

BCA

Business Council of Australia

Improvements to mandatory standards regulation submission

January 2022

Overview

The BCA welcomes the opportunity to provide a submission to the consultation regulation impact statement on improvements to mandatory standards regulation under the Australian Consumer Law (ACL). The proposed changes will make it easier to recognise updated trusted overseas product standards in Australia.

Australia must effectively engage with other countries across our region and the rest of the world as the strength of our economy is underpinned by our openness. Openness to trade and investment helps drive productivity growth and improves living standards by increasing access to markets, enhancing product market competition and provides an important channel for the diffusion of technology across countries.

Australia is 1.7 per cent of the world economy and our opportunities lie in accessing the other 98.3 per cent. This means most goods are manufactured and tested in line with product safety standards in major markets such as North America and the European Union. BCA member companies noted feedback from suppliers and manufacturers that domestic regulations are a key consideration in deciding whether to sell outside of North America and the European Union, where most businesses focus their sales.

Duplicative requirements in Australia can add unnecessary compliance costs for business, for example by requiring retesting of products or relabelling to demonstrate compliance with Australian standards. This can result in higher prices for consumers, slow or reduced access to products – all while, as the regulation impact statement notes, ‘arguably having no impact on product safety’.

Australia’s product safety framework is critically important, but the current process is slow, cumbersome, and results in unnecessary costs and complexity. As the consultation paper notes, it can take a minimum 18 months for comparable overseas standards to be recognised in Australia. One BCA member identified several examples of tensions between more recent versions and mandated older versions of Australian standards. Where documentation for the most up-to-date version of an Australian standard is not sufficient to meet the letter of the Australian regulations for mandatory standards, this can cause friction for vendors who may have to obtain additional product testing to prove they comply with the older mandatory standard required for Australia. This can result in perverse outcomes where products complying with the up-to-date standard are most likely safer than a product that only complies with an older, yet mandatory, version of the standard.

The urgency for reform has never been more acute as global supply chain disruptions are continuing due to pandemic-induced changes, pushing up the cost of traded goods, adding to inflationary pressures and driving businesses and consumers to search for alternative products. There are many factors influencing the effectiveness of global supply chains, and a well-designed product safety regulatory framework is of critical importance. This means the framework must be fit-for-purpose and not unnecessarily create barriers for the import or supply of the latest products – particularly where they have already been demonstrated as safe.

Key recommendations

1. The BCA supports both the policy intent of the consultation regulation impact statement to improve the product safety framework, as well as the policy objectives outlined.
2. **Option 3** would deliver the greatest net benefits and make it easier to comply with product safety standards, while not posing any additional safety risks to consumers. Within Option 3, Alternative 2 (the safe harbour provision) is preferable.

Additional information – policy options

Option 1

The current product safety framework imposes unnecessary costs and compliance burdens, particularly as outlined in the consultation regulation impact statement. Thus, continuing with the status quo is not an option.

Option 2

Option 2 proposes to amend the ACL to allow the Commonwealth Minister to more easily declare trusted overseas standards as local mandatory standards. Many suppliers and manufacturers rely on voluntary standards as a guide to their product liability obligations. However, using a voluntary standard for strict compliance can have significant consequences for even a minor technical breach.

This option may also be slow to implement and prevent businesses from quickly adopting overseas standards. This is because it may take time to update the current list of accepted standards given the need for the Minister to begin by declaring all potential trusted overseas standards.

Option 3 is the preferred approach, but if Option 2 is pursued then the principles-based approach of Alternative 2 is preferred on the proviso that the standard satisfies certain criteria. Of the criteria proposed for Alternative 2, it is key that:

- the standard is widely used and accepted by manufacturers of the relevant kind of consumer goods
- there is no evidence that the standard is not appropriate to be applied in Australia
- the standard offers at least a comparable level of safety to any applicable Australian standard (assuming one exists).

Option 3

Option 3 proposes to amend the ACL to more easily allow businesses to comply with the latest version of voluntary Australian and overseas standards. It is the preferred approach. This option would not pose any additional safety risk to consumers, and give manufacturers and suppliers some flexibility in complying with the most current versions of the standards already made or declared by the ACCC.

Within Option 3, the safe harbour approach of Alternative 2 is preferred. This approach would likely give businesses more scope and greater clarity around identifying compliance with up-to-date standards. This is particularly the case where a business is familiar with global standard improvements and in frequent contact with testing laboratories.

Alternative 1 appears it will likely require more substantive changes to the ACL compared with Alternative 2 and may lead to difficulties in interpretation and compliance. For example, this may be the case where a local mandatory standard has proposed changes to a voluntary or overseas standard referred to in the mandatory standard, which subsequently changes. Suppliers would need to be given adequate notice of mandatory changes.

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