



Australian
Competition &
Consumer
Commission

Protecting consumers from unsafe products

How the ACCC develops mandatory standards and bans

Consumer Product Safety Branch, December 2015

Overview

The Australian Competition and Consumer Commission (ACCC) is the national product safety regulator responsible for monitoring, promoting and overseeing the safety of consumer goods and product related services.¹

To achieve this goal, the ACCC administers specific product safety provisions under the Australian Consumer Law, along with state and territory consumer protection agencies, including developing mandatory safety standards and bans where evidence shows that consumer goods and product related services will or may cause serious injury to any person.

The Australian Consumer Law also includes provisions for the development of mandatory information standards for goods and services.²

Mandatory standards

The purpose of a mandatory standard for consumer goods or product related services is to make particular safety or information features on consumer products compulsory for legal supply into the Australian market.

A mandatory standard is made or declared by the Commonwealth Minister and it becomes enforceable once registered on the Federal Register of Legislative Instruments.

Mandatory safety standards can be made under s104 or declared under s105 of the Australian Consumer Law. Mandatory information standards can be made under s134 or declared under s134 of the Australian Consumer Law.

Bans

A ban is imposed to protect consumers from harm from the supply of an unsafe consumer good. There are two types of bans which can be imposed by the responsible Minister³ under the Australian Consumer Law—interim and permanent.

An interim ban (s109) on consumer goods may be imposed if a responsible Minister concludes it:

- will cause or may cause injury
- is reasonably foreseeable that use (or misuse) of the consumer good will cause or may cause injury.

Interim bans initially run for 60 days with the possibility of two 30 day extensions.

An interim ban can also be imposed without delay by the Commonwealth Minister (s132J of Part XI, *Competition and Consumer Act 2010*).

The Australian Consumer Law also provides the Commonwealth Minister the option of imposing a permanent ban (s114).

¹ 'Consumer goods' and 'product related services' are defined in section 2 of the Australian Consumer Law.

² 'Goods' and 'services' are defined in section 2 of the Australian Consumer Law.

³ A 'responsible Minister' is defined in section 2 of the Australian Consumer Law and includes the Commonwealth Minister.

Notice requirements for bans

When imposing interim or permanent bans, the Minister and the ACCC must satisfy a number of steps under the Competition and Consumer Act. For example, this includes providing to suppliers:

- a summary of the reasons for the proposed ban
- a copy of the proposed ban notice
- an opportunity for them to conference with the Minister/ACCC about the ban (ss132, 132E of Part XI, *Competition and Consumer Act 2010*).

Step by step guide to develop a mandatory standard

Stage 1: Prepare, research and conduct preliminary consultation

1. Conduct preliminary research

Gain an understanding of the relevant consumer goods/services, any associated hazards and any applicable standards/regulation in Australia or overseas.

2. Undertake market research

Identify the Australian market participants, sales figures, product range, and degree of compliance with any voluntary standard and develop a list of stakeholders. If relevant, review any concerns raised about the operation of any current mandatory standard.

3. Review existing regulatory arrangements

Develop a comprehensive understanding of any regulation or quasi-regulation of the goods/services in Australia or overseas. If undertaking a review of a mandatory standard, consider any regulatory developments since it came into effect.

4. Evaluate the effectiveness of any current voluntary standard (Australian, ISO, etc) (if applicable)

Develop a comprehensive understanding of the voluntary standard's scope and test methods.

Determine whether declaring a voluntary standard (eg an Australian Standard) as a mandatory standard is appropriate in the circumstances, or whether the mandatory standard should be developed independently. If applicable, concurrently participate in the Standards Australia committee process developing or reviewing the relevant voluntary standard.

5. Test goods/services (if appropriate)

Purchase an appropriate range/sample of products and arrange any necessary testing to gauge the extent of any hazard and/or compliance with any existing standard.

6. Obtain and analyse injury data

Research available sources of injury data or incident information relevant to the goods/services. These can include the ACCC Clearinghouse, ACCC Infocentre data/reports, recalls, available overseas data, university injury surveillance units, National Coroners' Information Service records, Choice Magazine reports.

7. If appropriate, advise the Commonwealth Minister that the safety of particular consumer goods is under investigation and regulation is being considered.

Also consult with states and territories' consumer protection agencies if relevant.

Stage 2: Consider the case for regulation to address the hazard and draft relevant documentation

8. Notify the Office of Best Practice Regulation about the ACCC's regulatory proposal

Notify the Office of Best Practice Regulation (OBPR) that the ACCC is considering developing or reviewing a mandatory standard to address the hazard associated with the consumer good or product related service.

Submit preliminary responses to the seven Regulation Impact Statement (RIS) questions, outlined in *The Australian Government Guide to Regulation*, to the OBPR:

1. What is the problem you are trying to solve?
2. Why is government action needed?
3. What policy options are you considering?
4. What is the likely net benefit of each option?
5. Who will you consult about these options and how will you consult them?
6. What is the best option from those you have considered?
7. How will you implement and evaluate your chosen option?

The OBPR will assess the responses and determine whether a RIS is required and what format it should be provided.

9. Draft RIS for proposed mandatory standard

Include responses to the first four RIS questions in the draft RIS and outline the proposed consultation plan. Refer to the [Australian Government Guide to Regulation](#) for further guidance about drafting the RIS.

10. Submit draft RIS for mandatory standard to ACCC Chief Operating Officer

Submit the draft RIS to ACCC Chief Operating Officer (COO) to certify that it meets the requirements of the *Australian Government Guide to Regulation* at the 'early assessment' stage.

11 Submit draft RIS to the OBPR and consult with states and territories about mandatory standard

Submit the draft RIS to OBPR for early assessment. Amend the draft RIS based on OBPR feedback if required. Then consult further with states and territories' consumer protection agencies.

12 Advise the Commonwealth Minister that formal public consultation on the proposed mandatory standard is about to start

13. Undertake public consultation

Undertake broad public/stakeholder consultation on the draft RIS. If possible, provide the complementary draft instrument being considered under any regulatory option set out in the draft RIS to stakeholders.

14. Consider public comments and finalise RIS for proposed mandatory standard

Examine and consider all comments received, and amend the draft RIS accordingly. Where necessary, discuss and clarify submissions with relevant stakeholders. Where stakeholder submissions result in significant changes to the proposal, consult with stakeholders on the final proposal.

15 Submit final RIS to Chief Operating Officer for signature

Submit the final RIS to the Chief Operating Officer for certification.

16. Submit final RIS to OBPR

Submit final RIS to OBPR for final assessment. Final assessment may be a two-part process. Refer to the [Australian Government Guide to Regulation](#) for further guidance

17. Finalise the legislative instrument to make or declare a mandatory standard

Ensure that an explanatory statement accompanies the legislative instrument for the mandatory standard.

If a new mandatory standard is to replace an existing one, also ensure the relevant documentation to revoke the previous legislative instrument is included.

18. Prepare brief to the Minister on the proposed mandatory standard

Prepare a brief to the Minister outlining the options to address the hazard and recommend the preferred approach. Also include the legislative instrument for signature and explanatory statement for approval.

19 Apply Minister's decision regarding mandatory standard proposal

Act according to Minister's decision. If the Minister decides to regulate, continue process. If the Minister decides not to regulate, follow the Minister's direction.

20. If the mandatory standard is approved, Minister to write to State and Territory Ministers advising them of that decision

The Commonwealth Minister will advise State and Territory Ministers of the decision to make a new mandatory standard in accordance with the COAG 'Intergovernmental Agreement for the Australian Consumer Law'.

Stage 3: The mandatory standard becomes law

21. Register the mandatory standard with the Federal Register of Legislative Instruments

Submit signed mandatory standard as a signed legislative instrument with accompanying explanatory statement to Federal Register of Legislative Instruments (FRLI).

Stage 4: Notify stakeholders

21. Prepare media release

If required, prepare a media release about the new mandatory standard. The media release may be distributed either by the Commonwealth Minister and/or ACCC.

22. Inform stakeholders of new regulation

Advise stakeholders of the new mandatory standard. Update the Product Safety Australia website.

23. Implement education and awareness program

If required, prepare and introduce an education/awareness program about the good/service and the new mandatory standard. This may include developing a supplier guide.

Step by step guide to develop a ban (interim or permanent)

Stage 1: Prepare, research and conduct preliminary consultation

1. Conduct preliminary research

Gain an understanding of the relevant consumer goods/services, any associated hazards and any applicable standards/regulation in Australia or overseas. This includes any relevant state/territory interim bans in force.

2. Undertake market research

Identify the Australian market participants, sales figures, product range, and degree of compliance with any voluntary standard and develop a list of stakeholders.

3. Review existing regulatory arrangements

Develop a comprehensive understanding of any regulation or quasi-regulation of the goods/services in Australia or overseas.

4. Evaluate the effectiveness of any current voluntary standard (Australian, ISO, etc) (if applicable)

Develop a comprehensive understanding of the voluntary standard's scope and test methods.

5. Test goods/services (if appropriate)

Purchase an appropriate range/sample of products and arrange any necessary testing to gauge the extent of any hazard.

6. Determine if there is an imminent risk of death, serious illness or injury from the consumer good

If there is an imminent risk of death, serious illness or injury, consider recommending to the Minister that an urgent interim ban be imposed without delay under s132J of Part XI of the *Competition and Consumer Act 2010*.

If an imminent risk does not exist, consider whether other regulatory action is appropriate, such as a mandatory standard, non-urgent interim ban or permanent ban.

7. Obtain and analyse injury data

Research available sources of injury data or incident information relevant to the goods/services. These can include the ACCC Clearinghouse, ACCC Infocentre data/reports, recalls, available overseas data, university injury surveillance units, National Coroners' Information Service records, Choice Magazine reports.

8. If appropriate, advise the Commonwealth Minister that the safety of particular consumer goods or product related services are under investigation

and either an interim ban without delay or interim ban/permanent ban is being considered.

Also consult with states and territories' consumer protection agencies if relevant.

Stage 2: Consider the case for regulation to address the hazard and draft relevant documentation for bans (interim or permanent)

9. Follow the relevant processes set out in subdivisions A-D in *Part XI of the Competition and Consumer Act 2010 regarding bans*

These include:

- Conference requirements before a ban (permanent or interim ban) is imposed (Subdivision A)
- Conference requirements after an interim ban without delay is imposed (Subdivision B)
- Conduct of conferences (Subdivision C)
- Miscellaneous provisions relating to an interim ban without delay (Subdivision D).

Stage 3: The ban becomes law

10. Register the ban with the Federal Register of Legislative Instruments

Submit signed mandatory standard/permanent ban as a signed legislative instrument with accompanying explanatory statement to Federal Register of Legislative Instruments (FRLI).

Stage 4: Notify stakeholders

11. Prepare media release

Prepare media release about the new ban. The media release may be distributed either by the Commonwealth Minister and/or ACCC.

12. Inform stakeholders of new regulation

Advise stakeholders of the new ban. Update the Product Safety Australia website.

13. Implement education and awareness program

If required, prepare and introduce an education/awareness program about the good/service and the ban. This may include developing a supplier guide.

Further information about consumer product safety

Further information about consumer product safety regulation in Australia is available from the Product Safety Australia website—www.product.safety.gov.au—or contacting the ACCC Infocentre on 1300 302 502.