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Commission

Productivity Commission Study into Consumer Law Enforcement and Administration

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Contents

Executive summary.....	2
Introduction	5
The Productivity Commission Study	5
Regulator performance	6
Proportionate, risk-based enforcement of the ACL	6
Our Compliance and Enforcement Policy	6
Measures of success.....	8
Tools and remedies available to ACL and specialist regulators	9
ACL and specialist regulator resourcing	10
Regulator coordination	12
ACL regulator coordination.....	12
Product safety ACL regulator coordination	15
Specialist regulator coordination	15
ACCC and ASIC.....	16
Consumers' and businesses' experiences under the ACL regime	17
Information sharing	18
Current arrangements between ACL regulators to share information and intelligence..	18
Project Sentinel	19
ANAO recommendations on information sharing	19
Introduction of a national database for ACL complaints.....	20
Specialist regulators.....	21
Institutional architecture for consumer safety regulation.....	24

Executive summary

The Australian Consumer Law (ACL) commenced on 1 January 2011. It created a uniform consumer and fair trading law across the Commonwealth, States and Territories, administered by consumer protection regulators (ACL regulators) at each level of government (the multi-regulator model). The ACL and the multi-regulator model was a significant harmonisation of laws. The previous consumer and fair trading regime applied different laws nationally and in each State and Territory.

The ACL and the multi-regulator model were adopted to:

- enhance consumer protection, reduce regulatory complexity for businesses and encourage the development of a seamless national economy and
- improve consumer wellbeing through consumer empowerment and protection, foster effective competition and enable the confident participation of consumers in markets in which suppliers trade fairly.

The Australian Competition and Consumer Commission (ACCC) endorses the current model and is of the view that significant progress has been made toward realising these goals. Progress has been strongest where ACL regulators have worked closely together and each has had sufficient resources and expertise to contribute meaningfully toward these goals in either complementary or coordinated ways.

The current and future success of the one law, multiple regulator model relies upon sufficiently resourced regulators that deliver on complementary roles and coordinated approaches.

Importantly, the one law, multiple-regulator model allows different regulators to provide different contributions in a complementary manner. While there are important variations in approach, at a high level the capacity of State and Territory ACL regulators to address localised conduct and provide conciliation or complaint resolution functions for consumers complements the ACCC's enforcement and compliance model that endeavours to address more systemic and national matters. Broadly:

- the State and Territory ACL regulators have responsibility for ensuring a safe and fair marketplace in their jurisdiction - they are responsible for individual dispute resolution, conciliation, mediation and State based enforcement and compliance activities
- the ACCC takes a national approach to enforcement, compliance and education, allocating resources to the issues of greatest risk of consumer detriment including serious consumer product safety issues - we do not engage in individual dispute resolution, conciliation or mediation.
- ASIC undertakes enforcement, compliance and education to promote confident and informed participation by investors and consumers in the financial system.

These complementary roles are not strictly demarcated and the model has allowed regulators at different levels to coordinate areas of cross over. A number of examples of this successful coordination between ACL regulators are outlined in box 1. However coordination alone is not a substitute for the differentiated but complementary role of the various regulators and the presence of State and Territory regulators in conciliation and local interventions is critical for consumers.

While the ACCC is an effective regulator with a broad remit, it is unable to increase activity in areas vacated (in whole or in part) by other regulators without significant opportunity cost.

To continue to be effective, it is essential that at every level, the ACL regulators and specialist regulators:

- are appropriately funded
- have the graduated enforcement powers necessary to proportionally and effectively enforce the law
- readily share information and collaborate and
- have an enduring culture of robust activity within their area of responsibility.

Under-resourcing a regulator at any level in the multi-regulator model results in gaps in the consumer protection regime that other regulators are often unable to pick up. The ACCC's resources are currently fully utilised. For example, we are currently able to pursue an average of 30 litigations per year in response to all obligations set out in the *Competition and Consumer Act 2010* (the CCA), not just consumer protection. We also address a considerable number of matters without resort to litigation, but even this leaves many reports and complaints to which the ACCC cannot respond. We regularly prioritise one matter over a number of others in circumstances where each is causing material detriment to consumers.

ACL regulators cannot replicate the focus and expertise that specialist regulators deliver. Where governments decide to dilute or remove specialist regulator capacity, ACL regulators will be unable to deliver consumer protection in the same way.

Parliaments have identified enhanced public risk or the need for particular expertise and established specialist regulators in several industries. It is not sustainable to remove or reduce those specialist regimes and expect the same level of attention and expertise from generalist regulators. While ACL regulators can and do provide strategic interventions in important matters and while the ACL provides an important role to assist with emerging practices, they are not substitutes for specialist regulators.

For example, specialist areas, such as electrical product safety, therapeutic goods, food safety and building product conformity, require expertise and ongoing focus that ACL regulators are not able to provide on an ongoing basis.

It is important that relevant regulators have the tools and culture to play their part in the complementary and coordinated enforcement model.

We have a range of enforcement remedies available to us. We often seek court-based outcomes and court enforceable undertakings but we also issue infringement notices, undertake education and compliance campaigns and resolve matters administratively. We are conscious that the tools and remedies available to investigate and resolve matters vary among jurisdictions. We recognise there may be legitimate policy reasons for variation. However, the efficient operation of the multi-regulator model may be distorted if limitations in tools and remedies prevent regulators from engaging in proportionate, risk-based enforcement.

Strong enforcement actions are an important component of deterring unwanted conduct. A lack of resources, tools and remedies, information sharing or collaborative mechanisms affects a regulator's culture. In our experience, a culture of strong commitment to action requires staff and leadership with the skills and experience to confidently select the correct tool for each situation, accepting some risk and uncertainty where necessary. If this culture is lacking, a regulator may be unwilling or unable to respond proportionately to matters based on the risk they pose to consumers.

The 'one law multiple regulator' model remains the most efficient and effective model for enforcing and administering the ACL. However, the growing expectation of a nationally

coordinated and consistent approach is unlikely to be fully realised without improvements. It is timely to ensure that all regulators' have access to a well graduated toolkit that can be applied effectively and efficiently according to the circumstances of particular conduct.

In a regulatory environment where intelligence is key to achieving strategic interventions in a coordinated manner, the funding of a national complaints database should be considered.

ACL regulators currently invest significant resources into information sharing. The establishment of a national database would protect against information siloing, help identify issues of local and national significance and improve operational and strategic coordination and decision-making across all jurisdictions. Resourcing constraints and questions surrounding the structure of the database need to be resolved if such a database is to be established.

Introduction

The ACCC promotes competition and fair trade in markets to benefit consumers, businesses, and the community. Our primary responsibility is to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws set out in the CCA, which includes the ACL.

The overarching objective of the ACL is to improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.¹

To achieve this objective, the ACL provides for a number of consumer protections, including:

- a system of consumer protections and remedies in relation to defective goods and services (consumer guarantees)
- unfair contract terms protections
- a product safety regime
- prohibitions against a number of false, misleading, unconscionable and unsolicited sales practices
- enforcement powers for regulators.

Some of these protections are mirrored in the *Australian Securities and Investments Commission Act 2001* (ASIC Act) in relation to financial services which is administered by ASIC.

The ACL is a cooperative instrument of the Australian Government and the States and Territories, through the Council of Australian Governments (COAG). An Intergovernmental Agreement (IGA) signed by COAG underpins the ACL.

The Productivity Commission Study

In 2015, Consumer Affairs Australia and New Zealand (CAANZ) began a review of the content of the ACL (ACL Review). The ACL Review is considering whether the protections provided for in the ACL are adequate and fit for purpose. It is scheduled to deliver an interim report in the second half of 2016 and a final report by March 2017.

In parallel with the CAANZ review, the Australian Government has asked the Productivity Commission to consider whether the enforcement and administration arrangements supporting the ACL are fit for purpose (Study).

In making our submission we have sought to respond to each of the themes raised rather than respond directly to each question set out in the Study issues paper.

¹ *Intergovernmental Agreement for the Australian Consumer Law* (2 July 2009).

Regulator performance

Information request (page 9)

To what extent do the ACL regulators achieve proportionate, risk-based enforcement in practice? Are changes to the current approaches of the ACL regulators warranted, and is there any evidence to show that such changes would lead to improved outcomes for consumers overall? Are the enforcement tools and remedies available to regulators sufficient to address risks to consumers?

Proportionate, risk-based enforcement of the ACL

We are committed to achieving proportionate, risk-based enforcement of the ACL. We have limited resources and receive over 250 000 contacts each year.² We apply a risk-based approach to our compliance and enforcement activity and a set of priorities that are set out in our [Compliance and Enforcement Policy](#)³ in order to allocate our resources in the most appropriate and efficient way.

The Australian Government's [Statement of Expectations](#)⁴ for the ACCC sets out an expectation that the ACCC will act in accordance with regulatory best practice to maximise effectiveness, efficiency and transparency, and minimise compliance costs. It also contains an expectation that the ACCC will adopt a risk-based approach to compliance and enforcement. In our [Statement of Intent](#)⁵ in response, we acknowledge the Government's expectation of proportionate, risk-based enforcement and commit to continuing to apply that approach in our enforcement activities.

Our Compliance and Enforcement Policy

Each year we publish an updated Compliance and Enforcement Policy that sets how we prioritise our matters and exercise our enforcement discretion.

The policy is governed by the following guiding principles:

- **Transparency:** this has two aspects:
 - o our decision-making takes place within rigorous corporate governance processes and is able to be reviewed by a range of agencies, including the Commonwealth Ombudsman and the courts
 - o we do not do private deals—every enforcement matter that is dealt with through litigation or formal resolution is made public.
- **Confidentiality:** in general, investigations are conducted confidentially and we do not comment on matters we may or may not be investigating; however, we may make a statement about an investigation where a matter is already in the public domain and we consider it to be in the public interest to do so.
- **Timeliness:** the investigative process and the resolution of enforcement matters are conducted as efficiently as possible to avoid costly delays and business uncertainty.
- **Consistency:** we do not make ad hoc decisions and we set out our priorities and approach clearly to give business certainty.
- **Fairness:** we seek to strike the right balance between voluntary compliance and enforcement while responding to many competing interests.

² In 2013/14 the ACCC received 202 363 contacts, which increased to 260 343 contacts in 2014/15. Source: ACCC 2014/15 Annual Report p 117 https://www.accc.gov.au/system/files/979_Annual%20Report_2014-15_web_FA_1.pdf

³ <http://www.accc.gov.au/publications/compliance-and-enforcement-policy>

⁴ https://www.accc.gov.au/system/files/ACCC_Statement_of_expectations.pdf

⁵ <https://www.accc.gov.au/system/files/ACCC%20Statement%20of%20Intent%20-%20June%202014.pdf>

We received over 250 000 contacts last financial year. We have limited resources and cannot pursue every issue we would like to see addressed. We have a responsibility to use our limited resources in the most effective way we can. When considering how to make the most effective use of our limited resources, we regularly have to choose between matters that are likely to result in material consumer detriment and progress one over another.

Our Compliance and Enforcement Policy is used to prioritise matters and select the appropriate response to each matter. Often the most appropriate use of our resources is encouraging compliance with the law by educating consumers and businesses about their rights and responsibilities. For some matters an enforcement response is warranted. Our enforcement responses are also tailored to each matter and can range from administrative resolution to institution of court proceedings.

The method by which we prioritise matters is set out in detail within the Compliance and Enforcement Policy, but two key features are:

- a series of priority factors (indicators of matters that will, or have the potential to, result in widespread consumer detriment and therefore we will prioritise them whether or not the conduct occurs in a priority area) and
- a series of priority areas (areas of the economy in which we are taking a more detailed interest). These priority areas are reconsidered annually. This year's priority areas include:
 - o competition and consumer issues in the agriculture and in the health and medical sectors
 - o consumer guarantees, with a focus on representations made by large retailers about express and extended warranties and
 - o the effectiveness of action taken by suppliers to recall unsafe consumer products.

If we investigate a matter and consider enforcement action is warranted the Compliance and Enforcement Policy sets out the flexible and graduated set of enforcement tools we use. These range from educational material or warning letters, through to administrative resolutions, issuing of infringement notices, accepting court enforceable undertakings and in some cases instituting court proceedings. This broad suite of enforcement tools allows us to select the right tool for the job and obtain a proportionate enforcement outcome that mitigates consumer harm.

Decisions to initiate compliance projects, use enforcement tools or commence litigation are undertaken following an analysis of the conduct, the level of detriment which will arise or has arisen and the outcome that can be achieved. In assessing the risk, one of our key considerations is the impact on consumers and the market if we do not intervene. This ensures that our decision on the tools used and the level of intervention is a proportionate response to the conduct and the consumer harm.

The Compliance and Enforcement Policy is reviewed and updated annually as part of our Strategic Review process. This is a substantial undertaking that includes:

- extensive consultation with ACCC staff, consumer and industry stakeholders, other ACL agencies, other regulatory agencies, ombudsmen, and relevant government departments
- review of the priorities of our international counterparts
- analysis of ACCC complaint statistics and trends
- a review of the progress of projects underway in connection with previous priorities.
- This continual reassessment of our priorities allows us to respond to the dynamic nature of the Australian economy and the risks faced by consumers.

In relation to product safety, we are committed to regulatory best practices and are currently going through an extensive program of reviewing the product safety mandatory standards and bans to ensure they are operating to ensure consumer safety without imposing unnecessary burden. This is a particular ACCC responsibility given it is only the Commonwealth Minister who can create national standards and bans.

We have established consumer product safety regulatory practice that does not impede the ability of local ACL regulators to develop approaches for local issues, and allows specialist safety regimes to respond to the risk of consumer detriment from unsafe specialist products.

- Effective regulators have a culture of enforcement of the law and resources to address the highest-risk conduct in a meaningful way. Our Compliance and Enforcement Policy and our commitment to regulatory best practice go hand in hand with our culture of enforcement. The ACCC has a culture of persistent and strong commitment to encouraging compliance with the law, including by backing up this message with enforcement where necessary.

Measures of success

In 2016 the Australian National Audit Office (ANAO) assessed how effectively we were managing compliance with fair trading obligations.⁶ The ANAO made a range of findings including that:

- The ACCC has a sound compliance and enforcement strategy that outlines a set of proportionate and graduated approaches to encouraging voluntary compliance and addressing non-compliance.
- The ACCC has appropriate arrangements for consideration and selection of matters at its internal case selection meetings.
- The ACCC consistently makes decisions about the appropriate enforcement action in particular cases in accordance with its Compliance and Enforcement Policy, proportionate to the identified non-compliance, and having regard to the objectives of specific and general deterrence.
- Enforcement actions taken by the ACCC were effective in responding to and managing non-compliance.

The ANAO also made three key recommendations for improvement:

- increasing the use of other ACL regulators' complaints data
- improving our own complaint data quality and
- increasing the use of trends and intelligence when selecting cases.

We are committed to continually evaluating and improving our approach to ACL enforcement. We have accepted all three of these recommendations and have begun taking steps towards these goals. Some are more complex than others, as demonstrated by the discussion of information sharing between ACL regulators starting on page 19.

We assess and report upon our performance on an ongoing basis. We release a variety of reports and information that allows stakeholders to assess our performance. For example, we report upon our activity in our [annual report](https://www.accc.gov.au/publications/accc-aer-annual-report) to Parliament.⁷ We also produce [ACCCount](https://www.accc.gov.au/publications/acccount) – a quarterly report of our activities.⁸ Both of these publications report upon the compliance,

⁶ Australian National Audit Office Performance Audit – Managing Compliance with Fair Trading Obligations (ANAO Report No.23 of 2015-2016) <https://www.anao.gov.au/work/performance-audit/managing-compliance-fair-trading-obligations>

⁷ <https://www.accc.gov.au/publications/accc-aer-annual-report>

⁸ <https://www.accc.gov.au/publications/acccount>

education and enforcement activities we undertook during the reporting period. In the past these have been used by community stakeholders to review our performance.⁹

A range of views about whether ACL regulators are achieving proportionate and risk-based enforcement have been put in the ACL Review. The Productivity Commission might find it useful to refer to the submissions in response to the ACL Review issues paper.¹⁰

In the future, a key self-assessment mechanism will be the [Regulator Performance Framework](#). We will conduct our first self-assessment at the end of 2015/16. The material we will use to assess our performance is [publically available](#).¹¹

Tools and remedies available to ACL and specialist regulators

The ACL Review is currently considering whether the protections provided for in the ACL are adequate and fit for purpose. This includes consideration of the enforcement powers, penalties and remedies applying under the ACL. The tools and remedies available to ACL and specialist regulators can also have an impact on how the ACL is administered and enforced, and are therefore relevant to the PC Study to this extent.

The ACL Review will consider whether the financial penalties available for breaches of the ACL are sufficient to provide specific and general deterrence.¹² In our view, the current maximum penalties available under the ACL are too low and need to be increased if they are to act as an effective deterrent.¹³ Court ordered penalties are an important part of our enforcement toolkit and, like all enforcement tools, need to be set at an appropriate level if they are to form part of a proportionate response to consumer harm.

The enforcement tools and remedies available to ACL regulators vary from jurisdiction to jurisdiction and this variation may limit the efficacy of the multi-regulator model. There are a number of variations between jurisdictions, but in particular we note that some State and Territory ACL regulators are not empowered to issue infringement notices, and of those that can, some are not permitted to publicly identify the recipients.

Some specialist regulators, such as some State and Territory electrical safety regulators, also lack regulatory tools and remedies and this sometimes prompts them to seek our assistance. A good example of this is the lack of consistent recall powers across the State and Territory electrical safety regimes that prompted our involvement in the Infinity cable recall. This is discussed on page 21.

Such limitations in the availability of tools and remedies across ACL and specialist regulators can undermine a regulator's ability to engage in proportionate, risk-based enforcement. The benefits of the multi-regulator model will be better realised if all regulators have access to a broad suite of enforcement tools.

Information request (page 9)

⁹ See, for example the Consumer Action Law Centre publication 'Regulator Watch: The Enforcement Performance of Australia's Consumer Protection Regulators' <http://consumeraction.org.au/new-report-regulator-watch/calc-regulator-report-final-eversion/>

¹⁰ <http://consumerlaw.gov.au/review-of-the-australian-consumer-law/have-your-say/issues-paper/> .

¹¹ 'ACCC self-assessment methodology, measures and evidence' June 2015
<https://www.accc.gov.au/system/files/ACCC%20self-assessment%20methodology%2C%20measures%20and%20evidence%20for%20the%20Regulator%20Performance%20Framework.pdf>

¹² Australian Consumer Law Review Issues Paper, pp 41-43
http://consumerlaw.gov.au/files/2016/03/ACLreview_issues_paper.pdf

¹³ Australian Competition and Consumer Commission's Submission to the Senate Inquiry into Penalties for White Collar Crime
<https://www.accc.gov.au/system/files/ACCC%20Submission%20to%20the%202016%20White%20Collar%20Crime%20Penalties%20Inquiry.pdf>

Are the levels of resources for enforcing the ACL adequate? What are the effects of differences in resources available to state and territory ACL regulators? To what extent, if any, does the potential for the ACCC or ASIC to undertake enforcement actions affect the resources the states and territories devote to ACL enforcement?

ACL and specialist regulator resourcing

Effective regulators must allocate their limited resources in the most appropriate and efficient way. Our current resources are fully utilised and we allocate them on the basis of priority, as set out in our Compliance and Enforcement Policy. We cannot do everything and it is inevitable that there will be circumstances where, while compliance or enforcement action could produce a desirable outcome, action cannot be taken because of resourcing constraints.

If we had more resources we could do more. Responding to a question on resourcing in Senate Estimates, ACCC Chairman Rod Sims said in May 2016:

*'The way I would put [it] is that if we had more we could do more. I think there is a reasonable band of resources that you have when you are in this sort of position. We are probably at the bottom end of a reasonable range of resources. We have enough to do the job. Obviously I would like more.'*¹⁴

As the above quote demonstrates, our current resources are fully utilised. It is our responsibility to ensure that we use our limited resources effectively. We have to prioritise and this involves making difficult decisions about which matters to pursue and which not to, when all of them have a risk of consumer harm attached.

A useful illustration of the impact of our limited resources is consideration of the number of matters we progress to litigation. We are currently sufficiently resourced to conduct approximately 30 cases in court each year across all the obligations provided for by the CCA –competition law, regulated infrastructure, industry codes and the ACL. We must be, and we are, very selective about the matters we pursue through to litigation. Complaints we do pursue go through a series of increasingly in-depth investigations with fewer and fewer progressing to each subsequent phase:

Table 1.1: Contact actions¹⁵

Category	2013/14	2014/15
Contacts received (phone, email, online)	202 363	260 343
Contacts recorded in the database	160 039	165 544
Under-assessments commenced	978	1 062
Initial investigations commenced	496	584
In-depth investigations commenced	131	100
Litigation	27	27

Of course litigation as a tool to achieve compliance should not be considered in isolation. Following a successful litigation we leverage that outcome across the industry to other businesses using a mix of compliance and education tools. Many education or compliance initiatives leveraged in this way successfully achieve behavioural change.

¹⁴ Senate Estimates Hansard, Economics Legislative Committee, 6/5/16

¹⁵ ACCC, Annual Report 2014/15 page 117 https://www.accc.gov.au/system/files/979_Annual%20Report_2014-15_web_FA_1.pdf

Likewise, many education or compliance initiatives are undertaken to address problems identified by market intelligence or increasing complaints. The use of education or compliance initiatives initially provides industry and businesses with an opportunity to proactively address the concerns we identify. In this scenario, enforcement tools are used to complement the education or compliance initiative and follow on from us 'putting the industry on notice.'

However, while we provide extensive guidance to both businesses and consumers on our website and through our national compliance and education activities, we are not resourced or structured to engage in individual dispute resolution activities. Moreover, each State and Territory regulator must make its own assessment of priorities within its own resource constraints. The ACCC is not in a position to step in where another regulator has resource constraints or makes a different assessment of priorities because our resources are already fully allocated to national competition and consumer matters.

In particular, it should not be expected that ACL regulators can replicate the attention and expertise of specialist regulators and always cover residual issues that are not pursued by specialist regulators.

Regulator coordination

Information request (page 8)

To what extent have issues noted in the Commission's 2008 report — such as inconsistency, gaps and overlaps in enforcement and unclear delineation of responsibilities among regulators — been addressed by the current arrangements? To what extent have the 'high level' reforms documented in the implementation progress reports been reflected in improvements in 'on the ground' administration, compliance and enforcement of the ACL?

What evidence or metrics are available that can be used to assess or substantiate these claims?

What, if any, alternatives to the multiple regulator model should be considered? What benefits and costs would the alternatives have?

Information request (page 11)

What problems are there with the administration and enforcement of the ACL under the multiple regulator model and how could it be improved?

Where particular problems have arisen in the enforcement of the ACL, are these because of (a) weaknesses in the law (b) weaknesses in the way enforcement is undertaken (c) insufficient resources to enable sufficient enforcement action?

The proper functioning of the multi-regulator model is contingent upon Commonwealth, State and Territory regulators building and maintaining effective relationships and information sharing mechanisms and delineating roles and responsibilities and establishing a framework that facilitates collaboration and joint projects where appropriate.

ACL regulator coordination

We work closely with all ACL regulators to monitor and enforce compliance with the ACL. In addition to cooperating on joint projects aimed at reducing widespread harm, ACL regulators have collaborated in responding to significant events affecting large segments of consumers and public awareness campaigns. Collaboration promotes efficiency and enables ACL regulators to form united strategies to respond quickly and decisively to significant consumer issues without unnecessary duplication or delay.

Cooperation between ACL regulators is particularly evident in response to significant events that have the potential to cause widespread consumer detriment, such as large retailers going into receivership, businesses unilaterally cancelling services impacting large numbers of consumers and cancellations of large scale events or concerts. ACL regulators will often appoint a lead regulator to negotiate consumer outcomes and manage public messaging. This ensures we are negotiating with one voice, have common media and call centre information, and are ensuring communication channels with consumers are established.

Joint projects that require external funding can be achieved through an agreed funding formula amongst the Commonwealth and States. For example, the guidance materials for consumers and businesses in the disability sector is being developed and funded jointly.

At times there is variation in both the resources that certain regulators may have available and the relative priority given to particular issues. In these circumstances, a group of interested ACL regulators can pool their resources to cooperate on projects. The outputs of these projects can then be supported by other ACL regulators, with more limited resources, through, for example, re-publishing on their website and promotion using social media platforms.

Box 1: Some examples of successful coordination between ACL regulators

Property spruikers

Launch of a national campaign to warn consumers about property spruikers promising big returns for low risk investments. This was complemented by enforcement action by State and Territory and Commonwealth ACL regulators, including proceedings against three 'rent to buy' businesses in Western Australia.

Following a coordinated investigation with NSW Fair Trading and assistance from Consumer Protection WA, the ACCC instituted proceedings against trader that made several claims in relation to wealth creation strategies, for example how to buy a house for \$1. The ACCC also obtained a delegation from ASIC to institute proceedings under the ASIC Act to enable issues concerning financial consumer protection to be dealt with in the same proceedings.

Flight cancellations

ACL regulators worked together to negotiating consumer outcomes in respect of cancelled flights following the grounding of various airline services. This coordinated action ensured airline staff had timely information to respond to consumer enquiries and complaints, and resulted in consumer refunds and in some cases compensation for reasonable losses.

VET Fee Help

Officers from the ACCC and NSW Fair Trading formed a joint task force to investigate various education and training provider sectors, particularly with VET Fee Help providers. After a five month joint investigation the ACCC instituted civil proceedings against several private colleges. The ACCC also worked with other ACL regulators to produce materials to warn consumers against signing up 'on the spot' for a training course, and not to be swayed by offers of 'free items'.

Fraud Awareness

The ACCC chairs the Australasian Consumer Fraud Taskforce (ACFT), which includes the ACL regulators. The ACFT works closely with the public, private and community sectors to educate the public and disrupt scams. This coordinated response is the most effective approach to minimising consumer harm. In May 2016, ACFT's National Consumer Fraud Week focused on scams that target older Australians, in line with the ACCC's priority concerning vulnerable consumers.

Product safety

ACL regulators have worked closely in relation to a range of product safety issues. The ACCC regularly coordinates integrated national product safety surveillance and consumer safety education activities. We also work in complementary ways. For example, Consumer Affairs Victoria took action against Qantas for supplying banned small, high-powered magnets that complemented the ACCC's compliance and enforcement work in the area.

Most Complained About Businesses Project

This Consumer Affairs Victoria-led project is focused on reducing the complaints made by consumers to ACL regulators. There was extensive data sharing amongst ACL regulators to identify which businesses are the most complained about. The emphasis of this project is to enable a nominated ACL regulator to take the lead with the business to explain the project and seek an explanation from the business on what steps they will undertake to address and reduce complaints. The businesses targeted by this project are generally large businesses that are well resourced and have extensive legal and compliance teams. The project is

focused on number of complaints not proportionality of complaints or any detriment that arises. Many of the complaints related to poor customer service policies and individual disputes rather than wider non-compliance with the ACL. Although, in some cases, the complaints have highlighted a wider non-compliance issue.

The ACL regulators have regular formal and informal contact. There are a number of formal committees that meet on monthly basis to coordinate the activities of ACL regulators, including Compliance and Dispute Resolution Advisory Committee (CDRAC), and Policy and Research Advisory Committee (PRAC). These committees are focused on operational issues and seek to identify what actions agencies are taking with respect to particular issues and conduct. Operational committees like CDRAC and PRAC often establish sub committees that focus on a particular task or project. For example, CDRAC created the Product Safety Operations Group (PSOG) to coordinate joint product safety activities. These project groups also meet regularly. Other committees like Education and Information Advisory Committee (EIAC) have a slightly different focus. The objective is delivering collateral or education material that can be used or shared amongst ACL regulators.

These committees were established to focus on key issues impacting on all ACL regulators. However, in some cases, the issues that the committee or sub-committee deals with may be of limited utility to one or more ACL regulator – with some regulators more interested in some issues compared to others. The committees may focus on non-ACL issues and instead address specialist consumer laws or issues that might be relevant only to State or Territory ACL regulators, for example, licensing of real estate agencies.

In addition, there is extensive informal engagement between ACL regulators. For example, when an ACL regulator that is investigating a business is aware that another ACL regulator has previously investigated the same business, the agency current investigating will often request that the other provide background on the business and previous actions. Extensive requests for complaints data from fellow ACL regulators are common.

At times we refer individual matters to State and Territory and specialist regulators, as we do not engage in conciliation or dispute resolution. We can also refer matters to mediators or other alternative dispute resolution arrangements, such as industry and small business ombudsmen. Separate to the ACL, we have responsibility for five mandatory industry codes that are prescribed under the *Competition and Consumer Act 2010*, including the Franchising Code and the Horticulture Code, and as a result engage significantly with the small business sector, particularly through our compliance and education work and take enforcement action where required. Responsibility for these codes is not shared by the States and Territories so these issues are not typically dealt with by State and Territory ACL regulators. However a number of States and Territories have small business commissioners or ombudsman, which can deal with small business issues which may arise under the ACL through a conciliation but not an enforcement framework.

From time to time, State or Territory ACL regulators may seek to refer matters to us for conciliation or dispute resolution because we have previously taken enforcement action against a business. We reject these referrals as we do not engage in conciliation or dispute resolution, although we note them for the purpose of monitoring the conduct of the business.

ACL regulators regularly discuss what compliance or enforcement tools are most appropriate to use for a given matter. These discussions often involve extensive negotiation and discussion.

ACL regulators aim to ensure that there is 'no wrong door' for a consumer that is seeking assistance with consumer issues. However, there are still occasions where consumers are incorrectly or unnecessarily referred to or from another regulator on the basis of jurisdiction. This may arise because of a narrow (or technical) interpretation of their jurisdiction or be a

communication issue, where a decision not to act on a matter is explained in terms of jurisdiction rather than prioritisation.

It is not uncommon for a complainant, be it an individual, business or lobby group, to send the same complaint to multiple regulators. This can result in inefficient and ineffective use of resources and does not necessarily lead to improved outcomes for complainants. Greater clarity from complainants as to which regulators they have lodged the complaint with and why, as well as more effective coordination of such complaints by regulators could address this issue.

Product safety ACL regulator coordination

We work with the other ACL regulators to devise coordinated compliance programs for product safety requirements, removing unsafe products from the marketplace, reminding suppliers about their obligations under the relevant mandatory standard and enforcement action where appropriate. These programs are undertaken periodically under the auspices of the Legislative & Governance Forum on Consumer Affairs.

We have not observed any significant problems or weaknesses in this area, if ACL regulators maintain expertise as intended. We consider that a 'one law multiple regulator' model could remain the most efficient and effective model for enforcing and administering the ACL consumer product safety arrangements.

The success of this model is contingent on the State and Territory regulators retaining expertise and capacity to deliver on their role in consumer product safety, including in market surveillance, compliance and enforcement. The consumer product safety expertise and capacity of some ACL regulators has decreased since implementation and this has shifted the need for responses to the national regulator, in a way not envisaged by the reforms.

The ACCC will continue to focus its efforts and resources on consumer product safety risks that require a broad national response, including those issues that might respond to an enforcement strategy that takes into account either a complex supply chain or the benefits of general deterrence on a national level (in accordance with our Compliance and Enforcement Policy).

In our view, State and Territory ACL regulators should continue to maintain capacity to enable them to adequately and consistently respond to local product safety issues, individual complaints, localised distribution chains and issues raised through coronial responses where specific local conditions preclude readily establishing a clear national context.

Specialist regulator coordination

In the area of the specialist regulators, beyond the ACL, jurisdiction and enforcement tools can often vary across jurisdictions. This can constrain specialist regulators from securing prompt national responses within their authority.

The electrical safety specialist regime, for example, appears to operate efficiently for localised issues. However, the jurisdiction and enforcement tools of the specialist regulators can vary significantly. The ACCC believes this is causing unsustainable and growing demands for a national ACL response to electrical safety issues such as the recalls of Infinity cable and Samsung washing machines. This distances experts from the response and hinders rapid, informed and responsive action.

While the current ACL and specialist regulator arrangements have gone a large way to dealing with the previously identified issues such as inconsistency, gaps and overlaps in regulation and unclear delineation of responsibilities among ACL regulators, the growing expectation on the national regulator is unlikely to be sustainable. The ACL cannot be an

alternative to intervention under specialist regulatory regimes. Where specialist regulators have been established, it is not sustainable to remove or reduce those regimes and expect the same level of attention and expertise from generalist regulators.

This is demonstrated in the product safety area where the combined effect of reduced capacity and safety expertise in some ACL regulators, together with proposals for the ACL to deal with non-ACL safety issues better addressed by specialist regulators, has added substantially to expectations of the ACCC without a corresponding increase in resources or expertise to deliver on those expectations.

Specialist regulators need the regulatory tools and national frameworks so that they can do their job without reliance on the ACL and the ACCC.

Information request (page 10)

What mechanisms are used to coordinate the regulation and enforcement of consumer financial products (or the financial aspects of consumer products) between ASIC and the other ACL regulators, and how effective are they?

ACCC and ASIC

Consumer protection in relation to financial services is specifically excluded from the ACL by section 131 of the CCA. However, the ACCC is capable of taking action in relation to financial services as a result of delegations between ASIC and the ACCC. The ACCC coordinates with ASIC on potential investigations where a matter may involve a financial service.

ASIC and the ACCC share responsibility for matters for which there is jurisdictional overlap in relation to financial products or services. For example, overlap can exist where a consumer product or service is provided in conjunction with a financial product or service.

The sharing of responsibility takes place under a Memorandum of Understanding (MOU), and a series of delegations.

The MOU does not create legally binding obligations between ASIC and the ACCC. It creates a framework for ASIC and the ACCC to share information and coordinate on projects of mutual interest.

Under section 102 of the ASIC Act, ASIC may delegate certain of its powers to the ACCC. Likewise, under section 26 of the CCA, the ACCC may delegate certain of its powers to ASIC. Delegations allow each agency to impart some of its powers to the other agency where it is expedient for a single agency to address an area of overlap, or for both agencies to be able to undertake joint activities with the same set of powers.

Delegations may be “standing”, whereby one agency delegates its powers to investigate a particular form of conduct indefinitely. Delegations may also be created on a one-off basis, for example for the purpose of a single investigation into specifically identified companies. Either type may also be a cross delegation, where each agency will have symmetrical powers based on delegating the powers that the other does not already have under its own Act. Cross delegations ensure there is no gap in consumer protection between financial and all other products and services.

There are a number of cross standing delegations currently on foot between ASIC and the ACCC in relation to consumer financial services including in relation to hire car arrangements, extended warranties, for-profit financial difficulty services, and consumer leases. In addition, a number of specific delegations are also currently in place. For example, delegations have provided some ASIC powers to the ACCC for the investigation and

conduct of court proceedings in relation to a specific white goods insurance provider and several telecommunications service providers.

Information request (page 8)

What have been consumers' and businesses' experiences under the ACL regime? Does the multiple regulator model cause any confusion or other problems for consumers seeking redress or for business operations? How, in broad terms, could any such problems be addressed?

Consumers' and businesses' experiences under the ACL regime

The introduction of the ACL and the multi-regulator model has coincided with modest improvements in the experience of consumers and businesses.

CAANZ commissioned the Australian Consumer Survey in 2011 (soon after the ACL was introduced) and again in 2016 (to inform the ACL Review). The [report](#) is publically available¹⁶ but, in summary:

- consumers are more likely to agree the government provides adequate information and advice about their rights when purchasing products and services (up 16 points since 2011 to 54%)
- consumers are more likely to agree the government provides adequate access to services that help resolve disputes between consumers and businesses (up 9 points since 2011 to 58%)
- consumers are less likely to have experienced problems when purchasing products and services (down 15 points nationally to 59%) with decreases across all states and territories and most product categories
- more consumers took action to resolve any problems they experienced (up 7 points since 2011 to 82%).

In contrast, fewer consumers agreed that they could generally make transactions knowing that businesses will not mislead or cheat them (down 7 points since 2011 to 64%).

The survey also examined business' experience of consumer protection. Business awareness of consumer laws and their obligations and responsibilities under those laws remained high at 98% and 80% respectively. Changes since 2011 include that:

- businesses are more likely to agree that most disputes between businesses and consumers end up with a fair outcome (up 20 points to 70%)
- businesses are more likely to agree that the ACL protects the rights of both consumers and businesses (both up 11 points to 91% and 60% respectively)
- more businesses thought they had sufficient information to ensure compliance with the ACL (up 10 points since 2011 to 84%)
- more businesses thought the ACL had had a positive impact on:
 - o their understanding of their obligations and responsibilities (up 13 points to 57%)
 - o their compliance with the law (up 14 points to 56%)
 - o consumer's understanding of their rights and responsibilities (up 14 points to 50%)
 - o the investment required to comply with the ACL (up 14 points to 28%)
- businesses estimated that their total cost of dealing with consumer issues each year had decreased.

¹⁶ <http://consumerlaw.gov.au/australian-consumer-survey/>

Information sharing

Information request (page 11)

What ongoing arrangements are there for ACL regulators and regulators of specialist safety regimes to share information on consumer protection problem areas on a national basis? Are such arrangements adequate, including for a future where markets are increasingly national in nature and new products and services are constantly entering those markets?

If not, what arrangements might be cost-effective to institute that could provide such a national database? Are there approaches used by other countries that provide lessons for Australia on how it might improve the sharing of information among the different ACL regulators, or in other ways (for example, artificial intelligence or machine learning) identify emerging consumer harms or scams, or areas for priority enforcement?

As set out earlier, the Australian Government's [Statement of Expectations](#)¹⁷ for the ACCC sets out an expectation that the ACCC will act in accordance with regulatory best practice to maximise effectiveness, efficiency and transparency, and minimise compliance costs. It also contains an expectation that the ACCC will adopt a risk-based approach to compliance and enforcement.

We have a responsibility to use our limited resources in the most effective way we can. As stated earlier, when considering how to make the most effective use of our resources, we regularly have to choose between matters that are likely to result in material consumer detriment and progress one over another. The ACCC does this according to a series of priority **factors** and a series of priority **areas** – the latter are amended annually and these changes are informed in part by intelligence.

We seek to utilise all available intelligence to appropriately prioritise matters as early as possible. Education or compliance initiatives are often undertaken to address problems identified by market intelligence or increasing complaints. In this scenario, enforcement tools are used to complement the education or compliance. This will be assisted with a consistent national approach to categorisation of matters for consideration.

Current arrangements between ACL regulators to share information and intelligence

The ACCC works closely with counterparts to monitor and enforce compliance with the ACL. We cooperate on:

- joint projects that are aimed at reducing widespread harm
- cross-industry issues
- intelligence sharing on specific matters
- Information sharing between regulators is affected by the different priorities that each ACL regulator has and the rationale for intervening in a matter.

ACL regulators invest significant resources into information sharing. This includes the creation of ACLink, a secure extranet that allows ACL regulators to share intelligence and information about complaints and investigations, communicate on compliance and enforcement issues and alert members to emerging issues and complaints of interest. Monitoring, preparing material and responding to requests in ACLink can be time consuming, but we recognise that the information provided may assist enforcement decision-making by State and Territory regulators.

¹⁷ https://www.accc.gov.au/system/files/ACCC_Statement_of_expectations.pdf

While ACLink is a mechanism for secure information exchange, whereby regulators can post alerts and ask for information, it does not provide a national database of complaints.

Project Sentinel

Fully realising the benefits of the multi-regulator model requires close collaboration and ACL regulators, through the Council of Australian Governments Legislative and Governance Forum on Consumer Affairs, have established a series of committees and subcommittees to facilitate a co-operative approach to compliance and dispute resolution, product safety, education and information, and policy and research. One such sub-committee-based project is the Sentinel pilot project – an information sharing project focused on motor vehicle related issues.

The Sentinel Pilot project commenced on 1 December 2015 and focused on identifying ACL-related issues within the automotive industry. The majority of jurisdictions provided relevant complaints and licensing / registration data, along with data from advertisers and auction houses in the automotive sector, which was transformed by the NSW Fair Trading project team to facilitate data matching.

The data collected as part of the project was intended to identify if a person was selling motor vehicles as an unlicensed motor vehicle dealer. The project also enabled State and Territory ACL regulators to identify some anomalies with sellers engaging in odometer wind back conduct.

Key learnings arising out of the Sentinel Project are the importance of appropriate resourcing for IT infrastructure to underpin data systems and the significance of developing a shared taxonomy (for instance the categorisation of contacts into 'complaints' versus 'inquiries') to fully exploit the potential of such repositories.

This type of work continues to build on the existing information sharing architecture, including ACLink.

ANAO recommendations on information sharing

As discussed above, the ANAO audit concluded the ACCC was not systematically analysing its complaints data and should explore the benefit of obtaining comprehensive complaints data held by State and Territory ACL regulators and made a recommendation aimed at the ACCC improving the extent and use of information for intelligence purposes:

Recommendation 1: To improve the extent and usefulness of information obtained for intelligence purposes, the ANAO recommends that the Australian Competition and Consumer Commission examines the merit of regularly obtaining complaints data feeds from other Australian Consumer Law regulators.

The ACCC agreed with the recommendation aimed at the ACCC improving the extent and use of information for intelligence purposes both in relation to analysis of complaints and reports received but importantly in combination with broader sources of intelligence.

Since then, the ACCC and other ACL regulators have been involved in the development of the Sentinel pilot project discussed above, working towards greater sharing of intelligence and complaint data. While this is a positive development, the scope of this project is unlikely to deliver the information sharing solution that would be beneficial in the short to medium term.

In addition, we continue to obtain data feeds from other regulatory and industry bodies as necessary to inform our assessments and decision making when escalating issues in line with ACCC priorities.

Introduction of a national database for ACL complaints

ACL regulators invest significant resources into information sharing to ensure that each of us has the information we need to properly perform our roles. A shared ACL complaint database, if properly delivered, would improve our intelligence and investigative functions.

In general, we also support the resourcing and establishment of a national database as an information-sharing tool for consumer product safety incident data, to enhance intelligence on emerging risks. With this information, we could track the outcomes for product safety issues referred to specialist regulators, and proactively identify issues where a coordinated multiple-regulator response may be required.

Currently, the majority of information and intelligence sharing between ACL regulators is 'request based' and managed through either the Fair Trading Operations Group (FTOG) as part of a national project or on an "as needs" basis when a particular matter or issue is deemed high profile. This data is predominantly shared via ACLink.

At the fundamental level, a national complaints database is likely to overcome the issue of information siloing and improve operational and strategic decision making across all jurisdictions. It will more readily identify issues of local and national significance and improve the identification and assessment of cross-jurisdictional and national marketplace risk. It is likely to provide CAF with an effective and agile intelligence and analytics capability.

Previous attempts to amalgamate disparate data sets across different ACL regulators has involved a significant amount of effort and resources in collecting, collating and attempting to make sense of different enterprise information. The costs and resourcing required to deliver a national database has been the most significant obstacle.

There are a number of key outstanding issues that require further consideration before either a general ACL or a product safety specific shared database can be implemented, cost being the most significant of these issues:

- Costs and budget – to date there has been an unwillingness or inability to break off existing IT contracts in favour of new, complementary systems, or to fund multiple sets of licencing fees. Existing IT budgets are a key constraint on developing a national complaints database
- Taxonomy – one of the key impediments to effective information synthesis has been an inability to decide amongst participants on appropriate naming conventions, or taxonomy, for contacts. Without this base-line agreement any eventual national system may be less useful
- Database governance structure – it will be critical to ensure that any national database delivers on the needs of all participants
- Privacy and security issues – agency privacy and information sharing policies may need to be amended to allow for a national database.
- Shared protocols publicly communicating relevant results and information obtained through use of the database – participants will need to agree as to how joint information can and cannot be used.

Specialist regulators

Information request (page 10)

How adequate are current arrangements among ACL regulators (and specialist safety regulatory regimes) for identifying consumer concerns that are 'extra jurisdictional' and for developing a consistent national regulator response? How might these arrangements be improved?

Information request (page 13)

The Commission would welcome comprehensive information on the specialist consumer safety regulatory regimes that lie outside the ACL and the regulators responsible for administering those regimes in and across jurisdictions in Australia. What is the rationale for the delineation of responsibilities between specialist safety regulators (and the ACL regulators)?

The rationale for the specialist regulators is that they are best placed to manage the risks in their area of speciality, given their technical expertise. Specialist regulators also administer regulatory frameworks that are specifically tailored to a category of risk or a particular industry. This allows specialist regulators to develop expert knowledge of the technical details of those risks and to develop strong relationships with those industries. That expert knowledge and strong relationships should enable them to respond effectively and efficiently to emerging issues in those industries or that relate to those categories of risk.

The ACCC notes that the implementation of this rationale requires clear delineation of responsibilities to avoid inefficiency. The ACCC considers that the delineation suggested by the Productivity Commission in its review of the product safety system in 2006 remains appropriate:

- medicines and other therapeutic devices (Therapeutic Goods Administration)
- food products and alcohol (Food Standards Australia New Zealand with state regulators)
- road transport vehicles (Department of Infrastructure and Regional Development, Vehicle Safety Standards)
- buildings (Australian Building Codes Board with state regulators)
- pesticides and veterinary medicines (the Australian Pesticides and Veterinary Medicines Authority)
- electrical consumer products (which are regulated by a variety of State and Territory organisations and co-ordinated by the Electrical Regulatory Authorities Council)
- tobacco (subject to a range of regulations co-ordinated by the Ministerial Council on Drugs and the Department of Health).

For example, the Department of Infrastructure and Regional Development (DIRD) has the technical expertise and authority to conduct risk assessments of motor vehicles. It administers premarket motor vehicle safety standards and frameworks that cover the breadth of the motor vehicle industry with strong links with international counterparts and well developed technical expertise. State and Territory road safety authorities apply further controls over motor vehicle users as part of an integrated national motor vehicle safety system. Given this elaborate and entirely appropriate regulatory framework, we do not believe we have a role to play in regulating motor vehicle safety.

Similarly, State and Territory electrical safety regulators administer an electrical safety regime that encompasses the electrical supply system, the licensing of electricians and the safety of industrial electrical equipment as well as the safety of electrical equipment used by consumers. Each State and Territory has different powers and remedies. This lack of consistent powers across the State and Territory electrical safety regimes can complicate

electrical safety concerns experienced nationwide, and prompted our involvement in the recall of unsafe Infinity electrical cable. In some States, electrical safety regulators had recall powers that they could apply to this electrical safety problem but in other States and Territories the electrical safety regulator had either inadequate or no recall powers to remedy one of the biggest electrical safety challenges Australian regulators have ever seen. In the absence of an effective national law, it was necessary to form a Taskforce of ACL and electrical safety regulators to develop and implement an appropriate response. Having regard to the serious and wide-spread nature of the safety concerns we agreed to take a leading role in the response.

However, ACL regulators lacked the specialist electrical safety expertise to diagnose the defect in the cable and to formulate a technical response that was consistent with electrical wiring laws in each State and Territory. The ACL remedies are general and not designed with electrical cable installations in mind. This has had a significant and ongoing impact on ACCC resources which could have been avoided if the specialist regulators had appropriate tools and remedies at their disposal. Any expectation that we, or any other generalist regulator, can step in in this way in the future is unsustainable. We are not resourced, and cannot be expected, to develop the technical expertise or regulatory tools necessary to duplicate the electrical safety regulatory system.

Finally, food safety regulators administer a successful regime of controls aimed at ensuring the safety of the Australian food supply. This system involves multiple bodies including Commonwealth agencies such as Food Standards Australia New Zealand (FSANZ), State and Territory agriculture and health agencies and local governments. Being a specialist regime, there needs to be tools and resources to address emerging safety issues. There should also be a clear delineation of roles and no need for food safety regulators to approach us for assistance with food safety concerns. For example, recent concerns about the supply of raw-milk were resolved within the food safety regulatory framework but discussions about the potential application of the ACL nonetheless diverted our resources for several months.

Information request (page 15)

What challenges do product complexity and bundling, and overlapping regulation, pose for ACL regulators, specialist safety regime regulators, businesses and consumers? What are some current examples of particular concern? How significant are these challenges? Does the availability of alternative avenues of regulating particular products assist ACL or specialist safety regulators in protecting consumers?

The rationale for specialist regulators remains well considered and persuasive. The ACCC's experience is that delineation occurs informally and when risk perception is high, this can apply pressure for a response under the ACL rather than the specialist regime. Consumer perception of risks, whether safety concerns or otherwise, is likely to be neutral about which regulator develops the response, so long as it is adequate.

As noted above, where Governments have established specialist regulators, it is not sustainable to remove or reduce those regimes and expect the same level of attention and expertise from generalist regulators.

Information request (page 16)

Are current protocols for communication, cooperation and coordination between regulators of specialist safety regimes and ACL regulators effective in dealing with consumer concerns where regulators in both regimes have responsibility for consumer protection? In particular:

- *Are those protocols effective in ensuring that consumer concerns about product safety received by one regulator are effectively directed to the most appropriate (ACL or specialist safety regime) regulator?*

- *Are there examples of especially good or poor interaction between ACL and specialist regulators, and what lessons might these provide to improve interaction between ACL and specialist safety regime regulators?*

What changes to current arrangements are needed to achieve effective communication, cooperation and coordination of consumer protection regulation among regulators of ACL and specialist safety regulatory regimes?

Can formal protocols for communication and cooperation provide effective channels or are broader organisational changes (such as co-location or amalgamation of regulatory functions) needed?

In relation to product safety, we have formal arrangements in place for the referral of safety reports and recalls to specialist regulators, which in general function well. However, the administrative overhead involved in referring these matters to other agencies is relatively high and a significant proportion of these referrals involve negotiations about the respective roles and responsibilities of the ACCC and the relevant specialist regulator. We have attempted to establish interagency agreements to resolve these issues but these negotiations are ongoing, protracted and resource intensive.

We do not consider that there is a case for co-location or amalgamation of product safety regulatory functions as the number of specialist regulators and the wide variety of industries and specifically identified risks they regulate would make this administratively unworkable and entirely inefficient. However, it is important for specialist regulators to better clarify and delineate roles and responsibilities, for example via interagency agreements. ACL regulators can and do provide strategic interventions in important matters and the ACL provides an important role to assist with emerging practices. However, ACL regulators are not substitutes for specialist regulators and cannot devote the same level of attention and expertise as those specialist regulators.

Institutional architecture for consumer safety regulation

Information request (page 17)

What progress has been made in removing unnecessary and costly divergences in regulatory requirements between industry-specific state and territory consumer protection regimes since 2008? Where progress has been limited, why? Is there a case for pursuing a 'one law' model for areas of consumer product safety regulation, or other means of reducing the costs of variations, where there are currently state variations? If so, what areas should be priorities for review?

During the creation of the ACL, ACL regulators undertook considerable work to harmonise standards and bans under consumer laws, with a substantial reduction in the number of regulations. We have since observed benefits of the one-law model for consumer product safety, which has brought about the same protections for consumers regardless of location and has allowed regulators to set consistent expectations for business compliance.

Those benefits might also be realised if there were, for example, a national electrical-equipment/gas-appliance safety law with supporting administrative arrangements and appropriate remedies and powers. This could remove constraints for specialist regulators to deliver prompt national outcomes in those areas.

Information request (page 18)

What are the ramifications of changes in products and nature of sales (including the move to online sales, without a local distributor) for the enforcement of consumer product regulation? Are there other models that could provide lessons for the approach adopted in Australia?

New technologies are increasingly opening up opportunities for consumers to acquire products that by-pass traditional retail outlets. Consumers enjoy the increased choice, rapid access to new products, and the potential for lower prices and this has broader benefits for the economy. However, consumers still expect products purchased online to be safe and unsafe products place a burden on consumers and the economy.

The ACCC works international product safety regulators to influence offshore supplier behaviours and in this regard has developed relationships with regulators in North America, Europe, and several emerging 'producer' economies in Asia and South America. We are also actively engaged in the OECD Working Party for Consumer Product Safety, in developing the OECD Global Recalls Portal.

We also work directly with internet shopping portals to restrict the supply of unsafe goods to Australia – sometimes with great success but sometimes with less effect, noting the limits of our offshore enforcement capabilities.

There has been an apparent increase in more diffuse chains of responsibility for the safety of consumer products, particularly those originating from offshore. Market failures can compound the complexity of the national response, such as the response to the recent Infinity cable recall that the ACCC leads. Where this intersects with a specialist product safety regime that does not operate under a well-functioning national framework, the outcomes can be less effective than they might otherwise be.

The ACCC does not consider at this time that a 'one law, one regulator' model would make the product safety outcomes more effective and efficient. However, there is room for this kind of improvement within some of the specialist product safety regulatory regimes.