

1 February, 2022

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

By email

Dear Director,

Submission on the Consultation Regulation Impact Statement for Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law

Amazon Commercial Services Pty Ltd (Amazon Australia) welcomes the opportunity to provide a response to the Consultation regulation impact statement (RIS) on potential improvements to mandatory standards regulation in Australia.

Amazon Australia is supportive of regulatory changes that would recognise trusted overseas product safety standards as suitable standards to which products being sold in Australia may comply. Amazon Australia is also supportive of regulatory changes that would permit the sale of consumer products that meet up to date versions of Australian mandatory standards, but not older out of date mandatory versions. We believe the proposed changes will benefit both consumers and industry.

Our response provides an overview of Amazon and our operations in Australia, a description of our compliance systems and processes, as well as data and anecdotes from selling partners¹ who list products on our store. We have detailed our preferred approach from the three options presented in the RIS. In general, we are supportive of efforts to make improvements to mandatory standards regulation under the Australian Consumer Law.

About Amazon Australia

Amazon Australia launched Amazon.com.au store in December 2017 and now offers Australian customers over 125 million items across 31 categories, from consumer electronics to fashion to Amazon devices such as Alexa and Kindle. In June 2018, we launched Amazon

¹ "Selling Partners" encompass both retail vendors and third-party sellers who offer products on the Amazon.com.au site



Prime, our flagship membership program, including free domestic shipping in as fast as two days in metropolitan areas, plus entertainment benefits including Amazon Prime Video.

Since 2011, Amazon has invested over A\$5.3 billion in Australia, and in the last year, Amazon invested A\$1.9 billion, including infrastructure and compensation to employees. Across Amazon Australia and Amazon Web Services, we employ more than 4,000 people locally in Australia, and create 6,000 jobs indirectly in areas such as construction, logistics, and professional services. More than 1,100 people are directly employed by our Australian retail business in a variety of roles, from highly skilled and specialist positions, to entry level jobs. We now have Fulfilment Centres in Brisbane, Sydney, Melbourne and Perth, and our first local robotics Fulfilment Centre in Kemps Creek, Western Sydney, recently opened in early 2022.

More than 11,000 Australian businesses are selling their products on Amazon.com.au and our stores across the globe, and we continue to support small and innovative Australian businesses through our Launchpad and Global Selling programs. Globally, almost 60 per cent of Amazon's unit sales come from third-party selection through an Amazon marketplace. Australian businesses can ship products they sell to customers directly or use the Fulfilment by Amazon (FBA) service to ship their products to customers across Australia. FBA saves valuable time and money for businesses as they do not need to individually purchase shipping materials, pack orders, store products, and make multiple trips to the post office.

Amazon and its commitment to product safety

Customer safety is a top priority for Amazon. We aim to ensure that customers can be confident in finding a comprehensive selection of relevant products without having to worry about product safety, quality, or reliability. We also aim to ensure that each selling partner can offer the appropriate products for sale, with real-time safety approval to sell where required.

One of our top objectives is to block suspicious, unsafe, or non-compliant products from being listed on our store so customers never see them. We continuously scan data points related to selling partners, products, brands, and offers to detect activity that indicates products offered in our store might be a concern. When a concern arises, we move quickly to protect customers. For instance, we may remove the product from the website, reach out to selling partners and manufacturers for additional information, place relevant warnings on the product detail page, or take other actions depending on the situation. Where appropriate we also report product safety concerns to applicable government agencies in order to bolster their safety data and help facilitate any necessary recalls.

Amazon also supports efforts to continuously improve product safety measures and



frameworks. We want these measures and frameworks to be ambitious, relevant and appropriate to tackle the changing demands of 21st century retail. We were particularly pleased to be a founding signatory of the first Australian Product Safety Pledge (the Pledge). The commitments we have made under the Pledge reflect the long-standing and constantly evolving protections we provide to our customers when they shop on our store.

In 2020, we invested more than USD\$700M and employed more than 10,000 people globally to protect our store and our customers and built robust programs to help ensure products offered are safe and compliant.

Compliance at Amazon

To have offers on Amazon.com.au, selling partners must comply with all applicable laws and regulations in Australia, as well as any Amazon policies applicable to those products and product listings. For certain product categories, Amazon reviews compliance documentation from selling partners to demonstrate that their products meet relevant Australian Mandatory standards.

For example, Amazon has specific policies related to the sale of toys in Australia. On Amazon.com.au, all products or materials designed or clearly intended for use in play by children of 14 years of age and under are considered “children’s toys”. We require toy selling partners to submit the required safety documentation from an accredited testing laboratory or organisation. Selling partners then upload the safety documentation directly into our system, which is then reviewed by Amazon to confirm compliance. Documentation from an accredited testing laboratory or organisation is required to confirm that the product was tested and found to comply with applicable standards.

Amazon provides applicable testing requirements as a guide for selling partners. Providing this information is particularly important for those selling partners who are offering their products in Australia for the first time, and might not be aware of the specific Australian Mandatory standards that apply to the product(s) they are attempting to list.

Impact of the current system on business

Based on our first-hand interactions with selling partners on local regulatory and accreditation requirements, compliance requirements are a key consideration in deciding whether to sell outside of North America (the United States and Canada), as many businesses focus on sales in those countries through Amazon.com and Amazon.com.ca. A key blocker for selling partners selling into Australia, as well as other countries, is the need to complete additional testing specifically for Australia, even where products have been confirmed to meet similar (and sometimes identical) required safety standards in other countries.



From a survey Amazon conducted with a selection of selling partners in 2021:

- Only 33% of responders are selling in multiple marketplaces, where the majority of them are limiting themselves to the United States and Canada only.
- 67% of responders are scared of how expensive it is [selling outside of the United States & Canada] and are not sure how to meet foreign regulations.
- When asked about the cons to selling outside of the United States or Canada, a business cited “burdensome regulations in the European Union and new children safety testing requirements per each market”.

While these comments are not unique to Australian regulations and systems, businesses sometimes have challenges complying with local labelling requirements mandated in the Australian Mandatory Standards (for example, where labelling conforms to another standard). Improvements to the system, for example allowing labelling standards that are consistent with the trusted standards would reduce labelling burden for manufacturers.

Amazon Australia also monitors and tracks product listing rejections for those products where selling partners are required to submit compliance documentation. In a 16 week period over 2021, our analysis shows that compliance submissions for 1,294 toy listings were rejected due to incomplete testing documentation being submitted into our system. Of these rejections, 463 were due to selling partners submitting documents from non-Australian jurisdictions which failed to satisfy Australian Mandatory Standard requirements. This represents 36% of total rejections.

Furthermore, Amazon has identified numerous examples of inconsistencies between more recent versions of relevant Australian voluntary standards and the versions mandated in the Australian Consumer Law (ACL) such as the bunk beds example set out in the RIS. Such cases cause friction for selling partners who may have to obtain additional product testing to show they comply with the older versions of standards mandated in the ACL. Standard making bodies update these standards in the interests of protecting consumer safety by keeping up to date with changes in product design and production practices and addressing emerging safety issues with products. This means that products conforming with older versions of these standards mandated in the ACL, are likely to be less safe than products complying with the most up to date voluntary versions of these standards.

Response to regulatory and consultation options

Amazon Australia is supportive of regulatory changes that would recognise trusted overseas product safety standards and accepting current versions of Australian standards under mandatory standards regulations. We believe the proposed changes will benefit both consumers and industry.

As noted in the RIS, there are barriers to compliance for global businesses and manufacturers. Globally, consumer goods are often first tested against the safety standards of major markets (e.g. European Union or North America). Businesses choosing to import goods to Australia may then need to retest or relabel products for sale in Australia, even where they already comply with a comparable safety standard with minor differences from the Australian Mandatory Standard. This leads to additional compliance costs for manufacturers and importers.

This results in a number of negative outcomes for Australian consumers. Where Australian specific standards are required, Australian customers experience reduced product selection and higher prices due to Australian specific compliance and testing costs. If trusted overseas standards were to be accepted in place of Australian standards, as proposed in the RIS, overseas businesses would experience reduced barriers to selling products in Australia. This would result in increasing the speed at which safe new and innovative products are available to Australian consumers. It could also reduce the cost of those items being sold to Australian consumers as the need for additional testing, certifications, packaging and warning labels could be avoided.

Further, there is no sound policy reason to prohibit sellers from complying with the most up to date version of the relevant safety standard.

Preferred options

To improve the safety of products on the Australian market, and to reduce the barriers to businesses selling products in Australia, we recommend the government adopt a combination of Options 2 and 3 presented in the RIS. We believe a combination of Options 2 and 3 would be most beneficial for businesses and consumers because they address challenges of speed, while leveraging the expertise and judgement of standards making bodies.

Option 2, Alternative 1:

Option 2 presents two alternatives to allow the Commonwealth Minister to declare trusted overseas standards as mandatory standards: 1) prescribing a list of certain overseas standards making organisations in the ACL regulations, and 2) using a principles-based approach for declaring overseas standards.

Alternative 1 presents 14 potential suitable standards making bodies. Once a list of trusted overseas standards organisations is set, a mechanism is needed to select overseas standards that will apply in Australia; either: a) an 'opt-in' approach where specific standards from trusted overseas standards associations are incorporated under the ACL following a review

process or, b) 'opt-out' approach that incorporates relevant standards from trusted overseas standards associations, unless it is demonstrated to be unsafe for Australia. Under this approach when a specific product standard is considered potentially unsafe, a review would be undertaken. Following the review, Australia could opt-out of the specific standard if the expected costs outweighed the benefits.

Option 2, Alternative 1 would also give businesses the best clarity and predictability of which standards are required for their products. By allowing relevant overseas standards to be accepted in Australia, business will also experience reduced cost and time associated with executing multiple similar test standards needed to commercialise their products in multiple countries. This would also allow business to pass these savings on to Australian consumers. It is expected that Australian consumers would see increase product selection as more international businesses may choose to sell their products in Australia and reduced wait time for these products to be made available locally.

Implementing any of the outlined improvement Options quickly will have the greatest impact to businesses and consumers. With regards to Option 2, we would recommend the Minister declare key trusted overseas standards as a priority, in order to provide maximum benefit to consumers and business. We would recommend that four key standards are declared in the first instance: ASTM, EN, ISO, and IEC. Declaring these standards as a priority will give businesses certainty and would have significant impact in a short time frame.

and

Option 3

Option 3 considers appropriate amendments to the ACL to ensure businesses are not penalised or restricted from manufacturing or supplying products that comply with the most up-to-date versions of existing voluntary Australian and trusted overseas standards where the updates have not yet been incorporated into a mandatory standard. This option focuses on legislative amendments as a means of achieving the Australian Government's policy objectives consistent with the announcement on 4 June 2021. However other alternatives may also be considered, including non-regulatory alternatives. Two alternative approaches are presented: a) permitting voluntary and overseas standards that are referenced in, or declared as, mandatory standards to apply as they exist from time-to-time, and b) providing a safe harbour provision for businesses that want to comply with the most up-to-date versions of voluntary Australian and overseas standards not yet incorporated into a mandatory standard.

Either alternative within Option 3 would be suitable, although Alternative 2, the safe-harbour proposal, would give business more scope to make judgement calls on compliance with up-

to-date standards. This is particularly true where an international business has global compliance teams who are both familiar with voluntary standards improvements and are in frequent contact with testing laboratories, and therefore in a position to make these judgement calls.

Case Studies

The examples below illustrate how the proposed improvements will reduce the burden of doing business while also improving consumer safety.

Bunk bed example - Selling partners who supply bunk beds for sale on amazon.com.au are required to submit documents which demonstrate compliance with Consumer Protection Notice No. 1 of 2003. Division 2 of this notice requires that bunk beds meet AS/NZS 4220:1994, Bunk beds, so selling partners are asked to supply testing to this standard. AS/NZS 4220:1994 has, however, been superseded and updated twice since this time (2003, 2010). A 2016 ACCC Consultation² assessed the changes between the 1994 and 2010 versions of the standards, identifying seven parameters in which the updated Voluntary Standard (AS/NZS 4220:2010) have safety improvement over the Australian Mandatory Standard (AS/NZS 4220:1994). If Option 3 is adopted, this will alleviate the need for selling partners to undertake retesting/certification at additional expense in order to comply with a standard which does not reflect modern developments in these types of products.

Toys for under 36 months example – Similar to the bunk bed example, Consumer Protection Notice No.14 of 2003, as amended by Consumer Protection Notice No.1 of 2005, references a superseded voluntary standard (AS/NZS ISO 8124.1:2002). However, the standard has been superseded multiple times, with the latest version published in 2019. As ISO standard (ISO 8124.1:2019) is essentially an adoption both the European standard (EN 71-1) and the US standard (ASTM F463), the adoption of Option 2 would create an opportunity for selling partners who have already tested products to these international standards to demonstrate compliance without retesting. This would serve to benefit business, and ultimately consumers, in the form of reduced time and cost to test against multiple comparable testing standards while maintaining or improving the level of safety of these products.

Yours faithfully,

Michael Cooley
Director of Public Policy
Amazon Australia

² https://consultation.accc.gov.au/product-safety/bunkbeds/supporting_documents/ACCC%20Review%20of%20the%20mandatory%20standard%20for%20bunk%20beds%20%20Draft%20regulation%20impact%20statement.pdf