

# Criteria for Accepting International Standards and Risk Assessments for Product Safety

## ACCC Consultation Paper

*11 May 2015*

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# 1. Introduction

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (Cth) and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure for the benefit of all Australians. The *Competition and Consumer Act 2010* includes the Australian Consumer Law, which sets out a range of provisions that assist Government to protect consumers from unsafe goods.

The ACCC is the national product safety regulator. It is responsible for a range of product safety functions in Australia including conducting risk assessments and researching appropriate measures to protect consumers from unsafe goods. The ACCC also makes recommendations to the Government on the development of suitable regulation including mandatory safety and information standards and bans.

Mandatory standards and bans are only considered after an assessment has determined that regulation is needed. The development and review of regulation is done according to best regulatory practice detailed in [The Australian Government Guide to Regulation](#), including a thorough and transparent examination of non-regulatory options and estimated costs and benefits.

The Government is seeking to align regulatory processes as much as possible to eliminate or minimise regulatory compliance burden. The Government is adopting the principle that if a system, service or product has been approved under a trusted international standard or risk assessment, then Australian regulators should not impose any additional requirements, unless there is a good and demonstrable reason to do so. Accepting trusted international standards and risk assessments can reduce duplication of regulatory approvals, reduce delays, increase competition and improve business competitiveness in Australia.

The ACCC will apply the Government's policy and this paper details the criteria the ACCC will use when determining and accepting trusted international standards and risk assessments for use when product safety standards and bans are being considered or being routinely reviewed. The implications of accepting international standards and risk assessments on business, including the costs and benefits, will be determined when considering regulation.

In this document, the term 'international standards' means a mandatory or voluntary product safety standard used or developed in a country other than Australia. It includes:

- voluntary standards developed by international bodies like the International Organization for Standardization (ISO) and the European Committee for Standardization (CEN)
- national voluntary standards published by standards organisations from other countries (e.g. United States organisations such as the American Society for Testing and Materials, the British Standards Institute, and equivalent organisations in Japan, Canada, New Zealand or elsewhere)
- mandatory standards or regulations in force in international jurisdictions.

## 2. Consultation

The ACCC is seeking your input regarding the criteria and processes it will use to determine whether international standards and risk assessments are suitable for use in Australia. The ACCC will consider submissions on this document prior to publishing a final document.

You are invited to make submissions on the draft criteria and to discuss other issues the ACCC might consider when engaging with trusted international standards and risk assessments.

You should consider and address the following questions in your submissions:

- Are the criteria sufficient for the ACCC to appropriately consider accepting international standards and risk assessments in Australia?
- Are there other factors the ACCC should take into consideration?

Consultation is open from 11 May to 5 June. Our preferred method of receiving submissions is via the consultation hub:

<https://consultation.accc.gov.au/product-safety/internationalstandards>.

Alternatively, submissions can be emailed to [productsafety.regulation@accc.gov.au](mailto:productsafety.regulation@accc.gov.au)

Or mailed to

Director  
Policy and Engagement  
Product Safety Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Questions regarding this process can be directed to Simon Bell by phone 02 6243 1232 or email [productsafety.regulation@accc.gov.au](mailto:productsafety.regulation@accc.gov.au).

### 3. Background

The Australian Government published the ‘*Industry Innovation and Competitiveness Agenda: An Action Plan for a Stronger Australia*’ on 14 October 2014. The Agenda included a number of proposals including the following:<sup>1</sup>

*To reduce duplicative domestic regulation, the Government will adopt the principle that if a system, service or product has been approved under a trusted international standard or risk assessment, then Australian regulators should not impose any additional requirements, unless there is a good and demonstrable reason to do so. This will reduce costs and delays for businesses, increase the supply of products into the Australian market and allow regulatory authorities to focus on higher priorities.*

The proposal requires a review of Commonwealth Government processes in each ministerial portfolio to objectively assess whether unique Australian standards or risk assessments are needed. In doing so, agencies are required to conduct stakeholder consultation to develop criteria for accepting or adopting trusted international standards and risk assessments.

The criteria will be used when new regulation is being considered or when existing regulation is being reviewed. Any proposed new regulation or changes to existing regulation will still be done through the usual policy approval process, including assessment through a Regulation Impact Statement if required.

#### 3.1. Australian Consumer Law

The Australian Consumer Law empowers the Commonwealth Minister to make or declare mandatory safety or information standards and bans. In making these decisions, the Minister considers the advice of the ACCC, including advice about accepting or adopting international standards and risk assessments. An example of this is the mandatory safety standard for baby walkers that was made under the Australian Consumer Law and specified requirements set out in the American Society for Testing and Materials (ASTM) standard for infant walkers.

The version of any standard that is referenced in Commonwealth regulation must be specified. Normally this is done by specifying the year of publication. We cannot draft regulation that updates automatically as standards change over time since this would effectively allow the publisher of the standard to independently change the law. If a standard is referenced in regulation, then the regulation may need to be reviewed when a new version of the standard is published. This may be challenging if the standard changes frequently or if several international standards are referenced in a regulation.

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<sup>1</sup> Department of Prime Minister and Cabinet, *Industry Innovation and Competitiveness Agenda: An Action Plan for a Stronger Australia*, DPMC, 2014, p. 31 available: [https://www.dpmc.gov.au/sites/default/files/publications/industry\\_innovation\\_competitiveness\\_agenda.pdf](https://www.dpmc.gov.au/sites/default/files/publications/industry_innovation_competitiveness_agenda.pdf)

### 3.2. Current engagement with international standards and risk assessments

The ACCC is committed to delivering the most appropriate and effective regulatory oversight for the Australian community. While we have always considered trusted international standards and risk assessments in our regulation work, we are committed to improving the quality of our engagement with these international standards and risk assessments.

We recognise the impact of global marketplaces, we cooperate with the international community to address emerging safety hazards and harmonise regulatory approaches.

We recognise that our work in standards development and review needs to have formal criteria that are known to the public and that help guide our formal policy work. These criteria support our commitment and work towards this vision by providing a structure that provides transparency to our work and allow stakeholders to understand our processes.

### 3.3. WTO Agreement on Technical Barriers to Trade

Adopting international standards supports the World Trade Organisation (WTO) Technical Barrier to Trade Agreement strategy for technical regulations that requires signatories to pursue a parallel strategy for technical regulations such as standards. The agreement provides that members will use relevant international standards except in circumstances where they would be an ineffective or inappropriate means to fulfil the objectives pursued. This includes fundamental climatic or geographical factors or fundamental technological problems. The ACCC works with the Department of Foreign Affairs and Trade in ensuring we meet our WTO obligations that relate to mandatory standards and bans.

### 3.4. Australian Standards

Many of the mandatory standards administered and enforced by the ACCC reference selected voluntary Australian standards. In those cases, the ACCC normally participates actively in the relevant Standards Australia technical committee that develops and supports the voluntary standard and encourages acceptance of international standards within the voluntary standard.

The Commonwealth memorandum of understanding (MOU) with Standards Australia says that Standards Australia will “utilise accepted international standards to the maximum extent possible and will only depart from this practice where there are compelling reasons to do so”.

## 4. Criteria

The criteria proposed below for accepting or adopting trusted international standards and risk assessments would assist the ACCC identify *trusted* international standards and risk assessments that might be used to protect consumers from unsafe goods while at the same time minimising additional costs, and/or cutting red tape for business.

When an approved system, service or product already exists in an international market or an international agreement exists, the following three criteria will form a basis for the ACCC to assess the potential for Australia to adopt and accept international standards and risk

assessments or remove duplicate and/or unnecessary Australian-specific standards and regulations. Applying these criteria will enable the ACCC to be consistent with the Government's principle on international standards and risk assessments.

## **Criterion 1 - Addressing safety concerns**

- Do any international standards or risk assessments adequately address the consumer product safety concerns?

### **How would we do this?**

- Are there appropriate international standards and risk assessments that provide adequate consumer safety?
- When considering an international standard or risk assessment we will not disregard its application on the basis that it may not be *the best* safety practice, so long as it achieves an acceptable level of safety for consumers.

## **Criterion 2 - Comparable jurisdiction to Australia**

- Is the international standard or risk assessment published or developed by a legitimate standards body or government agency from an economy or nation with comparable economic and regulatory processes to Australia?

### **How would we do this?**

- We would consider whether the international regulatory and standards making processes and institutions are robust and comparable to those of Australia.
  - Does the standards body or government agency have a credible and consistent track record?
  - Are the international standards and risk assessments developed via publicly transparent assessment processes?
  - Is there a record of actively managing the quality of standards and assessments (such as peer review, independent assessment auditing of processes and outcomes, periodic reviews)?
- We would also consider:
  - Does the international standard or risk assessment specify requirements for products supplied into a market economy?
  - Is the international standard or risk assessment accepted as authoritative by stakeholders in the relevant jurisdiction?

## **Criterion 3 - Applicability to the Australian context**

- Is the international standard or risk assessment applicable to the Australian context?

## How would we do this?

- We would consider Australian data, conditions and circumstances which may provide a basis for varying the requirements of, or not adopting, an international standard or risk assessment.
- We would strengthen and maintain relationships with relevant stakeholders including state and territory Australian Consumer Law regulators. This assists our understanding of how the economy and market works and to ensure that the circumstances of all Australians are being considered.
- We would consider whether the adoption of an international standard or risk assessment would conflict with the delivery of transparently-stated Government policy objectives (for example, where adoption of international standards or risk assessments conflicts with state/territory laws).
- Our international partners help provide an insight to the nature of international standards and risk assessments in an environment external to Australia. We routinely seek and use international standards and risk assessments conducted by these agencies whenever they are available and use them in assessing options to limit consumer exposure to hazards from consumer goods.
- This allows us to focus on aspects of the problem that may present differently in Australia such as differences in climate, consumer behaviour, regulatory frameworks, medical infrastructure, or in the products marketed in different countries.
- We would consider the regulatory costs and benefits of adopting Australian-specific requirements, including the potential costs from fragmentation between Commonwealth regulations and those of the Australian states and territories.
- We would consider the scope for the ACCC to influence the future direction and requirements of an international standard.
- We would consult with relevant businesses to understand their perspective on which international standards may be suitable for use or application in Australia.
  - Is the international standard used or likely to be used by manufacturers?
  - Is there likely to be a demand for products that comply with the international standard?
- We would determine if the standard is reasonably available to Australian consumers and businesses and if it is available in reasonably understandable English.

## 5. Reviewing the Criteria

We are committed to improving the effectiveness of our engagement with international standards and risk assessments over time. A key element of this improvement will be evaluating our performance under these criteria, and if necessary, amending and adding to

this document. It will be important to determine whether the criteria are operating effectively and meeting our expectations and those of the government and our stakeholders.

We will monitor the ongoing effectiveness of the criteria. In particular, the evaluation phase at the end of each mandatory standard development or review will provide opportunities for the ACCC to consider how the criteria are working in practice, and suggest changes. Feedback from stakeholders gained through these project evaluation processes will inform the assessment.

Additionally, in the longer term, it will be important to determine the relevance of the criteria going forward and whether they are operating effectively and meeting our needs and those of the Australian people. In this context, we will aim to review the criteria in two years.