



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

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17 December 2018

Dr Narelle Clegg  
Assistant Secretary, Animal Health Policy Branch  
Department of Agriculture and Water Resources  
GPO Box 858  
Canberra City ACT 2601  
Sent by email: [REDACTED]

Dear Dr Clegg

### **Pet food safety regulatory approaches**

I am writing to you regarding the Senate Standing Committee on Rural and Regional Affairs and Transport's (the Committee) inquiry report recommendations regarding regulatory approaches to ensure the safety of pet food.

The Australian Competition and Consumer Commission (ACCC) recognises that unsafe pet food has recently led to adverse events for numerous pets. The ACCC acknowledges consumer interest in the welfare of their pets, however, the ACCC does not have a role in the regulation of pet food.

There appears to be an assumption in the Committee inquiry report that the ACL provides a mechanism for voluntary recalls, compulsory recalls, mandatory standards, offences and penalties for pet food products that are unsafe. This is not correct.

The consumer product safety regime within the ACL is intended to consider the safety of people, not animals (including pets). The ACCC is not the appropriate body to receive consumer reports about pet food safety or to assist in improving the Pet Food Adverse Event System of Tracking (PetFAST) system. The ACCC does not have the required technical knowledge and expertise in the regulation of animal related products to take on a role in pet food safety regulation and data collection.

### **Role of the ACCC and the ACL**

The ACCC is a whole of economy regulator that promotes competition and fair trading in markets to benefit consumers, businesses and the Australian community. One of the ACCC's key roles is to seek to ensure that consumers can confidently participate in markets. Through the administration of the ACL, the ACCC aims to prevent misleading behaviour and unconscionable dealings, and to minimise the risk posed by unsafe consumer goods.

Our product safety responsibilities involve identifying, prioritising and addressing risks to persons arising from unsafe consumer goods. We do this by administering the consumer product safety provisions of the ACL, which include powers to issue compulsory recalls, product bans, mandatory standards and safety warning notices. It is not within the jurisdiction of the ACCC to regulate the safety of food products intended for human or pet consumption.

The provisions of the ACL are intended to be general in nature, and apply to a broad range of consumer goods and services. Consumer goods are defined as goods that are intended for personal, domestic or household use. Goods, including consumer goods, requiring specialist expertise in order to be regulated or investigated are normally subject to sector specific regulation.

Further, the ACCC already provides guidance and assistance to consumers regarding their rights about consumer goods more generally, especially around the consumer guarantees regime, which would apply to consumer purchases of domestic quantities of pet food.

### **Pet food safety inquiry recommendations**

At the outset, the ACCC would like to make clear that it is beyond the capacity and capability of the ACCC and ACL to regulate the safety of pet food or to assist in improving the collection of pet food safety reports. The product safety framework in the ACL is not designed or intended to apply to pets as it:

- contains certain legislative thresholds which require there be an actual or reasonably foreseeable risk of injury, illness or death to natural persons; and
- does not provide specific regulatory powers to implement product safety interventions for pets.

Further, the ACCC does not have the required technical, veterinary, nutritional, or food safety knowledge or expertise required to undertake appropriate investigation or pursue regulatory interventions to address pet food safety hazards.

The ACCC's response to each recommendation made by the Committee is outlined below.

*Recommendation 4 - The committee recommends that the Australian Competition and Consumer Commission review the process by which the Australian Standard for the Manufacturing and Marketing of Pet Food (AS5812:2017) could become a mandatory standard under Australian Consumer Law and make public its review findings and any recommendations.*

While we understand the consumer benefits of improved safety outcomes for pet food, the ACCC does not support this recommendation as the ACL is not the appropriate framework to achieve this objective and the recommendation falls outside of the ACCC's regulatory capabilities and expertise.

The ACL provides for two forms of mandatory safety standards for consumer goods or product-related services, where the Minister may:

- make a safety standard that sets out requirements that are reasonably necessary to prevent or reduce the risk of injury to a person (s 104 of the ACL); or
- declare a safety standard approved by Standards Australia or a prescribed association (s 105 of the ACL).

The ACCC is of the view that the powers to make and declare mandatory safety standards under these sections could not be used to regulate pet food safety. Both of these sections, within the broader context of the product safety regime and taking into account principles of statutory interpretation, relate to consumer safety and preventing the risk of injury to natural persons and would not extend to pets. The ACL does not specifically contemplate the protection of non-humans (i.e. pets).

The introduction of a mandatory safety standard for pet food safety is not consistent with the underlying principles of the ACL and regulatory activities of the ACCC, which focus on minimising the risk unsafe goods pose to consumers, including from injury or death caused by consumer goods.

In addition, information standards can be implemented under the ACL to provide important information to consumers about goods and services, but only regulate the minimum disclosure requirements and type of information that is provided. This means that information standards cannot be used to mandate specific requirements about the level of safety, minimum standards or methods of manufacture or processing to ensure the safety of pet food.

*Recommendation 5 - The committee recommends that the Australian Veterinary Association, in cooperation with the Australian Competition and Consumer Commission explore measures to improve data capture in the PetFAST system.*

The ACCC acknowledges the issues identified by the Committee regarding the accessibility, underutilisation and onerous nature of the PetFAST system, as well as concerns regarding its ability to facilitate the identification of chronic and long-term illness.

While the ACCC welcomes measures to address these issues and improve data capture in the PetFAST system, and product safety data more generally, it is not within the scope of the ACCC's jurisdiction and role to assist the Australian Veterinary Association in carrying out this function as it relates to pet food safety data.

Specialist database administration and development skills are required to explore and implement measures to improve data capture in the PetFAST system. The ACCC does not have the technical knowledge and expertise of data systems to provide the required support or collect data in the way the PetFAST system does. The ACCC does not support this recommendation.

*Recommendation 6 - The committee recommends that the Australian Competition and Consumer Commission establish a system for consumer reporting on its Product Safety Australia website, to enable members of the public to lodge complaints and concerns associated with pet food.*

The ACCC presently receives web based reports from consumers through two mechanisms:

- the Product Safety Australia website accepts reports about unsafe goods, including pet food; and
- the ACCC website accepts reports about general consumer issues, such as in relation to consumer guarantee rights.

On this basis, the ACCC does not support this recommendation as it is not necessary that a secondary or specific system for consumer reporting in regard to pet food be established on the Product Safety Australia or ACCC website.

Irrespective of the complaint housing capacity of the websites, the ACCC is not the appropriate body to receive pet food safety complaints or pursue any regulatory intervention given the ACL's product safety framework does not apply to pets. Complaints regarding the safety of pet food would be better directed to an industry specialist regulator that has a regulatory focus on pets and expertise to assess the safety of animal related products. For example, the Australian Pesticides and Veterinary Medicines Authority has a regulatory function in relation to stock feed and pet food that contains prescription medication, antibiotics or makes therapeutic claims.

In line with Government expectations, the ACCC aims to avoid duplicate handling of hazard reports from consumers that should be directed to other more appropriate regulators or industry bodies.

### **Next steps**

Further to this letter, we appreciate the opportunity to join the working group led by the Department of Agriculture and Water Resources that is reviewing the current arrangements for pet food safety. We would like to continue our participation as an observer, with the ability to

provide commentary and input on any matters pertaining to the ACL and the operations of the ACCC if this is amenable to the Secretariat.

I understand the working group will consider the Committee's inquiry recommendations and other workable solutions to manage pet food safety, and will report to the Agricultural Senior Officials Committee within 12 months with a view to assisting in preparing or commenting on the Government response to the inquiry.

If you would like to discuss any aspect of this letter, please contact Paula Pearsall, Director, Regulatory Reform, Consumer Product Safety Branch on [REDACTED] or at [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Matthew', with a long horizontal flourish extending to the right.

Neville Matthew  
A/g Executive General Manager  
Consumer, Small Business and Product Safety Division