

Because injury prevention is so important, the ACCC takes its role very seriously in promoting compliance with mandatory standards and bans. If the bans and standards are flouted, it will take enforcement action to drive home the message that it will not tolerate any unnecessary risk to consumers.



Carrying out surveys

The ACCC conducts random surveys of retail outlets throughout Australia to detect banned products or others that don't comply with a standard. It also assesses the overall level of compliance in the marketplace and liaises with suppliers. These surveys are carried out throughout the year and are developed on a risk management basis. Because it is not possible to survey every product covered by a standard or ban in every survey, selecting those to be surveyed at a particular time needs to take account of a number of things. For example, the time of year (e.g. surveys during the Christmas period usually include items for children), when a product was last surveyed, what complaints

may have been received, current trends and emerging marketplace developments in standards.

The ACCC also investigates allegations by consumers and suppliers about goods not complying with bans and standards, and it checks goods sold by direct marketing and on the internet. In some cases, a simple visual inspection is enough to assess compliance, for example, when checking labelling and a product's dimensions. In others, a technical assessment is necessary. In these cases, if the ACCC suspects a product doesn't comply it may seek proof from the supplier or arrange for the goods to be tested.



Market surveys for banned mini-cup jellies

ACCC case

Following the minister's ban, the ACCC carried out a national market survey program for mini-cup jellies, starting in November 2002. All regional offices across Australia participated, checking in supermarkets, grocery stores and greengrocers in metropolitan and regional centres.

Jelly cups containing konjac were found in Perth, Adelaide and Melbourne. The product was then also included in the survey programs for 2003.

Publicity

Because of the inherent dangers of the product, it was essential to obtain as much publicity as possible. The minister issued a press release on the ban and the ACCC issued one soon after. The ban also received some radio publicity.

A product safety bulletin was translated into Chinese and Vietnamese and distributed by staff carrying out the market surveys.

Further publicity has been given to the outcome of ACCC investigations, particularly following the outcome of the Trans Oriental matter referred to below.

Action

After finding mini-cup jellies for sale in a shop in Perth, the ACCC instituted legal proceedings against Trans Oriental Import & Export Pty Ltd and Mr Steven Thai Tran. In May 2003 Justice Carr of the Federal Court found that Steven Thai Tran and Trans Oriental had breached the Trade Practices Act.

As part of the settlement, Trans Oriental and Steven Thai Tran consented to orders that included:

- publishing a recall notice
- publishing corrective information notices to wholesale customers and consumers
- refunding customers and retailers who returned product with proof of purchase
- Mr Tran attending a trade practices training program
- contributing to the ACCC's court costs.

ACCC issued media releases on the Trans Oriental matter in December 2002 and May 2003. Some more jelly cups were found in Melbourne and staff contacted the supplier who agreed to:

- immediately notify all their retailers to withdraw the product
- refund retailers who returned product
- send a product safety bulletin to retailers recalling the product and offering refunds. The bulletin was translated into Chinese and both English and Chinese versions were placed in the store.

Other small amounts have been located in Adelaide and Melbourne. ACCC staff ensured the product was withdrawn from sale and recall notices placed in stores.



ACCC TAKES
ACTION

What happens if you break the law

When mandatory standards are breached or banned products are found in the marketplace, the ACCC's first priority is to ensure the hazardous goods are removed from the market and from people's homes. It notifies suppliers who are then expected to stop selling the goods immediately and cooperate in ensuring the goods are removed from outlets which carry them.

The ACCC then assesses what enforcement action may be taken against suppliers. Companies found in breach of the product safety provisions of the Trade Practices Act face possible criminal prosecution and maximum penalties of \$1.1 million for corporations and \$220 000 for individuals.

Wilful non-compliance is not common in product safety breaches—usually carelessness and poor attention to addressing risks are the cause. How the ACCC responds and what sort of action might be taken depends on factors such as:

- the seriousness of the safety hazard
- the quantity of the product supplied
- how blatant the conduct is
- the level of cooperation from the supplier.

The ACCC may seek remedies such as administrative action or court enforceable undertakings or, if the case goes to the Federal Court, injunctions and orders for corrective advertising, consumer recalls, refunds or repair of the goods and legal costs.

Suppliers which provide court enforceable undertakings to the ACCC may be required to conduct consumer recalls of the unsafe product and set up corporate compliance programs to prevent any repeat of the safety breach.

How the ACCC enforces safety standards

- The ACCC obtained consent orders against Hyundai Automotive Distributors for breaches of the mandatory standard for **vehicle jacks**. Hyundai had supplied about 185 000 motor vehicle jacks without the required warnings and instructions. Hyundai implemented a voluntary recall and consented to court orders requiring a trade practices compliance program.
- Super Toyworld in Darwin gave the ACCC court enforceable undertakings to stop selling **bicycles** that do not meet the standard, publish newspaper advertisements offering to fix any bicycles it had sold to ensure they met the standard and implement a substantial trade practices compliance program.
- The ACCC obtained declarations and injunctions in the Federal Court in Perth to settle actions against two importers who supplied two brands of **sunglasses** which did not comply with the mandatory safety standard. Monza and Apollo also agreed to publish product safety notices in newspapers and magazines and provide in-store notices recalling the sunglasses and offering refunds to consumers. Both companies were required to implement trade practices compliance programs.
- The Federal Court granted injunctions against Autobarn Pty Ltd, Autobarn Darwin and Dictomax Pty Ltd preventing them from supplying **portable car ramps** which failed to comply with the mandatory safety standard. Autobarn was also restrained from supplying goods subject to a mandatory safety standard without first sighting verification from an authorised testing authority that they complied with the standard. The companies had supplied the Jackramp which failed the structural integrity, design and safety labelling requirements as set out in the mandatory standard. The court also ordered that the companies pay the ACCC's court costs and that Autobarn institute new processes and conduct additional staff training to supplement its existing trade practices compliance program.