

Submissions of the NRA



**National Retail
Association**

Product safety in online retail marketplaces

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1. ABOUT THE NATIONAL RETAIL ASSOCIATION

The National Retail Association (NRA) is Australia's largest and most representative retail industry organisation, servicing more than 28,000 stores and outlets nationwide. We are a not-for-profit organisation built on strong relationships with our members.

We exist to help retail and service sector businesses comply with an ever changing and growing regulatory environment. Our services are delivered by highly trained and well-qualified in-house experts with industry specific knowledge and experience. We provide professional services and critical information right across the retail industry, including the majority of national retail chains and thousands of small businesses, independent retailers, franchisees and other service sector employers.

Members are drawn from all of the sub-categories of retail including fashion, groceries, department stores, household goods, hardware, fast food, cafes and personal services like hairdressing and beauty. NRA has represented the interests of retailers and the broader service sector for almost 100 years.

The National Retail Association Technical Standards Committee (NRATSC) is a national committee comprised of product and compliance specialists from some of Australia's largest retailers. The Committee seeks out and addresses product safety and compliance issues that affect Australian retailers and their customers.

2. PURPOSE OF THESE SUBMISSIONS

The NRA supports the inclusion of "Improving product safety in the online marketplace, with a focus on improving the safety of products sold on online platforms" in the Product Safety Priorities 2019 as published by the Australian Competition and Consumer Commission (ACCC)¹.

While we believe in good faith that the ACCC is taking steps to address banned and recalled products (Tier 1) and those with inadequate product labelling and safety warnings (Tier 2), we submit that more needs to be done to address products being sold in e-commerce platforms that do not meet Australian voluntary or mandatory safety standards (Tier 3).

We submit that Australian consumers are exposed to unacceptable risk to their health and safety as large e-commerce marketplaces and innumerable company e-shops have been found to sell, and continue to sell, products that do not meet Australian voluntary or mandatory safety standards.

Members of the National Retail Association Technical Standards Committee (NRATSC) have reviewed current online offerings and found the issue to be substantial and widespread.

This issue impacts the safety of Australian consumers and the viability of the Australian retail industry, and we propose that industry stakeholders are well-positioned to assist the ACCC and enforcement bodies in their efforts via greater industry consultation.

¹ Australian Competition and Consumer Commission, Product Safety Priorities 2019. Available at:

<https://www.accc.gov.au/about-us/australian-competition-consumer-commission/product-safety-priorities-2019>

3. THE ONLINE PRODUCT SAFETY ISSUE

GROWTH IN E-COMMERCE MARKETPLACES

Online marketplaces are now a very popular way of shopping online. The *Inside Australian Online Shopping 2018 eCommerce Industry Paper*² produced by Australia Post reports that Australians now spend \$21.3 billion buying goods online.

The report confirms that, in 2017, growth in online spending significantly outperformed traditional retail spending by 16.2 percentage points. It is expected that, by 2020, one in 10 items will be bought online. The report also confirmed the growth in purchases from mobile devices with one in five online purchases now made from a mobile device.

Global research by the Internet Retailer³ identified that global customers spent \$1.86 trillion on the top 100 online marketplaces in 2018 and these marketplaces now account for 52% of all global online sales.

The Inside Retailer research confirms more than half of the top 100 global marketplaces were launched in the last 7 years. This includes retailers that have been around for a while and began allowing other merchants to sell on their sites. Australia sits in the Asian region, which now has approximately 17 online marketplaces.

OECD FINDINGS

As to the scope and magnitude of the current safety issue faced by consumers when purchasing tangible goods online, we refer to the research and findings outlined in the *Online Product Safety: Trends and Challenges, OECD Digital Papers* (2016).⁴

This report examines selected product safety problems faced by consumers when purchasing tangible goods *via* e-commerce, at both domestic and cross-border levels. It is divided into two main parts, exploring the scope and magnitude of such online product safety issues, and providing an overview of the government and business initiatives that have been carried out in a number of jurisdictions to protect consumers from unsafe products online.

The report also includes the results of an OECD online product safety sweep ("the OECD sweep") coordinated by the Australian Competition and Consumer Commission (ACCC) from 27 to 30 April 2015 on behalf of the Working Party on Consumer Product Safety (WP).

The initiative, in which 25 jurisdictions participated, involved the inspection of a total of 1709 goods falling into one of the following three categories:

² See further: https://auspost.com.au/content/dam/auspost_corp/media/documents/2018-ecommerce-industry-paper-inside-australian-online-shopping.pdf

³ See further <https://www.digitalcommerce360.com/article/infographic-top-online-marketplaces/>

⁴ OECD (2016), "Online Product Safety: Trends and Challenges", *OECD Digital Papers*, No.261, OECD Publishing, Paris. Available at: <https://www.oecd.org/internet/consumer/Online%20Product%20Safety-%20Trends%20and%20challenges.pdf>. Annexed to these submissions is a copy of the report.

- banned and recalled products (Tier 1)
- inadequate product labelling and safety warnings (Tier 2); and
- products that do not meet voluntary or mandatory safety standards (Tier 3).

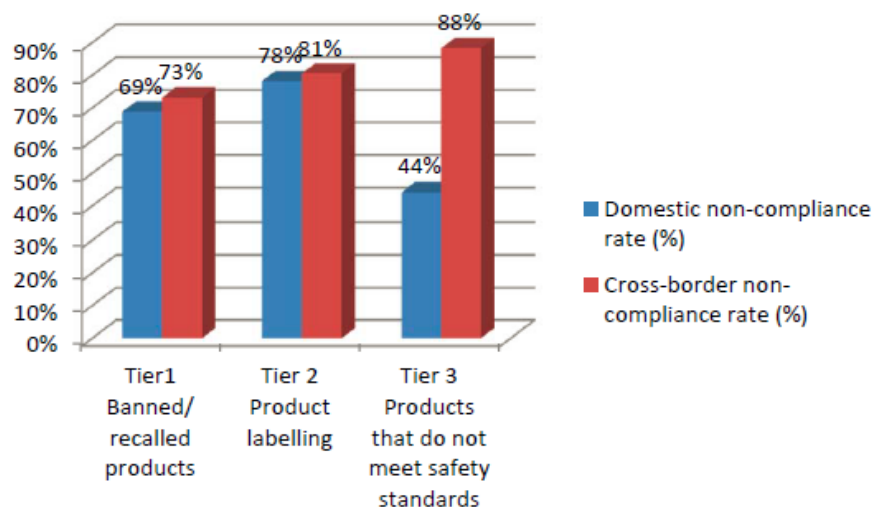
As we believe the ACCC is taking steps to address issues presented by Tier 1 and Tier 2 products, the focus of these submissions is Tier 3: products that do not meet voluntary or mandatory safety standards.

During the OECD safety sweep, 136 products were inspected for the purposes of detecting products that do not meet safety standards. A majority of such products (54%) did not comply with safety standards. Among the 60 products that had been purchased and tested in the OECD sweep, more than half (55%) were assessed as non-compliant with relevant product safety standards.

Furthermore, the OECD safety sweep identified that the level of noncompliance was twice as high at cross-border level (88% of inspected products) than at domestic level (44% of inspected products).

Figure 1 below reproduced from the Report summarises these findings:

Figure 1. OECD sweep results: Non-compliance rates at domestic and cross-border e-commerce levels



The extremely high noncompliance level of product with reference to voluntary or mandatory safety standards as identified in the OECD safety sweep has triggered the need for more decisive and immediate action as sought in these submissions.

AUSTRALIAN CONCERNS

As far back as 2011, the Productivity Commission raised safety concerns regarding noncompliant goods purchased online from overseas suppliers. Since this time, the popularity and customer trust in online marketplaces has grown further.

The Productivity Commission’s Economic Structure and Performance of the Australian Retail Industry (2011)⁵ report highlighted safety concerns for a wide range of goods including medicines, bicycle parts and accessories, toys, body jewellery, electrical goods and motor vehicle components. Essentially, the concerns focused on:

- a) the potential harm to consumers from the lack of enforcement of Australian statutory requirements (rather than the requirements themselves); and
- b) the cost disadvantage for domestic retailers compared to their overseas competitors.

The Productivity Commission Inquiry Report referenced a number of submissions calling for mandatory Australian product safety standards to be enforced on overseas online retailers by Australian regulators. These included submissions from the National Retail Association, Photo Marketing Association, Myer Holdings Limited, Photo Imaging Council of Australia, Australian Automotive Aftermarket Association, Retail Cycle Traders Australia, Pharmacy Guild, Australian Music Association, and Bicycle Industries Australia Ltd.

In light of the complexity around enforcement of Australian laws on overseas sellers and the obvious high level of cross border noncompliance, it is logical that more needs to be done by retail industry stakeholders to protect customer safety and ensure compliance with safety standards.

NRATSC REVIEW

To provide tangible insight into the issue, members of the National Retail Association Technical Standards Committee conducted a localised review of *Ebay Australia* product listings over a 3 month period between 11th August 2017 and 24th October 2017.

This review was limited to a small range of products that could pose serious risk to consumers, including: car ramps, car stands, trolley/scissor jacks, high lift jacks, bottle jacks, and child restraints. The review identified a significant number of products that do not meet voluntary or mandatory safety standards.

Product	Number of noncompliant listings
Car ramps	14
Car stands	100+
Trolley/scissor jacks	122
High lift jacks	67
Bottle jacks	108
Child restraints	2544

While this review was in no way comprehensive, it highlights the growing issue of noncompliance especially since the introduction of large international online marketplaces. It is likely that had other mandatory standard products been targeted in the research, similar results would have been found.

⁵ See pages 120 to 122, Productivity Commission (Australia) (2011), “5. Consumer Protection”, Economic Structure and Performance of the Australian Retail Industry, November 2011. Available at: <https://www.pc.gov.au/inquiries/completed/retail-industry/report/retail-industry.pdf>

A concerning aspect of the review was that detection of product noncompliance was easy to establish by a brief review of the information included in each product listing, given the user knows what to look for. The noncompliant listings contained product descriptors, packaging and images referencing foreign standards of manufacture such as United Kingdom, Germany and United States, rather than Australian standards. Such openly defiant cases of noncompliance by online sellers using online marketplaces that sell to Australians confirm a strong noncompliance culture which demands more decisive compliance action or cooperation with online marketplaces.

It is submitted that the entry and rapid growth of large international online retail marketplaces such as *Ebay*, *Amazon* and *AliExpress* which offer inexpensive products to Australian consumers has exacerbated the prevalence of product noncompliance levels.

We submit that the current approach of education programs for foreign sellers and limited enforcement action has not addressed the substantial level of cross border noncompliance facilitated in the main by large online marketplaces.

4. POTENTIAL SOLUTIONS

In 2018 the European Union (EU) acknowledged the importance of industry solutions and the need to drive accountability within online marketplaces, announcing agreement with *AliExpress*, *Amazon*, *Ebay* and *Rakuten-France*.⁶

This action addressed, among other things, the findings of a UK consumer protection charity *Electrical Safety First* (ESF) report⁷ which found a variety of goods with safety flaws that could spark or cause electrical shock being sold on *Amazon*, *Ebay* and *Fruugo* between April and May 2018. This report noted that counterfeit goods were particularly prone to safety flaws, and one in three UK shoppers, or around 18 million people, have purchased a counterfeit electrical item online.

Under the new **Product Safety Pledge**, *AliExpress*, *Amazon*, *Ebay* and *Rakuten-France* have committed to, among other things, the following:

- a) To react within two (2) working days to authorities' notices made to the companies' contact points to remove listings offering unsafe products. Companies should follow-up and inform the authorities on the action taken.
- b) Provide a clear way for customers to notify dangerous product listings. Such notices are treated expeditiously and appropriate response given within five (5) working days.
- c) Take measures aimed at preventing the reappearance of dangerous product listings already removed.
- d) Provide information/training to sellers on compliance with EU product safety legislation, require sellers to comply with the law, and provide sellers with the link to the list of EU product safety legislation.

⁶ See further: <https://internetretailing.com.au/eu-in-agreement-with-e-commerce-giants-to-tackle-dangerous-product-listings/> and <https://bit.ly/2wC9Srg>

⁷ See further: <https://www.electricalsafetyfirst.org.uk/blog/online-the-hidden-dangers-behind-online-marketplaces/>



Early indicators suggest that this agreement has led to these online marketplaces implementing appropriate policy and putting in place procedures in order to take down listings of unsafe or noncompliant products.

We submit that this model should be considered in Australia and should form the basis of discussion and consultation with industry stakeholders via the proposed forum.

Therefore the primary objectives of the proposed forum will be to facilitate discussion on the issue, participation on potential solutions, and the formation of a technical working party to draft an agreed industry guideline for online retailers, backed by an Treasury or ACCC national implementation strategy.

5. NEXT STEPS

The NRA seeks a meeting with senior management within the Treasury to discuss our proposal to increase active industry participation and support across the issue, namely via an industry forum. A key objective of the proposed forum will be the formation of a technical working party to draft an Industry Guideline backed by a Treasury strategy to implement such guidelines in the market.

The agenda for the proposed forum would be to seek expert industry input and facilitate discussion of the online safety issue. At this stage, discussion would focus on Tier 1 recalled/banned products and Tier 3 products covered by voluntary or mandatory safety standards. Based on preliminary consultation, we expect participation in the forum from a broad cross-section of the Australian retail industry including retailers and other industry associations.

The full details of the proposed forum and role we would like the Treasury to play will be discussed at our proposed meeting should it be accepted.

We appreciate your assistance in this matter and look forward to hearing from you. I may be contacted on 0409 926 066 or by email d.stout@nra.net.au

Yours faithfully,

A handwritten signature in black ink, appearing to read 'D Stout', is written over a light blue horizontal line.

David Stout

National Retail Association
Manager of Industry Policy, Research and Projects



ANNEXURE

"Online Product Safety: Trends and Challenges", *OECD Digital Papers*, No.261, OECD Publishing, Paris



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