



Director
Consumer Safety and Sustainability Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

**Submission by Watchdog Compliance Pty Ltd
Supporting business through improvements to mandatory standards
regulation under the Australian Consumer Law
Consultation Regulation Impact Statement – December 2021 (RIS)**

About Watchdog Compliance

Watchdog Compliance Pty Ltd (Watchdog Compliance) specialises in assisting businesses to comply with their legal obligations in Australia and New Zealand, in the areas of Competition and Consumer law, Modern Slavery, Privacy & Spam.

We specialise in assisting companies to establish, implement and maintain compliance programs with a strong focus on the Australian Consumer Law. A key area of our work includes assisting businesses to ensure products they supply meet the requirements of applicable mandatory standards in force under the ACL (mandatory standards).

We have extensive experience in all areas of compliance including product safety, compliance policies, risk assessments, independent reviews, training (both face to face and online), complaint handling systems, compliance procedures, on-going client support, reviewing products and assistance in dealing with regulators.

Watchdog Compliance has assisted hundreds of companies to meet their requirements following undertakings to regulators and Court Ordered compliance programs. We work with some of the leading companies in Australia and New Zealand across a broad range of industries, including department stores, telecommunications, travel, food and beverages, clothing and textiles, fast moving consumer goods, online comparisons, construction, financial services, health insurance, children's products and more.

David Johnson (Director of Watchdog Compliance) is a member of the ACCC's Product Safety Consultative Committee.

Key Points

Watchdog Compliance welcomes the RIS and the Australian Government's intent to amend the Australian Consumer Law (ACL) and associated legislation to support businesses to innovate, grow and minimise compliance costs, while maintaining protections for Australian consumers.

The policy objectives should also include improving access, and reducing the cost of obtaining access, to mandatory standards that incorporate voluntary standards, for both business and consumers.

Watchdog Compliance supports the implementation of option 2 and option 3 and considers they are both essential to achieving the policy objectives of the RIS. and enhance safety outcomes for consumers. Given the realities of supply chain operations and lead times, certainty and clarity of requirements is essential, with clear transitional and safe harbour provisions a must.

Australian businesses experience:

- increasing and significant compliance costs and barriers to trade from duplicative or additional testing and compliance measures where a product has been manufactured overseas to the requirements of a comparable overseas standard;
- confusion from suppliers to international markets;
- delays in speed to market; and
- compromised ranging choices, including where enhanced safety features could render a product non-compliant under a mandatory standard.

It is essential for the ACL to be amended to easily allow for updated voluntary Australian standards and trusted overseas standards to be recognised, declared and incorporated quickly and efficiently into a mandatory standard.

Issues

Policy Objectives – Access to Standards

Watchdog Compliance supports the policy objectives but considers the policy objectives should include improving access, and reducing the cost of obtaining access, to mandatory standards that are based on voluntary standards.

Currently, if a mandatory standard incorporates a voluntary standard then a business, or a consumer seeking to better understand the characteristics of a product, can only identify the requirements of the mandatory standard by purchasing a copy of that voluntary standard from a supplier such as Standards Australia, SAI Global, etc.

These costs are significant as purchasing a copy of a voluntary standard can cost hundreds of dollars in most cases. If a business purchased of a copy of every voluntary standard that forms part of the current mandatory standards the cost would be in the tens of thousands of dollars. Further, additional costs are incurred when a voluntary standard is updated as the updated voluntary standard also needs to be purchased.

Watchdog Compliance considers that obtaining a copy of a voluntary standard that forms part of a mandatory standard should be free for all businesses, both Australian based business and overseas based businesses. At a minimum, this should apply to such voluntary standards obtained from Standards Australia.

Licence and copyright restrictions also currently apply that prevents or limits the sharing of such voluntary standards. The cost of purchasing a voluntary standard increases proportionally to the number of users or type of licence that is selected when purchasing a voluntary standard from Standards Australia.

Watchdog Compliance submits that the ability to interpret and apply legislative requirements should not be dependent on access to proprietary resources, subject to license and copyright restrictions. Further, Watchdog Compliance submits that the content of standards should be able to be shared freely to ensure they are readily available to all businesses and to consumers seeking to better understand the features and quality of a product.

Policy Objectives – Supply Chain Impacts

A broader policy consideration is the extent to which inconsistent regulatory requirements contribute to unnecessary cost burden across the supply chain, particularly as it relates to offshore manufacturing. Deviations in Australian standards necessarily adds complexity and cost to manufacturers who have built their operations to comply to trusted internationally recognised standards and factory workers, reduces the opportunity for expansion to the Australian market.

Options proposed in the RIS

Option 1: Status quo

Including for the reasons detailed in the RIS, change is required. Option 1 should not be preferred.

Option 2: Amend the ACL to allow the Commonwealth Minister to more easily declare trusted overseas standards

Many products supplied by Australian businesses are manufactured overseas and imported into Australia either directly or through third party suppliers. Often, these products are initially designed and tested to meet the requirements of an overseas standard for a major market (e.g. the United States, European Union, China, etc). However, the Australian business supplying the products bears the responsibility, and legal obligation, for ensuring every product its supplies that is subject to a mandatory standard meets the requirements of that mandatory standard. As the majority of mandatory standards do not recognise overseas standards, the Australian business is required to undertake additional compliance checks, testing and relabelling to ensure compliance with a mandatory standard despite the product meeting the requirements of an overseas standard and demonstrated as being safe in comparable overseas markets.

Businesses experience significant additional compliance costs as a result, which includes:

- purchasing copies of standards;
- identifying the differences between a mandatory standard and an overseas standard that has been referenced during the manufacture of the product (including with the assistance of specialist expert or legal advice);
- arranging for additional testing to be undertaken or checking additional test reports;
- redesign or modifications to a product that may be required for the product to meet the requirements of a mandatory standard;
- relabelling of products, which can be minor or significant but still required for most products to comply with a mandatory standard regardless of whether there are only minor technical differences to the overseas standard.

These additional compliance costs can lead to an increase in the cost of products for consumers and slow the speed, or simply prevent the supply, of products to the Australian market.

Certainty and clarity of requirements is essential. Watchdog Compliance submits that it is essential for the ACL to be amended to allow for trusted overseas standards to be recognised, declared and incorporated quickly and efficiently into a mandatory standard. The ACL also needs to efficiently allow mandatory standards to keep pace with changes or updates to such overseas standards.

In terms of the two alternatives proposed under option 2 of the RIS, Watchdog Compliance submits that both alternatives should be implemented. This is because there are limitations to each, which could be minimised and enhance certainty and clarity by implementing both.

Alternative 1 (prescribing a list of trusted overseas standards organisations in regulations) would provide certainty as to what organisations may be considered relevant for the Australian context, allowing both Australian business and their suppliers to better identify opportunities to introduce products from the international market to Australian consumers. for standardisation in manufacturing processes. To support certainty and clarity, Watchdog Compliance submits the 'opt-out' approach described in the RIS should be the preferred approach as this will allow for overseas standards to be recognised, declared and incorporated quickly and efficiently into a mandatory standard and allow mandatory standards to keep pace with changes or updates to such overseas standards. However, there must be certainty as to what standards from those organisations are acceptable for the purposes of meeting the requirements of a mandatory standard. If there is ambiguity or room for doubt as to whether compliance to a particular standard will satisfy a mandatory standard, this will lead to confusion and uncertainty and undermine the intent of the approach.

Further if, following a review, a voluntary standard was found to be 'unsafe for Australia', it would be important to allow a sufficient transition period for businesses to move to another standard. Watchdog Compliance submits that a minimum of 18 months should be allowed for such a transition.

While alternative 2 (using a principles-based approach for declaring overseas standards) would also provide certainty as to what overseas standards are acceptable

for the purposes of a mandatory standard and additional flexibility to business, it would appear to have a downside in terms of the time it would take to declare a standard.

Further issues to consider with option 2 include:

- ensuring the most recent version of an overseas standard can be adopted as soon as it comes into effect; and
- how to identify the parts of a standard that apply for the purposes of a mandatory standard if the whole of the overseas standard is not required for the mandatory standard

Option 3: Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards

Option 3 should be implemented in addition to Option 2 as the combination of both Option provides enhanced choice, certainty and the flexibility required to deliver enhanced safety outcomes for consumers. Of the two alternatives presented under Option 2, alternative 2 is preferred as it would provide businesses with the greatest level of certainty without compromising a business's ability to enhance potential safety outcomes via adoption of an updated standard.

The RIS recognises the detriment to business and consumers when a voluntary standard is updated leaving the mandatory standard based on a superseded voluntary standard. Some examples are discussed in the RIS. Another such example includes the mandatory standard for prams and strollers. This mandatory standard is based on AS/NZS 2088:2000, which was updated in 2009 and most recently in 2013. If only the current voluntary standard is referenced, then prams or strollers produced in 2009 will not comply with the mandatory standard as different wording is specified in the updates to AS/NZS 2088:2000 for one of the required warnings.

Businesses should be *allowed* to comply with the latest voluntary standard as soon as it comes into effect but given the reality of supply chain lead times and potential changes to manufacturing requirements, *should not be automatically required* to do so. If there was an automatic requirement to comply with the latest version of a voluntary standard (even allowing for a transition period) this would place a large burden on businesses to implement adequate measures to ensure they are made aware of such updates when they occur and be in a position to quickly work with suppliers to make the necessary manufacturing, testing and labelling changes and to sell through existing stock (noting that such existing stock would comply with the mandatory standard).

Watchdog Compliance submits that there should not be a *requirement* to comply with the latest voluntary standard until such time as it is reviewed and updated as per the existing process administered by the ACCC. Adequate notification of updates by the ACCC will also be essential (such as ACCC email alerts to subscribers of the product safety Australia website and publishing updates on the product safety Australia website).

There also needs to be a sufficient transition period to enable businesses to have adequate time to make any changes required to comply with the latest version

compared to the existing mandatory standard at that time. A transition period should be at least 18 months as shorter transition periods may not allow sufficient time to make required changes or sell through existing stock (noting that such existing stock would have complied with current mandatory standards). This is particularly the case in the current climate where global supply chain issues have substantially increased lead times for manufacturing and lead times for some products are 12-18 months.

Also, alternative 1 has the downside of putting businesses in the difficult position of having to wait to see if the ACCC determines to not accept an update. If a business has moved to the updated standard then it will then have to 'undo' all the work that was done to move to the updated standard, leading to even higher compliance costs. The RIS comments that a *'suitable timeframe could be 180 days, during which time the ACCC could also undertake procedural steps such as notification of affected stakeholders that an update will occur'*. 180 days would not be enough time to 'undo' the work to move to the updated standard and that it would be concerned that it may not become aware of any such notification in a timely manner.

Further issues to consider include identifying updated standards. Clear criteria will be needed to ensure business know what updates can be applied. For example, if the name of a standard changes but the number of the standard is the same (or vice versa) will that be an update that can be applied. For example, *AS/NZS 2063-2008 Bicycle helmets* was superseded by *AS/NZS 2063:2020 Helmets for use on bicycles and wheeled recreational devices*.

Thank you for the opportunity to make this submission.

David Johnson BEc, LLB
Director
Watchdog Compliance Pty Ltd