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Commissioner Rod Stowe
NSW Office of Fair Trading
Chair of the Compliance and Dispute Resolution Advisory Committee

Dear Commissioner

As you know, on 18 August 2016, the Productivity Commission met with Consumer Affairs Australia and New Zealand (CAANZ) members in Melbourne to discuss our study into the administration and enforcement of the Australian Consumer Law (ACL).

Among other things, we raised the prospect of sending a request for information to all ACL regulators. In response, it was suggested that we should, to begin with, channel our request through the Compliance and Dispute Resolution Advisory Committee (CDRAC) — which you currently chair.

Subsequent to our meeting on Wednesday 14 September, we have refined our information requests and these are now contained in this letter which we are happy to have circulated to your colleagues for discussion.

Below I have outlined the areas where we are seeking information. In the main, these are data related. (An expansion of these topics is contained in attachment A).

Details about ACL regulators' activity and resourcing

As the regulators have different reporting arrangements (i.e., some as part of a larger department others as stand-alone agencies), it would be very helpful for us to receive directly:

- data on enforcement activity by ACL regulator
- data on complaint handling and resolution for the state and territory ACL regulators
- data on the resourcing of ACL regulators and estimates of how it is allocated
- information on the intersection of the ACL and regulators' other activity.

Interaction between ACL and specialist safety regime regulators

Once again, given that the regulators all have different arrangements, where possible it would be useful to receive information and the views of ACL regulators on:

- how ACL and specialist regulators delineate their responsibilities, and how that delineation is conveyed to consumers and suppliers
- the extent and means by which ACL and specialist regulators share data and information to help focus regulators' regulatory efforts
- the approach taken to address product safety concerns where ACL/specialist regulator jurisdiction overlaps
- to what extent formal arrangements such Memorandum of Understanding are used to guide interactions between ACL and specialist regulators, and how well formal or informal arrangements with specialist regulators works in practice.
- how often ACL interact with different specialist safety regime regulators

Cooperation between regulators and ADR schemes

We have also included in the attachment a particular question about progress on one of the Commission's 2008 recommendations on the above matter.

We are aware that some of these requests might be best handled by individual ACL regulators, while others will be best handled centrally by CDRAC. As discussed at our meeting, given your familiarity with the CAANZ 'family' and their respective responsibilities and capabilities, we would appreciate your advice on how best we might proceed to collect the information we are seeking.

We fully appreciate that we are requesting a substantial amount of information and would like to work with the ACL regulators in a way that is time efficient and practical, including by further clarifying or fine-tuning our requests if necessary. We would also be happy to make ourselves available at the next CDRAC meeting to discuss any of our requests if you deem that would assist respondents in answering our requests.

We are working towards a draft report release by end November or early December. Working back from that point, and in order to incorporate responses to our request for information into our drafting and, if necessary, clarify any information with respondents, we would need to receive those responses by around the end of October.

If you would like any further information about the matters raised, please contact me or my staff (Tom Nankivell) on [###] or [###], respectively.

Yours sincerely

Julie Abramson
Presiding Commissioner
Consumer Law Enforcement and Administration Study

Attachment A

Details about ACL regulators' activity and resourcing

- The Terms of Reference for this study asks us to consider the impacts of changes in the level of resourcing on regulator involvement in administration of the ACL. To help address this:
 - if possible, we are seeking time series data on resourcing levels ACL regulators in terms of both the dollar value of expenditure and the staffing level (in full-time equivalents (FTEs)). The Commission is aware that ACL regulators often administer a range of other regulations, so ideally estimates would distinguish to the extent possible between ACL and non-ACL matters. For this request, we would like annual data from before the inception of the ACL (say from 2009-10 up to the 2014-15 (or 2015-16 if it is available)).
 - we are also seeking estimates (preferably for the same span or years, but if that is not possible then at least for a single year —2014-15, or 2015-16 if it is available) of the split of ACL regulators' resourcing between different activities (policy advice; education and guidance; complaint handling and resolution; inspections and compliance; enforcement).
- Table 1 (page 18) in the latest ACL implementation report lists, for 2014-15, the aggregated number (for all ACL regulators) of enforcement action outcomes by type (infringement notices, enforceable undertakings, public warnings and court cases). Can this table be broken down by regulator?
- Can we obtain data on the number of enquiries and complaints received by ACL regulators (and the split between ACL and non-ACL matters), including a breakdown on complaint handling and resolution? For instance, we would like data on whether complaints are:
 - dismissed
 - withdrawn
 - referred to other regulator or ADR service
 - resolved via conciliation
 - unresolved after conciliation
 - escalated to a tribunal.
- If possible, could you document examples or instances where there are strong synergies between ACL activity and other functions, such as education or compliance activities that address multiple regulations; or where the ACL has been used as substitute for other regulations.
- How do ACL regulators determine priorities at a local, jurisdictional level? How do you determine the relative weight given to activities such as conciliation, enforcement and compliance and educational outreach? We are aware of the ACL Compliance and Enforcement Guide, which includes material on risk-based enforcement. Can you point us to policies or other similar material at the jurisdictional level that sets out priorities or approaches to priority setting and risk-based enforcement?
- We would appreciate if each ACL regulator could notify us of the functions they have outside of the administration and enforcement of the ACL.

Interaction between ACL and specialist safety regime regulators

- Is the interaction between ACL and specialist safety regime regulators governed by any overarching set of explicit or imputed objectives? If so, what are these objectives and are they embodied in any formal or informal agreements?
- Do ACL regulators have formal or informal arrangements whereby they and specialist safety regime regulators agree on the boundaries of their respective responsibilities where regulatory remit overlaps or has gaps? If so, what examples are there of these arrangements?
- Do ACL regulators cooperate with specialist regulators in producing information or educational material to assist consumers and suppliers better understand the delineation of their respective responsibilities? If so, what examples are there of this cooperation?
- Do ACL regulators cooperate with specialist regulators in sharing information or data to help focus their respective regulatory efforts? If so, what examples are there of this cooperation?
- Do ACL regulators cooperate with specialist regulators in dealing with product safety concerns where ACL/specialist regulator jurisdiction overlaps? If so, what examples are there of this cooperation?
- Do ACL regulators have a view on how well their interaction with specialist safety regime regulators operates in practice (for example, with respect to delineation of responsibilities among themselves, sharing of information, cooperation in the production of educational material to inform consumers and suppliers of where respective responsibilities lie, the enforcement of compliance with product safety requirements and the handling of consumer complaints)? What are those views and how might that interaction be improved?
- Do ACL regulators collect data on the incidence of their interaction with specialist safety regime regulators? If so, what measures do they collect and what do those measures show?

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?