

CHOICE

Submission – Coroner’s Court of NSW Inquest to examine deaths and serious fires caused by Lithium-ion batteries

May 2025

About Us

CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's work visit www.choice.com.au/campaigns

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Introduction

CHOICE is concerned about the growing risks posed by lithium-ion batteries, and products containing them, resulting in an increasing number of serious fires causing injury, death and damage to property. Australia's product safety regime does not provide consumers with adequate protections for product safety issues. The regime is reactive and it can take someone being seriously injured or killed before a product is recalled, or before more proactive measures like mandatory standards are introduced.

While mandatory standards are an important control to address specific risks on the product level, there is no overarching general duty imposed on businesses in Australia to ensure the products they sell are safe. While this remains the case, consumers will be exposed to unacceptable risks from unsafe products and regulators and governments will continue to play catch up as new risks emerge.

CHOICE has advocated for a general safety provision for many years. Policy options were consulted on in 2019, but progress on this important reform has largely stalled. Incidents involving lithium-ion batteries across the country continue to highlight the gaps and weaknesses in product safety consumer protections that urgently need to be addressed.

Recommendations

The Coroner's Court of NSW should recommend that:

1. The Federal Government introduce a General Safety Provision in the Australian Consumer Law that applies to all businesses in the supply chain, including online marketplaces, that is backed by strong penalties.
2. The Federal Government review whether the current definition of 'supply' should be expanded to capture online marketplaces, or whether sector-specific rules should be implemented to address issues with online marketplaces.
3. Product safety incident reporting obligations be expanded to include reporting of serious safety risks that could reasonably cause injury, death or damage to property ('near-misses').
4. The Federal Government should introduce a national product safety incident reporting database that is publicly available.
5. The product recall regime be reviewed and reformed to focus on the outcome of recalls, rather than simply notifying consumers.
6. Governments increase funding to state, territory and federal regulators to increase monitoring and enforcement capacity to improve compliance.
7. Governments implement the Household Electrical Product Reform Action Plan as soon as possible.
8. State and territory electrical safety regulators introduce, administer and enforce requirements for testing, labelling and compliance of lithium-ion batteries and the products containing them.
9. The Federal Government prioritise implementing an economy-wide unfair trading prohibition backed by strong penalties.

10. The Federal Government prioritise introducing strong penalties for failing to provide a remedy when required under consumer guarantees obligations.

Lithium-ion batteries pose growing risks to consumers

Lithium-ion batteries pose significant safety risks to consumers

Lithium-ion batteries have become ubiquitous in Australian homes – from laptops to power tools and solar power storage. Although data is limited, the ACCC has reported that incidents involving lithium-ion batteries in Australia and overseas are increasing, including fires, injuries and deaths. Between 2017 and 2022, 24 products including lithium-ion batteries were recalled affecting 89,000 products, with most relating to overheating and fire.¹

Cheap products from overseas are flooding the market

The growing popularity of online marketplaces has resulted in cheap products from overseas sellers flooding the Australian market and CHOICE is concerned about the safety risks this poses to consumers. Although CHOICE has not tested the safety of lithium-ion batteries themselves, we remain concerned about product safety on online marketplaces generally.

In 2024, CHOICE testing uncovered significant safety issues with a number of products purchased through online marketplace, Temu, including:

- All 15 products containing lithium coin or button batteries failing to meet at least one of Australia's mandatory button battery standards, including missing warning labels and improperly secured battery compartments²; and
- An electrical hair dryer which lacked safety certifications and the Regulatory Compliance Mark, and didn't have any means of securing the power cable, such as a cable clamp.³

CHOICE also discovered eBay and Amazon selling dangerous plug-in electric heaters after they were effectively banned from being sold in Australia by regulators.⁴ This is despite both online marketplaces being signatories to the Product Safety Pledge which includes commitments to set up processes to prevent or restrict the sale of banned, non-compliance and recalled products.

Low-quality lithium-ion batteries, and products containing them, pose significant risks to consumers, and it's likely that many of these products are entering Australia through online

¹ ACCC (2023), *Lithium-ion batteries and consumer product safety report*, p. 2.

<https://www.accc.gov.au/system/files/lithium-ion-batteries.pdf>

² CHOICE (2024), 'Dangerous toys found on online shopping platform Temu',

<https://www.choice.com.au/babies-and-kids/children-and-safety/toys-and-safety-at-play/articles/dangerous-toys-sold-at-temu>

³ CHOICE (2024), 'What to know when buying a hair dryer',

<https://www.choice.com.au/health-and-body/beauty-and-personal-care/hair-care-and-removal/buying-guides/hair-dryers>

⁴ CHOICE (2024), 'The banned mini heaters still being sold online',

<https://www.choice.com.au/home-and-living/heating/electric-heaters/articles/unsafe-mini-electric-heaters>

marketplaces which have made it easier for overseas sellers to sell products to people in Australia.

A 2021 OECD Product Safety Sweep found that noncompliance with safety standards was the highest for household electrical products (58%). The overall average noncompliance rate across the sweep was 54% for online marketplaces, compared to 32% for retailers. Foreign suppliers had significantly higher rates of non-compliance (68%), compared to domestic suppliers (26%). Rechargeable lithium batteries recorded a 60% noncompliance rate with standards.⁵ The further a product is from a traditional supply chain, the likelihood of it being non-compliant and potentially dangerous increases significantly.

Foreseeable risks are not being voluntarily addressed by all manufacturers

Many products containing lithium-ion batteries pose significant safety risks when used in a way that many consumers would consider to be reasonable. For example, consumers may leave lithium-ion batteries on to charge unattended or overnight, as consumers have become used to doing with phones and laptops. It's also reasonable to expect consumers to charge e-mobility devices like e-scooters and e-bikes in enclosed garages or inside apartments, and to store battery-powered gardening and power-tool equipment in garden sheds. This usage could increase the risk of fires, but consumers may not be aware of this. The focus has largely been on educating consumers, but safety advice may be impractical for many consumers to implement, including those who live in apartments and/or those without access to private open spaces.

These foreseeable uses and the risks associated with them have not been adequately addressed by all manufacturers and it's not realistic to expect consumers to act in a way that they are not accustomed to with these products. Instead, manufacturers should be required to consider which measures, such as warnings and instructions, are needed to ensure the product is safe, having regard to normal use, as well as foreseeable misuse of these products. For example, requirements and tests for safe operation of portable sealed secondary lithium batteries in the IEC 62133-2:2017 international standard cover intended use and reasonably foreseeable misuse.⁶

Australia's product safety regime needs to be strengthened

Australia's product safety regime is reactive and doesn't adequately protect consumers

⁵ OECD (June 2023) Online Product Safety Sweep Report, https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/online-product-safety-sweep-report_f68342d5/c1faa51e-en.pdf, p 1, 18-19, 49

⁶ IEC 62133-2:2017, <https://www.iecee.org/certification/iec-standards/iec-62133-22017#:~:text=IEC%2062133%2D2%3A2017%20specifies.IEC%2062133%20published%20in%202012.>

Australia's product safety regime is largely reactive and it can take someone being seriously injured or killed before a product is recalled, or before new mandatory standards are created and implemented. For example, it took seven years after the first recorded death in Australia due to button battery ingestion before mandatory button battery standards were introduced – in which time two further infant deaths occurred⁷. It also took over a year for the Thermomix to be recalled after the first serious injury was reported to the company as early as March 2013⁸.

The regime is largely reliant on voluntary recalls, but they are not an effective measure to prevent harm to consumers. As of 2019, the ACCC reported that over half of recalled products are never returned and potentially remain posing a danger to consumers⁹.

There are also limits to communicating effectively with consumers where the buyer cannot be contacted and consumers may also face barriers when attempting to return unsafe products or report issues. Some of the barriers consumers face returning recalled or unsafe products are explored later in this submission.

There are only 52 national mandatory standards and 19 national product bans. This is in addition to various voluntary standards made by different Australian and international standards making bodies, as well as electrical standards. Mandatory standards play an important role, and will continue to, but without a general safety duty, gaps and inconsistencies will continue to exist and put consumers at risk. As there is no single mandatory safety standard for Lithium-ion batteries and products enforced by the ACCC, ensuring products are safe is complex due to a number of different voluntary standards that may apply, with inconsistent testing requirements.¹⁰ CHOICE welcomes efforts to harmonise household electrical safety standards by state, territory and federal governments, as well as new standards for lithium-ion batteries in e-mobility devices in NSW.

Australia's product safety regime is out of step with community expectations

Consumers have a false sense of security when it comes to product safety in Australia, with CHOICE research showing that 74% of consumers mistakenly believe that businesses are legally required to ensure products are safe before selling them in Australia. This is despite 93% of people believing that businesses having this legal obligation is important.¹¹

⁷ CHOICE (2021), 'How CHOICE helped win the fight to improve button battery safety', <https://www.choice.com.au/babies-and-kids/children-and-safety/avoiding-common-dangers/articles/how-choice-helped-win-mandatory-button-battery-safety-standards>

⁸ CHOICE (2018), 'Thermomix to pay \$4.6m for downplaying burn risks', <https://www.choice.com.au/home-and-living/kitchen/all-in-one-kitchen-machines/articles/thermomix-fined-four-point-six-million-by-federal-court>

⁹ ACCC (2019), 'Over a million recalled products still in circulation in Australia', <https://www.accc.gov.au/media-release/over-a-million-recalled-products-still-in-circulation-in-australia>

¹⁰ ACCC (2023), *Lithium-ion batteries and consumer product safety report*, p. 58-61. <https://www.accc.gov.au/system/files/lithium-ion-batteries.pdf>

¹¹ CHOICE Consumer Pulse Survey, September 2024

This disconnect between what consumers believe the law protects them from and what it actually does, is potentially putting consumers at increased risk and may prevent people from taking additional precautions when purchasing from cheap online websites. Research from UK consumer group, Which?, also showed that consumers in the UK are placing a high level of trust in online marketplaces, with 70% of users confident that online marketplaces will ensure the safety of products sold on their platforms, and 64% expressing confidence in the marketplaces' ability to swiftly remove such products from their platforms.¹² This is despite online marketplaces not having clear mandatory duties to do so in the UK – as is the case in Australia.

Australia's product safety regime is out of step with comparable jurisdictions

Comparable jurisdictions like the EU and the UK both have general safety provisions, giving consumers stronger product safety protections.

In developing a general safety provision in Australia, CHOICE recommends that guidance is taken from the UK's General Product Safety Regulations 2005 [part 2, regulation 5] for inclusion in the Australian Consumer Law:

General safety duty

(1) No producer shall place a product on the market unless the product is a safe product.

(2) No producer shall offer or agree to place a product on the market or expose or possess a product for placing on the market unless the product is a safe product.

(3) No producer shall offer or agree to supply a product or expose or possess a product for supply unless the product is a safe product.

(4) No producer shall supply a product unless the product is a safe product.

A clear and concise definition of 'safe' is crucial to avoid confusion. Guidance should be taken from the definition used in the UK:

“safe product” means a product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons. In determining the foregoing, the following shall be taken into account in particular—

¹² Which? (2024), *Safe shopping in the evolving digital space: Balancing convenience and consumer safety in Online Marketplaces*, p. 2.
<https://media.product.which.co.uk/prod/files/file/gm-0259a521-b010-4fcb-8e2f-de8653f87830-omp-policy-report.pdf>

- (a) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, instructions for installation and maintenance,*
- (b) the effect of the product on other products, where it is reasonably foreseeable that it will be used with other products,*
- (c) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product, and*
- (d) the categories of consumers at risk when using the product, in particular children and the elderly.¹³*

CHOICE has taken guidance from the UK to recommend key factors that could be assessed to demonstrate whether a business has complied with a general safety provision if introduced in Australia:

- (a) any mandatory standards drawn up in Australia and other current consumer safety regulations,
- (b) any voluntary national standards of Australia,
- (c) any standards mandated by overseas government consumer safety agencies, including the European Commission and the US Consumer Product Safety Commission,
- (d) any active voluntary standards, published via national standards bodies,
- (e) product safety codes of good practice in the sector concerned,
- (f) the state of the art and technology, and
- (g) reasonable consumer expectations concerning safety.

Conformity of a product with the criteria designed to ensure the general safety duty is complied with, shall not bar an enforcement authority from exercising its powers under these Regulations in relation to that product where there is evidence that, despite such conformity, it is dangerous.

A general safety provision, as articulated above, could have helped reduce the harm caused by lithium-ion batteries. A general safety provision may have resulted in clear warnings on products to warn consumers about the dangers caused by foreseeable consumer behaviour, such as leaving batteries on to charge overnight, and potentially safety measures to prevent batteries from overcharging and overheating.

¹³ General Product Safety Regulations 2005, Part 1, Regulation 2, accessed on 8 April 2025, <http://www.legislation.gov.uk/ukxi/2005/1803/regulation/2/made>

To be effective, a general safety provision should be backed by strong penalties in line with other breaches of the Australian Consumer Law, such as those that apply to misleading or deceptive conduct, to act as a strong deterrent for non-compliance.

Recommendation:

1. The Coroner's Court of NSW should recommend that the Federal Government introduce a General Safety Provision in the Australian Consumer Law that applies to all businesses in the supply chain, including online marketplaces, that is backed by strong penalties.

Online marketplaces exploit gaps in the law

Due to the sheer volume of products available for purchase on online marketplaces like Amazon, eBay and Temu at any one time, the task of ensuring compliance by relying on post-market controls is impossible. Many of the products sold on online marketplaces are not sold directly by the online marketplaces themselves, but by third parties.

Australian Consumer Law (ACL) obligations apply to businesses that supply products. As online marketplaces may not be considered to 'supply' products under the ACL, and rather act as intermediaries, regulators may have to pursue the third party suppliers selling unsafe products through the platforms. In reality, pursuing these sellers can be difficult, as many are based overseas and may be small businesses. For example, significant and widespread noncompliance with Australia's mandatory button battery standards remains an ongoing concern¹⁴, with limited enforcement options available to rein in noncompliance across online marketplaces.

Under section 2 of the ACL, 'supply', when used as a verb, includes:

(a) in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire purchase

(b) in relation to services – provide, grant or confer and when used as a noun, has a corresponding meaning, and supplied and supplier have corresponding meanings.

The ACCC noted that 'an online marketplace may not be a 'supplier' under the ACL solely because a good has been listed on its platform for sale by a user of the platform...'¹⁵

¹⁴ ACCC (2023), 'ACCC investigates as button battery products fail to comply with information rules to keep children safe'

<https://www.accc.gov.au/media-release/accc-investigates-as-button-battery-products-fail-to-comply-with-information-rules-to-keep-children-safe>

¹⁵ ACCC (2022), Digital platform services inquiry Interim report, No. 4 - General online retail marketplaces, p. 47

Regulators rely on the goodwill of online marketplaces and voluntary measures like the Product Safety Pledge (the Pledge). The Pledge commits online marketplaces to take additional measures, but there is no mechanism to enforce compliance, and there's no obligation for online marketplaces to sign up to the pledge. For example, Temu is not currently a signatory.

Even when an online marketplace is a signatory to the Pledge, consumers can still face problems. One CHOICE supporter reported that a replacement battery for a Dyson vacuum cleaner purchased through Amazon caused a fire and were unsatisfied with Amazon's response:

“After 17 months [the battery] exploded while the stick vacuum was in its cradle and set our back room on fire. We were fortunate to be at home and not in the back room, and had two fire extinguishers handy to put out the fierce fire before it caused even more damage. If we had not been home, we could feasibly have lost the whole house and its contents.

I cancelled our Amazon Prime membership. Responses from Amazon and supplier unsatisfactory... Seller did refund purchase price \$44.99...”

The ACCC noted that ‘a ‘general safety provision’ would, in principle, require businesses to supply safe products to the Australian market as it is not currently illegal to supply unsafe products. Such a provision could include clear obligations for online marketplaces to ensure the reasonable safety of products sold on their platform (for example, removal of unsafe products and monitoring safety risks).’¹⁶ For example, specific product safety obligations on online marketplaces were introduced in the EU in the General product safety regulation (2023)¹⁷, which could be considered for incorporation into an Australian general safety provision.

These challenges should be addressed by ensuring a general safety provision adequately captures online marketplaces. Further consideration should be given to whether the definition of ‘supply’ under the ACL should be amended to capture and address online marketplaces, and whether sector-specific duties should be implemented – similar to the currently voluntary measures under the Pledge – although these commitments should be strengthened.

Recommendations:

The Coroner's Court of NSW should recommend that:

2. The Federal Government review whether the current definition of ‘supply’ should be expanded to capture online marketplaces, or whether sector-specific rules should be implemented to address issues with online marketplaces.

Product safety incident reporting is inadequate

¹⁶ ACCC (2022), Digital platform services inquiry Interim report, No. 4 - General online retail marketplaces, p. 8

¹⁷ Regulation (EU) 2023/988 on general product safety, amending Regulation (EU) No 1025/2012 and Directive (EU) 2020/1828, and repealing Directive 2001/95/EC and Directive 87/357/EEC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4670517>

Businesses are not obliged to report, or take action on, near-misses. Businesses only need to report product safety incidents that cause damage to property or cause injury or illness requiring medical treatment¹⁸. This means that many product safety incidents may be going unreported – which are missed opportunities to prevent more serious incidents from occurring in the first place. Businesses should be required to report any incidents that could reasonably pose a risk of serious injury or damage to property – even if serious injury or death doesn't occur.

Even with the lax reporting obligations that we have, the level of compliance is unclear. In 2016, CHOICE submitted a mass incident report to the ACCC detailing 45 injuries involving scalding due to a faulty Thermomix sealing ring, with 18 people receiving medical treatment.¹⁹ Between June 2012 and July 2016, Thermomix failed to report serious injuries caused by the machine within two days on 14 occasions. Thermomix also released misleading and deceptive statements that the product was safe, even though Thermomix was aware of 35 serious injuries caused by the machine. This resulted in a \$4.6m penalty²⁰.

Although Thermomix was notified by customers who were seriously injured by the product as early as March 2013, Thermomix continued to sell the product until it was replaced with a newer model in September 2014 and did not notify the ACCC of injuries of two users, which could have influenced an early decision to recall the product. A voluntary recall was only initiated in October 2014 – a full year and a half after Thermomix was notified of the first serious injury.²¹

Australia does not have a public product safety incident database. A public database would bring visibility to product safety issues, act as a deterrent for producing unsafe products, and help consumers make informed decisions about which products they buy. Guidance should be taken from the United States Consumer Product Safety Commission which operates a public database of product safety incidents, which allows consumers to report incidents, including near-misses, that anyone can access²².

Research from the Consumer Policy Research Centre (CPRC) in 2024 found that most Australian Consumer Law regulators underutilise data from consumer complaints and the data they have on hand. The research found that publication of valuable consumer data can improve

¹⁸ ACCC, 'When you must report an incident', accessed on 8 April 2025, <https://www.productsafety.gov.au/business/make-a-mandatory-report/when-you-must-report-an-incident#toc-deadline-to-complete-the-report>

¹⁹ CHOICE (2016), Mass incident report to the ACCC: Consumer reports of Thermomix product failure and serious injuries, <https://www.choice.com.au/home-and-living/kitchen/all-in-one-kitchen-machines/articles/thermomix-fined-four-point-six-million-by-federal-court>

²⁰ CHOICE (2018), 'Thermomix to pay \$4.6m for downplaying burn risks', <https://www.choice.com.au/home-and-living/kitchen/all-in-one-kitchen-machines/articles/thermomix-fined-four-point-six-million-by-federal-court>

²¹ CHOICE (2018), 'Thermomix to pay \$4.6m for downplaying burn risks', <https://www.choice.com.au/home-and-living/kitchen/all-in-one-kitchen-machines/articles/thermomix-fined-four-point-six-million-by-federal-court>

²² <https://www.saferproducts.gov/PublicSearch/Result>

business practices, enhance regulatory efficiency, boost research and analysis and strengthen government decision-making.²³

Recommendations:

The Coroner's Court of NSW should recommend that:

3. Product safety incident reporting obligations be expanded to include reporting of serious safety risks that could reasonably cause injury, death or damage to property ('near-misses').
4. The Federal Government should introduce a national product safety incident reporting database that is publicly available.

Product recalls are slow and ineffective

Currently, the ACCC needs to negotiate product recalls with suppliers. Ministers can issue mandatory recalls, but these are relatively rare.

Suppliers only need to notify consumers of voluntary product recalls, meaning that businesses do not have any real incentive to ensure that recalled products are actually returned and the risks they pose removed from homes. In 2019, the ACCC reported that about half of recalled products, excluding motor vehicles, remained in Australian homes²⁴.

The Takata airbags recall was an example of a largely successful recall, resulting in almost 100% of affected airbags being recalled. Progress was tracked and reported on, and suppliers failing to comply could be fined, with the Federal Court ordering Mercedes to pay penalties of \$12.5 million for failing to use attention-capturing, high-impact language when communicating with consumers about the compulsory recall²⁵. However, this was the first time a company was penalised for failing to comply with a compulsory recall notice in Australia.

Measuring success by the percentage of products recalled, as opposed to just notifying consumers and not tracking progress, should be the general approach taken with all product recalls. Under the OECD, the Federal Government has committed to maximising product recall effectiveness under the OECD's Recommendation of the Council on Consumer Product Safety.²⁶ As a part of this, the Federal Government has committed to implementing strategies outlined in the OECD Policy guidance on maximising product recall effectiveness which specifically states that governments should assess and measure recall factors such as units in

²³ CPRC (2024), Am I the only one –How regulators can use complaints data to help consumers, businesses and themselves, <https://cprc.org.au/report/am-i-the-only-one>

²⁴ ACCC (2019), 'Over a million recalled products still in circulation in Australia', <https://www.accc.gov.au/media-release/over-a-million-recalled-products-still-in-circulation-in-australia>

²⁵ ACCC (2022), 'Mercedes to pay \$12.5m for failing to comply with Takata recall communication plan', <https://www.accc.gov.au/media-release/mercedes-to-pay-125m-for-failing-to-comply-with-takata-recall-communication-plan>

²⁶ OECD (2020) Recommendation of the Council on Consumer Product Safety, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0459>

the supply chain, units in the market, trackability of products, etc.²⁷ Very few of the strategies outlined in the OECD Recommendation are present within the Australian recall system.

Recommendation:

The Coroner's Court of NSW should recommend that:

5. The product recall regime be reviewed and reformed to focus on the outcome of recalls, rather than simply notifying consumers.

Monitoring and compliance resourcing is inadequate

With over 15,000 different categories of products on sale, regulators have an enormous task to monitor and enforce compliance. Introducing a general safety provision may reduce this load as it puts the onus on businesses to ensure, and demonstrate, that the products are safe before they're sold. Even with a general safety provision, additional regulator funding will still likely be needed for regulators to increase monitoring and enforcement capacity.

Recommendation:

The Coroner's Court of NSW should recommend that:

6. Governments increase funding to state, territory and federal regulators to increase monitoring and enforcement capacity to improve compliance.

Regulations are inconsistent

CHOICE welcomes new e-mobility standards and the new information standard in NSW, but regulation needs to be nationally consistent to give consumers confidence that they are buying safe products.

CHOICE also welcomes agreement by Treasurers to cooperate to harmonise and implement the regulation of household electrical consumer products, and agreement to pursue a national approach to address the safe use of e-mobility vehicles powered by lithium-ion batteries, and to explore the most appropriate mechanism to ensure safe disposal of lithium-ion batteries. Strengthening and harmonising electrical safety regulation across the country is crucial to protect consumers, particularly requirements for testing, certification and labelling. CHOICE welcomes the Household Electrical Product Reform Action Plan and recommends that it be implemented as soon as possible.

²⁷ OECD (2020) Policy guidance on maximising product recall effectiveness,, [https://one.oecd.org/document/DSTI/CP/CPS\(2019\)4/FINAL/En/pdf](https://one.oecd.org/document/DSTI/CP/CPS(2019)4/FINAL/En/pdf)

Recommendation:

The Coroner's Court of NSW should recommend that:

7. Governments implement the Household Electrical Product Reform Action Plan as soon as possible.
8. State and territory electrical safety regulators introduce, administer and enforce requirements for testing, labelling and compliance of lithium-ion batteries and the products containing them.

Consumers face barriers to report and return unsafe products

Barriers to reporting and accessing customer service need to be addressed

A survey of over **6,000** CHOICE supporters in July 2024 showed that 39% of respondents who experienced a product safety issue didn't report it. Only 24% of respondents felt confident reporting an unsafe product.²⁸

Some respondents shared that they didn't know who to report the issue to or how to report it, that it wasn't worth the effort, that they didn't think any action would be taken, they didn't have time, or didn't think to report it.

One respondent shared their experience with a lithium-ion battery from eBay:

"I was away from my house by about 50 meters and was intending to go for a walk when I thought I could faintly hear a fire alarm, I made the decision to go back home to check and I found my bedroom floor on fire. There were two fires where two batteries had launched themselves out of the charger and landed on the carpet next to the bed where they began burning the carpet and bedding. I was able to put the fire out but was made sick from the smoke..."

The respondent didn't report the incident, explaining, "Nothing changes anyway so there is no point making the effort..." and didn't pursue a refund because their "buyer protection time had run out".

Consumers should be able to easily access remedies for unsafe products

In the July 2024 survey, over 40% of respondents who had an unsafe product said they didn't attempt to return the product. Some respondents reported that it was a hassle, it was a cheap

²⁸ CHOICE product safety supporter survey, July 2024

product so didn't bother, their warranty had expired, travel was too far, packaging had been opened, they didn't have the receipt, or they didn't think the store would assist.

Of those who did try to take a risky product back to where they had bought it from, 24% encountered an issue, including being refused a remedy for not having a receipt, the business had gone out of business, the consumer was blamed for the fault, they were offered a remedy other than a refund like a replacement or repair, or the consumer felt like they had to fight for a refund.

One respondent shared their experience trying to return a lithium-ion battery that appeared to have a fault:

“Battery made crackling, ticking noise and became extremely hot. No-one was injured... Place of purchase didn't want to know because the 12 month warranty had expired.”

Some consumers are made to agree to non-disclosure agreements in order to receive a remedy for unsafe products. In our earlier investigation, CHOICE obtained non-disclosure agreements from customers seeking refunds that required them "not to disparage or otherwise comment negatively about Thermomix or Vorwerk [the German manufacturer] and not to take any action which it is intended, or would reasonably be expected, to harm the reputation of Thermomix or Vorwerk, or lead to unwanted or unfavourable publicity". Last year, CHOICE reported on a couple who were asked to sign a non-disclosure agreement in order to receive a refund for a Samsung fridge which the couple claimed made them sick, requiring medical treatment.²⁹

These issues highlight two clear gaps in consumer protections that need to be addressed. Firstly, Australia does not have a prohibition on unfair trading, allowing businesses to deliberately impose barriers to accessing a remedy, like making contact details hard to find and deliberately giving consumers the run-around. The Federal Government should implement a strong, economy-wide unfair trading prohibition that is backed by strong penalties.

Secondly, there are no penalties for breaching consumer guarantee obligations, meaning there is no incentive for companies to provide consumers with remedies when they're required to. The Federal Government should introduce strong penalties for companies that unfairly refuse consumers a remedy when required to under consumer guarantee obligations.

Recommendation:

The Coroner's Court of NSW should recommend that:

9. The Federal Government prioritise implementing an economy-wide unfair trading

²⁹ CHOICE (2024), 'Family claims a chemical leak from their Samsung fridge caused a health emergency', <https://www.choice.com.au/home-and-living/kitchen/fridges/articles/family-claims-a-chemical-leak-from-their-samsung-fridge-caused-a-terrifying-health-emergency>

prohibition backed by strong penalties.

10. The Federal Government prioritise introducing strong penalties for failing to provide a remedy when required under consumer guarantees obligations.