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APPA SUBJECT MATTER

### Disclaimer

This information is being furnished by APPA for education and information purposes only. The Association makes no warranties or representations about specific dates, coverage or application.

Consult with appropriate legal counsel about the specific application of the law to your business and products.



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APPA SUBJECT MATTER



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APPA SUBJECT MATTER

### Australia and New Zealand

- This video covers the Australian and New Zealand systems
- Many elements are the same for both countries
- It is noted where they differ, with further details in the accompanying notes.



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PPS PRODUCT SAFETY

### Don't be *that* company

"It's not our product, it was the way the stupid consumer used it."

Design is The Key!



The most effective way to achieve safety is in a product's *design*.



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PPS PRODUCT SAFETY

### Product safety hierarchy



#1 - Design



#2 - Guards/protective devices



#3 - Information/warnings



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PPS PRODUCT SAFETY

### Some products are subject to specific regulations

This includes specific regimes, such as

- cars
- electrical
- food, and
- therapeutic goods

Check for information on the schemes on those agency websites



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**Key resources - Australia**

Product Safety Australia website – the main go-to website for consumer product safety

- Australian Consumer Law (ACL) product safety provisions
- ACL standards and bans
- Guide to who does what else



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**Key resources – New Zealand**

- Product safety provisions - New Zealand has a mix of general regulation and product/sector specific regulation
- Standards and bans – see Trading Standards and Commerce Commission websites
- Guide to who does what else



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**Some 'general' products are also subject to regulations**

Some general products that may have mandatory standards, or even be banned outright



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1111 PRODUCT SAFETY

### Compliance

If your product is covered by a regulation ...  
... you have to make sure it complies



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1111 PRODUCT SAFETY

### Unregulated products . . .

Even when there's no regulation that applies to a product,  
all products *should* be safe when they're put into the market

Ways of ensuring safe products:

Some provisions provide business incentives not to sell unsafe products



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1111 PRODUCT SAFETY

### Rules – pre- and post-market

The main law in Australia that affects product safety is the Australian Consumer Law (ACL); NZ, it's the Fair Trading Act (FTA)

The Australian Competition and Consumer Commission (ACCC) and state counterparts administer the ACL; NZ, it's the Commerce Commission and Ministry of Business, Innovation and Employment

Some rules relate to *before* a product can be sold; others to ensuring safety *after* products have been sold



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**Pre-market rules**

Apply before you put products into the market

- No misleading claims
- Product bans
- Mandatory general product and other specialty standards



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**Enforcement**

All regulatory schemes have penalties for non-compliance

Remedies allow for a scaled response

Court fines in Australia of more than \$1,000,000

May be multiplied by the number of instances



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**No misleading claims**

Applies to all goods and services in all products categories, including those subject to the specialty regimes



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**Mandatory product standards**

Mandatory standards might set out how products have to *perform*

- such as that toys for children under 36 months old (ACL and NZFTA) must withstand tests for foreseeable use and abuse



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**Mandatory product standards**

Mandatory standards might set out how a product is to be *designed* and constructed

- such as that babies' dummies must have a shield big enough to prevent swallowing



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**Mandatory product standards**

Mandatory standards might specify that the product prominently display *information*

- such as warning that children must be supervised when using a treadmill



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**MANDATORY STANDARD LISTS**

### Mandatory standard lists

Australian mandatory consumer product standards (list sample)

- Aluminum foil**  
This standard is related to the safety of water and plumbing.
- Baby bath tubs**  
This standard is related to both child development and child safety.
- Baby cribs and cots (2010)**  
This standard is related to children's product safety for baby cribs and cots. It also includes information on crib and cot safety.



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**MANDATORY STANDARD LISTS**

### Mandatory standard list

NZ mandatory standards

- Pedal bicycles
- Baby walkers
- Children's nightwear
- Children's toys
- Household cots
- Cigarette lighters



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### Product bans

Bans may be outright bans, meaning that the product cannot be sold at all.

(Titled 'Unsafe goods notices in the legislation')

Example: Sky lanterns



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**ACL Product bans**

'Bans' are not always outright prohibitions for a product

A 'conditional' ban might be considered a standard in disguise

- an aspect of the product is banned



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**Bans list**

Australian product bans (list sample)

-  Dry batteries  
Batteries are banned for a specific voltage
-  Small, high-powered magnets  
They can apply magnetic force to magnetic materials
-  Candles with lead wicks  
Lead wicks are banned for use in candles for specific voltages



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**Bans list**

NZ product bans:

- Small, high-powered magnets
- Hot water bottles
- Candles with lead wicks
- Multi-purpose ladders
- Chainsaws without a brake
- Pistol crossbows
- Inclined baby-sleepers



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**Candle-related regulations**

Button-battery powered?

A 'conditional' ban that says candles must not contain wicks with more than 0.06% lead (ACL & NZFTA)

A 'conditional' ban on candle holders that are combustible (ACL)



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**Candle holder recalls**



Images from recall notices at [www.tsb.govt.nz](https://www.tsb.govt.nz)



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**Electrical and electronic products**

- All powered products have to meet specific rules
- Electronic equipment managed by ACMA; in NZ by the Radio Spectrum Management agency
- Mains powered products managed by state authorities in Australia, and nationally by Energy Safety at Worksafe in NZ



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APPA PRODUCT SAFETY

### Common promotional products subject to regulations

- Toys – small parts, toxic materials, high-powered magnet toys
- Electrical – appliances, electronic items
- Cosmetics – toxic materials, eg. asbestos, lead (Ingredient labelling Australia)



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APPA PRODUCT SAFETY

### Common promotional products subject to regulations

- Apparel – toxic materials, eg. formaldehyde, care labelling, (fibre content labelling NZ)
- Button batteries (Aust. regs pending) – many powered products
- Food & drink – food labelling, food-contact standards



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APPA PRODUCT SAFETY

### Break time

We've covered quite a bit already ...  
Please now pause the video, stand up, walk around, have a stretch before moving



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**Consumer product safety regime in Australia**

All consumer products: **Australian Consumer Law (ACL)**

- Misleading & deceptive representations are prohibited
- Consumer guarantees/injury reporting/Recalls/Product liability/Warranty notices
- These are all administered by the ACCC \*

**Specific product regimes with separate additional rules**

Chemicals	Gas
Food	Medicines
Electrical	Therapeutic
Electronics	Wheels

See who regulates what on the Product Safety Australia website

**General consumer products**

**ACL Mandatory product standards**  
e.g. sunglasses, cots, bicycles, car seats

**ACL Product base**  
e.g. small high powered magnets, fire footbags, sky lanterns

These are administered by the ACCC and state agencies. A list of current standards and bans is on the Product Safety Australia website



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**Consumer product safety regime in New Zealand**

All consumer products: **Fair Trading Act (FTA)**

- All consumer goods are also covered by the Consumer Guarantees Act
- FTA covers – Misleading regulations, bans and recalls – It also covers misleading & deceptive representations
- These are administered by Trading Standards (WMI) and the Commerce Commission

**Specific product regimes with separate additional rules**

Chemicals	Gas
Food	Medicines
Electrical	Therapeutic
Electronics	Wheels

See who regulates what on the Trading Standards website

**General consumer products**

**NZ mandatory product standards**  
e.g. small high powered magnets, multi-purpose ladders, shavers without a chain blade

**NZ product base**  
e.g. small high powered magnets, multi-purpose ladders, shavers without a chain

These are administered by Trading standards, and enforced by the Commerce Commission – A list of current standards is on the Trading Standards website



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**Post-market provisions**

- Consumer guarantees
- Recalls
- Mandatory injury reporting (Aust)
- Product liability (Aust)



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ACCC PRODUCT SAFETY

### Consumer guarantees

- If a product is unsafe or otherwise defective, consumers are entitled under the law to get a refund, repair or replacement
- Apply to all consumer products, including those subject to the specialty regimes
- The guarantee applies to products that don't perform as advertised (so take care in marketing)



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ACCC PRODUCT SAFETY

### Consumer guarantees



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ACCC PRODUCT SAFETY

### Recalls

- For unsafe products in the market (not defined)
- Companies must notify the ACCC/NZ Trading Standards within 2 days – then placed on the public recalls listing
- Compulsory recall orders can be made if a recall isn't done, or is poorly done



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EPSC PROJECT SAFETY

## Recalls

- Impacts end users as well as your own company
- Plan ahead – just in case
- Traceability is beneficial



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EPSC PROJECT SAFETY

## Recalls

View > Search > Home > Recalls > Recalls by product > Cricket Australia

### Cricket Australia – Promotional LED Wristband

Recall No.	Issue Date	Completion Date
2019-001	2019-03-28	2019-04-01

**Product description:** This promotional LED wristband was manufactured by Cricket Australia and distributed to Cricket Australia staff and volunteers. The wristband is green and features the Cricket Australia logo. It is powered by a 3V CR2032 coin cell battery. The wristband is made of a flexible material and is designed to be worn on the wrist. It is used for promotional purposes and is not intended for use as a medical device.

**What are the defects?** The wristband may contain a small amount of lead in the solder used to attach the battery. This lead may be released into the environment if the wristband is disposed of in a landfill.




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EPSC PROJECT SAFETY

## Recalls

View > Search > Home > Recalls > Recalls by product > AGL Energy Ltd

### AGL Energy Ltd – Promotional AGL-Branded Wireless Phone Charger

Recall No.	Issue Date	Completion Date
2019-002	2019-04-01	2019-04-01

**Product description:** This promotional AGL-branded wireless phone charger was manufactured by AGL Energy Ltd and distributed to AGL staff and volunteers. The charger is black and features the AGL logo. It is designed to charge wireless phones and is not intended for use as a medical device.

**What are the defects?** The charger may contain a small amount of lead in the solder used to attach the battery. This lead may be released into the environment if the charger is disposed of in a landfill.




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**Recalls**

**Tilley Soaps Australia Pty Ltd – Tilley Orange Blossom Candle 240g**

Product: Tilley Orange Blossom Candle 240g  
 Item Code: 130133

**Identifying features**

Barcode number: 80139133000  
 Size: 240g

**What are the defects?**

In some cases when the candle is lit, the wick of the candle may sag and cause a fire hazard. However, this is not the case for all candles. For more information, please contact the manufacturer.



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**Plan ahead on recalls**

- Standard publication: *ISO AS/NZS 10393 Product recalls – Guidelines for suppliers*
- The PSA and NZ Trading Standards websites have a guide to preparing for and conducting recalls
- Further guidance on particular products, such as FSANZ, is also provided on those regulators' websites



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**Injury reporting - Australia**

Any serious injury associated with a product you have supplied must be reported to the ACCC within 2 days of becoming aware

Awareness – direct or indirect, anywhere in the world

Serious – requiring medical treatment

Which company – any member of the supply chain



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**Injury reporting**



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**Injury reporting**

All businesses need systems to:

- Recognise when/how 'awareness' occurs
- Evaluate whether the incident meets the reporting criteria
- Ensure a report is made



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**Product liability - Australia**

Applies mainly to the manufacturer, or importer (if sourced overseas)

The court will take various factors into account when determining whether a product has a safety defect, including:

- how and for what purposes the product has been marketed
- product packaging
- the use of any mark in relation to the product



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PPS PRODUCT SAFETY

### Product liability - Australia

And these factors:

- instructions and warnings for assembly and use
- what might reasonably be expected to be done with the product
- the time when the product was supplied

And NZ: Accident compensation scheme, but still some supplier liability



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PPS PRODUCT SAFETY

### Product liability



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PPS PRODUCT SAFETY

### Summary

- Product safety is good for business
- Systems for compliance and safety
- Measures for responding



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