

Productivity Commission's Inquiry into Consumer Law Enforcement and Administration



Prepared by the National Retail Association

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1. About the Submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. The Queensland-based NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

The NRA's membership is comprised of members from all the sub-categories of retail including fashion, groceries, department stores, home wares, hardware, recreational goods, newsagents, fast food, cafes and personal services like hairdressing and beauty. It also includes both large and small businesses, including the majority of national retail chains, as well as independent retailers and franchisees, and other service sector employers.

The NRA has represented the interests of retailers and the broader service sector for almost 100 years. The NRA's aim is to help Australian retail businesses grow.

The NRA wishes to provide its view on six key issues raised in the Draft Report, as follows:

1. Centralising compulsory recall and interim ban powers with the ACCC is a positive step towards consistency
2. Reform is needed of specialist product safety regimes for electrical and gas products
3. Mandatory food reporting should not be part of the ACL
4. A national consumer complaints and incidents database is opposed, unless it would allow businesses to gather and analysis data to identify risks
5. A Retail Ombudsman is not warranted
6. Increase in ACL penalties is not warranted

2. Centralising compulsory recall and interim ban powers is a positive step towards consistency

The NRA agrees that centralising the powers to issue compulsory product recalls and interim bans will strengthen the administration and enforcement of the ACL. Any steps taken to centralise decision-making and ensure a consistent approach to enforcement will be beneficial to businesses and consumers in terms of providing clear and consistent safety messages and the equal treatment of products across state boundaries (which reduces the regulatory burden on business that operate nationally).

3. Reform is needed of specialist product safety regimes for electrical and gas products

Regulation of electrical good and gas products by the specialist regulators in each state is significantly lagging compared to other specialist safety regimes. The NRA considers that electrical and gas product safety regulation should operate the same as other specialist safety regimes with a national law that is applied and enforced consistently by state regulators.

Currently, electrical and gas product safety standards are state-based, but recalls are issued at the national level. Even among the states and territories, there are significant variances in how regulators:

- set product testing levels and requirements;
- develop “Declared” or “Prescribed” lists of products that require approval prior to sale; and
- establish their procedures and processes for addressing potential safety issues.

These variances increase the compliance burden on businesses and create confusion as to the most appropriate approach across different jurisdictions.

A comparison of some of the differences between the electrical safety regimes in NSW, Queensland and Victoria is provided in the table in Annexure A.

The differences between the requirements of regulators present challenges for national

suppliers when some products can be sold in one state, but not in another. Examples of inconsistent outcomes from a multiple-regulator model are provided in the table in Annexure B.

4. Mandatory food reporting should not be part of the ACL

Food should be excluded from the ACCC mandatory reporting regime to remove duplication of national regulation with state and territory regulation. This would reduce inefficiencies by removing time-consuming and unproductive regulation while preserving the overall objective of ensuring the safety of foods. This is not a new issue, but it is yet to be addressed as the Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015 (the Bill) lapsed after Parliament was prorogued in April 2016. The Bill proposed to remove the mandatory reporting requirement in relation to food. We would recommend the Bill be reintroduced.

We also strongly support the proposal of extending the mandatory reporting timeframe from 2 days to 4 days or more. The current timeframe does not allow sufficient time to thoroughly conduct investigations, which can lead to incomplete and inaccurate reporting or unnecessary reporting where, after a thorough investigation, it is established that the product did not cause the injury.

5. A national consumer complaints and incidents database is strongly opposed, unless it would allow businesses to gather and analyse data to identify risks

There is not a need or a clear benefit for the establishment of a national consumer complaints database (such the NSW Fair Trading Complaints Register). There are considerably more detriments to businesses than benefits which are likely to arise from this exercise, in particular because:

- it is not clear what, if any, minimum threshold will apply before businesses are named on the register, however:
 - businesses should have the opportunity to respond and resolve the customer incident or complaint before it is published;
 - complaints should be carefully validated as regarding legitimate consumer law issues to avoid unfairly and adversely affecting a company's reputation;
 - vexatious or frivolous complaints should not be counted;
- simply publishing complaints or incidents is unlikely to help identify any particular issue that warrants concern, and could simply create more "noise" which may obfuscate the real trends and issues;
- businesses which are large retailers, selling millions of products a year, would be disproportionately represented based purely on scale and not necessarily because there are any legitimate consumer or safety issues; and

- there has, to date, not been any public review of the effectiveness of the NSW Fair Trading Complaints Register.

In conducting the cost/benefit analysis, inquiries should be made of State fair trading regulators as to the number of complaints that are:

- (a) swiftly resolved, or
- (b) vexatious, baseless or founded on a misunderstanding.

However, there may be potential benefits to regulators, businesses, consumers and industry generally, if a national database was established to identify issues with particular products (as opposed to businesses). For example, publishing the number and descriptions of validated safety incidents in relation to certain products would allow regulators and businesses to identify, analysis and assess the known risk associated with particular products.

6. A Retail Ombudsman is not warranted

The retail industry is already heavily and adequately scrutinised by regulators to ensure that businesses are compliant with applicable laws, standards, codes of conduct and do not mistreat consumers or suppliers. Consumers already have several avenues for making complaints and resolving issues with businesses including under the consumer guarantees, approaching ACL regulators, industry bodies, the media and the businesses themselves.

Many businesses are required to comply with mandatory and voluntary product safety standards, mandatory information standards, The Grocery Code of Conduct, the Franchising Code of Conduct, court enforceable undertakings and other measures which ensure that consumer laws and other regulations are enforced and appropriate standards are set for business behaviour.

7. Increase in ACL penalties is not warranted

An increase in penalties under the ACL is not warranted. Businesses already have significant willingness and incentives to comply with the ACL, and an increase in penalties is unlikely to change this. However, it could result in significantly disproportionate enforcement outcomes, particularly for small businesses. However, there is a need for equal treatment (including in relation to the amount of penalties issued under infringement notices) regardless of business size or structure or model. Penalties under the ACL are already significant in the eyes of retail businesses and are certainly not regarded as an acceptable cost of doing business.

8. Contact information

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Annexure A

Electrical safety regimes – Major differences			
	NSW	Victoria	Queensland
Electrical equipment covered	Products operating at voltages above 50 volts a.c or 120 volts d.c	All electrical equipment, regardless of voltage	Products operating at voltages above 50 volts a.c or 120 volts d.c
Requirements for local manufacturers and importers (first sellers) of electrical equipment	<p>Lower risk electrical products must meet minimum safety requirements.</p> <p>Higher risk electrical products must meet particular standards, have a current electrical approval, and have required marking when offered for sale.</p>	<p>All electrical products must meet minimum safety requirements.</p> <p>Higher risk electrical products must have a current electrical approval, and have accepted marking when offered for sale.</p>	<p>All electrical products must meet minimum safety standards as well as product specific safety standards.</p> <p>All electrical products must be marked with the regulatory compliance mark (RCM).</p> <p>Australian manufacturers or importers (responsible supplier) pay an annual fee to be registered on a database.</p> <p>Higher risk electrical products must be registered (annual fee) prior to sale.</p>
Requirements for subsequent sellers of electrical equipment	Same as for first sellers	Same as for first sellers	<p>All electrical products must meet minimum safety standards.</p> <p>All electrical products must be marked with the regulatory compliance mark (RCM)</p> <p>Higher risk electrical products must be registered in relation to a registered responsible supplier at time of purchase.</p>

Annexure B

Examples of inconsistent outcomes			
Product example	NSW	Victoria	Queensland
Unsafe self-balancing scooters (hoverboards)	<p>Not covered by current NSW electrical safety legislation.</p> <p>Note: NSW is proposing new legislation that will allow them to declare high risk battery products, enabling them to regulate them.</p>	<p>Self-balancing scooters are electrical equipment in Victoria. They must meet minimum safety requirements. ESV can prohibit sale of unsafe products.*</p> <p>Note: ESV issued a prohibition notice for self-balancing scooters not meeting ESV requirements, effective 1 July 2016.</p>	<p>Not covered by current Queensland electrical safety legislation.</p>
<p>Electrical toaster purchased from reputable supplier by retailer, but not yet sold.</p> <p>Compliant at time of purchase from supplier and still covered by a valid electrical approval, however not meeting currently required electrical safety standards.</p>	<p>Product cannot be sold if current NSW gazetted standards are not met.</p>	<p>Likely to be saleable in Victoria.</p> <p>Can be sold provided the electrical approval is current, the product is correctly marked and minimum safety standards are met.</p>	<p>Likely to be saleable in Queensland.</p> <p>Can be sold provided the toaster was registered in relation to a responsible supplier at the time it was purchased, is marked with the RCM, and meets minimum electrical safety standards.</p>
<p>Electrical toaster purchased from reputable supplier by retailer, but not yet sold.</p> <p>Compliant at time of purchase from supplier however the electrical approval has expired.</p>	<p>Cannot be sold in NSW.</p> <p>Product cannot be sold once electrical approval has expired.</p>	<p>Cannot be sold in Victoria.</p> <p>Product cannot be sold once electrical approval has expired.</p>	<p>Likely to be saleable in Queensland.</p> <p>Can be sold provided the toaster was registered in relation to a responsible supplier at the time it was purchased, is marked with the RCM, and meets minimum electrical safety standards.</p>