Law Council
OF AUSTRALIA

Business Law Section

23 October 2026

Treasury
Langton Crescent
PARKES ACT 2600

By email: consumerlaw@treasury.gov.au

Dear Sir/Madam,

Strengthening post-market regulation of unsafe products in the Australian Consumer Law

1. The Competition and Consumer Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to provide a submission on the Consultation Regulation Impact Statement (**Consultation RIS**) published by Treasury and the post-market product safety framework under the Australian Consumer Law (**ACL**).

2. In general, the Committee considers that the current system largely works - recalls are notified, mandatory reports are made and the Australian Competition and Consumer Commission (**ACCC**) uses its investigative and enforcement powers where it considers it appropriate to do so.

3. The recall framework for voluntary recalls is a notification framework, supplemented / augmented by ACCC guidance, practice and procedure. The ACCC has a recent practice of using a range of boilerplate language for recalls. The Committee supports flexibility in negotiations with the ACCC over the terms of recall notifications (which is not required by the statute) to ensure that suppliers are not disadvantaged if the supplier takes the action suggested by the ACCC and gives the ACCC notice before doing so.

4. The Committee considers that the mandatory reporting regime should not be expanded to cover reports of injury, exacerbation of pre-existing condition or near-misses. This would introduce significant administrative burden and complexity and therefore cost. Suppliers would be likely to funnel all customer complaints of injury to the ACCC, without seeking to properly apply the statutory trigger.

5. The maximum penalties should not be increased to the extent proposed. The proposed maximum penalty for failure to notify recall action or serious injury, illness or death is proposed to go up to $1 million. Failing to notify (or late notification) does not mean appropriate action was not taken. And on the contrary, this may act as a disincentive to commencing a recall (taking the step which triggers the action).

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6. Finally, the Committee also considers that wherever possible, overlapping regimes for specific product types (for example, therapeutic goods, food, motor vehicles, electrical products) should avoid duplication and overregulation.

7. The Committee's response to the focus questions is set out in this submission. A detailed response to the 32 sub-questions is set out in Attachment 1.

Introduction

8. The Consultation RIS published by Treasury and the subject of the current consultation seeks stakeholder views about the post-market product safety framework under the ACL. The Consultation RIS describes three problems that justify consideration of reform:

   (a) Unsafe products impose significant costs on consumers, businesses and the economy;

   (b) Product safety information may be insufficient or delayed;

   (c) The post-market framework may not provide sufficient incentives and tools for timely and effective risk management. (page 7, Consultation RIS)

9. The Consultation RIS poses four "focus questions" and 32 sub-questions in respect of nine proposed options, which may be implemented separately or in combination. Those options cover:

   (a) non-legislative interventions (options 1 - 2);

   (b) improvement of post-market recall and information processes (options 3 - 6); and

   (c) strengthening enforcement and consistency (options 7 - 9).

10. The Consultation RIS observes that the Government has not identified a preferred option at this stage, but that the impacts of any proposed reforms will be assessed in a subsequent Decision Regulation Impact Statement (**Decision RIS**).

11. It is worth observing, as the Law Council did in its submission to the Treasury's Discussion Paper regarding the review of artificial intelligence (**AI**) and the ACL in November 2024 that the ACL should remain confined to addressing real consumer harms, and any proposed amendments to the ACL must have regard to this limited scope. It would not be appropriate to import other policy objectives into the ACL.[1]

12. As considered in the 2024 review, any amendments to the post-market safety framework should also consider the developing nature of technology, software and firmware, and software as a service.

13. In this submission, the Committee responds to the four focus questions, and then provides a series of comments in the table at Attachment 1, in answer to the questions specific to each option raised for consultation.

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[1] Law Council of Australia, *Review of AI and the Australian Consumer Law* (Submission, 20 November 2024), [17]-[18].

Focus questions

A: Do you consider that there are problems with Australia's post-market product safety framework under the ACL, or is the framework operating effectively? Are there any additional problems or emerging issues that should be considered?

14. The Committee considers that the post-market framework is largely operating as intended. The Annual Report 2025-26 of the ACCC and Australian Energy Regulator (**AER**) reported that in the 2025-26 financial year, the ACCC assessed 2,698 mandatory reports and 261 voluntary recall notifications were made.[2] These statistics show the framework is being used; however, it is difficult to extrapolate from this information to make broader comments about its effectiveness.

15. The Consultation RIS describes post-market measures in the ACL as mandatory reporting, recalls, safety warning notices, compliance monitoring and enforcement activities (page 6). How those post-market measures operate, or should be modified, must be considered in the context of the range of general and specific prohibitions in the ACL relating to misleading or deceptive conduct and false or misleading representations, the consumer guarantees (specifically, but not limited to the acceptable quality guarantee), the safety defect provisions, and the regime for mandatory safety and information standards and product bans.

16. This framework operates alongside specialist Commonwealth, state and territory product safety regimes, including for motor vehicles, therapeutic goods, food and electrical products. Motor vehicle accidents, therapeutic goods and food each have their own separate reporting and recall notification regimes.

17. Areas of uncertainty arise from the lack of detail in the statute, including a definition of the core term, "recall". Further, the voluntary recall regime and mandatory reporting regime are substantially augmented by detailed guidance, practice and procedure issued and imposed by the ACCC and other relevant regulators. The ACCC has shown itself to be adept at using its investigation and enforcement powers, including to test and clarify the law.

18. It is relevant to note that the definition of "unsafe products" adopted for the purpose of the Consultation RIS (at page 5) is used to describe:

> *...consumer goods with a defect that means their safety is not of a level that would reasonably be expected. The term is not intended to include products that inherently pose a safety risk to their intended use and design (e.g. power tools, sporting equipment).*

19. This definition bears a striking similarity to section 9 of the ACL, which provides that goods have a "safety defect" if "their safety is not such as persons generally are entitled to expect". Importing this definition into the recalls framework may have the opposite effect to that intended, where questions of whether a particular good has a "safety defect" may be highly contentious and may not be capable of being answered at the point at which in-market action may be taken.

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[2] ACCC and AER, *Annual Report 2025-26* (October 2026), 2.

20. The purpose of the post-market safety framework in the ACL should be to support the timely identification, investigation and where appropriate, in-market corrective action (including recall action). The words of the statute recognise that recall action may be associated with identification of a potential risk of injury (including associated with foreseeable use or misuse) or breach of a safety standard or ban. Any reforms to the post-market framework should remain focussed on product safety.

21. Emerging or unresolved issues which are not directly addressed by options in the Consultation RIS include:

    (a) statutory notification obligations by persons within the supply chain which are participating and responsible for implementing recall action, but which are not responsible for designing the recall and liaising with relevant regulators;

    (b) co-ordination by the ACCC and state/ territory or specialist regulators in relation to oversight of proposed recall action (which sits outside the current voluntary recall notification regime but which is the subject of a high degree of intervention, and sometimes duplication, by and between regulators);

    (c) protecting the confidentiality of information suppliers provide through the ACCC's online forms and regulatory liaison relating to recalls or mandatory notifications; and

    (d) the regulation of software as a service, and whether this is properly designated as a "product-related service".

B: Do you consider that government intervention is warranted to address the identified problems? Are there alternative approaches that should be considered?

22. Targeted legislative clarification is warranted, but a broad expansion of regulators' powers is not. The ACCC is already very active and specialist regulators such as the Therapeutic Goods Administration are also increasingly using their investigation and enforcement powers to address areas of potential product risk.

C: Which options, or combination of options, do you support and why? How should the options be prioritised? Are there alternative options that may be more effective or proportionate?

23. The Committee:

    (a) recommends clarifying the existing obligations under the statute, mainly through Option 3, supported by better guidance and targeted partnerships (Option 2);

    (b) recommends adoption of reform (c) in Option 7, to clarify product safety administration by specifying that the ACCC can receive recall notifications and mandatory safety reports;

(c) recommends clarifying that no further announcement is needed if a product recall is implemented after a safety warning notice is published (Option 9, reform (b));

(d) does not recommend amendments to the compulsory recall regime insofar as it may limit procedural fairness (Option 4);

(e) does not recommend the expansion of intervention powers or maximum penalties as proposed, as set out in Options 5 and 8; and

(f) does not recommend the substantial broadening of mandatory reporting powers, as described in Option 6.

24. Treasury should prioritise further work on the statutory regime supporting voluntary recall action (Option 3).

25. Further comments on each option are set out in the table at Attachment 1.

D: What evidence, data or examples can help assess the likely impacts of the proposed options, including their costs, benefits, risks, implementation issues and potential unintended consequences?

26. The Committee cannot address the likely compliance costs for business. As noted in the table at Attachment 1, significant expansion of the mandatory reporting regime for serious injury, illness or death has the potential to significantly increase the burden on suppliers to collect, assess and report customer contacts, complaints and enquiries (in compliance with the statutory requirements and at risk of significant penalties).

27. Treasury may also consider whether data collected by the ACCC or other regulators about product recalls and mandatory reports enables the regulators to:

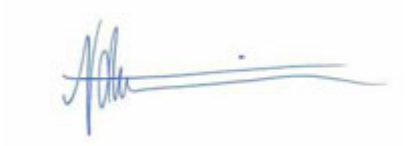
(a) identify and remove duplicate reports;

(b) identify typical recall remediation rates; and

(c) identify reasons for late notification.

28. The Committee would be pleased to discuss any aspect of this submission. Please contact Simon Muys (Chair) [redacted] if you would like to do so.

Yours sincerely



Adrian Varrasso
Chair, Business Law Section

Attachment 1 - Comments on specific options

Consultation RIS - Questions		Comments
Option 1 - Status quo		
1.1	To what extent are the current post-market requirements ensuring product safety risks are adequately managed? Do the requirements support timely supplier action and protect consumers from harm?	The current post-market requirements do not address when a supplier or manufacturer should take action in the marketplace. That question is to be answered by reference to the general law and existing ACL obligations: what (proportionate) action should be taken to protect consumers from potential harm? The post-market requirements cannot be considered in isolation from those other parts of the ACL which impose mandatory standards or provide the basis for regulatory or consumer-led action for misleading or deceptive conduct and false or misleading representations, or breach of the consumer guarantees (specifically, but not limited to the acceptable quality guarantee), safety defect provisions, mandatory standards and product bans.
1.2	What costs, administrative burdens or operational challenges does the current product safety framework impose on businesses?	It is not for the Committee to make submissions about the costs, administrative burdens or operational challenges the current product safety framework imposes on businesses. Plainly, any amendments to the current regime, or which increase the compliance burden on suppliers or manufacturers (including if amendments introduce uncertainty or broaden the language of the statute) will increase the costs, administrative burdens or operational challenges for businesses. Whether those additional costs, burdens or challenges are proportionate will depend on the proposals which are progressed further, and the manner in which those proposals are to be implemented.
Option 2 - Enhance guidance and industry engagement		
2.1	How useful and effective are current regulator initiatives to support the post-market framework? Please provide examples of what existing initiatives work well and do not work well, how they could be	The Committee is not best placed to comment on how useful or effective the current regulatory initiatives are, such as the Product Safety Australia website, targeted ACCC education campaigns and the Product Safety Pledge. The ACCC and AER 2025-26 reported 3,819,583 page views (adjusted to exclude unusual traffic spikes to the site), 2,698 mandatory reports assessed, 261 voluntary recall notifications and four product safety campaigns published.

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	improved to support your answer.	
2.2	Which non-legislative initiatives outlined in Table 3, if any, should be prioritised and why?	Partnerships and targeted communications with schools, childcare providers, and others, should be prioritised. The progress and success of a recall is judged by regulators against the number of products remediated (repaired, replaced or returned) from the market. Although the ACCC does not typically publish recall rates, the Committee understands that recall action response rates often fall far below complete remediation.
2.3	Should voluntary initiatives be considered? If so, how should the initiatives be designed?	The Product Safety Pledge is a good example of voluntary safety leadership. Participants in that Pledge are best placed to speak to effectiveness and compliance burden of such voluntary initiatives. It is important to note (as recognised in Consultation RIS at Appendix C) that suppliers and manufacturers of certain types of products are also regulated by additional regimes covering product quality and safety, such as the therapeutic goods regime, food, and electrical products.
2.4	Would a more coordinated national approach to product safety intelligence, surveillance and data sharing improve product safety outcomes? If so, what arrangements or initiatives would be effective?	The Consultation RIS provides insufficient information about the proposed 'coordinated national approach' to enable comment.
Option 3 - Improve voluntary recall processes		
3.1	Do you support reforms to improve the effectiveness of the voluntary recall framework? Why or why not?	Yes. The framework for voluntary recalls is largely found in ACCC guidelines and practice and procedure. Uncertainty in the application of the law has arisen because of the expansion of these guidelines and with the introduction of new technologies. For example, the ACCC has interpreted software updates, where taken to address a risk of safety even if they do not require a consumer to do anything, as recalls that require notification. Only the obligation to notify the ACCC of the commencement of recall action, within two days of

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		taking that action, is found in the statute. The term "voluntary recall" is not found in the statute, and "recall" is not defined in relation to such in-market, corrective action to remove or remediate goods. Including more detail in the statute may assist suppliers and manufacturers to understand what types of corrective action are captured and aid compliance.
3.2	Which of the proposed reforms should be adopted, modified or not proceeded with, and why?	The Committee supports clarification of the types of action that trigger the voluntary recall notification requirements (reform (a)); however, it does not support the alternative definitions proposed in the Consultation RIS. These definitions introduce further uncertainty to the legislation (e.g. introducing a further new definition for "corrective action"). The triggers for reporting (risk of injury, breach of mandatory standard or ban) already set a threshold for when notification should be considered. This would be supported by the proposal in the Consultation RIS to include a non-exhaustive list of actions that constitute a recall (which should be pursued), and clarifying that a recall is a public, post-production action, at a product level (rather than an individual claim level). The Committee does not oppose improving the terminology of "voluntary recall" (reform (b)), although notes that term is not used in the legislation nor in published recall action communications where action has been commenced by suppliers or manufacturers. To the extent there is an ambiguity, the Committee prefers the reference to "supplier-initiated recall". To the extent the Government determines to progress with any of the options relating to compulsory recalls or other interventions, this should be revisited. In relation to reform (c), the Committee observes that Consultation RIS discusses the various participants in the supply chain, which may need to co-operate to implement a recall, but it does not address practical questions of responsibility or notification. For example, an overseas manufacturer conducting a global recall in Australia may wish to remain the primary contact and manage regulatory communications for the recall. The product may have been sold through numerous distributors and retailers across Australia, as well as online. Such recalls

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		require the manufacturer to rely on those local entities to communicate with their own customer lists. However, it may not be appropriate, in many cases, for those customer lists to be shared among supply chain participants even on a very limited basis. In relation to reform (d), it is the Committee's position that the recall regime should encourage suppliers and manufacturers to take prompt action to investigate potential safety issues and, where appropriate, initiate recall action. It may not be possible to understand the entire scope or magnitude of the risk when the recall action is initiated. This is an important clarification to ensure that it is clear that taking recall action is not itself an admission of liability, even where the evidence supporting that recall action may be relevant to court action in negligence, or alleging a safety defect or breach of consumer guarantee. The Consultation RIS has not raised for consideration a further possible approach which would distinguish between voluntary recall action in relation to (a) an identified or emerging product risk; (b) actual reports of injury; and (c) an identified breach of mandatory standard or ban. This would enable a tiered system of dealing with the supplier or manufacturer's identification of the issue (which in many cases can be addressed by compliance testing) and the potential consequences of delay or refusal to take action (which could be reflected in maximum penalties).
3.3	What implementation issues, risks, safeguards or unintended consequences should be considered in designing these reforms?	Changes to the definition or application of the voluntary recall framework should be limited to action taken by manufacturers or suppliers on their own motion, rather than by exercise of compulsory power by the Minister or ACCC. Any amendments must continue to encourage prompt action aimed at protecting Australian consumers from harm, once the safety hazard/ risk and an appropriate response have been identified. The focus of any reform should be to maintain the focus on in-market corrective action at a product or batch level for a safety reason. It should not extend to quality issues or product improvements or modifications for customer service or satisfaction reasons.

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		The current regime requires notification by a person within two days of taking relevant action. Any purported changes which seek to enshrine any obligation by the Minister or the ACCC to first approve recall action or communications will likely lead to significant delay in communicating potential safety issues to consumers.
Option 4 - Bolster compulsory recalls		
4.1	Do you support any of the proposed reforms to improve the administration, flexibility and effectiveness of the compulsory recall framework? Which reforms should be adopted, modified or not proceeded with, and why?	The Committee does not support any proposed reform which may remove or limit procedural fairness to suppliers and manufacturers in respect of recall or other in-market corrective action. It is appropriate that product bans and compulsory recalls are imposed in a minority of cases and following a significant consultation process. Administrative burden is not an adequate justification for removing these important processes. Flexibility in the process should only be permitted with the consent of the parties. Compulsory recall action across a product class may benefit from a detailed investigation into and interrogation of evidence including expert evidence. In many cases, the state of knowledge and in fact the underlying science, may be in development. It may be that there is agreement as to the hazard and its scope, but not to the likelihood of the risk eventuating. In an example such as the Takata compulsory recall, numerous vehicle manufacturers participated in the consultation and were subject to the recall action. For clarity of communication to consumers and due to the sheer scale of the recall action, detailed technical matters and areas of disagreement between those manufacturers likely became of less relevance. Amendments in relation to compulsory recalls should not discourage or preclude a supplier or manufacturer from taking steps to initiate prompt voluntary action in appropriate circumstances, in the interests of consumer safety. Particular care must be taken in proposing any reforms which provide the Minister with the ability to specify remedies in response to a particular safety issue. Imposing complex or costly remedies may lead to significant time delay in recall implementation,

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		and may make it difficult for a supplier or manufacturer to action the recall.
4.2	If a cost recovery framework is introduced for compulsory recalls, under what circumstances should costs be recovered, how should costs be allocated, and what safeguards should apply?	Cost recovery for compulsory recalls should be tied to a schedule of costs which provide some transparency and accountability for the steps of a compulsory recall, which are capable of being generally known in advance. This could be scaled by reference to the number of suppliers, since certain steps required in a compulsory recall may also provide some efficiencies of scale for the regulator. Costs should be borne by the person conducting the recall, whether that is the supplier, manufacturer or other local distributor. The supply chain participant with responsibility for conducting the recall and the primary regulatory liaison can then manage any apportionment of such cost recovery through its existing contracting arrangements.
4.3	If powers to vary compulsory recall notices are provided to the ACCC, should equivalent powers also be available to other ACL regulators? If so, which powers and subject to what limitations or safeguards?	Many of the examples provided in the Consultation RIS will be changes led by the person conducting the recall and may be tied to its success (or otherwise) in implementing the recall. Powers granted to the ACCC (or other ACL regulators) to vary compulsory recall notices should be limited to where the person conducting the recall has not only had a chance to make submissions, but agrees with the variation. Disputed variations should follow the ordinary procedures for compulsory recall action.
Option 5 - Introduce targeted intervention powers		
5.1	Do you support introducing targeted intervention powers to address circumstances where supplier action in response to an identified product safety risk is absent, delayed or inadequate? Why or why not?	There may be many reasons as to why a supplier or manufacturer disagrees with the regulator as to the need for or timing of in-market corrective action in response to a safety risk. The safety risk itself may be the subject of ongoing investigation, corrective action may be co-ordinated across numerous countries (where alignment is desirable to limit consumer confusion and distress) or the nature of the product recall may mean that response levels are low. For instance, where a recall is conducted of a low-priced item sold more than a year prior, consumers may simply choose to dispose of the item rather than take additional steps to receive a remedy. Responsible Ministers have a range of powers available to seek further information or documents, or

Consultation RIS - Questions		Comments
		to encourage co-operation by suppliers or manufacturers in relation to product safety issues. These include issuing safety warning notices (section 129, ACL) confirming that particular goods are under investigation and warning about possible risks. The ACCC uses its websites and social media channels to draw attention to specific product issues, including by highlighting investigations or product recalls. The Commonwealth Minister or inspector has the power to issue a disclosure notice requiring provision of information, documents or evidence in relation to safety issues (s 133D, *Competition and Consumer Act 2010* (Cth) (**CCA**)). The ACCC also has the power to issue a statutory notice, requiring provision of information, documents or evidence in relation to an alleged contravention of the ACL (s 155, CCA). The Committee understands that the ACCC regularly purchases product which it considers to be non-compliant and examines or arranges for testing of that product, where it considers the supply of the product may be in contravention of the ACL. The Committee does not support the grant of broad discretionary power to the ACCC or other ACL regulator to take specified actions where the regulator considers action taken by the supplier is absent, delayed or inadequate to address the risk identified by the regulator. Amendments which are designed to bolster (rather than overhaul) the current regime for voluntary recalls should set clear thresholds before more interventionist action can be taken. For example, in s 29 of the *Gas and Electricity (Consumer Safety) Act 2017* (NSW), which applies to consumer electrical articles and gas appliances, the Secretary may, by written notice served on a seller who has sold an electrical article or gas appliance, require the seller to take specified action in the time specified. Such action can only be taken where the Secretary believes on reasonable grounds that: • the product in question is, or is likely to become, unsafe to use because of its design or construction; and • specified action is necessary to make the product safe to use or render its use safe.

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		Where products and their sellers or manufacturers may be governed by more than one regulatory regime, the ACCC and specialist regulators (e.g. therapeutic goods regulator or state/ territory electrical safety regulator) should clearly identify which regulator will take action and lead communications.
5.2	Are the proposed intervention powers appropriate? Which powers should be adopted, modified or not proceeded with, and are there any additional powers that should be considered?	The Consultation RIS proposes that the regulator be granted additional powers to require further risk assessment and investigation, to assist the regulator to further assess a product safety risk. In addition to the powers set out above, the Commonwealth Minister (via the ACCC) has specific powers to gather reporting information about serious injury, serious illness and risk. In relation to proposed compliance reporting, the ACCC already imposes requirements on suppliers by requiring regular progress reporting after a recall is commenced. The cadence of this reporting is set ad hoc by the ACCC and continues until the ACCC determines reporting is no longer required. The variable nature of recall actions makes it difficult to set specified time frames, but a wholly discretionary power to set recall actions is also not favoured. Any proposed intervention powers of this nature should only be exercised in respect of a particular product supplied by a particular supplier. If the potential issue impacts multiple suppliers or multiple products, the existing powers relating to compulsory recalls or interim or permanent bans should be utilised.
5.3	Should the powers be different if no voluntary recall has been initiated? If so, are the proposed additional powers appropriate? Why or why not?	If targeted intervention powers are to be introduced, the Committee accepts that it is appropriate for those powers to differ depending on whether voluntary recall action has already been initiated. As acknowledged in the Consultation RIS at page 32, it would be undesirable if a supplier or manufacturer concludes that initiating a recall exposes them to increased risk of regulatory intervention. The proposal to grant power to require temporary "risk-management" measures where a recall has not been commenced (e.g. temporarily ceasing further supply, quarantining stock, removing online listings or other measures to allow for further assessment) are steps which are regularly taken by suppliers or

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		manufacturers while risk is being assessed. Responsible regulators already have the power to impose interim bans to stop supply in appropriate cases.
5.4	Should powers to require a supplier to provide product samples for testing, or undertake or commission testing, be confined to these intervention powers, or available to regulators more broadly to enable assessment of breaches of the ACL?	The Committee does not support the grant of additional powers to regulators more broadly to require suppliers or manufacturers to undertake or commission testing. Consistent with their existing obligations under the ACL, the primary obligation rests on suppliers and manufacturers to identify potential product safety risks, assess their potential scope and magnitude, and to determine whether action is necessary (whether in-market action or on a forward-looking basis to include improvements to design or production). Regulators only need to assess a product safety risk and the appropriateness of a response in specific circumstances, e.g. where the product risk has been the subject of safety-related consumer complaints to regulators or mandatory reports to the ACCC, or where the regulator is pursuing potential enforcement action. As noted above, the ACCC already purchases and tests products it considers may not comply with the ACL or a relevant mandatory standard, and it has a range of information-gathering powers under s 133D and s 155 of the CCA. If voluntary recall action has already been commenced, it is a question for the supplier or manufacturer if they wish to take further steps to understand the scope and magnitude of the risk. It is difficult to see why else regulators would need further testing in those circumstances. Any intervention powers which impose a requirement for further testing need to take into account (a) the difficulty in identifying or assessing appropriate expertise; (b) the time taken to conduct appropriate testing, including by appropriately accredited (e.g. NATA-accredited) test labs. A power to require the provision of a reasonable number of product samples may be appropriate, where a regulator has opened an active investigation in relation to an alleged contravention of the ACL. Whether the exercise of such a power is appropriate may also depend on the nature and cost of those

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		samples, and any special requirements which may apply (e.g. handling or other instructions).
5.5	What thresholds, safeguards and governance arrangements should apply to the exercise of the powers, including which regulators should be able to exercise them?	If targeted intervention powers are pursued, then the safeguards set out in Table 8 of the Consultation RIS are appropriate, specifically, written notice and reasons, the opportunity to respond, threshold and proportionality and review rights. These safeguards must be built into the legislation, such as s 29 of the *Gas and Electricity (Consumer Safety) Act 2017* (NSW), which requires that the regulator believes on reasonable grounds that the product will or may cause injury and that the specified action is necessary and proportionate to address that risk. These kinds of powers should be exercised by the Minister or the ACCC Commissioner, not a delegated senior official. Unless the identified issue relates only to a single state or territory, any such powers should be exercised by the ACCC or Commonwealth Minister.
5.6	Should non-compliance with directions issued under the framework attract lower penalties than non-compliance with a compulsory recall notice? If not, what alternative approach should be adopted – please refer to Option 8 for penalty tiers?	Yes. A compulsory recall notice should typically be pursued where consistent industry-wide action is required, or where a supplier or manufacturer is refusing to take in-market action in relation to a product which has been associated with actual personal injury or which carries a significant risk of injury. Any non-compliance with directions issued under this framework should attract lower penalties than non-compliance with a compulsory recall notice. What penalties may be appropriate will also depend on the safeguards built into the process, and by reference to how a direction is framed. A defence should be available where the person has taken reasonable steps to comply with a direction.
Option 6 - Enhance mandatory reporting effectiveness		
6.1	Do you support expanding the range of circumstances in which mandatory reports must be provided? If so, which approach should be adopted and why?	The Committee does not support broadening the mandatory reporting requirements to any injury or illness. While the mandatory reporting requirements require the assessment of numerous threshold questions ("serious injury or illness", use or foreseeable misuse of consumer goods, and whether any exemption applies), expanding this requirement

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		to any injury or illness will impose a significant administrative burden on suppliers. It will, in effect, be akin to providing the ACCC with access to suppliers' customer management systems. This is because, in many cases, complaints, inquiries or other reports often include insufficient information to enable a supplier to determine whether a report should be made. Coupled with any increase to the penalty for non-compliance, expansion of the reporting requirements may make it more difficult for regulators to identify the most significant safety risks and to determine whether any reported injury signals a potential safety issue associated with a product or product class. In particular, the ACCC's position is that all persons becoming aware of the death, serious injury, or illness must make a separate report (unless an agent is appointed on behalf of multiple parties). This may lead to duplication of reporting, and reduces the reliability of the data for regulatory monitoring of potential safety issues. To the extent there is any uncertainty about the application of the existing statutory requirements, this can be clarified through updates to the (already very detailed) guidance. For the avoidance of doubt, the Committee does not agree that treatment that is required, even if it is not received is a reasonable interpretation of the requirements (p. 35). It will not be within the expertise of suppliers reviewing in-bound contacts to make this assessment. On the contrary, if a person reports attending a hospital in connection with an injury sustained while using a product, the supplier is entitled (and presumably, encouraged) to consider such an attendance was required, irrespective of the outcome (e.g. a person's injury was assessed in hospital but no treatment provided - just observation).
6.2	Should 'near misses' be captured in the range of reportable incidents? If so, what is the most appropriate definition or threshold for determining when a report should be required?	No. A "near miss" requires a supplier to assess a hypothetical, counterfactual scenario, and determine what might have happened in slightly different circumstances. This assessment would also be required, at law, to be made within a short timeframe and (if Option 8 proceeds) under the threat of significantly higher penalties.

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		The Consultation RIS properly recognises that defining and assessing a "near miss" may create uncertainty. The ACCC may choose to continue to encourage the reporting by suppliers of near misses on a voluntary basis, but they should not be subject to the mandatory reporting requirements.
6.3	Should the current two-day mandatory reporting timeframe be retained, shortened or extended if the range of reportable incidents is expanded?	If the reporting criteria are not broadened, the two-day timeframe may be retained, but the statute should reflect the clarifications described in the Consultation RIS, which currently only sit in the ACCC's guidance. That is, time runs only once the business has enough information to determine that the criteria are met, and only information known at the time of reporting must be provided. The reporting timeframe should be expressed in business days, by reference to the headquarters or ordinary place of business of the reporting supplier. If the reporting criteria are broadened, the timeframe for reporting must also be broadened.
6.4	Should de-identified mandatory reporting information be able to be published or shared for product safety or consumer protection purposes? If so, what safeguards should apply?	The Committee supports the publication of appropriately de-identified and aggregated information; e.g. by product category or hazard type. Any such publication should be accompanied by sufficient information to explain the basis for the mandatory reporting, and to identify limitations in the data. Specifically, the data included is based on a supplier's subjective assessment of the statutory criteria, it may include voluntary reports that do not reach the statutory threshold, it may include duplicated reports and the fact of a report does not represent a substantiated causal link between product and reported injury nor an admission of defect. As proposed on p. 37 of the Consultation RIS, such publication must be accompanied by appropriate safeguards regarding de-identification, privacy protections and the treatment of commercially sensitive information. Should any category-level information carry a reasonable risk of identifying a supplier or their product (depending on how narrow product categories are identified), that supplier must be given a reasonable opportunity to review and comment on the information before it is published.
Option 7 - Improve product safety administration		

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7.1	Do you support enabling the ACCC to exercise some or all of the proposed product safety functions currently conferred on, or directed to, the Minister under the ACL? If so, which functions should or should not be delegated and why?	The Committee supports proposed reform (c), proposing to clarify in the legislation that the ACCC may receive voluntary recall notifications and mandatory reports, rather than relying on administrative instruments or authorisations. The ACCC currently receives these recall notifications and mandatory reports, performing a supervisory role in relation to voluntary recall action and identifying and investigating potential areas of product risk. The Committee does not oppose reform (b) enabling the ACCC to approve the export of goods subject to a permanent ban or a safety standard, together with appropriate safeguards as noted on p. 40 of the Consultation Paper. The Committee has reservations about reform (a), enabling the ACCC to publish safety warning notices. While that reform would no doubt support timely decision-making and direct decision-making by product safety specialists, safety warning notices are a serious step which may cause significant reputational harm before a risk is confirmed. Furthermore, if appropriate safeguards are included (such as the giving of notice, recorded reasons and opportunity for supplier consultation), in practice there may be no efficiency gains to be made by making this change. The Committee agrees that powers to make safety and information standards, impose bans and issue compulsory recall notices should remain exclusively with the Minister.
7.2	Should equivalent powers also be available to other ACL regulators? If so, which powers and subject to what conditions or safeguards?	No, not generally. State/ territory responsible Ministers have the power to impose an interim ban. The product safety functions specifically granted to the Commonwealth Minister (e.g. overriding a state/ territory interim ban and issuing permanent bans) should remain centralised. Where products are supplied nationally, it is appropriate for relevant actions to be led by the Commonwealth Minister, supported by the ACCC.
7.3	What accountability, review or governance arrangements should apply where the ACCC exercises functions	If the ACCC exercises any functions of the Minister, the exercise of these functions or powers must be supported by appropriate arrangements including decision-making at highest level (ACCC Commissioner), provision of written reasons, prompt notification of the functions or powers to the Minister,

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	currently exercised by the Minister?	transparency about the exercise of the functions or powers, review rights and annual reporting.
Option 8 - Increase penalties to strengthen deterrence		
8.1	Do you support the proposed reforms to strengthen penalties and infringement notices for product safety obligations? Why or why not? Which proposed reforms should be adopted, modified or not proceeded with?	The Committee does not support the proposed increases in penalties for recall notification and mandatory reporting obligations (Table 13). These increases are significant, representing a 60-fold increase in the case of notification requirements in respect of recall actions and mandatory reporting, and failure to nominate compliance method or providing information or documents relating to mandatory standard compliance. The Committee would support a more modest increase to these maximum penalties, reflecting the time elapsed since commencement of the ACL. In the Committee's view, significant increases to the maximum penalties for recall notification and mandatory reporting is likely only to encourage precautionary reporting, and not to positively impact upon identification or investigation of potential product safety issues, or in-market corrective actions. On the contrary, since the statutory notification obligation is triggered only once recall action has been taken, higher penalties may mean that suppliers take more time to initiate recall action. In addition, non-compliance with ss 108(2), 108A, 137AA and 137B does not mean that goods do not comply with mandatory safety or information standards. The Committee also does not support the significant increases to proposed penalty units in relation to infringement notices for specified product safety contraventions. In its guidance on Infringement Notices, the ACCC observed that "[i]nfringement notices are designed to provide a timely, cost-efficient enforcement outcome in relation to relatively minor contraventions of the CCA". Payment of an infringement notice penalty does not amount to an admission or finding that the person contravened the Act by engaging in specified conduct. Expanding these maximum penalties by 5- and 10-fold is excessive. Treasury has provided no explanation for the size of these proposed increases, although the Consultation RIS appears to acknowledge that higher penalties may not improve

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		outcomes where non-compliance is linked to uncertainty about obligations, capability constraints or lack of awareness (p. 46).
8.2	Do the proposed penalty settings and tiers appropriately distinguish between the different types of contraventions? If not, what alternative approach should be adopted?	No. Proposed increases to the penalty provisions and infringement notices are significantly higher than the current settings. While the proposals appropriately distinguish between body corporates and individuals (and listed corporations, where appropriate), they do not delineate between deliberate concealment, reckless conduct (i.e. indifference to the need for any compliance system or the need for reporting), genuine inadvertence or uncertainty as to when the obligation arose, or e.g. technical non-compliance (missing the reporting window by a small margin).
8.3	Are the proposed criminal penalties and infringement notice settings appropriate, including the proposed extension of these measures to obligations where they do not currently apply? If not, what alternative approach should be adopted?	The Committee does not support introducing new strict liability criminal penalties for s 108(3), or extending infringement notices to mandatory reporting and recall notification obligations. Whether an incident is reportable (for example, whether a good "may have caused" a serious injury) or whether an action is a recall involves evaluative judgment, which is not suited to an infringement notice regime. Infringement notices are appropriate for contraventions for which objective information can be assessed.
8.4	Should penalties continue to be expressed as fixed dollar amounts or be converted to penalty units? Why?	Using penalty units would be consistent with the infringement notice regime more generally and the broader Commonwealth approach to identifying maximum penalties. It enables the 'price' of those contraventions to move with the declaration of the value of a Commonwealth penalty unit over time. Any conversion should be consistent with the comments about proportionality above.
Option 9 - Introduce targeted technical amendments		
9.1	Do you support the proposed reforms in Option 9? Which amendments should be adopted, modified or not proceeded with, and why?	In relation to reform (a), the Committee does not consider it to be controversial that consumer goods are covered by the ACL, even if they become fixtures. Consumer guarantees apply to goods supplied "to a consumer" (rather than "consumer goods"), and the definition of "consumer goods" in s 2 and s 128(1) of the ACL already confirm that voluntary or compulsory recall action can still be undertaken in relation to

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		consumer goods that have become fixtures since being supplied. "Goods" in s 2 is plainly an inclusive term (otherwise many consumer goods would not be captured by the consumer guarantees regime). The Committee supports reform (b), which should avoid unnecessary duplication if voluntary recall action has followed issue of a safety warning notice. See option 3 in relation to recall notification requirements (reform (d)). The Committee considers that a separate provision governing notification of recall action to persons outside Australia is not necessary and should be captured in consideration of recall structure and implementation. See 9.2 in relation to reform (c) and 9.3 in relation to reform (e).
9.2	Should changes be made to the interaction between the ACL and the Trans-Tasman Mutual Recognition Arrangement to support product safety outcomes? If so, what approach should be adopted and what impacts should be considered?	The Consultation RIS notes that there is no evidence the TTMRA pathway is being actively exploited (p. 50), and the TTMRA already provides for temporary exemptions to protect health and safety. Absent evidence of harm, the Committee does not consider change is warranted at this stage. Any change should be progressed through the established trans-Tasman intergovernmental processes.
9.3	Is there a gap in the current framework for addressing unsafe product-related services? If so, should corrective action powers be extended to product-related services and what scope, threshold and safeguards should apply?	The Committee is not persuaded that there is a significant gap in the current framework for addressing allegedly unsafe product-related services. Product-related services are already subject to safety standards, bans and mandatory reporting, and unsafe installation is commonly regulated by state and territory licensing, electrical, gas and building regulators. If a corrective action framework is introduced, it should be confined to voluntary corrective action with a notification obligation, carry the same protection that notification is not an admission of liability, clearly identify which party is responsible, and should not extend the proposed Option 5 powers to service providers, many of whom are small businesses.