
Improvements to mandatory standards under the Australian Consumer Law

3 Feb 2022.

My experience with standards: I have been a committee and working group member on Australian committees for Prams & Strollers, Folding cots and Child Restraints. I have also had involvement with Baby Walkers, High Chairs, Baby Slings, Baby Baths, etc.

I was on an ISO committee during the development of what is now referred to as the ISOFIX system of securing a child restraint in a vehicle.

Overview: clearly my experience is with the nursery industry (stuff for babies and kids). The Australian standards in these areas are mostly ahead of their offshore equivalents.

The child restraint standard for example – there are more kids alive and well in Australia per any metric you like than the equivalent in the USA or UK/Europe. When freeing up the introduction of offshore standards into Australia – where an Australian equivalent exists - care needs to be taken that the level of safety offered is not reduced.

There is an additional factor that concerns those of us working with the child restraint standard (and may apply to some other mandatory standards as well). For most products the standard does most of the work. How the product is used rarely or not at all affects the degree of safety offered, e.g. sunglasses. But a child restraint is only as good as its installation and it is well documented that incorrect installation results in the death of several children each year in Australia. Much emphasis is placed on clearly conveying installation information to the consumer. The two other major child restraint standards in the world (USA - FMVSS 213 and UK/Europe – R44/R129) have different installation requirements. Having all three in one country causes installation confusion leading to incorrect installation, leading to occasional injury or death in a crash.

New Zealand has this situation, and the advice from there is do not allow multiple Standards.

As I read the proposals there is occasional mention of “reviews”, “allowing the Commonwealth Minister to consider any evidence etc”, “retaining safeguards would protect against the lowering of safety standards for consumers in those circumstances in which Australia imposes more stringent safety requirements on certain products due to unique Australian conditions” (which then goes on to water that intent down), and so on.

My point is that whatever the final process, there must be a clear and transparent review process, with industry involvement, before an overseas standards is accepted. The worst option is a situation where e.g. coming up to an election, a minister without constraint allows child restraints complying to an overseas standard into Australia because “it will give greater choice and reduce the cost”.

Q1	Agree.	Examples: Prams and Strollers – the mandatory standard is based on a (year) 2000 voluntary Australian standard. The voluntary standard for some years has been a 2008 version, about now the 2022 version is being concluded. Child Restraints – following conclusion of the last version of the voluntary standard in 2012 it took about a year for the ACCC to declare it mandatory. As we are all obliged to update to the newest version this delay cost time and money.
Q2		
Q3		Prams and Strollers – there are slightly different label requirements resulting in a stroller having two similar warning labels, one to meet the mandatory standard, one to meet the voluntary standard resulting in potential confusion and a loss of safety. As the countries major retailer in this category requires compliance with the voluntary standard for importers it's like having two mandatory standards.
Q4	Agree	
Q5	Agree	
Q6		Not that I am aware of.
Q7		The description suggests that while retaining the status quo "The ACCC will continue to periodically review and update existing mandatory standards to capture updates to any voluntary Australian and overseas standards referenced therein, and incorporate and reference any additional trusted overseas standards as appropriate." Currently this process is far too slow and it's unclear if Option 1 involves speeding the ACCC process up or if it's more of the same.
Q8		No, it's too slow and inflexible.
Q9		Yes, see Q3 above. An additional example – I assisted a client who had inadvertently imported baby baths without the warning triangle required by the mandatory AU std (but not by the US standard). Considerable money was spent relabeling the products.
Q10 a		Point taken re the problem in having a trusted list of standards making bodies, plus which a trusted body might produce a poor standard. A principle based approach should be better, as long as there is a robust review process before allowing a standard into Australia.
Q10 b		Not that I am aware of
Q11		Outside my area of expertise.
Q12		I would have trouble determining a trusted standards making body.
Q13		Outside my area of expertise.
Q14		Outside my area of expertise.
Q15		Outside my area of expertise.
Q16a		I cannot think of any examples but the safe harbor option may be a bit too open to allowing (either intentionally or otherwise) a lower level of standard. Alternative 1 preferred.
Q16b		Not that I am aware of
Q17		May well depend on the product but a 12 month overlap is desirable. Some products move slowly through distribution and retail and no one wants to have to dump older stock that does not meet as new requirement.
Q18		Obviously someone needs to review them, possibly an internal ACCC review will

		suffice.
Q19		Not as long as there is a strong review process.
Q20		Depends on who is doing the reviewing. Any change other than e.g. fixing an editorial error or similar minor drafting error. Not that I am aware of.
Q21		Assuming ACCC continues to run it, set min timeframes for any review to be concluded. It's worth noting that in the US when a voluntary standard which is also a mandatory standard is updated, by law the mandatory must be updated in 90 days.
Q22		This question seems to be referring to two not quite similar things as the proposed amendments to the ACL seem to be much broader. Streamlining the current process is unlikely to be as beneficial as amending the ACL.
Q23		Not that I am aware of
Q24		I'd have to reread the document in greater detail but options 2 and 3 are not mutually exclusive, the final outcome will presumably contain parts of both.
Q25		Not that I am aware of.

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