

Australian Product Safety Pledge

Guidance for signatories to the pledge

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1. Background

Purchasing products online in Australia is growing rapidly, with more than 73% of Australian households embracing online shopping. In 2020 online shopping accelerated further due to unprecedented growth in online sales driven by the global Coronavirus (COVID-19) pandemic.²

Consumer and commercial interests are well served when businesses take positive steps to ensure consumers have access to a safe and trusted marketplace, particularly as we navigate changes fuelled by COVID-19. In recognition of the increase in online shopping, the Australian Competition and Consumer Commission (ACCC) in collaboration with AliExpress, Amazon Australia, Catch.com.au and eBay Australia developed the Australian product safety pledge (the pledge). The pledge will set a benchmark for good practice measures in online product safety for the benefit of all Australian consumers.

The pledge is a voluntary initiative which affirms the commitment by its signatories to certain product safety-related responsibilities. The pledge aims to proactively strengthen online product safety policies and initiatives in a framework where expectations are public and results are measurable.

¹ Australia Post, *Inside Australian Online Shopping - 2019 eCommerce Industry Report*, Australia Post, 2019, https://auspost.com.au/content/dam/auspost_corp/media/documents/inside-australian-online-shopping-ecommerce-report.pdf, viewed 16 June 2020.

² Australia Post, *Inside Australian Online Shopping - 2020 eCommerce Industry Report*, Australia Post, 2020, https://auspost.com.au/content/dam/auspost_corp/media/documents/2020-ecommerce-industry-report.pdf, viewed 28 July 2020.

2. About the pledge

Upon signing the pledge, signatories will receive the pledge package which will include the following documents:

- 1. The Australian product safety pledge and key performance indicators (KPIs)—outlines the twelve pledge commitments and associated KPIs.
- 2. Guidance for signatories to the pledge (the guidance)—provides good practice examples to assist in fulfilling the pledge commitments.

Important points to note about the pledge:

- The pledge seeks to protect Australian consumers from product safety risks by providing a set of commitments for implementation by signatories.
- In the context of the pledge, signatories include, but are not limited to, online businesses that facilitate marketplace services, engaging in business-to-consumer or consumer-to-consumer transactions via the internet.
- To be eligible, the signatory must demonstrate a capability to comply with the pledge commitments or a willingness to adapt their internal practices so as to comply.
- The pledge is voluntary, however it is expected that signatories will use their best efforts to comply with the commitments. Where appropriate, it is expected that signatories will cooperate with Australian regulatory authorities in fulfilling the pledge commitments. Unless otherwise stated, any reference to 'Australian regulatory authorities' in the pledge package refers to Australian Consumer Law (ACL) regulators.
- Consistent with the ACL, the pledge applies to all general consumer products, noting however that there are clear limitations on the ACCC's product safety role with respect to certain consumer goods such as motor vehicles, food, medicines, medical devices and chemicals. Where appropriate, signatories are encouraged to replicate the arrangements in place with ACL regulators with specialist product safety regulators/agencies.
- Adopting the pledge does not replace the need to ensure overall compliance with the Competition and Consumer Act 2010 (CCA) including the ACL or other relevant legislation. It also does not prevent the ACCC or other regulatory authorities from taking action against signatories for any breaches of the CCA or any relevant state and territory legislation.
- The ACCC encourages signatories to inform consumers about their commitment to and compliance with the pledge via their website and other communication channels.

2.1 The guidance and signatories

Important points to note about the guidance document and signatories:

- The guidance is an iterative tool that signatories may draw on to assist them in understanding, meeting and exceeding the pledge commitments. It provides signatories with examples of good practice approaches to fulfil each commitment rather than a list of compulsory actions. Other actions may be appropriate for certain businesses or situations.
- The ACCC acknowledges that online businesses, specifically marketplaces, operate under significantly different models. These differences can lead to the use of varying product safety mitigation strategies to fulfil the pledge commitments. While the good practice examples are highly recommended, it is not expected and in some cases may not be possible for signatories to implement ALL measures outlined in the guidance.
- Signatories should consider implementing the actions set out in the guidance on a case by case basis, supplemented by any additional or substitute measures they identify as effective to their specific business model and internal operations.
- The ACCC is not endorsing the performance or compliance approach of any online business by virtue of them signing on to the pledge.
- The guidance (including any complementary templates) will be reviewed and updated as needed by the ACCC in cooperation with signatories at the time of review to ensure it meets the needs of the evolving and dynamic online environment.
- Any queries relating to this guidance document should be directed to the ACCC.

2.2 Pledge performance measures and KPI reports

Important points to note about measuring signatory performance on the pledge:

- The ACCC encourages signatories to self-assess their performance in relation to the pledge and identify areas for improvement. However, in the event a signatory is repeatedly unable to meet one or more of the pledge commitments, the ACCC may:
 - inform the signatory of any issues or concerns and give the signatory an opportunity to respond
 - consider the response provided by the signatory and where necessary request that the signatory outline the steps it will take to rectify the issue (the rectification plan)
 - provide the signatory with sufficient time to develop a rectification plan and implement any relevant actions
 - report more broadly on any areas where signatories overall (and on a non-identifiable basis) reported or experienced difficulties in meeting the pledge commitments
 - remove the business' name as a signatory to the pledge should the signatory fail to implement the rectification plan without sufficient justification.
- Signatories must submit a report to the ACCC outlining how the business has performed against the KPIs during the financial year (1 July-30 June). Details of how to submit the report are outlined in the KPI reporting template.
- The KPIs will be reviewed and updated by the ACCC in collaboration with signatories to ensure they
 remain relevant.
- The ACCC will aim to release a public report in the fourth quarter of each year outlining signatories' overall performance against the pledge commitments. This report will include aggregated, de-identified data based on the individual reports submitted by signatories at the end of each financial year.

3. Pledge structure

The pledge commitments detailed in this document are divided into three categories based on the objectives of each section:

1. Informed and Responsive

Pledge commitments 1-6: the signatory is an informed and responsive product safety stakeholder.

2. Empowering and Trustworthy

Pledge commitments 7-8: the signatory empowers suppliers and consumers with product safety information and operates as a safe and trusted online business.

3. Proactive and Innovative

Pledge commitments 9-12: the signatory delivers proactive and innovative product safety mitigation strategies.

4. Pledge commitments

4.1 Informed and responsive



1. Regularly consult the Product Safety Australia³ website and other relevant sources for information on recalled/unsafe products. Take appropriate action⁴ on these products once they are identified.

Notes

- The term 'unsafe products' includes all products considered a safety risk to consumers, even if those products have not been recalled (e.g. due to lack of seller action).
- The Product Safety Australia website (PSA website) is managed by the ACCC on behalf of the Commonwealth and state and territory product safety regulators. The PSA website is a single entry point for products subject to safety recalls and provides a range of information on laws, bans, standards, restrictions and best practice guidance that may apply when supplying goods to consumers in Australia.

- 1. Subscribe to the PSA website for alerts on recalls, news or updates to product safety legislation in Australia.
- 2. Regularly consult a variety of global and domestic product safety information, including product safety databases such as the PSA website, RAPEX and the OECD *GlobalRecalls* portal.
- 3. Consider emerging trends and surveillance results published by product safety regulators to inform compliance activities.
- 4. Use information from the PSA website and other sources to enhance product safety compliance. Such information could be used to:
 - remove, prohibit or restrict banned, recalled or non-compliant listings
 - geo-block the sale of certain products or product types into Australia
 - identify emerging safety issues in domestic and global markets
 - influence or inform signatories' auditing activities
 - educate third-party sellers and internal staff (where applicable)
 - inform consumers of recalls or product safety risks
 - take appropriate action on the seller's account.
- 5. Understand the role of specialist agencies in regulating the safety of different types of consumer products in Australia. The ACCC maintains relationships with specialist regulators to avoid duplication in coverage.
- 6. Facilitate clear communication with Australian regulatory authorities (authorities).
- 7. Share information with authorities where possible on emerging product safety trends.

³ www.productsafety.gov.au.

⁴ This could include, among other things, removal of product listings, blocking the sale of a product into Australia and/or informing consumers and sellers, as appropriate.



2. Provide a dedicated contact point(s) for Australian regulatory authorities to notify and request take-downs of recalled/unsafe products.

Notes

- Refer to section 2 for clarification on the term 'Australian regulatory authorities'.
- A dedicated contact point(s) could be a group email account, a particular contact person or a combination of both, provided that emails are actively monitored.
- ACL regulators will use a standard template developed in collaboration with signatories to submit take-down and data/information requests. The standard template will be used by signatories to process these requests in a timely manner.

Good practice examples

- 1. Put in place a dedicated contact point(s) that is regularly monitored by staff, where requests from authorities are given high priority, unless the contact point is used solely for urgent take-down requests from authorities.
- 2. Notify authorities of any changes to the dedicated contact point(s) as soon as practicable.
- 3. Review the standard template and notify authorities of any updates that may be required.



 Remove identified unsafe product listings within two business days of the dedicated contact point(s) receiving a take-down request from Australian regulatory authorities. Inform authorities on the action that has been taken and any relevant outcomes.

Notes

- Refer to section 2 for clarification on the term 'Australian regulatory authorities'.
- The action of 'removing the identified unsafe product listing' should occur within two business days of the signatory receiving the request.
- 'Informing authorities on the action taken and any relevant outcomes' should occur as soon as
 practicable after the take-down has occurred by responding via email to the person who made
 the request.
- Unless otherwise notified, authorities will reasonably assume that a take-down request is 'received' by the signatory at the time the take-down request is sent by the authority. This assumption is based on the understanding that communication via email is generally instantaneous.
- Where the request is particularly urgent, the authority will liaise with the signatory directly to discuss options for an expedited removal of the listing.
- The two business day timeframe will take into account the global nature of online businesses, region-specific holidays, weekends and requests made or received outside normal business hours (9am to 5pm).
- If a request is received on a weekend, outside usual business hours (9am to 5pm) or on a public holiday, the two day timeframe will commence from 9am the next business day.

Some examples to demonstrate how the two day timeframe would apply in certain situations are noted below:

Example 1: signatory is located outside Australia

The ACCC sent a take-down request to signatory XYZ whose compliance and enforcement arm is located in California, USA. The ACCC sent the request at 9.00am on Wednesday 27 May 2020 AEST. XYZ received the request at 4.00pm on Tuesday 26 May 2020 PDT based on the assumption noted above. XYZ has until 4.00pm Thursday 28 May 2020 PDT to action the request.

Example 2: request received on a weekend, public holiday or outside business hours

The ACCC sent a take-down request to signatory ABC whose compliance and enforcement arm is located in New York, USA. The ACCC sent the request at 9.00am on Wednesday 27 May 2020 AEST. ABC received the request at 7.00pm Tuesday 26 May 2020 EDT based on the assumption noted above. ABC received the request outside normal business hours, therefore the two business days will commence on 9am Wednesday 27 May 2020 EDT. ABC has until 9am Friday 29 May 2020 EDT to action the request.

Example 3: a public holiday or weekend falls within the 2 day timeframe

The ACCC sent a take-down request to signatory 123 whose compliance and enforcement arm is located in Melbourne, Australia. The ACCC sent the request at 11.00am on Friday 24 January 2020 AEDT. 123 received the request on the same day and time based on the assumption noted above. Australia observes a national public holiday on Monday 27 January 2020, which occurs during the timeframe 123 is required to action the request. To account for the public holiday, 123 has until 11.00am Wednesday 29 January 2020 AEDT to action the request.

- 1. Confirm receipt of take-down requests submitted by authorities as soon as possible.
- 2. Regularly action take-down requests within the two business day timeframe, noting that delays in removing identified unsafe product listings may be justified in the following exceptional circumstances:
 - the information provided by the authority in the standard template is incomplete or incorrect
 - the signatory did not receive the request due to technological issues or other factors outside its control (e.g. the authority sent the take-down request to an incorrect contact).
- 3. Inform authorities if there is an expected delay in actioning the take-down request, the reason for the delay and the timeframe the signatory expects the take-down request to be actioned.



4. Cooperate with Australian regulatory authorities in identifying, as far as possible, the supply chain of unsafe products by responding to data/information requests within ten business days should relevant information not be publicly available.

Notes

- Refer to section 2 for clarification on the term 'Australian regulatory authorities'.
- Any information provided to the ACCC will be treated according to the <u>ACCC & AER</u> information policy.
- Signatories may be requested to cooperate with authorities to inform consumers of product safety risks in certain circumstances (refer to examples below).
- The disclosure of information pursuant to informal data/information requests from authorities will be undertaken in accordance with relevant legal obligations.

- 1. Confirm receipt of data/information requests from authorities as soon as possible.
- 2. Implement a privacy policy which has regard to the safety of the public and outlines the circumstances where information and data will be shared with authorities.
- 3. For product safety purposes, provide information to authorities on the aggregate number of Australian consumers that purchased a particular product and/or confirm whether identified products were shipped to Australian consumers.
- 4. Provide seller information to authorities for product safety purposes (e.g. name, email, physical address, number of units sold, period of sale), including any alternative contact details that may not be publicly available.
- 5. Inform authorities of any preferred channels or methods to receive data/information requests and how to access those channels. Notify authorities if those preferred channels or methods change.
- 6. Assist authorities to inform consumers of product safety risks either by notifying consumers of recalled/unsafe products on the authorities' behalf or by providing consumer details to the authority (subject to the signatory's legal obligations). Such details may include the consumer's name, address, username and number of units purchased. The authority is likely to request the signatory's assistance to inform consumers of safety risks where:
 - the recall notification process has been compromised (e.g. the seller is unable to access the consumer's contact details via the signatory for the purposes of informing the consumer of a recall or product safety risk)
 - it is necessary to inform the consumer of urgent product safety risks.
- 7. Regularly provide responses to data/information requests within the ten day timeframe, noting that delays in actioning a request may be justified in the following exceptional circumstances:
 - the information provided by the authority in the standard form template is incomplete or incorrect
 - the signatory requires further time to consider the request in accordance with its privacy policy, user agreement/s and legal obligations
 - the signatory did not receive the request due to technological issues or other factors outside its control (e.g. the authority sent the data/information request to an incorrect contact).
- 8. Inform authorities if there is an expected delay in responding to a data/information request, the reason for the delay and the timeframe the signatory expects a response to be provided.



Have an internal mechanism for processing data/information requests and take-downs of unsafe products.

Notes

 The term 'internal mechanism' refers to having a system in place to receive, monitor and action data/ information and take-down requests made by authorities.

Good practice examples

- Implement internal processes that are regularly reviewed to ensure requests are responded to in a
- Upon request, provide authorities with an explanation of the procedure that the signatory will follow when processing data/information and take-down requests.



Provide a clear pathway for consumers to notify the pledge signatory directly of unsafe product listings. Such notifications are treated according to signatory's processes and where responses to consumers are appropriate, they are given within five business days.

Notes

- A 'clear pathway' refers to signatories having a visible, easy to use mechanism in place for consumers to notify signatories of alleged unsafe products or product safety risks/concerns that is actively monitored by staff. The pathway should closely resemble the signatory's business model.
- Where responses to consumers are appropriate, they should be provided within five business days of a signatory being directly notified of the issue.

Good practice examples

- Implement an effective notification/complaint handling process which at a minimum, confirms receipt of the notification and includes an initial assessment or triage point.
- 2. Assess or triage notifications at an early stage to determine priority and whether any further action may be required. Triage options could include, but are not limited to, escalation of the matter or no further action.
- 3. Provide adequate resources for staff to actively monitor and triage notifications.
- Consider a number of factors during the triaging process to determine whether a consumer notification should be escalated, including but not limited to:
 - whether the notification involves an alleged injury to a consumer
 - the consumer is notifying of a recalled product that remains active on the online store or marketplace
 - the notification relates to the consumer's lack of access to an appropriate remedy for the supply of a recalled, banned or non-compliant product.

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- 5. Escalation outcomes may include but are not limited to:
 - gathering further information to make an assessment on the seriousness and veracity of the notification/complaint
 - removal of the listing or blocking the sale of a product or certain product types into Australia
 - encouraging the seller to recall a product and intervening further where appropriate
 - imposing seller account sanctions in accordance with the signatory's policies
 - informing a seller and/or consumer of a safety risk associated with a product
 - supporting the consumer to access a remedy
 - informing the ACCC of any product-related deaths, serious injuries or illnesses associated with a consumer product purchased via the online store or marketplace.
- 6. Ensure other mechanisms are available for the general public to raise product safety issues with the signatory that do not require an account or member log-in.
- 7. Analyse notification/complaint trends to improve product safety.
- 8. Provide responses to consumers, where applicable, within the five day timeframe, noting that not all notifications/complaints will require a response. A non-exhaustive list of examples outlining when responses should be provided includes:
 - to inform the consumer that the product of concern has been recalled and request that they contact the seller about what steps should be taken
 - when an injury is reported, to inform the consumer that they should notify the seller immediately and report an unsafe product via the PSA website
 - where the product of concern has been removed from the online store or marketplace but not recalled, to communicate product safety risks and remedial options to consumers
 - to support consumer's access to a remedy in certain circumstances.

4.2 Empowering and trustworthy



7. Implement measures to facilitate sellers' compliance with Australian product safety laws. Share information with sellers on compliance training/guidance, including a link to the ACCC's 'Selling online' page on the Product Safety Australia website.⁵

Notes

• The term 'product safety laws' refers to legislation and regulations applicable to general consumer products such as the ACL.

- Maintain a rigorous product safety compliance program which is reviewed at least annually and
 includes key product safety checks for ACL-regulated products prior to listing and regular product
 safety surveillance post-listing to identify and remove/restrict banned, recalled and non-compliant
 products (see good practice examples under pledge commitment 9 for further information on prelisting/listing and post-listing product safety measures).
- 2. Include links to the ACCC's '<u>Selling online</u>' page in a conspicuous location on its website. The signatory should also take the opportunity to inform sellers about product safety during every stage of the selling process from the pre-listing and listing stages (links to <u>mandatory standards</u>, <u>bans</u>, <u>recalls</u>) to post-market (facilitate communication between sellers and authorities).
- 3. Distribute information on behalf of authorities to sellers on a mass scale, including translated information provided by authorities.
- 4. Work with authorities to ensure training/guidance material provided to sellers is translated into appropriate languages and easily accessible to offshore sellers.
- 5. Take opportunities to promote resources developed by authorities (e.g. supplier fact sheets, videos, webinars, news alerts, media releases) and encourage sellers to subscribe to the PSA website for updates on product categories they sell.
- 6. Notify the ACCC when significant updates or changes are made to its product safety policies.
- 7. Implement product safety policies that:
 - support the overall objective of compliance with Australian product safety laws
 - actively encourage seller cooperation with authorities' requests
 - include appropriate protocols to address policy breaches.

^{5 &}lt;u>www.productsafety.gov.au/sellingonline.</u>



8. Cooperate with Australian regulatory authorities and sellers to inform consumers about relevant recalls or corrective actions on unsafe products.⁶

Notes

- Refer to section 2 for clarification on the term 'Australian regulatory authorities'.
- The term 'corrective actions' refers to steps taken to remove any safety risks posed by a consumer product. The action is not just limited to recalls and can include, but is not limited to, the following:
 - removing the product from sale
 - changing the labelling or product packaging
 - sending information to consumers about the correct use of the product
 - correcting the specific product safety failure
 - modifying or repairing products
 - recalling products from consumers and offering a repair, replacement or refund.

Good practice examples

Signatories should help facilitate the recall process by:

- informing consumers of the product recall or corrective actions via direct messaging to the affected consumer or through other communication channels (e.g. via its website, in advertisements, social media or relevant buyer forums)
- providing consumer contact information to the seller and/or authorities for the purposes of notifying consumers of a product recall or corrective actions
- encouraging sellers to recall unsafe products and contact concerned buyers
- supporting consumers to access a remedy
- where possible, cooperating with other product safety agencies (beyond ACL regulators) to facilitate recalls where the particular agency has jurisdiction or there is an overlap in coverage (see pledge commitment 1 for further information).

⁶ This may also include informing sellers and requesting them to contact concerned buyers.

4.3 Proactive and innovative



9. Set up processes aimed at preventing or restricting the sale of banned, non-compliant and recalled products as appropriate.

Notes

This commitment focuses on signatories developing proactive measures to detect and remove banned, non-compliant and recalled ACL-regulated products prior to listing or as soon as practicable after listing as opposed to being notified and informed of non-compliance from authorities.

Good practice examples

- 1. Include links to educational material on mandatory standards, bans and recalls in a conspicuous location on its website, particularly on seller 'hubs' and relevant announcement pages.
- 2. Develop measures to detect and remove banned, recalled and non-compliant products in the pre-listing/listing and post-listing stages. Signatories are encouraged to adopt the measures below that are suited to their specific business model and internal operations.

Examples of proactive product safety measures

- Pre-listing/listing stage
 - Conduct seller validation checks (e.g. identity verification and screening) and prohibit sellers from opening an account with limited or incorrect information.
 - Require sellers to include a statement verifying compliance with any relevant mandatory standards.
 - Require sellers to include clear warnings, labels, product descriptions, images and ingredient lists to help consumers make informed decisions.
 - Prohibit the supply of banned and non-compliant products in policies and seller guidelines.
 - Implement auto pop-up alerts or warning messages to prompt the seller to check the product for compliance prior to listing.
 - Use keywords/identifiers or a filtering system to identify and geo-block non-compliant, recalled or banned products.
 - Implement gating measures for ACL-regulated products, such as requiring sellers to submit test certificates by a NATA accredited testing agency to show evidence of compliance prior to listing.
- Post-listing stage
 - Conduct regular automated audits or surveillance program using block filters and algorithms.
 - Conduct regular manual filtering using keywords/identifiers to check for banned, recalled and non-compliant products.
 - Physically inspect goods at fulfilment centres (where possible).
 - Undertake concentrated audits when systemic concerns are raised by authorities or there is evidence of emerging product safety risks.



10. Put in place reasonable measures to act against repeat offenders selling unsafe products, including in cooperation with Australian regulatory authorities.

Notes

- Refer to section 2 for clarification on the term 'Australian regulatory authorities'.
- A 'repeat offender' refers to a seller who:
 - re-lists a product after the product has been de-listed either under the same or a different name
 - has a history of selling unsafe or recalled products, whether or not those products are the same
 - has previously breached the signatory's product safety policies.

Good practice examples

- 1. Take measures to deter non-compliance, particularly repeat, regular or blatant non-compliance.
- 2. Develop a systemic and transparent approach for dealing with non-compliance to ensure consistent, clear and predictable consequences.
- 3. Put in place a multi-tiered intervention system to distinguish between minor and severe non-compliance. Consequences could include:
 - minor cases—account restrictions or warnings with remedial action required within a certain timeframe
 - severe cases—account closures and/or permanent bans.



11. Take measures aimed at preventing the reappearance of unsafe product listings already removed.

- 1. Trace seller accounts.
- 2. Conduct targeted audits for product listings already removed.
- 3. Develop and put in place block filters and algorithms for previously removed products to prevent re-listing.
- 4. Promote or advertise seller recall notices on its website (where possible).
- 5. Implement gating measures to prevent listing of a possible non-compliant product (e.g. compliance test reports, pop-up alerts of removed product to warn seller during the pre-listing process).



12. Explore the potential use of new technologies and innovation to improve the detection and removal of unsafe products.

Notes

The term 'innovation' refers to technological and non-technical innovations such as process changes.

Good practice examples

Signatories should explore innovative technologies to:

- block recalled, banned or non-compliant products from being listed on the online store or marketplace
- detect products that may be subject to mandatory standards or other concerns and automatically prompt sellers to check compliance before listing
- use virtual assistants and live chat capabilities to scale up customer service or enable the consumer to lodge a complaint, give feedback or raise a safety issue at any time
- analyse complaints data/other data to identify trends or emerging issues
- make process enhancements to efficiently remove identified unsafe/recalled products.

5. ACCC support to signatories of the pledge

The ACCC will support signatories of the pledge in fulfilling the pledge commitments by:

- facilitating bi-annual meetings with signatories to discuss product safety
- sharing information with signatories on product safety concerns, trends and surveillance results
- maintaining and updating the PSA website
- utilising the correct channels to submit take-down and data/information requests
- ensuring all relevant information is provided to signatories (where possible) to action take-down and data/information requests
- providing a forum for signatories to connect with state-based product safety regulators on product safety issues and compliance initiatives
- working collaboratively with state-based ACL regulators to avoid duplication of take-down and data/information requests sent to signatories
- providing a variety of accessible and easy-to-understand guidance and information on Australia's product safety regulations (including translated information) for signatories to share with sellers.

