

Ref: File16/67613

Julie Abramson
Presiding Commissioner
Consumer Law Enforcement and Administration Study
Productivity Commission
GPO Box 1428
CANBERRA ACT 2600

Dear Ms Abramson

I refer to your letter of 16 September 2016 to me in my capacity as Chair of the Compliance and Dispute Resolution Advisory Committee (CDRAC).

On behalf of state and territory Australian Consumer Law (ACL) regulators I am pleased to provide you with the attached information in connection with your review into the administration and enforcement of the ACL. However, I would like to reiterate some of our concerns that were discussed during our teleconference on 6 October 2016 which was also attended by Mr Simon Cohen, Chair of Consumer Affairs Australia and New Zealand (CAANZ).

Enforcement activity

Given the collaborative working relationship of ACL regulators in administering and enforcing the ACL, it is important to note that activity is not solely undertaken by an individual regulator. Quite often a lead agency approach is taken with contributions from other regulators. This may give the impression that some regulators are more active than others for ACL matters.

A wide range of measures and outcomes are also used to address marketplace concerns or respond to emerging issues. Regulators not only rely on the ACL but also their own state-based legislation and powers, and a range of effective tools to ensure Australian consumers and businesses are protected in the marketplace.

Seeking compliance with the ACL does not necessarily result in enforcement action and this may not be captured in the data provided to you. Each ACL regulator utilises various tools and functions such as consumer education, trader engagement programs and marketplace statements such as public warnings.

Complaint handling and resolution data

ACL regulators deal with a wide variety of consumer issues, some of which may overlap or cross over between the ACL and the state-based, industry-specific laws we administer. Because of this, it is difficult to accurately identify ACL-specific matters. For example, some matters may not be initially identified as an ACL-related matter until a later point in examining a complaint or undertaking an investigation and vice versa.

In view of significant structural and functional changes that have occurred within our agencies since the commencement of the ACL on 1 January 2011, CDRAC has provided data on enforcement activity, complaints and dispute resolution for the 2015-16 period only.

Agency resourcing for ACL matters

Providing information on the number of agency staff allocated specifically for ACL matters is difficult to ascertain due to the fact that our staff are trained and tasked to deal with a number of consumer-related matters. That is, in addition to the ACL, our staff can also be engaged with the other state-based laws our agencies administer. As previously mentioned and discussed, there may also be cross-overs between the provisions of state-based laws and the ACL. In fact, in some jurisdictions like New South Wales and Victoria, agencies have taken a deliberate market-focussed approach, preparing industry sector plans.

Australian Competition & Consumer Commission (ACCC)

The response has focussed heavily on data and experiences from state and territory regulators noting that the ACCC has provided a separate submission and its published reports of its enforcement and compliance activities in relation to the ACL. This said, in its submission the ACCC identified that the one law, multiple-regulator model allowed regulators to provide different contributions in a complementary manner. In particular, whilst it won't be seen in enforcement statistics, the ACCC noted that the capacity of state and territory ACL regulators to address localised conduct and provide conciliation or complaint resolution functions for consumers was critical and complemented the ACCC's enforcement and compliance model that endeavours to address more systemic and national matters. This is not to say that an enforcement presence of state and territory regulators is not important but that it is not the full measure nor necessarily appropriate that all regulators operate in exactly the same way.

We have endeavoured to provide you with the information you require and which would be of use to your review. However, if you do require anything further please contact Lisa Turnbull, Manager National Projects, NSW Fair Trading on (02) 9895 0676 or email lisa.turnbull@finance.nsw.gov.au.

Yours sincerely



Rod Stowe
Commissioner
Chair, Compliance and Dispute Resolution Advisory Committee

8 November 2016

Response to Productivity Commission: Consumer Law Enforcement & Administration

**Compliance and Dispute Resolution Advisory Committee (CDRAC)
on behalf of:**

- Australian Capital Territory – Access Canberra
- New South Wales – NSW Fair Trading
- Northern Territory – Northern Territory Consumer Affairs
- Queensland – Queensland Office of Fair Trading
- South Australia – Consumer and Business Services
- Tasmania – Consumer, Building and Occupational Services
- Victoria – Consumer Affairs Victoria
- Western Australia – WA Consumer Protection (Department of Commerce)

November 2016

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1. Data on enforcement activity

ACL enforcement outcomes reported nationally by ACL regulators for the 2015-16 year are shown below, to be included in the ACL Implementation Report for the period.

Table 1: ACL enforcement outcomes

Activity*	Number	Value
Infringement notices	195	\$902,886
Enforceable Undertakings	33	
Public Warnings	66	
Court cases	149	
Court action fines		\$711,400
Court action costs		\$122,165
Compensation awarded**		\$2,963,849
Civil pecuniary penalty orders		\$15,642,000

* Actions taken under the ACL, or under the ACL with other legislation.

** As a result of court action or enforceable undertaking negotiations.

Although data has been provided, it should not be relied upon solely to demonstrate ACL related action taken by ACL regulators. It is more accurate to take a holistic view of regulators' activities and note the following:

- Enforcement outputs are not the only measure of success and are either coupled or separate to other outcomes, for instance compliance, education, trader engagement, trader warnings, stakeholder engagement, audit, recalls, public warnings and legislative reforms.
- The enforcement outcomes reported are not an accurate reflection of all enforcement matters that had ACL elements present during the investigation, only those matters that had ACL elements at the time of the outcome. Regulators administer a wide variety of legislation and will choose appropriate options to address issues. There are some instances where state-based legislation is available but the ACL is ultimately chosen, or vice versa.

While the Productivity Commission has requested disaggregated jurisdictional enforcement outcomes, CDRAC considers the aggregated national enforcement outcomes are a better measure of ACL enforcement outcomes than disaggregated jurisdictional outcomes for a number of reasons.

Firstly, jurisdictional outcomes do not accurately reflect individual agency contributions towards matters where a jurisdiction was involved in a national approach but did not initiate enforcement action because another jurisdiction took that action. This includes:

- work on national projects,
- investigations where a lead regulator approach has been taken,
- investigations where a joint investigation results in a single agency commencing proceedings,
- providing complaint and investigation information to other agencies during a national crisis meeting, FTOG/CDRAC/PSOG/NICS discussions, other ad-hoc discussions, or via the Govdex/ACLINK platform, and
- ad-hoc requests between agencies where some agencies perform ACL related duties on behalf of another, such as serving notices, inspection of trader premises, taking witness statements, and conducting surveillance.

Furthermore, smaller agencies with fewer resources may concentrate on changing trader behaviours within their jurisdictions and may rely more on the larger agencies with more resources to lead complex or cross-border matters impacting on the larger community. This approach leverages the

resources, and plays to the strengths, of both larger and smaller agencies for the benefit of consumers and traders, for example by providing avenues to get messages out to the marketplace about appropriate behaviours. It also enables agencies to use the outcomes as examples of behaviours which have been found to be unacceptable by courts to progress future similar matters via conciliation for resolution, at a significantly lower cost to businesses, consumers and government.

1.1. Setting priorities & reporting outcomes – further jurisdictional information

1.1.1. Australian Capital Territory – Access Canberra

Access Canberra publishes information about its [complaint-handling process and priorities](#) on its website. It also publishes [enforceable undertakings](#) and [public warnings](#) on its website.

1.1.2. New South Wales – NSW Fair Trading

Where relevant, NSW Fair Trading considers the ACL when regulating specific industries, alongside any industry-specific legislation. Fair Trading is guided by its [Compliance and enforcement policy](#), [corporate plan and the following marketplace sector plans](#), published on Fair Trading's website:

- Real estate and property
- Building & Construction
- Motor Vehicles
- Product Safety
- Australian Consumer Law

NSW Fair Trading also publishes [quarterly enforcement reports](#) on its website, including ACL outcomes, noting that outcomes can change after publication as a result of appeal or review. Fair Trading also publishes its [enforceable undertakings](#) and [public warnings](#) on its website. The annual Year in Review is also available at the [Data and Statistics](#) area of the website.

1.1.3. Northern Territory – Northern Territory Consumer Affairs

Consumer Affairs publishes its [Compliance and enforcement policy](#) on its website, along with [public warnings](#) and [annual reports](#).

1.1.4. Queensland – Queensland Office of Fair Trading

Queensland Office of Fair Trading publishes information about [enforcement and its processes](#), its [Compliance and enforcement policy](#), [compliance program](#), [enforceable undertakings](#) and [public warnings](#).

1.1.5. South Australia – Consumer and Business Services

Consumer and Business Services publishes information about [what it investigates](#), [public assurances and undertakings](#), [public warnings](#) and its [Compliance and enforcement policy](#) on its website.

1.1.6. Tasmania – Consumer, Building and Occupational Services

Consumer, Building and Occupational Services publishes information about which [consumer complaints are selected for investigation](#), as well as its [public warning register](#).

1.1.7. Victoria – Consumer Affairs Victoria

Consumer Affairs Victoria publishes its [Compliance and enforcement policy](#) on its website, including [case selection criteria](#) and [enforcement priorities](#). Consumer Affairs Victoria also [publishes a response](#) to any periodic [statement of expectations](#) from the Minister for Consumer Affairs, Gaming

and Liquor Regulation. Consumer Affairs Victoria also publishes recent [court actions](#), [enforceable undertakings](#), [public warnings](#), [Infringement notices](#) on its website.

1.1.8. Western Australia – WA Consumer Protection (Department of Commerce)

WA Consumer Protection publishes the [Department's Corporate plan](#), its [Enforcement and prosecution policy](#), information about [how it responds to consumer complaints](#), [media releases about compliance actions](#), [enforceable undertakings](#), and [consumer alerts](#).

1.2. Enforcement actions – case studies

Some examples below will highlight how a number of ACL outcomes have been achieved by regulators collaboratively that are not reflected in the enforcement outcomes.

1.2.1. Training providers

The CDRAC Training Providers national project identified serious conduct in the sector with vulnerable consumers being misled into signing up for courses funded by loans through the Commonwealth Government's VET FEE-HELP scheme. The success of the project occurred as a result of a number of collaborative relationships and lead agency approach.

The project commenced in May 2014 and allowed ACL regulators to share information about the conduct (including complaints) with the national VET regulator the Australian Skills Quality Authority (ASQA) and the Commonwealth Department of Education and Training. A consumer education campaign was developed that included material published by ACL regulators and shared to ASQA, Indigenous Consumer Assistance Network and Disability Advocacy and Information Services.

NSW Fair Trading took the lead agency approach on many tasks – liaising with peak industry stakeholders, drafting stakeholder correspondence, and developing the consumer education campaign. However, all jurisdictions contributed complaint information, messaging for campaigns and industry liaison, working with other agencies and community service providers on education and outreach for vulnerable consumers, plus dispute resolutions to assist affected consumers, including one instance of NT Consumer Affairs getting over 300 NT and WA enrolments cancelled with one training provider alone.

NSW Fair Trading and the Australian Competition and Consumer Commission (ACCC) jointly investigated a number of training providers and related brokers/agents, with cases from many jurisdictions, resulting in the ACCC commencing action in the Federal Court on four matters and obtaining one enforceable undertaking. The benefits of the enforceable undertaking included a multi-million dollar saving to government and consumers. The ACCC and other regulators also took separate action against a number of other training providers and brokers/agents, often using information from multiple regulators. These activities and the resulting benefits for consumers are not adequately represented by the enforcement outcomes.

1.2.2. Cassandra Nicole Cooney

Ms Cooney operated online cleaning businesses offering bond cleaning services to consumers in capital cities around Australia. This trader has been the subject of investigations in a number of states. Public warnings about this trader were issued by NSW, NT and WA consumer law regulators, warning consumers not to deal with the individual under numerous business names.

On 1 June 2016 Ms Cooney was fined \$5,000 after being charged by the Queensland OFT for taking money from Queensland consumers and failing to supply cleaning services. Ms Cooney pleaded guilty to 6 charges of wrongly accepting payment and failing to supply services within a specified time.

Ms Cooney is also awaiting sentence in NSW for fraud charges brought by NSW Police and NSW Fair Trading has also commenced a prosecution after she allegedly accepted payment and failed to provide the promised services. On behalf of all consumer law regulators, NSW Fair Trading has taken down two websites allegedly used by Ms Cooney to advertise to consumers and will take a lead agency approach to investigating any further conduct, potentially taking action on behalf of regulators and consumers around Australia.

1.2.3. Daiso

Daiso is an importer and chain retail store trader of some 27 outlets across the eastern seaboard of Australia. Daiso offers for sale about 100,000 different product lines at any given time of discount variety goods.

Consumer law regulators had been monitoring Daiso's conduct for compliance with the product safety mandatory standards and bans over a period of time. Collaboration and information sharing between state ACL regulators, including communications through ACLINK, produced intelligence of systemic non-compliant conduct by Daiso.

In 2015, Consumer Affairs Victoria coordinated a joint compliance operation with NSW Fair Trading and Queensland Office of Fair Trading across the three states targeting all Daiso stores. As a result of simultaneous inspections, thousands of allegedly non-compliant products were seized as evidence. Consumer Affairs Victoria has since issued proceedings against Daiso in the Federal Court for contraventions of the ACL in 3 states. The legal action relies partly on evidence and seized goods provided by regulators in NSW and Queensland. The action that Consumer Affairs Victoria has taken, as lead agency on behalf of ACL regulators, will provide guidance on national applicability. Consumer Affairs Victoria will be seeking orders that apply nationally to ensure that Consumer Affairs Victoria's action is leveraged nationwide.

1.2.4. Global Work and Travel

This Queensland OFT case involved consumers across Australia and overseas affected by unfair travel contracts. Queensland OFT worked with the trader for over a year to improve its compliance with the ACL. The trader ended up refunding \$25,655 to 29 consumers, without the need for formal enforcement action.

1.2.5. Digital Skies Group Pty Ltd

Digital Skies Group Pty Ltd trades as an online business that sells electronic goods, including digital cameras, mobile phones and smart watches. The company is associated with a range of business names including Android Enjoyed, Camera Sky and Klukkur. A media release was issued on 6 September 2016 by NSW Fair Trading warning consumers not to deal with Digital Skies Group Pty Ltd as numerous complaints had been received, primarily concerning the quality of goods sold, the acceptance of payment without supplying the goods, the supply of goods not suitable for the Australian market and other ACL offences. The estimated total market value of consumer detriment is \$150,000.

The trader has engaged a PR consultant and embarked on a crisis management protocol to address outstanding complaints as a matter of urgency. NSW Fair Trading issued a second media release on 14 September 2016 with an update that Digital Skies Group has engaged with NSW Fair Trading in an attempt to resolve the recurring issues raised by customers. NSW Fair Trading is monitoring the trader closely on behalf of all regulators.

1.2.6. Rick Otton

In 2013 WA obtained an enforceable undertaking from Mr Otton. Under the agreement Mr Otton agreed to make it clear to prospective buyers in WA that:

- the purchase price for the property must ultimately be paid before they can own the property;
- the one dollar payment to buy option is only the initial step towards owning the property;
- they may not necessarily satisfy a bank's lending requirements to exercise the option to buy; Payment of instalments over time may not be proof of creditworthiness; and
- legal advice should be obtained before being involved in a rent-to-buy property scheme.

In 2015, following a coordinated investigation with the NSW Fair Trading, the ACCC instituted proceedings in the Sydney Federal Court against We Buy Houses Pty Ltd and Rick Otton for alleged contraventions of the ACL. The alleged conduct includes several representations made to consumers that, by attending seminars and boot camps, consumers will be taught strategies to enable them to, for example buy a house for \$1; buy a house using little or none of their own money; and build property portfolios without their own money invested and without new bank loans.

The ACCC obtained a delegation from ASIC to also institute proceedings under the ASIC Act as some of the matters may fall within the financial consumer protection jurisdiction of ASIC. The ACCC has been assisted by other ACL regulators particularly NSW Fair Trading and WA Consumer Protection.

1.2.7. Indigenous Funeral Plans

Consumer and Business Services South Australia launched a national campaign in July 2015 to help prevent indigenous consumers from signing up for funeral plans that can be expensive, complex and not suitable for their needs. A new video was developed highlighting the various options available to pay for a funeral so consumers can make an informed choice. ACL regulators are taking proactive steps to identify promoters that are doing the wrong thing, to educate consumers and improve traders' behaviour.

1.2.8. Button Batteries

The ingestion of small button batteries has led to serious internal injuries and death. In Australia two children have died from button battery injuries and an estimated 20 children visit an emergency department each week due to a swallowed or inserted button battery.

In 2013 a four-year-old child died in Queensland after ingesting a button battery. On 3 November 2015 the Queensland Coroner released the findings of the inquest into her death and made recommendations to improve the regulation of button batteries and button battery powered consumer products.

In the lead up to Christmas 2015, product safety officers from Consumer Protection WA inspected 105 items operated by button batteries at 44 different retailers. Twenty of the items failed a 'drop test' and the trader removed the items from sale.

The ACCC led development of a voluntary Industry Code for suppliers and a two-year national button battery safety strategy, which both commenced in July 2016. The ACCC is also continuing to work with stakeholders to raise awareness of the hazard and to improve packaging and labelling of relevant consumer products.

2. Data on complaint handling and resolution

2.1. Complaint and enquiry numbers

The following table includes the number of contacts and complaints received by ACL regulators over the 2015-16 financial year. It was not possible for regulators to provide further data in the timeframe available for this submission.

Table 2: Complaint and enquiry numbers

	Contacts	Total complaints	Total enquiries	ACL related complaints	ACL related enquiries	Comments / Qualifications
ACT		274	6,395	181	unknown	The data provided relating to ACL is not accurate due to system capability. ACT has a number of channels (including a centralised contact centre as well as dedicated phone lines) through which consumers and businesses seek information.
NSW	7,799,047	51,221		unknown	unknown	NSW is unable to identify ACL related complaints and enquiries as data is not disaggregated. Total contact numbers include all requests for service – website sessions, app downloads, social media reach, phone calls, licence transactions, etc.
NT	17,137			229	unknown	It is estimated 37% of contacts relate to ACL, however NT cannot provide an accurate figure as ACL is not recorded when other specific legislation is chosen, for example 51% of contacts relate to Residential Tenancies Act, it is unknown what contacts under RTA relate to the ACL. NT is aware that it had received 229 formal written complaints about the ACL directly but is unable to determine others
QLD	174,479	14,505	69,185	unknown	unknown	Data cannot be provided specifically relating to ACL as it is disaggregated. Qld has a number of channels (including a whole of government call centre for all front facing calls and some counter services) through which consumers and businesses seek information.
SA		4,866	40,835	unknown	unknown	Unable to determine specific ACL matters. CBS provides free fair trading advice to consumers and traders. Enquiries are received by telephone and in person. Complaints are comprised of advice and dispute resolution matters received by email, fax or post.
TAS	12,114	193	11,921	61	2,439	The enquiries do not include the Inter Governmental Contact Centre (ITGCC) who take initial calls, supplying relevant information to resolve calls without further escalation.
VIC	349,985			11,272	73,952	Statistics do not include calls relating to complaints where the enquiry officer selected a category that was an industry specific category where an ACL issue may have also been raised. Figures do not accurately represent the full picture of ACL matters.
WA		11,711		8,411		Manual process conducted to determine ACL complaint numbers

There are qualifications to the data provided as:

- ACL regulators do not code ACL and non-ACL matters or record data according to legislative provisions. Hence, the data cannot be broken down to determine specific ACL matters. Additionally, when complaints and enquiries are received it may not be determined that it is an ACL matter until a full investigation has been conducted (noting ACL regulators investigate a small number of matters resulting from reports).
- some agencies are unable to report all enquiries due to a whole of government call centre addressing issues without escalation to the ACL regulator (i.e. Queensland)
- the data does not include matters where a jurisdiction was involved in a national lead agency approach, for instance:
 - the most complained about businesses national project
 - Fair Trading Operations Group discussions / Govdex notifications by regulators
 - CDRAC discussions / appointment of lead agency
 - General Govdex notifications putting other jurisdictions on notice
- the data reported by each agency is not as effective until identifying systemic behaviours and/or combining it with other ACL regulator data and external material to gain a full understanding of the position for the regulator to make an informed decision on the best way to respond to marketplace conduct
- Other factors need to be considered when interpreting the data in the tables such as the number of laws the regulator administers, the jurisdiction's population and the location of business activity. Generally, a regulator that administers numerous laws and has a large population and business base would have more complaints and enquiries.

2.2. Complaint handling and resolution outcomes

The following table includes the outcomes of complaint handling by ACL regulators over the 2015-16 financial year. It was not possible for regulators to provide further data in the timeframe available for this submission.

Table 3: Complaint outcomes

	Dismissed	Withdrawn	Referred to other regulator or ADR service	Resolved via conciliation	Unresolved by conciliation	Escalated to a tribunal	Comments
ACT			unknown				ACT only captures complaints in the database therefore some figures such as referred to other regulator are unable to be provided as that occurs at the assessment phase and is not registered as a complaint. Awaiting further figures
NSW			49,666			At least 962	Statistics relate to all complaints. Note the figure for referral to other regulators are separate to complaints as they were recorded as enquiries. 96% complaints were finalised because redress was offered, the complaint was unjustified, the matter was escalated. NSW is unable to reliably identify the proportion of complaints and enquiries in other fields within the time provided to answer the questions. The results would not be able to identify which of those relate to ACL matters. If a trader and consumer do not agree on a matter the consumer is provided information on the tribunal.

	Dismissed	Withdrawn	Referred to other regulator or ADR service	Resolved via conciliation	Unresolved by conciliation	Escalated to a tribunal	Comments
NT	39	25	unknown	127	46	unknown	Dismissed figures include complaint not substantiated/unfounded/ evidence insufficient to proceed. Unresolved figure includes consumer won't accept offer. The consumer is always given the option to go to the Tribunal.
QLD	43	1252	889	7362	1412	884	Statistics relate to all complaints and cannot be split out to show ACL only. Note that the totals of these subgroups do not add up to the total of complaints finalised in 2015-16 as 3529 were finalised by codes other than those listed in the table.
SA			unknown				<p>1,627 consumer disputes were conciliated in 2015-16. This number is not comparable to 'complaints' in the former table, which includes dispute resolution and requests for advice.</p> <p>Under s8A of the Fair Trading Act 1987 (SA), the Commissioner for Consumer Affairs has the power to call a compulsory conciliation conference of the consumer and trader. If a trader fails to attend a compulsory conciliation, they can be issued a penalty.</p> <p>In 2015-16, 89% of 4,866 requests for advice and dispute resolution were finalised or escalated to compulsory conciliation within 30 days and 79% of 241 matters referred to compulsory conciliation were resolved.</p> <p>In addition, 32 cases resulted in an enforceable action such as prosecution, undertaking or assurance. A further 61 cases resulted in either a formal warning, expiation notice, referral to another agency or court case.</p>
TAS	59	No further action/ advice given	29	107	1	prosecution (not tribunal)	
VIC	570	294	132	3,456	1,916	unknown	
WA	682	unknown	625	4,999	1,930	unknown	WA statistics relate to ACL estimated outcomes and have been matched to the requested outcomes as best as possible. Manual process conducted to identify ACL complaints and outcomes

3. Data on the resourcing of ACL regulators and estimates of how it is allocated

Consumer Law regulators are generally unable to provide financial data that accurately calculates resourcing for ACL related responsibilities. The following issues should be noted:

- Each regulator has a diverse range of responsibilities and the ACL is only part of those responsibilities.
- ACL regulators do not have exclusive dedicated ACL resources.
- ACL activities are undertaken by a range of teams, both within and outside consumer law regulators' structures. This includes functions relating to licensing, dispute resolution, investigation, education, policy, human resources, corporate services, legal services, payroll etc some of which are not located within an agency.
- ACL regulators are funded differently.
- Resourcing and allocation are heavily influenced by government priorities, machinery of government, and electoral cycles.
- There are significant resource implications if regulators were to estimate and the information provided could not be certified as being accurate.

3.1. Further jurisdictional information

3.1.1. New South Wales – NSW Fair Trading

In 2015-16, NSW Fair Trading had a total expenditure budget of \$127.2m and 522 FTE employees as at 30 June 2016.

Under the current operating model for the agency and the Department, many 'Fair Trading' functions relating to administering the ACL and other laws are now delivered by other divisions within the NSW Department of Finance, Services and Innovation, and in some cases by other agencies. For example, Fair Trading no longer operates public counter services to handle face-to-face complaints and enquiries, being functions transferred to the whole-of-Government service agency, Service NSW, along with responsibility for answering many phone enquiries. Furthermore, occupational licensing, policy, legal services, media and communications functions, and the answering of other phone enquiries are performed by other divisions in the Department of Finance, Services and Innovation, outside the Fair Trading structure. Other services including ICT, human resources and finance support are provided to the Department by private enterprise under contract.

For the functions remaining within the NSW Fair Trading agency structure, teams administer a range of laws including the ACL, and it is not possible for Fair Trading to break down the operating budget to identify the proportion that related to administration of the ACL compared to non-ACL administration, or how many full-time equivalents are involved in administering the ACL.

The functions performed by Fair Trading include consumer and trader education and outreach, complaint and enquiry handling (including strata mediations), trader engagements, national projects, inspections (both as part of dispute resolution and for compliance purposes), investigations, disciplinary action processes for occupational licences, administration of community grants, specialist programs such as the Loose Fill Asbestos Insulation Voluntary Purchase and Demolition Program, and managing rental bonds, cooperatives and incorporated associations.

Given the spread of services across teams within and outside the NSW Fair Trading structure, it is not possible to break down the Fair Trading budget by the functions specified by the Productivity

Commission (policy advice, education and guidance, complaint handling and resolution, inspections and compliance, enforcement) within the time available for making a submission.

3.1.2. South Australia – Consumer and Business Services

In South Australia, ACL regulation is delivered in multiple facets through Consumer and Business Services (CBS). The purpose of CBS is to protect consumers, support and regulate business and record significant life events in South Australia. CBS carries out a diversified role including licensing and registration, dispute resolution, legislative compliance, policy development and providing education and awareness campaigns to ensure an informed community that is able to conduct business fairly, efficiently, competitively and safely.

3.1.3. Queensland – Office of Fair Trading

In 2015-16, Queensland Fair Trading had a total budget of \$30.64m and 225.3 FTE employees as at 30 June 2016.

Under the current operating model for the agency, as determined by the Department in which it is located (currently the Department of Justice and Attorney-General) and the Queensland government as a whole, many functions relating to the provision of fair trading services are provided from outside the 'Office of Fair Trading' structure. For example, the Office of Fair Trading no longer operates public counter services in some locations to handle face-to-face complaints and enquiries as these functions have been transferred to the whole-of-Government service agency, Smart Service Queensland. Similarly, responsibility for answering all phone enquiries to government, including for the OFT, rests with Smart Service Queensland. Furthermore, policy, legal services, human resource, and ICT services are provided by other parts of the department, outside the Office of Fair Trading structure.

For the functions remaining within the OFT structure, teams administer a range of laws including the ACL, and it is not possible to break down the operating budget to identify the proportion that related to administration of the ACL.

The functions performed by the Queensland Office of Fair Trading include consumer and trader education and engagement, outreach, enquiry handling, conciliation of consumer complaints, national projects, inspections, proactive compliance, investigations, disciplinary action processes for occupational licences, the administration of laws relating to cooperatives, charities and incorporated associations and their registrations, and the oversight of financial audits and management of claims for reimbursement for financial loss under the Agents Financial Administration Act.

Given the spread of services across teams within and outside the Queensland Office of Fair Trading structure, it is not possible to estimate funding by the functions outlined by the Productivity Commission (policy advice, education and guidance, complaint handling and resolution, inspections and compliance, enforcement). Any attempt to do so would involve significant resource implications and the estimates resulting from it could not be considered accurate.

4. Information on the intersection of ACL and regulators' other activity

ACL regulators, as consumer protection agencies, have a range of functions and responsibilities across a wide variety of industries. The following table indicates the amount of legislation administered by each agency (Appendix 1) which may help to provide some perspective on responsibilities.

Table 4: Legislation administered by ACL regulators

Jurisdiction	Acts	Regulations
ACT*	16	11
NSW	46	32
NT	14	7
QLD	60	22
SA	42	29
TAS	18	1
VIC	29	32
WA	78	66

*Access Canberra regulators over 100 separate Acts and regulations, 16 relate to the FT Commissioner Functions.

While some teams within consumer law regulators may be funded to undertake functions for the administration of a limited number of laws, it is common for teams involved in the administration of the ACL to administer a wider range of legislation. This has provided regulators with both flexibility in responding to consumer issues using the most appropriate legislative provisions and, commonly, a holistic response that utilise multiple statutes as part of their response, to address more consumer and marketplace issues.

It should be noted that in some jurisdictions, the consumer law regulator is also the specialist regulator for building, electrical safety, plumbing and gas industry (NSW and Tasmania).

Regulators have found that the provisions of the ACL can often be utilised together with, or instead of, local industry-specific legislation to get the most appropriate outcome in compliance matters. In some cases, the ACL can result in larger penalties than industry-specific legislation. Furthermore, decisions under the ACL can help establish national precedents for conduct within specific industries that would otherwise be regulated more inconsistently across state and territory borders. The use of the ACL to respond to underquoting of residential property prices in Victoria is a good example of this (see case study at 4.1.2.). Often, ACL contraventions can be also cited as grounds for other actions to be taken under industry-specific legislation, such as actions to cancel or restrict occupational licences.

Regulators have also conducted education activities targeting particular audiences that utilise a range of legislation.

4.1. Case studies

4.1.1. ACT vehicle regulation certificates of compliance

Access Canberra has in a number of matters overlaid the ACL in order to complement and strengthen a secondary regulatory scheme that did not have an effective range of enforcement tools to address an identified compliance issue. The following outlines a matter that involved non-compliance with transport regulation requirements.

“Certificates of Compliance” had been issued for vehicle registration, where the vehicles’ brakes had not been tested to the standard required by legislation. As a result, consumers had been charged for a service that was not completed to the required standard.

The concern was that a number of consumers may have been misled about the service that they actually received from this business. The ACL was applicable in this matter as the circumstances described above had the potential to mislead a consumer about the nature of the service they had received.

The ability to address this issue was enhanced by applying ACL provisions to the conduct. This provided greater reach to detect, deter and prevent potential harm to consumers and gave Access Canberra an opportunity to use a broader suite of legislative provisions to achieve efficient, effective and proportionate compliance outcomes.

The issues were resolved by utilising section 218 (enforceable undertaking provisions) of the ACL as the ACT Commissioner for Fair Trading accepted undertakings from the two separate entities in relation to the identified conduct.

The outcome was effective as the transport regulation legislative obligations were broadened and supported by the application of the ACL. The outcome also reiterated that a business is responsible under the ACL for the actions of their employees.

The above case study is only a single example of how Access Canberra considers the application of the ACL across a range of regulatory schemes for which it has responsibility.

4.1.2. Hocking Stuart (Richmond) Pty Ltd

Consumer Affairs Victoria’s recent action in the Federal Court against Hocking Stuart (Richmond) Pty Ltd was a case where the broader provisions of the ACL were used to address industry specific non-compliance. In this instance, it was used to address the issue of underquoting in the Victorian real estate market.

Consumer Affairs Victoria commenced proceedings in the Federal Court against Hocking Stuart (Richmond) Pty Ltd alleging contraventions of section 18 of the ACL (which prohibits misleading and deceptive conduct in trade) and section 30 of the ACL (which prohibits, in respect of the possible sale of land, false and misleading representations as to the price payable).

The investigation had revealed the agency had advertised price ranges lower than the expected selling price in the marketing of 11 properties in Richmond and Kew. Due to the circumstances, ACL provisions were preferred to the specific offence provisions in the state based real estate legislation to address the identified non-compliance.

The agency was ordered to pay a pecuniary penalty of \$330,000 after admitting it had engaged in misleading and deceptive conduct, and making false and misleading representations about the sale of land.

Consumer Affairs Victoria’s action under the ACL in this space has resulted in orders that will provide guidance and have a national effect on conduct in the real estate market.

4.1.3. Paul David Smith

This Queensland trader operated unlicensed in breach of the former Property Agents and Motor Dealers Act (PAMDA) and engaged in odometer wind-backs. Queensland OFT had taken action

against this trader previously and on this occasion investigated and took enforcement action under both PAMDA and the ACL. Mr Smith was found guilty of:

- 1 count of acting as an unlicensed motor dealer under PAMDA in the sale of vehicles to 8 consumers via car sales websites under various names,
- 2 counts of misrepresenting that goods were of particular standard, value, quality or grade in breach of the ACL by failing to tell the purchasers of the vehicles previous status as write-offs and for winding back the odometers of vehicles more than 100,000 kilometres each, and
- 2 counts of misrepresenting an affiliation in breach of the ACL by telling one purchaser he worked for Holden, and by telling another purchaser he worked for Toyota.

On 21 October 2016, Mr Smith was imprisoned for three months (as his unlicensed conduct occurred during a suspended sentence for an unrelated matter), given a further four months suspended sentence for acting an unlicensed motor dealer, and ordered to pay a \$20,000 fine for the ACL offences plus costs of \$17,172 within six months to avoid a further six months of imprisonment.

4.1.4. Coronis Real Estate

This Queensland trader is licensed under the Property Occupations Act (POA). Queensland OFT undertook an investigation under both POA and ACL and subsequently took enforcement action against the trader under the ACL. The Queensland real estate agency was fined \$10,800 after misleading a buyer about the future development potential of a Kings Beach property. Coronis Caloundra claimed in an advertisement that development applications would be accepted to a height of seven stories, subject to Council approval. Sunshine Coast Regional Council development guidelines, however, prohibited heights above three stories. A consumer purchased the property, based on the misrepresentation, in the belief that it had significant development potential and would provide good investment returns.

4.1.5. John Trevor Dobson

John Trevor Dobson was the sole operator of Ozpeopletrace, an online business offering to help people find missing family members and loved ones. This Queensland trader was licensed under the Security Providers Act (SPA). Queensland OFT investigated under both the SPA and ACL and subsequently undertook enforcement action against the trader under the ACL. On 1 September 2016 Mr Dobson was ordered to pay \$3,645 in fines and restitution for breaches of the ACL.

Mr Dobson was fined a total of \$2,500 on two counts of wrongly accepting payment and three counts of claiming false affiliations. Mr Dobson was also ordered to pay \$1,145 in restitution to two affected consumers and will face 15 days in prison if he fails to pay it within four months. The Court heard Mr Dobson took \$1,145 from two consumers who contracted him to find missing family members.

Mr Dobson's Ozpeopletrace company website claimed an affiliation with two industry associations but the investigation revealed Mr Dobson had not been a member of either since 2009. When asked to provide evidence of any actual work performed for the two consumers, Mr Dobson was unable to do so.

4.1.6. Stockland Corporation Pty Ltd

Stockland, developer of the 'SoLa' residential property development in North Lakes, advertised properties as being a 22-minute train trip to the city, along the Moreton Bay rail link which at that

time was under construction. The Moreton Bay rail draft timetable put the trip at 46 minutes, more than double the time period represented.

The trader was licensed in Queensland under the Property Occupations Act. Queensland OFT subsequently undertook enforcement action against the trader under the ACL. Stockland North Lakes Pty Ltd, part of Stockland Corporation Limited was issued fine of \$10,800 for misleading consumers. Following the investigation, Stockland corrected its advertising, advised potential customers of the error, and paid the \$10,800 civil penalty notice.

4.1.7. John Barry Johnston

On 19 March 2016, Mr Johnston, licensed under the Property Occupations Act (POA), auctioned his own property in Chelmer. The property was advertised as having 'no reserve' and Mr Johnston announced it would sell that day. However, the property was instead passed in at auction after bidding stalled, rather than being sold to the last bidder.

After the auction concluded, Mr Johnston offered the property to the auction's last bidder for a higher price, which was declined. Mr Johnston subsequently re-listed the property for an amount greater than the last bid on the auction day.

Queensland OFT investigated activity under both POA and ACL. The agent was fined after running a misleading "no reserve" auction. Mr Johnston paid a \$2,160 penalty notice after allegedly breaching the false and misleading representation provisions of ACL.

4.1.8. Dale Aaron Smith

This Queensland trader was licenced under the former Property Agents and Motor Dealers Act (PAMDA). Following an investigation by Queensland OFT, Mr Smith was convicted of fraudulently converting \$30,663 in entrusted funds to pay for unauthorised personal and business related expenses and for failing to pay a \$1,000 cash prize advertised in promotional material. The agent was:

- fined \$10,000 and ordered to pay compensation of \$30,663 under the Property Occupations Act; and
- fined \$2,500 and ordered to pay compensation of \$1,000 under the ACL.

4.1.9. Door to Door Trader Aware Community initiative

The Door to Door Trader Aware Community initiative is the result of a joint agreement between Queensland OFT, the ACCC, the Indigenous Consumer Assistance Network (ICAN) and the local council. It is designed to increase the knowledge of members of this indigenous community about their consumer rights and to reduce the detriment these vulnerable consumers have encountered from door to door traders.

An Australia-first community partnership was launched in Wujal Wujal in April 2016 with the unveiling of roadside signage designed to minimise consumer harm from unlawful door-to-door trade. The signage, placed on both entrances into the Far North Queensland Indigenous community, reminds door-to-door traders they have legal obligations to consumers and can't approach houses displaying do-not-knock notices. It is also hoped that the signage helps to empower Wujal Wujal residents to understand and assert their rights under the ACL. The initiative encouraged consumers to place a 'do-not-knock' sticker in a visible and prominent place on the home.

4.1.10. Horticulture Worker Interagency Group (HWIG)

The horticulture industry is one of Queensland's largest agriculture sectors by farm gate value, with an estimated value of \$4.07 billion for 2015-16. Horticultural production employs 14,100 people, or about 24% all people employed in Queensland agriculture. These figures do not include casual employees which are a significant proportion of the workforce. A reliance on seasonal, temporary employees in regional Queensland leads to close ties with regional tourism.

In July 2015, the Office of Industrial Relations established the Horticulture Worker Interagency Group to develop a whole-of-government approach to address issues experienced by travelling workers in the horticultural industry. The interagency group has representation from 13 Queensland Government and three Commonwealth Government agencies.

Queensland OFT is a member of the HWIG, contributing as an ACL regulator in relation to matters of misrepresentation of employment, consumer guarantees, and unfair contract terms.

5. Interaction between ACL and specialist safety regime regulators

5.1. How ACL and specialist regulators delineate their responsibilities, and how that delineation is conveyed to consumers and suppliers

The ACCC is the primary regulator for the ACL product safety regime nationally (and the sole ACL regulator for product safety in the Northern Territory, thus the comments in this section are not applicable to NT Consumer Affairs) and operates the [Product Safety Australia](#) website, incorporating information about recalls of all consumer products, including consumer products also regulated under specialist safety regimes.

ACL regulators recognise there are often overlapping responsibilities between their responsibilities under the ACL and the responsibilities of Commonwealth, state and territory specialist safety regime regulators, including those focussed on:

- electrical safety
- gas safety
- building safety, including specialist trades
- workplace safety
- fire safety
- road safety
- health authorities
- food safety
- therapeutic goods.

The specialist safety regime regulators have the technical capabilities to assess specific risks, compared to ACL regulators. As a result, action is often taken under state and territory specialist safety legislation, supported by the ACL and ACL regulators as needed.

ACL regulators may also have responsibility for specialist safety regimes, depending on the industry or the product. For example, in NSW, NSW Fair Trading regulates electricity and gas safety however in Victoria that responsibility lies with Energy Safe Victoria rather than Consumer Affairs Victoria.

ACL product safety regulators communicate with each other via monthly Product Safety Operations Group (PSOG) and CDRAC teleconferences, when issues arise via the Govdex platform and as needed via out-of-sessions teleconferences to respond to critical issues. As part of that process, where a product may be covered by a specialist safety regime, contact is normally made with specialist safety regime regulators to determine any action they may be undertaking.

ACL regulators commonly maintain relationships with state and territory fire and health authorities, to stay informed about incidents where consumer products may have contributed to death or injury and to conduct research into patterns of incidents over time to consider appropriate regulatory responses. For example, Queensland Fair Trading works with the Consumer Product Injury Research Group and the Queensland Injury Surveillance Unit (funded by Queensland Health).

ACL regulators commonly refer consumers to specialist safety regime regulators on their websites and in media releases where needed, sometimes issuing joint releases with specialist regulators. The Product Safety Australia website makes reference to other regimes and specialist regulators when necessary.

5.1.1. Further information about specific specialist safety regimes

Electrical safety

Electrical safety is primarily regulated in Australia by state and territory regulators. The Electrical Regulatory Authorities Council (ERAC, www.erac.gov.au) coordinates the work of the Australian state, territory and Commonwealth authorities, and the New Zealand authorities responsible for electrical safety, supply and energy efficiency. ERAC liaise with the ACCC as necessary. ERAC's [recall guidelines](#) explain how the specialist regime works alongside the ACL, including the ACL's recalls regime and the mandatory reporting requirement, often involving a 'home regulator' being nominated from one of the ERAC members who will be the point of contact for the trader and the ACCC. State and territory ACL product safety regulators will refer consumers to electrical safety authorities where relevant, commonly through information on websites and in media releases, including the need to report electrical accidents.

5.1.2. Further jurisdictional information

New South Wales – NSW Fair Trading

NSW Fair Trading is the regulator for electrical safety, gas safety and plumbing through its specialised Energy and Utilities Unit in the Building and Construction Service, enabling quick liaison within the agency in relation to products and incidents of concern, to determine the most appropriate response under the ACL, specialist safety legislation in NSW, or whether another specialist safety regulator is responding on behalf of other regulators. Whilst the ACCC is the reporting body for mandatory incident reporting in electrical and gas safety, all notifications for NSW are passed back to NSW Fair Trading for actioning.

NSW Fair Trading is also the specialist regulator for building and construction in NSW, to allow a quick and holistic response to safety issues involving building and related products, covering ACL and Building Code of Australia issues, participating in the whole-of-Government [Building industry co-ordination committee](#).

Fair Trading's website provides information about the specialist regimes it regulates, and provides referral information to the [NSW Food Authority](#), [Health Care Complaints Commission](#), the [Therapeutic Goods Administration](#), and [Safework NSW](#).

Victoria – Consumer Affairs Victoria

Energy Safe Victoria (ESV) has lead responsibility in Victoria for issues relating to the safety of electrical and gas products. However, Consumer Affairs Victoria has some responsibilities in the industry such as issues relating to disputes on fees charged and the quality of electrical work (excluding safety issues).

Queensland – Queensland Office of Fair Trading

The Service Trades Council (STC) commenced in December 2015 and has regulatory responsibility for plumbers and drainers; and provides advice to the Queensland Building and Construction Commission's Commissioner and Minister. Membership of the Council is by Ministerial appointment and its membership must include a senior officer of the Queensland OFT to represent consumers.

The Queensland Building and Construction Product Committee (QBCPC) was formed in December 2015 and aims to protect home owners and industry members from non-compliant and non-conforming products. The committee is comprised of the QBCPC, Queensland OFT (compliance and product safety) and the Queensland Electrical Safety Office. The committee works to prevent a repeat of incidents such as 2014's compulsory recall of electrical cabling product, Infinity Cable,

which did not comply with Australian standards. The QBCPC considers reports of potentially non-conforming products and then investigates whether the products comply with Australian standards.

South Australia – Consumer and Business Services

The SA Office of the Technical Regulator (OTR) is responsible for the administration of the safety and technical provisions of the *Electricity Act 1996*, the *Gas Act 1997*, the *Energy Products (Safety and Efficiency) Act 2000* and the *Water Industry Act 2012*. The primary purpose of these Acts is to ensure the safety of the South Australian community and promote energy efficiency and reliable supplies. The ACL also ensures the safety of consumers and Consumer and Business Services (CBS) administers the ACL within South Australia.

A number of activities are conducted by both agencies including education material and auditing work – OTR focuses on electrical and gas installations and ensures that requirements are met whereas CBS will often focus on the licensing aspects and whether there has been any misleading or deceptive conduct. The OTR has very similar enforcement options to what is available under the ACL including verbal and written warnings, expiation notices, assurances or prosecutions. However, the OTR often refers its enforcement matters through to CBS for action rather than take action itself which can cause confusion for the consumers.

5.2. The extent and means by which ACL and specialist regulators share data and information to help focus regulators' regulatory efforts

Most major product safety issues are national matters and therefore most responses are coordinated at the national level. This is the most appropriate way to address the national issues and the Product Safety Operations Group was established in September 2016 to facilitate this.

The ACCC regulates and monitors all product recalls; however state and territory specialist safety regime regulators (such as NSW Fair Trading or Energy Safe Victoria) also regulate and manage recalls they undertake under specialist regimes, especially mandatory recalls such as Samsung washing machines and Infinity cables recalls. The specialist regulator will share information with the ACL regulators.

5.2.1. Infinity Cables

Between 2010 and 2013, Infinity Cable Co. Pty Ltd imported electrical cable from China that they supplied to over 140 hardware retailers, electrical wholesalers, builders and electricians. The cable coating was of inferior quality with a reduced service life. If the electrical wiring became exposed it could cause house fires or electrical shock to people. No incidents have yet been reported but estimates suggest some early installations could become hazardous under certain conditions by 2016.

Electrical safety regulators became aware of the issue in May 2013 after the Australian Cablemakers Association commissioned testing of imported Infinity cables which indicated they failed the Australian standards for electrical safety. In August 2013, Infinity voluntarily recalled the non-compliant cables from retailers and later placed itself into liquidation.

In early October 2013, electrical safety regulators in NSW, Western Australia, Victoria and Queensland prohibited the supply or installation of Infinity cables under their electrical safety legislation. The ACCC initiated a national product safety recall of Infinity cables on 27 August 2014. The recall takes a risk-based remediation approach, replacing only the cable that presents a hazard. The recalls are coordinated by ACCC on behalf of a taskforce of state and territory regulators (made up of regulatory safety regulators, consumer agencies and building regulators) and in Industry

Reference Group. State and territory ACL regulators shared information with the specialist regulators to support the national task force and ensure consistent messaging on the issue. Some state and territory specialist regulators have initiated further recalls after identifying further retailers of the cable.

In August 2015, NSW Fair Trading initiated 25 mandatory recalls on NSW based suppliers (26 suppliers in total – one in liquidation) known to have purchased Infinity branded cables directly from Infinity Cable Co. Pty Ltd. These ‘tier 2’ traders were separate to the NSW traders that were captured by the ACCC’s voluntary recall.

The requirements of the mandatory recall, is to remediate known supplied cable, similarly to that of the risk based remediation approach of the national product safety recall imposed by the ACCC. To date, records estimate that approx. 2.5% (27,938m of 1,121,100m) of the recorded supplied cable by these traders has been remediated since the mandatory recalls were issued. Suppliers are required to report monthly to Fair Trading to advise of the current status of remediation and or destruction of Infinity cable.

NSW Fair Trading continually works closely with the ACCC and electrical safety regulators in the national taskforce, in an attempt to assist traders and consumers in remediating the recalled cables. Recently, the ACCC has agreed to conduct audits of other known suppliers that have not previously been captured in either the ACCC or Fair Trading’s recalls, two of which are NSW based suppliers.

Despite the attempts of the NSW recalling suppliers actively promoting the recall, remediation/destruction of Infinity cables has declined and to date there have been no reports of the infinity cables failing.

5.2.2. Non-conforming building products

The fire in the Lacrosse apartment building at Docklands, Victoria in November 2014 raised public concerns about the safety and compliance of building material. The 2015 Victorian Building Authority (VBA) External Wall Cladding Audit of 170 high rise residential and public buildings around Melbourne found a non-compliance rate of 51%.

At a national level, gaps in the current regulatory framework relating to non-conforming building products were identified and discussed in the report released in February 2016 by the Senior Officers’ Group (SOG) of the Building Ministers Forum (BMF). A number of ACL regulators who also have responsibility in the building sector, including South Australia and New South Wales, are members of the SOG.

As Victoria’s ACL regulator, Consumer Affairs Victoria has the ability to take action in some instances where building products are being advertised or described in false or misleading terms. The VBA, as Victoria’s building regulator, has wider powers under its legislation to address the issue of buildings that may not comply with applicable codes and standards because of the use of non-conforming products in their construction. Other regulators, such as Worksafe Victoria and Energy Safe Victoria, may also have responsibility for aspects of compliance in this area.

To ensure a consistent and coordinated approach to any issues arising out of the use or sale of non-conforming building products in Victoria, a Non-Conforming Building Product Working Group was formed in 2016, comprising Consumer Affairs Victoria, the VBA, Worksafe Victoria and Energy Safe Victoria. This working group meets regularly to share information and to ensure that any issues in

this space are dealt with effectively, particularly until any gaps in the current regulatory regime are amended.

A recent example of coordinated action in this space is the working group's response to the discovery of asbestos in public buildings in other jurisdictions, notably Perth Children's Hospital. With Worksafe Victoria leading, testing of Victorian products was carried out to ensure compliance with relevant standards and codes.

5.2.3. Samsung Washing Machines

After a number of house fires across Australia (Samsung had 6 reports and then came forward to NSW Fair Trading), Samsung issued a recall on six models of their top-loader washing machines due to a fire hazard from moisture penetrating electrical connectors. The affected machines have led to multiple fires causing external damage, of which some were machines that Samsung technicians had repaired earlier in the recall.

In July 2015, NSW Fair Trading announced a mandatory recall for the affected washing machines. At the time of the recall the remedy rate was 51 per cent and Samsung had been delivering the voluntary recall nationally. Whilst the mandatory recall was for NSW only, Samsung applied the recall requirements set out by NSW Fair Trading for all states and territories.

The ACCC investigated reports that some consumers who owned a recalled machine were offered a repair but not a replacement or refund. As of September 2016, the total remedy rate for the recall was 81.01 per cent

ACL regulators in other state supported the NSW recall nationally and regulators are sharing information about the number of machines reported by consumers in response to the recall.

5.3. The approach taken to address product safety concerns where ACL / specialist regulator jurisdiction overlaps

There are often some ACL and specialist regulator overlaps across Australia with more than one regulator able to respond to product safety issues. A lead agency approach is often required and the Product Safety Operations Group (PSOG) will assist ACL regulators and specialist regulators to take a coordinated approach.

5.3.1. Synthetic Drugs

In 2013 the NSW Parliamentary Legal Affairs Committee requested the NSW Government to adopt a multifaceted approach to combat the emergence of synthetic drugs resulting in a series of hospitalisations. Concerns were raised about the availability of synthetic psychoactive substances and the risks they posed to the public.

On 9 June 2013, the NSW Minister for Fair Trading imposed an interim ban under the ACL on a range of synthetic drugs. The ban was developed in consultation with the NSW Police Force Drug Squad. NSW Fair Trading undertook a major compliance operation involving 120 Fair Trading officers inspecting over 1,000 retailers over four days. The NSW Minister also wrote to the Commonwealth requesting the Commonwealth utilise its permanent banning powers under the ACL to prohibit synthetic drugs nationally.

South Australia replicated the NSW ban on 13 June 2013. On 16 June 2013 the Commonwealth announced a national interim ban for up to 120 days.

In Victoria, psychoactive substances are regulated under Schedule 11 of the *Drugs, Poisons and Controlled Substances Act 1981 (Vic)*, however it is also possible to issue bans under the product

safety provisions of the ACL. After a series of synthetic drug incidents in June 2013, Victoria Police, Consumer Affairs Victoria and the Department of Health and Human Services cooperated to develop a response to the issue and ensure that such synthetic substances were removed from sale. In December 2013 a protocol was developed outlining the respective roles and responsibilities of Victoria Police, Department of Health and Human Services and Consumer Affairs Victoria. The protocol addressed both responsibility for short term actions (such as pre-emptive police action and public health warnings) and the longer term response such as bans or changes to relevant legislation.

In September 2013, the NSW Government introduced the *Drugs and Poisons Legislation Amendment (New Psychoactive and Other substances) Bill 2013*. The new law commenced on 7 October 2013 and prohibits the supply, manufacture and advertising of synthetic drugs or psychoactive substances in NSW. The law also makes it an offence to manufacture, supply and possess a substance listed on schedule 9 of the Commonwealth Poisons Standard list.

The national interim ban which lapsed on 13 October 2013 served its purpose by protecting consumers whilst relevant jurisdictional drug laws were developed.

5.3.2. Raw Milk

In December 2014 it became known that unpasteurised or “raw” milk was being sold in Victoria as ‘Bath Milk’ or “Cosmetic Milk’. It was reported that, despite being labelled as not fit for human consumption, the product was being consumed, and in some instances, fed to children.

The Victorian Chief Health Officer issued a public health warning on the dangers of drinking raw cow’s milk. This warning was prompted by five cases of gastroenteritis in children who drank raw milk, one of which resulted in the death of a child.

The ACCC, in collaboration with other ACL regulators arranged a voluntary recall of unpasteurised milk products as a first response. Consumer Affairs Victoria inspectors visited various stores and seized quantities of raw milk that were available for sale in Victoria. Consumer Affairs Victoria also liaised with the Department of Health and Human Services and Dairy Food Safety Victoria to coordinate and ensure consistent public messaging and educational activities.

A National Raw Milk Working Group was established, comprising consumer, health and food regulators to seek a national approach to this issue. This group liaised with the Australia and New Zealand Ministerial Forum on Food Regulation (ANZMFFR) to discuss the most effective way to regulate this issue. It was suggested that regulation through the food regulatory regime would be the best option. As a result of this consultation, it was agreed that the supply of raw milk would be regulated through the food supply chain, and that the National Raw Milk Working Group would be disbanded.

5.3.3. Hoverboards (self-balancing scooters)

In January 2016, a house fire in Victoria was found to be caused by a hoverboard which had been left charging. Upon advice from Consumer Affairs Victoria, the Victorian Minister for Consumer Affairs immediately issued a public warning under the ACL. Concurrently, the Minister wrote to the Commonwealth Minister requesting the safety of hoverboards be given urgent attention and recommended a national ban of the product so that the product can be tested to see if it meets Australian standards. Additionally, the minister wrote to industry asking that retailers stop selling dangerous and recalled hoverboards.

In March 2016, the Commonwealth Minister imposed a series of interim bans under the product safety provisions of the ACL which led to a permanent ban on hoverboards that do not meet Australian Electrical Safety Standards. Energy Safety Victoria (ESV) banned hoverboards that do not have the required electrical safety certification in Victoria under its legislation. ESV was the lead agency as they are the only electrical safety jurisdiction that has powers to stop the sale of hoverboards. An interim ban on unsafe hoverboards was also imposed by the WA Government after house fires were caused by unsafe models of hoverboards which failed to meet electrical standards. Consumer Affairs Victoria enforces the mandatory safety standard on hoverboards through its state-wide inspection program and continues to share market intelligence with ACCC and ESV in relation to this matter.

In some jurisdictions, ACL regulators and electrical safety regulators conducted inspections of stores to inform traders of the interim ban issued by the ACCC.

5.3.4. Quad Bikes

Quad bikes used for work, such as by farmers on their property for farm use, are regulated under work health and safety laws as they are defined as 'plant and equipment'. Following a spate of quad bike-related deaths (from little to no vehicle protection and poor driving skills) a Heads of Workplace Safety Authorities (HWSA) working group was convened in 2009 to develop a national strategy address this issue.

Although quad bike safety primarily lies with workplace safety authorities, ACL regulators have played a role in ensuring the product safety of quad bikes. One of the HWSA's Quad Bike Safety Strategy's key strategy areas focused on the point of sale of quad bikes. This includes the development of promotional material to be displayed at stores selling quad bikes.

A national safety campaign to raise awareness of the dangers of quad bikes was launched in 2014 by ACL regulators. The ACCC, through its Product Safety Australia website, developed the [*Quad bike safety – would you risk it?*](#) video and regularly publishes quad bike safety messages.

The Queensland Office of Fair Trading was involved in developing the Queensland Government's [*Statewide Plan for Improving Quad Bike Safety in Queensland 2016-2019*](#). The plan acknowledges that quad bikes are used for both work and recreational purposes and aims to increase awareness of the risks associated with quad bikes and implement initiatives to mitigate these.

5.4. To what extent formal arrangements such as MOU's are used to guide interactions between ACL and specialist regulators, and how well formal or informal arrangements with specialist regulators works in practice

ACL regulators find that a more informal and flexible mode of cooperation with its regulatory partners to maintain constructive working relationships is more beneficial, rendering formal MOU redundant and sometimes inhibitive. Generally, strong interagency relationships led by senior executives supported by regular meetings is a more productive and sustainable way of ensuring strong governance and effective working relationships. This enables agile, tactical responses to emerging issues and whole of agency collaboration.

ACL regulators will enter into a MOU where there is a requirement by another agency to underpin data sharing or where there is a complex legal framework requiring definition of agency roles and responsibilities.

5.5. How often ACL regulators interact with different specialist safety regime regulators

It is difficult to report on how often ACL regulators interact with different specialist safety regime regulators. Consumer and trader issues are dynamic and quite often cannot be predicted or foreseen. However, as issues do arise, and where it is apparent that interaction with other specialist safety regime regulators is required, ACL regulators are able to quickly refer to the appropriate agency. For example, some jurisdictions are involved in various state-based working groups with other specialist regulators.

In Victoria, Consumer Affairs Victoria sits in a working group with the Victorian Building Authority and Energy Safe Victoria that meets regularly for gas, electrical and building safety.

In Queensland, a Building and Construction Product Committee was formed in 2015 to protect home owners and industry members from non-compliant and non-conforming products. The committee is comprised of the Queensland Building and Construction Committee, the Queensland Office of Fair Trading and the Queensland Electrical Safety Office.

6. Cooperation between regulators and ADR schemes

In 2008 the Commission recommended (rec 9.2) establishing “a formal cooperative mechanism between regulators, ADR schemes and other stakeholders to reassess every five years the nature and structure of ADR arrangements to achieve best practice and address redundancies or new needs”. Can CDRAC point to any public information or other material that indicates the extent to which this recommendation has been addressed?

6.1 Further jurisdictional information

6.1.1 New South Wales – NSW Fair Trading

Section 9A of the [Fair Trading Act 1987](#) allows the Commissioner for Fair Trading to enter into an information sharing arrangement to share or exchange information held, with agencies or “any other person or body that exercises functions, in the public interest, that involve protecting the interests of consumers”. ADR schemes fall within that definition, allowing the Commissioner to enter into an information sharing arrangement when needed. However, NSW Fair Trading generally advises consumers making complaints and enquiries to Fair Trading to directly approach relevant ADR schemes to complain, but has utilised a memorandum of understanding (information sharing arrangement) with one ADR scheme, being the Energy & Water Ombudsman NSW (EWON).

Fair Trading constantly maintains its comprehensive processes for handling enquiries and complaints, including referring consumers to ADRs. Referrals are also made publicly in the media when appropriate, with the Commissioner referring to ADRs such as the Financial Ombudsman Service in his regular talk-back radio segments that cover consumer issues within and beyond the scope of the laws that Fair Trading administers.

In 2009, under the remits of the Department of Justice, the [Alternative Dispute Resolution Directorate](#) was established to co-ordinate, manage and drive ADR government, policy, strategy and growth in NSW. The [ADR Blueprint project](#) aims to extend and better integrate ADR across the NSW civil justice system including overseeing a number of recommendations and conducting surveys on the use of ADR by NSW government departments.

In April 2014 the NSW Law Reform Commission advised NSW Fair Trading that the NSW Attorney General had asked the NSW Law Reform Commission to “review the statutory provisions that provide for mediation and other forms of alternative dispute resolution with a view to updating those provisions and, where appropriate, recommending a consistent model or models for dispute resolution in statutory contexts, including court ordered mediation and alternative dispute resolution”. NSW Fair Trading completed an ADR survey and noted information relating to relevant legislation administered by NSWFT and the option for NSW consumers to go to the NSW Civil and Administrative Tribunal.

6.1.2 South Australia – Consumer and Business Services

Consumer and Business Services (CBS) provide an advice and dispute resolution service for South Australian consumers and businesses under the *Fair Trading Act 1987* (SA). However, advice and dispute resolution may be referred to certain specialist regulators in SA: the Telecommunications Industry Ombudsman, the SA Small Business Commissioner or the Energy Industry Ombudsman.

Telecommunications Industry Ombudsman (TIO)

CBS provides advice on telephony and internet goods and services but makes a clear distinction in some areas. For example, CBS will attempt to conciliate disputes regarding mobile phone handsets bought outright, however will not conciliate disputes concerning payment plans between

telecommunication service providers and consumers. If a mobile phone is bought on a payment plan linked to a particular service provider then the TIO is best placed to conciliate any dispute involving the combined product /service. This distinction is explained to consumers at the point of contact with CBS and a referral.

Office of the Small Business Commissioner (SBC)

Many businesses have rights under the ACL and CBS provides advice to business. However, CBS does not provide a conciliation service to businesses that have a dispute with another business. At the point of customer contact with CBS, businesses are advised that CBS can provide advice and that the SBC may be able to offer conciliation services.

Energy Industry Ombudsman (EIO)

CBS does not offer advice or conciliation services on billing disputes between energy suppliers and their customers. These matters are referred to the EIO. However, where an energy supplier has provided goods and services, such as the supply and installation of solar panels, then CBS may offer advice and assistance with resolving any dispute. Such matters can touch on billing issues in so far as decreased solar energy generation has increased electricity bills.

6.1.3 Queensland – Queensland Office of Fair Trading

The Queensland OFT provides an advice and dispute resolution service for Queenslanders under the *Fair Trading Act 1989*. Under the OFT's compliance framework disputes may be referred to specialist regulators including for example the Residential Tenancies Authority, the Queensland Building and Construction Commission, the Energy and Water Ombudsman, the Queensland Training Ombudsman, The Queensland Health Ombudsman.

Appendix A – List of Attachments

1. ACL regulators – list of legislation administered per jurisdiction
2. ACL Dispute Resolution and Compliance & Enforcement Protocol
3. CDRAC Crisis Management Protocol
4. ACL MOU
5. CDRAC Terms of Reference 2015-2017
6. FTOG Terms of Reference
7. PSOG Terms of Reference 2016-2018
8. CAF/CAANZ Strategic Agenda 2015-2017

Appendix 1 - Legislation administered by ACL Regulators

ACT Access Canberra

Minister for Racing and Gaming

- Casino Control Act 2006
- Gambling and Racing Control Act 1999
- Gaming Machine Act 2004
- Interactive Gambling Act 1998
- Lotteries Act 1964
- Pool Betting Act 1964
- Race and Sports Bookmaking Act 2001
- Racing Act 1999
- Totalisator Act 2014
- Unlawful Gambling Act 2009

Minister for Workplace Safety and Industrial Relations

- Dangerous Goods (Road Transport) Act 2009
- Dangerous Substances Act 2004
- Long Service Leave Act 1976
- Machinery Act 1949
- Scaffolding and Lifts Act 1912
- Workers Compensation Act 1951
- Work Health and Safety Act 2011

Minister for Health

- Food Act 2001
- Smoke-Free Public Places Act 2003
- Tobacco Act 1927

Attorney-General

- Associations Incorporation Act 1991
- Civil Law (Property) Act 2006
- Civil Law (Sale of Residential Property) Act 2003
- Civil Unions Act 2012
- Domestic Relationships Act 1994
- Fair Trading (Australian Consumer Law) Act 1992
- Land Titles Act 1925
- Land Titles (Unit Titles) Act 1970
- Liquor Act 2010
- Married Persons Property Act 1986
- Parentage Act 2004
- Partnership Act 1963
- Prostitution Act 1992
- Residential Tenancies Act 1997
- Security Industry Act 2003
- Unit Titles (Management) Act 2011

Minister for Justice

- Adoption Act 1993
- Agents Act 2003
- Births, Deaths and Marriages Registration Act 1997
- Charitable Collections Act 2003
- Classification (Publications, Films and Computer Games) (Enforcement) Act 1995
- Cooperatives Act 2002
- Eggs (Labelling and Sale) Act 2001
- Fair Trading (Motor Vehicle Repair Industry) Act 2010Fair Trading (Fuel Prices) Act 1993
- Hawkers Act 2003
- Heavy Vehicle National Law (ACT) Act 2013
- Interstate Road Transport Act 1985 (Cwlth)
- Interstate Road Transport Charge Act 1985 (Cwlth)
- Motor Vehicle Standards Act 1989 (Cwlth)
- Pawnbrokers Act 1902
- Rail Safety National Law (ACT) Act 2014
- Registrar-General Act 1993
- Registration of Deeds Act 1957
- Retirement Villages Act 2012
- Road Transport (Driver Licensing) Act 1999
- Road Transport (General) Act 1999
- Road Transport (Public Passenger Services) Act 2001
- Road Transport (Public Passenger Services) Regulation 2002
- Road Transport (Safety and Traffic Management) Act 1999
- Road Transport (Safety and Traffic Management) Regulation 2000
- Road Transport (Alcohol and Drugs) Act 1977
- Road Transport (Vehicle Registration) Act 1999
- Sale of Goods Act 1954
- Sale of Motor Vehicles Act 1977
- Second-hand Dealers Act 1906
- Workplace Privacy Act 2011
- Unit Titles Act 2001

Minister for the Environment

- Clinical Waste Act 1990
- Environment Protection Act 1997
- Lakes Act 1976
- National Environment Protection Council Act 1994
- Nature Conservation Act 1980
- Nature Conservation Act 2014
- Plastic Shopping Bags Ban Act 2010
- Utilities Act 2000
- Utilities (Technical Regulation) Act 2014
- Water Resources Act 2007

Minister for Planning

- Architects Act 2004
- Building Act 2004
- Building and Construction Industry (Security of Payment) Act 2009
- Construction Occupations (Licensing) Act 2004
- Electricity Safety Act 1971
- Gas Safety Act 2000
- Lands Acquisition Act 1994
- Planning and Development Act 2007
- Water and Sewerage Act 2000 Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)

Minister for Community Services

- Working with Vulnerable People (Background Checking) Act 2011

Minister for Territory and Municipal Services

- Public Unleased Land Act 2013
- Road Transport (Driver Licensing) Regulation 2000
- Road Transport (Public Passenger Services) Regulation 2002
- Road Transport (Vehicle Registration) Act 1999
- Road Transport (Vehicle Registration) Regulation 2000

Minister for Roads and Parking

- Road Transport (General) Act 1999
- Road Transport (General) Regulation 2000
- Road Transport (Safety and Traffic Management) Act 1999
- Road Transport (Safety and Traffic Management) Regulation 2000

NSW Fair Trading

- Agricultural Tenancies Act 1990
- Architects Act 2003
- Architects Regulation 2012
- Associations Incorporation Act 2009
- Associations Incorporation Regulation 2016
- Australian Consumer Law Act
- Biofuels Act 2007
- Biofuels Regulation 2016
- Boarding Houses Act 2012, Part 1 (except sections 3 (b) and (c)), Part 2, Part 5 (except section 104), Schedule 2 (except Part 2) and subschedules 3.3 and 3.6
- Boarding Houses Regulation 2013, Part 2
- Building and Construction Industry Security of Payment Act 1999
- Building and Construction Industry Security of Payment Regulation 2008
- Building Professionals Act 2005
- Building Professionals Regulation 2007
- Business Names (Commonwealth Powers) Act 2011

- Charitable Fundraising Act 1991
- Charitable Fundraising Regulation 2015
- Community Land Management Act 1989
- Community Land Management Regulation 2007
- Contracts Review Act 1980
- Conveyancers Licensing Act 2003
- Conveyancers Licensing Regulation 2015
- Co-operative Housing and Starr-Bowkett Societies Act 1998
- Co-operative Housing and Starr-Bowkett Societies Regulation 2015
- Co-operatives (Adoption of National Law) Act 2012
- Co-operatives National Law NSW
- Co-operatives National Regulations NSW
- Co-operatives (New South Wales) Regulation 2014
- Credit (Commonwealth Powers) Act 2010
- Electricity (Consumer Safety) Act 2004
- Electricity Supply Amendment (Advanced meters) Act 2016
- Electricity (Consumer Safety) Regulation 2015
- Fair Trading Act 1987
- Fair Trading Regulation 2012
- Funeral Funds Act 1979
- Funeral Funds Regulation 2016
- Gas Supply Act 1996, section 83A (remainder Minister for Resources and Energy)
- Gas Supply (Consumer Safety) Regulation 2012
- Hairdressers Act 2003
- Holiday Parks (Long-term Casual Occupation) Act 2002
- Holiday Parks (Long-term Casual Occupation) Regulation 2009
- Home Building Act 1989
- Home Building Regulation 2014
- Innkeepers Act 1968
- Landlord and Tenant Act 1899
- Landlord and Tenant (Amendment) Act 1948
- Landlord and Tenant Regulation 2015
- Motor Dealers and Repairers Act 2013
- Motor Dealers and Repairers Regulation 2014
- Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014
- Mutual Recognition (Automatic Licensed Occupations Recognition) Regulation 2014
- Occupational Licensing (Adoption of National Law) Act 2010
- Occupational Licensing National Law (NSW)
- Partnership Act 1892, in so far as it relates to the functions of the Registrar of the register of limited partnerships and incorporated limited partnerships and to the setting of fees to be charged for maintaining that register, jointly with the Attorney General and the Minister for Finance and Services (remainder, the Attorney General)
- Pawnbrokers and Second-hand Dealers Act 1996

- Pawnbrokers and Second-hand Dealers Regulation 2015
- Personal Property Securities (Commonwealth Powers) Act 2009, Attorney General, except parts; Division 2 of Part 2 of Schedule 1 and clause 24 of Schedule 1, jointly the Attorney General, the Minister for Finance and Services and the Minister for Fair Trading
- Plumbing and Drainage Act 2011
- Plumbing and Drainage Regulation 2012
- Prices Regulation Act 1948
- Professional Standards Act 1994
- Professional Standards Regulation 2014
- Property, Stock and Business Agents Act 2002
- Property, Stock and Business Agents Regulation 2014
- Residential (Land Lease) Communities Act 2013
- Residential (Land Lease) Communities Regulation 2015
- Residential Tenancies Act 2010
- Residential Tenancies Regulation 2010
- Retirement Villages Act 1999
- Retirement Villages Regulation 2009
- Storage Liens Act 1935
- Storage Liens Regulation 2014
- Strata Schemes Management Act 1996
- Strata Schemes Management Regulation 2010
- Surveying and Spatial Information Act 2002
- Surveying and Spatial Information Regulation 2012
- Tattoo Parlours Act 2012 (jointly with the Minister for Police and Emergency Services)
- Tattoo Parlours Regulation 2013
- Uncollected Goods Act 1995
- Uncollected Goods Regulation 2011

NT Consumer Affairs

- Accommodation Providers Act
- Australian Consumer Law Act
- Building Act
- Building (Resolution of Residential Building Work Disputes) Regulations
- Building (RBI and Fidelity Fund Schemes) Regulations
- Building Regulations
- Business Tenancies (Fair Dealings) Act
- Business Tenancies (Fair Dealings) Regulations
- Caravan Parks Act
- Caravan Parks Regulations
- Consumer Affairs & Fair Trading Act
- Partnership Act
- Price Exploitation Prevention Act

- Residential Tenancies Act
- Residential Tenancies Regulations
- Retirement Villages Act
- Retirement Villages Regulations
- Sale of Goods Act
- Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010
- Uncollected Goods Act
- Warehousemen's Liens Act

QLD Office of Fair Trading

- Agents Financial Administration Act 2014
- Agents Financial Administration Regulation 2014
- All Saints Church Lands Act 1924
- All Saints Church Lands Act 1960
- Anglican Church of Australia (Diocese of Brisbane) Property Act 1889
- Anglican Church of Australia Act 1895
- Anglican Church of Australia Act 1895 Amendment Act 1901
- Anglican Church of Australia Act 1977
- Anglican Church of Australia Constitution Act 1961
- Ann Street Presbyterian Church Act 1889
- Associations Incorporation Act 1981[1]
- Associations Incorporation Regulation 1999
- Bishopsbourne Estate and See Endowment Trusts Act 1898
- Boonah Show Ground Act 1914
- Business Names (Commonwealth Powers) Act 2011
- Charitable Funds Act 1958
- Chinese Temple Society Act 1964
- Churches of Christ, Scientist, Incorporation Act 1964
- Collections Act 1966
- Collections Regulation 2008
- Cooperatives Act 1997
- Cooperatives Regulation 1997
- Credit (Commonwealth Powers) Act 2010
- Credit (Rural Finance) Act 1996
- Debt Collectors (Field Agents and Collection Agents) Act 2014
- Debt Collectors (Field Agents and Collection Agents) Regulation 2014
- Disposal of Uncollected Goods Act 1967
- Factors Act 1892
- Fair Trading (Code of Practice - Fitness Industry) Regulation 2003
- Fair Trading (Safety Standards) Regulation 2011
- Fair Trading Act 1989 incorporating the Australian Consumer Law Qld
- Fair Trading Inspectors Act 2014

- Funeral Benefit Business Act 1982
- Funeral Benefit Business Regulation 2010
- Guides Queensland Act 1970
- Introduction Agents Act 2001
- Introduction Agents Regulation 2002
- Land Sales Act 1984
- Land Sales Regulation 2000
- Mercantile Act 1867
- Motor Dealers and Chattel Auctioneers Act 2014
- Motor Dealers and Chattel Auctioneers Regulation 2014
- Partnership Act 1891
- Partnership Regulation 2015
- Personal Property Securities (Ancillary Provisions) Act 2010
- Personal Property Securities (Ancillary Provisions) Regulation 2011
- Personal Property Securities (Commonwealth Powers) Act 2009
- Presbyterian Church of Australia Act 1900
- Presbyterian Church of Australia Act 1971
- Property Occupations Act 2014
- Property Occupations Regulation 2014
- Queensland Congregational Union Act 1967
- Queensland Temperance League Lands Act 1985
- Returned & Services League of Australia (Queensland Branch) Act 1956
- Returned Servicemen's Badges Act 1956
- Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945
- Roman Catholic Church (Incorporation of Church Entities) Act 1994
- Roman Catholic Church (Northern Lands) Vesting Act 1941
- Roman Catholic Church Lands Act 1985
- Roman Catholic Relief Act 1830
- Sale of Goods (Vienna Convention) Act 1986
- Sale of Goods Act 1896
- Salvation Army (Queensland) Property Trust Act 1930
- Scout Association of Australia Queensland Branch Act 1975
- Sea-Carriage Documents Act 1996
- Second-hand Dealers and Pawnbrokers Act 2003
- Second-hand Dealers and Pawnbrokers Regulation 2004
- Security Providers (Crowd Controller Code of Practice) Regulation 2008
- Security Providers (Security Officer—Licensed Premises—Code of Practice) Regulation 2008
- Security Providers Act 1993
- Security Providers Regulation 2008
- Storage Liens Act 1973
- Storage Liens Regulation 2008
- Tattoo Parlours Act 2013

- Tattoo Parlours Regulation 2013
- Tourism Services (Code of Conduct for Inbound Tour Operators) Regulation 2003
- Tourism Services Act 2003
- Tourism Services Regulation 2003
- United Grand Lodge of Ancient Free and Accepted Masons of Queensland Trustees Act 1942
- Uniting Church in Australia Act 1977
- Wesleyan Methodist Trust Property Act 1853
- Wesleyan Methodists, Independents, and Baptists Churches Act 1838

SA Consumer and Business Services

- Associations Incorporation Act 1985
- Associations Incorporation Regulations 2008
- Australian Consumer Law
- Authorised Betting Operations Act 2000
- Authorised Betting Operations Regulations 2016
- Births, Deaths and Marriages Registration Act 1996
- Birth, Deaths and Marriages Registration Regulations 2011
- Building Work Contractors Act 1995
- Building Work Contractors Regulations 2011
- Casino Act 1997
- Casino Regulations 2013
- Collections for Charitable Purposes Act 1939
- Companies (Administration) Act 1982
- Conveyancers Act 1994
- Conveyancers Regulations 2010
- Co-operatives (South Australia) Regulations 2015
- Co-operatives Act 1997
- Co-operatives National Law (South Australia) Act 2013
- Fair Trading (Fuel Industry Code) Regulations 2013
- Fair Trading (Health and Fitness Industry Code) Regulations 2007
- Fair Trading (Pre-paid Funerals Industry Code) Regulations 2011
- Fair Trading Act 1987
- Fair Trading Regulations 2010
- Gaming Machines Act 1992
- Gaming Machines Regulations 2005
- Hairdressers Act 1988
- Hairdressers Regulations 2016
- Land Agents Act 1994
- Land Agents Regulations 2010
- Land and Business (Sale and Conveyancing) Act 1994
- Land and Business (Sale and Conveyancing) Regulations 2010
- Land Valuers Act 1994

- Land Valuers Regulations 2010
- Liquor Licensing Act 1997
- Liquor Licensing (Declared Criminal Organisations) Regulations 2015
- Liquor Licensing (General) Regulations 2012
- Lottery and Gaming Act 1936
- Lottery and Gaming Regulations 2008
- Marriage Act 1961
- Misrepresentation Act 1972
- Partnership Act 1891
- Partnership Regulations 2006
- Plumbers, Gas Fitters and Electricians Act 1995
- Plumbers, Gas Fitters and Electricians Regulations 2010
- Prices Act 1948
- Prices Regulations 2014
- Residential Parks Act 2007
- Residential Parks Regulations 2007
- Residential Tenancies Act 1995
- Residential Tenancies Regulations 2010
- Residential Tenancies (Rooming Houses) Revocation Regulations 2014
- Second-Hand Vehicle Dealers Act 1995
- Second-hand Vehicle Dealers Regulations 2010
- Security and Investigation Industry Act 1995
- Security and Investigation Industry Regulations 2011
- Sexual Reassignment Act 1988
- Sexual Reassignment Regulations 2015
- Tattooing Industry Control Act 2015
- Tattooing Industry Control Regulations 2016

SA Consumer and Business Services also has responsibilities under the following legislation:

- Adoption Act 1988
- Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981
- Coroners Act 2003
- Burial and Cremation Act 2013
- Criminal Investigation (Covert Operations) Act 2009
- Da Costa Samaritan Fund (Incorporation of Trustees) Act 1953
- Family Relationships Act 1975
- Evidence Act 1929, under Section 49 (7)
- Maralinga Tjarutja Land Rights Act 1984
- Partnership Act 1891
- Sexual Reassignment Act 1988
- Trustee Companies Act 1988
- Witness Protection Act 1996

TAS Consumer Affairs and Fair Trading

- Associations Incorporation Act 1964
- Australian Consumer Law Act
- Collections for Charities Act 2001
- Commissioner for Corporate Affairs Act 1980
- Conveyancing Act 2004
- Cooperatives Act 1999
- Limited Partnerships Act 1908
- Prepaid Funerals Act 2004
- Retirement Villages Act 2004
- Trades Unions Act 1889
- Australian Consumer Law
- Consumer Affairs Act 1988
- Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998
- Residential Tenancy Act 1997
- Property Agents and Land Transactions Act 2005
- Conveyancing Act 2004
- Motor Vehicle Traders Act 2011
- Security and Investigations Agents Act 2002
- Flammable Clothing Act 1973

VIC Consumer Affairs

- Associations Incorporation Reform Act 2012
- Associations Incorporation Reform Regulations 2012
- Australian Consumer Law and Fair Trading Act 2012, incorporating Volume 3, Schedule 2 of the Competition and Consumer Act 2010 (known as the Australian Consumer Law)
- Australian Consumer Law and Fair Trading Regulations 2012
- Australian Consumer Law and Fair Trading (Code of Practice for Fuel Price Boards) Regulations 2016 (commences 30 November 2016)
- Competition and Consumer Regulations 2010
- Business Licensing Authority Act 1998
- Business Licensing Authority Regulations 2013
- Business Names (Commonwealth Powers) Act 2011
- Chattel Securities Act 1987 (except Part 3, which is administered by the Minister for Roads)
- Chattel Securities (Purchase Price) Regulations 2008 No. 109
- Company Titles (Home Units) Act 2013
- Consumer Credit (Victoria) Act 1995
- Consumer Credit (Victoria) (Administration) Regulations 2006 No. 95
- Conveyancers Act 2006
- Conveyancers (Professional Conduct & Trust Account & General) Regulations 2008 No 49
- Conveyancers (Qualifications, Experience and Fees) Regulations 2008 No 48

- Co-operatives National Law Application Act 2013 (containing the Co-operatives National Law)
- Co-operatives National Regulations - NSW legislation website
- Co-operatives National Law (Victoria) Local Regulations 2014
- Credit Act 1984
- Credit (Administration) Act 1984
- Credit (Commonwealth Powers) Act 2010
- Domestic Building Contracts Act 1995 (except Part 5, which is administered by the Attorney-General)
- Domestic Building Contracts Regulations 2007 No 25
- Estate Agents Act 1980
- Estate Agents (Professional Conduct) Regulations 2008 No 46
- Estate Agents (General, Accounts and Audit) Regulations 2008 No 39
- Estate Agents (Contracts) Regulations 2008
- Estate Agents (Exemption) Regulations 2014
- Estate Agents (Retirement Villages) Regulations 2006 No 100
- Estate Agents (Fees) Regulations 2007 No 79
- Estate Agents (Education) Regulations 2008 No 128
- Fundraising Act 1998
- Fundraising Regulations 2009 No. 72
- Fundraising Exemption Order - No.1 (PDF, 19KB)
- Fundraising Exemption Order - No. 2 (PDF, 7KB)
- Funerals Act 2006
- Funerals (Infringements) Regulations 2011
- Goods Act 1958
- Motor Car Traders Act 1986
- Motor Car Traders Regulations 2008 No 144
- Owners Corporations Act 2006
- Owners Corporations Regulations 2007 No. 130
- Partnership Act 1958
- Partnership (Limited Partnership) Regulations 2003 No 91
- Residential Tenancies Act 1997 (ss.23A-25, 27, 32, 33, 45-48, 74-77, 82. 90, 91, 91 A, 102, 102A, 103, 104(1),104(4), 104(5), 104(6), 105(2), 105(2A), 105(3), 124, 128, 130-134, 141-142B, 142D-212, 213AA-215, 230, 232-234, 241, 277, 289A, 291-327, 329-333, 335-339, 341, 343-366, 373-376, 385, 388, 388A, 390, 390A, 395-398, 399A-439M, 480, 486-499, 501-504, 505A-510C and 511; s.66(1) jointly with the Minister for Housing; the Act is otherwise administered by the Attorney-General, the Minister for Housing and the Minister for Planning).
- Residential Tenancies Regulations 2008
- Residential Tenancies (Rooming House Standards) Regulations 2012 (made under the Residential Tenancies Act 1997 by the Minister for Housing)
- Retirement Villages Act 1986
- Retirement Villages (Contractual Arrangements) Regulations 2006 No 99

- Retirement Villages (Records and Notices) Regulations 2015 No 147
- Rooming House Operators Act 2016 (this Act has been passed by the Parliament, but a commencement date has not yet been determined - it is expected to commence in early 2017)
- Sale of Land Act 1962
- Sale of Land (Infringements) Regulations 2014 No 115
- Sale of Land (Public Auctions) Regulations 2014 No 73
- Second-Hand Dealers and Pawnbrokers Act 1989
- Second-Hand Dealers and Pawnbrokers Regulations 2008
- Second-Hand Dealers and Pawnbrokers (Exemption) Regulations 2008
- Sex Work Act 1994
- Sex Work Regulations 2016 No 47
- Sex Work (Fees) Regulations 2014
- Subdivision Act 1988, Part 5, Section 43 insofar as it relates to Part 5.
- Travel Agents Repeal Act 2014
- Veterans Act 2005 (Part 4 only; the rest of the Act is administered by the Minister for Veterans Affairs)
- Veterans (Patriotic Funds) Regulations 2008 No 19
- Warehousemen's Liens Act 1958

WA Department of Commerce (Consumer Protection division only, excluding wider departmental responsibilities)

- Associations Incorporation Act 2015
- Associations Incorporation Regulations 2016
- Auction Sales Act 1973
- Auction Sales Regulations 1974
- Business Names Act 1962
- Business Names Regulations 1962
- Business Names (Commonwealth Powers) Act 2012
- Charitable Collections Act 1946
- Charitable Collections Regulations 1947
- Chattel Securities Act 1987
- Chattel Securities Regulations 1988
- Churches of Christ, Scientist, Incorporation Act 1961
- Commercial Tenancy (Retail Shops) Agreements Act 1985
- Commercial Tenancy (Retail Shops) Agreements Regulations 1985
- Competition Policy Reform (Taxing) Act 1996
- Competition Policy Reform (Western Australia) Act 1996
- Co-operatives Act 2009
- Co-operatives Regulations 2010
- Credit Act 1984
- Credit Regulations 1985

- Credit (Regulation of Loan Contracts) Regulations 1993
- Credit (Administration) Act 1984
- Credit (Administration) Regulations 1985
- Credit (Commonwealth Powers) Act 2010
- Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010
- Debt Collectors Licensing Act 1964
- Debt Collectors Licensing Regulations 1964
- Decimal Currency Act 1965
- Disposal of Uncollected Goods Act 1970
- Disposal of Uncollected Goods Regulations 1971
- Distress for Rent Abolition Act 1936
- Dividing Fences Act 1961
- Dividing Fences Regulations 1971
- Employment Agents Act 1976
- Employment Agents Regulations 1976
- Fair Trading Act 2010 (*Also applies the text of the Australian Consumer Law as a law of Western Australia)
- Fair Trading (Advisory Committees) Regulations 2011
- Fair Trading (Infringement Notices) Regulations 2012
- Fair Trading (Permitted Calling Hours) Regulations 2015
- Fair Trading (Product Information Standard) Regulations 2005
- Fair Trading (Retirement Villages Code) Regulations 2015
- Finance Brokers Control Act 1975
- Finance Brokers Control (General) Regulations 1977
- Fremantle Buffalo Club (Incorporated) Act 1964
- Hire-Purchase Act 1959
- Hire-Purchase (General) Regulations 1975
- Land Valuers Licensing Act 1978
- Land Valuers Licensing Regulations 1979
- Licensed Valuers Code of Conduct 2016
- Limited Partnerships Act 1909
- Limited Partnerships Rules 1909
- Metric Conversion Act 1972
- Motor Vehicle Dealers Act 1973
- Motor Vehicle Dealers (Infringements) Regulations 2002
- Motor Vehicle Dealers (Licensing) Regulations 1974
- Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974
- Motor Vehicle Dealers (Sales) Regulations 1974
- Motor Vehicle Repairers Act 2003
- Motor Vehicle Repairers Regulations 2007
- New Tax System Price Exploitation Code (Taxing) Act 1999
- New Tax System Price Exploitation Code (Western Australia) Act 1999
- Personal Property Securities (Commonwealth Laws) Act 2011

- Personal Property Securities (Commonwealth Laws) Regulations 2012
- Petroleum Products Pricing Act 1983
- Petroleum Products Pricing Regulations 2000
- Petroleum Retailers Rights and Liabilities Act 1982
- Petroleum Retailers Rights and Liabilities Regulations 1982
- Real Estate and Business Agents Act 1978
- Real Estate and Business Agents (General) Regulations 1979
- Real Estate and Business Agents and Sales Representatives Code of Conduct 2016
- Residential Parks (Long-stay Tenants) Act 2006
- Residential Parks (Long-stay Tenants) Regulations 2007
- Residential Tenancies Act 1987
- Residential Tenancies Regulations 1989
- Retail Trading Hours Act 1987
- Retail Trading Hours Regulations 1988
- Retail Trading Hours (Holiday Resorts) Regulations 2012
- Retirement Villages Act 1992
- Retirement Villages Regulations 1992
- Sale of Goods (Vienna Convention) Act 1986
- Sale of Goods Act 1895
- Settlement Agents Act 1981
- Settlement Agents Regulations 1982
- Settlement Agents' Code of Conduct 2016
- Street Collections (Regulation) Act 1940
- Street Collections Regulations 1999
- Sunday Entertainments Act 1979
- Sunday Entertainments Regulations 2006
- Transfer of Incorporation (HBF and HIF) Act 2009
- Travel Agents Act 1985
- Travel Agents Regulations 1986
- Western Australian Aged Sailors, Soldiers and Airmen's Relief Fund Act 1932
- Western Australian Aged Sailors, Soldiers and Airmen's Relief Fund Regulations 2009

AUSTRALIAN CONSUMER LAW

**DISPUTE RESOLUTION AND COMPLIANCE &
ENFORCEMENT PROTOCOL**

Version 5 – Endorsed by CDRAC on 19 September 2016

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1. Foreword

This protocol supports the *Australian Consumer Law – Memorandum of Understanding (MoU)* entered into by each Australian Consumer Law (ACL) regulator.¹

This protocol should be read in conjunction with the Complaints and Dispute Resolution Advisory Committee (CDRAC) Terms of Reference.

The purpose of this document is to outline an agreed set of general principles for dealing with complaint dispute resolution, information sharing and the undertaking of enforcement action.

This protocol is separate to, and is not intended to affect any protocol in place relating to Product Safety matters.

This protocol does not create legally binding obligations between ACL regulators.

2. Objectives of this Protocol

The objectives of this protocol are to:

- a) identify principles for referring, between ACL regulators, those consumer complaints which only require dispute resolution, and facilitate an effective transfer process;
- b) help ACL regulators identify and respond to marketplace misconduct;
- c) employ the most effective means of addressing consumer harm through cooperative and complementary enforcement action;
- d) avoid unnecessary duplication of effort in the effective administration of the ACL;
- e) ensure that enforcement action, when and if deemed to be required by ACL regulators, has regard to the agreed *ACL Compliance & Enforcement Guide*;
- f) ensure, wherever appropriate, a consistent approach to dispute resolution and enforcement action is employed; and
- g) assist ACL regulators in gathering, monitoring and reporting national issues.

¹ The ACL regulators are listed in the *ACL Compliance & Enforcement Guide*.

3. **Crisis Management**

- a) The ACCC, ASIC or a state or territory ACL regulator may become aware of an ACL issue and consider it warrants an urgent and coordinated national response. Such issues may include a trader with a significant presence in multiple states and territories (determined by the number of physical stores or the number of consumers affected) or online:
 - (i) ceasing trading,
 - (ii) being placed into external administration,
 - (iii) introducing significant new restrictions on trade, and / or
 - (iv) broader impacts arising from natural disasters.
- b) A CDRAC Crisis Management Protocol is available on GOVDEx. The protocol details processes for ACL regulators responding to urgent national crises, sample checklists and processes for approaching external administrators, and consistent and agreed messages that can be used to develop media releases and internal scripts to inform consumers about ACL-related crises.

4. **Complaint Dispute Resolution**²

- a) Generally, each State and Territory ACL regulator when handling initial contacts that require a complaint to be lodged will advise the consumer to lodge within the State in which they reside.
- b) Generally, each State and Territory ACL regulator will be responsible for resolving complaints that they receive from consumers insofar as the complaint is to be dealt with via a *non-court based dispute resolution* method.
- c) Where reasons exist to transfer the complaint, each jurisdiction will identify an officer or position from whom and to whom such complaints will be referred, by agreement.
- d) Where reasons exist to transfer the complaint, the consumer will be advised in writing by the referring agency as to which jurisdiction the complaint has been referred together with a contact number for the receiving jurisdiction.

² This protocol notes that the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC) have processes for the referral of consumers to State and Territory ACL regulators for the purposes of undertaking *non-court based dispute resolution*. Where a referral is considered appropriate, the ACCC & ASIC will, unless circumstances support otherwise, refer consumers to the relevant regulator of the jurisdiction where the consumer resides.

- e) Decisions by ACL regulators regarding court-based consumer redress initiatives should be dealt with in line with the *enforcement action* clauses of this protocol.
- f) If an ACL regulator is undertaking enforcement action against a business for a *serious breach* of the ACL, State and Territory ACL regulators may continue to resolve other complaints regarding the same business using *non-court based dispute resolution methods*.

5. **Trader Engagement**

- a) Where a regulator is dealing with a trader through a trader engagement program, useful data, intelligence or information should be shared with other jurisdictions via GOVDEX.
- b) Where a regulator is engaging with a business under such a program, the regulator will attempt to address underlying conduct to reduce complaints and enquiries. The engagement will not necessarily address all complaints individually and other regulators should not refer all complaints to the regulator engaging with the trader.
- c) ACL regulators should check GOVDEX before commencing a proactive trader program and liaise with relevant jurisdictions prior to any engagement, if another jurisdiction has any action/engagement underway.

6. **Enforcement Action**

Generally, enforcement action undertaken against a business for a *serious breach* of the ACL should have regard to the *ACL Compliance & Enforcement Guide*:

6.1 *Assessment*

- a) As part of its internal assessment processes used to determine whether to undertake enforcement action under the ACL, each ACL regulator will conduct a check of GOVDEX to determine whether another ACL regulator is currently undertaking (or planning to undertake) enforcement action against a particular business.
- b) Where such a check indicates that no other ACL regulator is currently undertaking (or is planning to undertake) enforcement action ACL regulators will make determinations as to whether or not they undertake enforcement action utilising their own complaint/ enforcement assessment protocols and policies.
- c) Where a check of GOVDEX reveals that another ACL regulator is currently undertaking (or planning) enforcement action, then ACL regulators should confer with each other.

- d) Discussions between the two ACL regulators should explore the best means to address consumer harm arising from the *serious breach* having regard to the *ACL Compliance & Enforcement Guide*. These discussions may canvass whether:
 - (i) the matter will be referred to one of the ACL regulators for enforcement action;
 - (ii) joint enforcement action is appropriate and, if so, whether one of the ACL regulators is to be designated as the lead ACL regulator;
 - (iii) the ACL regulators should undertake parallel enforcement actions;
 - (iv) whether other ACL regulators should be notified or involved in the enforcement action; and
 - (v) which ACL regulator will undertake responsibility for immediate or follow-up communication with consumers and businesses.
- e) Should it be required, the Chair of the Compliance and Dispute Resolution Committee (CDRAC) can assist the ACL regulators in their discussions as to the best means to address the consumer harm arising from the *serious breach*.

6.2 Parallel Enforcement Actions

- a) Generally, parallel enforcement actions should occur in circumstances where:
 - (i) the conduct and breaches being pursued are substantially different; or
 - (ii) where the conduct has affected substantially different groups of consumers.
 - (iii) Where relief for a group of consumers cannot be provided by a lead ACL regulator.
- b) If, following discussions as outlined in 6.1 d)(iii) above, two or more ACL regulators have agreed to proceed to commence parallel enforcement action against a business, then the outcome of those arrangements are to be recorded on GOVDEX and future breaches should be handled in line with 6.1.
- c) Where parallel enforcement action is proposed to be taken by two or more State or Territory ACL regulators, the ACCC or ASIC (whichever of the national regulators is relevant to the matter) should be notified so that it may consider becoming the *lead ACL regulator*.
- d) Where parallel enforcement actions are underway, the ACL regulators involved are to liaise in order to protect the integrity of each ACL regulator's investigations.

6.3 Lead ACL Regulator

- a) Where an ACL regulator is designated as the *lead ACL regulator*, other ACL regulators considering other *serious breaches* by the business should engage in discussions with the *lead ACL regulator*.
- b) Other *serious breaches* by the business may be forwarded to the *lead ACL regulator* for its consideration in terms of possibly incorporating the breaches in the current or planned enforcement action.
- c) The *lead ACL regulator* is not obliged to include in its current or planned enforcement action the breaches referred to it by another ACL regulator. However, the *lead ACL regulator* should advise the referring regulator of any decision it makes not to include those breaches in the enforcement action.
- d) Where a *lead ACL regulator* has agreed to incorporate a *serious breach* referred to it by another ACL regulator into its current or planned enforcement action, the referring regulator may be asked to assist the *lead ACL regulator* with the compilation of evidence, including the obtaining of witness statements or affidavits. Such assistance should be delivered in a timely manner.

6.4 Progress and Outcome Reporting

- a) All ACL regulators agree to utilise GOVDEx as well as reports to Fair Trading Operations Group (FTOG) and CDRAC as a means of keeping all ACL regulators up-to-date with the progress and outcome of enforcement action undertaken under this protocol.
- b) Following the implementation of enforcement action by one ACL regulator, other ACL regulators may also decide to issue a public warning or take additional or separate enforcement action against the business using their own jurisdiction. Where this occurs, the ACL regulators will work closely to ensure that the later enforcement action(s) do not create a 'double jeopardy' situation.

7. Compliance Projects

- a) ACL regulators agree to be involved in national compliance projects and joint compliance activities set by CDRAC. The level of involvement by each ACL regulator in these compliance projects is for each ACL regulator to determine.
- b) The priority setting by CDRAC is not meant to restrict ACL regulators from carrying out specific targeted compliance projects within their jurisdictions.

- c) If an ACL regulator determines it is necessary to carry out an ACL compliance project targeting businesses and markets which are outside the national compliance projects set by CDRAC, but still of national or multiple jurisdiction relevance then that regulator should endeavour to notify other ACL regulators of their intention to carry out that activity by placing information on GOVDEX.
- d) Information provided to other ACL regulators should indicate the specific markets, businesses and conduct which are to be the subject of the compliance project.
- e) The ACL regulator undertaking the compliance project should report the outcome of the program to FTOG and CDRAC.

8. Release of Information

- a) All ACL regulators agree not to release any information obtained as a result of their participating in this protocol and access to GOVDEX, unless prior consent to the release of that information has been obtained from the author of that information.
- b) Investigation information obtained from GOVDEX should be made available only to those involved in investigations and decision making related to the undertaking of enforcement actions.

9. Media Statements and Releases

- a) ACL regulators recognise the importance of having effective and consistent communication with businesses, consumers and their representative organisations regarding compliance with the ACL.
- b) ACL regulators also recognise that communication through the media, including social media, can increase compliant trading, and reduce the level of inadvertent non-compliance with the ACL.
- c) Apart from adhering to **8.** above, each ACL regulator is not restricted by this protocol from making statements to the media or issuing media releases regarding the progress or outcomes of compliance and enforcement action it undertakes in seeking compliance with the ACL.
- d) Prior to issuing any media statement, an ACL regulator will check GOVDEX to determine if enforcement action is being undertaken by another ACL regulator. If action is underway, then the regulators will, wherever practicable, consult over the issue of the release.
- e) ACL regulators agree to post the media releases on GOVDEX as soon as practicable following release.

10. Definitions

- a) *Serious breaches* – include where:
- (i) there is evidence of deliberate and systemic non-compliant conduct on a scale which is likely to have the effect of significantly altering the operation or competitiveness of a national, state/territory or large regional market;
 - (ii) there are breaches against potentially vulnerable groups of consumers (including elderly consumers, young consumers, consumers from a non-English speaking background, Indigenous consumers and consumers from a lower socio-economic group), where the business's conduct is targeted in such a way that members of the group have no reasonable prospect of either recognising the non-compliant conduct and/or seeking effective remedies;
 - (iii) non-complying conduct by a business is likely to adversely affect the operations of a large number of compliant businesses within the same market;
 - (iv) there is the potential for a high level of consumer harm – measured by the number of consumers affected or potentially affected by the conduct, or the overall impact of the harm on individual consumers;
 - (v) a business is demonstrating a blatant disregard of the law, by exhibiting non-compliant conduct which has been the subject of enforcement action during the previous five years; and
 - (vi) consumers are at special risk because the non-compliant conduct by a business deliberately limits or restricts the availability or effectiveness of self-help remedies.
- b) *Non-court based dispute resolution methods* – include:
- (i) contacting the business to seek consumer redress or the cessation of non-compliant conduct;
 - (ii) voluntary compliance resolution tools;
 - (iii) an ACL regulator conducting informal or formal mediation with a business to obtain redress; and
 - (iv) a form of trader engagement program/initiative
- c) *Enforcement action* – includes the use of court prosecutions; disciplinary action for licensed businesses; infringement notices; enforceable undertakings; and civil litigation.

d) *Enquiry* –

- (i) received and answered through self-help advice or through a referral or provision of information to assist the enquirer to reach a resolution themselves;
- (ii) the officer handling the enquiry does not take part in the outcome and does not require notification of the outcome; and
- (iii) the enquiry is often closed immediately.

e) *Complaint* –

- (i) request for some form of intervention by the consumer protection agency, e.g. a letter, phone call, email, informal dispute resolution or mediation between the parties to a dispute; or
- (ii) notification of possible breach or conduct issue that may be considered for investigation.

f) *Investigation* – a possible breach or conduct issue that may warrant enforcement action under the ACL and/or relevant local consumer protection legislation, that the consumer protection agency has decided to investigate.

g) *GOVDEX* - is an online collaboration mechanism for use across government. It is a secure, private web-based space that helps agencies share documents and information. Govdex can be used for 'in-confidence' material while most other networks can only be used for unclassified material. May also be referred to as ACLink by some users.

Compliance & Dispute Resolution Advisory Committee
(CDRAC)

Crisis Management Protocol

Protocol, agreed crisis messages and administrator checklists

Version 2 – Approved by CDRAC on 21 March 2016

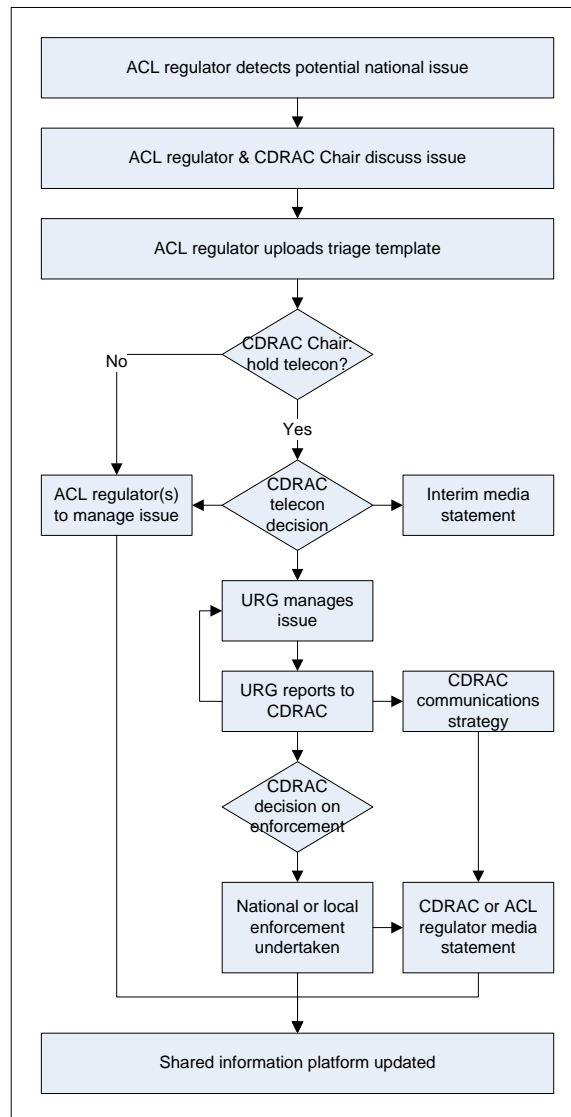
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CRISIS MANAGEMENT PROTOCOL

1. If any ACL regulator becomes aware of an issue and considers it may warrant an urgent national response, the reporting regulator emails all other ACL regulators and posts to the shared information platform (ACLINK / Govdex or similar), as soon as practicable. Such issues may include a trader with a significant presence in multiple states and territories (determined by the number of physical stores or the number of consumers affected) or trading online:
 - a. temporarily or permanently ceasing trading,
 - b. being placed into external administration,
 - c. introducing significant new restrictions on trade and/or
 - d. broader impacts arising from natural disasters.
2. If the initiating regulator has not already spoken to the CDRAC Chair, the CDRAC Chair will contact the reporting regulator to discuss the need for an urgent national teleconference.
3. The initiating regulator will report on issues (as far as practical) outlined in the CAF / CAANZ Triage Template (Attachment 1) and upload the information to the shared information platform.
4. The CDRAC Chair may call an urgent out of session teleconference – normally within 24 hours of the original shared information platform entry – to consider the information in the triage template, determine whether the conduct is a potential national issue, and if so determine:
 - a. whether an Urgent Response Group (URG) is required (and nominate its membership, including lead regulator and support regulator),
 - b. any further information the URG will require from regulators or stakeholders,
 - c. any funding required,
 - d. how regulators will address ongoing dispute resolution,
 - e. whether senior staff from the state/territory where the company has its registered office (or the external administrator's office) to attend and speak with an officer of the company (or the external administrator), to determine the company's current and future debt, the number of consumers and level of consumer detriment (administrator checklist in this protocol),
 - f. the wording for an interim media statement (sample messages in this protocol) , and
 - g. any other actions required to contain the issue and limit any further damages.
5. The URG is to report back to CDRAC and seek direction on preferred consumer protection / enforcement options.
6. The URG and CDRAC may develop a communications strategy. This may include:
 - a. Objectives
 - b. Timelines
 - c. Methods of communication
 - d. Funding
 - e. Consultation (internal and external)

7. Options for further action may be:
 - a. No national action is proposed. The originating regulator or a number of regulators may take local action.
 - b. Public Warning/Statement.
 - c. Interim Injunction or other orders from the Supreme Court of the most appropriate jurisdiction(s), or the Federal Court.
 - d. Investigation with the view to taking ACL enforcement action (prosecution, undertakings, etc).
 - e. Non regulatory action is proposed.
8. If the appropriate next step is NOT to proceed with a possible regulatory response, a report on the issue will be prepared by the reporting regulator in consultation with CDRAC and provided to CAANZ. If the appropriate next step is to proceed with consideration of a regulatory response CDRAC will decide which regulator is best place to take the lead on the matter.
9. Where local rather than national action is proposed the initiating regulator will collate the actions of those regulators involved and present a consolidated report to CDRAC via the shared information platform.



MESSAGE BANK OF AGREED MESSAGES FOR CRISIS SITUATIONS

Generic messages for any situation, but particularly a company under administration or in receivership, where supply against items under deposit, lay-by or paid in full is in jeopardy:

- *Customers who have paid by credit card can contact financial institutions to request a charge back process.*
- *Consumers seeking repayment for goods or services not yet received can register to become unsecured creditors by contacting the appointed administrator or receiver for more information.*
- *Customers can contact ASIC for contact details for an appointed administrator or receiver, or for further information about the insolvency process and their rights.*

Where the industry is covered by a fidelity fund (e.g. real estate agents) that would cover losses related to a business closure:

- *The xxxxx fund, administered by xxxxxx, may provide compensation for consumers who have suffered a loss as a result of xxxxxxx. Information on protections provided by this fund and how to make a claim is available at xxxxxxx.*

Where the loss is something that may be covered by insurance (e.g. travel, natural disaster):

- *Consumers with relevant policies may be covered by insurance. They should contact their insurer immediately to check on coverage and how to make a claim.*
- *Consumers who are unhappy with the advice or service provided by their insurer may wish to contact the Financial Services Ombudsman for advice or assistance in a dispute.*

Where the trader has offered gift cards as part of its business:

- *Consumers who have purchased xxxxx gift cards (directly from xxxxx or from a third party retailer) which are yet to be redeemed, using a credit or eligible debit card, may have chargeback rights and should urgently contact their financial institution. Recipients of gift cards can approach the person who gave them the gift card so that person can consider their chargeback rights.*
- *Consumers who purchased a xxxxx gift card with cash or with a card using the 'savings' or 'cheque' option, or gift card recipients who don't want to contact the person that gave them the gift card, can contact the administrator / receiver to register as an unsecured creditor. The insolvency process will determine if you get a full refund, a partial refund or no refund at all.*
- *Sometimes a retailer will continue trading under the control of an administrator and the gift cards the retailer sold will be honored. The administrator may place new conditions on the use of gift cards, like requiring you to spend an additional dollar for every dollar you redeem. If this is the case, you will need to work out if it is worth taking up the offer.*

Following natural disasters:

Refer to the 11 crisis facts sheets developed by EIAC in collaboration with CDRAC following back to back natural disasters early in 2011 (available on ACLINK):

- How consumer agencies can help
- Damaged vehicles
- Buying and selling property
- For business
- Fundraising scams
- Price rip-offs

- Flood damaged vehicles
- Rental issues (landlords)
- Rental Issues (tenants)

- Repairs and building
- Travel and holiday arrangements

DEALING WITH ADMINISTRATORS, RECEIVERS & LIQUIDATORS

It is important to clarify the distinction among administrators, receivers and liquidators as the terms indicate quite different statutory roles.

Administrator

Voluntary administration is an external administration where the directors of a financially troubled company or a secured creditor with a charge over most of the company's assets appoint an external administrator called a 'voluntary administrator'. The role of the voluntary administrator is to investigate the company's affairs, to report to creditors and to recommend to creditors whether the company should enter into a deed of company arrangement, go into liquidation or be returned to the directors. A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

Receiver

A company most commonly goes into receivership when a receiver is appointed by a secured creditor who holds security over some or all of the company's assets. The receiver's primary role is to collect and sell sufficient of the company's charged assets to repay the debt owed to the secured creditor.

Liquidator

Liquidation is the orderly winding up of a company's affairs. It involves realising the company's assets, cessation or sale of its operations, distributing the proceeds of realisation among its creditors and distributing any surplus among its shareholders. The three types of liquidation are:

- court
- creditors' voluntary
- members' voluntary

A creditors' voluntary liquidation is a liquidation initiated by the company. A court liquidation starts as a result of a court order, made after an application to the court, usually by a creditor of the company

Engaging with administrators, receivers & liquidators

In seeking to obtain information that will be of benefit in advising consumers the consumer protection agency / regulator needs to ask the following questions of the appointed person.

- Exactly what entities and business/trading names are involved?
- Are there any related entities (e.g. franchises) - if so how are they affected?
- Which states and territories had/have physical stores? Is/was the business selling online, and through what web addresses?
- Was the business selling any home/own/exclusive branded products, either manufactured for the business or imported by the business directly, where there is likely no other Australian manufacturer/distributor that consumers can approach to seek remedies for faults?
- Exactly who has been appointed, by whom and in what capacity e.g. administrator, receiver, or liquidator?
- What is the nature of the business/businesses involved?
- Who is the nominated person for regulators/other parties to contact for information & how should contact be made?
- What is the extent of unsatisfied debt?
- What is the current status - e.g. shut down, trading on with a view to recovery, trading on with a view to sell either as a going concern or as individual parts/assets?
- Important information for consumers:
 - If trading on what is the impact on consumers who have paid for goods/services in part or full, by **deposit** or **lay-by**, and goods have not yet been collected? Are new deposits or lay-bys being accepted?
 - What is the impact on customers with **advance orders** under deposit or paid in full but not yet collected? Are new advance orders being accepted?
 - Has the trader been selling **gift cards**? Have third-party retailers been selling gift cards for the business? Are there any plans in place or likely to be announced to deal with these? Are gift cards still being issued by the business or third parties?
 - Has the business been issuing **credit notes**? Are there any plans in place or likely to be announced to deal with these? Are new credit notes being issued?
 - Is there any changes to the **refund/exchange policy** and if so, what is the new policy?
 - What is the impact on **warranty or consumer guarantee claims** for past sales? What is the impact for warranty or consumer guarantee claims for new sales? Are there differences between home/own/exclusive branded products and other branded products?
 - Can consumers seek refunds or exchanges for **change of mind returns** on past sales and under what conditions? Can consumers seek refunds or exchanges for change of mind returns on new sales and under what conditions?
 - Is there any impact on **extended warranties** previously sold by the business? Is the business still selling extended warranties and will they be honoured?
 - Who specifically should consumers contact if they have any questions or issues (including **how to register as an unsecured creditor**)?
- Is there a plan for a meeting of creditors?

- Who are the major creditors and to what extent are consumers disadvantaged?
- Will there be a release of information to the media/public?
- Is there anything to suggest that money was taken from consumers in a period prior to the appointment but at a time when the trader should have reasonably known they couldn't supply?

If they are administering the company (as opposed to liquidating) agencies/regulators should make sure their refund/exchange policy complies with the ACL.

The appointed person should be advised that the consumer protection agency may put out a media release and scripting for the call centre advising consumers what to do and how to register as a creditor, and may share that information with other consumer agencies.

Australian Consumer Law

Memorandum of Understanding

A Memorandum of Understanding between

- the Australian Competition and Consumer Commission
- the Australian Securities and Investments Commission
- the State and Territory offices of fair trading, being:
 - New South Wales – Fair Trading;
 - Victoria – Consumer Affairs Victoria;
 - Queensland – Office of Fair Trading;
 - Western Australia – Department of Commerce;
 - South Australia – Office of Consumer and Business Affairs;
 - Tasmania – Consumer Affairs and Fair Trading;
 - Australian Capital Territory – Office of Regulatory Services; and
 - Northern Territory – Consumer Affairs
- the New Zealand Commerce Commission
- the New Zealand Ministry of Consumer Affairs.

This Memorandum of Understanding sets out a framework for cooperation between the regulators of the Australian Consumer Law so that they may best serve the interests of consumers and promote fair trading and competition.

Australian Consumer Law

Memorandum of Understanding

PART 1 INTRODUCTION

1. In October 2008, the Council of Australian Governments (COAG) committed to a reform process that will provide a '...uniform and higher level of protection for Australian consumers'.¹ The centrepiece of the consumer policy reform agreed to by COAG is the introduction of a single national consumer law for Australia, the 'Australian Consumer Law' (ACL). The ACL is based on the consumer protection provisions of the *Trade Practices Act 1974*² (the Act) and also draws on best practice in existing state and territory consumer laws.
2. On 2 July 2009 the Commonwealth and all States and Territories ratified the Intergovernmental Agreement for the Australian Consumer Law (the IGA) agreeing to implement and enforce the ACL to ensure a nationally consistent consumer protection regime.
3. In accordance with the IGA, this Memorandum of Understanding (MOU) provides the framework for communication, cooperation and coordination between the Parties in administering and enforcing the ACL.
4. The parties to this MOU are the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC) and the State and Territory offices of fair trading, which will jointly administer and enforce the ACL, as well as the New Zealand Ministry of Consumer Affairs and New Zealand Commerce Commission to the extent that the matters are relevant to trans-Tasman administration and enforcement of consumer law as provided for under the IGA (the Parties).
5. The Parties agree that where possible, the governance of this MOU will be guided by the principles of the Charter of the Ministerial Council on Consumer Affairs (MCCA).
6. This MOU is not intended to create legally binding obligations on the Parties.

1 COAG Communiqué (2 August 2008), p 2.

2 To be renamed the *Competition and Consumer Act*

CHAPTER 10 CONSUMER LAW

7. The object of this MOU is to set out a framework for communication, cooperation and coordination between the Parties so that they can, both collectively and within each of their own jurisdictions, most effectively protect and empower consumers and promote fair trading under the ACL.
8. The Parties each recognise that communication, cooperation and coordination are desirable and necessary to:
 - (a) discharge their respective functions;
 - (b) maximise the effective and consistent implementation of their regulatory powers; and
 - (c) promote efficient and streamlined resource allocation.
9. The Parties each recognise the need for ongoing communication, cooperation and coordination between Australia and New Zealand in the administration and enforcement of consumer protection legislation to ensure consistency with the objectives of the Australia New Zealand Closer Economic Relations Trade Agreement.

CHAPTER 11 THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

11.1 THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)

10. The ACCC is responsible for enforcing consumer protection and fair trading laws and promoting competition in the market place. It does this by promoting compliance with and enforcing the provisions of the Act. The role of the ACCC is to facilitate and encourage compliance with the laws it enforces, to take appropriate action in response to contraventions of those laws, to determine certain competition and access issues and to educate the community in relation to such matters.

11.2 AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

11. ASIC is Australia's corporate and markets regulator as well as the consumer protection regulator for financial services. ASIC contributes to Australia's economic reputation and wellbeing by ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers. ASIC administers the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), and it carries out most of its work under the *Corporations Act 2001* (the Corporations Act). ASIC's responsibilities under the ASIC Act are to:
 - maintain, facilitate and improve the performance of the financial system and entities in it;
 - promote confident and informed participation by investors and consumers in the financial system;
 - administer the law effectively and with minimal procedural requirements;
 - enforce and give effect to the law;

- receive, process and store, efficiently and quickly, information that is received; and
- make information about companies and other bodies available to the public as soon as practicable.

12. Fair Trading (New South Wales)

12. Fair Trading is responsible for administering laws which promote consumer wellbeing and marketplace integrity across many transactions including general purchases; product safety; accommodation; motor vehicles and property. Fair Trading promotes a fair market place in NSW by educating consumers and traders; resolving their disputes; investigating contraventions of the law and taking action to enforce the law.

13. Consumer Affairs Victoria (Victoria)

13. Consumer Affairs Victoria (CAV) has a far reaching impact on the Victorian community. CAV protects and promotes the interests of consumers by:
 - reviewing and advising Government on consumer legislation and industry codes;
 - advising and educating consumers, tenants, traders and landlords on their rights, responsibilities and changes to the law;
 - registering and licensing businesses and occupations;
 - conciliating disputes between consumers and traders, tenants and landlords; and
 - enforcing and ensuring compliance with consumer laws.

14. Office of Fair Trading (Queensland)

14. The Office of Fair Trading (QLD OFT) delivers a fair and safe marketplace for consumers and traders in Queensland. The QLD OFT achieves this by providing information and advice to consumers and traders about their rights and responsibilities and by maintaining and improving fair trading legislation. The QLD OFT assists both consumers and traders to resolve disputes through conciliation, complaint investigation and where necessary, the taking of enforcement action. The QLD OFT administers a range of industry licensing functions, maintains a register of business names and oversees the regulation and monitoring of product safety standards.

15. Consumer Protection (Department of Commerce) (Western Australia)

15. Consumer Protection is a division of the Department of Commerce. The Department has a broad range of functions and works with the community to ensure safety and protection for workers and consumers, and promotes and fosters innovative industries, science and enterprise. The Consumer Protection Division promotes consumer protection and fair trading in Western Australia by:
 - providing information and advice to consumers and traders about their rights and responsibilities;
 - helping consumers resolve disputes with traders;
 - investigating complaints about unfair trading practices;
 - prosecuting unscrupulous traders;

- regulating and licensing some business activities; and
- developing legislation that protects consumers.

Office of Consumer and Business Affairs (South Australia)

16. The Office of Consumer and Business Affairs is responsible for promoting and protecting consumer interests in South Australia, administering a policy and legislative framework that sets the scene and the rules for trading to occur on fair terms, providing services to parties involved in residential and retail tenancy and contributing to the security of individuals' identity information.

Department of Consumer Affairs and Fair Trading (Tasmania)

17. Consumer Affairs and Fair Trading (CAFT) is a division of the Tasmanian Department of Justice. CAFT is the main advisor to government on matters affecting the interests of consumers. In partnership with the Australian Government, CAFT aims to protect consumer through enforcement of the ACL and by supporting a collaborative approach to the creation of a fair and equitable Australian marketplace for all consumers.

Office of Regulatory Services (Australian Capital Territory)

18. Fair trading is a function of the Office of Regulatory Services (ORS) which sits under the Department of Justice and Community Safety. ORS assists and protects the community through the administration of fair trading legislation and the registration and compliance of businesses in specific industries.

ORS provides the community with a number of services including, advice, education, information, complaint handling, and business registration and licensing services.

Consumer Affairs (Northern Territory)

19. Consumer Affairs (CA) is a division of the Northern Territory Department of Justice. CA aims to promote and regulate responsible business practices through administration of a regulatory system that protects consumer interests. The role of CA includes educating consumer and traders about their fair trading rights and responsibilities.

Ministry of Consumer Affairs (New Zealand)

20. The Ministry of Consumer Affairs is responsible for advising the New Zealand Government in matters concerning:
 - development of consumer policy;
 - provision of appropriate, accurate and accessible information, education and advice for consumers and businesses on consumer law and issues; and
 - investigation and management of unsafe consumer products.

21. The Commerce Commission is responsible for the monitoring and enforcement of New Zealand's *Commerce Act 1986*, *Fair Trading Act 1986* and *Credit Contracts and Consumer Finance Act 2003*. The Commerce Commission's objective is to ensure that New Zealanders benefit from competitive prices, better quality and greater choice by ensuring that:

- markets are dynamic and all goods and services are provided at competitive prices;
- consumers are confident of the accuracy of information they receive when making choices; and
- regulated industries are constrained from earning excess profits, face incentives to invest appropriately and share efficiency gains with consumers.

Article 1: Purpose of the MOU

Article 2: General principles of cooperation and collaboration

22. The Parties agree that they will communicate, cooperate and coordinate with one another to:
- (a) monitor compliance with the ACL;
 - (b) enforce the ACL, including through the exchange of information and intelligence;
 - (c) manage consumer complaints;
 - (d) inform the general public and educate consumers and businesses about the ACL; and
 - (e) report on and review compliance and enforcement of the ACL.
23. The Parties also agree that they will each:
- (a) explore opportunities to communicate, cooperate and coordinate efforts on ancillary or associated activities within the framework of this MOU and consistent with all relevant law;
 - (b) inform one another regularly of their general compliance and enforcement activities and priorities;
 - (c) consult one another in relation to recent judgments, current law reform, policy issues and other matters of mutual interest;
 - (d) consult and collaborate with one another to develop publications and liaise with stakeholder groups on consumer protection matters of mutual interest; and
 - (e) consider and implement any appropriate opportunities for collaboration between the Parties in training, staff development and/or staff exchanges.
24. Each Party will appoint a Liaison Contact Officer (LCO) for the purpose of day-to-day liaison, communication and information sharing under this MOU.

Article 3: Complaint handling

25. The Parties agree that they will collaborate to promote consistency in complaint management practices and principles to achieve effective outcomes for consumers.
26. The Parties recognise that in some cases it may be appropriate for a Party (the referring Party) to refer a consumer complaint or inquiry to another Party (the receiving Party), for instance, where:
- (a) in the initial contact with the consumer it is clear that the complaint or inquiry relates to issues that would be more appropriately managed by the Party who has responsibility for a particular area of law; or
 - (b) after assessment of a complaint, it becomes apparent that the complaint would be more appropriately managed by the receiving Party.
27. When a Party considers that a consumer complaint or inquiry is appropriate for referral to another Party, the Parties agree that the referring Party will, while having regard to all the circumstances of the particular complaint or inquiry:

- (a) initiate the referral for consideration by the receiving Party as soon as practicable; and
- (b) provide the receiving Party with any information and documentation held by the referring Party that will assist the efficient management of the complaint or inquiry, subject to any legal restrictions on the disclosure of information.

Part 3: Investigation powers and confidentiality

28. The Parties agree to collaborate to ensure that, as far as possible, procedures exist to support the effective sharing of complaint and investigation information. This may include establishing frameworks for:
 - (a) providing information to a requesting Party at that Party's request;
 - (b) providing information to another Party in circumstances where the providing Party considers that it is likely to assist the receiving Party to administer or enforce the particular area of law for which that Party is responsible; or
 - (c) promoting legislative amendments, where appropriate, to enable information sharing between the Parties to occur more freely.
29. The Parties will have regard to the statutory privacy and confidentiality obligations governing the permitted disclosure of confidential or protected information and wherever appropriate seek to obtain information in such a way that can be shared with other Parties.
30. When a Party receives information from another Party it will:
 - (a) observe any express conditions placed upon the release of the information by the providing Party; and
 - (b) take all reasonable steps to ensure that such information is only:
 - (i) used internally by the receiving Party in connection with carrying out its statutory functions or performing its duties;
 - (ii) disclosed where required or permitted by law or as otherwise authorised by the providing Party.
31. If a receiving Party is required by law to disclose information provided to it in-confidence it must:
 - (a) where possible, notify the providing Party of the disclosure requirement to allow the providing Party, in its discretion, to take all reasonable steps to maintain the confidentiality of the information required to be disclosed, including, if necessary and appropriate, making a claim for public interest immunity privilege or requiring confidentiality undertakings from the person or body to whom the information is required to be disclosed; and
 - (b) disclose only the confidential information necessary to comply with the legal requirements.

Element 4: Compliance Activities

32. The Parties agree to cooperatively develop strategies to address actual or prospective consumer harm, particularly in circumstances where that harm affects, or is likely to affect, consumers across the jurisdiction of two or more Parties. These strategies may involve, but not be limited to:
- (a) education campaigns;
 - (b) targeted and general guidance for consumers and businesses; and
 - (c) liaison and consultation involving one or more of the Parties with consumer and business representatives.
33. In developing education and guidance materials the Parties will, to the extent possible, develop consistent materials.
34. Where appropriate, a Party will consider inviting the staff of another Party to participate in compliance visits or other outreach activities.

Element 5: Enforcement Activities

35. Where two or more Parties consider that consumer harm identified within their jurisdictions may be most effectively addressed by way of mutual investigation, litigation or other enforcement action, the Parties concerned may agree to establish a cooperative working arrangement, in writing, independently of this MOU.
36. The cooperative working arrangement is subject to any confidentiality obligations and the elements of any such arrangement between two or more parties will be flexible and contingent on the circumstances of the matter concerned, and subject to agreement between the parties on a case by case basis.

Element 6: Product Safety

37. The Parties agree that the administration and enforcement of product safety will be supported by a specific cooperative framework.
38. The cooperative framework will include the Parties to this MOU to the extent that they have jurisdiction for the administration and enforcement of product safety.
39. The cooperative framework will set out:
- (a) protocols for complaint handling, exchange of information and intelligence, surveillance, compliance and joint enforcement;
 - (b) cooperative arrangements for informing the parties to this agreement and the general public and educating consumers and business about product safety;
 - (c) protocols for dealing with warning notices, product bans, mandatory safety standards and recalls;
 - (d) contact officer arrangements; and
 - (e) all other matters necessary for ongoing implementation and administration of the Product Safety Framework.

40. The protocols and principles under the cooperative framework will not apply to or affect any cooperative arrangements made under this MOU with ASIC.

41. The cooperative framework will not affect the general application of this MOU or any other cooperative arrangements.

DATE: 14/05/2014

Signature of [Name] of [Name]

42. This MOU shall take effect on and from the date that it is signed by all Parties.

Signature of [Name] of [Name]

43. The Parties will review the operation of this MOU at intervals of no more than five (5) years, with a view to improving its operation and resolving any issues that may arise.

44. The MOU may be amended at any time in writing by agreement of all the Parties.

Signature of [Name]

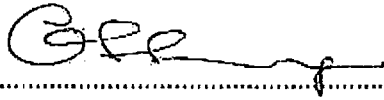
45. Any Party may give notice to one or all Parties of a dispute concerning the operation of this MOU.

46. Where there is a conflict or disagreement between any of the Parties over any issue relating to or covered by this MOU, the Parties will attempt to resolve the issue by negotiation in the first instance.

47. If a dispute cannot be resolved between the Parties, it will be referred for resolution through the Standing Committee of Officials of Consumer Affairs framework.

The Parties have confirmed their commitment to this MOU as follows:

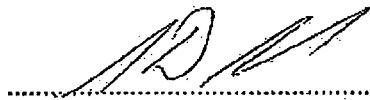
Signed for and on behalf of the Australian
Competition and Consumer Commission by



Mr Graeme Samuel
Chairman of the ACCC

Date: 6/7/10

Signed for and on behalf of the Australian
Securities and Investments Commission by



Mr Tony D'Aloisio
Chairman of ASIC

Date: 6/7/10

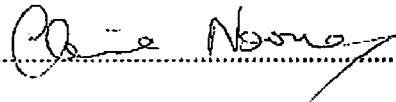
Signed for and on behalf of Fair Trading
(New South Wales) by



Mr Peter Duncan
Director General

Date: 11.6.10

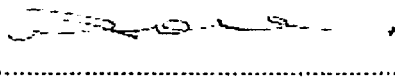
Signed for and on behalf of Consumer Affairs
Victoria by



Dr Claire Noone
Director of Consumer Affairs Victoria

Date: 8/6/2010

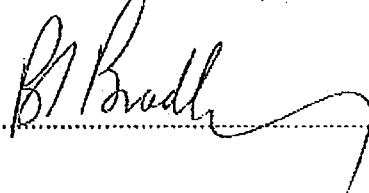
Signed for and on behalf of the Office of Fair
Trading (Queensland) by



Mr David Ford
Commissioner for Fair Trading
(QLD)

Date: 21.6.10

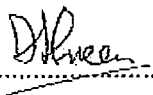
Signed for and on behalf of the Department of
Commerce (Western Australia) by



Mr Brian Bradley
Director General of the Department of
Commerce

Date: 2.6.2010

Signed for and on behalf of the Office
of Consumer and Business Affairs (South
Australia) by



Mr David Green
Commissioner for Consumer Affairs (SA)

Date: 17/6/2010

Signed for and on behalf of Consumer Affairs
and Fair Trading (Tasmania) by



Mr Chris Batt
Director of Consumer Affairs and Fair
Trading (TAS)

Date: 23/6/2010

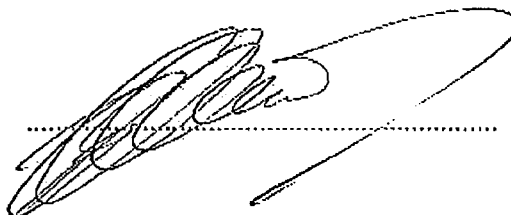
Signed for and on behalf of the Office of
Regulatory Services (Australian Capital
Territory) by



Mr Brett Phillips
Executive Director of Office of Regulatory
Services (ACT)

Date: 15/6/10

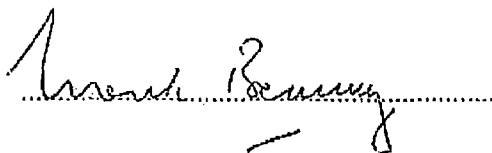
Signed for and on behalf of Consumer
Affairs (Northern Territory) by



Mr Gary Clements
Commissioner of Consumer Affairs (NT)

Date: 4/06/2010

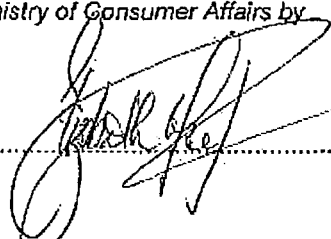
Signed for and on behalf of the New Zealand
Commerce Commission by



Dr Mark Berry
Chairman of the New Zealand Commerce
Commission

Date: 29/6/2010

Signed for and on behalf of the New Zealand
Ministry of Consumer Affairs by



Ms Elizabeth MacPherson
General Manager of the Ministry of Consumer
Affairs (NZ)

Date: 29/6/2010



Fair Trading



Record No: M10/5095

Date Due:

Doc Type: RDL

OFT File No:

Division: MINISTERIAL AND EXECUTIVE SERVICES - FT

Organisation: Australian Competition & Consumer Commission Victoria

Author: Ridgway Nigel

MP:

Response
By:

Subject: GOVERNMENT RELATIONS - ADVICE - Australian Consumer Law - Original copy
of Memorandum of Understanding

Date	Officer	Comments	Initials
7.12.10	Compliance + NRA	For information only	JS
		Email sent to NRA for info.	
6-12-10	J. Treacy		



**Fair
Trading**



**Services,
Technology &
Administration**

DIRECTOR GENERAL / DEPUTY COMMISSIONER REQUEST

RDL/CMC No:

M 10/5095

Date Received:

2-12-10

TITLE:

Australian Consumer Law - original copy of the
Memorandum of Understanding

REPLY FOR SIGNATURE BY:

☐ DIRECTOR GENERAL

☐ ASSISTANT DIRECTOR GENERAL

☐ DEPUTY COMMISSIONER

☐ DIRECTOR - MES-FT

☐ MINISTER FAIR TRADING

☐ CHAIRPERSON CITT

☐ FOR APPROPRIATE ACTION

☐ STANDARD LETTER & BRIEF

☐ FOR INFORMATION ONLY

☐ BRIEFING ONLY REQUIRED

☐ NO RESPONSE REQUIRED

☐ LETTER ONLY REQUIRED

☐ REFER TO CHAIRPERSON

☐ ACKNOWLEDGED

PRIORITY:

☐ URGENT

☐ STANDARD

☐ 3 weeks

☐ 2 weeks

☐ 1 week

☐ Other

Date:

☐ NRR

☐ Co-ordinated response

☐ Lead:

☐ Campaign Issue

☒ Link to Previous corr.

☒ Related Files:

M10/2273

MES-FT contact:

.....

.....

☐ To all Divisions

☐ Consumer, Trader & Tenancy
Tribunal

☐ Fair Trading Services

☐ Customer Feedback Survey

☐ Property Compensation Fund

☐ Insurance Services

☐ REVS

☐ Home Building Service

☐ Policy

☒ National Reform Agenda

☐ Compliance & Enforcement

☒ Compliance Group

☐ Registry of Co-ops

☐ CAPS:

☐ P&LD

☐ M&TS

☐ FTIC

☐ E&IS

☐ Customer Services

☐ Legal and Governance

☐ Legal (Parramatta)

☐ MES-FT

☐ Copy to Director General

☐ Copy to Public Affairs

☐ Copy to Deputy Commissioner

☐ Copy to MES

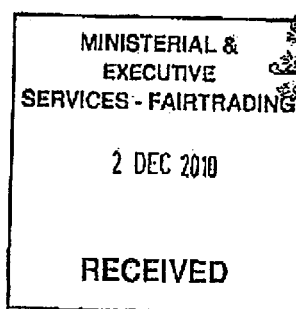
☐ Copy to Assistant DG

☐ CAVEAT

COMMENTS:

9 July 2010

Mr Peter Duncan
Director General
Department of Services, Technology and Administration
McKell Building
Level 11, 2-24 Rawson Place
SYDNEY NSW 2000



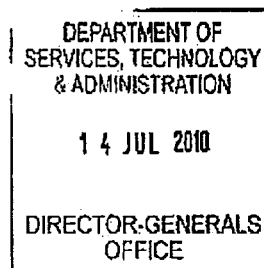
Australian
Competition &
Consumer
Commission

GPO Box 520
Melbourne Vic 3001

Level 35, The Tower
360 Elizabeth Street
Melbourne Vic 3000

tel: (03) 9290 1800
fax: (03) 9663 3699

www.accc.gov.au



Dear Mr Duncan

Australian Consumer Law Memorandum of Understanding

I am delighted to enclose an original copy of the signed Australian Consumer Law (ACL) Memorandum of Understanding.

In accordance with the Intergovernmental Agreement on the ACL, the MOU seeks to establish a framework for communication, cooperation and coordination between the ACCC, ASIC, state and territory and New Zealand consumer protection agencies so that they can, both collectively and within each of their own jurisdictions, most effectively protect and empower consumers and promote fair trading.

Thank you for your cooperation and participation in the signing of the ACL MOU. I look forward to working collaboratively with you in the future.

Yours sincerely

A handwritten signature in black ink, appearing to read "N. Ridgway".

Nigel Ridgway
Group General Manager
Compliance, Research, Outreach and Product Safety

MES-FT - RDL M10/5095 - Info Only

From: MES-FT
To: RML C&E; RMLNationalReformSM
Date: 7/12/2010 2:01 PM
Subject: RDL M10/5095 - Info Only
CC: Kyle Emslie

COMPLIANCE AND NRA - FOR YOUR INFORMATION ONLY

MES-FT Request

This is a co-ordinated one with Compliance & National Reform Agenda

For Information Only

Registration Number: RDL M10/5095

Status: **FOR INFORMATION ONLY**

Author: Ridgway Nigel

Title: GOVERNMENT RELATIONS - ADVICE - Australian Consumer Law -
Original copy of Memorandum of Understanding

Link : \\ENT2NW\\E2DATA0\\DFTRESOURCE\\MinisterialCorrespondence\\MINISTERIAL%
20AND%20EXECUTIVE%20SERVICES%20-%20FT\\2010\\M10-5095%20-%20AUS\\M10-5095%
20RDL%20For%20Info%20Only.pdf

MES-FT contact: Kyle Emslie

The attached correspondence has been allocated to your division. Where the file has been incorrectly allocated please contact MES-FT via email, including the file details and an explanation of the reasons for re-allocation or referral.

All enquires should be sent to the 'MES-FT' shared mailbox.

Please ensure that you update TRIM as you forward this email to the next actioning officer.

Upma Gyaneswar

COAG Legislative and Governance Forum
on Consumer Affairs
(CAF)

Consumer Affairs Australia and New Zealand
(CAANZ)

Compliance and Dispute Resolution Advisory Committee
(CDRAC)

Terms of Reference

1 July 2015 – 30 June 2017

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 - MEETINGS
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7. PRINCIPLES
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1. ESTABLISHMENT

- 1.1 The Compliance and Dispute Resolution Advisory Committee (CDRAC) was established on 4 December 2009 by the Ministerial Council on Consumer Affairs (MCCA) and commenced operation on 1 January 2010.
- 1.2 MCCA has been replaced by the COAG Legislative and Governance Forum on Consumer Affairs (CAF) and is supported by Consumer Affairs Australia and New Zealand (CAANZ) (formerly the Standing Committee of Officials of Consumer Affairs – SCOCA).
- 1.3 CDRAC oversees collaborative work into product safety matters since the Product Safety Consultative Committee (PSCC) was disbanded in 2015.

2. ROLE OF THE COMPLIANCE AND DISPUTE RESOLUTION ADVISORY COMMITTEE (CDRAC)

- 2.1 Subject to the direction of CAANZ the Roles of CDRAC are to:
 - Oversee the delivery of strategic projects as outlined in the CAANZ/CAF Strategic Agendas 2010 – 2012; 2013 – 2015; and 2015 -2017.
 - Take action on issues referred to it by CAANZ.
 - Detect emerging marketplace compliance and dispute resolution issues, and initiate co-ordinated national responses to those of national significance.
 - Inform members of CAANZ about significant compliance and dispute resolution issues, including those related to product safety.
 - Inform members of CAANZ about recent judgements, law reform and other matters likely to affect compliance and dispute resolution.
 - Identify and report to CAANZ about legislative or policy options (in association with the Policy and Research Advisory Committee, PRAC) to address emerging matters causing consumer detriment.
 - Identify the need for, and jointly develop, publications (in association with the Education and Information Advisory Committee, EIAC) to address compliance and dispute resolution issues.
 - Coordinate joint operational activities including co-operative investigations where appropriate and national compliance surveys on agreed areas.
 - Consult with business and consumer representatives about compliance and dispute resolution issues.
 - Maintain and continually enhance effective data and trend analysis systems to detect market non-compliance trends and specific trader breaches (within legislative constraints).

- Build links with other enforcement agencies, co-regulatory bodies and industry groups to foster information sharing.
- Examine and implement opportunities for cooperative staff training and staff exchanges.
- Facilitate a Trans-Tasman approach to compliance issues where relevant, particularly product safety.
- Promote a tripartite approach to compliance - business, consumer and government.

3. RESPONSIBILITIES

3.1 The Responsibilities of CDRAC are:

- Coordination of consistent approaches to compliance and enforcement with harmonised legislation, including strategies to respond to product safety issues.
- Ensuring early liaison with EIAC about options for supplier or consumer education strategies to address priority compliance issues, and coordination of planning for education and enforcement strategies to result in integrated strategies.
- Reporting on emerging compliance issues with the potential to significantly impact consumer protection.
- Facilitating and reporting on investigations of significance that cross jurisdictional boundaries.
- Oversee the role of the Fair Trading Operations Group (FTOG) in the delivery of strategic projects as outlined in the CAANZ/CAF Strategic Agendas 2011-1012; 2013-2015; and 2015 – 2017.

4. COMMUNICATION – REFERRAL AND REPORTING OF ISSUES

4.1 The Committee structure is made up of the following committees:

- CAF: COAG Legislative and Governance Forum on Consumer Affairs
(Members - Consumer Affairs Ministers)
- CAANZ: Consumer Affairs Australia and New Zealand
(Members - Fair Trading Commissioners)
- CCG: Committee Chairs Group
(Members – Chairs of CAANZ, Advisory Committees and Consultative Committee)
- PRAC: Policy and Research Advisory Committee
(Members – Senior Officials)
- CDRAC: Compliance and Dispute Resolution Advisory Committee
(Members – Senior Officials)
- EIAC: Education and Information Advisory Committee
(Members – Senior Officials)
- FTOG: Fair Trading Operations Group
(Members – Officials)
- NICS: National Indigenous Consumer Strategy

4.2 The referral and reporting of issues to the committees is through a systematic process detailed below. Some issues may be referred directly to committees and others referred through a secondary committee.

4.3 Committees share and link information about relevant issues through the referral and reporting process.

4.4 The Triage Template (Attachment A) should be used to standardise the assessment of issues and to determine if further work should be undertaken.

4.5 Reporting on referred issues will follow the Referral and Reporting Structure:

The referral and reporting of issues to CAF can be done by:

- COAG
- CAF
- CAANZ

The referral and reporting of issues to CAANZ can be done by:

- CAF

- Advisory Committee
- Consultative Committee (through an Advisory Committee)
- NICS (with endorsement from the relevant Committee)

The regular reporting on Committee Workplan to CAANZ is to be done by:

- Advisory Committee
- Consultative Committee

The referral and reporting of issues to CCG can be done by:

- CAANZ
- Advisory Committee
- Consultative Committee

The referral and reporting of issues to an ADVISORY COMMITTEE can be done by:

- CAF (through CAANZ)
- CAANZ
- Advisory Committee
- Consultative Committee

The referral and reporting of issues to the CONSULTATIVE COMMITTEE can be done by:

- CAF (through CAANZ)
- CAANZ (through an Advisory Committee)
- Advisory Committee

The referral and reporting of issues to NICS can be done by:

- CAF (through CAANZ)
- CAANZ (through an Advisory Committee)
- Advisory Committee

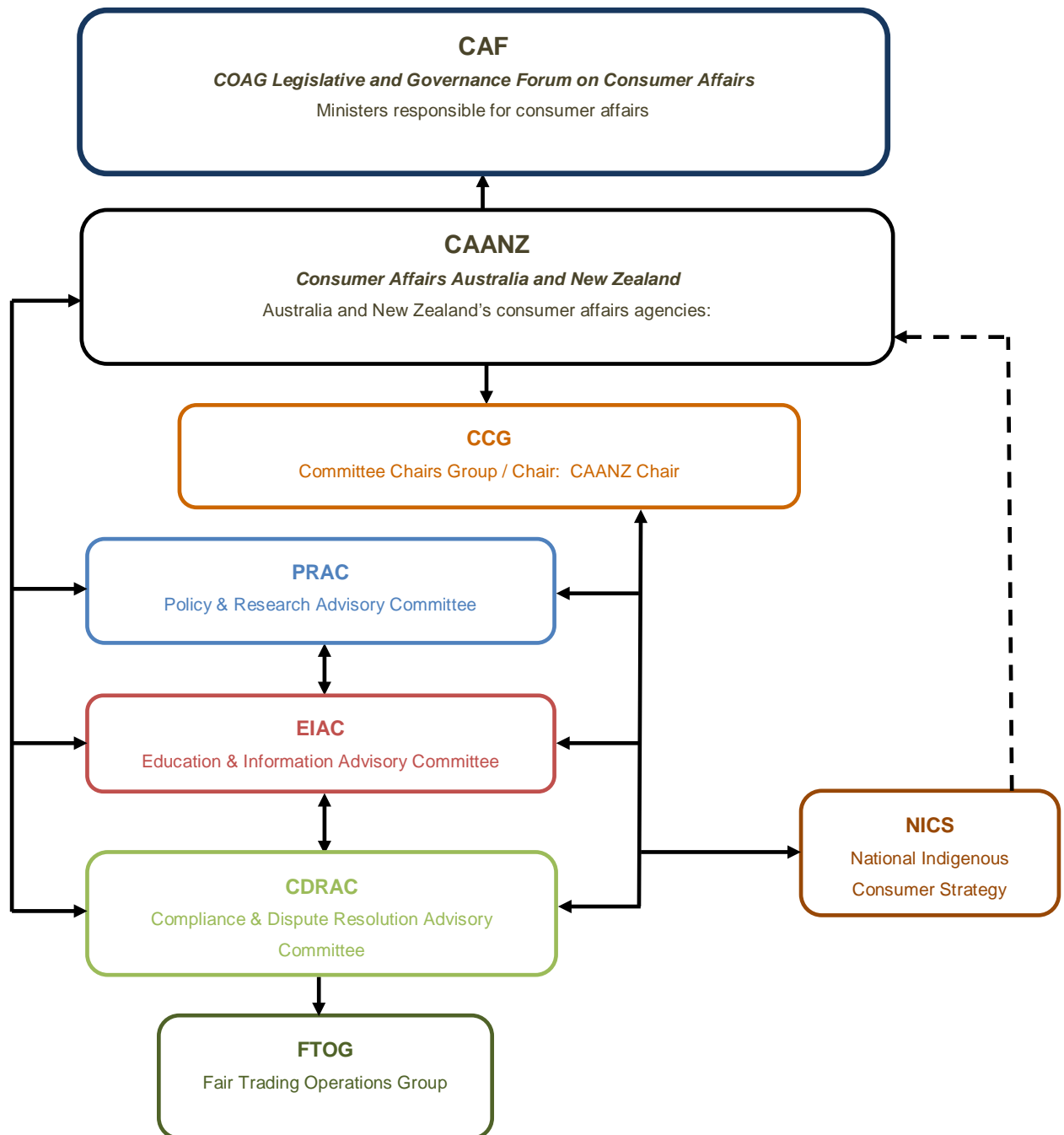
The referral and reporting of issues to the OPERATIONS GROUP can be done by:

- CAANZ (through CDRAC)
- CDRAC

Referral and Reporting responsibilities of Committees within the CAF structure

Referral and Reporting Lines: ←

Reporting Line on Workplan only: ← - - -



5. PROCEDURES

MEMBERSHIP

- CDRAC members are appointed by members of CAANZ. Candidates are to have the skills and experience required. Appointments are to be for a period of three years, with incumbent members eligible for reappointment.
- Members are to be drawn solely from agencies represented on CAANZ.
- Commonwealth agencies may be represented on the CDRAC by representatives of the Australian Treasury, ACCC and ASIC.
- New Zealand agencies may be represented on the CDRAC by representatives of the New Zealand Ministry of Business, Innovation and Employment or the New Zealand Commerce Commission.

CHAIRPERSON

- A CAANZ member will act as chairperson of the CDRAC for a term of two years, with the chairperson appointed by CAANZ from jurisdictions with the necessary resources for the role and its inherent responsibilities.
- The appointment of chairpersons to be reviewed every two years by CAANZ, with incumbent chairpersons eligible for reappointment.
- CDRAC chairpersons are to monitor and ensure milestones, deliverables and reporting requirements are met by the committee.

SECRETARIAT

- Agenda and minutes for CDRAC meetings to be prepared by the Secretariat.
- The Secretariat will receive agenda papers and distribute with a minimum of one week before each CDRAC meeting.

MEETINGS

- The CDRAC will hold at a minimum a monthly phone meeting and face to face as needed – up to twice a year. Teleconferences will generally occur on the third Monday of the month at 1:30pm AEST.

PROJECTS AND REPORTING

- CDRAC will undertake work only on projects approved by CAANZ or the chairperson of the Committee. Working Parties formed to progress specific projects will report to CDRAC.
- Each project will have a comprehensive project plan, including agreed milestones and dates for deliverables agreed by CAANZ.
- Significant changes to the agreed project plan, in particular to deliverables, milestones and/or dates for deliverables to be agreed by CAANZ.
- A written report on the status of each project by the project leader will be provided to each CAANZ meeting, including reports against agreed milestones and dates for deliverables.
- Agenda papers should be succinct and no more than four pages (less is better); full use should be made of tables.
- As required, CDRAC will use an out of session process that is consistent with that used by CAANZ.
- A meeting of the Committee Chairs will be via teleconference each month or as agreed by the Chairs.

VOTING

- Decision making is to be by consensus but if agreement cannot be reached then the matter will be put to a vote. If any matter is the subject of voting, Commonwealth agencies (Treasury, ASIC and ACCC) will have just one vote.
- For relevant matters, New Zealand will have only one vote.

Voting will be by simple majority. CDRAC will report to CAANZ with details of dissent for resolution in accordance with CAANZ's decision-making processes.

6. EVALUATION AND REVIEW

- 6.1 The operations and terms of reference for CDRAC will be reviewed every two years by the Committee and submitted for endorsement to CAANZ.

7. CDRAC PRINCIPLES

7.1 The Principles set out below underpin the efficacy of CDRAC.

Representation

- Jurisdictions will be encouraged to maintain consistent representation of senior officers to facilitate strategic decision-making;

Collaboration

- Committees will be proactive in circulating relevant issues to other committees and/or CAANZ/CAF for information and/or action;
- Greater collaboration will be initiated with organisations involved in researching and developing international consumer policy;

Responsiveness and effectiveness

- Jurisdictions will be encouraged to submit issues as they arise on a Triage Template to assist scope and management issues;
- On receiving the issues, CDRAC will consider if an interim response would be advantageous;
- A terms of reference, and plan with agreed timeframes, will be established for every issue;
- On completion of the terms of reference, a decision will be made as to whether further action is required;
- The CDRAC Chair will involve the Secretariat with more complex issues where it is anticipated considerable coordination will be required across committees;
- All issues will be placed on a CDRAC project register;
- Social media will be used to more broadly consult;

Meeting preparation

- The Chair will call for agenda items one week prior to a meeting;
- Brief CDRAC project reports will be circulated in advance to reduce reporting time and maximise discussion/decision making opportunities during meetings;
- Reports from other CAANZ committees will be circulated prior to CDRAC, and be an agenda item to understand their potential impact on the policy and research agenda;

Meetings

- Questions on project reports will be by exception;
- The Committee will endeavour to identify issues early, and remove road blocks to achieve the most efficient and satisfactory result;
- An Agency will be encouraged to take a lead where the issue is particularly important for their jurisdiction;
- Minutes and outcomes of each CDRAC meeting will be placed on the Extranet;

Planning

- A clear terms of reference and a plan with agreed timeframes will be established for every issue;
- Once the terms of reference are complete, a decision will be made if further action is required;
- A project register will reflect all issues be considered by CDRAC, and to track progress

8. OTHER ARRANGEMENTS

- 8.1 CDRAC has the capacity to form subcommittees with the agreement of CAANZ.
- 8.2 CDRAC may consult a CAANZ advisory panel made up of representatives of consumer advocacy organisations, industry groups and other interest groups to be engaged on an as-needed basis.
- 8.3 Coordination of common issues across Advisory Committees is to be provided by the chairpersons and CAANZ.

COAG Legislative and Governance Forum
on Consumer Affairs
(CAF)

Consumer Affairs Australia and New Zealand
(CAANZ)

Compliance and Dispute Resolution Advisory Committee
(CDRAC)

Fair Trading Operations Group

FTOG

Terms of Reference

1 July 2015 – 30 June 2017

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 - SECRETARIAT
 - MEETINGS
 - PROJECTS AND REPORTING
 - VOTING
6. EVALUATION AND REVIEW
7. PRINCIPLES
8. OTHER ARRANGEMENTS

1. ESTABLISHMENT

- 1.1 The Fair Trading Operations Group (FTOG) was established on 17 February 2010 by the Compliance and Dispute Resolution Advisory Committee (CDRAC) and commenced operation with its inaugural teleconference on 9 March 2010.
- 1.2 The COAG Legislative and Governance Forum on Consumer Affairs (CAF) is supported by Consumer Affairs Australia and New Zealand (CAANZ).

2. ROLE OF FAIR TRADING OPERATIONS GROUP (FTOG)

- 2.1 The Roles of FTOG are to:
 - Facilitate the delivery of strategic projects as outlined in the CAANZ/CAF Strategic Agendas 2010-2012; 2013 – 2015; and 2015-2017
 - Facilitate a monthly teleconference of all member jurisdictions to share information on emerging issues, dispute resolution, product safety and significant compliance actions.
 - Support CDRAC

3. RESPONSIBILITIES

- 3.1 The Responsibilities of the FTOG are to:
 - Provide support to CDRAC on national projects where CDRAC identifies project as operational
 - Ensure open lines of communication between jurisdictions are fostered at all operational officer levels for information sharing, intelligence, investigations, compliance, trader engagement and dispute resolution.
 - Explore opportunities for co-ordinated training, resource-sharing and capacity building across jurisdictions.

• 4. COMMUNICATION – REFERRAL AND REPORTING OF ISSUES

4.1 The Committee structure is made up of the following committees:

- CAF: COAG Legislative and Governance Forum on Consumer Affairs
(Members - Consumer Affairs Ministers)
- CAANZ: Consumer Affairs Australia and New Zealand
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- CCG: Committee Chairs Group
(Members – Chairs of CAANZ, Advisory Committees and Consultative Committee)
- PRAC: Policy and Research Advisory Committee
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- CDRAC: Compliance and Dispute Resolution Advisory Committee
(Members – Senior Officials)
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- NICS (with endorsement from the relevant Committee)

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- Consultative Committee

The referral and reporting of issues to CCG can be done by:

- CAANZ
- Advisory Committee
- Consultative Committee

The referral and reporting of issues to an ADVISORY COMMITTEE can be done by:

- CAF (through CAANZ)
- CAANZ
- Advisory Committee
- Operations Group
- Consultative Committee

The referral and reporting of issues to the CONSULTATIVE COMMITTEE can be done by:

- CAF (through CAANZ)
- CAANZ (through an Advisory Committee)
- Advisory Committee

The referral and reporting of issues to NICS can be done by:

- CAF (through CAANZ)
- CAANZ (through an Advisory Committee)
- Advisory Committee

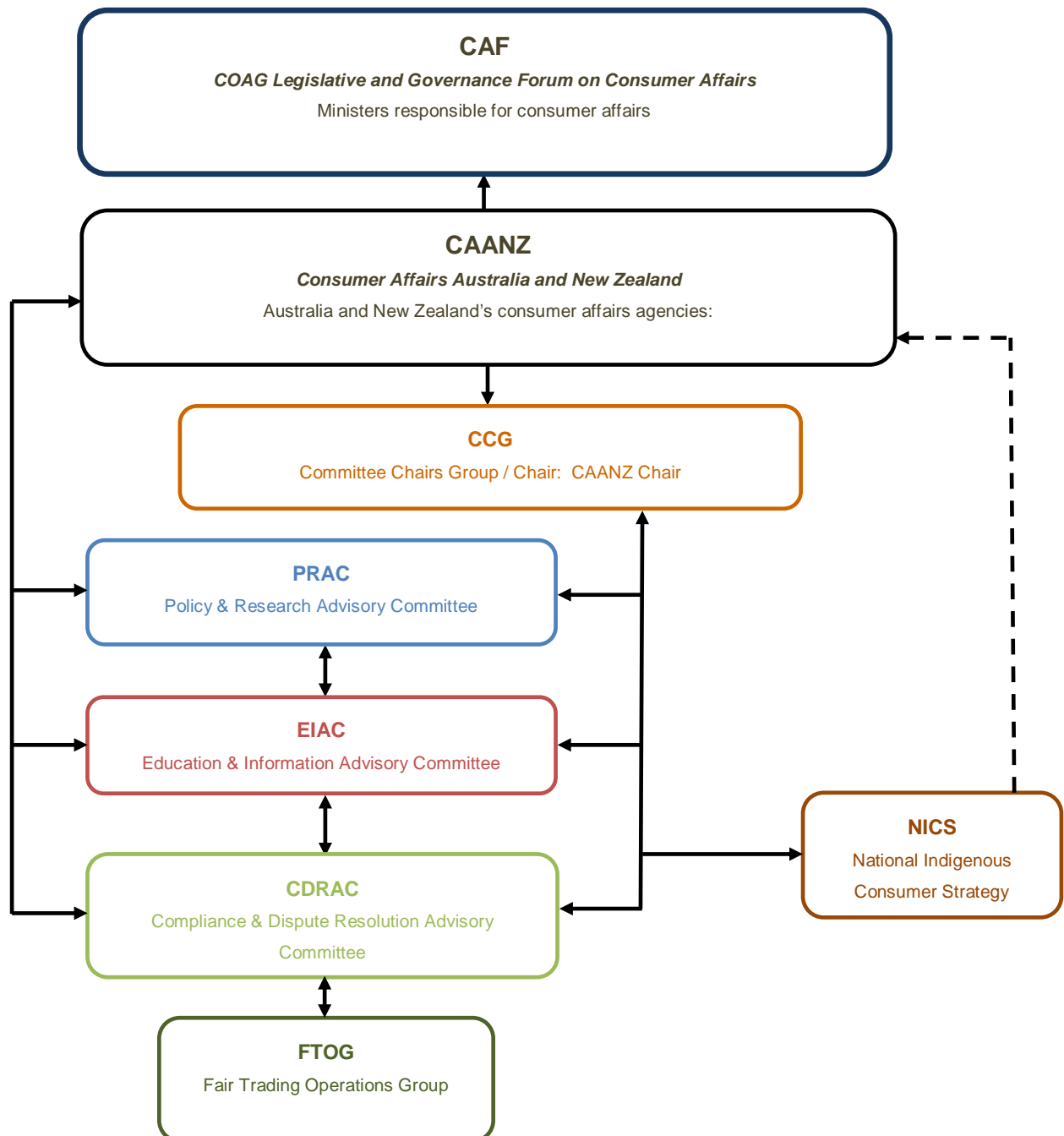
The referral and reporting of issues to the OPERATIONS GROUP can be done by:

- CAANZ (through CDRAC)
- CDRAC

Referral and Reporting responsibilities of Committees within the CAF structure

Referral and Reporting Lines: ←

Reporting Line on Workplan only: ← - - -



5. PROCEDURES

MEMBERSHIP

- FTOG members are nominated by members of CDRAC and attendees at monthly teleconferences are decided by jurisdictions. Members are to have the skills and experience to contribute.
- Members are to be drawn solely from agencies represented on CAANZ.
- Commonwealth agencies are represented on the FTOG by representatives of the ACCC and ASIC.
- New Zealand agencies are represented on the FTOG by representatives of the New Zealand Ministry of Business, Innovation and Employment and or the New Zealand Commerce Commission.

CHAIRPERSON

- A CDRAC member will act as chairperson of the FTOG for a term of two years, appointed by CDRAC from jurisdictions with the necessary resources for the role and its inherent responsibilities.
- The appointment of chairperson is to be reviewed every two years by CDRAC, with incumbent chairpersons eligible for reappointment.
- FTOG chairpersons are to monitor and ensure milestones, deliverables and reporting requirements are met by the committee.

SECRETARIAT

- Agenda and minutes for FTOG meetings to be prepared by the Secretariat after approval by the FTOG Chair.
- The Secretariat will receive agenda papers and distribute at least 3 business days prior to each FTOG meeting.

MEETINGS

- The FTOG hosts a teleconference on the second Tuesday of each month at 12 noon AEST.

PROJECTS AND REPORTING

- FTOG will facilitate a monthly teleconference of all jurisdictions to share information and intelligence on new and emerging issues; dispute resolution; trader engagement; compliance, product safety and significant prosecution action.
- FTOG will facilitate complaint and enquiry data gathering and analysis amongst jurisdictions to support the identification of market issues.
- FTOG will undertake work only on projects approved by CDRAC or the chairperson of the Committee. Working Parties formed to progress projects will report outcomes to the CDRAC.

- Each project will have a comprehensive project plan, including agreed milestones and dates for deliverables agreed by CDRAC. Once approved by CDRAC the project will be a CDRAC project and fall under the reporting requirements of CDRAC.
- Reporting of activities will be provided as a standing item on the CDRAC agenda.

VOTING

- Decision making is to be by consensus but if agreement cannot be reached then the matter will be put to a vote. If any matter is the subject of voting, agencies representing the Commonwealth (ASIC and ACCC) will have a single vote.
- For relevant matters, agencies representing New Zealand will have a single vote.

Voting will be by simple majority. FTOG will report to CDRAC with details of dissent for resolution in accordance with CAANZ's decision-making processes.

6. EVALUATION AND REVIEW

- 6.1 The operations and terms of reference for FTOG will be reviewed every two years by the Committee and submitted for endorsement to CDRAC.

7. PRINCIPLES

- 7.1 The Principles set out below underpin the efficacy of the FTOG.

Representation

- Jurisdictions will be encouraged to maintain consistent representation of senior officers to facilitate strategic decision-making;

Collaboration

- Committees will be proactive in circulating relevant issues to other committees and/or CAANZ/CAF for information and/or action;
- Greater collaboration will be initiated with organisations involved in researching and developing international consumer policy;

Responsiveness and effectiveness

- Jurisdictions will be encouraged to raise issues as they arise as an out of session issue or at the monthly teleconference;
- On receiving issues identified by FTOG, CDRAC will consider if further specific action is warranted or it would be advantageous to engage with other CAANZ committees;

Meeting preparation

- The Chair will call for agenda items one week prior to a meeting.
- Each jurisdiction will be asked to provide a written update of issues in accordance with the agenda 4 days prior to the meeting;

- Secretariat will circulate the approved agenda and papers at least 3 business days prior to the meeting.

Meetings

- Each jurisdiction will be asked to provide an update of issues in accordance with the agenda;
- The FTOG will endeavour to identify issues that require intervention and or escalation to CDRAC for consideration;
- Lead Agency status will be encouraged to lead particular matters;
- Minutes and outcomes of each FTOG meeting will be circulated.

8. OTHER ARRANGEMENTS

- 8.1 The FTOG has the capacity to form subcommittees with the agreement of CDRAC.

COAG Legislative and Governance Forum
on Consumer Affairs
(CAF)

Consumer Affairs Australia and New Zealand
(CAANZ)

Product Safety Operations Group

PSOG

Terms of Reference

1 September 2016 – 30 June 2018

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1. Establishment

- 1.1 The Product Safety Operations Group (PSOG) is established by the Compliance and Dispute Resolution Advisory Committee (CDRAC).
- 1.2 The COAG Legislative and Governance Forum on Consumer Affairs (CAF) is supported by Consumer Affairs Australia and New Zealand (CAANZ). CDRAC supports and advises CAANZ.

2. Roles of PSOG

- 2.1 The roles of PSOG are to:
 - Facilitate the delivery of agreed projects that support the CAANZ/CAF Strategic Agenda 2015-2017;
 - Provide advice to CDRAC on proposed consumer product safety compliance and monitoring activity;
 - Co-ordinate the delivery of national product safety projects and activities on behalf of CDRAC, including the development of one or more annual integrated national compliance programs and other projects agreed by CDRAC through normal budgeting and planning processes;
 - For emerging product safety issues, provide a forum for all member jurisdictions to collaboratively:
 - support CDRAC to identify and implement national strategies to reduce the risk of product-related injury and death.
 - share information
 - where necessary for urgent issues, develop consistent media 'holding' responses
 - where appropriate, confirm lead agency status and supporting agencies to manage operational issues
 - where agreed, develop national project proposals or other national responses.

3. Responsibilities of PSOG and PSOG Members

- 3.1 The responsibilities of the PSOG are to:
 - Escalate emerging product safety issues as appropriate to CDRAC;
 - Provide advice to CDRAC on proposed consumer product safety compliance and monitoring activities;
 - Deliver nationally agreed consumer product safety initiatives, collaborating with EIAC and PRAC, as requested by CDRAC and to the extent practical if the issue is urgent;

- Undertake minor research and consultation in relation to urgent consumer product safety issues;
- Review and maintain consumer product safety issue identification and escalation frameworks;
- Provide input into the development of product safety regulations
- Provide a forum for regulators to discuss and coordinate operational and technical issues and approaches to emerging issues;
- Resolve technical issues and providing operational advice relating to proposed and existing product safety standards and bans; and
- Advise CDRAC of severe injuries or deaths associated with consumer products.

3.2 The responsibilities of the PSOG members include:

- Sharing and exchanging consumer product safety information in a coordinated manner, using Govdex as the primary communication tool;
- Being actively involved when an issue is particularly important for their jurisdiction;
- The ACCC providing PSOG with a monthly summary of deaths and serious injuries, including an overview of mandatory reports;
- The ACCC making recommendations to the Commonwealth Minister regarding enacting ACL instruments; and
- The ACCC providing information to PSOG from the Organisation for Economic Co-operation and Development (OECD) meetings of the Working Party for Consumer Product Safety. The ACCC will also seek information from PSOG members to inform consideration of issues that Australia may want to present to the Working Party.

4. Communication – Referral and Reporting of Issues

4.1 The Committee structure is made up of the following committees:

CAF: COAG Legislative and Governance Forum on Consumer Affairs
(Members – Consumer Affairs Ministers)

CAANZ: Consumer Affairs Australia and New Zealand
(Members – Fair Trading Commissioners)

CCG: Committee Chairs Group
(Members – Chairs of CAANZ, Advisory Committees)

PRAC: Policy and Research Advisory Committee
(Members – Senior Officials)

CDRAC: Compliance and Dispute Resolution Advisory Committee
(Members – Senior Officials)

EIAC: Education and Information Advisory Committee
(Members – Senior Officials)

PSOG: Product Safety Operations Group
(Members – Officials)

FTOG: Fair Trading Operations Group
(Members – Officials)

NICS: National Indigenous Consumer Strategy

4.2 The referral and reporting of issues to the committees is through a systematic process detailed below (4.4).

4.3 The Triage Template (Attachment A) should be used to standardise the assessment of issues and to determine if further work should be undertaken. It is the responsibility of the referring agency to complete the template.

4.4 Reporting on referred issues will follow the Referral and Reporting Structure:

The referral and reporting of issues to CAF can be done by:

- COAG
- CAF
- CAANZ

The referral and reporting of issues to CAANZ can be done by:

- CAF
- Advisory Committees
- FTOG and PSOG (through CDRAC)
- NICS (with endorsement from the relevant Committee)

The regular reporting on Committee Work plan to CAANZ is to be done by:

- Advisory Committees

The referral and reporting of issues to CCG can be done by:

- CAANZ
- Advisory Committees

The referral and reporting of issues to an ADVISORY COMMITTEE can be done by:

- CAF (through CAANZ)
- CAANZ
- Advisory Committees

The referral and reporting of issues to the PRODUCT SAFETY OPERATIONS GROUP can be done by:

- CAF (through CAANZ)
- CAANZ (through an Advisory Committee)
- CDRAC

The referral and reporting of issues to NICS can be done by:

- CAF (through CAANZ)
- CAANZ
- Advisory Committee

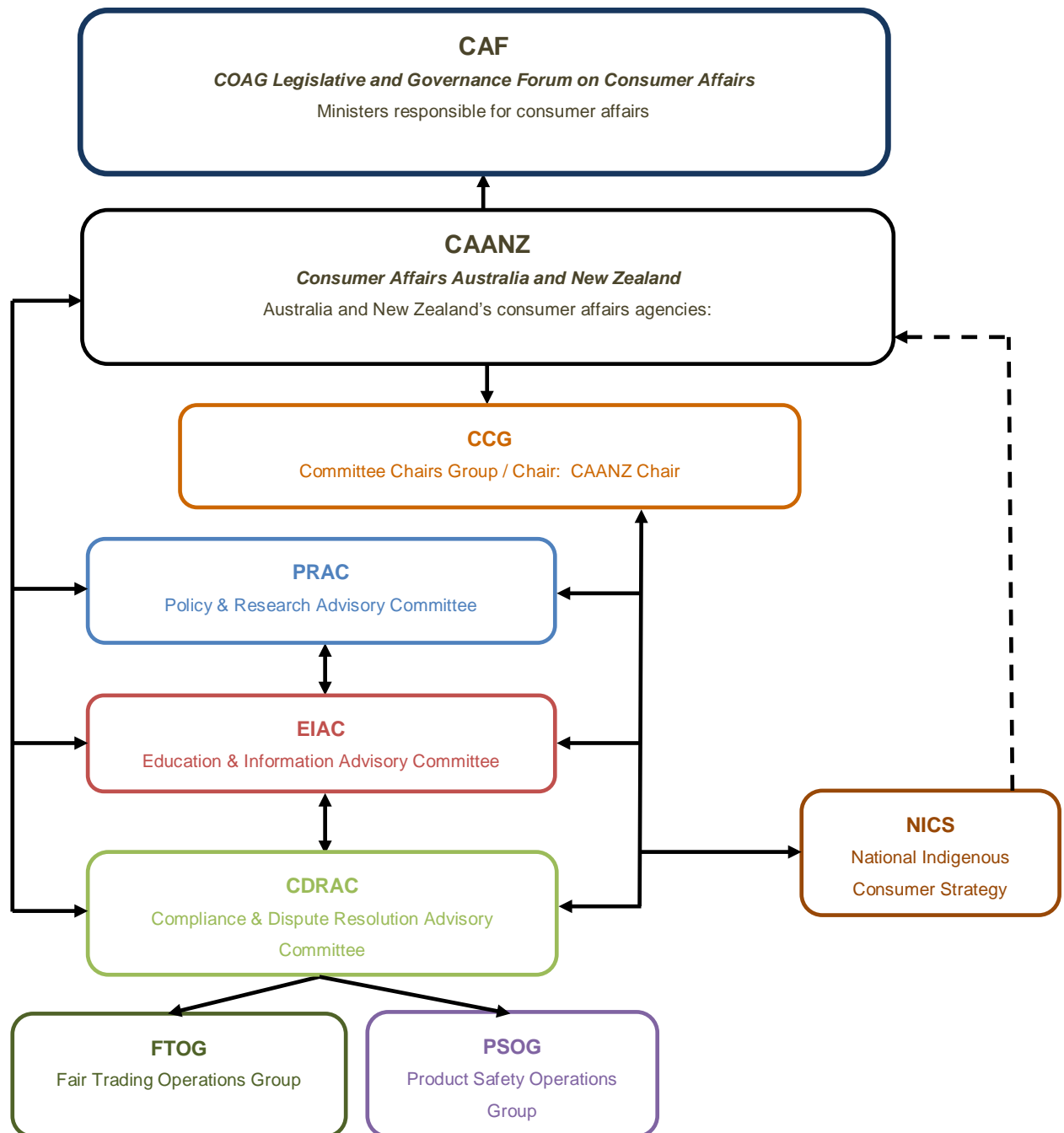
The referral and reporting of issues to the Fair Trading Operations Group can be done by:

- CAANZ (through CDRAC)
- CDRAC

Referral and Reporting responsibilities of Committees within the CAF structure

Referral and Reporting Lines: ←

Reporting Line on Work plan only: ← - - -



5. Procedures

5.1 Membership

- PSOG members are to be drawn from agencies represented on CDRAC (with the exception of the Northern Territory; the ACCC has the sole responsibility for the regulation and enforcement of product safety throughout the Northern Territory).
- Commonwealth agencies may be represented on PSOG by the ACCC.
- New Zealand may be represented by representatives of the New Zealand Ministry of Business, Innovation and Employment or the New Zealand Commerce Commission.
- A representative of the Independent Consumer and Competition Commission of Papua New Guinea may be an observer member of PSOG.

5.2 Chairperson

- A CDRAC member will act as Chairperson of PSOG for a term of two years, appointed by CDRAC from jurisdictions with the necessary resources for the role and its inherent responsibilities.
- A Chairperson is eligible for re-appointment for a further period.
- The Chairperson's role is to monitor and ensure project plan milestones, deliverables and reporting requirements are met and to facilitate meetings, discussions and activities between the jurisdictions under the terms of reference.
- To maintain business continuity for any particular activity, any member of PSOG can agree to act as Chairperson if invited to by the Chairperson.

5.3 Secretariat

- The Commonwealth Treasury Markets Secretariat will perform the Secretariat functions of PSOG.

5.4 Meetings

- PSOG will hold at a minimum a monthly phone meeting and face-to-face at least annually. Teleconferences to occur on the first Wednesday of the month at 2pm AEST.

5.5 Projects and Reporting

- In dealing with emerging issues, PSOG may agree to responses or related projects that may include elements of education, research, advocacy, market surveillance and media management. For non-urgent projects, PSOG may seek advice from other committees on how to deliver those elements.
- PSOG will collaborate with other advisory committees on projects approved by CDRAC. Working Parties, if necessary, may be formed to progress specific projects which will report to PSOG.
- Each project will have a project plan, including agreed milestones and dates for deliverables agreed by CDRAC.

- Significant changes to the agreed project plan, in particular to deliverables, milestones and/or dates for deliverables, to be agreed by CDRAC.
- A written report on the status of each project by the project leader will be provided through PSOG to CDRAC for each CAANZ meeting, including reports against agreed milestones and dates for deliverables.
- PSOG may establish working groups to develop approaches to new issues and will advise CDRAC via reporting against the work-plan.
- Agenda papers should be succinct and no more than four pages (less is better); full use should be made of tables.
- As required, PSOG will use an out of session process that is consistent with that used by CAANZ.

5.6 Work-plan

- PSOG will establish a rolling forward 12-month work-plan to reflect issues considered by the group and to track progress. This work plan can be informed by a skills and capability audit across the personnel available.
- Ongoing identified issues will be nominated for responses on the PSOG work-plan.
- PSOG members will be expected to consider how they can best support the PSOG work-plan on an opt-in basis for each project.
- PSOG will monitor and revise the sequencing of responses to issues to prioritise resources.

5.7 Immediate Action

- Any PSOG member can nominate an issue for consideration of immediate action to the Secretariat.
- Upon receipt, the Secretariat and Chairperson will schedule an immediate action meeting.
- Available PSOG members will meet and determine if the issue warrants immediate action and seek to agree on the nature of the response necessary.

5.8 Voting

- PSOG will follow a voting process when necessary. This includes:
 1. whether an issue should be escalated for immediate attention
 2. what issues should be listed for the annual program.
- It is acknowledged that jurisdictional priorities, administrative processes and legislative requirements may impact on a member's ability to fully commit to individual activities. Voting does not bind PSOG members to allocate resources to projects, responses or other activities intended to manage those issues.

- PSOG will report to CDRAC with details of dissent for resolution in accordance with CDRAC's decision-making processes.

6. Evaluation and Review

- 6.1 The operations and terms of reference for PSOG will be reviewed every two years by the Committee and submitted for endorsement to CAANZ.

7. PSOG Principles

- 7.1 The Principles set out below underpin the efficacy of the PSOG.

Representation

- Jurisdictions are to maintain consistent representation of appropriately senior officers to facilitate strategic dialogue and efficient decision making.

Collaboration

- Committees will be proactive in circulating relevant issues via CDRAC to other committees and/or CAANZ/CAF for information and/or action.
- Greater collaboration will be encouraged with organisations involved in research to inform the development of domestic and international consumer product safety policy.

Responsiveness and effectiveness

- Jurisdictions will be encouraged to submit issues to the Secretariat as they arise on a Triage Template to assist scope and management issues.
- The PSOG Chair will involve the Secretariat with more complex issues where it is anticipated considerable coordination will be required across committees.
- PSOG will look towards innovative solutions and approaches (e.g. making more use of social media).

Meeting preparation

- The PSOG Secretariat will circulate a draft agenda and call for agenda items one week before a meeting, with papers due at least 48 hours prior to the meeting.
- PSOG meeting papers will be uploaded to Govdex in advance to reduce reporting time and maximise discussion/decision making opportunities during meetings.

Meetings

- The work-plan will be discussed by exception.
- Regulatory updates, the national surveillance program and the monthly report on deaths and severe injuries with consumer goods will be standing agenda items.

- The Committee will endeavour to identify issues early, and remove road blocks to achieve the most efficient and satisfactory result.
- Minutes and outcomes of each PSOG meeting will be placed on Govdex.

8. Planning

- 8.1 A project plan with agreed timeframes will be established for every issue warranting a working group or urgent response, with formality and detail scaled to the urgency of responding.

9. Other Arrangements

- 9.1 Coordination of common issues across Advisory Committees is to be provided by the Chairpersons.

COAG Legislative and Governance Forum
on Consumer Affairs
(CAF)

Consumer Affairs Australia and New Zealand
(CAANZ)

TRIAGE TEMPLATE:
Initial Assessment of Issue

1 July 2016 – 30 June 2017

TRIAGE TEMPLATE - overview

The purpose of this Triage Template is to facilitate the assessment, prioritisation and management of issues referred to CAF, CAANZ and Advisory Committees. Detecting and evaluating consumer problems and determining the level of consumer detriment is a challenge for policy makers and regulators. The Triage Template draws on the approach adopted in the OECD's *Consumer Policy Toolkit 2010* to assist in the assessment of referred issues.

PRAC - POLICY AND RESEARCH ADVISORY COMMITTEE

A central role for PRAC is to assess issues efficiently and effectively using an evidence-based approach.

The Triage Template will assist to determine when to intervene in a market problem, what policy tools are available to address the issue, and how to manage appropriately an agreed approach.

EIAC - EDUCATION AND INFORMATION ADVISORY COMMITTEE

The purpose of the EIAC is to ensure that cost-effective, co-ordinated, innovative and effective mechanisms are used to provide information, increase knowledge and change behaviour of both consumers and business in the interests of consumer protection in Australia.

The Triage Template will provide a determination of whether an education response should be developed for an issue, and how education might work in tandem with other approaches where needed.

CDRAC - COMPLIANCE AND DISPUTE RESOLUTION ADVISORY COMMITTEE

CDRAC's primary function is to ensure that compliance and dispute resolution across Australia is coordinated, efficient, responsive and, where appropriate, consistently applied. As part of this role, CDRAC focuses on significant current and emerging compliance and dispute resolution issues, and initiates and delivers effective national responses.

The Triage Template provides a framework to assist CDRAC in assessing such marketplace issues and determining an appropriate and timely course of action, consistent with CAF's strategic and operational priorities.

PSOG - PRODUCT SAFETY OPERATIONS GROUP

The central role of PSOG is to identify and implement national strategies that minimise risk of injury and death from safety hazards in consumer products.

The Triage Template provides PSOG with a framework to assist in determining when an issue or proposed course of action is of national significance.

CRITERIA

1. WHAT IS THE NATURE OF THE ISSUE?

Can you describe the nature of the issue?

[\[click and type here\]](#)

2. IS THIS GENUINELY A CONSUMER PRODUCT ISSUE?

Where does the legislative authority rest to deal with the issue? Does the issue fall within the scope of the ACL? What other non-consumer policy issues may be involved?

[\[click and type here\]](#)

3. WHAT IS THE SCOPE OF THE ISSUE?

How many consumers are involved? What is the safety risk to consumers? Have there been injuries or deaths?

What is the probability this issue could dramatically escalate?

[\[click and type here\]](#)

4. IS THIS A CROSS-JURISDICTION ISSUE?

Does this impact one, multiple or all jurisdictions?

[\[click and type here\]](#)

5. WHAT CURRENT MEASURES EXIST IN RELATION TO THE ISSUE?

Are there existing regulatory measures that deal with the issue? Has compliance/enforcement been effective?

Is it clear that this is a consumer product as defined by the ACL?

Do non-regulatory measures (i.e. education materials or voluntary initiatives) exist in relation to the issue?

[\[click and type here\]](#)

6. WHAT WOULD SUCCESS LOOK LIKE IF THIS ISSUE WERE RESOLVED?

How would traders and/or consumers behave differently? How would the consumer product or access to it be different?

[\[click and type here\]](#)

7. WHAT ARE THE POSSIBLE ASSOCIATED IMPACTS ON BUSINESS (INCLUDING SMALL BUSINESS)?

What are the likely compliance costs on business if they were required to behave differently? What is the likely impact on competition (i.e. product range, prices)? If the consumer product or access to it were modified, how quickly could that occur? What would be the likely costs involved?

[\[click and type here\]](#)

8. WOULD ANOTHER COMMITTEE BE MORE APPROPRIATE TO CONSIDER THE ISSUE?

Would it be more appropriate for another Committee to consider the issue? Should another Committee be consulted?

[click and type here]

9. WHAT OTHER AGENCIES MIGHT CONTRIBUTE TO THE SOLUTION?

Are there alternate regulatory regime(s) that might cover this issue?

If so, how are they approaching it in those other regimes?

Have other relevant agencies been consulted?

How has this safety issue been dealt with overseas?

[click and type here]

10. ARE THERE SPECIFIC TIMEFRAMES THAT MUST BE MET?

What is the nature of the hazard posed by this consumer product (or its misuses) and what is the exposure to that? If there have been injuries or deaths, are more expected? With what frequency and why?

[click and type here]

12. DO YOU BELIEVE AN INTERIM RESPONSE MIGHT BE USEFUL?

Is an interim holding position necessary? Has your agency developed one?

[click and type here]

CAF's Strategic Priorities for 2015-2017

1. Provide more targeted education and greater access to information and tools that support empowered, self-sufficient consumers
2. Collaborate with other bodies to engage and protect vulnerable consumers
3. Identify, understand and respond to emerging market innovations and their impact on regulatory regimes
4. Better leverage the compliance and enforcement outcomes of regulators
5. Create an annual integrated strategy for nominated areas of concern and signal these to the market
6. Extend collaborative relationships with regulatory bodies and other relevant stakeholders
7. Develop mechanisms for more effective data collection and analysis
8. Commence, support and implement the ACL Review

Legislative and Governance Forum
on Consumer Affairs
with
Consumer Affairs Australia and New Zealand

Strategic Agenda 2015-2017

An integrated and harmonised approach to consumer
protection

June 2015

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AN INTEGRATED AND HARMONISED APPROACH TO CONSUMER PROTECTION

The Australian Consumer Law (ACL) commenced on 1 January 2011, introducing a national policy framework to enhance consumer protection. This reform has significantly changed the legislative framework for consumer law, the way consumer policy is developed and implemented, and how consumer law is communicated and enforced in Australia.

The Legislative and Governance Forum on Consumer Affairs (CAF) is responsible for the administration of the ACL and for other specific issues under the Intergovernmental Agreement for the Australian Consumer Law (IGA) and the Trans-Tasman Mutual Recognition Agreement.

Consumer Affairs Australia New Zealand (CAANZ) is a forum of consumer affairs agencies in Australia and New Zealand, established to support the formal responsibilities of CAF.

To achieve the objectives of the IGA and to promote trans-Tasman harmonisation and coordination as appropriate, CAANZ engages in policy coordination and development, enforcement cooperation and information sharing, and shares compliance and national education initiatives.



STRENGTHENING THE CONSUMER FRAMEWORK

Successful implementation of the Australian Consumer Law has enabled more sophisticated and coordinated approaches to policy development and implementation, both across Australia and trans-Tasman.

The successful introduction of the Australian Consumer Law and the adoption of the “one law, multiple regulators” model has enabled jurisdictions to better coordinate action and speak as ‘one voice’ to industry and has increased the effectiveness and responsiveness of consumer protection interventions.

This Strategy focuses on priorities that will deliver clear benefits to jurisdictions which includes the harmonisation of laws to better deal with national and international consumer issues.

Through the ACL, consumer laws in Australia have been strengthened, modernised and harmonised, to improve compliance and enforcement and to raise consumer and business awareness of their rights and obligations.

Clear and easier to understand rights and obligations can result in better informed consumers and businesses, clearer avenues of redress, reduced regulatory complexity and fewer disputes. A robust and effective consumer policy and regulatory framework can lead to more competitive markets in Australia and New Zealand and allow Australian and New Zealand businesses to serve their customers better, operate more seamlessly across borders and compete more efficiently in world markets. Greater competition can improve economic wellbeing for the benefit of all consumers.

The consumer law reforms in Australia have also promoted greater alignment between Australian and New Zealand laws, and have created opportunities for greater policy coordination and regulatory consistency with New Zealand, as a member of CAF and CAANZ, and as part of the Australia and New Zealand Single Economic Market agenda.

Australia and New Zealand also both contribute to international forums, particularly the OECD Committee on Consumer Policy and APEC. The close trans-Tasman working relationship facilitates a supportive approach by each country at these forums.

Legislative and Governance Forum on Consumer Affairs (CAF) Consumer Affairs Australia and New Zealand (CAANZ)



CONSUMER POLICY IN A CHANGING MARKET: ADAPTING CONSUMER POLICY TO NEW CHALLENGES

Consumers and traders are connecting and engaging in new ways in a dynamic market environment.

An environment scan has identified the following key factors that have been taken into account in formulating the strategic agenda for CAF and CAANZ.

- *New models of business are emerging*

Different consumption patterns and new models of business such as peer-to-peer transactions are evolving. These person-to-person marketplaces are driving innovative and entrepreneurial delivery mechanisms, products and services that bypass traditional institutional structures. Many occasional traders do not think of themselves as a business, and as a result, do not consider regulatory requirements in their day-to-day operations. Understanding how these new business models coexist with existing regulatory regimes is still to be fully understood by traders and regulators.

- *Vulnerable consumers can have limited ability to navigate complex product and service delivery options, especially where information provision and purchasing are online*

The polarisation has never been greater between the highly informed, empowered consumer and the vulnerable consumer who does not have access, or the resources and capacity, to confidently participate in the marketplace. Vulnerable consumers are also less likely to understand and exercise their consumer rights and can be the target of unfair practices.

- *E-commerce is business-as-usual*

E-commerce has become a common way of doing business, reflected in a steady growth in online retail sales in Australia in recent years (to an estimated \$16.8 billion in the year to March 2015, up 8% from the previous year). Consumers are also increasingly using available information and data to make comparisons and purchase local and global products and services online. Data can assist consumers to make more informed choices of product features and offers, and as a result, improving consumer wellbeing and market efficiency.

- *Complex consumer complaints and issues may not be addressed*

Empowered and informed consumers are increasingly seeking remedies themselves for non-complex matters. This has seen more complex matters brought to consumer

agencies. The proportion of consumers who choose and/or have the means to seek redress through the legal system is small due to the cost and complexity of pursuing matters through the courts. As a result, consumers may not pursue their rightful claims for more complex matters, which can diminish the fairness of the system. Also, when Australians purchase products overseas, often through intermediaries, it is more difficult to pursue redress if and when issues arise.

- *Business and consumer data is growing exponentially*

Increasingly sophisticated consumer data generation and collection mechanisms are emerging, including smart technologies, retail loyalty schemes and online purchasing, promotions and competitions, providing businesses with a wealth of data on consumers. This is providing opportunities for businesses to target very specific consumer groups, whether through providing more tailored products and services or for engaging in unfair practices such as scam activity. It also enables consumers to become more informed through accessing their own consumption data for use in purchasing decisions in an efficient format, as recommended by the Harper Competition Policy Review. Increasing data about businesses and consumers can help regulators and policymakers better target their interventions and also opens up potential new ways to support the marketplace.

THE INTEGRATED AND HARMONISED CONSUMER POLICY OBJECTIVE

CAF continues to work towards achieving the national consumer policy objective:

‘...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

This is supported by six operational objectives as articulated in the IGA:

- to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
- to ensure that goods and services are safe and fit for the purposes for which they were sold;
- to prevent practices that are unfair;
- to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- to provide accessible and timely redress where consumer detriment has occurred; and
- to promote proportionate, risk-based enforcement.

¹ Recital C, *Intergovernmental Agreement for the Australian Consumer Law*.

ASPIRATIONS FOR CONSUMER POLICY: CAF AND CAANZ'S GOALS FOR 2015-2017

CAF and CAANZ's Aspirations for 2015-2017 are centred on informed consumers, responsible traders and improved consumer outcomes for Australians and New Zealanders.

Consumers are making informed decisions and receive redress when things go wrong, wherever they are and however they buy

- Consumers take responsibility for the risks they can control
- Vulnerable consumers are protected
- The consumer protection framework enables consumers to confidently participate in the market

Businesses meet their obligations under the Australian Consumer Law

- The same expectations apply to businesses no matter where or how they operate
- Action is risk-based and proportionate to consumer detriment at an appropriate level of regulatory burden
- Decisive action is taken against where there is the greatest harm

A single, harmonised approach has achieved improved consumer outcomes for Australians and New Zealanders

- Current and emerging consumer issues are effectively addressed through collaboration and rapid responses
- Industry-specific regulation genuinely solves industry-specific consumer problems
- The benefits of robust consumer policy regulation are demonstrable

MAKING CONSUMER POLICY WORK: STRATEGIC PRIORITIES FOR 2015-2017

The priorities determine where the majority of time, effort and resources will be allocated to achieve the Aspirations.

Strategic Priorities

1. Provide more targeted education and greater access to information and tools that support empowered, self-sufficient consumers
2. Collaborate with other bodies to engage and protect vulnerable consumers
3. Identify, understand and respond to emerging market innovations and their impact on regulatory regimes
4. Better leverage the compliance and enforcement outcomes of regulators
5. Create an annual integrated strategy for nominated areas of concern and signal these to the market
6. Extend collaborative relationships with regulatory bodies and other relevant stakeholders
7. Develop mechanisms for more effective data collection and analysis
8. Commence, support and implement the ACL Review

MANAGING CONSUMER POLICY AND REFORM: A DECISION-MAKING FRAMEWORK

To achieve its goals, CAF and CAANZ have a decision-making structure. After a review of the effectiveness of the structure, one amendment has been recommended. It was agreed that product safety issues would be better addressed through FTOG or the relevant committee (PRAC, EIAC or CDRAC) and hence the PSCC would no longer operate as a stand-alone committee.

To further optimise the committee structure and inter-jurisdictional collaboration, the following operational improvements will be implemented.

1. When a new issue arises at CAANZ or with a committee, a high-level project plan will be created to ensure appropriate phasing, alignment and integration of all committee work. During the planning stage, consideration will be given as to whether the issue warrants the establishment of a short term, cross-committee working group.
2. A shared knowledge management system will be established to enable minutes and actions arising from all parts of the decision-making structure to be readily accessed to support cross-committee collaboration and ensure continuity when CAANZ and committee membership changes over time.
3. Explore mechanisms through which the CAF/CAANZ decision-making structure can actively engage with specialist regulatory regimes to address consumer issues of common interest.

