

ARA SUBMISSION

PRODUCT SAFETY REGULATION - EXPOSURE DRAFT

OCTOBER 2024

The Australian Retailers Association (ARA) welcomes the opportunity to comment on draft legislation outlining changes to Australia's product safety regulations, that are intended to enable the adoption of comparable overseas safety standards or local voluntary standards that have replaced outdated mandatory standards.

The ARA is the oldest, largest and most diverse national retail body, representing a \$430 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

In principle, the ARA is supportive of measures outlined in the exposure draft but has concerns about the proposed reframing of ministerial powers and record keeping requirements, as per the following comments.

The comments outlined in this submission relate to those provisions in relation to safety standards. The ARA will conduct additional consultation with members in respect of proposed changes to information standards.

Improved flexibility for business

The ARA welcomes commonsense amendments outlined in the exposure draft that provide more flexibility for business in terms of the different product safety standards they choose to adhere to. These measures largely address our concerns about the current framework, which sometimes puts retailers in the unenviable position of prioritising regulatory compliance ahead of using the most current or applicable safety standard.

For example, the forced adoption of mandatory standards that have been superseded by newer voluntary standards presents an uneasy trade-off for businesses, who are currently faced with the choice either:

- Ensuring the highest level of safety, by adhering to the most current voluntary standard; or
- Minimising their own compliance risk, through ongoing adoption of mandatory safety standards that may have been outdated.

Changes outlined in the exposure draft address this challenge, so that retailers no longer have to default to an outdated mandatory standard if a more current voluntary standard is available. This approach removes the compliance risk of using an incorrect (but safer) standard, while also minimising any risk for consumers.

These changes also make it possible for Australian retailers to comply with Australian Consumer Law by demonstrating adherence to an equivalent overseas standard. This change will improve speed-to-market without increasing risks for consumers, while also reducing costs and minimising duplication for Australian retailers who are currently required to adhere to local standards in addition to any overseas standards that a product may already be adhering to in other markets.

Acceptance of the latest and comparable international standards will not just reduce compliance burden for local retailers and brand owners, it could also further improve safety of products through verification against the latest and highest standards from around the globe.

Expanded ministerial powers need checks and balances

We note that the responsible Minister can currently make or declare safety standards, but that these powers only allow for the Minister to make or declare standards prepared and approved by Standards Australia.

We therefore welcome changes outlined in the exposure draft that clarify ministerial powers in relation to the making of standards, and extend those powers to also allow the Minister to make standards based on local voluntary standards that have been developed to supersede an existing mandatory standard, or an equivalent overseas standard that has been endorsed by the Australian Competition and Consumer Commission (ACCC).

These expanded powers will improve speed-to-market and redress current imbalances that prioritise regulatory compliance over consumer safety. Local retailers that can demonstrate adherence to an equivalent overseas standard would also expect to see a reduction in duplicative testing, costs and complexity in their dealings with suppliers, many of whom operate in the global retail supply chain.

However, these extended powers do give rise to the potential of ministerial overreach, political interference or ill-informed decision making about safety standards on products that have the potential to cause injury or death. The ARA therefore recommends that the regulations explicitly restricts the Minister from making safety standards that have not been subject to independent, expert review through the ACCC or Standards Australia.

Having a systematic evaluation and approval process for qualifying international standards (for example, an expert review by ACCC or Standards Australia) prior to the Minister making them as mandatory standards is essential, to ensure adequacy and relevancy of standards from overseas jurisdictions or voluntary schemes.

Onerous record keeping requirements

It is reasonable for government to outline its expectation that business maintains adequate records to demonstrate adherence to a relevant local or overseas safety standard. However, individual businesses are best placed to determine what records are required to meet that requirement without the need for prescriptive guidance from government.

This position is informed by our observation that good corporate citizens, like our members, have a vested interest in making sure any product claim they make stands-up to scrutiny, to maintain their social license to operate. In most instances, retailers share this risk with their supply chain partners, who would be relied upon to ensure adequate testing and documentation to ensure adherence.

In the event of suspected non-compliance, the ACCC already has the power to request documentation, which a retailer would either have readily available or would need to seek from a supplier. However, the proposed drafting implies that all products are non-compliant until proven otherwise, providing extensive powers for regulators and other persons to enter any business and request documentation on any product, irrespective of whether any non-compliance is suspected.

The drafting also gives rise to the potential of an otherwise compliant product having to be removed from sale because of a failure to provide sufficient documentation. There are also concerns about the application of “related” and “incident” matters, and the associated need to keep and provide records on request.

These changes will create ambiguity and increase the administrative burden for retailers, unnecessarily increasing cost and complexity for the vast majority of businesses in our sector that meet their compliance obligations and will continue to do so, without the threat of prescriptive government requirements.

The ARA recommends the addition of a safe harbour provision to the Bill. The provision, for Australian Standards, would give immediate access for suppliers to sell goods that meet the latest version of published standards. This would address potential time lags in the adoption of some of the 48 standards, a concern identified by the Decision Regulatory Statement.

The ARA also recommends that any proposed measures in relation to record keeping be removed, so to avoid unnecessary costs in managing for a risk of non-compliance that (in most cases) is highly unlikely to materialise. We also recommend that the requirement to provide information to any person (including a regulator) be removed, given that the ACCC already has powers to make inquiries where non-compliance is suspected.

Thank you again for the opportunity to provide comments changes to Australia's product safety regulations. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.