, the supplier has a legal obligation under statute to notify the relevant government minister or commissioner in most states and territories where the product is supplied. In the case of consumer products generally, this notification must be made to the Commonwealth Minister for Competition Policy and Consumer Affairs (the Commonwealth minister) via the ACCC. In addition, specialist Commonwealth product safety regulators also require notification of the recall of particular products such as motor vehicles, therapeutic goods, food products, and animal medicines and agricultural products.

The review found that the multiplicity of notification requirements may be a burden on suppliers that could delay recall initiation. While it is expected that components of the Australian Consumer Law (ACL) reforms will streamline the notification requirements between state and territory consumer protection agencies and the ACCC, there are opportunities to better align and clarify the different notification requirements of Commonwealth product safety regulators. Alignment and clarification of the notification requirements across jurisdictions may create efficiencies and assist with recall effectiveness. The ACCC will work with other Commonwealth regulators to facilitate the alignment of notification requirements.

The lack of a definition of what constitutes a recall also poses problems for suppliers and regulators alike, particularly when it comes to ensuring compliance with statutory notification provisions. 'Recall' is not defined in the *Trade Practices Act 1974* (TPA) or any other legislative instrument in relation to product safety. The review found that some suppliers take a narrow view and thereby avoid the statutory notification provisions. Such an approach impacts on the ACCC's ability to effectively oversee product safety related hazards and potentially impacts on the safety of consumers. The ACCC will amend the Recall Guidelines<sup>1</sup> to clarify that suppliers should notify the Commonwealth minister of all actions taken to address the risk posed by an unsafe product, including the issuing of a safety alert, the recall of a product from consumers, and the recall of a product from within the supply chain.

Notification of other entities in the supply chain is also crucial when it comes to successfully recalling unsafe products. Currently, the statutory notification provisions require suppliers to advise international recipients of products being recalled but do not require notification of others in the domestic supply chain, which results in inconsistent protection of Australian consumers. The ACCC considers that broadening the statutory notification provisions to include notification of others in the domestic supply chain would provide stronger consumer protection. The ACCC will revise the Recall Guidelines to recommend that suppliers notify others in the domestic supply chain, as well as international recipients of products, of any action taken to address a consumer product safety risk.

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<sup>1</sup> Australian Competition and Consumer Commission, *Product safety recall: A guide for suppliers*, electronic document available at <https://www.recalls.gov.au/content/index.php/itemId/952488>.

## Communication

The purpose of communicating with consumers about a recall is to ensure that product related injuries are prevented through the removal of unsafe products from the market. This means that suppliers should ensure that their notices advertising recalls not only provide consumers with information about the recall but also motivate consumers to comply with the recall notice and return the recalled product to the supplier.

The ACCC examined how recalls are currently communicated to consumers and whether this corresponds with the communication preferences of different consumer demographics. Market research was conducted with consumers across regional and metropolitan areas to understand how they prefer to receive recall messages and what motivates them to respond to a recall.

The research found that the use of newspapers alone to advertise recall notices is in many cases no longer sufficient. Communication channels allowing direct contact between the supplier and consumers are the most effective methods of communicating product recalls. For example, some suppliers now use new internet phenomena like Facebook and Twitter to advertise recalls, responding to the growing popularity among some consumer demographics of blogs and social networking sites.

Recall notices should also be easily recognisable and easily understood, capturing consumers' attention and motivating them to bring the product back as soon as possible. The review found that the wording, tone and design of a recall notice can create barriers to consumer compliance by providing too little information or too much complex information, and can allow consumers to talk themselves out of complying. Suppliers should be aware of and carefully consider the wording, tone and design of recall notices in order to encourage consumers' acceptance of and compliance with the recall message. The ACCC will revise the Recall Guidelines to clarify the requirements in relation to the wording and design of a recall notice.

## Product retrieval and closure

The ability to trace products, especially high-risk products, into the hands of consumers will ultimately improve recall effectiveness. At the same time, product traceability enables suppliers to undertake more targeted and therefore more cost-efficient recalls, and assures regulators that the risk posed by high-risk products in particular will be addressed as quickly and as effectively as possible.

To enable effective product tracking, the ACCC will encourage suppliers to have systems in place to track products and retain records that reflect the movement of products through the supply chain. Greater ability to identify particular batches of products and track them effectively through the supply chain would mean recall action could be limited to fewer products and communications could be more effectively targeted. The ACCC will also encourage other mechanisms to ensure that consumers are made aware of product recalls, such as warranty cards and online registration facilities.

The Recalls Australia website, which details product recalls occurring around Australia, is an invaluable reference tool for consumers. Currently, over 15 000 suppliers and consumers are

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receiving emails and RSS feeds about the latest product recalls. The ACCC will continue to actively promote the website.

The ACCC found that suppliers' success in retrieving unsafe products is influenced by the level of oversight product safety regulators have of the recall. Active monitoring and oversight of the recall usually involves the regulator requiring regular progress reports from suppliers and using these to assess the effectiveness of the recall and to identify how recall return rates could be improved. Reporting also assures the regulator that the supplier has addressed the remedial aspects of a recall by identifying the cause of the product defect and taking steps to ensure that further unsafe products do not enter the market. This includes providing evidence of the rectification or destruction of unsafe goods prior to recall closure.

By providing additional guidance to suppliers on reporting requirements, the ACCC will ensure that each recall has a better chance of success. The ACCC will revise the Recall Guidelines to clarify the reporting requirements for a recall. Reporting requirements will be agreed on a case by case basis and will be tailored to ensure that high-risk recalls are more closely monitored and necessary additional measures are identified in a timely fashion. In the event that reporting proves unsatisfactory, the ACCC has the option of recommending that the Commonwealth minister intervene to properly protect consumers by using compulsory recall powers.

The recommendations for change contained in this report are targeted towards providing greater transparency and consistency in the actions taken by the ACCC and suppliers in relation to product recalls. The targeted nature of the actions and recommendations also takes into account the fact that suppliers already have to comply with various forms of regulation. Accordingly, the actions and recommendations have been designed where possible to be implemented through mechanisms that are already in place, in order to ensure effective recalls with minimal costs to suppliers.

## Findings and actions

1. The Australian product safety environment		
Finding	1	Regulator involvement in the recall process through the provision of advice, guidance and intervention where necessary can increase the effectiveness of the recall.
Action	1	The Australian Competition and Consumer Commission (ACCC) will further develop its role in relation to the oversight of consumer recalls through the provision of advice, guidance and intervention where necessary in order to promote greater consistency between suppliers' recall outcomes.
2. Notification		
Finding	2	The multiplicity of notification requirements is a burden on suppliers that could delay recall initiation. This problem will be addressed between the ACCC and state and territory product safety regulators as part of the Australian Consumer Law (ACL) reforms. However, there is scope to clarify and align notification requirements between Commonwealth product safety regulators to assist with recall effectiveness.
	3	There is no clear definition of 'recall' under the <i>Trade Practices Act 1974</i> (TPA) or in the ACCC's <i>Product safety recall: A guide for suppliers</i> (Recall Guidelines). As a result, some suppliers may avoid notification requirements and regulatory oversight when they adopt strategies such as safety alerts and trade-level recalls to address product safety risks.
	4	Recall policies and procedures can assist with the efficient and effective management of recalls. Suppliers can assure regulators of the adequacy of their recall management through the provision of their recall strategy.
	5	There is a statutory requirement to advise international recipients of products of a recall. However, in the absence of clear guidance it is possible that some suppliers will interpret s. 65F(7) of the TPA narrowly and fail to notify international recipients of the full spectrum of strategies used to address product safety risks.
	6	The absence of a legislative requirement for suppliers undertaking a consumer product safety recall to notify others in the domestic supply chain of the recall can result in inconsistent protection of Australian consumers.

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Action	2	The ACCC will discuss with other Commonwealth regulators possible ways to ease the compliance burden on suppliers of multiple notification requirements.
	3	<p>The ACCC will modify the Recall Guidelines to ensure the guidelines:</p> <ul style="list-style-type: none"> <li>• include clear and useful information about all consumer product safety notification requirements at the Commonwealth and state and territory levels</li> <li>• indicate that suppliers should notify the Commonwealth Minister for Competition Policy and Consumer Affairs (the Commonwealth minister) of all actions taken to address the risk posed by an unsafe product</li> <li>• provide clear instructions to suppliers about the information the ACCC requires in order to be assured that the product safety risk will be effectively mitigated</li> <li>• include clear and useful information to assist suppliers in the development of recall policy and procedural documents</li> <li>• indicate that suppliers are to notify international product recipients of all actions taken to address the risk posed by an unsafe product</li> <li>• indicate that suppliers are to notify others in the domestic supply chain of any action taken to address a consumer product safety risk.</li> </ul>
	4	The ACCC will ensure that the Recall Guidelines indicate that suppliers should notify the Commonwealth minister of all actions taken to address the risk posed by an unsafe consumer product, including the issuing of a safety alert or a trade- or consumer-level recall. After encouraging suppliers to notify the ACCC of these strategies for a period of 12 months, the ACCC will evaluate the responsiveness of suppliers to this request and consider whether legislative reform to expand the notification provisions of the TPA is necessary.
<h3 style="color: red;">3. Communication with consumers</h3>		
Finding	7	The use of newspapers alone to advertise recall notices is no longer sufficient. Direct contact between the supplier and consumers, using a communication method that is directed towards the particular consumer demographic, is the most effective method for communicating about product recalls.
	8	Suppliers should carefully consider the tone of the recall communication and the description of the problem and the risk in order to encourage consumers' acceptance of and compliance with the recall message. The recall message should clearly convey what the consumer should do to return the product or arrange for it to be rectified.

Action	5	The ACCC will modify the Recall Guidelines to require suppliers to develop their proposed communication strategy based on different communication methods and consumer demographics.
Action	6	<p>The ACCC will modify the Recall Guidelines to require that all recall notices:</p> <ul style="list-style-type: none"> <li>• no longer refer to ‘voluntary’ recall</li> <li>• use words in the title that will have the greatest impact on consumers</li> <li>• have a border printed in red</li> <li>• include a photo of the product</li> <li>• contain a hazard symbol where available</li> <li>• have a clear description of the product, including serial and model numbers or other unique identification</li> <li>• have a clear description of the risk and potential injury</li> <li>• have a ‘what to do’ section which explains the action the consumer is to take</li> <li>• include contact details for the supplier, including reference to the recalls.gov.au website</li> <li>• detail how the supplier plans to reduce the inconvenience caused to the consumer, including refund, replacement or repair options.</li> </ul>
<h4 style="color: red;">4. Retrieving the product</h4>		
Finding	9	The use of tracking labels facilitates product traceability and can allow a recall to be more targeted and effective.
	10	Suppliers should retain records that identify who they purchased a product from and who they sold the product to, in order to facilitate recalls and withdrawals and improve the effectiveness of these actions.
	11	Regular reports on the progress of product recalls are an important tool for both suppliers and regulators when assessing recall effectiveness.

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Action	7	When reviewing mandatory standards and contributing to the development of voluntary standards, particularly in relation to products that pose heightened safety risks, the ACCC will consider whether there should be a requirement for the product to include distinguishing marks to allow it to be identified and traced.
	8	The ACCC will develop a reporting schedule with suppliers at the beginning of a recall that appropriately reflects the product risk being addressed by the recall and enables ongoing assessment of the effectiveness of the recall. The ACCC will allow electronic submission of these reports to ease the reporting burden on suppliers. If this amendment to the Recall Guidelines insufficiently encourages compliance, amendments to the TPA to enable the ACCC to require recall progress reports at nominated periods will be considered.
	9	The ACCC will provide guidance and encourage suppliers to: <ul style="list-style-type: none"> <li>• include distinguishing marks on their products or packaging to allow the products to be identified and traced</li> <li>• in the case of low-value recalled products, offer incentives for consumers to return them</li> <li>• retain records to facilitate tracing of products through the supply chain</li> <li>• maintain records about the origin of the components of products</li> <li>• use online product registration and warranty cards.</li> </ul>
Action	10	The ACCC will further investigate over the next 12 months whether it is appropriate to recommend amending s. 65F of the TPA (or the equivalent provisions in the ACL) to allow the Commonwealth minister to direct that the supplier offer a particular remedy when ordering a compulsory recall.
Action	11	The ACCC will continue to monitor suppliers' conduct over the next 12 months to determine whether it is appropriate to recommend amending s. 65G of the TPA (or the equivalent provisions in the ACL) to make it an offence to supply goods subject to a voluntary recall as well as those subject to a compulsory recall.

5. Closure		
Finding	12	Recalls can be more successfully targeted if the cause of the deficiency is identified, particularly if it can be traced to a particular batch or lot number or product stream. Additionally, this can reduce the risk of the manufacture and supply of unsafe products in the future.
	13	The destruction or rectification of unsafe goods reduces the opportunity for them to be deliberately or accidentally sold to consumers after the completion of the recall.
	14	Recall effectiveness can best be assessed by reviewing a range of relevant factors in addition to noting the quantity of product returned to the supplier or rectified.
Action	12	<p>The ACCC will increase its oversight of the remedial aspects of recalls and will modify the Recall Guidelines to include:</p> <ul style="list-style-type: none"> <li>• the requirement that suppliers provide information about the cause of the product defect and the steps they have taken to remedy the defect</li> <li>• the requirement that suppliers provide evidence of the destruction or rectification of the unsafe product prior to recall closure</li> <li>• the factors the ACCC will consider when assessing the effectiveness of the recall</li> <li>• the requirement that the supplier provide a final report before the recall can be closed.</li> </ul>

## Background

In January 2006, the Productivity Commission (PC) released its *Review of the Australian consumer product safety system research report*.<sup>2</sup> While this report considered all aspects of the product safety system in Australia, in relation to the product recalls system it recommended that the existing Recall Guidelines<sup>3</sup> be reviewed in order to establish whether the effectiveness of recalls could be improved:

### Recommendation 11.1

As the success of recalls in recovering unsafe products is variable (and especially poor for low value products) the Ministerial Council on Consumer Affairs should undertake a review of existing recall guidelines to ensure that recalls are undertaken in the most effective manner. Considerations for improving recalls could include:

- improved advertising efforts (including photographs in advertisements and other targeted material);
- buyer registration cards for high risk products; and
- identification and highlighting of particularly high risk products which have been recalled.<sup>4</sup>

On 3 July 2008, the Council of Australian Governments (COAG) approved the review of the existing Recall Guidelines, along with other product safety reforms including harmonisation of product safety regulations across the Commonwealth and states and territories, implementation of a 'one-stop shop' website to provide easier access to product safety material, implementation of an emerging hazards clearing house, and mandatory reporting of goods associated with serious injury or death.

The Australian Competition and Consumer Commission (ACCC) has now reviewed the existing consumer product recalls system, drawing on the views of other Commonwealth, state and territory and international product safety regulators.

The objective of the review was to consider the effectiveness of the consumer product recall mechanism in removing unsafe consumer products from the sale and post-sale environment.

The review of the existing recalls system will inform the development of new guidelines for suppliers and provide the basis for improvements to the processes and procedures used by the ACCC to improve recall effectiveness.

This report presents the ACCC's findings and recommendations from the review.

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2 Productivity Commission, *Review of the Australian consumer product safety system: Productivity Commission research report*, 2006.

3 Australian Competition and Consumer Commission, *Product safety recall: A guide for suppliers*.

4 Productivity Commission, *Review of the Australian consumer product safety system: Productivity Commission research report*, 2006, p. xlvi.

## Methodology

The ACCC undertook the following work as part of its review:

- File review of all recalls since January 2006. This included reviewing recall notifications within the jurisdiction of specialist Commonwealth product safety regulators.
- Questionnaire circulated to international product safety regulators through the International Consumer Product Safety Caucus. The questionnaire probed the strengths and weaknesses of other countries' product safety systems, measures of recall effectiveness and perceptions of recall success.
- Research into current legislation and policy, including procedural systems of specialist Commonwealth regulators.
- Research (conducted under commission by Colmar Brunton Social Research) into consumer perceptions of the current product recalls system.
- Interviews with suppliers who had been involved in a recall since 2006, to understand the recall process from a business perspective.

## Outcomes

As a result of its review the ACCC identified four broad aspects of the recalls system that are influenced by differing levels of involvement by regulators through the provision of advice, oversight or intervention in the recall process. The four aspects relate to:

- notification of the product recall
- communication of the product recall
- retrieval of the recalled product
- closure of a recall.

Each aspect is discussed in detail in the respective chapter of the report. At the conclusion of each chapter a number of findings are listed that summarise what has been learned about recall effectiveness. From these findings a number of recommendations are made which will form the basis of consultation with interested stakeholders, including state and territory regulators and industry representatives, in order to finalise the new Recall Guidelines.

To put the findings in context, the following chapter provides a broad outline of the Australian consumer product safety environment, the regulators involved in its oversight and the ways in which the risks associated with unsafe goods can be addressed by suppliers and regulators.

# The Australian product safety environment

Product safety in Australia is the responsibility of a number of different Commonwealth and state and territory regulatory authorities. At the Commonwealth level, the Australian Competition and Consumer Commission (ACCC) has jurisdiction over consumer products generally, while agencies and departments such as the Therapeutic Goods Administration (TGA), the Australian Pesticides and Veterinary Medicines Authority (APVMA), Food Standards Australia New Zealand (FSANZ), the Department of Infrastructure, Transport, Regional Development and Local Government (Infrastructure) and the National Industrial Chemicals Notification and Assessment Scheme (NICNAS)<sup>5</sup> regulate and monitor specific product categories.

Each Australian state and territory has an agency responsible for consumer product safety and food safety, as well as a specific branch or section within the consumer product safety agency or separate agency responsible for electrical product safety.

## Commonwealth product safety regulators

The ACCC enforces and administers the *Trade Practices Act 1974* (TPA), which applies to corporations and other entities engaged in trade and commerce whose activities cross state boundaries, take place within a territory or are conducted by electronic means such as e-commerce.

Using the powers conferred by the TPA, the ACCC regulates products available to consumers in the national marketplace. The range of goods covered under the TPA is broad and includes any product that is used in personal, domestic or household consumption.<sup>6</sup>

Goods that are monitored by specialist Commonwealth regulators such as the TGA, APVMA, FSANZ and Infrastructure 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 the specialist Commonwealth regulators are normally not considered by the ACCC for direct action under the TPA. On occasion, the ACCC has become involved in specialist matters when a specialist regulator's powers have not been able to satisfactorily address safety issues. In addition, the breadth of the definition of 'goods' under the TPA allows the ACCC to act as a safety net and ensure that there are no gaps in Commonwealth regulatory coverage.

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5 Cosmetic products that do not fall within the definition of therapeutic goods are generally regulated by a combination of NICNAS and National Drugs and Poisons Schedule Committee processes.

6 See s. 4 of the TPA, which defines 'goods' to include 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.

Table 1. Jurisdictions of the specialist Commonwealth regulators

Regulator	Legislation	Jurisdiction
TGA	<i>Therapeutic Goods Act 1989</i>	General health care products such as prescription medicines, over-the-counter medicines, complementary health care products, and other medical products such as wound dressings, tampons and condoms.
APVMA	<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	All agricultural and veterinary chemical products.
FSANZ	<i>Food Standards Australia New Zealand Act 1991</i>	Any food substance or thing, whether it is living, raw or prepared or partly prepared, for human consumption. Food may include live plants or animals. Food and beverages, including those containing alcohol. Food and beverage packaging.
Infrastructure	<i>Motor Vehicle Standards Act 1989</i>	Any vehicle or trailer designed solely or principally for the transport on public roads of people, animals or goods. The vehicle or trailer must be able to be registered under state or territory legislation for on-road use.

When an unsafe product is identified, suppliers have a statutory obligation under the TPA to notify the ACCC when undertaking a recall voluntarily.<sup>7</sup> This enables the ACCC to ensure the recall effectively addresses the risk and removes the unsafe product from the hands of consumers. Alternatively, product recalls may be negotiated with suppliers by the ACCC following enforcement or compliance action. As a last resort, the ACCC may recommend that the Commonwealth Minister for Competition Policy and Consumer Affairs order a compulsory recall to protect the public from an unsafe good. When this happens, the ACCC will direct the manner in which the recall is to occur and will actively enforce compliance.<sup>8</sup>

<sup>7</sup> See s. 65R of the TPA.

<sup>8</sup> Not all the other Commonwealth regulators have comparable powers under their legislation.

## State and territory product safety regulators

Each state and territory has a fair trading or consumer affairs office that shares responsibility for product safety with the Commonwealth. The state and territory product safety provisions extend legislative coverage to individuals and unincorporated businesses not regulated by the TPA.

The states and territories have powers comparable to those of the ACCC when it comes to dealing with unsafe goods in their respective jurisdictions. However, like the specialist Commonwealth regulators, not all state and territory regulators currently have the power to order a compulsory recall.<sup>9</sup>

## Australian Consumer Law reforms

The jurisdictional overlap between Commonwealth and state and territory regulators within consumer protection sometimes results in inconsistencies and inefficiencies. Some of those issues will be overcome by a suite of legislative and policy reforms known as the Australian Consumer Law (ACL) reforms.

The ACL will align the Commonwealth and state and territory consumer product safety laws and introduce a new, more consistent national product safety system. For example, all states and territories will be able to order compulsory recalls of unsafe goods within their jurisdiction. However, as a matter of practice the Commonwealth will initiate and manage compulsory recalls occurring over three or more jurisdictions. It is anticipated that the ACL will be fully implemented by 1 January 2011.

## Regulatory involvement in recalls

This report focuses on the role of regulators in addressing the removal of unsafe goods from the market. The level of involvement of product safety regulators in the removal of unsafe goods varies and is influenced by factors such as the regulator's legislative mandate and policy direction and the experience of the supplier conducting the recall.

Research shows that consumers expect regulators to closely monitor both voluntary and compulsory recalls to ensure that unsafe products are quickly removed from the market and the post sale environment.<sup>10</sup>

There are three ways in which regulators assist with effective recall management:

- **Advice:** regulators can assist suppliers to develop their preparedness for a product recall and develop effective ways to manage a recall, through provision of advice and preparation of written guidance, checklists and training.
- **Oversight:** regulators monitor the effective management of a recall by requiring notification of any recall, input into the development and final approval of the supplier's recall strategy, and regular reports on various aspects of the recall.

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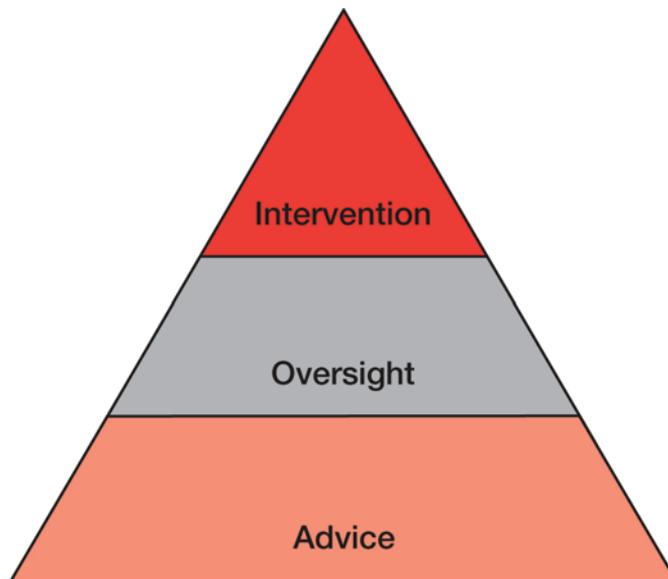
9 Queensland and Tasmanian regulators do not have the power to order a compulsory recall and will instead rely on assistance from the ACCC to seek a compulsory recall under s. 65F of the TPA.

10 Feedback from participants in the ACCC-commissioned research into consumer behaviour by Colmar Brunton Social Research, *Review of the effectiveness of the consumer product recall system*, September 2009, p. 9.

- **Intervention:** regulators can order a compulsory recall in the event that a recall is not progressing satisfactorily. In addition, in some jurisdictions there is a penalty for the provision of recalled products.

The level of regulatory involvement will depend on such factors as the nature of the risk, the experience of the supplier and the level of compliance with guidelines. Further, as is to be expected, there will be a greater level of regulatory involvement in the management of compulsory recalls.

Figure 1. Regulatory involvement in recalls



Source: ACCC analysis.

To understand the various approaches taken by Australian product safety regulators in the recall process, the ACCC undertook a process-mapping exercise with regulators at the Commonwealth and state and territory levels. The exercise identified six common activities within the recall process that regulators are involved in to varying degrees. These six activities are:

- notification of the recall
- assessment of the recall strategy
- oversight of the implementation of the recall strategy
- assessment of completion of the recall process
- auditing the recall
- ordering compulsory recalls.

In any of these activities, the regulator can provide advice and guidance, actively oversee the progress of the recall and intervene when necessary.

The process-mapping exercise found notable differences in the approach regulators took to the recall process. Some regulators encouraged industry to voluntarily address unsafe products and only intervened in the recall process if industry failed to adequately mitigate the risks, whereas others were more involved and actively managed the process from the outset.

However, this study showed that the recall process was more effective when the regulator actively managed and had a greater level of involvement in all activities of the process from the outset. Active management relies on the regulator receiving regular reports from the supplier on the progress of the recall, but the study showed that this does not always happen.

Based on this analysis, the ACCC has identified that further advice on and oversight of the recall process will assist suppliers to improve recall effectiveness.

## Current recalls

One primary indicator used by the ACCC and state and territory regulators to measure the effectiveness of each recall is the number of products returned as a result of the recall. The number of returned products includes products returned from the supply chain and from consumers. Including the amount returned from the supply chain is important because the ACCC wants to be assured of the safe disposal of the recalled products and that recalled products are not on-sold. This figure is recorded as a percentage of the number of products originally supplied. The same measurement is used by the specialist Commonwealth regulators such as FSANZ and the TGA.

While the recall return rate is an indicator of recall effectiveness, it is not the sole indicator. There are other factors that influence recall effectiveness, and these should be understood to form a better picture of whether the hazard has been addressed at an acceptable or reasonable level. These other factors are discussed later in this report.

It is important, however, to understand the current effectiveness of recalls using this measurement. The next section examines recall return rates for all consumer products, including those recalls that fall within the jurisdiction of specialist Commonwealth regulators. This analysis is based on recall data that has been collected by the ACCC since 1986.<sup>11</sup>

## Overview of recalls since 1986

There have been over 10 000 product recalls in Australia in the last 23 years.<sup>12</sup> The recall data shows that the most commonly recalled products are therapeutic goods such as medicines and medical equipment, which account for 46.4 per cent of all recalls.

Consumer products generally, which fall within the jurisdiction of the ACCC, account for 25 per cent of all recalls. Of this figure, toys are the most commonly recalled consumer products and account for 25 per cent of all recalls in this category. This is closely followed by electrical equipment and homewares.

After recalls of consumer products generally, motor vehicle recalls account for 19 per cent of all recalls. Recalls involving food products are significantly less common, with only 9 per cent

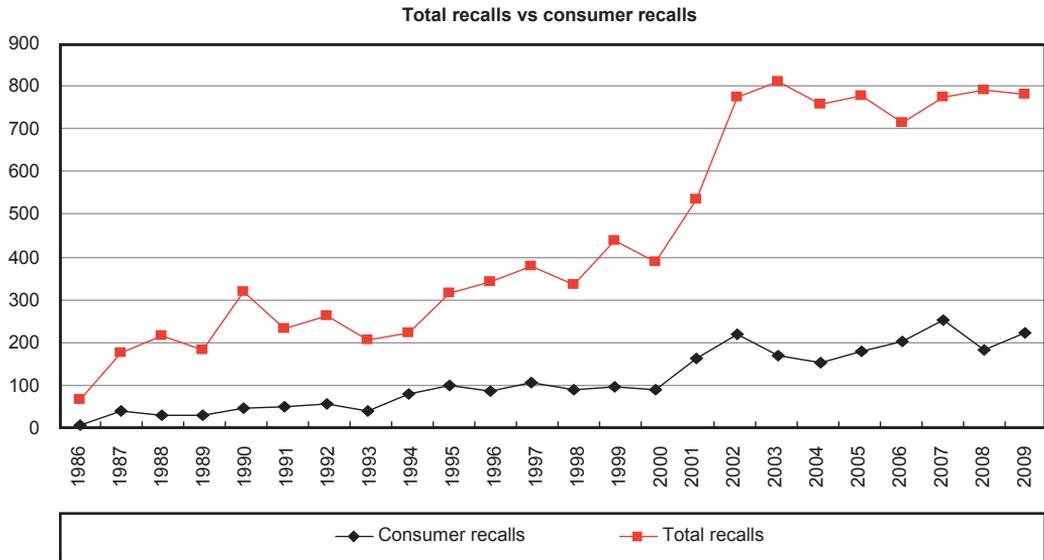
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<sup>11</sup> The analysis for each regulator varied due to the different types of data collected for those recalls.

<sup>12</sup> As at 17 November 2009.

of recalls involving food products. The graph below shows the total number of consumer recalls notified to the ACCC, including those within the jurisdiction of specialist Commonwealth regulators.

Chart 1. Total voluntary recalls: 1986 to 2009



Source: Recall notification data collected by the ACCC since 1986.

## Comparison of recalls between regulators

Analysis of the recall data reveals that the average return rate across recalls for all Commonwealth regulators is 56.75 per cent.<sup>13</sup> However, looking at each Commonwealth regulator in isolation shows notable differences in recall return rates.

**Table 2. Ranking of Commonwealth regulators’ average return rates**

Ranking	Regulator	Average rate of products being returned
1	Infrastructure	80%
2	TGA	72%
3	ACCC	39%
4	FSANZ	36%

Source: Recall notification data collected by the ACCC since 1986.

The difference in the return rates for each Commonwealth regulator can be attributed to a number of factors. Some of these are unchangeable due to the jurisdiction of the regulator and the type of product being recalled, and others arise from the involvement of the regulator in the recall process.

For example, Infrastructure is responsible for overseeing motor vehicle recalls. Motor vehicle recalls tend to be unique because of the high value of these products and because Infrastructure requires all motor vehicle recalls to be communicated by directly contacting owners, either during the recall campaign or through dealers during scheduled servicing.

On the other hand, recalls of medical equipment under the jurisdiction of the TGA require the TGA to approve the recall strategy proposed by the supplier before it is implemented. In assessing the proposed recall strategy, the TGA will consider a number of factors such as the product defect, the incidence of complaints, the product distribution, recovery procedures, corrective action and the availability of alternative products. The TGA will approve the communication methods to be used by the supplier, including the content of letters, proper addressing of envelopes, and the timing and duration of paid advertising. Depending on the hazard posed by the product, the TGA may require the supplier to issue a media release in conjunction with the TGA, alerting consumers to the recall.

<sup>13</sup> This figure does not include the return rates for APVMA. This is because there is limited data available to the ACCC to perform statistical analysis on, due to the very small number of recalls of pesticides and veterinary medicines that pose safety risks to humans.

## Product recall within the jurisdiction of the ACCC only

When it came to assessing the recalls data for consumer product recalls, the absence of some data meant that it was difficult to determine all the factors that influence recall effectiveness. This was due to the inconsistency in data provided by suppliers when conducting a recall.

For example, the ACCC currently receives data on the type of product, the number of affected products, the product hazard, the duration of the recall, the quantity supplied and the quantity recalled. However, it does not receive complete data about the intended consumer, the price of the product, which entity in the supply chain is initiating the recall, all the communication methods used and the incidence of complaints about the product. The ACCC has identified the need for suppliers to provide more consistent data to enable a more meaningful assessment of the implementation of the recall strategy and ultimately the effectiveness of the recall. For example, having data on the price of a recalled product may demonstrate the impact the value of a product has on the return rate. Armed with this information, the ACCC and suppliers may be in a better position to influence consumer responses to recalls where price is an influential factor.

On the data that was available, however, the ACCC was able to draw some preliminary conclusions about how the type of product being recalled, the communication methods used and how much the ACCC is involved influences recall effectiveness.

The table below demonstrates the influence on return rates of the type of product being recalled and the hazard posed by the product.

**Table 3. Influence on return rates of type of product being recalled and hazard posed by product on return rates**

Ranking	Product category	Most commonly recalled products within that category	Most common problem with those products	Percentage of recalls that involved those products (2006 to 2009)	Standard deviation <sup>14</sup>	Average return rate in recalls involving those products
1	Equipment and supplies	Welding equipment, car jacks, hydraulic pumps and electrical sockets and outlets	Electrical shocks, malfunction	13%	21.3%	53%
2	Sporting and fitness	Bikes, exercise equipment, water vehicles and all-terrain vehicles	Malfunction and defects	13%	1.5%	49%
3	Electrical products	Air conditioners, heaters, fans and some whitegoods; also smaller products like adaptors, batteries and lamps	Electrical faults, malfunction	22%	21.1%	48%
4	Homewares	Candles and candle accessories; also beds, blinds, tables and chairs	Fire, strangulation, entrapment	18%	21.2%	34%
5	Toys	Wide range of products, from mobile toys like bikes, scooters and buggies to static devices like headbands, trainer seats and activity centres	Choking hazard	26%	21%	30%
6	Clothing	Clothing accessories like sunglasses and sleeping bags	Choking and fire hazards	8%	21.7%	18%

<sup>14</sup> The standard deviation shows how much variance there is from the average. A large standard deviation means that the data varies widely around the average while a small standard deviation means that the data is rarely far from the average.

Recalls involving equipment and supplies (welding equipment, car jacks etc.) tend to have the highest average return rate, closely followed by recalls involving sporting and fitness equipment and electrical products. Electrical product and toy recalls had relatively high standard deviations, which suggests that the return rates tend to vary widely within these categories. However, this was not the case for sporting and fitness products—75 per cent of these recalls have return rates ranging between 46 per cent and 52 per cent.

As noted previously, recalls of toys make up 25 per cent of the total recalls of consumer products generally; however, the data shows that toy recalls only yield an average return rate of 30 per cent. There could be a number of reasons for this result. One reason is that parents who discover a defective toy may be more likely to discard the toy than trust a replacement or repair of the toy. Another possible reason is that toys tend to be lower value items and often have short life spans; therefore, parents may consider the time and effort to return the toy not worth it.

The communication method used for toy recalls is another consideration. Those recalls that use direct contact yield an average return rate of 51 per cent, as opposed to a return rate of only 26 per cent when direct contact is not used. These figures suggest that in order to improve return rates in toy recalls, suppliers need to contact consumers directly where they can.

The ACCC recall data also shows that the type of consumer redress offered has a greater influence on the return rate than the product hazard does. This contrasts with the recalls of the other Commonwealth regulators. Analysis of the ACCC recall data found that recalls which offered a repair or replacement tended to have much higher return rates (averaging 52 per cent) than recalls offering a refund only (averaging 29 per cent).

## Conclusion

### *Finding 1:*

*Regulator involvement in the recall process through the provision of advice, guidance and intervention where necessary can increase the effectiveness of the recall.*

### *Action 1:*

*The ACCC will further develop its role in relation to the oversight of consumer recalls through the provision of advice, guidance and intervention where necessary in order to promote greater consistency between suppliers' recall outcomes.*

# Notification of the product recall

## The requirement to notify the regulator

There are a number of ways a recall can be initiated:

- by the supplier of its own initiative in response to an identified hazard
- by the supplier after contact with and advice from a regulator
- at the insistence of the regulator (compulsory recall).

Once a supplier decides to recall a product, it is required to notify the Commonwealth Minister for Competition Policy and Consumer Affairs (the Commonwealth minister) under s. 65R of the *Trade Practices Act 1974* (TPA). In addition, other Commonwealth and state and territory regulators also require the supplier to notify them of the recall, either under a legislative power or through policy. Notification ensures that the relevant regulator is aware of the recall and that the recall can be appropriately overseen.

Consequently, there are a variety of notification requirements for suppliers who recall products across more than one state or territory or products that fall within the jurisdiction of more than one Commonwealth regulator.

Table 4. Statutory or policy based notification requirements relating to Australian recalls

Jurisdiction	Regulator	Legislation	Notification requirement
Federal	Australian Competition and Consumer Commission (ACCC)	TPA, s. 65R	Supplier must provide notification within two days.
Federal	Australian Pesticides and Veterinary Medicines Authority (APVMA)	<i>Agricultural and Veterinary Chemicals Code Act 1994</i> , s. 161	Supplier must provide notification as soon as practicable after it becomes aware of a potential problem with a product.
Federal	Food Standards Australia New Zealand (FSANZ)		There is no statutory notification requirement but suppliers are encouraged to notify FSANZ through the Food industry recall protocol. <sup>15</sup> No time frame is specified.
Federal	Department of Infrastructure, Transport, Regional Development and Local Government (Infrastructure)		There is no statutory notification requirement but suppliers are encouraged to notify Infrastructure under Part 6.2 and appendix D of the Recall Code of Practice. <sup>16</sup> No time frame is specified but information should be provided 'as soon as it is available'.
Federal	Therapeutic Goods Administration (TGA)		There is no statutory requirement; however, the Uniform recall procedure for therapeutic goods <sup>17</sup> requires notification. No time frame is specified.

15 Food Standards Australia New Zealand, *Food industry recall protocol: A guide to writing a food recall plan and conducting a food recall*, 6th edition, 2008.

16 Department of Transport and Regional Services [now part of Infrastructure], *Procedures for the recall of vehicles and associated products with safety related defects*, 2002.

17 Therapeutic Goods Administration, *Uniform recall procedure for therapeutic goods*, 2004.

## Review of the Australian product safety recalls system

Jurisdiction	Regulator	Legislation	Notification requirement
New South Wales	Office of Fair Trading	<i>Fair Trading Act 1987</i> , s. 36D(1)	Supplier must notify the director general within two days*.
Australian Capital Territory	Office of Fair Trading	<i>Fair Trading (Consumer Affairs) Act 1973</i> , s. 37(10)	Supplier must notify the minister within two days*.
Victoria	Consumer Affairs Victoria	<i>Fair Trading Act 1999</i> , s. 49(1)	Supplier must notify the minister within two days*.
South Australia	Office of Consumer and Business Affairs	<i>Trade Standards Act 1979</i> , s. 27C	Supplier must notify the minister within two days.
Western Australia	Consumer Protection Division	<i>Consumer Affairs Act 1971</i> , s. 54(10)	Supplier must notify the commissioner within two days*.
Northern Territory	Office of Consumer and Business Affairs	<i>Consumer Affairs and Fair Trading Act 1990</i> , s. 36(2)	Supplier must notify the commissioner within 10 days.
Tasmania	Office of Consumer Affairs and Fair Trading	There is no notification requirement for suppliers.	
Queensland	Office of Fair Trading	There is no notification requirement for suppliers.	

\* Unless the supplier has already notified the Commonwealth minister as per s. 65R of the TPA. Notification to the Commonwealth minister is deemed to meet the notification provisions of the state or territory legislation.

Source: ACCC analysis.

The effect of these provisions is that suppliers can be either required or requested to notify numerous regulators of the same recall. The duplication of notification and the multiplicity of product safety regulators may make it more difficult for suppliers to understand their obligations in relation to voluntary recalls and hinder compliance.

There are potentially regulatory inefficiencies as well. Regulators each maintain separate systems for the collection and management of information, as well as individually processing information about the same recall.

The proposed Australian Consumer Law (ACL) reforms are expected to go some way towards resolving these issues. Legislative amendment is intended to remove the requirement for suppliers to notify state and territory product safety regulators, ministers and commissioners of recalls. Instead, only notification to the Commonwealth minister will be required. The Commonwealth minister, through the ACCC, will continue to ensure the state and territory regulators are quickly informed of any recalls within their jurisdiction. This will reduce the administrative burden on suppliers and regulators.

The ACCC believes there are also opportunities for the Commonwealth regulators, working together, to streamline notification methods. This would allow suppliers to focus on the management of the recall and reduce the time taken for compliance.

Currently, suppliers undertaking recalls within the jurisdiction of more than one Commonwealth regulator need to understand the various notification requirements relating to the recall and notify each Commonwealth regulator individually.

Notifying the ACCC of the recall in addition to the relevant specialist regulator may suggest to some suppliers that both agencies will be actively involved in the oversight of the recall. This is not the case. While the ACCC's jurisdiction under the TPA is broad and encompasses matters within the jurisdiction of other Commonwealth regulators, as a matter of policy the ACCC does not involve itself in matters that are within the scope of those regulatory bodies, except at their request. The jurisdictional breadth of the TPA does, however, ensure that there is a safety net and that no matters are excluded from regulatory oversight.

The ACCC hosts the Recalls Australia website ([recalls.gov.au](http://recalls.gov.au)), which provides a single repository of recall information. This is an important tool for consumers, who would otherwise need a more sophisticated understanding of various state/territory and federal government departments and their responsibilities and would be required to search across a number of websites to obtain this information.

## What should be notified

The notification provisions outlined above apply to recalls. However, neither the TPA nor the ACCC's *Product safety recall: a guide for suppliers* (Recall Guidelines) defines 'recall' for the purposes of s. 65R or the other product safety provisions in Division 1, Part V of the TPA.

Feedback from compliance officers within the ACCC and state and territory product safety regulators indicates that the lack of a clear definition of 'recall' can create problems when assessing whether the actions of a supplier to address unsafe goods are adequate or the point at which statutory notification obligations are activated.

This review has identified that it is important for 'recall' to be defined to ensure that there is clarity in relation to the current notification provisions. There is a strong argument to extend the requirement for ministerial notification to include the full range of actions taken to mitigate safety risks in consumer goods.

In the context of product safety, recalls are understood by suppliers and regulators to encompass the following actions:

- ceasing distribution or supply of the product between different entities in the supply chain and to the public
- seeking the return of the product at the supply level only
- inspecting a possible unsafe product in situ and conducting repairs or modifications to remedy the defect and make the product safe if necessary
- requesting that entities in the supply chain and the consumers undertake repairs or modifications themselves to make the product safe
- seeking the return of the unsafe product from the consumer for replacement or refund.

## Review of the Australian product safety recalls system

In addition to the actions above, some Commonwealth and international consumer regulators require notification of safety notices or warnings about potential hazards associated with products. For example, the APVMA includes the following definition in its recall guidelines:

... any action to prevent or reduce any harmful effects of a non-compliant agricultural or veterinary chemical product. This action may extend to stopping supply or publishing product alert notices, to the location, retrieval and correction or destruction of a non-compliant agricultural or veterinary chemical product within the distribution network.

There are sound reasons why each of the above actions requires notification to the Commonwealth minister.

The ACCC has an interest in whether any action taken by a supplier to mitigate a consumer product safety risk effectively does so and ultimately protects consumers. This interest is grounded in the product safety provisions in the TPA, and the recall provisions specifically. Implicit in the requirement for a supplier to notify the Commonwealth minister of a recall is the expectation that the Commonwealth minister or the ACCC will act in the event that the proposed action is insufficient. This expectation was also clearly conveyed by consumers in market research recently commissioned by the ACCC.<sup>18</sup>

For example, in the event that a supplier decides that a safety notice is all that is required to effectively mitigate the safety risk, the ACCC needs to assess whether some other mitigating action, such as a recall from suppliers or consumers, is more appropriate.

Similarly, if a supplier has determined that for safety reasons a particular product should no longer be sold, the regulator should be confident that the action does not need to be extended to the consumer level. If the ACCC and other regulators are not aware of such an action, they are not in a position to identify the occasions when some suppliers, either deliberately or unintentionally, have not complied with a recall within the supply chain. Indeed, the ACCC and other regulators have noted a range of problems in this area in recent years. These are noted in the following paragraphs.

Regulators also need to be informed of a recall within the supply chain in order to monitor the marketplace for comparable products and assess the safety of such products, as well as to oversee the destruction of the product or correction of the defect to ensure that the defective products are not subsequently offered for sale in the domestic or international market.

It is apparent from industry behaviour that supplier views on what is included in the scope of the term 'recall' vary. For example, some suppliers currently advise of recalls within the supply chain while others do not.

The ACCC has also observed an increasing number of 'safety notices' in the press which advise consumers of action that can be taken to reduce potential risks in a product but which are not considered by the supplier to be recalls.

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18 Colmar Brunton Social Research, *Review of the effectiveness of the consumer product recall system*, September 2009.

In addition, the ACCC has found in the course of its enforcement activity that some suppliers argue that while they are willing to take measures to have products returned, they are reluctant to have the action identified as a recall.

The ACCC's view is that a supplier action that seeks the return of goods for remedial attention or provides an additional component to modify goods in situ to make them safer requires notification. Ignoring such actions would allow some suppliers to avoid the application of the notification provisions of the TPA and regulatory oversight.

Consumers will be better protected if the Commonwealth minister is advised within two days of a decision being taken to address a product safety risk through any of the methods noted above, including:

- issuing a safety notice
- withdrawing goods from entities in the supply chain (a trade-level recall)
- retrieving or modifying goods in the hands of consumers (a consumer-level recall).

When the Commonwealth minister is notified, the ACCC can assess whether the proposed activity will effectively address the risk posed by the product in the context of the nature of the risk, the intended audience, the distribution of the product and a variety of other factors. In the event that the Commonwealth minister is unsatisfied with the proposed solution, the Commonwealth minister may consider ordering a compulsory recall of the product.

The ACCC will clarify the notification requirements in the Recall Guidelines in accordance with its views on what actions require notification. It proposes to monitor supplier conduct in this area to determine whether the issue may also require amendment of the TPA.

## Assurance of recall preparedness: the recall strategy

As noted earlier, implicit in the requirement to notify the Commonwealth minister of measures taken by suppliers to address unsafe products is the expectation that the Commonwealth minister will act in the event that the intended action is insufficient. In the majority of cases, this will take the form of advice to the supplier about various aspects of the proposed action—for example, refinement of the communication with consumers—and will reflect the cooperative relationship between the supplier and the regulator, and the regulator's role in providing advice about the quick, thorough and efficient removal of product safety hazards. However, in cases where the regulator is not satisfied that the proposed action will adequately address the risk, it may recommend that the Commonwealth minister consider ordering a compulsory recall.

The primary method by which the supplier shares this information with the regulator is the recall strategy. A recall strategy is a documented process for the management of a particular recall by the supplier. It is created by the supplier in response to the risk posed by the product and will vary according to a number of factors, including the nature of the risk, the type of consumer for whom the product was intended and the geographical distribution of the product.

The recall strategy has several purposes. Research shows that suppliers that develop a recall strategy to deal with product recalls as part of their risk management processes are better placed to limit potential losses while at the same time protecting their brand and reputation.<sup>19</sup> Having a recall strategy will increase the effectiveness of the recall by removing unsafe goods from consumers more quickly and efficiently. Not only is a quick and effective recall critical to consumer safety and brand protection; it is also essential to putting the company in a position to mitigate the legal and economic risks accompanying the recall.<sup>20</sup>

In addition, when an unsafe product is identified, a supplier with a recall strategy is in a better position to assure regulators that it is capable of addressing the risk posed by the product. Failing this, the regulator will encourage the supplier to adopt a recall strategy that the regulator considers appropriately addresses the risk. In circumstances where a supplier is reluctant or unwilling to adopt a strategy, the ACCC has the option of recommending that the Commonwealth minister order a compulsory recall.

All of the Commonwealth regulators currently require a copy of the supplier's recall strategy at the time of notification or shortly thereafter. However, the level of assurance and the nature of the information required varies between regulators.

In comparing the various information requirements of the different Commonwealth regulators in relation to a recall strategy, a number of common factors were identified which are relevant to recall effectiveness. The ACCC considers that a supplier's recall strategy should include information that addresses these factors. The factors are:

- explanation of the problem, including the hazard associated with the product and the supplier's assessment of the risk posed by the product
- communication with consumers, including the method of communication, the frequency with which the communication will be repeated and details of the message
- communication with other entities in the domestic and international supply chain, including the details of those entities to which the unsafe product has been provided or from which it has been purchased
- distribution of the product (this information will be enhanced by effective traceability and tracking systems), including the number of units distributed to other entities in the supply chain, the number of units purchased by consumers and the geographical spread of the supplied products
- action taken by the supplier to identify and correct the cause of the deficiency, including the outcome of any root cause analysis or the time period in which such analysis will occur
- any known injuries or incidents associated with the product
- the manner in which the recalled products will be destroyed or rectified.

Understanding these factors will help the ACCC assess whether the product safety risks associated with the unsafe product will be adequately addressed by the recall strategy. This information must be provided at the earliest opportunity—either at the time of notification or shortly thereafter—in order for that assessment to usefully occur. The ACCC will amend the Recall Guidelines to ensure this requirement is fully explained.

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19 Kenneth Ross, 'Product recalls', *Inside Supply Management*, December 2008; M Rozembajgier, 'Lessons in product recalls: The five biggest mistakes companies make', *Product Safety Letter*, 22 July 2009.

20 Rozembajgier, *ibid*.

## Recall policies and procedures

Once a decision has been taken to address a product safety risk through a recall, the supplier needs to be able to quickly implement that decision. There are two key factors that facilitate that process. The first is the ability to quickly and easily understand and comply with relevant notification requirements and assure the appropriate regulator that the recall will be effectively managed. This has been addressed in the previous sections of this chapter. The second is the preparedness of the supplier to undertake the recall.

One of the ways in which the supplier can prepare for a product recall is to ensure that its staff are familiar with its recall policies and procedures. Recall policies and procedures are usually more static and longer term documents than the recall strategy, which is developed in relation to particular product deficiencies. They often provide detailed and practical instructions for staff about what to do if there is a recall. By ensuring that staff are familiar with these documents, a supplier can enhance its ability to implement an effective, prompt recall.

Product safety regulators can offer guidance to suppliers about some of the most important elements of recall policies and procedures, based on their exposure to numerous strategy documents and their understanding of the factors that influence recall effectiveness. For example, a recall strategy should identify the recall team, outline some of the direct and indirect costs of a recall, including the mechanism for meeting those costs, and provide some information about the manner in which the supplier will take and respond to consumer inquiries and complaints about the product. Furthermore, most recall policy and procedural documents should address the media strategy, the consumer redress that will be made available and the way in which returned goods should be handled.

## Other notification requirements

The decision to recall an unsafe product could be made by any entity in the supply chain, and a recall's effectiveness will often depend on whether other entities in the supply chain also support and facilitate the recall. For example, suppliers who have no direct involvement in the manufacture of a product should still have systems in place to ensure they can respond to a recall initiated by the manufacturer or retailer in their supply chain. Similarly, notification of international recipients or suppliers is important to ensure that the risk associated with the product can be addressed in other countries.

## Notification of international product recipients

Currently, s. 65F(7) of the TPA requires a supplier who undertakes a voluntary or compulsory recall to give written notice of the recall of the goods to any person overseas to whom they have supplied the goods. Other Commonwealth regulators also require suppliers to contact overseas product recipients when a product defect is identified or a recall initiated.

The regulatory interest in the publication of safety alerts and withdrawals within the supply chain, in addition to recall actions, was discussed earlier in this chapter. It appears that international suppliers or recipients of products that are the subject of such safety alerts or withdrawals would be equally interested to know of these activities. This would allow them to assess the risk and decide whether the proposed Australian mitigation strategy would work effectively in their jurisdiction.

## Notification of other entities in the supply chain

As discussed above, the notification requirements under s. 65F(7) of the TPA only apply to goods that are exported from Australia.

The Australian Capital Territory, the Northern Territory, New South Wales, Victoria and Western Australia have provisions in their respective product safety legislation ensuring that distributors outside those states and territories are made aware of the recall and take appropriate action to deal with the unsafe goods.<sup>21</sup> Tasmanian, South Australian and Queensland legislation does not include such a requirement.

There is also no comparable Commonwealth legislation requiring suppliers to notify others in the domestic supply chain of a product recall. Recall effectiveness is contingent on notification and cooperation between all entities in the supply chain to ensure that all products are removed from supply and the hands of consumers. This is reflected in the recall policies of some Commonwealth regulators that encourage notification of a recall within the supply chain.

Suppliers may take a different view about the best way to respond to a particular product safety risk. However, notification that a recall is considered appropriate by one entity should at least put other entities on notice of the risk and provide them with an opportunity to work collaboratively on the recall. In the event that other suppliers decline to participate in a recall, the regulator can intervene and encourage a voluntary recall or order a compulsory one if required.

While some suppliers currently voluntarily notify others in the supply chain of recall action, the absence of a legislative requirement to do so means that this practice is neither consistent nor enforceable. There are two ways to ensure that consumer product safety risks are comprehensively addressed in Australia: inclusion of the requirement to notify others in the supply chain in the Recall Guidelines; and expansion of s. 65F(7) to include a requirement to advise the entity from whom the product was purchased and the entity (if there is one) to whom it was sold of any recall activity.

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<sup>21</sup> See s. 37(9) of the *Fair Trading (Consumer Affairs) Act 1973* (ACT), s. 36 of the *Consumer Affairs and Fair Trading Act 1990* (NT), s. 36E of the *Fair Trading Act 1987* (NSW), s. 55 of the *Fair Trading Act 1999* (Vic) and s. 54(9) of the *Consumer Affairs Act 1971* (WA).

## Conclusion

Recall effectiveness can be enhanced when suppliers clearly understand their statutory obligations and can meet them in a simple, streamlined way. Also, greater protection will be provided to Australian consumers if suppliers share information about unsafe products and mitigation plans with others in the supply chain.

In relation to the notification of the product recall, the ACCC's findings and intended actions are as follows.

### *Finding 2:*

*The multiplicity of notification requirements is a burden on suppliers that could delay recall initiation. This problem will be addressed between the ACCC and state and territory product safety regulators as part of the ACL reforms. However, there is scope to clarify and align notification requirements between the Commonwealth product safety regulators to assist with recall effectiveness.*

### *Action 2:*

*The ACCC will discuss with other Commonwealth regulators possible ways to ease the compliance burden on suppliers of multiple notification requirements.*

### *Finding 3:*

*There is no clear definition of 'recall' under the TPA or in the Recall Guidelines. As a result, some suppliers may avoid notification requirements and regulatory oversight when they adopt strategies such as safety alerts and recalls only within the supply chain to address product safety risks.*

### *Finding 4:*

*Recall policies and procedures can assist with the efficient and effective management of recalls. Suppliers can assure regulators of the adequacy of their recall management through the provision of their recall strategy.*

### *Finding 5:*

*There is a statutory requirement to advise international recipients of products of a recall. However, in the absence of clear guidance, it is possible that some suppliers will interpret s. 65F(7) of the TPA narrowly and fail to notify international recipients of the full spectrum of strategies used to address product safety risks.*

### *Finding 6:*

*The absence of a legislative requirement for suppliers undertaking a recall to notify others in the domestic supply chain of the recall can result in inconsistent protection of Australian consumers.*

### Action 3:

*The ACCC will modify the Recall Guidelines to ensure that the guidelines:*

- *include clear and useful information about all consumer product safety notification requirements at the Commonwealth and state and territory levels*
- *indicate that suppliers should notify the Commonwealth minister of all actions taken to address the risk posed by an unsafe product*
- *provide clear instructions to suppliers about the information the ACCC requires in order to be assured that the product safety risk will be effectively mitigated*
- *include clear and useful information to assist suppliers in the development of recall policy and procedural documents*
- *indicate that suppliers are to notify international product recipients of all actions taken to address the risk posed by an unsafe product*
- *indicate that suppliers are to notify others in the domestic supply chain of any action taken to address a consumer product safety risk.*

### Action 4:

*The ACCC will ensure that the Recall Guidelines indicate that suppliers should notify the Commonwealth minister of all actions taken to address the risk posed by an unsafe consumer product, including the issuing of a safety alert or a trade- or consumer-level recall. After encouraging suppliers to notify the ACCC of these strategies for a period of 12 months, the ACCC will evaluate the responsiveness of suppliers to this request and consider whether legislative reform to expand the notification provisions of the TPA is necessary.*

## Communication of the product recall

Whether a recall is voluntary or compulsory, undertaking a product recall and ensuring its effectiveness is the responsibility of the supplier. This is true both under the relevant Australian statutes and under tort law in relation to a supplier's civil liability for dangerous products. Regulators are also involved in the recall process and can provide guidance in addition to oversight, especially when it comes to communicating the recall to consumers.

The purpose of communicating a recall is obvious—defective products are recalled because they are dangerous and present a risk to a person's health and wellbeing.

From the perspective of a regulator such as the ACCC, the goal of communicating a product recall is to remove dangerous products from the market and prevent product related injuries. Recall communications should therefore be targeted at seeking *compliance* with a recall notice—encouraging people to return any defective products and thereby remove themselves and others from risk of injury or death.

However, suppliers may perceive recalls as damaging to their brand and reputation, perhaps fearing that being associated with a defective product will result in reduced sales and market share. To limit the impact of a recall, some suppliers may word recall notices to downplay the risk in an effort to protect their reputation.

This approach to recall notices is not acceptable to the ACCC, given that the goal in communicating a product recall notice is to ensure consumers comply with the notice. This goal achieves the following ends:

- Ensuring compliance prevents people from ignoring the risk or even putting themselves at greater risk. Studies have shown that providing excessive information to people about a recall encourages them to overlook/ignore the risks of the product or try to fix a defect themselves.<sup>22</sup> Both these responses potentially result in a greater number of injuries.
- Ensuring compliance prevents the dangerous product from being on-sold by consumers. If a person complies with a recall notice and returns that product to the manufacturer, that product is either repaired or safely removed from the market. If, however, a person decides to simply put the product 'out of the way', that product may be forgotten about and later on-sold or given to another person.

Consequently, the purpose of communication about a recall should be to encourage consumers to return the product or arrange with the supplier for the product to be rectified.

To be able to encourage consumers to respond to a recall notice, suppliers need to understand how consumers want to receive recall notices and what the recall notices should say to motivate them to respond.

To develop this understanding, the ACCC commissioned Colmar Brunton Social Research to host and report on a series of focus groups held across Australia. The groups included people with English as a second language and people with a vision or hearing impairment.

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<sup>22</sup> Colmar Brunton Social Research, *Review of the effectiveness of the consumer product recall system*, September 2009, pp. 21–22.

## Consumers' response to recall notices

While the communication of safety information is a prerequisite for compliance, it may not be sufficient to motivate people to act.<sup>23</sup> Some people receive and understand a recall message but still decide not to comply.<sup>24</sup> Consumers typically go through several steps in deciding whether to comply with a recall notice.<sup>25</sup> These steps include:

- receipt of the message
- recognition of the importance of the message
- comprehension of the message—the message must be read and comprehended
- storage of the message—this allows for recollection of the message at a later time
- compliance with the message.

## Methods for communicating recalls

When asked how they would prefer to receive recall information, focus group participants nominated a wide spectrum of different communication methods.<sup>26</sup> This included television, radio, newspapers, catalogues, outdoor billboards and posters, online advertising, direct contact and word of mouth.<sup>27</sup> The following section provides a summary of the different communication methods and strategies that can be employed to ensure people progress through each of the steps listed above and to encourage compliance with recall communication.

## Forms of direct and indirect contact

Studies have repeatedly shown that direct contact is the most effective way of communicating a product recall. Direct contact occurs when a supplier makes contact with individual consumers. The different forms of direct communication include:

- mail
- email
- telephone.

Indirect contact is contact with consumers that utilises another medium or third party to convey the message. The methods of indirect contact include:

- newspapers
- specialist magazines
- point-of-sale notices and catalogue notices
- television and radio.

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23 Consumer Product Safety Commission (US), prepared by XL Associates and Heiden Associates, *Recall effectiveness research*, July 2003, p. 7.

24 *ibid.*

25 *ibid.*

26 Colmar Brunton Social Research, *Review of the effectiveness of the consumer product recall system*, September 2009, p. 15.

27 *ibid.*, pp. 15–16.

## Online forms of communication

In metropolitan areas, 70 per cent of Australians now have broadband internet access, while 60 per cent have broadband in non-metropolitan areas.<sup>28</sup> Furthermore, internet access is becoming much more widely available. This trend suggests that notifying people of a product recall through online communication could be particularly effective. The various online methods of communication that could be employed include forums, blogs, microblogs, websites and social networking sites.

## Demographic preferences

A major factor influencing which method should be chosen to communicate a recall will be the target audience for that communication. Matching the communication medium to the consumer is important to achieve the objective of compliance with a recall notice.

As part of its research, Colmar Brunton looked at a number of different consumer groups with particular demographics and assessed their preferred communication channels. The consumer groups were classified by:

- age: nation builders, baby boomers, generation X or generation Y
- gender
- income and occupation
- whether the household included children.

The results of this study of demographics and communication are summarised in table 5.

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28 Department of Finance and Deregulation, Australian Government Information Management Office, *Interacting with government*, December 2008, p. 4.

Table 5. Summary of study of demographics and communication

Consumer group	Preferred communication method
Nation builders (65+)	<p><i>Television and radio</i>—tend to view/listen throughout the day so flexible as to the timeslot</p> <p><i>Newspapers</i>—thorough readers; need not be a front-page notice</p> <p><i>Websites</i>—general web browsing, particularly news and weather</p> <p><i>Email</i></p>
Baby boomers (46–65)	<p><i>Drivetime radio</i></p> <p><i>Television</i>—evening news, current affairs and evening viewing</p> <p><i>Newspapers and catalogues</i>—but needs to be a reasonably prominent notice</p> <p><i>Websites</i>—general web browsing is popular, with some limited use of blogs and social networking</p> <p><i>Email</i></p>
Generation X (31–45)	<p><i>Word-of-mouth chat groups</i></p> <p><i>Television</i>—news and evening entertainment</p> <p><i>Drivetime radio</i></p> <p><i>Social networking</i>—more significant take-up of social networking in this generation</p> <p><i>Websites</i>—blogs increasingly popular</p> <p><i>Email</i></p>
Generation Y (18–30)	<p><i>Evening entertainment television</i>—news much less popular</p> <p><i>Websites</i>—general entertainment and as a primary source of news</p> <p><i>Blogs and microblogging</i>—large take-up on sites such as Twitter</p> <p><i>Social networking</i>—rapid take-up</p> <p><i>Email</i></p> <p><i>Newspapers</i>—possible resurgence</p>
Higher income earners	<p><i>Websites, social networking, blogs and email</i>—significantly more use of online communication</p>
Lower income earners	<p><i>Television, radio and newspapers (age depending)</i>—much less online communication</p>

Consumer group	Preferred communication method
Households with children	<p><i>Television, radio and newspapers—generally popular given spread of ages across household</i></p> <p><i>Internet communication—significantly more likely than households without children to have internet access; age depending, higher popularity of websites, social networking and blogs</i></p>
Gender	<p><i>Little effect on internet use, although men are statistically slightly more likely to use internet communication; largely depends on age and whether the product is gender oriented</i></p>

## Recall notice content: describing the fault, the risk and what action the consumer should take

The purpose of communicating a recall is to alert people to a risk and motivate them to comply with the recall. The title of the notice should serve to both alert people to the problem and the recall and convey a sense of urgency so as to provide some impetus to read or listen to the notification.<sup>29</sup>

Referring to a recall as a ‘voluntary recall’ as opposed to a ‘compulsory recall’ confuses people.<sup>30</sup> Some suppliers believe that identifying the recall as one they have initiated without the intervention of a regulator reassures the public that they are safety conscious and responsive, and therefore emphasise this in any recall communication.

However, the focus group analysis found that many participants thought that ‘voluntary recall’ meant that it was voluntary for people to return the product, as opposed to a compulsory recall where people *had* to return the product. Further, from the consumer’s perspective the distinction between voluntary and compulsory recalls is irrelevant: the required consumer action is the same. A recall notice, therefore, should not specify whether the recall is voluntary or mandatory.

Recall communication should clearly describe the fault and risk associated with a recalled product so that consumers can avoid the risk, while also instilling in them a sense of urgency and importance. A recall notice should explain the nature of the risk—such as choking hazard, fire hazard or strangulation hazard.<sup>31</sup> The description should allow people to visualise and understand the potential injury. This allows people to identify the risk and how to avoid it, instead of providing them with the opportunity or incentive to gamble with the risk or take actions that increase the risk.

The ACCC conducted detailed interviews with suppliers who had recently overseen a product recall. The most common queries received by these suppliers were from customers seeking to clarify exactly what they had to do to comply with the notice. The ‘what to do’ section of the recall notice explains to people what they have to do to comply with the recall and what the manufacturer will do in response—for example, ‘return the product to your nearest store and we will replace it, at no cost to you’. The ‘what to do’ section of a recall notice needs to be clear and concise. The notice needs to be written in simple language and explain the whole process of the recall. However, it should not over-explain the process. Over-explaining may lead people to think that the process is more complicated and difficult than it really is.

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29 Jennifer A Cowley and Michael S Wogalter, ‘Analysis of terms comprising potential names for a recall notification campaign’, North Carolina State University, *Proceedings of the Human Factors and Ergonomics Society 52nd annual meeting*, 2008, p. 1698.

30 Colmar Brunton Social Research, *Review of the effectiveness of the consumer product recall system*, p. 22.

31 *ibid.*, p. 21.

## Conclusion

The purpose of communicating with consumers about a recall is to ensure that product related injuries are prevented through the removal or rectification of dangerous products. The goal is to encourage people to comply with the recall notice. This makes communicating a recall a complex task.

In relation to communicating to consumers about a recall, the ACCC's findings and intended actions are as follows.

### *Finding 7:*

*The use of newspapers alone to advertise recall notices is no longer sufficient. Direct contact between the supplier and the consumer, using a communication method that is directed towards the particular consumer demographic, is the most effective method for communicating about product recalls.*

### *Finding 8:*

*Suppliers should carefully consider the tone of the recall communication and the description of the problem and the risk in order to encourage consumers' acceptance of and compliance with the recall message. The recall message should clearly convey what the consumer should do to return the product or arrange for it to be rectified.*

### *Action 5:*

*The ACCC will modify its Product safety recall: a guide for suppliers (Recall Guidelines) to require suppliers to develop their proposed communication strategy based on different communication methods and consumer demographics.*

### *Action 6:*

*The ACCC will modify the Recall Guidelines to require that every recall notice:*

- *no longer refer to 'voluntary' recall*
- *use words in the title that will have the greatest impact on consumers*
- *have a border printed in red*
- *include a photo of the product*
- *contain a hazard symbol where available*
- *have a clear description of the product, including serial and model numbers or other unique identification*
- *have a clear description of the risk and potential injury*
- *have a 'what to do' section which explains the action the consumer is to take*
- *include contact details for the supplier, including reference to the recalls.gov.au website*
- *detail how the supplier plans to reduce the inconvenience caused to the consumer, including refund, replacement or repair options.*

## Retrieving the product

The ultimate goal of every recall is to retrieve as many unsafe products as possible, especially high-risk products. One way to achieve this goal is for suppliers to have the ability to track goods through the supply chain using individual product marking and tracing systems. Product marking and tracing systems fundamentally rely on suppliers keeping records that include information about who they purchased the product from, who they supplied the product to and the origin of individual components of the product, as well as batch and serial numbers. These systems also assist with identifying the manufacturer so that the problem with the product can be addressed at its source.

When it comes to retrieving low-value products, suppliers need to consider ways to motivate consumers to return products instead of disposing of them.

## Traceability of the product

The ability to track products through the supply chain offers a number of benefits to businesses. It facilitates coordination of orders, management of stock levels, tracking of shipments and assistance with quality assurance processes, and allows for quick and targeted removal of deficient products. It also assists with addressing manufacturing and design flaws at the source.

It is widely accepted that the ability to trace goods into the hands of consumers improves the return rates of a recall.<sup>32</sup> For example, consumer product recalls that rely on direct communication have a 59 per cent return rate on average.<sup>33</sup>

There are several elements of traceability:

- marking the product or its packaging so that it is individually identifiable
- having systems in place to track the product through the supply chain
- tracing the product into the hands of consumers.

From the ACCC's analysis, it is clear that tracking labels facilitate product traceability and can allow a recall to be more targeted and effective.

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32 See G Grabowski and JL Hertzberg, 'Avoiding and managing product recalls', *Risk Management Magazine*, December 2007, p. 14; Kenneth Ross, 'Product recalls', *Inside Supply Management*, December 2008, p. 24; Consumer Product Safety Commission (US), *Recall handbook*, May 1999, p. 5; Health Canada, *Recalling consumer products: A guide for industry*, April 2005, p. 2; Office of the Belgian Federal Minister for the Environment, Consumer Protection and Sustainable Development et al., *Product safety in Europe: A guide to correction action including recalls*, June 2004, p. 18.

33 Figure based on recall data collected by the ACCC across all consumer products for the period January 2006 to May 2009.

## Low-value products

As noted above, low-value products pose particular challenges for suppliers and regulators alike when it comes to a recall. In some cases, it may not be feasible for low-value products to have distinguishing markings or tracking labels on them, particularly where the product is very small. However, low value does not necessarily mean low risk, and suppliers should still seek to achieve effective recalls of such products.

Consumer feedback has shown that many consumers will dispose of low-value products rather than returning them to the supplier in the event of a recall because of the time, effort and inconvenience involved:

They'd have to offer more than just a refund or replacement for me to return something like a coffee pot. Just a little bit extra to make it worth my while, like a bag of coffee beans along with a new pot.

Pre-contemplation participant, Boomer Generation, Melbourne<sup>34</sup>

Furthermore, consumer research shows that low-value items in particular carry a social embarrassment barrier to actioning a return request. For this reason a number of participants across the research expressed reluctance to return a low-value item and were more inclined to dispose of the product rather than return it:

I'd feel funny taking something small back to be returned. I'd feel cheap asking for my money back on something from the \$2 shop.

Contemplation participant, Boomer Generation, Brisbane<sup>35</sup>

Therefore, suppliers and regulators need to target the recall strategy to overcome these barriers and encourage consumer compliance. One way to do this would be to offer consumers an incentive to return the goods, as suggested by the consumers themselves.

## Tracking products through the supply chain: systems and records

As noted above, the ability to track products through the supply chain can help determine the extent of any safety related problem and identify the most appropriate response.

A number of international jurisdictions have introduced traceability requirements into their product safety frameworks in recognition of the impact these have on recall effectiveness. The jurisdictions include the EU, Canada and the US, and the traceability requirements include tracking systems and record keeping.

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<sup>34</sup> Colmar Brunton Social Research, *Review of the effectiveness of the consumer product recall system*, September 2009, pp. 12–13.

<sup>35</sup> *ibid.*

## Review of the Australian product safety recalls system

In contrast to these developments internationally, there is no Australian statutory consumer product safety requirement for suppliers to keep information relating to the movement of consumer goods through the supply chain.

Under s. 65Q(1) of the *Trade Practices Act 1974* (TPA), a supplier is required, on receipt of a notice from the Commonwealth Minister for Competition Policy and Consumer Affairs (Commonwealth minister) or other authorised person, to furnish information, produce documents or give evidence relating to goods which are intended to be used or likely to be used by a consumer and which will or may cause injury to any person. Failure to comply with the notice is punishable by pecuniary penalty. However, there is no explicit requirement for suppliers to keep records relating to the supply and distribution of goods to support any request that the Commonwealth minister may make under s. 65Q(1).

In contrast, the specialist Commonwealth regulators mandate record-keeping requirements in their legislation or recall policies to aid traceability. For example, s. 31 of the *Therapeutic Goods Act 1989* prescribes the information and documentation that is to be provided to the Therapeutic Goods Administration and therefore kept by suppliers.

Maintenance of records about the movement of goods through the supply chain assists suppliers to make decisions about the most appropriate action to take in relation to the distribution of unsafe products. It enables suppliers to assure themselves and any appropriate regulator that the risk has been sufficiently mitigated, by demonstrating that the goods were withdrawn from other suppliers prior to sale or recalled effectively. It allows a supplier who identifies a problem to communicate with others involved in the product's distribution and manage the problem more comprehensively. It also provides information for regulators that may wish to follow up with other suppliers of a recalled product.

Where a supplier manufactures or assembles the product, maintenance of records about the origin of the components of the product is also important. Product deficiencies could result from the failure of one particular component, or a faulty batch of that component, and such records could help identify and limit the extent of the problem.

To facilitate an effective recall, each entity in the supply chain needs to keep records of who supplied them with a product and to whom they supplied that product. While the majority of companies already do keep these records for taxation purposes, the ACCC proposes to provide further advice and guidance to encourage all suppliers to maintain these records.<sup>36</sup>

## Other tracking mechanisms

Recalls have the highest success rate if they can be traced directly to the consumer. There are a number of mechanisms that can facilitate this tracking.

The consumer may choose to monitor the supplier's website or a recalls website such as recalls.gov.au to identify products they have purchased that are the subject of a recall.

Suppliers can also develop and maintain databases that include customer contact and purchasing information. In the event that a product is recalled, the supplier can contact

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<sup>36</sup> Sections 121.20 and 121.25 of the *Income Tax Assessment Act 1997* require sales and purchase records to be kept for a period of five years.

those customers who have purchased the product directly to discuss remedies. Traditional techniques for the collection of this information include warranty cards.

Alternative methods of tracing products to consumers could include the use of banking, credit card or loyalty card records. In such cases, the supplier could ask that the card operator forward correspondence relating to a recall to all of its customers who purchased the product.

## Regulator involvement in the retrieval of unsafe products

Many regulators not only provide advice about recall effectiveness but also actively monitor the recall to ensure that it is successful. Active monitoring of the recall usually involves the regulator requiring regular status reports from the supplier and using these reports to assess the effectiveness of the recall and identify how retrieval rates of the unsafe product could be improved.

In some circumstances, regulators may need to intervene to properly protect the public. To do so, regulators have powers to intervene in the conduct of a recall and use compulsory recall powers, and have the ability to seize and destroy unsafe products and impose penalties for continuing to supply unsafe products.

Reporting on the progress of a recall is an invaluable tool not only for regulators but also for suppliers, who can review and adjust the recall strategy as appropriate.

A compulsory recall can be ordered under s. 65F of the TPA when an unsafe consumer good comes to the attention of the ACCC or the Commonwealth minister and the supplier is unwilling to take action. This power can also be used where the supplier has not taken satisfactory action in respect of a voluntary recall.<sup>37</sup>

## Penalties for supplying recalled goods

If a good is subject to a recall the unmodified product should not be sold. However, the TPA currently does not have provisions that adequately address the problem of suppliers continuing to sell recalled goods.

Section 65G of the TPA directs that a corporation engaged in trade or commerce shall not supply goods of a kind to which a compulsory recall order relates. There is no comparable provision for supplying goods that have been voluntarily recalled by a supplier. However, there is often no difference in the risk to the community between products that are voluntarily recalled and those that are compulsorily recalled. Consequently, the ACCC will further consider this issue and monitor supplier conduct to determine whether it is appropriate to recommend legislative amendment to the TPA.

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<sup>37</sup> Legal advice provided by the ACCC Deputy General Counsel on 18 August 2009 on the application of s. 65F states that there does not have to be a voluntary recall of the product before a compulsory recall of the same product can be ordered.

## Conclusion

The ability to trace products into the hands of consumers will improve recall effectiveness by enabling suppliers to undertake more targeted and therefore cost-efficient recalls of defective products, and assuring regulators that the risk posed by the product will be addressed as quickly and effectively as possible.

In relation to the retrieval of a recalled product, the ACCC's findings and intended actions are as follows.

### *Finding 9:*

*The use of tracking labels facilitates product traceability and can allow a recall to be more targeted and effective.*

### *Action 7:*

*When reviewing mandatory standards and contributing to the development of voluntary standards, particularly in relation to products that pose heightened safety risks, the ACCC will consider whether there should be a requirement for the product to include distinguishing marks to allow it to be identified and traced.*

### *Finding 10:*

*Suppliers should retain records that identify who they purchased a product from and who they sold a product to, in order to facilitate recalls and withdrawals and improve the effectiveness of these actions.*

### *Finding 11:*

*Regular reports on the progress of product recalls are an important tool for both suppliers and regulators when assessing recall effectiveness.*

### *Action 8:*

*The ACCC will develop a reporting schedule with suppliers at the beginning of a recall that appropriately reflects the product risk being addressed and enables ongoing assessment of the effectiveness of the recall. The ACCC will allow electronic submission of these reports to ease the reporting burden on suppliers. This amendment to the Recall Guidelines insufficiently encourages compliance, amendments to the TPA to enable the ACCC to require recall progress reports at nominated periods will be considered.*

### *Action 9:*

*The ACCC will provide guidance and encourage suppliers to:*

- *include distinguishing marks on their products or packaging to allow the products to be identified and traced*
- *in the case of low-value recalled products, offer incentives for consumers to return them*
- *retain records to facilitate tracing of products through the supply chain*
- *maintain records about the origin of the components of products*
- *use online product registration and warranty cards.*

### *Action 10:*

*The ACCC will further investigate over the next 12 months whether it is appropriate to recommend amending s. 65F of the TPA (or the equivalent provisions in the Australian Consumer Law (ACL)) to allow the Commonwealth minister to direct that the supplier offer a particular remedy when ordering a compulsory recall.*

### *Action 11:*

*The ACCC will continue to monitor suppliers' conduct over the next 12 months to determine whether it is appropriate to recommend amending s. 65G of the TPA (or the equivalent provisions in the ACL) to make it an offence to supply goods subject to a voluntary recall as well as those subject to a compulsory recall.*

## Closure

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 rights of consumers in relation to the product, and the public can continue to access information about the recall through the recalls.gov.au website.<sup>38</sup> However, when a recall is closed, the supplier no longer needs to actively promote the recall and the regulatory oversight ceases.

As part of its oversight role, the regulator needs to be assured that the decision to close the recall is appropriate. In many cases the supplier offers that assurance in the form of a final report in which they provide information about how the recall strategy has been implemented, the number of products returned and the reasons for the recall to be closed.

## Root cause analysis and corrective actions

Before it can agree to closure, the regulator needs to understand how the problem occurred and what the supplier has done to prevent its recurrence. A root cause analysis undertaken by the supplier can often assist with identification of the problem's causes, which the supplier can then prioritise and address.

To date, the ACCC has not required suppliers to report on any root cause analysis they may have undertaken regarding a product defect. However, there are numerous advantages in understanding the causes of the problem that resulted in the supply of an unsafe product— including the potential to reduce the risk of future recalls, with the commensurate increase in consumer safety and reduction in business costs. To ensure suppliers are effectively addressing product safety risks by consistently performing root cause analysis, the ACCC will oversee the steps suppliers are taking to prevent unsafe products entering the marketplace.

## Information about disposal or rectification

The regulator also needs to be assured that the unsafe goods will not re-enter the market and pose a new safety risk to consumers. Consequently, information about the destruction or rectification of the unsafe product should be provided to the regulator before closure.

## Recall effectiveness

Finally, the regulator and the supplier will need to agree that the recall has been effective and that no further steps need to be taken by the supplier to mitigate any product safety risk. As noted at the beginning of this report, the primary measurement of consumer product recall effectiveness in Australia is the percentage of the distributed product returned or rectified from within the supply chain and from consumers. However, this report has considered various other factors that may also affect recall effectiveness. Given those other factors, it appears that a more appropriate measure of recall effectiveness would take into account the

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<sup>38</sup> Information about recalls is generally made available to the public through this website. However, a limited number of product recalls are not visible to the public. For example, some recalls of large earthmoving equipment are not published because of the very limited Australian distribution and the capacity of the supplier to trace every product to the end user.

range of indicators demonstrating that the recall has been quickly initiated and effectively communicated to all relevant stakeholders.

Consequently, a more appropriate measure of recall success could include:

- the percentage of product returned from both the supply chain and consumers
- the breadth and depth of the recall advertising, including repetition of recall messages, communication methods, how effectively the communication strategy has been targeted and whether it has reached the intended audience
- where relevant, decreases in the number of injuries and in complaints about the product
- the likelihood of the product remaining in use
- notification of others in the supply chain
- information about disposal or rectification of the product.

Some of these factors should carry more weight than others, depending on the product and risk. It is not possible to be definitive about the way this model should be applied. It is necessarily dependent on the sound judgement of qualified, well-trained and experienced product safety officers. However, consideration of the criteria above could provide some standard basis for assessment and support an argument for the effectiveness of a recall.

## Cost

It is acknowledged that some consumers may conduct their own informal risk assessment in relation to the product and the hazard and decide to either continue using or destroy less expensive products rather than return them to the supplier. However, the cost of the item should not be a relevant consideration when assessing the effectiveness of the recall. This is because:

- Cost is not aligned with risk. There are significant risks associated with low-cost as well as high-cost products. Consequently, it is equally important to effectively recall low-cost products.
- The directions to consumers about the action they should take in relation to a recall should be clear and unequivocal. It is easy to misunderstand what is required when various options for dealing with the unsafe product are presented. Including options for the disposal of the product by the consumer for low-cost products, rather than directing that the product should be returned to the supplier, could increase the risk that neither action is taken.
- There are risks associated with the disposal of some products, and those risks are not associated with the cost of the product. The safest solution in many cases is for the supplier to safely destroy the product.
- Disposal of the product by the consumer does not provide the supplier with an opportunity to rebuild its brand with the consumer, or provide the consumer with any redress.

The recall of a low-cost item should be recognised as posing particular challenges and indicating the need for greater focus on the communication methods and message.

## Final report

As part of its oversight role, the regulator requires reports from the supplier about the progress of the recall. When the supplier believes that the recall should be closed, they should provide a final report to the regulator that demonstrates that the risk has been effectively mitigated.

The final report should address the factors outlined above. It should:

- identify the number of products initially affected and subsequently discovered to be affected, the number of products returned or rectified from the supply chain, and the number of products returned or rectified from the hands of consumers
- provide details about the communication strategy, including copies of any data about its effectiveness (for example, the number of unique visitors to the relevant web page)
- report on any known injuries, deaths or near misses associated with the product, as well as any general complaints received about the product or the conduct of the recall
- include details of the life cycle of the product, where relevant, and an assessment of whether it is likely that consumers will continue to use the product after the expiration of its life cycle
- demonstrate notification to all other relevant entities up and down the supply chain, and show that relevant information was provided to international product recipients or suppliers
- provide evidence of the destruction or rectification of the recalled product.

As with regular progress reports, there is no specific legislative mandate for the provision of this final report. However, the oversight of the recall is clearly implied by the notification requirements and the compulsory recall power, and the ACCC conducts its oversight through assessment of such reports.

In the event that a supplier is unwilling to provide information required in a final report, the Commonwealth Minister for Competition Policy and Consumer Affairs may decide that he or she is not satisfied that the supplier has taken satisfactory action to prevent the goods causing injury, and may order a compulsory recall under s. 65F of the *Trade Practices Act 1974* (TPA). This can be ineffective when the recall has largely been completed and the supplier is taking all reasonable steps. The ACCC will continue to require suppliers to provide final reports and will monitor industry conduct in this area over the next 12 months to determine whether amendments to the TPA are necessary.

## Conclusion

When a supplier has taken all reasonable steps to effectively mitigate the risk posed by the unsafe product, the recall can be closed.

In relation to the closure of product recalls, the ACCC's findings and intended actions are as follows.

### *Finding 12:*

*Recalls can be more successfully targeted if the cause of the deficiency is identified, particularly if it can be traced to a particular batch or lot number or product stream. Additionally, this can reduce the risk of the manufacture and supply of unsafe products.*

### *Finding 13:*

*The destruction or rectification of unsafe goods reduces the opportunity for them to be deliberately or accidentally sold to consumers after the completion of the recall.*

### *Finding 14:*

*Recall effectiveness can best be assessed by reviewing a range of relevant factors in addition to noting the quantity of product returned to the supplier or rectified.*

### *Action 12:*

*The ACCC will increase its oversight of the remedial aspects of recalls and will modify its Product safety recall: A guide for suppliers (Recall Guidelines) to include:*

- *the requirement that suppliers provide information about the cause of the product defect and the steps they have taken to remedy the defect*
- *the requirement that suppliers provide evidence of the destruction or rectification of the unsafe product prior to recall closure*
- *the factors the ACCC will consider when assessing the effectiveness of the recall*
- *the requirement that the supplier provide a final report before the recall can be closed.*



# Contacts

## Australian Competition and Consumer Commission

### Product safety

By regularly checking the Product Safety Australia website at [www.productsafety.gov.au](http://www.productsafety.gov.au), you can keep informed about mandatory standards, bans, recalls and emerging issues.

Our website also contains our media releases and links to related websites.

For further information, subscribe to the email alerts in the **Notify me** box on the **Product Safety Australia** web page at [www.productsafety.gov.au](http://www.productsafety.gov.au).

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