

choice

MASS INCIDENT REPORT TO THE ACCC
Consumer reports of Thermomix product failure and
serious injuries



MAY 2016

WWW.CHOICE.COM.AU E CAMPAIGNS@CHOICE.COM.AU
57 CARRINGTON ROAD MARRICKVILLE NSW 2204 P 02 9577 3333 F 02 9577 3377

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

To find out more about CHOICE's campaign work visit

www.choice.com.au/campaigns



57 CARRINGTON ROAD MARRICKVILLE NSW 2204
P 02 9577 3333 F 02 9577 3377

CONTENTS

INTRODUCTION.....	4
Summary of findings.....	6
1. Safety incidents.....	7
Near misses: worried consumers who have avoided injury	7
Ongoing mechanical problems.....	7
Injuries.....	8
2. Response to complaints.....	11
Thermomix Australia’s approach to complaints handling	11
Use of Non-Disclosure Agreements	14
Mandatory reports.....	15
3. Issues with the Thermomix Australia TM31 recall.....	16
Adequacy of the green sealing ring fix.....	17
Appendix One: reports from consumers who saw a doctor or a nurse	21
Appendix Two: other documents provided to the ACCC.....	24

INTRODUCTION

CHOICE has worked with consumers to gather cases asserting harm that has come from use of Thermomix products. We present the cases received together as a mass safety incident report to the Australian Competition and Consumer Commission (ACCC).

Through this mass incident report, a number of consumers assert that the TM31 has caused them severe harm. Other consumers say they have received minor burns or near misses and remain understandably cautious about using their Thermomix. These people have been left holding a \$2000 machine they don't feel is safe to use.

Most people who complained to Thermomix in Australia (also referred to as Thermomix Australia), the national distributor of Verwork Thermomix products, were unsatisfied with the response. Reports say Thermomix Australia blames customers for safety incidents, at times belittling or intimidating those making a complaint. Their approach appears inconsistent; in some cases where a Thermomix user has been severely burned they have received no response to a complaint, in other cases consumers are given a full refund and in others customers are being told that they must sign a non-disclosure agreement to receive any remedy.

Consumers need a clear answer from the ACCC: are TM31 devices safe to use? Based on the information reported to CHOICE, we have serious concerns that some TM31 machines are unsafe to operate, particularly with hot liquids. CHOICE requests that the ACCC issue a safety warning notice about TM31 products while conducting an investigation to determine whether reasonable use of TM31 machines (including reasonable misuse) may cause injury to consumers.¹ It is CHOICE's hope that further investigation from the ACCC will lead to tangible action for consumers, with those at risk of harm better protected and consumers being given access to remedies that are currently limited.

It is also unclear to CHOICE - and to many Thermomix customers - if the problems they are experiencing with the TM31 mean that their product has a major failure. This would mean consumers could receive their choice of a repair, refund or replacement under the Australian Consumer Law. This should be clarified by the ACCC as a matter of urgency.

¹ As per Competition and Consumer Act (2010), s129.

CHOICE also calls for the ACCC to investigate the following matters which are supported by complaints in this report:

- Did Thermomix Australia take appropriate and timely action when first notified of safety issues?
- Has Thermomix Australia acted appropriately in issuing and promoting the product recall in October 2014? Does the fix address consumer problems?
- Did Thermomix Australia make all mandatory reports as required when notified that their product caused significant injury?
- Is Thermomix Australia treating customers fairly, offering consumers the option of repairs, refunds or replacements in the case of a major failure?
- Is Thermomix Australia's use of non-disclosure agreements fair or does it restrict consumer rights to a remedy under Australian Consumer Law? Does this conduct constitute a breach of sections 18, 29(1)(m) or 64 of the Australian Consumer Law?
- Has Thermomix given all customers appropriate information about the need to change sealing rings in TM31 products every two years?

CHOICE urges the ACCC to use its powers under s155 of the Competition and Consumer Act 2010 to compel Thermomix to provide documents or information relating to any likely breach of the Australian Consumer Law detailed in this report, including non-disclosure agreements and other related documents

Summary of findings

CHOICE called for case studies from Thermomix owners from 29 March 2016 to 5 May 2016. These are the headline results.

- We received 94 reports, 87 of which were about problems with a Thermomix product.²
- There are two recent Thermomix products: the TM31 and the recently released TM5. 83 of the reports CHOICE received were about the TM31, four reports are about the TM5.³
- In 45 cases, a consumer reports being harmed. Two of these cases were from a consumer using a TM5, 43 were from a consumer using a TM31.
- 18 reported having to receive treatment from a doctor or nurse as a result of the injury.
- Eight reports came from people who were hospitalised as a result of the incident. Six of these reported being treated in a specialist burns unit for a number of days, up to three weeks.
- Of the 45 reports from consumers who were injured, 12 came from people injured before the October 2014 TM31 recall. 18 people were injured after the recall but were using the green sealing ring supplied to allegedly rectify problems. Nine people were injured after the recall and were not using the green sealing ring.⁴
- 53 people complained to Thermomix Australia. Of these, only five people said they were happy with the resolution or the quality of customer service.

All 87 cases have been referred by CHOICE to the ACCC, including any additional hospital reports or photos that we had permission to pass on. People making a complaint through the CHOICE online complaint tool had the option of choosing to pass on personal details to the ACCC and these requests have been honoured. However, given the public nature of this report, all personally identifiable information has been redacted. Cases are referred to by a number assigned to them.

² Four reports were from customers wanting to note positive experiences with their Thermomix and three reports were from people using other products.

³ In 10 cases consumers entered TM5 as their model number, the default in the reporting tool drop down menu, but case details indicate that their machine was purchased before the TM5 was released in Australia or specifically refers to using a TM31. In these cases, we've noted this in our report to the ACCC but recorded the complaint as about a TM31.

⁴ In six cases it wasn't clear what date the incident occurred or the green sealing ring/recall was not applicable.

1. Safety incidents

The 87 complaints received from Thermomix owners show that people are worried about using their machine. People have been seriously injured or seen their product act in a way that makes them worry about using it in future.

Near misses: worried consumers who have avoided injury

26 people reported a 'near-miss' incident with their Thermomix. In these cases, owners say their machines spat or exploded hot food but they were lucky enough to not be harmed.

I was making mash potato and I was up to the last function which was the mashing the timer was counting down from 30 seconds at 20 seconds the machine started violently shaking almost falling off the kitchen bench knocked into our wall then started splattering boiling mash potato this is when I moved away - Case 55.

When on high speed (8+) machine shakes and moves around table. Also had some liquid spit out when on high speed as well. Don't use it as much now as scared. – Case 10.

My soup went everywhere. It has happened more than once. It has never burned me and the lid didn't come off but the thick soup was all over my kitchen. The setting was on 1-3 in all occasions. We left it in the kitchen unattended and thank god we did – Case 33.

Many people who have experienced a near-miss no longer feel comfortable using their machine. Some report no longer using their machine at all, others report only using the machine with cold ingredients. A few people who experienced near-misses noted that the machine is often used by children who assist with cooking and this is one of the primary reasons they no longer feel safe making hot items in the machine.

Ongoing mechanical problems

33 people reported ongoing issues with their machines such as lids unlocking (particularly when used at high speeds), liquid spilling out of the sides and mechanical failure. A lid moving to the unlocking position while in use is the most commonly reported problem. Many reports about ongoing problems came from people who also experienced near-miss incidents.

Lid unlocks frequently when in use. – Case 25.

I have watched lid carefully and noticed it moving towards open position when operating at higher speeds - so have decided not to blend hot liquids at high speed – Case 35.

My lid slips to the unlock position when I puree hot liquids at high speeds- 9. I hold it in place to ensure it doesn't slip off as I have seen the horrific burns people have suffered and don't want this to happen to me. I am using the replacement seal as the original is even looser. – Case 44.

Sporadic opening of lid, loud grinding noises and smell. Not functioning properly, not cutting things properly. I contacted Thermomix about my machine 3 times, it was sent back twice. - Case 53.

Injuries

45 people reported being injured when using their Thermomix. Injuries ranged from small burns to significant burning requiring intensive treatment at hospital burns units. Two of these reports are for the TM5 models and 43 are for the TM31 model.

Understandably, burns have caused consumers significant distress. Many people are no longer using their Thermomix or no longer using their Thermomix for hot liquids.

A lot these reports come from people who were using their Thermomix to puree or mix hot liquids. In some cases, consumers say a lid came loose or popped off. In other cases, they report the measuring cup which sits in the middle of the TM31 model lid has been forced out, causing hot liquids to explode across kitchens. A sample of incident descriptions below reports the range of activities that consumers say led to injuries. Several consumers noted that they were following Thermomix recipe instructions precisely before the incident.

Was cooking vegetable nachos in thermomix on varoma reverse speed 3-4. My daughter was drawing on the bench about a 1- 1.5 meters away. About 15 mins into the cooking. I hear a scream only to find her with a big chunk of the vegetable

mix on her arm. Provided immediate burns care...Was a partial thickness burn. Mc was on during cooking process⁵- Case 63.

I was making bolognaise sauce. I had heated it to 100 degrees, then I started to blend it and the measuring cup (small lid) shot off and my nose, right side of face, chest and right shoulder was splattered with hot sauce. Kitchen was also covered. – Case 51.

Was cooking a recipe, followed recipe exactly. The machine was in action pureeing. My whole family was in kitchen at time the machine exploded, I blocked most of them from being harmed. – Case 73.

... I was preparing & cooking Cauliflower Soup from Everyday Cookbook Thermomix, page 79. I followed the instructions and at the step 4, blend 1 min/speed 9. I was gradually increasing the speed of the machine, the machine was vibrating & rocking, I had reached approximately speed 5 when I saw the lid move completely to the right, as I moved closer to turn the machine, the lid exploded off with the 100 oC hot soup flew out and over my chin, neck, chest, both arms. I screamed at the excruciating pain and moved away from the machine to the opposite side of the kitchen. I looked down at myself and saw the skin from the underneath the top of my left arm peel off. – Case 38.

I was making pumpkin soup- it had cooked for about 20 minutes. I then blended the soup at high speed, which I'd done many times before. The machine started to wobble across the bench and spit. I went to stop it and the lid blew off sending soup all over the kitchen, onto the ceiling and on to my face. – Case 68.

We asked consumers to let us know if anyone was hurt and, if so, what was the nature of the injury. In all reported cases of physical injuries, consumers were burned by hot food or liquid, some so badly they required weeks of treatment at hospital burns units. Below is a sample of consumer descriptions of their injuries and the treatment required.

I was badly burnt when cooking pumpkin soup....it exploded leaving me scared and hot soup all around my kitchen. I was grateful [sic] my kids were not in the kitchen at the time. i had to dress wound and husband took over cleaning kitchen and

⁵ MC refers to the measuring cup in the Thermomix lid.

looking after kids...i now only use thermo to chop or make only cakes as too scared and nervous to cook in it – Case 32.

I was injured receiving second degree facial right shoulder and chest burns... I have minor scars, marks remaining which can mostly be covered by makeup. I am required to avoid all direct sunlight in the burns for anothr [sic] 18 months (two years in total), even when I am wearing factor 30 Or 50 sunscreen. – Case 51.

I was burnt on my left forearm, chest and upper right arm. I was just thankful my 6 month old and 2 year old weren't hanging from my legs like usual. I was also still breastfeeding my baby, her head when feeding rested in my forearm, directly on the burns. The hospital did a good job of patching me up, although I've scarred, but it made life with 2 little ones very hard for quite some time. – Case 75.

2. Response to complaints

Thermomix Australia's approach to complaints handling

While a few customers noted exceptional customer service from Thermomix Australia, most were extremely disappointed. Many felt bullied, ignored or made to feel as though the safety incident was their fault.

53 people complained to Thermomix Australia. Of these, only five people said they were happy with the resolution or the quality of customer service.

An alarming number of consumers say they struggled to get any response from Thermomix Australia. In some cases, consumers reported more success if the consultant who they purchased the product directly from was able to escalate a complaint for them. Others, including some consumers who were so badly burned that they received treatment from a doctor, say they never received a response.

I mentioned it to one of the Thermomix consultants who called me to check that I received green seal and he said someone will follow up, but no one ever did. I sent numerous emails to Thermomix without any reply. their representative that sold me machine, stopped working for them and referred me to email on which on one ever replies. – Case 23.

i contacted them via their web contact form and received no reply. – Case 73 (consumer received treatment in hospital due to severity of burns).

Some consumers who did get a response found the attitude of Thermomix Australia staff confronting. People who had been badly burned or whose machine had a serious failure report being told issues are their fault and say they feel bullied by Thermomix Australia staff. This attitude can extend to public forums, with consumers who raise concerns on social media claiming they were told by the Thermomix community that problems are their fault.

Thermomix never addressed my concerns directly since I began questioning them back in 2014 and never once answered my question for more information on the actual fault with my machine - i.e. is my machine the result of a manufacturing error? They dismissed every query I made with a repeated statement that 'if operated according to instruction the machine SHOULD be safe to use'. On their

Facebook page I was bullied and made to feel ungrateful, repeatedly, that I was complaining about a '1st world problem'. – Case 1.

Tm were rude, would not return e-mails calls or letters. ACCC tried but my only course of action would be tribunal. I am a busy working mum there is only so much time I can spend fighting this cause. It is totally demoralising. – Case 2.

Turned on the machine with material in it, unit exploded and went everywhere, It caused significant distress and then the shaming as I tried to get a refund, but massive mess and unit a writeoff - they blamed me for the unit exploding and would not offer to fix or refund... bullied me, insisted it was my fault, and I was stupid their words. – Case 18.

...called thermomix straight away were we dealt with 2 people who informed my partner it was my fault and I was not using the machine correctly then we had a third person call us later on wanting to know what happened and she told us to send it in we informed her we have no issues sending it in but we want a refund as its not safe and we are to scared to use it going forward as we also have young children. – Case 55.

Some consumers say the attitude of Thermomix Australia has discouraged complaints.

Have not bothered contacting either as Thermomix have not been ultra helpful in the past when I have contacted them & hearing in the media that everyone else has not had any luck in regards to complaints, I felt like it would be pointless complaining. – Case 69.

Unfortunately gave up as the customer service from thermomix is rude and unhelpful. – Case 77.

Thermomix Said there was nothing they could do I have 4 kids and am to scared to use it when they are home – TM31 owner burned while making risotto – Case 79.

In some cases, consumers say Thermomix Australia insisted on taking the affected machine and running tests. Consumers have raised concerns about the accuracy or transparency of these tests, the time it takes to run the tests and the lack of information they receive about results.

... the response was poor and indicated a lack of care. It was only after I went on Facebook with my story that the Perth branch agreed to send, on loan, a replacement TM 5. after much negotiating. We then agreed to send our machine for testing. It has been over 4 months and we have still received no results. – Case 68.

No, they said when they did tests the machine was fine, I kept having problems, it felt like they thought I was making it up. I had concerns about the safety as I often cook with my son. – Case 53.

... after my machine was sent off for nealy [sic] a month and rigorous testing (with water not hot soup being blitzed at same speed as told they don't test via cooking in them) apparently performed by thermomix I was told there was no problem and that it was impossible for the lid to actually come off and normal for it to vibrate and move around at high speed. They also said after checking the machines 'black box' that I was opening the lid too quickly after machine was put to unlock position which seemed a contradiction given thermomix state the machine won't allow itself to be unlocked unless safe. No refund/ replacement or machine repair offered. Given another green seal and lid though. – Case 83.

It took 6 phone calls to get a return response from Thermomix. Thermomix requested the machine to be returned, I was advised by Thermomix that there was nothing wrong with the machine and that Thermomix had sent the machine back to Germany. I was given a new machine TM31 serial number [REDACTED] on [REDACTED] October 2014 with full confidence that the replacement machine was perfect, faulty free & had been thoroughly tested. That this machine did not fall into the green seal faulty range & a green seal was not required. However on [REDACTED] November 2015, a lawyer from Thermomix contacted me to say that this machine was now in the faulty range & a green seal should be used, not to take the machine above speed 4. That a green seal would be sent to my address shortly. I have not received this promised green seal as yet. - Case 38.

CHOICE is particularly concerned about Thermomix communications about the 'black box' in the TM 31 machine. There is little information about what this 'black box' does and what information it collects. For example, it is unclear if and how the machine can record when a lid is opened (although it may be able to record when unlock functions are triggered). Any investigation by the ACCC should examine communications from Thermomix Australia to customers about the 'black box' feature and should determine if any misleading or deceptive claims have been made.

Use of Non-Disclosure Agreements

Some consumers progressed their complaint through state consumer regulators, through tribunals or through other legal means. Consumers report that Thermomix were not cooperative. In some of these cases, Thermomix Australia asked consumers to sign confidentiality agreements to receive remedies.

The lid blew off and hot soup burnt my face, arm, neck and chest. I contacted Thermomix who replaced the machine with two others that both had different faults. I asked for a refund and was ignored. I threatened legal action as I had photographic evidence and finally received a refund. – Case 16.

I feel bullied by Thermomix and am disappointed in how I have been treated. I initially asked if a new model was coming out soon before I purchased this model. They said no so I bought this model. Weeks later the T5 was unveiled and I tried to get a refund after being lied to. They were unhelpful [sic] so I went to Small Claims Court. They bullied me into signing a confidentiality agreement and gave me a recipe book and travel bag instead of the refund I was after. They threatened me not to say anything to anyone otherwise I will be taken to court. – Case 12.

I saw a lawyer and thermomix gave me a settlement but I had to sign a form not to disclose or discuss the incident... At the time yes, it was the best outcome. I didn't know of anyone else who this happened to and thermomix said it was a one off incident and they had never heard of it before. – Case 60.

Based on a Thermomix Australia non-disclosure agreement sent to CHOICE by a consumer on the condition of anonymity, we are concerned that these agreements offer little protection to consumers and grant excessive rights to Thermomix Australia. The agreement seen by CHOICE restricted the consumer from talking about their settlement with others and restricted any discussion which could damage Thermomix or Verwork's reputation. This clause appears overly broad as it prevents the consumer from saying anything disparaging about Thermomix Australia, well beyond the incident covered by the agreement.

[REDACTED] agrees not to disparage or otherwise comment negatively about Thermomix or Vorwerk and not to take any action which it is intended, or would reasonably be expected, to harm the reputation of Thermomix or Vorwerk, or lead to unwanted or unfavourable publicity. – Quote from a Thermomix Australia non-

disclosure agreement provided from a consumer to CHOICE, full contract provided in attachments to the ACCC.

Denying people the ability to discuss their problem with other consumers, regulators and consumer advocates prevents others from learning about the experience and championing change. A non-disclosure agreement also implies that the remedy is provided at the discretion of Thermomix Australia, when it may have been required under the Australian Consumer Law, as products should be of acceptable quality: safe and free from defects. CHOICE requests that the ACCC investigate Thermomix Australia's use of non-disclosure agreements as part of dispute resolution to determine if any claims put forward are misleading or deceptive or unnecessarily restrict consumer rights.

Mandatory reports

Of the 45 people reporting an injury, 18 people say they received treatment from a doctor or a nurse. These cases are summarised in appendix one.

The ACCC guidelines are clear; a supplier must provide a written notice to the Commonwealth Minister for consumer affairs within two days of becoming aware that someone suffered a serious injury or illness that was caused (or may have been caused) by the use or foreseeable misuse of their product.⁶ A serious injury is defined as one that requires medical or surgical treatment by a qualified doctor or nurse. If Thermomix Australia was told about an incident where someone required treatment from a doctor or a nurse, they should have submitted a mandatory report about this to the ACCC within two days.

Based on the information CHOICE has received, Thermomix should have made mandatory reports to the ACCC for at least 10 incidents where consumers received medical treatment because of their injury and contacted the company directly after the incident. CHOICE requests that the ACCC confirms whether mandatory reports were received for each of these incidents documented in the table below (appendix one).

⁶ ACCC (2016), *A guide to mandatory reporting law in relation to consumer goods*, <http://www.productsafety.gov.au/content/item.phtml?itemId=984082&nodeId=11d356437f46d7a5e5209c1ffb7ab894&fn=Mandatory%20Reporting%20Guidelines.pdf>

3. Issues with the Thermomix Australia TM31 recall

On 1 October 2014, Thermomix Australia announced a voluntary recall for a limited range of TM31 machines.⁷ The announcement noted that there was an issue with some TM31 machines: if pureeing food at speeds of 4 or above, then switching to the 'lid open' function could result in liquid splashing out of the machine.

CHOICE has a number concerns with this recall. Each of these matters is considered in detail below:

1. The fault described in the recall does not cover all reported incidents. Further investigation is needed to determine if the recall should have been broader.
2. Reports suggest the fix put in place by Thermomix Australia (supply of green sealing rings) has not prevented further incidents and may not address underlying problems.
3. Thermomix Australia has asserted that this is not a recall and may be restricting consumer access to appropriate remedies.
4. CHOICE believes Thermomix Australia reacted slowly. The recall occurred in October 2014, up to a year after incidents were reported to Thermomix Australia about burns and machine failure.
5. Not all consumers are aware of the need to replace sealing rings every two years, likely placing more people at risk.

Scope of the product recall

The product recall noted a specific risk to people using a range of TM 31 machines:

In rare circumstances, if a potentially affected Thermomix TM31 is operated at high RPMs, (ie at a high speed of four or above) and then is immediately switched to the 'lid open' position, there is a possibility that liquid or food may splash out of the mixing bowl. – Thermomix TM 31 recall.⁸

The reports received by CHOICE suggest that there are other risks, possibly related, that are not captured in the scope of this recall.

⁷ See first known announcement at <https://www.facebook.com/thermomixaustralia/posts/789522371090025> The recall was listed on recalls.gov.au on 7 October 2014 <https://www.recalls.gov.au/content/index.phtml/itemId/1063922>

⁸ See <https://www.recalls.gov.au/content/index.phtml/itemId/1063922>

CHOICE has received reports that lids have come off on their own (either propelling off or from vibrating into unlock mode while operating in another function), reports of consumers saying they have been harmed using their machine at lower speeds and of consumers who say they have been harmed because the measuring cup has been forced out of the lid.

These reports suggest the initial product recall may not consider all incidents consumers have experienced with TM 31 machines. The ACCC should investigate what complaints Thermomix Australia had received prior to the recall and whether the fix proposed adequately addressed all of these problems. The ACCC should also investigate whether complaints made subsequent to the recall should have led to additional action from Thermomix.

Adequacy of the green sealing ring fix

Under the Australian Consumer Law, if a supplier undertakes to repair a good as part of a recall, the repair must ensure that “any defect in the goods identified in the recall notice is remedied.”⁹ Based on the reports received, CHOICE seriously questions whether the green sealing ring fix addresses the problems that a number of TM 31 users continue to experience.

Consumers were asked if they have the green replacement sealing rings that were provided as part of the TM31 recall. 18 people say they were harmed after the recall but were using the green sealing ring supplied to allegedly rectify problems. Nine people say they were harmed after the recall and were not using the green sealing ring.

Multiple reports raised concerns that the green seal did not fix the problems they were experiencing with their TM31:

My machine has often spilled liquid from the start. Replacement seals have made no difference at all and in fact do not even 'click in' to lid which was apparently the reason why the machines were spilling out in the first place! – Case 9.

My lid has not blown off. YET. But at times it either refuses to lock or will slowly make it's [sic] way to the open position while operating. Usually with a higher than speed 4 and hot contents. I don't use it now for hot cooking as I'm concerned and I have a TM5 to use instead for hot cooking. I have one of the 'affected' machines requiring a replacement seal. – Case 24.

⁹ Competition and Consumer Act (2010), s124(2)(a)

I had received the green ring some months before and had no incident. I was making a cauliflower soup one day which I often did. Followed the recipes per the everyday cook book. The last stage of the cooking process is to blend the hot soup to create a smooth yummy soup. On this particular day the lid had come loose. I was very concerned so I reported it to thermomix. They followed up with a call a day later and asked me to send the machine for checking. I did this. It came back with no problem by thermomix. I was a little disappointed as I didn't deem this to normal but the report came back as nothing wrong. Now when I make soup or anything that needs blending I feel anxious after seeing the reports in the media of burns. When I made tomato soup last week I became so anxious that I walked out of the room as now I feel I gave a ticking time bomb sitting on my bench top. – Case 5.

My machine is within the faulty range and Thermomix thought they could fix this by just supply a new sealing ring. The ring does not solve the problem and it leaks. The lid is extremely difficult to put on and take off and I have stopped using the machine for anything hot as someone is going to get burnt if we continue to use it. – Case 20.

The ACCC should investigate if the green sealing ring is an adequate fix to the safety problems identified by consumers. The ACCC should consider if Thermomix Australia has taken into account feedback received by consumers that the green sealing ring is not addressing their problems.

Thermomix promotion of the TM31 recall

CHOICE is very concerned about Thermomix Australia's characterisation of the TM31 recall.

CHOICE has received correspondence from Thermomix Australia insisting that there has never been a recall on TM 31 machines. On 4 March, 2016, Thermomix Australia sent a media statement to CHOICE stating that: "We would like to clarify that the TM31 has never been the subject of a product recall". This media statement has been provided as an attachment to this report.

CHOICE has also received correspondence from Thermomix Australia's lawyers asserting that there has been no voluntary or mandatory recall of a Thermomix product but that "potentially affected customers were instead directed to follow operating instructions in accordance with the notice, and Vorwerk provided replacement sealing rings to those customers."

CHOICE raised this issue directly with the ACCC. The ACCC has confirmed that the TM31 product is subject to a voluntary recall (PRA 2014/14361) initiated on 7 October 2014. It is vital that consumers are given correct information about product recalls. CHOICE requests that the ACCC further investigates claims made by Thermomix Australia about the nature of the TM 31 recall.

Timing of the product recall

CHOICE has received 12 reports of consumers being harmed prior to the sealing ring recall in October 2014. Some of these incidents date back to early 2013.

One consumer reports a serious incident in 2013, possibly over a year prior to the recall, and others in early 2014. The ACCC should investigate when Thermomix Australia first knew about issues with sealing rings and whether the response time was adequate.

Information provided about product safety and sealing ring replacement

The Thermomix TM31 instruction manual does contain warnings about blending hot food at high temperatures and the need to replace sealing rings every two years.¹⁰ The instruction manual states that users should “[n]ever use the turbo button or abruptly increase the speed when processing hot food (Temperature above 60°C), especially if it has not been heated in the Thermomix TM31. Never hold the measuring cup when processing hot food.”¹¹ It is unclear when this warning was added to the instruction booklet or if the advice has always been provided to consumers.

Despite warnings provided in the instruction manual, many consumers say they are unaware of the need to replace TM31 sealing rings every two years. CHOICE asked owners of the TM31 to tell us if they knew that sealing rings needed to be replaced every two years. This was a public poll distributed through CHOICE networks and social media. 3127 people responded to the poll by 9 May 2016. Of these, 2,409 (77%) said they did not know that TM31 sealing rings needed to be replaced every two years. 718 (23%) said they did know.

¹⁰ Thermomix TM31, Instruction Manual for TM31-1C with 220...240 V and Thermomix TM31-4C with 110...127 V. Accessed 6 May 2016, <https://thermomix.com.au/wp-content/uploads/2016/02/TM31-Instruction-Manual.pdf> Relevant warnings on pages 6 and 33.

¹¹ Ibid, page 6.

Given the injuries that consumers report the TM31 has caused, CHOICE believes that this level of awareness of the need to replace a critical part is not good enough.

CHOICE calls on the ACCC to investigate when and how Thermomix Australia has notified customers about the need to replace sealing rings on the TM31 every two years and if communications strategies have changed in response to new information about product safety.

Appendix One

Table one: incident reports from consumers who say they received treatment from a doctor or a nurse because of injuries caused by a Thermomix

Case #	Date of incident	Details of injury	Was Thermomix informed?	Green seal used?	Further notes
16	January 2015	Lid blew off while making soup causing burns to face, arm, neck and chest.	Yes	No	TM5 model caused the injury.
37	Early March 2016	Using TM31, soup exploded causing 2 nd degree burns to chest, left hand and arm.	Yes	Yes	
38	30 March 2014	Making soup, lid exploded causing 2 nd degree burns to approximately 20% of user's body mostly on chest, neck and arms.	Yes	No	Had ongoing issues prior to incident where lid moved into unlock position while in use
45	Approx March 2015	Cleaning function spat hot water causing burns on hand, arm and stomach.	Yes	Yes	Thermomix said they'd note case down but user has not heard anything since.
51	September 2015	Making bolognese, measuring cup shot out of machine at blend stage causing hot food to splatter. User received burns on right side of the face, chest and right shoulder that required treatment at hospital burns unit. Treatment is ongoing, expect two years until total recovery.	Yes – in February 2016	No – was living overseas at time of recall.	User was pleased with how Thermomix handled her complaint. Replacement machine promptly issued.
52	29 March 2015	While pureeing soup, liquid splattered out from underneath the lid causing second degree burns to	Yes	Not applicable	Thermomix took weeks to respond, yet to

		the arm and chest. Scars remain 12 months on.			hear about result of complaint.
56	June 2013	While pureeing soup, the measuring cup burst off and liquid burst out causing second degree burns to hand and wrist.	No	No	Felt that incident was own fault so didn't complain.
57	22 February 2014	While pureeing pasta sauce noticed that sauce was spilling out of lid and measuring cup. Switched machine off and opened lid, machine was still spinning and sauce sprayed out causing second degree burns to chest, neck, face and arms which required several weeks of treatment at a hospital burns unit.	No	Incident occurred before recall.	
60	2013	While blending soup, the lid came off and hot soup splattered over face and arms requiring treatment at hospital burns unit.	Yes	Incident occurred before recall.	"thermomix said it was a one off incident and they had never heard of it before"
62	22 November 2013	The thermomix beeped to indicate it was done blending pumpkin soup, the user opened the lid but hot liquid splashed out causing burns on chest, arm and face.	Unclear.	Incident occurred before recall.	
63	12 January 2015	While cooking vegetable nachos, the thermomix spat out hot vegetables on owner's daughter sitting over a meter away causing a partial thickness burn on her arm requiring hospital treatment.	Yes	Yes	Complained to Thermomix Australia but did not receive a response.
68	28 June 2015	While blending pumpkin soup, the machine wobbled and then the lid blew off causing soup to explode over the room. The user received	Yes	Yes	Complained to Thermomix who took machine for assessment,

		second degree burns on the face that required treatment at hospital burns unit.			has not heard back about result.
72	7 February 2016	Opened machine after blending soup (machine had been turned off and left), hot soup exploded out causing burns to hand and stomach.	No	No	Took no action as assumed it was user fault.
73	January 2015	Machine exploded hot liquid while it was pureeing. User managed to block other family members from harm but received burns to arms, chest and stomach that required treatment at hospital burns unit.	Yes	Not applicable	Contacted Thermomix through online web form and received no response.
75	11 July 2016	While pureeing vegetable sauce, the measuring cup in the lid shot out causing hot sauce to explode throughout kitchen. User burned on arms and chest, requiring treatment at hospital burns unit. User has difficulty breastfeeding baby due to placement of burns.	No	No	
81	24 December 2014	While making sticky date pudding, the measuring cup in the lid exploded and spread hot batter across kitchen. Incident caused burns on arms, hands and face.	No	No	Didn't progress action as machine was purchased from a consultant who was a friend.
82	2014	Measuring cup exploded off while blending soup causing burns to arm.	Unclear	No	
86	May 2016	After measuring cup split, was instructed to place plastic cup on lid. After one use, boiling water shot out near plastic cup burning forehead, hand and arm.	No	Yes	

Appendix Two

List of other documents provided to the ACCC:

- Full case study details, with consumer contact details provided where CHOICE has received permission to pass this to the ACCC.
- Photos, further complaints details and hospital records supplied for some cases.
- Media statements from Thermomix in Australia.
- A non-disclosure agreement set to a customer by Thermomix and provided to CHOICE.