

# Product safety

A guide for businesses and legal practitioners



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# Introduction

## About this guide

This is one of six guides to the Australian Consumer Law (ACL) developed by Australia's consumer protection agencies to help businesses understand their responsibilities under the law.

These guides:

- > explain the law in simple language but are no substitute for the legislation
- > give general information and examples – not legal advice or a definitive list of situations where the law applies.

This guide will help businesses and legal practitioners understand the product safety requirements of the ACL.

## About the other guides

Other guides in this series cover:

- > **consumer guarantees**  
explains supplier, manufacturer and importer responsibilities when there is a problem with goods and services; refunds, replacements, repairs and other remedies
- > **sales practices**  
covers unsolicited supplies, unsolicited consumer agreements (door-to-door and telemarketing), lay-by agreements, pricing, proof of transaction and itemised bills, referral selling, pyramid schemes, harassment and coercion
- > **unfair business practices**  
covers misleading or deceptive conduct, unconscionable conduct, country of origin, false and misleading representations, information standards
- > **unfair contract terms**  
outlines what an unfair term is and which contracts are affected by the law
- > **compliance and enforcement**  
outlines how consumer protection agencies will enforce the law.

## About the Australian Consumer Law

The ACL aims to protect consumers and ensure fair trading in Australia.

It is a national, state and territory law from 1 January 2011 and includes unfair contract terms legislation introduced on 1 July 2010.

Under the ACL, consumers have the same protections, and businesses have the same obligations and responsibilities, across Australia.

Australian courts and tribunals (including those of the states and territories) can enforce the ACL. The regulators of this law include:

- > the Australian Competition and Consumer Commission (ACCC)
- > the Australian Securities and Investments Commission (ASIC)
- > each state and territory consumer protection agency.

The ACL replaces previous Commonwealth, state and territory consumer protection legislation. It is contained in the *Competition and Consumer Act 2010* (CCA).

Aspects of the ACL are reflected in the *Australian Securities and Investments Commission Act 2001 (Cth)* (ASIC Act) to protect consumers of financial products and services.

# 01

## National product safety laws

The ACL includes national product safety laws. It sets out the responsibilities of the Commonwealth, state and territory governments and suppliers.

Under the ACL, Australian governments can regulate consumer goods and product-related services by:

- > issuing safety warning notices
- > banning products, either on an interim or permanent basis
- > imposing mandatory safety standards, or
- > issuing a compulsory recall notice that requires suppliers to recall a product.

The ACL also outlines the responsibilities of suppliers, including:

- > what to do when a minister bans a product or imposes a safety standard
- > when and how to recall consumer goods
- > what to do if a minister issues a compulsory recall notice
- > when to report an incident associated with consumer goods and product-related services to the Commonwealth minister, or
- > when manufacturers may be liable for loss or damage caused by a consumer good with a safety defect. A 'manufacturer' is not just the company that made the goods – see the glossary on page 20.

In addition to this guide, information to help suppliers with these responsibilities is also available from:

- > [recalls.gov.au](https://recalls.gov.au) – when and how to recall consumer goods
- > [productsafety.gov.au](https://productsafety.gov.au) – including mandatory reporting guidelines.

The ACL also allows Australian governments to regulate consumer goods or product-related services by imposing information standards. These standards require that certain information is provided about a good or service.

# 02

## What do the product safety laws cover?

The product safety laws apply to *consumer goods* and *product-related services*.

These are defined in the glossary on page 20, but in simple terms:

*Consumer goods* are things:

- > intended for personal, domestic or household use or consumption, or
- > likely to be used for personal, domestic or household use or consumption.

When a minister recalls a consumer good, it is recalled even if it has become part of something else (it has become a 'fixture').

**For example:**

- > A door is a fixture when installed on a building. The minister recalls glass doors produced by the Acme company due to a risk that the hinge may break, which could cause the door to fall to the floor and shatter the glass. All Acme doors in stock at various national suppliers are withdrawn from sale. The suppliers must also contact all customers who have had the particular door installed to advise them to stop using the door, and to organise a time to repair or replace the door at the supplier's expense.

*Product-related services* are services for or relating to:

- > installation of consumer goods
- > maintenance, repair or cleaning of consumer goods
- > assembly of consumer goods, or
- > delivery of consumer goods.

Any person who, in trade or commerce, supplies consumer goods or product-related services is responsible for complying with ACL product safety requirements.

This means all suppliers in the supply chain (including manufacturers, wholesalers, hirers and retailers) must keep up-to-date with the law and comply with any standards or bans.

Suppliers can subscribe for email updates about Australia's list of mandatory safety standards and bans. To subscribe, go to the Product Safety Australia website at [productsafety.gov.au](http://productsafety.gov.au). Click on 'subscribe to email alerts' and enter your details.

**All suppliers in the supply chain must keep up-to-date with the law.**

# 03

## Safety warning notices

### Summary

A safety warning notice is a formal warning issued by a Commonwealth, state or territory minister responsible for administering the ACL. It informs consumers and suppliers about consumer goods or product-related services that may cause injury, and/or are under investigation.

When a warning notice is published, suppliers do not have to stop supplying that good or service. However, they should stay informed about its status.

A safety warning notice should not be confused with an information standard, which may require a supplier to give advice about safe use, or a safety warning, on a product.

ACL reference: sections 129-130

### What a safety warning notice includes

A Commonwealth, state or territory minister responsible for administering the ACL (a 'responsible minister') can publish a safety warning notice online about consumer goods or product-related services.

The safety warning notice:

- > states that the goods or services are being investigated to determine whether the goods, used in a 'reasonably foreseeable' way, may injure someone either directly, or as a result of the supply of related services
- > warns of possible risks in using the goods or services.

For example:

- > a dishwasher (a 'consumer good') may have a defect that means when it is installed (a 'product-related service'), an electrical problem results. The safety warning notice would advise of an investigation into that type of dishwasher, and warn consumers and plumbers of the risks of installing that particular model.

**Reasonably foreseeable** use is defined in the glossary on page 21. In simple terms, it covers the predictable ways a consumer good might be used – including using it the wrong way (misuse).

Suppliers do not have to respond to a safety warning notice. However, they must comply with any bans or recalls of the product, so should stay informed. The Product Safety Australia website – [productsafety.gov.au](http://productsafety.gov.au) – has updates on investigations and further developments.

## Publishing investigation outcomes

If the safety warning notice announced an investigation, the minister must publish the outcome on the internet as soon as possible.

This can include proposed action – for instance, plans to impose a ban, a standard or a mandatory recall.

A state or territory minister does not have to announce results if the Commonwealth minister has already published a notice either:

- > proposing a ban or mandatory recall of the good or service and giving suppliers the opportunity to call a conference with the ACCC, or
- > imposing an urgent interim ban or mandatory recall. An urgent interim ban is one imposed without delay if the Commonwealth minister considers the goods create an imminent risk of death, serious illness or serious injury.

# A safety warning notice is a formal alert to consumers and suppliers ...

# 04

## Bans on consumer goods or product-related services

### Summary

Bans can be placed on consumer goods or product-related services in certain circumstances.

There are two types of bans:

- > an interim ban – imposed by any responsible minister. An interim ban lasts for 60 days and can be extended for up to another 60 days
- > a permanent ban – may only be imposed by the Commonwealth minister.

Failing to comply with a ban is an offence.

ACL reference: sections 109-119

### What does a ban do?

A ban on a consumer good makes it unlawful for anyone, in trade or commerce, to:

- > supply it
- > offer to supply it
- > manufacture it
- > possess it, or
- > have control of it.

Special rules apply to consumer goods supplied for export only. Businesses that supply consumer goods for export only should seek legal advice when those goods are subject to a ban.

A ban on a product-related service makes it unlawful for anyone, in trade or commerce, to supply or offer to supply that service.

### Example of a ban:

- > In 2008, the ACCC and state and territory consumer protection agencies became aware of products called 'fire footbags'. These are balls manufactured from fire-resistant material. They are designed to be doused in flammable liquid and ignited, and intended to be kicked or thrown for amusement.

Fire authorities advised that any plaything linked to flammable liquid and fire has the potential to ignite combustible material or burn the person playing with it. They also said there was a very real possibility that the use (particularly the careless use) of these goods could result in domestic fires or bushfires.

Commonwealth, state and territory ministers took action to ban the goods, unless supplied to professional entertainers or for theatrical use and the purchaser could demonstrate such qualifications or intended use. Australian suppliers had to comply with the ban.

## When can a minister impose a ban?

Relevant Commonwealth, state and territory ministers can impose interim bans on consumer goods or product-related services in certain circumstances.

All ministers can impose an interim ban if they consider:

- > goods may injure someone, including as a result of supplying product-related services
- > using or misusing goods, including those related to a service, in a 'reasonably foreseeable' way may injure someone, or
- > another minister has imposed a similar ban, which is still in force.

Interim bans last for 60 days unless extended by the minister for up to another 60 days.

### Commonwealth minister

The Commonwealth minister responsible for administering the ACL can impose permanent bans, as well as interim bans. A permanent ban does not have an expiry date.

Any ban imposed by the minister applies throughout Australia.

If the minister proposes to introduce any sort of ban (interim or permanent), the minister must notify suppliers in writing (a ban notice). The proposed ban notice must, among other things, be in writing and published on the internet.

Unless there is an imminent danger to the public, the minister also must give suppliers an opportunity to request a conference with the ACCC before imposing the ban (ACL reference: section 132 and 132J of Schedule 2).

To learn about proposed bans:

- > subscribe to receive automatic updates from the Product Safety Australia website, [productsafety.gov.au](http://productsafety.gov.au)
- > keep in touch with your industry association
- > follow product safety at the ACCC on Twitter: [@ProductSafetyAU](https://twitter.com/ProductSafetyAU).

### State and territory ministers

State and territory ministers can only impose interim bans that apply in their state or territory.

There is no requirement to notify suppliers or give them an opportunity to call a conference before imposing a ban. In urgent cases, it may not be practical to do so. Suppliers are responsible for staying informed about their legal obligations.

### Commonwealth ban following a state or territory ban

A state or territory ban on consumer goods or product-related services ceases immediately before a Commonwealth minister's ban on the same goods or services comes into force.

### Information about bans

All bans are listed on the Product Safety Australia website – [productsafety.gov.au](http://productsafety.gov.au).

### How to comply

A supplier must not supply or offer to supply a banned consumer good or product-related service.

When the ban applies to consumer goods, a supplier also must not, for the purposes of trade or commerce:

- > manufacture
- > possess, or
- > have control of those goods.

Special rules apply in relation to goods supplied for export only. Businesses that supply consumer goods for export only should seek legal advice when those goods are subject to a ban.

If a supplier realises they have supplied consumer goods in breach of a ban, they should recall the goods (see 'Recall of consumers goods' on page 14).

It is the supplier's responsibility to ensure consumer goods and product-related services do not breach any bans. This means that all suppliers should be aware of current bans and understand how to comply with them. For more information, visit the 'bans' section of the Product Safety Australia website, [productsafety.gov.au](http://productsafety.gov.au).

Product testing can help assure suppliers that they are supplying safe goods or services. A *Guide to Product Testing* is available from the publications section of the Product Safety Australia website – [productsafety.gov.au](http://productsafety.gov.au).

### Embargo notices

In certain circumstances, consumer protection agencies can embargo consumer goods. For more information, contact the relevant consumer protection agency (these are listed on pages 22-23).

### Penalties

A supplier who fails to comply with a ban may be found guilty of a criminal offence.

The maximum fine is \$220,000 for an individual or \$1.1 million for a body corporate. Civil penalties for the same amounts also apply.

A court does not have to consider the person's intentions before finding them guilty (ACL reference: sections 197-198).

# 05

## Mandatory safety standards

### Summary

The Commonwealth minister can impose mandatory safety standards that set specific requirements for consumer goods or product-related services.

It is an offence to supply consumer goods or product-related services that do not comply with mandatory safety standards.

ACL reference: sections 104-108

### Applying mandatory safety standards

The Commonwealth minister can require that consumer goods or product-related services are only supplied if they comply with a mandatory safety standard.

**A mandatory safety standard for a consumer good can set requirements including:**

- > the way the good is made
- > what it contains
- > how it works
- > what tests it needs to pass, or
- > whether any warnings or instructions need to accompany the good.

**For example:**

- > A number of children in Australia have died after becoming entangled in the cords used to open and close curtains and blinds. These cords are not inherently dangerous but, when not properly secured, can present a strangulation hazard to young children. A mandatory safety standard requires:
  - the goods and their packaging to have warnings clearly displayed on them to increase awareness of the dangers
  - the goods to be accompanied by instructions, specifying how they should be installed to avoid a strangulation hazard, or
  - any components mentioned in the instructions as necessary for cord safety to be included in the package.

### A mandatory safety standard for a product-related service can specify:

- > how the services are supplied
- > the skills or qualifications of a person supplying the service
- > the materials used in supplying the service, or
- > the tests the services must pass.

No mandatory safety standard for a product-related service was in force when this guide was published. However, an example would be a standard that regulates how a particular product is to be installed or who is able to install it.

Australian governments can also regulate goods or services by imposing information standards. These can require that certain information is provided about a good or service – for example, washing instructions for clothing.

Suppliers must comply with information standard requirements. For more about information standards, see another guide in this series – *Avoiding unfair business practices: a guide for businesses and legal practitioners*, available from [consumerlaw.gov.au](http://consumerlaw.gov.au).

### How to comply

When a mandatory safety standard applies, a supplier must not supply or offer to supply goods or services that do not comply.

If a standard applies to consumer goods, and the goods do not meet that standard, a supplier also must not for the purposes of trade or commerce:

- > manufacture
- > possess, or
- > have control of those goods.

Special rules may apply if the consumer goods are supplied for export only. Businesses that supply consumer goods for export only should seek legal advice when those goods fail to meet a standard.

It is the supplier's responsibility to ensure consumer goods comply with relevant mandatory safety standards.

A supplier should obtain a copy of:

- > the specific safety standards that apply, from the Product Safety Australia website – [productsafety.gov.au](http://productsafety.gov.au)
- > any documents the standard refers to – for example, an Australian Standard. Australian Standards are available from the SAI Global website, [saiglobal.com](http://saiglobal.com).

Product testing can help assure suppliers that they are supplying safe goods or services. See the *Guide to Product Testing*, available from the Product Safety Australia website – [productsafety.gov.au](http://productsafety.gov.au).

### When suppliers choose the safety standard

When there are two or more sets of requirements for a product, some mandatory safety standards allow suppliers to choose one to comply with.

#### For example:

- > Suppliers can choose one of several variations to the standard for child restraints. A supplier must be able to identify which variation of the child restraint standard they are complying with, if asked by a regulator.

It is a criminal offence for a supplier to fail to nominate a standard if required to do so by a consumer protection agency.

### Penalties

A supplier may be found guilty of a criminal offence if they fail to:

- > comply with a mandatory safety standard. The maximum fine is \$220,000 for an individual or \$1.1 million for a body corporate
- > nominate a standard if required to do so by a consumer protection agency. The maximum fine is \$4400 for an individual or \$22,000 for a body corporate.

Civil penalties for the same amounts also apply.

A court does not have to consider a person's intentions before finding them guilty of these offences (ACL reference: sections 194-196).

# 06

## Recall of consumer goods

### Summary

A recall can be initiated by a supplier or ordered by a minister. Most Australian recalls are initiated by suppliers.

Suppliers should recall consumer goods as soon as they realise the goods:

- > may cause injury
- > do not comply with a safety standard, or
- > are banned.

When a supplier initiates a recall, they must notify the Commonwealth minister within 48 hours of recalling the consumer goods. Failing to do so is unlawful.

A minister can order a recall when the product poses a safety risk and the supplier is not prepared to recall the goods voluntarily.

ACL reference: sections 128 and 201 (supplier-initiated recall); 122-127 (minister-ordered recall)

### When should a supplier recall consumer goods?

Suppliers must recall consumer goods they have supplied if they realise the goods:

- > may injure someone, or using the goods in a reasonably foreseeable way (including misuse) may injure someone
- > do not comply with a safety standard, or
- > are the subject of an interim or permanent ban.

For detailed information about the recall process, *Consumer Product Safety Recall Guidelines* are available from the Product Safety Recalls Australia website – [recalls.gov.au](http://recalls.gov.au).

### Who should a supplier notify about a recall of consumer goods?

A supplier must give the Commonwealth minister a written notice by completing the 'submit recall notification' form on the Product Safety Recalls Australia website – [recalls.gov.au](http://recalls.gov.au) – within 48 hours of initiating the recall. The information required will depend on the reasons for the recall. For instance, for a recall due to:

- > defect or dangerous characteristic, the notice must describe the defect or dangerous characteristic
- > dangers posed by using the goods in a reasonably foreseeable way, the notice must set out the use or misuse that poses the danger
- > failure to comply with a safety standard in force, the notice must state how the goods do not comply
- > an interim or permanent ban, the notice must state that the goods are subject to an interim or permanent ban.

A supplier must also give a notice about the recall to anyone they have supplied the goods to outside of Australia, as soon as practicable. The supplier must also give a copy of this notice to the Commonwealth minister within 10 days of issue.

For assistance, contact the ACCC's Infocentre on 1300 302 502.

### **Penalties – supplier-initiated recalls**

A supplier who fails to notify the minister as outlined above may be found guilty of a criminal offence.

The maximum fine is \$3330 for an individual or \$16,650 for a body corporate (ACL reference: section 201).

A court does not have to consider a person's intentions before finding them guilty of this offence.

### **When can a minister order a compulsory recall?**

A Commonwealth, state or territory minister responsible for administering the ACL can issue a compulsory recall notice when they consider that the consumer goods:

- > may injure someone, or using them in a 'reasonably foreseeable' way may injure someone
- > do not comply with a safety standard, or
- > are the subject of an interim or permanent ban.

The minister can only issue a compulsory recall notice if it appears a supplier has not taken satisfactory action to prevent the consumer goods injuring someone.

The Commonwealth minister must notify suppliers in writing of a proposed recall (a proposed recall notice). This must be published on the internet.

Unless there is an imminent danger to the public, the minister also must give suppliers an opportunity to request a conference with the ACCC before publishing the notice (ACL reference: section 132A of Schedule 2).

When the Commonwealth minister recalls consumer goods already recalled by a state or territory, the state or territory recall ceases as soon as the Commonwealth minister's recall comes into force.

### **What can a compulsory recall notice require a supplier to do?**

Using a compulsory recall notice, the minister can require suppliers to:

- > recall the consumer goods
- > disclose to the public, or to a particular group of people, that the consumer goods have a defect or dangerous characteristic, and what the defect is
- > disclose to the public, or to a particular group of people, the circumstances when a reasonably foreseeable use or misuse of the goods is dangerous, or
- > explain to the public, or to a particular group of people, how to dispose of the goods.

The notice can also include:

- > how the supplier must take action
- > deadlines for doing so.

### **If a minister issues a compulsory recall notice, suppliers must:**

- > give notice to anyone they have supplied with the consumer goods outside of Australia. The notice must state that the consumer goods are subject to a recall and the reasons why.
- > give a copy of this notice to the relevant minister within 10 days of its issue.

A compulsory recall notice will also require suppliers of consumer goods to:

- > replace the goods
- > repair the goods, unless recalled due to a dangerous characteristic, or
- > refund the purchase price. The notice can specify a reduced refund for goods supplied more than 12 months before issue of the recall notice.

The supplier must pay any cost of repair or replacement, including transportation costs.

### **When a supplier cannot be found**

When a supplier cannot be found, a minister can require the relevant consumer protection agency to recall the goods. This could include the ACCC and a state or territory fair trading agency.

### **Penalties – recalls ordered by a minister**

A supplier who does not comply with a compulsory recall notice may be found guilty of a criminal offence. The maximum fine is up to \$220,000 for an individual or \$1.1 million for a body corporate (ACL reference: section 199).

A supplier who does not notify a person outside Australia of a recall may also be found guilty of a criminal offence. The maximum fine is \$3330 for an individual or \$16,650 for a body corporate (ACL reference: section 200).

A court does not have to consider a person's intentions before finding them guilty of these offences.

# When consumer goods or product-related services may have caused death, serious injury or illness

## Summary

Suppliers must notify the Commonwealth minister within 48 hours of becoming aware that a person suffered serious injury, illness or death associated with a consumer good or product-related service they supplied – either in Australia or overseas.

This applies even if the consumer goods or product-related services were misused.

To notify the minister, suppliers should complete the online mandatory reporting form on the Product Safety Australia website – [productsafety.gov.au](http://productsafety.gov.au).

Failing to comply is an offence.

ACL reference: sections 131-132A

## When must a supplier notify the Commonwealth minister?

Suppliers must notify the Commonwealth minister when they become aware a consumer good or product-related service they supplied has caused, or may have caused:

- > death
- > serious injury, or
- > illness.

A serious injury or illness is an acute physical illness or injury requiring treatment by, or under the supervision of, a qualified doctor or nurse. The medical or surgical treatment can be provided in a hospital or clinic, or in a similar place such as a regional or rural clinic.

Suppliers must notify the minister within 48 hours of becoming aware of the incident, regardless of whether the goods were used before or at the time of the incident.

**For consumer goods**, they must identify the goods and include all they know about:

- > when, and in what quantities the goods were manufactured or supplied in, imported to, or exported from Australia
- > the circumstances of the death, serious injury or illness
- > the nature of the serious injury or illness
- > any action the supplier has taken, or intends to take, in relation to the goods.

**For product-related services**, they must identify the services and the related consumer goods, and include all they know about:

- > when the services were supplied
- > the circumstances of the death, serious injury or illness
- > the nature of the serious injury or illness
- > any action that the supplier has taken, or intends to take, in relation to the services.

### This reporting requirement:

- > applies when the supplier or another person – for instance, the affected consumer – considers the death, serious injury or illness was caused, or may have been caused, by use or foreseeable misuse of the consumer goods
- > does not apply if it is clear that the death, serious injury or illness was not caused, or was very unlikely to have been caused, by the use or foreseeable misuse of the consumer goods
- > does not apply when the supplier has to report the death, serious injury or illness under another law or an industry code of practice specified in the ACL Regulations. At January 2011, this includes the following Acts and their associated Regulations:

#### Commonwealth

- *Agricultural and Veterinary Chemicals Act 1994*
- *National Health Security Act 2007*
- *Therapeutic Goods Act 1989*

#### New South Wales

- *Coroners Act 2009*
- *Public Health Act 1991*
- *Road Transport (Safety and Traffic Management) Act 1999*

#### Victoria

- *Coroners Act 2008*
- *Public Health and Wellbeing Act 2008*
- *Road Safety Act 1986*

#### Queensland

- *Coroners Act 2003*
- *Motor Accident Insurance Act 1984*
- *Public Health Act 2005*
- Transport Operations (Road Use Management – Road Rules) Regulation 2009

#### Western Australia

- *Coroners Act 1996*
- *Food Regulations 2009*
- *Health Act 1911*
- *Road Traffic Act 1974*

#### South Australia

- *Coroners Act 2003*
- *Road Traffic Act 1961*

#### Tasmania

- *Coroners Act 1995*
- *Public Health Act 1997*
- *Traffic Act 1925*

#### Australian Capital Territory

- *Coroners Act 1997*
- *Road Transport (Safety and Traffic Management) Act 1999*

#### Northern Territory

- *Coroners Act*
- *Notifiable Disease Act*
- *Traffic Act*

For more detail on mandatory reporting, see the *Guide to the mandatory reporting law in relation to consumer goods, or product-related services, associated with death or serious injury or illness*.

The guide is available from the Product Safety Australia website – [productsafety.gov.au/mandatoryreporting](http://productsafety.gov.au/mandatoryreporting).

### How is the information treated?

Information provided when notifying a minister is confidential and cannot be disclosed unless the person giving the information consents. The only exceptions are when the:

- > Commonwealth minister shares the information with another minister or the appropriate regulator(s)
- > employees of the regulator share the information with the employees of other regulators in the performance of their duties
- > Commonwealth minister makes the disclosure in the public interest, or
- > disclosure is required or authorised under law, or is necessary (within reason) to enforce criminal law or a law imposing a financial penalty.

A supplier does not admit liability by notifying the minister.

### Penalties

A supplier who fails to notify the Commonwealth minister within 48 hours of becoming aware of the incident may be found guilty of a criminal offence.

The maximum fine is \$3330 for an individual or \$16,650 for a body corporate (ACL reference: section 202).

A court does not have to consider a person's intentions before finding them guilty.

## Summary

Consumers who suffer loss or damage because of defects in a manufacturer's goods can:

- > take the manufacturer to court. A court can award compensation to cover these losses, or
- > make a complaint to a consumer protection agency, which may take action on the consumer's behalf.

ACL reference: Part 3-5

## When can a consumer seek compensation?

A consumer can seek compensation from a manufacturer who has supplied defective goods, if the goods caused loss or damage.

### A manufacturer is a person or business that:

- > makes or puts goods together
- > has their name on the goods, or
- > imports the goods, if the maker of the goods does not have an office in Australia.

### 'Loss' and 'damage' can include:

- > injuries to the person making the claim, or to another individual
- > economic loss caused by damage to, or destruction of another good, land, a building or a fixture.

The court will consider the safety of the goods by looking at all relevant circumstances, including:

- > marketing of the goods
- > packaging of the goods
- > the warnings and instructions for use
- > what may reasonably be expected to be done with the goods.

If a person takes a manufacturer to court and wins, the court decides how much compensation is due.

A consumer must take action within three years of becoming aware, or from when they should have become aware, of the alleged:

- > loss or damage
- > safety defect of the goods, or
- > identity of the person who manufactured the goods.

They must also claim within 10 years of when the goods were originally supplied.

## Legal defences for suppliers and manufacturers

Legal defences available for suppliers and manufacturers include that the:

- > safety defect did not exist at the time the goods were supplied
- > state of scientific and technical knowledge at the time of supply did not enable the supplier or manufacturer to discover the defect
- > good was part of another good, and the defect only arose because of the design, markings, instruction or packaging of that other good
- > defect only existed because a mandatory standard was complied with. In this case, the Commonwealth may have to pay any compensation.

**A consumer can seek compensation from a manufacturer who has supplied defective goods, if the goods caused loss or damage.**

# Glossary and abbreviations

Term	Definition
body corporate	includes a company registered under the <i>Corporations Act 2001</i> , an incorporated association, a co-operative or an owners corporation
consumer	<p>a person who buys:</p> <ul style="list-style-type: none"><li>&gt; any type of goods or services costing up to \$40,000 (or any other amount stated in the ACL Regulations)</li><li>&gt; goods or services costing more than \$40,000, which would normally be for personal, domestic or household use, or</li><li>&gt; goods which consist of a vehicle or trailer used mainly to transport goods on public roads.</li></ul> <p>Australian courts have said that the following are not normally used for personal, domestic or household purposes:</p> <ul style="list-style-type: none"><li>&gt; an airseeder</li><li>&gt; a large tractor</li><li>&gt; an industrial photocopier.</li></ul>
consumer goods	goods intended, or likely, to be used for personal, domestic or household use or consumption
liability	an obligation to put right a problem – for example, fixing a defective product, providing compensation or taking other action
manufacturer	<p>includes a person who:</p> <ul style="list-style-type: none"><li>&gt; grows, extracts, produces, processes or assembles goods</li><li>&gt; holds him/herself out to the public as the manufacturer of goods</li><li>&gt; causes or permits his/her name, business name or brand mark to be applied to goods he/she supplies</li><li>&gt; permits him/herself to be held out as the manufacturer by another person, or</li><li>&gt; imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia.</li></ul>
product-related services	<p>means a service for or relating to:</p> <ul style="list-style-type: none"><li>&gt; the installation</li><li>&gt; the maintenance, repair or cleaning</li><li>&gt; the assembly</li><li>&gt; the delivery</li></ul> <p>of consumer goods of a particular kind. Without limiting any of the above, the definition also includes any other service that relates to the supply of consumer goods of that kind.</p>

<b>Term</b>	<b>Definition</b>
<b>reasonably foreseeable use</b>	<p>includes using consumer goods for their primary, normal or intended purpose, using the goods for an unintended purpose, or misusing the goods.</p> <p>This reminds suppliers that they need to take into account the way a consumer good might be used – rather than just whether it is free from defects – when considering their responsibilities to consumers.</p>
<b>regulator</b>	the Australian Competition and Consumer Commission or state/territory consumer protection agencies
<b>responsible minister</b>	the Commonwealth, state or territory minister responsible for administering the Australian Consumer Law
<b>serious injury or illness</b>	<p>an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place).</p> <p>It does not include:</p> <ul style="list-style-type: none"> <li>&gt; an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), or</li> <li>&gt; the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.</li> </ul>
<b>services</b>	<p>include duties, work, facilities, rights or benefits provided in the course of business, for example:</p> <ul style="list-style-type: none"> <li>&gt; dry cleaning</li> <li>&gt; installing or repairing consumer goods</li> <li>&gt; providing swimming lessons</li> <li>&gt; lawyers' services.</li> </ul>
<b>supplier</b>	someone who, in trade or commerce, sells goods or services and is commonly referred to as a 'trader', 'retailer' or 'service provider'
<b>supply</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>&gt; in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and</li> <li>&gt; in relation to services – provide, grant or confer.</li> </ul>

## Abbreviations

<b>ACL</b>	Australian Consumer Law
<b>ACCC</b>	Australian Competition and Consumer Commission

# Contacts



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