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Submission on Strengthening post-market regulation of unsafe products in the Australian Consumer Law

October 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback to Treasury's consultation on *Strengthening post-market regulation of unsafe products in the Australian Consumer Law*.

Executive summary

Australian retailers are committed to the highest standards of consumer protection and work to ensure that all products comply with the mandatory safety and information standards established under the Australian Consumer Law (ACL). Retailers, including Australian-based online businesses, make significant investments in product safety, compliance systems, recalls management, and consumer protections, to provide Australian consumers with a safe and trusted shopping experience.

Overall, ARC considers the current product safety framework to be effective for consumers and compliant businesses. However, not all businesses selling into the Australian market are subject to the same level of regulatory oversight, scrutiny, or enforcement. This is a failure in the framework and presents a product safety risk.

ARC supports post-market reforms that maintain Australian product safety standards, protect consumers and apply equally to all businesses selling products to Australian consumers, including ultra-cheap offshore retailers and online platforms. Product safety is a shared responsibility under the ACL across the supply chain, and all sellers should be required to appropriately manage and be held accountable for the safety risks associated with the products they supply.

While recognising this consultation focused on post-market reforms, ARC recommends Treasury assess and consider reforms to pre-market compliance as the most effective protection for consumers, ultimately reducing the need for costly post-market regulation. Many safety failures are best addressed by ensuring all sellers meet the same entry requirements prior to products reaching Australian consumers.

ARC recommends that reforms to the post-market regulation that maintain Australia's high product safety standards, protect consumers, support an effective and proportionate regulatory framework, and create a level playing field by applying consistent obligations and accountability requirements to all businesses selling products to Australian consumers, including ultracheap offshore sellers.

Specifically, ARC recommends:

1. Applying product recalls and consumer notifications requirements consistently across all businesses selling into the Australian market, including offshore businesses.

2. Ensuring mandatory reporting requirements are clear and support sellers and regulators to identify emerging safety risks earlier, while imposing consistent obligations across all sellers.

3. Providing the ACCC with practical and timely powers to respond to serious product safety risks, posed by ultra cheap offshore sellers including enhanced intervention powers where suppliers fail to undertake appropriate voluntary safety recalls.

4. Maintaining enforcement and penalty frameworks that deter non-compliance and hold all sellers accountable for product safety obligations, regardless of where a business is located.

5. Designing reporting frameworks to focus on meaningful safety intelligence and avoid duplicative reporting requirements. Poorly designed and managed regulation that unnecessarily diverts time and attention of safety and compliance professionals, should be avoided.

ARC's comments are organised according to the policy options outlined in the consultation paper.

Detailed comments

Non-legislative interventions

Option 1 – Maintain status quo

ARC recognises that the existing ACL framework has delivered important consumer safety outcomes. The principal weakness is uneven compliance by sellers that remove listings without addressing products already in consumers' possession. This is particularly of note with ultracheap offshore marketplaces.

Retailers face significant costs from testing, dedicated personnel, regulatory notifications, customer communications, freight, returns, store labour, storage and disposal. Reforms should avoid increasing costs for compliant businesses, without providing any tangible safety benefit.

Option 2 – Enhance guidance and industry engagement

ARC strongly supports enhanced guidance, templates and education materials to improve supplier capability, particularly for small and medium businesses undertaking recalls or navigating mandatory reporting requirements. Practical examples of reportable injuries and near misses would assist businesses to better understand their regulatory expectations and improve reporting outcomes. Clear guidance should accompany amendments to forms or obligations, along with how these regulatory reporting requirements contribute to improved consumer safety outcomes.

ARC supports sharing of deidentified product safety intelligence, nationally coordinated data sharing, modern digital tools, a searchable recall portal using identifiers such as barcode, brand and model, and targeted industry communications, including regarding any emerging risk trends where practical. Providing business with meaningful information about emerging hazards encourages proactive risk management and assists suppliers in identifying concerns and issues prior to any serious incident occurring.

Voluntary leadership initiatives can supplement regulation but should not replace legal obligations. Data sharing should connect relevant Commonwealth, state and territory regulators and technical agencies while addressing privacy and commercial sensitivity.

Improve recall and information processes

Option 3 – Improve voluntary recall processes

ARC supports measures that improve the effectiveness of voluntary recalls and consumer participation in recall programs. Businesses should be encouraged to adopt best practice approaches to recall communications, noting that

there are many instances where customer information is not available and notification obligations should be appropriately aligned. ARC members do, and continue to be expected to, contact traceable customers where contact details exist, but should not be subjected to obligations that cannot reasonably be fulfilled. For example, identifiable customers are already contacted through online purchase data, loyalty programs and other records. This is not possible for customers who use cash or other in-store purchases where customer details are not provided and/or retained.

Regulatory requirements should not compel businesses to collect or retain additional customer information solely for the purpose of product recalls, as doing so creates a significant privacy risk.

Renaming recall triggers from "voluntary recalls" to "supplier-initiated safety recalls" may reduce misunderstandings and we submit better represents the recall that is taking place. The ACL should also clarify that recall notifications and related communications are not, by themselves, admissions of liability.

Option 4 – Bolster compulsory recalls

ARC supports the continued availability of compulsory recall powers where significant and ongoing product safety risks exist, and voluntary action is not forthcoming. These powers provide an important safeguard for customers where they would otherwise remain exposed to unsafe products. However, compulsory recall powers should remain targeted toward circumstances involving clear and demonstrable safety risks, with fairness and transparency maintained throughout the process.

In addition, in relation to administration, cost recovery and variation powers:

- Written submissions are an appropriate alternative to conferences, however the right to a conference for complex or contested matters should be preserved. Notices may specify practical remedies and the ACCC may make minor administrative or technical variations.
- Retailers and suppliers already bear significant recall costs. Cost recovery should not apply automatically. If introduced, it should be confined to clear fault, bad faith, obstruction or repeated non-compliance, with allocation based on causation and culpability. Cooperating parties and downstream retailers acting in good faith should not bear costs arbitrarily.
- National coordination should be maintained. Independent variations by multiple regulators could create inconsistent notices, operational confusion and duplication for national retailers.

Option 5 – Introduce targeted intervention powers

ARC supports targeted intervention powers where suppliers fail to take appropriate action (i.e., action is absent, delayed or materially inadequate) to address genuine product safety risks. Timely intervention may be appropriate where evidence demonstrates that a voluntary recall has not been initiated despite a material safety concern. Potential powers may include targeted warnings, supply-chain communications, information and compliance reporting, temporary sales or listing restrictions, cooperation with investigations and product testing.

Any power enabling regulators to intervene on the basis that a recall is "inadequate" is subjective and should thus be supported by clear statutory criteria. Powers should be proportionate to risk, confined to reasonably available information and assistance, and restricted where an adequate recall is underway. Expensive testing should require reasonable grounds and cost safeguards.

The framework should use a coordinated national approach and lead regulator. Penalties for breaching an intermediate direction should generally be lower than for breaching a compulsory recall notice.

Compliant suppliers should also not be subjected to unnecessary intervention. Recall effectiveness is influenced by factors outside a retailer's direct control, including product age and manufacturing processes. Objective thresholds and detailed guidance are essential to ensuring consistency and regulatory certainty for businesses and consumers alike.

Intervention powers should clearly delineate the roles of different supply-chain participants and should be matched to what each participant can practically do. For example, an intermediary, such as an online marketplace, is able to remove listings, cease supply through its platform and notify affected customers, but is not positioned to conduct or facilitate a physical recall. This includes the collection, testing, repair or safe disposal of goods, which the manufacturer or importer is best placed to perform. Powers should not have the effect of transferring recall execution from the party responsible for the product to intermediaries further down the chain.

Option 6 – Enhance mandatory reporting effectiveness

ARC supports the timely reporting of serious safety incidents and a reporting framework that provides regulators with meaningful safety intelligence that can be tangibly and appropriately passed on to consumers.

However, ARC does not support a general "near miss" reporting obligation. Near misses are inherently difficult to define consistently and may generate significant reporting volumes while providing limited additional safety intelligence. Should the government proceed with such a requirement, near misses should be mandatory only where a clearly identified product failure could reasonably have caused death or serious injury or illness, potentially limited to prescribed high-risk products or catastrophic failure modes. In addition, it could be limited to products considered to those intended for infants and young children where the consequences of a failure may warrant a more precautionary approach.

Mental injury, illness and product performance issues should generally remain outside mandatory reporting requirements. Similarly, software-related incidents should only be reportable where they create a genuine product safety risk, rather than routine bugs or functionality problems.

Broader reporting obligations should remain proportionate. Poorly defined thresholds may encourage a defensive over-reporting method, which will lead to regulators becoming overwhelmed with low-value information, divert information away from identifying genuinely serious safety concerns and ultimately impact the ability to keep consumers aware and safe from unsafe products. For example, things such as minor rashes, itching, and rough fabrics may be required to be reported, even when there is no medical treatment or broader product defect. We question the value of this information for the ACCC as a part of potential statutory obligations.

ARC also recommends streamlining reporting mechanisms to minimise duplication where incidents have already been reported elsewhere in the supply chain. In addition, the current two day reporting timeframe presents practical challenges for business seeking to investigate incidents and gather sufficient information to submit accurate and meaningful reports. Regardless of whether reporting definitions are expanded, consideration should be given to extending the reporting timeframe to three business days to more appropriately assess incidents and improve the quality of the information being provided, while continuing to support timely identification of genuine product safety risks.

Where obligations are expanded, a longer reporting timeframe should be considered to account for the additional complexity and volume of matters requiring assessment.

ARC does not support publication of reports before investigations are complete, as causation may not have been appropriately established and risks arise from providing inaccurate information to consumers.

ARC further notes Australia's existing two-day mandatory reporting requirement is among the strictest internationally. Expanding the range of reportable incidents, particularly to include near misses, would further move Australia outside international norms and risks overwhelming the regulator with low value information, without a clearly articulated need or nexus for how the additional data would be used to tangibly improve consumer safety.

Strengthen enforcement and consistency

Option 7 – Improve product safety administration

The ACCC should perform routine and administrative functions that improve speed and efficiency, including receiving notifications and reports and administering appropriate safety notices or approvals. A nationally consistent ACCC-led approach is preferred. Equivalent state and territory powers should be limited by clear national guidelines, coordination and safeguards.

ARC recommends that high-impact law-making and coercive decisions, including compulsory recalls, bans and mandatory standards, should remain with the Minister. Decisions should be subject to transparent governance, accountability and appropriate review mechanisms.

Option 8 – Increase penalties to strengthen deterrence

ARC supports penalties that deter deliberate, repeated or reckless non-compliance with product safety laws. A tiered model is preferred: serious and intentional misconduct at the highest tier; substantive compliance and process failures at an intermediate tier; and minor, technical or good-faith errors at the lowest tier, with warnings or an opportunity to correct where appropriate. Infringement notices may suit clear and objective breaches. Criminal penalties should be confined to knowing, reckless or fraudulent conduct.

However, higher penalties alone are unlikely to improve safety outcomes where non-compliance arises from uncertainty regarding obligations or a lack of capability. Any increase in penalties should therefore be accompanied by improved guidance and regulatory engagement.

Penalty frameworks should also clearly distinguish between different categories of contraventions to ensure business understand their obligations and consequences. Penalties should also remain proportionate to a party's position in the supply chain and its real-world influence over the relevant conduct. ARC cautions against turnover-based penalty models adopting in some overseas jurisdictions, which can impose consequences on supply-chain participants that are disproportionate to their role and ability to control risk.

Option 9 – Introduce targeted technical amendments

ARC supports technical amendments that enhance regulatory effectiveness, improve administrative efficiency and strengthen enforcement against non-compliant sellers. A priority should be improving enforcement against businesses that deliberately or recklessly evade Australian product safety requirements, including ultracheap offshore sellers that place unsafe products into the Australian market while avoiding meaningful regulatory consequences. Targeted technical amendments, including clearer investigation announcement requirements, the interaction between the ACL and Trans-Tasman mutual recognition arrangements, and recall notification obligations for domestic and overseas supply are supported.

Consumers should be afforded consistent safety protections regardless of whether products are purchased from Australian based retailers, online marketplaces or overseas sellers. Businesses that invest heavily in compliance should not be placed at a competitive disadvantage compared with operators that disregard regulatory requirements.

Any direct consumer notification obligation must account for customers who cannot be identified, including cash purchasers. Clarification is needed for goods that become fixtures after installation, including corrective-action scope and remedy exposure. Corrective-action powers may extend to product-related services where installation, maintenance or repair creates a safety risk, but the regime should align with existing state licensing and regulatory frameworks and include clear scope, thresholds and safeguards.

Regulatory reform should support a consistent and proportionate approach to compliance by providing clear guidance, reporting requirements and administrative processes before new obligations take effect. Where recalls involve multiple regulators or agencies, a single lead contact should be appointed to coordinate engagement and reduce duplication in information requests. Consideration should also be given to publishing evaluations of regulatory measures that assess both safety outcomes and the costs incurred by businesses. Reforms should avoid unnecessary duplication and overlapping reporting, auditing or compliance requirements that do not deliver measurable safety benefits. The primary objective should remain the achievement of improved safety outcomes through efficient and effective regulation.

Please contact policy@retail.org.au if you have any questions about this submission.

About ARC

ARC represents the Australian retail sector. Valued at $444 billion, retail is the nation's largest private sector employer, supporting more than 1.4 million jobs, including more young Australians aged 15 to 24 years than any other industry. ARC's membership is diverse. From family-owned small and independent businesses, comprising 95 per cent of our membership, to large national and international retailers supporting communities across metropolitan and regional Australia. With more than 155,000 retail outlets nationwide and a growing online presence, the retail sector is embedded throughout the economy, playing a critical role in the supply chain of Australian businesses. ARC advocates for policies and reform that drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it. At a time of rapid change, from technological disruption and international competition to shifting consumer behaviour and sustainability expectations, effective policy settings are critical for retailers, workers, consumers, and communities.