

## Chapter 5

### Strengthening pet food recall and reporting arrangements

5.1 A substantial proportion of the evidence received by the committee focused on the need for stronger pet food recall provisions for unsafe pet food.<sup>1</sup> In support for such a system, submitters argued in favour of a central information register or portal whereby notice can be provided of recalls and information can be provided to pet owners and the wider community.<sup>2</sup> This chapter explores the types of mechanisms which could provide the framework for pet food recalls, and improve reporting in relation to recalled products.

5.2 To support the argument for stronger recall provisions, submitters drew to the committee's attention the small number of pet food recalls that have been undertaken in Australia over the last decade. Submitters advised that, without a central authority to publish recall information, it is difficult to confirm the exact number of recalls that have taken place. What is clear, however, is that there have only been a few. These include: the recall of Kramar dogs treats in 2009; Weruva BFF cat food in 2017; and Advance Dermocare dry dog food in 2018. By way of comparison, in the US there were approximately 20 pet food recalls undertaken in 2017 alone.<sup>3</sup>

5.3 CHOICE noted that the difference in the number of recalls (between Australia and the US) was not because pet food in Australia is any safer than pet food in the US. Rather, it was because 'there's not a strong enough regulatory environment to encourage businesses to proactively conduct voluntary recalls' in Australia.<sup>4</sup>

5.4 Submitters made the point that consumers assume that if or when pet food products are deemed unsafe, there are regulatory systems in place which would mandate appropriate recall action.<sup>5</sup> It was noted, however, that many consumers are surprised – if not shocked – to learn that under the current self-regulatory regime, recall of pet food products is voluntary. Product recalls are not managed by the PFIAA itself or by way of the PetFAST reporting system, but rather, remain a matter for individual businesses which make up the PFIAA membership.<sup>6</sup>

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1 Mr Paul Terrett, *Submission 10*, p. 3; Ms Jacinta Simpson, *Submission 43*, [p. 1]; Ms Karin Strehlow, *Submission 57*, [p. 3] and RSPCA Australia, *Submission 59*, p. 7.

2 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 5.

3 RSPCA Australia, *Submission 59*, p. 6; Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 5 and Angelique Donnellan, 'Having a pet die is an absolutely terrible thing': Senate announces inquiry into pet food industry', *ABC News*, 20 June 2018, <http://www.abc.net.au/news/2018-06-20/inquiry-to-be-held-into-pet-food-industry/9890398> (accessed 26 June 2018).

4 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 5.

5 The Cat Protection Society of NSW Inc., *Submission 29*, [p. 2].

6 Ms Michelle Lang, Nestlé Purina PetCare Australia, *Committee Hansard*, 29 August 2018, p. 36.

5.5 Noting that the absence of mandatory recall provisions serves as a 'gap in the current system', Nestlé recommended that such provisions be introduced in line with international best practice.<sup>7</sup> However, given that the coverage and reporting of adverse pet food events is not consistent, Nestlé also pointed out that requirements for a recall would need to be clearly stated. Emphasising the need for mandatory recall provisions that cover all adverse pet food events (which have an impact on pet health) Nestlé described various provisions for recall which make up the current 'inconsistent' system:

- Therapeutic pet diets are covered under the *Agricultural and Veterinary Chemicals Code Act 1994* (AgVet Code), which includes a mandatory reporting requirement for product that is not fit for purpose or for off-label use.
- A food safety issue in pet food that would also be an issue for human food (for example – the presence of salmonella or listeria) is covered under Australian Consumer Law and would trigger a recall.
- A food safety issue in pet food that would impact pet health but not human health (for example – the presence of chocolate in dog food) is not covered, and would not trigger a mandatory recall under Australian Consumer Law. It would be up to the company to enact a voluntary recall.
- A nutritional deficiency in a nutritionally complete pet food would not trigger a mandatory recall, whereas a nutritional deficiency in a nutritionally complete human food would.<sup>8</sup>

### **Protections for consumers**

5.6 CHOICE explained to the committee that some pet food companies (which have attempted to issue voluntary recalls in the past) have not had the support of the type of regulatory system that other food products benefit from. Because there is currently no centralised site on which they can place relevant information, some companies have chosen to provide information directly to veterinarians, while others have attempted to publicise the situation on Product Safety websites, or via public notices.<sup>9</sup>

5.7 CHOICE noted that the pet food industry was not taking advantage of the regulatory system already in place, which provides support for businesses seeking to conduct product recalls. As Ms Turner indicated, existing regulators – including FSANZ and the ACCC – provide support to companies conducting recalls by publishing recall information on a central website and prescribing obligations with regard to notification.<sup>10</sup>

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7 Ms Nicole Battistessa, Nestlé Australia Ltd, *Committee Hansard*, 29 August 2018, p. 34.

8 Nestlé Australia Ltd, *Submission 119*, p. 7.

9 Ms Erin Turner, CHOICE, *Committee Hansard*, 29 August 2018, p. 5.

10 Ms Erin Turner, CHOICE, *Committee Hansard*, 29 August 2018, p. 5.

5.8 Australia's recall system in relation to general consumer groups is largely voluntary; with state, territory and federal governments able to order businesses to undertake recalls under certain circumstances. As noted, under section 122 of the Australian Consumer Law, a compulsory recall can be ordered by the Minister responsible if the goods 'will or may cause injury to any person'. Alternatively, a compulsory recall can be ordered if a mandatory safety standard has not been met and it appears to the Minister that the suppliers of the goods have not taken 'satisfactory action to prevent those goods causing injury to any person'.<sup>11</sup> However, as CHOICE indicated, Australia's existing system for product safety relies heavily on voluntary recalls as Ms Sarah Agar explained:

The law provides that the minister can conduct a mandatory recall. It would appear that that threat in the background does encourage businesses to act and conduct voluntary recalls fairly frequently. That's in relation to goods that may injure humans, where the litigation risk—the damages that could be sought—would be quite high. The balance seems to be being struck there. I would suspect that, with pet food, the litigation risk would be lower due to the types of damages that could be sought in comparison to a product safety case. Introducing a system where a regulator does have the power to request a recall, with some penalties placed behind that if businesses don't comply, would certainly provide stronger incentives for businesses to more swiftly conduct voluntary recalls for a pet food.<sup>12</sup>

5.9 CHOICE indicated that there remains a significant gap in relation to pet food. As problems with pet food generally result in injuries to pets, not to 'persons', under the law, even if a mandatory standard for pet food were introduced:

...it is unlikely that a compulsory recall could be ordered for a product that failed to meet the standard unless it also posed as a threat to human health.<sup>13</sup>

5.10 In the context of product safety, CHOICE called for three minimum protections for consumers with regard to pet food. These included:

- greater incentives for businesses to conduct voluntary recalls – with a regulator empowered to request or require that a recall be conducted;
- notification requirements on businesses that choose to conduct a recall that are similar to product safety recall requirements; and the
- establishment of a central register to enable the general public to view what pet food has been recalled and why.<sup>14</sup>

5.11 With regard to incentives for businesses, CHOICE noted that most recalls of unsafe consumer goods are voluntary, with only a small number of compulsory recalls

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11 CHOICE, *Submission 143*, [pp. 2–3].

12 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 6.

13 CHOICE, *Submission 143*, [pp. 2–3].

14 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 2.

having to be ordered. This is because of the incentives in place that encourage businesses to recall consumer goods that may harm people. Yet, as CHOICE explained, these same incentives do not exist, or are certainly not as strong, in relation to pet food:

If a number of people are injured or killed by a product and the business fails to take appropriate steps to recall that product, that business could face very serious, costly court action. If pets are injured or killed by substandard pet food, the financial risk for a business is lower. A person could sue a pet food company for the cost of the poor quality food, and the cost of either their vet bills, if the pet became sick, or the market value of a new pet, if the pet died. This means that a business selling contaminated pet food may be less likely in all the circumstances to choose to conduct a voluntary recall than a business selling contaminated or dangerous food intended for people.<sup>15</sup>

5.12 CHOICE suggested that an independent regulator be given the power to request or to require businesses to conduct recalls of pet food, if it has reason to believe that the food could cause injury to any person or animal, or if they have failed to meet the standard that they are required to meet. In addition, businesses should be required to notify the regulator when action is taken to remove a pet food product from the market, and all pet food recall notifications should be published in a central location. Finally, CHOICE argued in favour of the imposition of strong penalties for businesses that do not comply with these requirements.<sup>16</sup>

5.13 RSPCA Australia added that recalls can be extremely damaging to manufacturers, costing 'millions of dollars' and having large 'reputational costs'. As such, there is little incentive for pet food manufacturers to issue recalls without a mandatory requirement.<sup>17</sup> Rather than relying on 'good corporate citizens' to take action, submitters recommended a stronger regulatory regime to fill 'a key gap in the current system'.<sup>18</sup>

### ***Timeliness of recalls***

5.14 Alongside the need for clearer recall provisions, witnesses drew the committee's attention to other issues with regard to the current system including the timeliness of recalls and the timely reporting of recalled product. Many witnesses were of the view that as part of a recall framework, companies should be required to recall products to facilitate investigation into the food.<sup>19</sup> The point was repeatedly

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15 CHOICE, *Submission 143*, [p. 3].

16 CHOICE, *Submission 143*, [p. 4].

17 RSPCA Australia, *Submission 59*, p. 7.

18 Ms Erin Turner, CHOICE, *Committee Hansard*, 29 August 2018, p. 3. Also see: Nestlé Australia Ltd, *Submission 119*, p. 7 and Ms Teresa Tassone, *Submission 89*, [p. 4].

19 Ms Rach Dola, *Submission 117*; Ms Jodi Burnett, *Submission 141* and Ms Shirley Benn, *Submission 84*.

made that such timely action would prevent potential harm to pets whilst investigations are underway.

5.15 In the case of Advance Dermocare, a number of submitters argued that the recall should have taken place as soon as the first cases of megaesophagus were reported.<sup>20</sup> According to the manufacturer of Advance Dermocare, Mars Petcare, the recall took place within 24 hours of advice regarding two household dogs with megaesophagus.<sup>21</sup> The committee was told that:

Mars Petcare was first notified in late December 2017 that a small number of service dogs in Victoria had been diagnosed with megaesophagus and had consumed ADVANCE Dermocare dry dog food. We immediately began investigations together with U-Vet, Victoria Police and consulted with the AVA. As a result of the unique environment in which service dogs operate, we believed this issue was an isolated one.

On 23 March 2018, we were advised by the AVA that two household dogs that had consumed our product had become sick with megaesophagus. We recalled ADVANCE Dermocare dry dog food within 24 hours of this notification. Our investigations continue at pace to support the independent investigation by U-Vet, and additional external veterinary experts. No root cause has been identified.

This recall was the right thing to do. We support increased regulation for pet food that strengthens our local industry and demands the very best for pets.<sup>22</sup>

5.16 Despite Mars' response, however, many submitters pointed out that the recall occurred three full months after the initial reports of megaesophagus. Dr Richard Malik commented that Mars' decision to recall the product in March 2018 was 'just too slow',<sup>23</sup> while Mrs Melanie Christie referred to the response as 'an utter failure'.<sup>24</sup>

5.17 Others questioned whether the recall would have been conducted at all had the media not reported on the story.<sup>25</sup> Ms Jodi Burnett noted:

The police went public with their story in a radio interview on 23<sup>rd</sup> March...Am I being cynical, or is it not a coincidence that Mars Petcare Australia issued a voluntary recall the very next day?<sup>26</sup>

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20 See, for example: Miss Jasmine Erhard, *Submission 73*, [p. 2]; Miss Melissa Field, *Submission 13*, [p. 3]; Mrs Laura Faulkner, *Submission 16*, [p. 1]; Mrs Christina Fry, *Submission 78*, [p. 2]; Ms Jodi Burnett, *Submission 141*, [p. 10] and Ms Rach Dola, *Submission 117*, pp. 3–4.

21 Mars Petcare Australia, *Dermocare recall timeline* (tabled at a public hearing on 29 August 2018).

22 Mars Petcare, *Submission 106*, p. 6.

23 Dr Richard Malik, *Committee Hansard*, 29 August 2018, p. 18.

24 Mrs Melanie Christie, *Submission 62*, [p. 5].

25 See, for example: Mrs Christine Fry, *Submission 78*, [p. 2]; Ms Stephanie Shaw, *Submission 102*, [p. 4] and Ms Rosemarie Mileham, *Submission 12*, [p. 1].

5.18 The point was also made that a specific and transparent, time frame for recalls would 'certainly provide stronger incentives for businesses to more swiftly conduct voluntary recalls for a pet food'.<sup>27</sup>

5.19 In terms of timely intervention, Dr Malik suggested a staged approach whereby an early quarantine regime would underpin the recall system. Drawing on the recent cases of listeria found in rockmelon,<sup>28</sup> Dr Malik recommended a process whereby products could be removed immediately from sale where there is a risk to pet health. Thereafter, further testing and evidence-gathering could be conducted to identify the exact cause, with a complete recall initiated where necessary.<sup>29</sup> Similarly, Ms Karin Strehlow made the point that recalls should be based on the 'precautionary principle', whereby products are taken off the shelf even if the scientific data confirming correlation and causation is not yet available.<sup>30</sup>

5.20 This approach was also supported by Dr Andrew Spanner who explained that:

We don't need to know the cause. The history of cholera is a good example. The pump in London that caused cholera was closed down 30 years before anyone knew what cholera did and how it happened. They just knew that that pump caused cholera. This product causes kidney failure. We don't need to know why. We hopefully will find out why one day; we don't know right now.<sup>31</sup>

### Central information portal

5.21 To ensure consumers are adequately informed about pet food recalls in a timely manner, a number of submitters recommended the publication of all recall notifications on a central register or information portal.<sup>32</sup>

5.22 Such a system would avoid the experience of pet owners with regard to the Advance Dermocare recall. According to Ms Rach Dola, Advance Dermocare was advertised as 'sold out' by one major pet food retailer three months after its recall, without any explanation as to the circumstances.<sup>33</sup>

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26 Ms Jodi Burnett, *Submission 141*, [p. 10].

27 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 6. Also see: Ms Rach Dola, *Submission 117 – Attachment 3*, p. 1 and Ms Teresa Tassone, *Submission 89*, [p. 8].

28 Guy Stayner. 'Rockmelon listeria outbreak: Fourth person dies from eating contaminated fruit', *ABC News*, 7 March 2018, [www.abc.net.au/news/2018-03-07/rockmelon-listeria-outbreak-fourth-person-dies/9522832](http://www.abc.net.au/news/2018-03-07/rockmelon-listeria-outbreak-fourth-person-dies/9522832) (accessed 16 September 2018).

29 Dr Richard Malik, *Committee Hansard*, 29 August 2018, p. 16.

30 Ms Karin Strehlow, *Submission 57*, [p. 3].

31 Dr Andrew Spanner, *Committee Hansard*, 28 August 2018, p. 19.

32 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 2; Mrs Jenny Kent, Pets Australia, *Committee Hansard*, 28 August 2018, pp. 13–14 and Ms Kristina Vesik, The Cat Protection Society of NSW Inc., *Committee Hansard*, 28 August 2018, p. 16.

33 Ms Rach Dola, *Submission 117 – Attachment 3*, p. 2.

5.23 Ms Teresa Tassone went further to recommend that there be a requirement on pet food stores to notify and communicate any recalls to their database of consumers—a view that was also supported by Ms Rach Dola who stated that it should be 'legally required to provide urgent information via this resource' in the case of a recall.<sup>34</sup>

5.24 According to a number of submitters, an information portal would also assist. It would alleviate confusion about the delineation between pet food and pet treats, and promote greater public education about overall animal nutrition. Such an information hub would also reduce the continued reliance on social and media communication, which can often lead to misinformation and the 'muddling' of facts.<sup>35</sup>

5.25 Submitters also noted that an 'unbiased' source of information would ensure that pet owners are educated about 'species-appropriate diets' and pet nutrition, without the influence of pet food companies and others with an interest in promoting particular pet food products.<sup>36</sup>

5.26 Ms Sarah Agar from CHOICE remarked that the information could be managed in a way that is similar to the USFDA website which lists both human products and pet food products. While the issues around how to format the information (and how it would be presented) was debated in evidence, it was agreed that a key objective would be: 'that consumers and pet owners are aware that there is one spot where they can go and find out whether or not any pet food currently on the market may endanger their pets'.<sup>37</sup>

### **A way forward**

5.27 The committee considered the evidence regarding an appropriate agency to manage pet food recalls and have the authority to report on recalls and related matters.

5.28 In its 2012 report, the PFCWG noted that a report and tracking system could be accommodated by the ACCC or FSANZ. It explained that such a system could be established by way of legislative amendment and additional funds to enable such agencies to fulfil recall functions for pet food.<sup>38</sup>

5.29 Drawing on arrangements currently in place in relation to human food, many submitters identified FSANZ as the appropriate recall authority. However, FSANZ's General Manager, Mr Peter May, explained that it does not have recall powers with

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34 Ms Teresa Tassone, *Submission 89*, [p. 8]; Ms Rach Dola, *Submission 117 – Attachment 3*, p. 2.

35 Ms Rach Dola, *Submission 117*, p. 4. Also see: Dr Joanne Sillince, *Pets Australia, Committee Hansard*, 28 August 2018, p. 14; Ms Kristina Vesik, *The Cat Protection Society of NSW Inc., Committee Hansard*, 28 August 2018, p. 16.

36 See, for example: Mrs Melanie Christie, *Submission 62*, [p. 4]; Mr Jason Grubisic, *Submission 66*, [p. 1]; Mrs Carol O'Herlihy, *Submission 69*, pp. 3–4.

37 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 2.

38 Standing Council on Primary Industries Pet Food Controls Working Group, *Managing the Safety of Domestically Produced Pet Meat, and Imported and Domestically Produced Pet Food*, January 2012, p. 23.

regard to human food, and that these powers essentially rest with the states and territories. Mr May explained the organisation's role:

FSANZ does not have the capability or capacity to develop standards for products that are not in the human food supply chain. FSANZ is not the food regulator. It has no regulatory powers. FSANZ's functions include, in addition to the power to develop food standards, which are then subject to legislative approval by the Ministerial Forum, a power to coordinate recalls in cooperation with state and territory authorities. FSANZ does not have recall powers itself, and almost all recalls are initiated by the supplier after consultation with a state authority. Very rarely, a recall will rely on the exercise of a state's recall powers. FSANZ does not initiate recalls and has no authority to do so.<sup>39</sup>

5.30 As FSANZ is underpinned by two intergovernmental agreements, any suggested change, such as a change to the definition of food from that for 'human consumption', would require the agreement of all parties to these agreements. Furthermore, New Zealand already has its own legislation to deal with pet food, and does not have to deal with pet food under its food acts. These factors, and a number of others, make the utilisation of FSANZ extremely difficult for the purposes of pet food regulation.

5.31 The Animal Welfare Coalition of WA argued that Product Safety Australia, a website managed by the ACCC, which already has oversight of a range of products, including many related to animals may be better suited to take on the role than FSANZ.<sup>40</sup> Similarly, CHOICE held the view that the existing ACCC Product Safety Australia website would be a suitable place to display pet food recall information.<sup>41</sup>

5.32 It became clear to the committee that under Australian Consumer Law, there are a number of provisions that already apply to the pet food industry, including both manufacturers and suppliers of pet food. Where a manufacturer or supplier has breached one of the prohibitions, they may be subject to a civil penalty under section 224 of the Australian Consumer Law.

5.33 In addition, a number of consumer guarantees already apply to pet food under the law. Furthermore, once a pet food manufacturer initiates a voluntary recall, they are then subject to the normal recall processes as stipulated by the ACCC.<sup>42</sup> In addition, and as previously noted, the ACCC can recommend that the responsible Commonwealth Minister initiate a compulsory recall in order to protect the public from an unsafe product. In this circumstance, the ACCC would direct the manner in which the compulsory recall was to occur and would enforce compliance. Under these

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39 Mr Peter May, Food Standards Australia New Zealand, *Committee Hansard*, 29 August 2018, p. 49.

40 Animal Welfare Coalition WA, *Submission 94*, p. 2.

41 Ms Sarah Agar, CHOICE, *Committee Hansard*, 29 August 2018, p. 8.

42 RSPCA Australia, *Submission 59*, p. 7.

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circumstances, the product safety recall process would involve a series of steps; as detailed in the ACCC Product Safety Recall Guidelines.<sup>43</sup>

5.34 It should be noted that some pet food products that have been subject to voluntary recall have been listed on the Product Safety Australia website. One of them was a Mars Petcare Australia recall of Whiskas adult aged 1–7 years chicken and rabbit flavour dry cat food (1 kg box) which took place in September 2013.<sup>44</sup> The recall notice explained that the reason for the recall was the possibility that a small number of boxes could contain pieces of hard plastic, suspected to be between 5 to 25 mm in size.

5.35 Australian Consumer Law does, therefore, already provide a mechanism for voluntary recall, the prospect of mandatory recall under certain circumstances, as well as offences and civil penalties (which are applicable to suppliers and manufacturers – including pet food processors).

5.36 The suggestion was made therefore, that the current mechanisms should be used without introducing further regulation. To this end, the Animal Welfare Coalition WA suggested that the ACCC's track-record demonstrated an ability to accept consumer reports and complaints, announce product recalls, and oversee a range of products relating to animals. It was argued that by empowering the ACCC to regulate pet food, the Australian Standard could be attached to the existing *Competition and Consumer Act 2010* and subsequently enforced.<sup>45</sup> The committee appreciates that, for reasons including practicality, cost-effectiveness and efficiency, this prospect should be fully explored.

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43 Australian Competition and Consumer Commission, *Consumer product safety recall guidelines*, 11 February 2011, <https://www.productsafety.gov.au/publication/consumer-product-safety-recall-guidelines> (accessed 25 September 2018).

44 Australian Product Recall, 'Whiskas Adult Aged 1-7 Years Chicken & Rabbit Flavour Dry Cat Food', [https://www.productsafety.gov.au/system/files/recall/Recall%20Notice\\_290.pdf](https://www.productsafety.gov.au/system/files/recall/Recall%20Notice_290.pdf) (accessed 25 September 2018).

45 Animal Welfare Coalition WA, *Submission 94*, p. 2.

