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**The Review of Australia's
Product Safety Policy Framework –
Aims and Outcomes**

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Australia's Product Safety Review

In 2006 the Australian Productivity Commission¹, a federal government economic and policy research agency, released a Review of the Australian Product Safety System² (the Review). The Findings and Recommendations of the Review are set out in Attachment 1.

In July 2008 the Council of Australian Governments³ (COAG) agreed to a set of product safety reforms and an implementation timetable that will see them in place by July 2010. The agreement generally adopts the Review recommendations although there are important changes in relation to the Regulatory model.

This paper provides an overview of the Review and the proposed reforms to product safety regulation and enforcement in Australia. It comments on some of the challenges that arise in seeking to improve the regulation of product safety in Australia and briefly notes some additional reforms that may impact on the product safety framework in Australia.

The context of the review would be familiar to many jurisdictions:

- At one level, there was ongoing awareness of 'dramatic' consumer product and food safety issues, and increasing public expectations about higher product safety standards
- Expectation of Government action on safety issues (balanced by the Government's general intentions to minimise regulation)
- Media criticism when Government agencies are both perceived as 'slow' on safety issues and when powers are perceived to have been used 'inappropriately' (ie without proper process or justification)

In this context, the Australian product safety policy framework had been subject to the following criticisms:

- The policy system was seen as uncoordinated and inconsistent, due to the spread of responsibilities across Commonwealth, state and territory governments. This was seen as affecting standards and enforcement, as well as being burdensome on businesses.
- An overly reactive system, rather than a system in which risks were effectively anticipated and dealt with early
- Slow and unresponsive to problems when they did emerge

¹ The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed simply, is to help governments make better policies in the long term interest of the Australian community.

² Productivity Commission 2006, Review of the Australian Consumer Product Safety System, Research Report, Canberra.

³ The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia. COAG comprises the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association (ALGA). The role of COAG is to initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by Australian governments.

- The policy framework was not seen as having sufficient information about risks, harmful incidents to allow for effective policy making and regulation
- Failing to keep up with international best practice

The policy framework was not seen as having “failed”, but there was a widely recognised need for a more effective and responsive system, with less regulatory duplication and inconsistency, and that had a greater focus on “evidence-based” risk identification and targeting.

Australian Product Safety Regulation

What does the current system look like?

Currently consumer protection regulation in Australia, including product safety regulation, is undertaken at both Commonwealth and State / Territory levels. Australia comprises 8 States and Territories meaning that, with the Commonwealth, there are 9 sets of legislation and regulation. There are also 9 agencies responsible for enforcing provisions.

The basic tools of general product safety regulation at the Commonwealth level are contained in the *Trade Practices Act* (the TPA)., Part V Division 1A. They are:

- Warning notices;
- Unsafe goods declarations (temporary – up to 18 month - bans)
- Permanent bans;
- Product safety or information standards;
- Compulsory recalls; and
- Notification of voluntary recalls.

There are also more general consumer protection laws, such as those that prohibit misleading conduct, that are often used in the product safety arena.

The TPA covers all corporations as well as other entities engaged in trade or commerce whose activities:

- Cross state boundaries;
- Take place within a Territory; or
- Are conducted through the post or electronic means.

State and Territory fair trading acts generally replicate these provisions and extend them to individuals and unincorporated businesses. There are however some differences, for example, in relation to mandatory recalls and enforcement powers.

In theory the general regime applies to all consumer products but there are a number of consumer products which have their own more stringent regimes. These include:

- Medicines and therapeutic goods

- Food and alcohol
- Road transport vehicles
- Pesticides and veterinary medicines
- Electrical consumer products and tobacco.

Priorities for Improvement

The Review in its Finding 4.5⁴ identified a number of priorities for improvement in the regulatory system.

Irrespective of whether a general safety provision is introduced, there are a number of ways governments could make the regulation of consumer product safety more efficient, effective and responsive. In this regard, the priorities are:

- *addressing fragmented policy making, administration and enforcement through a much stronger national approach;*
- *addressing significant data and information gaps;*
- *improving the responsiveness of government regulation to existing and emerging product-related hazards;*
- *focusing more strongly on hazard identification, risk assessment and risk management;*
- *improving the standards making process;*
- *ensuring the regulation of consumer product safety is adequately resourced; and*
- *clarifying boundaries and areas of responsibility between the general consumer product safety system and the specific safety regimes.*

Fragmented Regulation

The Review found that while legislation was broadly similar, the application of measures varies widely.

- It gave as an example the two states New South Wales and Western Australia which have identical pre-conditions for the imposition of bans and mandatory standards, yet only 20 per cent of bans and 50% of standards that apply in either jurisdiction apply across both jurisdictions.
- Of the 168 standards and bans in place when the report was written none applied in all jurisdictions.⁵

The greatest area of difference is in relation to bans. The Review notes that there are 111 products banned but only 12 could be considered nationwide because they are imposed by the Commonwealth. There are a few bans which apply in most jurisdictions: expanding novelty toys, yo-yo water balls, lead wicks in candles and novelty flashing dummies are banned in 6 of the 9 jurisdictions. The majority of bans however apply in only one jurisdiction. Over 80% are only banned in a maximum of two jurisdictions.

⁴ The PC Report pg 94

⁵ Ibid Pp343 - 352

There is less variation across Australia in relation to standards than there is to bans. Nonetheless 35% of standards apply in only one jurisdiction. 50% apply in 4 or more jurisdictions.

There was also concern about the way in which some standards were developed, and in particular whether they were written in such a way that inhibited effective monitoring and enforcement.

Clearly this fragmentation provides a difficult environment for industry, inconsistent protection for consumers and potentially presents barriers to trade.

A Single Law, with Multiple Regulators.

The Review recommended a single law (the Trade Practices Act), single regulator (the ACCC) model. This approach was not agreed. Instead Australia will be implementing a 'Single Law, Multiple Regulator' model.

- There will be a national application legislation regime for product safety law, based on the Trade Practices Act 1974.
- The Commonwealth Government (through the ACCC) will assume responsibility for the making of permanent product bans and standards under the TPA. The States and Territories will retain their power to issue interim product bans. Interim bans will apply for 60 days but could be extended for 30 days and then for a further 30 days in exceptional circumstances, at the discretion of the Commonwealth Minister.
- The ACCC and the State and Territory offices of fair trading will share responsibility for enforcement of the product safety law.
- Any jurisdiction may refer a proposal for a permanent ban or standard to the ACCC and there will be requirements for the ACCC to communicate its assessment to the Commonwealth Minister and to Ministerial Council for Consumer Affairs (which has as members all Commonwealth, State and Territory Ministers).

It is intended that these arrangements will be in place by July 2010.

This new model should bring about a major simplification in the regulatory environment. Already a harmonisation project is underway which will identify which standards and bans will be removed and which will become Commonwealth regulation. It is anticipated that while the responsibilities of the Commonwealth regulator will increase, the overall amount of regulation will decrease significantly.

Having a single law will be a great improvement but it can be undermined if enforcement is inconsistent. The ACCC will be working with States and Territories to develop procedures and protocols that will result in consistent enforcement (see below).

An obvious challenge in harmonising both standards and enforcement approaches is to ensure that the policy framework is made more effective rather than a 'lowest common denominator' outcome.

State and Territory Ministers were somewhat reluctant to pass all powers to the Commonwealth, wishing to retain an ability to respond quickly to local issues. In part this product safety remains a "bread and butter" issue for all levels of government, in particular because of media interest in the issue. The agreement addresses this by giving all jurisdictions the power to introduce short temporary bans (and refer the matter to the ACCC). The agreement also flags a high level of Ministerial consultation in relation to new regulation. Communication around these elements of shared responsibility will need to be effectively managed.

Legal Reforms

Governments have agreed to a range of legislative reforms that were recommended by the Review. In summary they are:

- "Reasonable foreseeable use" to be the threshold test for bans and compulsory recall orders
- Product safety provisions to cover services related to the supply, installation and maintenance of consumer products
- Mandatory reporting of product related injury by suppliers
- Voluntary recalls in all jurisdictions subject to mandatory reporting
- The power to instigate mandatory recalls available in all jurisdictions

The introduction of mandatory reporting of product related serious injury or death, together with an information clearing house (noted below), will significantly improve our ability to identify and address emerging issues.

The Review notes that some groups put the view that the current voluntary recall system with a notification requirement was sufficient. The Review however seems to have been persuaded by the need to improve Government responsiveness. The report indicates that businesses are often privy to valuable and more timely information about the safety of their products and this information is not always readily available to government through other sources at reasonable cost. It also allows information to be pooled – enabling regulators to make better judgements about the need to respond to serious product related hazards.

Non Legislative Reforms

Ministers have also agreed to progressively implement non legislative improvements recommended by the PC report. In summary they are:

- Hazard identification system based on a clearing house approach coordinated by the ACCC
- National system for the exchange of complaint information across jurisdictions; consideration of complaint portal by MCCA

- Development of guidelines by Governments encouraging suppliers to advise consumers and retailers how they can notify the supplier of unsafe or faulty products
- The development of an internet based 'one stop shop' for product safety information.

The Review describes the clearing house as a broadly based hazard identification system which will gather a range of information and analysis on consumer product incidents (largely from existing sources) and disseminate it. Sources should include information from hospitals, business notifications, international product warnings, mortality data and linked consumer complaints information. As noted above, such a system would greatly improve our ability to identify hazards that should be regulated at an earlier point.

The introduction of a 'One Stop Shop' will also be an improvement making it far simpler for suppliers and consumers alike to understand the broader safety environment and access information relevant to them.

There are also recommendations aimed at strengthening and improving the recall system.

At present this agreement is at a very high level and there is a great deal of detail yet to be worked out. It is currently envisaged that non legislative changes will be made by end 2009 and legislative arrangements should be put in place by mid 2010.

Additional Issues - Chemical Risks

The issue of chemicals in products and the environment is growing as an area of concern for consumers. The Productivity Commission recently released its report into chemicals and plastics regulation⁶, and identified potential opportunities for improvement in our ability to deal with chemical risks. The view within the ACCC is clearly that we see chemical risks as being an area where consumer expectations are growing around safety and information.

The Productivity Commission's report includes several recommendations in relation to the ACCC. Recommendation 5.4 is:

The ACCC and NICNAS should negotiate formal arrangements for cooperation on issues regarding chemicals in consumer articles. These arrangements should include the establishment of a more systematic research program to identify and deal with the risks of chemicals in consumer articles.

Government has not yet responded to the report but progress in this area would certainly be welcomed by the ACCC.

⁶ Productivity Commission 2008, *Chemicals and Plastics Regulation, Research Report*, Melbourne.

Some Implications for Enforcement

These reforms will open up new challenges for the Australian Competition and Consumer Commission (ACCC) in its enforcement role. These include:

- administering new powers
- issues around cooperation with the states and territories, including greater consistency in the approach to enforcement matters
- dialogue and interaction with industry participants and consumer stakeholders as new regulations and responsibilities are introduced

The new 'single law, multiple regulator' model will require co-operation agreements to be developed with all jurisdictions including:

- compliance strategies
- market surveillance
- interpretations
- enforcement policies
- remedial policies
- consumer and business education strategies
- information exchange

It may be useful to set out one of the features of the ACCC's enforcement toolkit that plays an important role in Product Safety regulation. The ACCC utilises court-enforceable undertakings as a key enforcement tool. At present some but not all of the state jurisdictions have this provision. Harmonisation should provide uniformity and therefore greater utility of this tool.

The availability of these undertakings enables expedient outcomes and flexibility in terms of remedial actions. Matters that might otherwise require litigation can be processed quickly with maximum remedial effect.

The undertakings usually include remedial action to address the product hazards, provide redress or refunds for consumers if a product must be recalled or replaced, and a requirement for the company to implement a compliance program. The undertakings are posted publicly on our website. The deterrent value of such outcomes is comparable to court-based actions due to the related supply chain compliance measures and the publicity gained.

This tool has proven effective in preventing repeat offences and has a flow on effect across market sectors. For example:

- Supercheap Auto, a national automotive accessory chain with 250 stores and 3,000 staff was the subject of an ACCC enforcement action for importing and selling unsafe car jacks in 2001, which resulted in an undertaking that included implementing a compliance program. After a further breach in 2005 which led to a strengthening of the compliance program and a second undertaking, the company directors conducted an overhaul of their compliance culture. The Company now gives greater priority to safety and compliance and, as they continue to expand their

business, they are applying their new approach to compliance across an ever wider market segment.

<http://intranet.accc.gov.au/content/index.phtml/itemId/650614/fromItemId/621537>

- Toys compliance - Particular interest in compliance across the industry was sparked by ACCC actions against suppliers of toys for under 3s that breached the amended mandatory standard. Enforceable undertakings were obtained from a couple of small importers. This also alerted the Australian Toy Association (ATA) to the knowledge gap, particularly among its smaller members. Joint ATA/ACCC programs to improve compliance across the toy industry were implemented during the first half of 2007 and this placed all parties in good stead prior to the lead in toys crisis in the second half of that year.
- In the area of online sales, significant penalties for a breach of children's product safety standards arising from internet-based sales were achieved in late 2006. A record fine totalling \$860,000 was handed down against Skippy Australia, an importer/retailer of baby walkers and cots that failed the mandatory standards. The ACCC worked with eBay to investigate this matter and gather evidence. eBay records also facilitated effective recall of the products. The ACCC continues to work with eBay and other internet based sellers to address e commerce product safety issues.

<http://intranet.accc.gov.au/content/index.phtml/itemId/747809/fromItemId/679031>

Following the Skippy prosecution, that company complained of an internet competitor selling similar non-compliant goods. Instead of seeking a further court-based outcome, the ACCC chose to rely on the deterrent value of the Skippy penalty and take a more expeditious path with the second offender. The ACCC negotiated a comprehensive court-enforceable undertaking that included publishing disclosure notices alerting parents to the dangers of buying products for children that do not meet product safety standards and reminding manufacturers/retailers of their obligations, as well as implementing a comprehensive compliance program. The cost of these measures was estimated to exceed \$200,000 (a good result in absence of civil penalties being available).

<http://intranet.accc.gov.au/content/index.phtml/itemId/854897/fromItemId/621537>

Attachment 1

Review of the Australian Consumer Product Safety System⁷

Findings and Recommendations

Evaluation of the current system

FINDING 4.1

Overall, Australia's consumer product safety system appears to provide reasonable incentives and constraints to encourage most businesses to supply safe products. The main mechanisms through which these incentives and constraints operate are market forces, the product liability arrangements, media scrutiny of unsafe products and organised consumer advocacy. The regulatory system plays an important complementary role in seeking to protect consumers in the event unsafe products reach the market.

FINDING 4.2

It is too early to tell what the impact of recent changes to the product liability arrangements may be in terms of consumers' access to redress and compensation. However, on balance, these changes are likely to have weakened the incentives for businesses to supply safe products.

FINDING 4.3

The Commission's exploratory estimates of the incidence of product-related injury and death suggest that the number of injuries and deaths directly caused by product fault is small relative to other causes of mortality and morbidity, though not insignificant. Consumer behaviour and poor product maintenance and servicing are likely to be more significant causes of product-related injury and death. And the most dominant cause of injury appears to be the physical context in which product-related accidents occur.

FINDING 4.4

The total cost to the community of consumer product-related injury and death is likely to be in the order of hundreds of millions of dollars annually.

FINDING 4.5

⁷ Productivity Commission 2006, Review of the Australian Consumer Product Safety System, Research Report, Canberra.

Irrespective of whether a general safety provision is introduced, there are a number of ways governments could make the regulation of consumer product safety more efficient, effective and responsive. In this regard, the priorities are:

- addressing fragmented policy making, administration and enforcement through a much stronger national approach;*
- addressing significant data and information gaps;*
- improving the responsiveness of government regulation to existing and emerging product-related hazards;*
- focusing more strongly on hazard identification, risk assessment and risk management;*
- improving the standards-making process;*
- ensuring the regulation of consumer product safety is adequately resourced; and*
- clarifying boundaries and areas of responsibility between the general consumer product safety system and the specific safety regimes.*

FINDING 4.6

Differences between the Australian and New Zealand consumer product safety regimes are unlikely to have a significant distortionary impact on Australasian economic activity. In practice the operation of these regimes is sufficiently similar and the significance of any differences should be mitigated by the Trans-Tasman Mutual Recognition Arrangement.

General Safety Provision

FINDING 5.1

The benefits of a General Safety Provision (GSP) applied to consumer products under reference are unlikely to justify the costs involved. A particular concern is that the GSP may fail to target the areas of biggest risk and may deliver little benefit beyond what might be achieved with appropriate modifications to the existing consumer product safety regime (as discussed in this report).

FINDING 5.2

Further consideration should be given by the Ministerial Council on Consumer Affairs to the following measures targeted at specific weaknesses identified in the current system:

- imposition of financial penalties once a product ban has been implemented; and*
- certification by importers that consumer products imported for resale meet mandatory Australian standards where applicable.*

Foreseeable use

RECOMMENDATION 6.1

Governments should amend consumer product safety provisions to explicitly cover ‘reasonably foreseeable use’ in the threshold tests for bans and compulsory recall orders under the Trade Practices Act and legislation in all jurisdictions.

Revision to coverage

RECOMMENDATION 7.1

Governments should amend consumer product safety provisions in all jurisdictions to cover services related to the supply, installation and maintenance of consumer products.

RECOMMENDATION 7.2

The Ministerial Council on Consumer Affairs should agree on an intergovernmental policy to clarify that second-hand goods (sold in trade or commerce) are covered by existing consumer product provisions. Further, all mandatory standards should explicitly state whether they apply to second-hand goods. A case-by-case approach to enforcement of product safety laws as they relate to second-hand goods should be adopted by all jurisdictions.

Safety criteria and thresholds

RECOMMENDATION 8.1

Subject to legal refinement:

- *the following threshold test for bans and mandatory recall orders should be adopted by all jurisdictions:*

‘the goods are goods of a kind which, under normal or reasonably foreseeable conditions of use, will or may cause injury to any person’; and

- *the following precondition for mandatory safety standards, currently in the Trade Practices Act, should be adopted by all jurisdictions:*

‘as are reasonably necessary to prevent or reduce risk of injury to any person’.

These provisions should be supported by supplementary guidance material, which clarifies how the provisions should be interpreted and the factors that regulators should take into account in determining appropriate action.

FINDING 8.1

If a General Safety Provision were to be introduced, the obligation should be stated broadly and the definitions and standards of safety should be closely aligned with existing provisions of Part VA of the Trade Practices Act (excluding the precondition of actual injury or loss).

Better hazard identification and risk assessment

FINDING 9.1

A national fully integrated early warning system involving the centralised collection, processing and assessment of raw data on product-related injury and death could be very costly. The increase in timeliness and number of advance warnings provided by this system are unlikely to be justified against this cost.

RECOMMENDATION 9.1

The Ministerial Council on Consumer Affairs should initiate the development of a broadly-based hazard identification system, based on a clearinghouse approach, to gather a range of information and analysis on consumer product incidents (largely from existing sources) and disseminate it to all jurisdictions. Sources should include information from hospital emergency departments and admissions, business notifications (including recalls), international product warnings, mortality data and linked consumer complaints information. This system should be coordinated by the Australian Competition and Consumer Commission.

RECOMMENDATION 9.2

The Ministerial Council on Consumer Affairs should establish a national system for the exchange of complaints information across jurisdictions and give consideration to the establishment of a national electronic portal for registering consumer complaints.

RECOMMENDATION 9.3

Governments should require suppliers to report to the appropriate regulator products which have been associated with serious injury or death. Should this not be adopted, suppliers should be required to report products which have been the subject of a successful product liability claim or multiple out-of-court settlements, in the latter case where a verifiable initiating action to commence litigation has occurred, such as a statement of claim. Such measures should be reviewed within three years of their commencement to determine their efficiency and effectiveness.

RECOMMENDATION 9.4

Governments should ensure that voluntary recalls in all jurisdictions are subject to mandatory reporting requirements, and all (voluntary and mandatory) recalls are posted on a national website, such as the Australian Competition and Consumer Commission's Recall Australia.

RECOMMENDATION 9.5

Governments should, through appropriate guidelines, encourage all suppliers to explain to consumers and retailers how they can notify the supplier of unsafe or faulty products, in order to improve the flow of product safety information to suppliers.

RECOMMENDATION 9.6

A one-off baseline study should be commissioned by the Ministerial Council on Consumer Affairs (MCCA) to identify the current incidence and costs of product-related accidents and provide a thorough analysis of the significance of different causes of accidents. This would improve hazard identification and help guide government interventions to address consumer product injury and death. The recent establishment of a dedicated research strategy by MCCA and the commitment by jurisdictions to fund further research through the Council, may provide the means by which to guide and fund this study.

FINDING 9.2

Beyond the research strategy recently introduced by the Ministerial Council on Consumer Affairs and the base-line study proposed in Recommendation 9.6, any further research into consumer product safety should continue to be assessed on a case-by-case basis through competitive funding processes already in place.

Better informed consumers and businesses

FINDING 10.1

The additional benefits associated with establishing a dedicated organisation tasked with providing information to consumers would not justify the associated costs. Well-designed and cost-effective information provision can improve product safety outcomes and should be used in conjunction with regulators' overall strategies for addressing product safety risks.

RECOMMENDATION 10.1

The Ministerial Council on Consumer Affairs should establish a national internet-based one-stop shop providing information about product safety regulations for all jurisdictions, administered by the Australian Competition and Consumer Commission. The one-stop shop should include:

- *relevant trade practices and fair trading provisions;*
- *information about product bans and standards;*
- *information about administration and enforcement practices;*
- *information about product recalls generally and a link to Recalls Australia;*
- *relevant product safety information targeted at consumers;*
- *links to product specific regulators; and*
- *potentially a consumer complaints registration portal.*

Removing unsafe goods

RECOMMENDATION 11.1

As the success of recalls in recovering unsafe products is variable (and especially poor for low value products) the Ministerial Council on Consumer Affairs should undertake a review of existing recall guidelines to ensure that recalls are undertaken in the most effective manner. Considerations for improving recalls could include:

- *improved advertising efforts (including photographs in advertisements and other targeted material);*
- *buyer registration cards for high risk products; and*
- *identification and highlighting of particularly high risk products which have been recalled.*

RECOMMENDATION 11.2

Governments should have the power to undertake a recall directly where no supplier can be found to undertake such a recall.

FINDING 11.1

There do not appear to be net benefits in imposing a general requirement for businesses to recall unsafe products. Current incentives appear sufficient to motivate most businesses to recall unsafe products on a voluntary basis. It is unlikely that a legal requirement for suppliers to recall unsafe products would result in a significant number of additional recalls, while potentially adding to uncertainty and costs.

FINDING 11.2

The benefits accruing from governments being given additional powers to conduct audits of recalls are unlikely to justify the costs of an audit process, particularly as most governments can instigate mandatory recalls if they consider suppliers' actions to be inadequate. Such powers to instigate mandatory recalls should be available in all jurisdictions.

Design and standards

FINDING 12.1

It is at the design stage that manufacturers have the greatest opportunity to prevent injury caused by consumer products. In this regard, it is essential that product safety is carefully considered at each stage of the design process and re-evaluated in light of consumer feedback once the product is available on the market.

RECOMMENDATION 12.1

All mandatory safety standards for consumer products should be developed on a 'hazard' focused basis. Regulators should ensure such standards only address essential safety issues and leave other design issues for voluntary standards. Further, wherever appropriate regulators should adopt international standards.

RECOMMENDATION 12.2

The Ministerial Council on Consumer Affairs, through the Australian Competition and Consumer Commission, should work with Standards Australia with a view to significantly streamlining the standards-making process to improve timeliness, given the potential impacts of standards in a rapidly changing marketplace. The aim should be for mandatory safety standards to be developed and implemented within 12 months.

National Approaches

FINDING 13.1

There is little justification for different consumer product legislation and enforcement responses across Australia. Such differences create inefficiencies in a resource constrained environment including unnecessary duplication of effort and inconsistent approaches to similar risks and hazards.

RECOMMENDATION 13.1

Given the national nature of most product markets and the need to adopt the most efficient means of achieving an effective consumer product regime, a national regime with a single law and single regulator should be established; with the States and Territories referring their existing authority to the Australian Government.

RECOMMENDATION 13.2

Given its well established nature and broad application, the Trade Practices Act, as amended by the proposals recommended in this report, should be the single law for consumer product safety. Given its current role and breadth of coverage, the

Australian Competition and Consumer Commission should be the single regulator. This would involve lower transition costs than establishing a new body.

RECOMMENDATION 13.3

Failing the establishment of a single law and regulator as proposed, there would be merit in a modified approach with the States and Territories retaining the power to impose interim bans only. The authority to impose all other consumer product safety regulation (such as permanent bans, mandatory standards and recalls) would be referred to the Australian Government, and enforcement would occur through the Australian Competition and Consumer Commission.

RECOMMENDATION 13.4

Should the ‘one law, one regulator’ regime as recommended not be adopted, then a number of reforms should be made to the existing cooperative arrangements, to be contained within an intergovernmental agreement by all nine jurisdictions, including:

- *Permanent bans and mandatory standards should only be implemented on a national basis, by:*
 - *automatically initiating the temporary exemption process, under the Mutual Recognition Agreement, when a jurisdiction imposes a temporary ban;*
 - *requiring the Australian Competition and Consumer Commission (ACCC) to recommend to the Ministerial Council on Consumer Affairs (MCCA) on whether a permanent ban or mandatory standard should be imposed after the conclusion of the temporary exemption;*
 - *a response to the ACCC’s recommendation being made by MCCA using a two-thirds voting rule and on an ‘accept or reject’ basis; and*
 - *imposing a time limit of 120 days on the temporary exemption, unless an extension is agreed to by MCCA.*
- *Consumer product safety legislation should be made uniform, through the establishment of arrangements where legislation passed in one nominated jurisdiction would be adopted by all others, along with all subsequent changes. However, if this cannot be achieved, governments should agree on a core set of uniform provisions. At a minimum, this core set of provisions should include:*
 - *the scope of any coverage of services*
 - *pre-conditions for the imposition of bans and mandatory standards*
 - *mandatory recall powers*
 - *requirements to notify authorities of voluntary recalls*
 - *length of interim bans.*

RECOMMENDATION 13.5

If an inter-jurisdictional approach remains, the Ministerial Council on Consumer Affairs should establish processes for the benchmarking of enforcement practices across jurisdictions as a way to lead to greater consistency in enforcement methods.

RECOMMENDATION 13.6

Alternative appeal arrangements should be established, such that the Australian Competition and Consumer Commission is no longer responsible for the review of its own decisions.