

A GENERAL SAFETY PROVISION - ARE WE THERE YET??

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Legal Briefings - By **Aoife Xuereb, Laura Stringer and Zoe Brown**

It is looking increasingly likely that a 'General Safety Provision' for consumer products will be introduced into legislation in the near future. This idea has been simmering for some time and the Commonwealth Treasury has recently received public submissions on whether such a legislative provision should be introduced. Businesses should be aware of and prepared for their additional obligations under the provision if it is introduced.

WHAT IS A GENERAL SAFETY PROVISION?

Whilst suppliers have existing obligations under the ACL regarding product safety, these are predominantly reactive and expose the supplier to consumer claims after injury or death has been caused. A General Safety Provision, by contrast, is a proactive provision which would impose a statutory obligation on a supplier not to supply unsafe goods to consumers. In effect, this means that suppliers must take positive steps to ensure the safety of a product before it is supplied to consumers, which might include consideration of possible risks and labelling requirements before importing or selling products. Any breach of the proposed provision could result in investigation by the ACCC and penalties in line with the ACL.

WHO HAS PROPOSED A GENERAL SAFETY PROVISION AND WHY?

In April 2017 Consumer Affairs Australia and New Zealand (**CAANZ**) released its review of the Australian Consumer Law (**ACL**). A key recommendation was the introduction of a General Safety Provision to rectify what CAANZ saw as deficiencies in the current product safety system. Similar legislative provisions have been implemented overseas, including the United Kingdom, European Union and Canada.

The ACCC estimates that the annual cost of injury and death from unsafe consumer products is over \$5 billion, with around 780 deaths and 52,000 injuries each year resulting from consumer products excluding motor vehicles. In light of this, the General Safety Provision was a priority of the ACCC in 2019, who worked with CAANZ to progress its development and implementation.

WHAT IS THE POTENTIAL IMPACT ON BUSINESSES?

The introduction of this provision would likely create additional costs for businesses and require close cooperation with the ACCC.

Manufacturers could be required to:

- Conduct further product testing;
- Expand the scope and volume of technical documentation; and
- Enhance product labelling and instructions.

Suppliers and importers could be required to:

- Ensure that they pass on information about any safety risks to the product;
- Maintain extensive records on the origin of the product; and
- Closely monitor the market for any potential safety issues.

Suppliers and importers should also be aware that they may also have an proactive obligations to ensure the product's safety. In the UK, importers are now responsible for ensuring the safety of the product, even though it is produced internationally.

The results of the Commonwealth Treasury's assessment and public consultation in regards to a General Safety Provision should be available soon. Watch for further updates as the Commonwealth Treasury's public consultation closed on 30 November 2019.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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