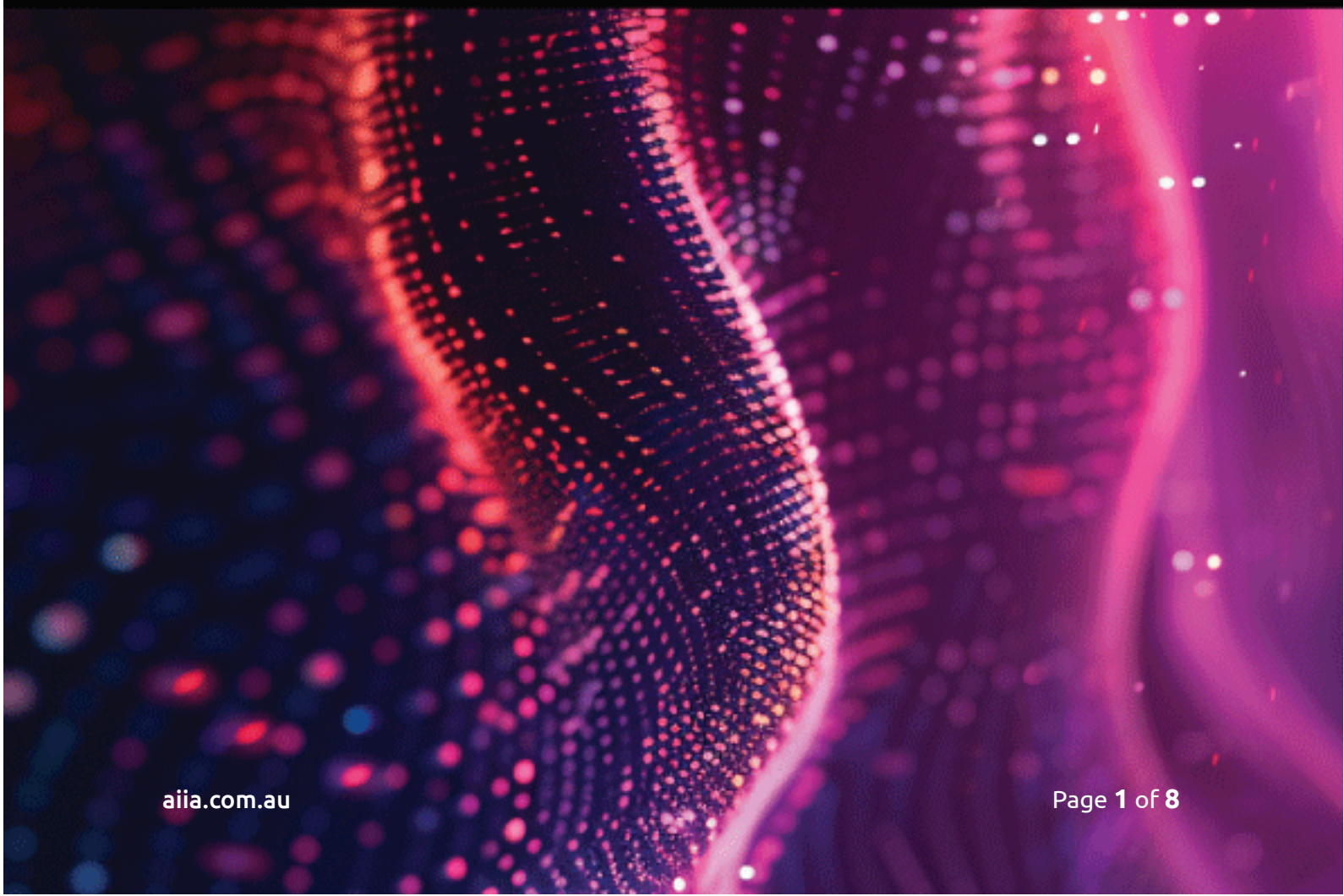
Australian Information Industry Association

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Submission on

Strengthening post-market regulation of unsafe products in the Australian Consumer Law



About the AIIA

The Australian Information Industry Association (AIIA) is the nation's peak body for those in the digital ecosystem, leading strategic policy and advocacy to shape a thriving digital sector. Through strong engagement with government, industry, and the broader community, the AIIA ensures the voice of its members informs decision-making on technology, innovation, and digital capability.

Membership provides direct access to influential networks, premium events, and opportunities to collaborate on initiatives with the sector's best and brightest to drive industry growth, improve productivity, and secure Australia's place as a global technology leader. AIIA members access real collaboration, real connections, and real outcomes.

Executive Summary

AIIA's submission makes four key recommendations:

1. **Clarify software and firmware recall obligations.** Recall notifications should apply only to corrective action addressing identified safety hazards. Routine cybersecurity patches, software maintenance, warranty repairs and quality improvements should be expressly excluded to avoid unnecessary regulatory uncertainty and delays to beneficial updates.

2. **Retain the term 'voluntary recall'.** The terminology is internationally recognised and distinguishes supplier-initiated recalls from compulsory recalls. Renaming it would create unnecessary administrative costs and inconsistency without demonstrated consumer safety benefits.

3. **Oppose cost recovery for compulsory recalls.** Suppliers already bear substantial recall and remediation costs. Additional regulatory charges could increase consumer prices, discourage market participation and raise procedural fairness concerns. If introduced, strict safeguards should apply.

4. **Oppose mandatory near-miss reporting.** Broad reporting requirements would create significant compliance burdens, duplicate existing manufacturer safety processes and risk overwhelming regulators with low-risk incidents.

AIIA encourages Government to focus on improving regulatory clarity, consistency and risk-based enforcement rather than expanding reporting obligations and compliance costs. Any reforms should be developed in consultation with industry, supported by practical guidance and targeted towards demonstrable improvements in consumer safety.

Introduction

The Australian Information Industry Association (AIIA) welcomes the opportunity to respond to Treasury's Consultation Regulation Impact Statement (RIS) on Strengthening post-market regulation of unsafe products in the Australian Consumer Law.

AIIA supports the Government's objective of a post-market framework that identifies genuine product safety risks early and enables timely, effective action to address them. For the technology sector, where products are designed and certified across many markets at once, that framework works best when obligations are clear, proportionate and consistent with international practice.

Option 3(a): Software and firmware updates as recall action

AIIA supports clarifying when the section 128 notification requirement is triggered. However, any definition must clearly separate genuine safety corrective action from routine software activity.

The Consultation RIS canvasses a non-exhaustive list of recall actions that includes "updating software or firmware used in or by the product" when taken to address "a safety risk, or potential safety risks". Technology suppliers release updates constantly, and most have no *safety* purpose. Without a clear boundary, suppliers will face uncertainty about whether an update must be notified. Some may delay beneficial updates while they assess reportability, which would work against both safety and security.

Three aspects of the proposal concern AIIA:

- **"Potential safety risks" is too broad.** Almost any change to battery management, thermal or power behaviour could be described as addressing a potential risk. Notification should be triggered only where the supplier has identified a safety hazard that will or may cause injury.
- **Exclude routine software and non-safety-related corrective actions.** This should include cyber security patches and vulnerability remediation that do not address an identified consumer safety hazard; software maintenance, performance, compatibility and feature updates unrelated to product safety; normal warranty repairs and replacements that do not constitute safety corrective action; and quality improvements or running changes to products in production.
- **Warranty and quality activity must be excluded.** Normal warranty repairs, quality improvements and running changes to products still in production are not recalls and should not be notifiable.

AIIA recommends that Government:

1. Define recall action as corrective action taken to address an identified safety hazard in goods already supplied, broadly consistent with ISO 10393:2013.

2. Expressly exclude routine cybersecurity patches and vulnerability remediation; software maintenance, performance, compatibility and feature updates; normal warranty repairs and replacements; and quality improvements or running changes to products in production.

3. Develop guidance with worked examples in consultation with industry before any definition commences.

Option 3(b): Terminology of "voluntary recall"

AIIA does not support renaming "voluntary recall". The term is long-established, internationally recognised and clearly distinguishes supplier-initiated recalls from regulator-mandated recalls. Renaming it would impose administrative costs on regulators and industry, without evidence that it would improve recall effectiveness, reduce injuries or enhance consumer safety outcomes.

The term is used across major comparable jurisdictions, including the United States,[1] Canada[2] and New Zealand,[3] to distinguish recalls initiated by suppliers from recalls ordered by regulators. Manufacturers, importers, retailers, legal advisers and regulators all understand it.

Changing the terminology in Australia would:

- create inconsistency with international recall programs, including joint trans-Tasman recalls
- introduce confusion for multinational suppliers
- require updates to global recall procedures, templates and training
- create unnecessary divergence from established international practice.

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[1] United States Consumer Product Safety Commission, *Recall Handbook* (Report) https://www.cpsc.gov/s3fs-public/8002.pdf

[2] Health Canada, 'Recalling Consumer Products: A Guide for Industry', Government of Canada (Web Page) https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/industry-professionals/recalling-consumer-products-guide-industry.html

[3] Ministry of Business, Innovation and Employment (NZ), 'Product Recalls Explained', Product Safety (Web Page) https://www.productsafety.govt.nz/for-businesses/product-recalls-information-for-businesses/product-recalls-explained

For global manufacturers managing recalls across Australia, the United States, Canada and Europe, common terminology improves efficiency and consistency. The Consultation RIS itself acknowledges that the current term "is well understood by many suppliers" and that a change "could lead to some confusion around the recall obligations".

The proposal would also not remove the underlying legal distinction, which the Consultation RIS confirms would be retained. A new label would simply sit over the same two categories. Consumer-facing recall notices need not use the word "voluntary" at all. If there is concern about how the term is perceived, ACCC guidance and recall templates can emphasise the safety purpose of a recall without legislative change.

Option 4(d): Cost recovery for compulsory recalls

AIIA does not support recovering the regulator's costs of a compulsory recall from suppliers. Suppliers already bear most of the cost of a recall. Adding regulatory costs would ultimately be passed on to consumers, or would discourage new suppliers from entering a market where the cost of doing business is already high.

A compulsory recall notice can already require suppliers to repair, replace or refund products at their own cost, notify affected consumers, inform the public, and act in a set way by a set date. Suppliers also carry logistics, communications, remediation and reputational costs. The Consultation RIS acknowledges that higher compliance costs under this option "may result in some costs being passed through to consumers".

Cost recovery would also raise practical and fairness concerns:

- Costs may fall on the wrong party. Where the responsible party is offshore or cannot be identified, costs risk falling on the local supplier or distributor that can be found, rather than the party that caused the hazard.
- It may chill procedural fairness. Suppliers may be reluctant to use the conference process or contest evidence if doing so extends billable regulatory activity.
- It weakens efficiency incentives. The regulator would determine both the scope of its oversight and the amount charged for it.

If Government nonetheless proceeds, AIIA recommends that any framework:

1. recovers costs only after recall obligations and consumer remediation are complete
2. is limited to direct, identifiable and efficiently incurred costs, set out in a published Cost Recovery Implementation Statement
3. does not apply to suppliers that cooperated with the regulator or began corrective action in good faith

4. includes merits review of cost decisions and a hardship mechanism for small businesses.

Option 6(b): Mandatory reporting of near misses

AIIA does not support mandatory reporting of near misses. It is unnecessary, and expanding the reporting threshold may reduce the effectiveness of the existing system while significantly increasing compliance burden.

Near misses are subjective and difficult to define. Unlike a death or serious injury, a near miss is open to interpretation. Examples of incidents that may raise questions about reportability include:

- a laptop battery swelling, with no fire
- an AC adapter overheating, with no property damage
- minor smoke emission during abnormal misuse
- a product dropped during testing, exposing internal parts.

Each raises questions with no objective answer. Was there a realistic possibility of injury? Was the event caused by the product's design or by misuse? Was it a quality issue or a safety issue? Different suppliers would assess the same event differently. The result would be inconsistent reporting, over-reporting, regulatory uncertainty and disputes about reportability. The Consultation RIS acknowledges that defining a near miss "may create uncertainty about whether an incident is reportable". The suggested test, whether a failure "could reasonably have resulted in" death or serious injury, is counterfactual and could capture a broad range of electrical and battery faults, including incidents where the likelihood of serious harm is remote.

It creates a serious signal-to-noise problem. The ACCC's objective is to identify genuine safety risks early. For every confirmed battery fire, a supplier may receive hundreds of battery swelling reports, thousands of warranty returns and numerous complaints with no confirmed defect. Most do not represent a significant safety risk. The ACCC already received over 9,000 product safety reports in 2025, around 3,000 of them from suppliers.[4] Adding large volumes of low-risk, unverified events would make serious hazards harder to see. The Consultation RIS itself notes that additional reports "may make it more difficult for regulators to identify the most significant safety risks".

Even under the current reporting threshold, suppliers often cannot verify the incident reports they receive. They depend on information from consumers that may never be provided, and some reports later prove to be inaccurate or false. The following case illustrates the challenge.

[4] The Treasury, Strengthening Post-Market Regulation of Unsafe Products in the Australian Consumer Law (Consultation Regulation Impact Statement, September 2026) 34.

Case study: An unverified report of a serious incident

A customer reported to a technology supplier that their laptop keyboard had become extremely hot during use. The supplier's support team sent several requests for further information and diagnostic data, but received no response.

A week later, the customer advised that the laptop had allegedly exploded while charging the day after the initial report, and that they had been hospitalised with severe burns to their body and face. The supplier sent multiple further requests for details of the incident. None were answered.

The supplier then received an email from a person claiming to be a family member of the customer. It advised that the customer had died from complications arising from the reported burn injuries, and asked that the family not be contacted while they grieved. Acting on legal advice, and out of respect for the request, the supplier decided to wait three weeks before seeking further information.

In the meantime, the supplier escalated the matter to its board, its local legal team and its global product, legal and communications teams. Public statements were prepared but held pending verification. The supplier also confirmed with the relevant state coroner's office that a death of this kind would be reportable by the hospital, and that no such report had been received.

When the supplier contacted the family member to seek details for its product safety investigation, it was told that no one had died. The customer had accessed the family member's email account and sent the message as a prank.

Despite repeated requests, the supplier was unable to obtain the information needed to verify the reported incident, yet the matter consumed significant legal, product and senior management resources. A near-miss reporting regime would require suppliers to assess and report far more incidents, many with even less information than this one. The result would be more reports of uncertain reliability, without any corresponding improvement in the ACCC's ability to identify genuine hazards.

Existing quality systems already capture near misses. Major manufacturers track complaints, field returns, warranty trends, battery events and thermal incidents, and run CAPA processes. These operate globally and are continuously monitored. Near misses are already investigated, trended and escalated where needed. Where a pattern points to a hazard, suppliers act, and a resulting recall must be notified. Mandatory submission of every such event would duplicate this work.

There are better ways to improve reporting. The Consultation RIS notes that some compliance challenges stem from confusion about when the reporting clock starts and what must be reported. Clearer thresholds and ACCC guidance with worked examples would address this directly.

If Government nonetheless proceeds, AIIA recommends that any requirement:

1. be limited to serious near misses, defined by a closed, objective list of events developed with industry
2. apply only once the supplier's investigation has confirmed a product failure, rather than misuse, that presents a safety hazard
3. exclude events arising from abnormal misuse or testing, and warranty returns without a confirmed hazard.