

. After 18 months the Commission may declare a *permanent ban* on a product where there is an 'interim' ban in place unless a consumer product safety standard has been prescribed in the meantime. During the course of the 18 months the Commission may revoke the declaration. Once a permanent ban is in place a supplier shall not supply the product.

Voluntary product recalls

If a person voluntarily decides to recall a product because the product may or will cause harm **the Commission must be informed in writing** of the details within two days. Details must include the products the subject of the recall and the nature of the defect or dangerous characteristic.

Supply outside PNG

In respect of any product recalled (including voluntary recall) supplied outside PNG the supplier shall give a notice in writing to the person supplied

- stating that the products have been recalled, and
- If the products are defective or have dangerous characteristic the nature of it, and
- If the products do not comply with a prescribed consumer product safety standard setting out the nature of the non compliance

And the supplier shall give the Commission within 10 days a copy of that notice.

Conference with the Commission

There is an opportunity for suppliers of goods that are subject to compulsory product recall to call a conference with the Commission.

Briefly if the Commission proposes to recall a product a draft notice of the proposed recall is to be included the National Gazette together with a summary of the reasons. Any person who supplies or proposes to supply the product must notify the Commission within 10 days of the date of publication if they wish to hold a conference with the Commission in respect of the notice. After the conference the Commission must publish its decision.

However, where there is imminent risk of death, serious illness or serious injury, the Commission may give the opportunity for a conference after the product recall has been imposed. After the conference the Commission must publish its decision .

Enforcement and penalties

The Commission may prosecute all offences under the ICCC Act.

General penalties – unless otherwise specified the Act provides substantial :

- penalties and imprisonment for an offence. In addition, the Court may order the forfeiture of any money or goods in respect of which an offence has been committed.

- In the case of a conviction for an offence under the Act any person who was a director or officer of the corporation at the time shall also be deemed guilty unless he/she can prove it was committed without his/her knowledge or he/she used due diligence to prevent the commission of the offence



**INDEPENDENT CONSUMER AND
COMPETITION COMMISSION**

Product Recalls

***A short guide for consumers and business,
under the Independent Consumer and
Competition Commission Act 2002***

Head Office:

Port Moresby

1st Floor Garden City Complex

Telephone : (+675) 325 2144
Facsimile : (+675) 325 3980
E-mail : info@iccc.gov.pg
Website : www.iccc.gov.pg

Consumer Complaint

Toll Free Number : 180 3333

Background

The Independent Consumer and Competition Commission (Commission) is responsible for administering the Independent Consumer and Competition Commission Act 2002 (ICCC Act) and other related legislation. The law is designed to enhance the welfare of the people of PNG by encouraging competition, fair trading and efficiency in business as well as preventing anti-competitive behavior.

The Commission has specific wide ranging powers in relation to consumer product safety. It is obligated under Division 4 of the ICCC Act to take immediate action when it becomes aware of a product that can affect the health or safety of consumers.

Failure to comply with these requirement may result in a heavy fine or imprisonment.

The Commission's powers include:-

- warning consumers of the possible danger of particular goods and to conduct an investigation into the risks involved,
- recommending to the Minister responsible to declare a standard; for suppliers of a product to meet, or for the provision of information,
- issuing 'interim' or permanent bans on unsafe goods where the Commission is of the view that such products are unsafe, and
- effecting compulsory recall of products that are unsafe, or not compliant with a product or information standard.

The Act provides that the Commission may in certain circumstances hold a conference with any supplier who may be adversely affected by its actions. This is discussed later.

About this guide

This guide has been developed by the Commission, PNG's consumer protection agency, to assist consumers and business to understand their rights and responsibilities under the relevant laws.

This guide explains the law in simple language but is not a substitute for the legislation and gives information on the scope of the law but does not provide legal advice. Parties should refer to the provisions of the law as necessary.

Your responsibilities

A supplier must make sure that products supplied do not breach our product safety laws.

If you sell unsafe products you risk:-

- these products harming your customers.
- being fined or taken to court.
- getting a bad reputation.

How can I make sure my products are safe?

Check the Commission's website.

Contact the Commission to check which products are banned or restricted and for any other requirements.

Testing

Some products have requirements that you can check yourself. For example, a warning label on the packaging or a simple measurement. However some products can only be checked by special testing laboratories. For instance, how much lead a product contains or whether it meets a particular level of strength and durability.

It is important to read the information provided in respect of products that have been declared unsafe and where necessary ask your suppliers for copies of test reports from an accredited testing laboratory. If they cannot provide these you may commission a laboratory to test the product for you.

Recall powers under the ICCC Act

Compulsory product recall

If a trader supplies a product that are or are likely to be used by a consumer that:

- does not comply with a prescribed consumer product safety or information standard, or
- if the product is covered by an 'interim' or permanent ban, or
- is of a kind that will or may cause injury

and it appears to the Commission that the supplier has not taken satisfactory steps to prevent the product causing harm, the Commission may, by notice in the National Gazette, require any of the following:-

- recall of the product within the period specified in the notice — see also below,
- Disclosure, within the time frame specified, to the public, or class of persons specified in the notice, the nature of the defect, (or its dangerous characteristic) the circumstances (as specified in the notice) in which it may be dangerous, or procedures for disposal of the specified product,
- inform the public (or class of persons specified) and within the time frame and manner specified in the notice that the supplier undertakes to do whichever of the following the supplier thinks appropriate — repair (except if the product has dangerous characteristics) or replace the product or provide a refund within the period specified in the notice — see also below

Recall of products

The notice may specify the manner in which a recall is to be carried out.

Repair of products

If a supplier undertakes to repair products then the products must be repaired such that any defect referred to in the notice is remedied and where there is a prescribed product safety standard it complies with that.

The cost of repair (including any necessary transportation is to be borne by the supplier.

Replacement of products

Products shall be replaced by like products that do not contain the specified defect or characteristic and if there is a prescribed consumer product safety standard it must comply with that.

The cost of replacement (including any necessary transportation) is to be borne by the supplier.

Refunds

The Commission may specify in the notice that if the supplier chooses to provide a refund for the price of products and it is more than 12 months since the products were acquired then the amount of refund may be reduced by an amount calculated in the manner specified in the notice.

A person shall not continue to supply a product the subject of a recall.

Product safety standards

The Minister may declare product safety standards after consulting with the Commission. A supplier cannot supply a product that does not comply with a product safety standard that has been declared by the Minister.

A brochure that will provide information about each standard will be prepared by the Commission for each standard declared. It will be available for perusal on its website and hard copies will be available from the Commission.

A product safety standard may specify performance, composition, contents, methods of manufacture, processing, design, construction, finish or packaging, testing, or the form and content of markings, warnings or instructions accompanying the goods.

The Commission is responsible to ensure that products comply with any such standards.

Product information standards

The Minister may also declare information standards. An information standard prescribes information to be given to consumers when they purchase the specified products.

When the Minister declares a product information standard the Commission will prepare a brochure that will provide information about the standard. It will be available for perusal on its website and hard copies will be available from the Commission.

Again a supplier that supplies goods that do not comply with a product information standard that has been declared by the Minister may be in breach of the law.

'Interim' and permanent ban on the supply of unsafe goods

Where, for a particular product, there is a risk of injury the Commission may declare the product unsafe – effectively an interim ban - and a supplier shall not supply the product.