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# Product Safety

## How product safety laws work in New Zealand

### Overview

New Zealand has two key laws which deal with product safety, the Consumer Guarantees Act and the Fair Trading Act. The Consumer Guarantees Act is a general consumer protection law which gives minimum standards of quality for goods and services. The Fair Trading Act is designed (among other things) to promote product safety and to prevent injuries.

The Ministry of Consumer Affairs administers both these Acts. The Ministry is expected to liaise and consult with other government agencies that may have an interest or be affected by any proposed government intervention.

The Commerce Commission enforces product safety standards and product bans made under the Fair Trading Act. The New Zealand Customs Service can also enforce the safety provisions, they generally do this under the Customs Act.

### Consumer laws

#### The Consumer Guarantees Act

The Consumer Guarantees Act gives consumers certain guarantees when they purchase goods and services. The Act puts responsibilities on retailers and manufacturers/importers and sets out rights and remedies consumers can claim if these guarantees aren't met.



The guarantees apply to goods (new and second-hand) and services which are purchased for household use. Excluded from the Act are goods and services that are supplied for business use and goods supplied by auction.

Relevant to product safety are the guarantees contained within the Act that goods sold are of 'acceptable quality'. This means that the goods have to be free from minor defects, safe, and durable. It also means they have to be 'fit for the purpose for which they were supplied' and acceptable in appearance and finish.

Goods that are unsafe are said to be of 'substantial failure' and the consumer has the right to reject the goods. To remedy the situation the consumer may choose a repair, replacement, or a full refund.

Action taken under this law is directed towards putting the problem right, including compensation for consequential loss. If a consumer can't sort out the problem with the supplier, the issue can be taken to the Disputes Tribunal.

#### **Product Safety Policy Statement**

The government has recently decided to take a more proactive approach to product safety by issuing government product safety policy statements. The first statement clarifies acceptable levels of formaldehyde in clothing.

A government product safety policy statement is designed to complement the Consumer Guarantees Act by making it clear to manufacturers and importers what is considered 'acceptable quality' and 'fit for purpose' under the Act. Other government policy statements may be developed in future for other areas of product safety.

## **The Fair Trading Act**

In relation to product safety, the Fair Trading Act allows the Minister of Consumer Affairs to:

- recommend the introduction of product safety standards
- declare goods to be unsafe (a product ban)
- order a compulsory recall.

## ***Product safety standards***



The Minister of Consumer Affairs may recommend that a product safety standard is made for the purpose of 'preventing or reducing the risk of injury'. The Minister is obliged to consult with parties who will be affected by a product safety standard, to give them the chance to comment. A product safety standard may cover:

- the nature of the product and its performance - e.g. composition, contents, manufacture, processing, design, construction, finish or packaging
- tests the product should go through during or after manufacture
- the form and content of any markings, warnings or instructions on the product.

There are currently six product safety standards for: baby walkers; children's nightwear; children's toys; cigarette lighters; household cots and pedal cycles. Businesses must make sure they're aware of the requirements relevant to them. It's a breach of the Fair Trading Act to not comply with the requirements of product safety standard regulations.

## ***Unsafe goods notices (product bans)***

The Minister of Consumer Affairs has the power to stop the sale of goods by declaring them to be 'unsafe goods'. This action can be taken 'where it appears to the Minister that goods of any description or any class or classes of goods will or may cause injury'. A ban stays in force for 18 months, unless withdrawn earlier by the Minister. At this point it can be imposed indefinitely or for a further specified time.

There are unsafe goods notices for: lead in children's toys; hot water bottles; candles with lead in the wicks and candlewicks containing lead; and, pistol crossbows.

The Commerce Commission investigates complaints about products that have a product safety standard or have an unsafe goods notice attached to them.

## ***Compulsory recall***

The Minister of Consumer Affairs can order a compulsory product recall where goods being sold do not comply with a product safety standard; or are of a kind which will or may cause injury and the supplier has not recalled the goods or taken good enough action to recall the goods.

New Zealand does not require notification of voluntary recalls, but the Ministry of Consumer Affairs does offer assistance to companies undertaking a recall.

## How the laws work together

The Ministry of Consumer Affairs investigates complaints about consumer products that are not subject to mandatory product safety standards (this is done by the Commerce Commission), or otherwise covered by other regulations (e.g. food, medicines). The Ministry of Consumer Affairs also monitors voluntary compliance with national standards where there's information that there may be the potential for injury but the need for formal government intervention has not yet been established.

Using the Consumer Guarantees Act condition that a product must be safe, the Ministry adopts the philosophy that voluntary national standards (NZ, Australian, European etc.) provide a reasonable minimum benchmark for safety requirements. There is an expectation that the products will comply with the critical safety requirements of voluntary national standards, and that redress is available to consumers where they do not. When an investigation concludes that critical safety requirements are not being met, the Ministry assesses whether the powers of the Fair Trading Act are required, depending on the potential injury risk involved, and the ability and or willingness of the suppliers to voluntarily self-regulate.

## Providing information

The Ministry of Consumer Affairs publishes a range of information resources on both the Consumer Guarantees Act and product safety issues. These resources are available on the Ministry's website. The Commerce Commission also provides a range of information on rights and obligations under the Fair Trading Act, how the Commission intends to enforce the Act and how the Act or regulation applies to a particular business or industry. It also provides information to consumers.

## Role of business

Business New Zealand (and the many industry sector associations under its umbrella) and the NZ Retailers Association play an active role in promoting self-regulation. They are involved in the development of industry codes of practice, provision to business of advice on suppliers' responsibilities under the Consumer Guarantees Act, and the development of national standards through participation on standards technical committees.

## Other consumer product safety legislation & who complaints should be referred to:

Product	Relevant organisation	Contact details
Products subject to a product safety standard or unsafe goods notice	Commerce Commission	<a href="http://www.comcom.govt.nz">www.comcom.govt.nz</a>
Food	New Zealand Food Safety Authority (NZSFA)	<a href="http://www.nzfsa.govt.nz">www.nzfsa.govt.nz</a>
Medicines and therapeutic goods	Ministry of Health	<a href="http://www.moh.govt.nz">www.moh.govt.nz</a>
Motor vehicles	Ministry of Transport Land Transport New Zealand	<a href="http://www.mot.govt.nz">www.mot.govt.nz</a> <a href="http://www.ltsa.govt.nz">www.ltsa.govt.nz</a>
Gas and electrical products	Energy Safety (part of the Ministry of Economic Development)	<a href="http://www.energysafety.govt.nz">www.energysafety.govt.nz</a>
Hazardous products and products used in the workplace	Occupational Safety and Health (a division of the Department of Labour)	<a href="http://www.osh.govt.nz">www.osh.govt.nz</a>
Hazardous substances and organisms	Environmental Risk Management the Authority (ERMA)	<a href="http://www.erma.govt.nz">www.erma.govt.nz</a>
Products used in building and construction	Department of Building and Housing	<a href="http://www.dbh.govt.nz">www.dbh.govt.nz</a>

## Overlaps between safety regimes and working together

Government action will generally be taken by the agency that has the lead interest in the class of product. Ministerial recall powers under the Fair Trading Act apply to any product that may cause injury. There are a range of formal and informal understandings between agencies with overlapping jurisdiction. If another safety regime does not adequately address the safety issue, or provide effective remedial powers to address it, the Fair Trading Act provisions can be used to assist in any recall of unsafe products.

### Further information

The product safety standard regulations are available from selected bookshops or on the New Zealand Legislation website: [www.legislation.govt.nz](http://www.legislation.govt.nz). Any relevant standards referred to in the product safety standard regulations and unsafe goods notices can be purchased from Standards New Zealand [www.standards.co.nz](http://www.standards.co.nz).

The Ministry of Consumer Affairs also has copies of the toy standard, both the mandatory and voluntary parts, for viewing by suppliers and members of the public at its offices in Auckland, Wellington, Petone and Christchurch. For further information, call the Ministry's free phone number on: 0508 627 774.