1. LIABILITY

1.1 What are the principal sources of law and regulation relating to product liability?

Product liability is regulated by statute and common law in Australia. As a federal system, Australia has relevant legislation at both the state and national level.

At the national level, the Australian Consumer Law (ACL) (which is Schedule 2 to the Competition and Consumer Act 2010 (Cth) (CCA)) provides a broad set of statutory standards, the breach of which will see manufacturers and suppliers of goods and services liable to compensate consumers for loss and damage suffered. In addition, manufacturers and suppliers of goods which breach the provisions of the ACL may face enforcement action and pecuniary penalties from the regulator that administers the ACL, the Australian Competition and Consumer Commission (ACCC).

In addition, manufacturers and suppliers may be liable under other provisions, including:
- under state fair trading laws, which largely mirror the provisions of the ACL;
- in tort, for the negligent manufacture or supply of goods and services; and
- under contract law for the supply of goods in breach of express or implied warranties, both in business to consumer transactions and business to business transactions.

Product liability proceedings most commonly involve allegations of both breaches of the ACL and negligence, while contract claims tend to be relied on where other provisions don’t apply, or where they are very clear and helpful to the claimant (which is more rare).

There are a wider array of regulations and laws regarding other aspects of product liability – we have focused on the product safety provisions.

1.2 What is required to establish causation under the most common causes of action available?

Under the main statutory cause of action in the ACL for the supply of defective goods, a manufacturer will be liable where:
- that manufacturer supplies goods in trade or commerce; and
- the goods have a safety defect; and
- because of that defect an individual suffers injuries (s138 of the ACL).
In this context, the words 'because of' require that there be a causal connection between the defect and the injury suffered.

Under common law causes of action such as negligence, it is generally necessary to show that there was some negligent aspect of the manufacturer's conduct, which, in fact, on the balance of probabilities caused the loss or damage suffered by the plaintiff. However, the fact that a safety defect exists in the product will go far to ground an inference that there has been the requisite negligent conduct.

Under contract, liability will depend on establishing that the product supplied breached an express or implied term as to the quality or safety of the product. The causation test is the same for breach of contract as it is for negligence.

1.3 Is strict liability available and, if so, in what circumstances?
Strict liability is available under the ACL, such that a manufacturer will be liable where it is established that:
• the manufacturer has supplied goods in trade or commerce; and
• the goods have a safety defect; and
• because of that defect an individual has suffered an injury or injuries (s138 of the ACL).

Under this statutory cause of action, there is no additional requirement that the manufacturer has acted negligently or recklessly in supplying the defective product.

1.4 Are guarantees or warranties as to quality implied by law?
Yes, both the statute and general law imply guarantees as to quality of goods or services, however, the ACL implies much broader and much stricter requirements than would apply at general law.

The key implied guarantee is one that all goods are of 'acceptable quality' (s54 of the ACL), which includes warranties that goods are as:
• fit for all the purposes for which goods of that kind are commonly supplied;
• acceptable in appearance and finish;
• free from defects;
• safe; and
• durable,

as a reasonable consumer fully acquainted with the state and condition of the goods would regard as acceptable. Whether goods meet the guaranteed standard is judged by reference to a number of factors, including the nature and price of the goods, as well as any marketing or information statements used in conjunction with the goods (s54(3)).

Division 1 of Part 3-2 of the ACL also contains other implied guarantees as they relate to goods and services, including guarantees as to:
• good title to goods (s51);
• fitness for purpose (s55);
• true supply of goods by their description (s56) or by reference to a sample or demonstrator model (s57);
Australia

• reasonable action to ensure provision of repairs and spare parts (s58); and
• use of due care and skill in providing services (s60).

Importantly, these guarantees cannot be excluded or limited by agreement (s64). Any term of a contract that purports to ‘exclude, restrict, or modify’ these consumer guarantees, or limit liability below that available under the ACL (s64A) is deemed to be void to the extent it attempts to do so.

1.5 How is a product ‘defect’ defined?
Under s9 of the ACL, goods will have a ‘safety defect’ if their ‘safety is not such as persons generally are entitled to expect’ having regard to factors such as:
• the marketing of the goods;
• their packaging or any mark use in relation to them;
• instructions for their use;
• what might reasonably be expected to be done with them; and
• the time they were supplied by the manufacturer.

The ACL also provides that an inference cannot be drawn that goods have a safety defect merely because safer goods were later supplied (s9(3)) or the goods complied with a mandatory standard and the standard was not the safest possible standard having regard to the latest state of scientific or technical knowledge (s9(4)).

Accordingly, manufacturers have significant control over ensuring their products do not have ‘safety defects’ by ensuring the products are labelled, marketed and supplied in compliance with safe practices.

1.6 Who in the supply chain has obligations or duties for defective products? What obligations or duties do they owe and to whom?
The ACL imposes obligations primarily on ‘manufacturers’ and, in some circumstances, ‘suppliers’ of goods or services. The definition of manufacturer in s7 of the ACL is broad, and includes a person or business that:
• makes or assembles goods;
• holds themselves out as the manufacturer of the goods;
• has brand name applied to or included in the goods; or
• imports the goods if the actual importer does not have an office in Australia.

A person who supplies goods, but is not also the manufacturer of those goods will be ‘deemed’ to be the manufacturer unless that supplier:
• identifies the person who manufactured or supplied them with the goods; and
• that identified person is available as a defendant in Australia.

Under tort law, the manufacturer and supplier will owe a duty of care to those who are supplied with their goods, in accordance with general duty of care principles.
1.7 By what means can a supplier limit its liability for defective products?

There are limited means by which suppliers can limit their liability for the supply of defective goods. However, there are steps that suppliers may take to limit their exposure, especially as between those in the chain of supply (in contrast with exposure directly to consumers). Contractual terms limiting liability can be effective as between suppliers (including manufacturers).

Importantly, suppliers cannot exclude or limit the consumer protections provided by the ACL. Under s64 of the ACL, any contractual term that purports to limit these rights is void to the extent that it seeks to exclude or limit rights to a level below that available under the ACL.

In addition, attempts to exclude statutory rights by posting notices inconsistent with the ACL may result in a manufacturer being prosecuted by the ACCC for misleading or deceptive conduct, which may result in fines or orders requiring corrective advertising.

As noted above, whether a product has a ‘safety defect’ depends in part upon its marketing, labelling, and intended uses. Accordingly, careful attention to providing clear and detailed warnings and labels and information will go some way to protect against liability. However, as noted, this can provide only so much protection. It is also important to take appropriate care in product design and manufacture, as well as to knowledge regarding product use patterns.

1.8 Are there particular goods or services which have specific obligations or duties attached to them?

Yes, there are some goods and services which are regulated entirely outside the ACL and the general law principles discussed here. The following are of particular note:

- pharmaceuticals, medical devices and other therapeutic goods are regulated under the Therapeutic Goods Act 1989 (Cth);
- food is regulated under separate Australia New Zealand Food Standards Code and other state and territory legislation;
- poisons and medicines are regulated under the Poisons Standard (and some also under the Therapeutic Goods Act 1989 (Cth);
- dangerous goods (particularly, transportation of) are addressed under the Australian Dangerous Goods Code and the state and territory legislation that implements it;
- weapons are addressed under the National Firearms Safety Code;
- veterinary and agricultural products are regulated under the Agricultural and Veterinary Chemicals Code;
- hazardous substances and industrial machinery are addressed under national and state workplace health and safety laws; and
- motor vehicles are regulated under the Motor Vehicles Standards Act 1989 (Cth) as well as other state and territory legislation.
2. DEFENCES
2.1 What are the possible defences to a product liability claim?
There are defences to actions under the ACL, but they are of limited application and cannot often be relied upon. Under ss142 and 148 of the ACL, a supplier may avoid liability for actions based on defective goods if the safety defect:
• did not exist when goods were supplied;
• came about because of compliance with a mandatory standard;
• at the time the goods were supplied, the defect could not be discovered based on scientific or technical knowledge; or
• is only attributable to the design, markings or instructions of other goods in which the goods were contained.

In practice, it is rare that these defences will apply, and liability to pay compensation often follows closely if a ‘safety defect’ can be linked to an injury.

There are additional defences available at general law, but these defences will not protect against liability for breaches of the ACL. For instance, in tort, suppliers may rely upon defences such as the consumer’s voluntary assumption of risk or contributory negligence. It is common to plead matters under the consumer laws in part to avoid these defences.

2.2 Is there a limit on the time in which proceedings may be brought (limitations and repose)?
Yes, but the time limits differ between actions under the ACL and actions under the general law.

The ACL contains a number of overlapping periods for defective goods actions. The general rule is that a defective goods action – other than one including damages for personal injury – must be commenced within 10 years of the supply of the goods by the manufacturer (s143(2) the ACL).

However, there are special rules for actions in which a plaintiff claims damages for personal injury. Under the ACL and CCA, a person cannot bring any defective goods action in which they claim damages for personal injury:
• if three years have elapsed since they have become aware, or ought to have become aware of all of the following:
  • the loss suffered;
  • the defect in the goods; and
  • the identity of person who manufactured the goods; or
• if 12 years have elapsed since the date of the act or omission causing death or injury (ss87F and 87H CCA).

Limitation periods for tort and contract are governed by state legislation. In all jurisdictions except the Northern Territory, no plaintiff may bring an action in contract or tort after the expiration of six years from when the cause of action arose. In the Northern Territory, the period is three years.

In tort, the cause of action is taken to arise once damage has been suffered. For breach of contract, the cause of action arises once the contract has in fact been breached.

Finally, courts generally have a broad discretion to extend limitations periods in order to serve justice.
3. LITIGATION OF PRODUCT LIABILITY DISPUTES

3.1 In which courts are product liability proceedings brought?
Product liability proceedings may be litigated in any level or branch of the Australian court hierarchy, from inferior and superior state courts to the federal courts. The appropriate court is typically chosen depending on the laws relied on (e.g., federal or state) and the amount in controversy.

3.2 How are proceedings commenced?
Proceedings are commenced by filing with the appropriate court a form of originating process, known either as a writ or an originating application depending upon the court in which proceedings are filed. This originating process will be accompanied by an affidavit or statement of claim that sets out all of the commencing parties' allegations and the material facts that support them.

3.3 Are disputed issues decided by a judge or a jury?
Almost all civil trials in Australia are decided by a judge sitting alone. However, court rules in all jurisdictions except South Australia and the Australian Capital Territory allow for a plaintiff to apply for the case to be heard before a jury, subject to the payment of additional jury fees. In some jurisdictions, legislation and court rules preclude trial of a civil action by jury if the trial requires prolonged examination of documents or scientific investigation, and these issues cannot conveniently be dealt with by a jury.

3.4 Who has the burden of proof and to what standard?
In civil trials, the plaintiff has the burden of proof with respect to liability and must prove facts to the 'balance of probabilities,' a lower standard than the criminal standard of 'beyond reasonable doubt.' In practice, this means that the plaintiff must show that a fact is on the evidence 'more likely than not'.

However, once a plaintiff has proved the facts necessary for a defendant's liability, the burden of proof shifts to the defendant to establish any defence, also to the balance of probabilities.

3.5 How is evidence given in proceedings and are witnesses cross-examined?
Evidence in chief in civil trials can be given either orally or by affidavit. In most courts, evidence will be given orally unless the court gives leave for affidavit evidence to be used. Accordingly, in most proceedings, evidence will be given orally but witness statements or outlines of evidence will be served in advance.

A person giving evidence may be cross-examined irrespective of whether they give evidence orally or by affidavit. Court rules in most jurisdictions prevent parties relying upon affidavit evidence unless the maker of the affidavit is available for cross-examination, subject to some exceptions.
3.6 Are the parties able to rely on expert opinion evidence and, if so, are there any special rules or procedures for expert opinion evidence?
Yes, the parties are able to rely upon expert opinion evidence. In all Australian jurisdictions, the evidence of persons with ‘specialised knowledge’ gleaned from specialised skill, training or experience is an exception to the general prohibition on opinion evidence.

Experts must, prior to giving evidence, agree to abide by expert ‘codes of conduct’, which impress upon experts their role to act impartially and assist the court, rather than act as advocate for a party’s position – see, eg, Federal Court of Australia, Practice Note CM 7, ‘Expert Witnesses in Proceedings in the Federal Court of Australia’.

3.7 Is pre-trial discovery permitted? If so, in what circumstances? If not, what other mechanisms, if any, are available for obtaining evidence from an party or a third party?
Pre-trial discovery of documents is generally permitted, but Australian courts are increasingly reticent to order broad-based and voluminous discovery. For instance, in the Federal Court of Australia, a party is not entitled to discovery unless the making of the order ‘will facilitate the just resolution of the proceeding as quickly, inexpensively, and efficiently as possible’: Federal Court Rules 2001 (Cth) r20.11.

Parties may also serve notices to produce documents during trials. If the documents sought are not produced by the party to whom the notice is addressed, then the party serving the notice may lead secondary evidence of the contents or nature of the document.

It should be noted that ‘discovery’ in Australia is generally limited to the provision of documents, and there is no provision for compulsory interviewing of another party’s witnesses (depositions).

In addition to conventional discovery, parties may obtain documents by:
• applications for preliminary discovery, where discovery is given even before proceedings are commenced to allow a party to either establish they have a cause of action, or establish against whom they have a cause of action;
• third party discovery and subpoenas, which may be directed to persons or entities that are not parties to the dispute.

Finally, interrogatories are not commonly used and will require leave of court.

3.8 Is there liability for spoliation of evidence/a remedy for destruction of or failure to preserve evidence (most relevantly, the product)?
All Australian jurisdictions impose harsh penalties for the destruction of any evidence, including products themselves. For instance, in the State of Victoria, s254 of the Crimes Act 1958 (Vic) makes it a criminal offence to destroy, conceal, or render illegible or unusable any evidence that ‘is, or is reasonably likely to be, required in evidence in a legal proceeding’ – an offence punishable by up to six years imprisonment or a fine of more than A$400,000.
Furthermore, once proceedings have commenced or they are clearly anticipated, all parties are under an obligation to take positive steps to prevent the destruction of any documents. Failure to comply with this obligation may involve costs sanctions, the striking out of pleadings, issue sanctions, or even fines and imprisonment.

3.9 Is interlocutory or interim relief available prior to the full trial of a proceeding? If so, in what circumstances?
Yes, forms of interlocutory or interim relief, including injunctions, are available where:
• a party can show there is a ‘serious question to be tried’, in that they have a cause of action that has some likelihood of success; and
• the ‘balance of convenience’ favours granting the relief.
   The ‘balance of convenience’ compares the harm likely to be suffered by each party if particular relief is granted. For instance, the harm that the public may suffer because of an allegedly defective product would be balanced against the financial impact of the relief on the manufacturer.

   A party seeking interlocutory or interim injunctive relief must, as a matter of course, give an ‘undertaking to damages’. This undertaking requires the party seeking relief to compensate the party subject to the injunction for loss or damage they suffer, if the first-named party does not obtain the final relief on which the injunction is based.

   In the product liability context, it is likely that such relief will be granted if there is some appreciable risk of danger to the community.

   In addition, orders may be made to freeze the assets of a party to a proceeding if there is a demonstrable risk that they will seek to shift those assets out of the jurisdiction in order to frustrate any award against them.

3.10 Can the winning party recover its costs?
Yes. In Australia, the usual rule is that ‘costs follow the event’, such that a successful defendant or plaintiff will be able to recover its costs from the other party depending on who is ultimately successful in the proceedings. If the parties are both successful in part, courts will often apportion costs on an issue-by-issue or percentage basis.

   However, the usual costs order will usually only cover between 60% and 70% of the actual fees and expenses incurred in litigation because parties recover their fees in accordance with court fee ‘scales’, which are likely not to cover the entire cost of litigation.

   Furthermore, if a party has engaged in delaying or obstructive tactics, they may either:
• if they were unsuccessful, be ordered to pay ‘indemnity costs’ which equates to a much higher proportion of the other side’s costs; or
• if they were successful, lose their prima facie entitlement to receive costs or even be required to pay the unsuccessful side’s costs, depending on the severity of the conduct.
3.11 What avenues of appeal are available?

Actions heard in State Courts may be appealed to State Courts of Appeal. Actions heard in the Federal Court may be appealed to the Full Bench of the Federal Court, sitting as an appellate court. Such appeals may or may not be as of right.

From there, parties may apply to the High Court of Australia for special leave to have their further appeal heard in that court, irrespective of whether the action came from a State Court of Appeal or the Full Bench of the Federal Court. However, special leave is not granted as of right, and the High Court will generally only grant leave to cases that involve questions of law of ‘public importance’ or where there is a difference of opinion between different state and federal courts.

There are no further avenues of appeal from the High Court.

4. CLASS ACTIONS/REPRESENTATIVE PROCEEDINGS

4.1 Is there a mechanism for class actions or representative proceedings, or coordinated proceedings for product liability claims? If so, what are the basic mechanics?
Yes. Legislation and court rules in each jurisdiction allow for actions to be brought as representative proceedings. However, the regime in Part IVA of the Federal Court of Australia Act 1976 (Cth) is the most used. Victoria has a similarly prescriptive statutory regime, but class actions in other jurisdictions rely upon existing — and less developed — court rules about representative proceedings.

Australian jurisdictions have embraced the opt-out model of representative proceedings, such that one or a few named plaintiffs will bring an action in the name of a nominal class of plaintiffs. The class of applicable plaintiffs is then defined within the proceeding and persons or entities within that class are given the opportunity to give notice of opting-out to allow them to pursue their own actions against the class action defendant. This ‘opt out’ process happens relatively early in the proceeding. If persons do not opt-out by a date fixed by the court, they will be bound by the court’s judgment in the proceeding.

The Australian representative proceeding model protects class members who do not participate in the action by providing that costs orders may only be levied against the representative plaintiffs who have brought the suit.

Threshold requirements for a representative proceeding include:
• the claims must arise out of the ‘same, or similar, circumstances’ or transactions;
• seven or more people must have claims against the same defendant; and
• claims must involve at least one common substantial issue of law.

Importantly, in Australia, the onus is on a defendant to disprove that these threshold requirements have not been met.

In addition to the representative proceeding model, multiple similar actions may be consolidated together into a single action, but this mechanism does not provide the same cost protection to non-representative plaintiffs.
5. LITIGATION FUNDING

5.1 Is litigation funding by third parties permissible in your country? If so, is it common?

Yes. Litigation funding is both permissible and common in Australia, and is particularly common in respect of class action-type litigation. To date, litigation funding has financed a number of large consumer and shareholder class actions, most particularly with respect to corporate disclosure obligations, directors’ and officers’ duties and financial services.

At this stage, litigation funding remains a largely unregulated aspect of Australia’s financial services industry, however, the recently-elected government seemingly has an appetite to impose stricter regulation on the industry.

5.2 Are contingency fee or ‘no win no fee’ arrangements permissible?

Contingency fees are prohibited in all Australian jurisdictions and lawyers are prohibited from charging on the basis of a percentage fee of any amount awarded to their client.

However, litigation funders are not prohibited from charging contingency fees, which sees an arrangement whereby the litigation funder provides the funding directly to the plaintiff or class or plaintiff, and pays the lawyers’ legal bills often irrespective of whether the action is ultimately successful. In this way, it is often the litigation funder and not the lawyers who bear the risk of unsuccessful actions in Australia.

‘No win no fee’ arrangements are permitted in all Australian jurisdictions. Under these arrangements, lawyers provide the same costs disclosures and charge fees on the same basis as they would for other professional services, but only charge the client those fees if the matter is successful. Lawyers may still claim for disbursements outlaid and the client themselves will have to pay any costs order levied against them.

There are recent reform moves afoot to allow contingency fees to be charged by lawyers directly.

6. REMEDIES

6.1 What remedies are available to a party who successfully pursues a product liability claim?

Under the ACL, the key remedy available is damage for loss or damage suffered because of the defective product. A person affected may claim the costs of medical treatments, lost past and future wages, or where the damage is to goods or property, the cost of repairing or replacing that property (ss138-141).

In addition, the court may:

- order injunctions prohibiting repeated contraventions of the ACL, in an action brought by the ACCC (s232);
- make other orders requiring that a manufacturer perform community services, implement compliance programmes, or conduct corrective advertising or awareness raising campaigns.
Under the general law, the court may order a manufacturer to pay damages and may, in some circumstances, order injunctions to prevent repeated negligent conduct or supply.

6.2 How are damages calculated/are there limitations on available damages?
Damages are calculated on the basis of actual loss suffered, or likely to be suffered, by a plaintiff because of the conduct of the defendant. These losses are likely to include:
- actual incurred or future losses caused by injury caused by the defect, such as the cost of medical treatment and loss of earnings;
- non-economic losses that arise from any above injury, such as pain and suffering, loss of amenities of life, loss of expectation of life and permanent disfigurement;
- losses arising from damage to the defective goods themselves, or the cost of repair or replacement of the goods; and
- losses for damage to land or fixtures associated with the defect.

The only limit on damages available under the ACL for the supply of defective goods is a $250,000 cap on non-economic loss (s87M). Other losses are not capped and must be paid if they are suffered.

Similarly, for general law liability in tort, the total amount of compensation that may be awarded for non-economic loss is capped, but at different levels in each jurisdiction. Currently, the amounts of these caps stand at between approximately $450,000 and $550,000.

6.3 Are punitive or exemplary damages available and in what circumstances?
Punitive damages are not available under the ACL, but they are available at general law.

However, punitive damages are rarely awarded unless there is some special feature of the defendants’ approach that shows they have acted with 'contumelious disregard of another's rights'.

Furthermore, tort reform in some state jurisdictions has placed limitations on the availability of punitive and exemplary damages in some proceedings — for instance, s21 of the Civil Liability Act 2002 (NSW) excludes punitive damages for negligence claims for personal injury.

Aggravated damages may also be awarded where the defendant's conduct has actually exacerbated the harm suffered by the plaintiff — for example, where undue rough treatment of the plaintiff during the litigation process has exacerbated mental harm caused by the defendant. Because these form part of the harm actually suffered by the plaintiff, they may be claimed under the ACL.

6.4 Is liability joint and several/how does apportionment of liability work, including where a partially responsible entity is not a party to the proceeding?
If a claim relates to personal injury, a defendant can be liable for a plaintiff's...
entire loss even if they have only contributed to that loss. To avoid this situation, defendants in Australia must join other parties responsible for that loss to proceedings.

Proportionate liability regimes may be available where the damage caused by a defective good is limited to damage to property. Under these regimes, a defendant cannot be held liable for, or be forced to pay, a proportion of the loss greater than that which is just and reasonable, having regard to that defendant’s responsibility for the loss. This would often involve the court ascribing a percentage responsibility level to respective parties and requiring them to pay that proportion of any final damages award.

7. ROLE OF REGULATORS

7.1 Please explain the role, responsibilities and powers of the regulators in your country which have jurisdiction over product liability issues.

The ACCC is the key national regulator responsible for administering the ACL. The ACCC is an independent federal statutory authority which has a broad regulatory role, including to enforce the CCA (which includes Australia’s competition laws) and the ACL. The ACCC has wide ranging investigative and enforcement powers. As discussed below, the ACCC plays an important role in the regulation of the product safety provisions of the ACL.

The ACCC is supported by state- and territory-based fair trading regulators, such as Consumer Affairs Victoria and New South Wales Fair Trading.

7.2 Are there any mandatory reporting requirements related to product safety issues?

Under the ACL, a report must be lodged with the ACCC if a supplier of a consumer good becomes aware of the death, serious injury or illness of a person and considers that the death, serious injury or illness was caused, or may have been caused, by the use or foreseeable use of their consumer good. The report must be lodged within two days of the supplier becoming aware of that death, injury or illness (s131). This obligation is triggered unless it is ‘clear’ that the good was not involved, or ‘very unlikely’ that it was involved (s131(2)).

A ‘consumer good’ is defined as goods that are intended to be used for ‘person, domestic, or household use’ (s2). There is no upper monetary limit on this definition.

Reports will be kept confidential except in ‘exceptional circumstances’ such as disclosure being in the public interest, or disclosure being necessary for the ACCC to bring enforcement action against a supplier (s132A).

Failure to comply with this obligation is a criminal offence of strict liability, punishable by fine (s202). Accordingly, it is prudent for a supplier to report any death, serious injury or illness they become aware of that is connected with their consumer goods, even if the supplier doubts that their consumer goods caused the death, serious injury or illness.
7.3 Do the regulators have the power to:
(i) ban certain goods or services?
(ii) require a supplier to recall a product?
(iii) prescribe standards in respect of certain goods or services and require that the goods or services meet those standards?
(iv) require production of information without court process?
If so, broadly explain the circumstances in which the regulator can exercise the power and any penalties that apply if a supplier fails to comply.
The key regulatory powers are exercised by the relevant state or federal minister, acting on the advice of the ACCC or the state regulator, as applicable. Below is a summary of these key powers and how they are operated.

Bans
The Federal Government minister responsible for product safety may issue either an interim or permanent ban that applies throughout Australia where it appears to the Minister that ‘goods of that kind will or may cause injury to a person’. Bans may be imposed urgently and without notice if there is an ‘imminent risk of death, serious illness, or serious injury’ to consumers (s132J CCA). Once a product is banned, it is an offence to then supply that product (s114 ACL).
In addition, the minister responsible for product safety in each state and territory government may also impose interim bans on products, but those bans only have effect within that state or territory and cannot be made permanent (ss110 and 114 of the ACL).

Compulsory recalls
Both state and federal ministers may initiate a compulsory recall by issuing a recall notice to a supplier, in circumstances where:
• it appears to the minister that goods, including when reasonably misused, may cause injury;
• the goods do not comply with a safety standard that is in force; or
• an interim or permanent ban is in force in respect of the goods (s122(1) ACL).
The recall notice can require the supplier to do any or all of the following:
• recall the goods;
• disclose to the public or consumers of a defect or dangerous with respect to the good;
• repair or replace the goods; or
• refund amounts paid for the good (s124 of the ACL).
Once a recall notice is in place, it becomes an offence to supply a product of that kind.
There are also compulsory notification procedures in place where a supplier decides to voluntarily recall a product.

Standards
The Federal Government minister, on the advice of the ACCC, has the power
under the ACL to impose safety standards on particular classes of goods or services that pose particular risks to consumers. These standards impose substantive requirements on the construction and composition of products themselves and are highly prescriptive in the level of detail they contain. It is an offence not to comply with these standards (s106 ACL).

In addition to safety standards, ministers may impose 'information standards' that require suppliers to provide specific information when supplying particular goods or services (s134 ACL). It is also an offence not to provide the information specified (s136 ACL).

Helpfully, the details of all products subject to safety standards are provided on the ACCC website: www.productsafety.gov.au/content/index.phtml/tag/mandatorystandards.

Production of information
The ACCC has a number of compulsory evidence gathering processes, the most significant of which is the power to issue a notice under s155 of the CCA. This section empowers the ACCC to require any person to provide documents and information if the ACCC has reason to believe that the person is capable of furnishing information about the contravention of the CCA. The ACCC can also compel a person to appear at a specified time and place to give oral or written evidence (s155(1)(c)).

8. VOLUNTARY CONDUCT
8.1 Are there regulations pertaining to the voluntary conduct of a product repair or recall by a supplier?
Yes. A supplier that initiates a voluntary recall must, within two days of 'taking action' to recall consumer goods, notify the ACCC of that recall (s128 ACL). Section 128 of the ACL sets out a prescriptive set of criteria that requires the supplier to give the ACCC detailed information about the product, the recall process, and where it has been sold, but most importantly, about any defects in the product or risks that the product poses to consumers (s128(7)). The notice will then be published on the ACCC website.

Once this voluntary recall notice has been issued, the ACCC may take further action, including directing further compliance steps or advising the minister to issue a compulsory recall notice of broader application. This means that, in practice, it is best for suppliers to actively engage with the ACCC by seeking input on the supplier's recall plan to reduce the likelihood that the ACCC and the minister will impose a mandatory recall.

9. EMERGING ISSUES AND LAW REFORM
9.1 Are there important developing and emerging issues or trends in product liability law in your country?
A key issue facing the product liability sphere is the possible tightening of regulation regarding litigation funding. Up to this point, litigation funders have avoided much of the regulation that ordinarily attends the provision of other financial products to consumers. At this stage, the official engagement with reform pushes has been limited to:
• comments by the now Federal Attorney General, George Brandis QC, that the litigation funding is ‘under active review right now’; and
• a 15-month public inquiry by the Federal Government’s Productivity Commission into access to justice and the role of litigation funders, which is due to present its findings in 2015.

9.2 Please describe any proposed important law reform in the area of product liability in your country.
In addition, the Federal Government is undertaking a ‘root and branch review’ of the CCA as a whole, including the ACL. However, the terms of reference for this review, released in March 2014, are focused almost exclusively on the competition provisions contained in the CCA, rather than the consumer protections provided in the ACL.

10. REGULATORY WEBSITES/INFORMATION
10.1 Please identify any useful regulatory references relating to product liability law in your country, for example, a product safety/consumer law website maintained by the main regulator.
• ACCC website: www.accc.gov.au/
• Product Safety specialised website maintained by the ACCC: www.productsafety.gov.au/content/index.phtml/itemId/970225

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