

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2016 - 2017

Division/Agency: Australian Competition and Consumer Commission

Question No: 108

Topic: Recall of products

Reference: Written

Senator: Ketter, Chris

Question:

- 1) How many recalls have been issued by the ACCC this year? How many in the last three years? Has there been an increase or decrease?
- 2) In terms of compliance and recall of unsafe consumer products – I assume the ACCC has a broad range of enforcement tools, which have been used most this year? Could you please describe this range of tools and how the organization chooses which tools to use at which times – I assume it's based on harm? Seriousness? Scale of the problem? Whether an entity has breached the law before?
- 3) How many fines have been issued to suppliers in terms of recalls of unsafe consumer products?
- 4) What is the value of these fines?

Answer:

- 1) Suppliers must notify the ACCC of their voluntary safety recalls of consumer goods under section 128 of the Australian Consumer Law (ACL).

The ACCC has published the following numbers of recalls:

Recall period	Number of voluntary recalls published
1 November 2013 – 31 October 2014	533
1 November 2014 – 31 October 2015	562
1 November 2015 – 31 October 2016	640

- 2) The ACL does not currently contain a specific prohibition on the supply of unsafe goods, although there are expectations of safety in the statutory consumer guarantees. The introduction of a general safety provision is being considered as part of the ACL Review that is now underway. The product safety recall framework used by the ACCC includes both voluntary and compulsory recalls, although virtually all recalls in the last three years have been voluntary negotiated recalls. The ACCC publishes these recalls on the Product Safety Australia website.

The ACCC monitors the progress of voluntary recalls through regular progress reports from suppliers. Where the rectification or return rate is not satisfactory, the ACCC may negotiate for the supplier to take additional steps to improve the recall. If a supplier does not take satisfactory actions to recall a product, the ACCC can recommend that the Minister issue a compulsory recall. This recommendation would take into account the nature of the hazard, the likelihood of harm and the supplier's actions.

The ACCC also administers 42 mandatory standards (39 safety standards and 3 information standards) and 22 permanent bans. Supply of a banned product or a product that fails to comply with a relevant safety standard is an offence under the ACL and there are a range of compliance and enforcement tools available to the ACCC to address this supply. Tools include education, product recall, administrative resolution, infringement notices (fines), court-enforceable undertakings and penalties.

The ACCC selects which enforcement and compliance tools to use in order to achieve the best possible outcome for the community and to manage risk proportionately. Considerations include the seriousness of the potential harm to consumers, the extent of the behaviour, the potential impact on vulnerable populations. The focus of the ACCC's enforcement activities also reflects its agreed annual priorities contained in the *Compliance and Enforcement Policy*.

- 3) Failure to comply with a compulsory recall can result in pecuniary penalties of up to \$1.1 million for a body corporate and \$220 000 for a natural person. Failure to notify a voluntary recall within 2 days can result in pecuniary penalties of up to \$16 500 for a body corporate and \$3 300 for a natural person. In the past three years the ACCC has not instigated any legal actions based on a supplier's failure to notify a recall, however the ACCC has instigated actions against businesses who have supplied products that needed to be recalled as they failed to meet mandatory safety standards. The basis for the legal actions was the non-compliance with a mandatory standard or misrepresentation of the goods. See further answer to Q4 below.

- 4) In the period between 1 November 2015 and 31 October 2016 the total value of fines and penalties resulting from ACCC action amounted to \$650 600, as follows:
 - 18 April 2016 - Online retailers Autoplus Pty Ltd (Autoplus), Smartchannel Pty Ltd trading as Outbax Camping (Outbax) and Sun Yee International Pty Ltd (Sun Yee) each paid a penalty of \$10 200 (grand total of \$30 600) after being issued with an infringement notice by the ACCC.

 - 22 June 2016 - The Federal Court ordered Online Dealz Pty Ltd (Online Dealz) to pay a penalty of \$100 000 for supplying a household cot, portable cot and stroller that did not comply with safety standards, and for making misleading representations in advertisements for the household cot, in proceedings brought by the ACCC.
The Court also ordered Online Dealz' sole director, Janet Lucas, to pay a penalty of \$20 000 after finding that she was knowingly concerned in the conduct of Online Dealz in relation to the household cot.

 - 30 August 2016 - The Federal Court ordered Ozsale Pty Ltd (Ozsale) pay penalties totalling \$500 000 for supplying children's nightwear which did not comply with the Australian mandatory safety standard.