



Who's liable?

People who suffer injury or loss because of a defective product can take legal action for compensation against the supplier.

The Trade Practices Act allows **anyone** to claim for personal injury or damage to private property (including land or buildings) arising because of the defect in the product. The law says that goods are defective if they do not provide the level of safety that the community is entitled to expect.

Not only does the law offer redress for consumers, but it also provides an incentive to suppliers to make safer goods in the first place.

Generally speaking, the law applies to a company that:

- manufactured the product
- imported the product
- sold 'own brand' goods manufactured for it under licence.

If a manufacturer cannot be identified then the retailer can be deemed to be the manufacturer.

In the caustic soda case opposite, the supplier, Glendale, argued it was not the manufacturer because it had only packed the product. However, the court did not uphold this claim.

A person has three years to bring an action from the time they become aware (or ought reasonably to have become aware) of the loss, the defect and the identity of the manufacturer. Any action must begin within 10 years of the time the manufacturer supplied the defective goods.

People injured by a defective product will generally seek compensation using a private law firm. However, litigation could also be carried out in a class action or by the ACCC itself. The ACCC can take representative action in the court on behalf of those who have suffered loss.



Caustic soda product liability appeal dismissed

ACCC case

In March 1998 a consumer received large monetary damages after the ACCC's first product liability representative action in the case against Glendale Chemicals Pty Ltd who manufactured and supplied Glendale Caustic Soda. Glendale later appealed against the decision, arguing that it was not the manufacturer of the product but merely the supplier, in that the product was 'packed by' Glendale. The Full Federal Court dismissed this argument in Sydney in December 1998, upholding Justice Emmett's decision that the Glendale Caustic Soda had a defective label and that the injured consumer did not contribute through his acts or omissions to the injury that he suffered.

The man suffered burns to his face and both eyes when he was hit by a column of water containing caustic soda—an extremely reactive alkali which releases considerable heat when dissolved in water.

He had poured boiling water through the chrome cover of his shower recess waste pipe before sprinkling one third of a 500g pack of Glendale Chemicals Pty Ltd Caustic Soda (sodium hydroxide) down his bathroom drain hole.

The case is a warning for manufacturers—a consumer who suffers injury can succeed against the supplier of the product even if the actual manufacturer of the product does not conduct business within Australia.

Suppliers and importers who re-package and brand the product with their name or logo are deemed as manufacturers under the Act.

Manufacturers need to be aware that consumer products which they know or should know are inherently dangerous or potentially unsafe, should have sufficient warnings and instructions about their safe use.

Glendale Chemicals Pty Ltd had previously given a court undertaking to amend its product labelling to clearly notify consumers of necessary safety precautions and direct consumers in their use of the product.

