

19 January 2022

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

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Dear Sir/Madam

Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law

The Australian Communications and Media Authority (ACMA) welcomes the opportunity to provide a submission to the Treasury's consultation regulation impact statement on improvements to mandatory standards regulation under the Australian Consumer Law (ACL).

ACMA is the Australian Government statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications. ACMA's role includes establishing and administering key product safeguards which involves making standards and determinations, registering industry codes and addressing issues of non-compliance.

ACMA notes that many of the issues raised in the consultation paper are issues confronted by sector specific regulators and encourages the Treasury to consider the continuing role of sector specific regulation in its considerations. In particular, there is a continuing role for sector specific product safety regulation and it is desirable that sector specific and economy wide regulation is not duplicative or does not otherwise impose unnecessary burdens on industry participants.

In our comments that follow we outline the elements of communications sector standards making arrangements that are relevant to issues raised in the consultation paper

ACMA makes a significant number of legislative instruments under the *Radiocommunications Act 1992* and the *Telecommunications Act 1997* that reference or adopt an industry standard for the purposes of health and safety, network integrity and interoperability. Under the *Broadcasting Services Act 1992* ACMA may adopt or make mandatory standards for the purpose of content safeguards.

ACMA has adopted technical standards published by Standards Australia, Communications Alliance, the International Electrotechnical Commission, the European Telecommunications Standards Institute, the European Committee for

Electrotechnical Standardization and the Australian Radiation Protection and Nuclear Safety Agency. ACMA has developed its own mandatory standard, the Broadcasting (Parental Lock) Technical Standard 2020, under the *Broadcasting Services Act 1992*, which provides specific content safeguards.

Given ACMA's experience in incorporating, and making, mandatory standards in sector-specific regulatory frameworks, it provides the following information which may assist the Treasury in its consideration of mandatory standards regulation under the ACL.

(a) Increased use of overseas standards

In general, ACMA supports streamlining requirements to allow trusted overseas standards to be recognised and incorporated as mandatory standards in Australia.

ACMA's approach is to permit compliance to be demonstrated through adherence to international standards as an alternative to domestic standards wherever possible, consistent with Australia's obligations under the World Trade Organisation's Technical Barriers to Trade Agreement.

Commonly, communication devices are manufactured overseas in larger economies for a world market. International standards reflect the globalisation of products and should be an available option for importers to Australia, except in the rare event that they do not adequately address Australian circumstances. This approach minimises duplication of costs and delays in time to market.

As highlighted in the consultation RIS, the European Technical Standards Institute notes the emerging need internationally to develop new standards defining security and safety measures for interconnected smart devices. The ACMA view is that an increased number of overseas standards will need to be adopted in the future under the Australian telecommunications, radiocommunications and broadcasting regulatory frameworks.

ACMA notes that it continues to also adopt domestic standards developed by local standards organisations as an alternative to international standards. This provides optionality for manufacturers and importers to comply with the ACMA's regulatory arrangements, by using the performance measures or testing methodologies in Australian standards if that is their preference. Domestic industry standards may also provide Australian specific regulation when required.

(b) Automatic updates of mandatory standards

In general, ACMA supports the use of automatic updates for mandatory standards to reflect industry changes and promote innovation. However, it may not be appropriate in limited situations where updates negatively affect safety or policy objectives or the regulator's ability to administer compliance and enforcement outcomes. In these limited situations, the Government or the relevant agency may need to review any updates or changes before they become mandatory, as discussed in the consultation RIS.

ACMA's general approach to incorporating an industry standard under the *Telecommunications Act* and *Radiocommunications Act* is to incorporate the industry standard that is in force at the time the relevant ACMA legislative instrument is made, and to incorporate any amendments or a single replacement of the industry standard. A second replacement will be subject to a thorough review process to ensure that it achieves its policy and regulatory objectives.

ACMA participates as an observer in various Standards Committees and working groups for standards development and monitors automatic updates to mandatory standards. This ensures that amendments to mandatory standards are appropriate to achieve the applicable safety or policy objectives of the relevant legislative instrument, and that ACMA can continue to effectively administer compliance and enforcement outcomes.

This approach provides flexibility for minor or machinery updates, removing unnecessary and obsolete requirements and allows manufacturers to immediately achieve operational efficiencies, utilise new technology and improved processes in accordance with the updated standards. ACMA's legislative instruments generally provide a transition period for manufacturers to continue using the previous version of the standard for up to two years, to reasonably adapt production and supply processes and replace stock on hand.

If you would like further information, or to clarify any aspect of this submission, please do not hesitate to contact John Hin, Assistant Manager, Infrastructure and Equipment Safeguards Section on _____ or email _____

Yours sincerely

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