



Australian Government

Department of Foreign Affairs and Trade

Submission from the Department of Foreign Affairs and Trade

Productivity Commission: Study of Consumer Law Enforcement and Administration

Key observations

- . Australia has international obligations that encourage the use of international standards and acceptance of other countries conformity assessment procedures, wherever appropriate.
- . The Commonwealth Government and all State and Territory governments are required to notify the WTO, through DFAT, of all mandatory product requirements and conformity assessment procedures that differ from international standards.
- . Australia's international obligations and free trade agreements do not weaken standards, or Australia's ability to regulate to fulfil legitimate policy objectives.
- . Complex and administratively burdensome regulatory systems can add to the time and cost of doing business in Australia.
- . There should be a clear rationale for any variation in consumer and product regulations between the State and Territories.

The Department of Foreign Affairs and Trade (DFAT) provides the following comments in response to the Productivity Commission's Issue Paper on Consumer Law Enforcement and Administration (the paper). DFAT's purpose is to help make Australia stronger, safer and more prosperous by promoting and protecting our interests internationally and contributing to global stability and economic growth. The Department provides foreign, trade and development policy advice to the government.

DFAT's interest is in advancing an Australian Consumer Law and regulatory system that are:

- . consistent with Australia's international obligations; and
- . provide consumer protection and supports Australia's international competitiveness.

This submission provides an overview of Australia's international obligations as they relate to the regulatory system under Australian Consumer Law (ACL) and highlights the impact of these regulations on the Australian economy.

International obligations

Australia takes an active role in the World Trade Organization (WTO) and other international fora to support the development of international trade rules, while maintaining Australia's right to develop policy and product regulations in our national interest. International trade rules provide certainty and transparency to government and businesses,

and promote principles of fairness and non-discrimination between trading partners. The rules-based international trading system supports the growth of Australian exports and the Australian economy.

Regulators should consider Australia's international obligations when developing regulations, and in the design of regulatory systems. DFAT has ongoing work with other government agencies to improve awareness of international trade obligations. Some of the key international commitments relevant to the administration of the ACL and specialist product safety regimes are outlined below.

World Trade Organization Agreements

As a Member of the WTO, Australia is party to a series of multilateral agreements that set the legal rules for international trade. The WTO Agreement on Technical Barriers to Trade establishes global rules on product standards, conformity assessment procedures and technical regulations¹.

The TBT Agreement recognises WTO Members' rights to implement regulatory measures to achieve legitimate policy objectives, such as the protection of human health and safety and the environment. At the same time, the Agreement aims to ensure that WTO Members' technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to international trade. Some of Australia's key TBT obligations relevant to the ACL and specialist safety regulators include, but are not limited to:

- ensuring regulations are no more trade-restrictive than necessary to fulfil a legitimate policy objective;
- according products imported from another Member no less favourable treatment than that accorded to like products of national origin;
- using international standards in technical regulations, where appropriate;
- accepting the results of conformity assessment procedures from other Members, wherever possible, even when those procedures differ from our own;
- publishing all changes to standards, technical regulations and conformity assessment procedures; and
- notifying the WTO of any changes to standards, technical regulations and conformity assessment procedures that deviate from relevant international standards and may have a significant effect on trade of other Members.

Australia also has rights and obligations under the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures that are relevant for specialist food safety regimes. The Department of Health and the Department Agriculture and Water Resources are the lead agencies for the regulation of Australia's food and SPS regimes.

¹ 'Technical regulations' are defined as documents which lay down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory.

Free Trade Agreements

In relation to TBT, Australia's Free Trade Agreements (FTAs) typically reaffirm WTO rights and obligations, and can provide further avenues for cooperation and information sharing between Parties. Australia's FTAs and other international agreements do not lower Australia's product safety standards. Australia's FTAs encourage the acceptance of international standards where applicable, but do not weaken Australia's ability to regulate food, health or safety standards. Imported products are subject to the same product safety requirements as domestic products. The enforcement of product safety standards relies on the capability of domestic enforcement and compliance systems.

Mutual Recognition Agreements

Australia has Mutual Recognition Agreements (MRAs) with New Zealand, Singapore, the European Union, and the European Free Trade Area, which are the responsibility of the Department of Industry, Innovation and Science. MRAs enable the conformity assessment of products intended for export to the other Party to be undertaken in the country of export, thereby reducing barriers to trade between the countries. For certain products and sectors, regulatory authorities must recognise test reports and certificates issued by the conformity assessment bodies of other countries. The implementation of these international MRAs relies on compliance with the Mutual Recognition Agreement between the Commonwealth, and States and Territories.

Relationship of international obligations to ACL and product specialist safety regimes

Australia's international obligations complement many existing domestic policies and best practice guidelines on the development of regulation. The Government's Regulatory Reform Agenda encourages regulatory burden be kept to a necessary minimum and for regulatory development processes to be transparent and to include extensive consultation with affected stakeholders. Similarly, given the contribution that international standards and conformity assessment procedures can make in improving efficiency of production and facilitating the conduct of international trade, it is also Australian Government policy to accept trusted international standards.²

Transparency is another benefit of international commitments on TBT. The Commonwealth and State and Territory governments must notify changes to technical regulations that deviate from relevant international standards and may have a significant effect on trade of other Members to the Australian TBT enquiry point. The enquiry point is administered by DFAT, and the notifications are submitted to the WTO and its Members.³ Consistent with the best practice in the Australian Government Guide to Regulation⁴, this enables interested parties, including other countries, an opportunity to provide comments on the measures, and time to adapt to the new requirements before they are introduced.

In view of Australia's international obligations, regulators should consider international commitments when developing regulations and in designing regulatory structures.

² Industry Innovation and Competitiveness Agenda, 2014, <http://www.industry.gov.au/industry/Pages/Industry-Innovation-and-Competitiveness-Agenda.aspx#header>

³ The Australian TBT Enquiry Point: TBT.enquiry@dfat.gov.au

⁴ Department of the Prime Minister and Cabinet, Australian Government Guide to Regulation, 2014, <https://www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation>

Commonwealth and State and Territory Governments must be prepared to explain the justification for any technical regulation or conformity assessment procedure that deviate from a relevant international standard, and variations between states and territories.

The inclusion of international obligations within regulatory development processes, such as Regulatory Impact Statements, could help to ensure that these requirements are given due consideration, and that the obligations for notification and consultation are met.

Impact of the ACL and product safety regimes on Australia's international competitiveness

The creation of the ACL represents significant progress towards the development of a national consumer protection framework. The ACL replaced a range of existing Commonwealth, State and Territory consumer laws and clarified understanding of the law for Australian consumers and businesses. However, States and Territories continue to maintain specialist product safety regimes for a range of products that operate alongside the ACL.

The multiple regulator model of the ACL, together with the various specialist safety regimes, means that many consumer products are subject to regulation by a number of jurisdictions and regulators. For example, electrical consumer appliances are covered by the ACL, but their safety is regulated through State and Territory electrical safety acts and regulations. These can stipulate different technical standards and conformity assessment procedures for each of the products. This can add to administrative costs for business and government, with different states maintaining different product databases, and multiple sets of state-based rules with different requirements and product marking.

Complex regulatory systems add to compliance costs for businesses, which can lead to higher prices and lower productivity. High regulatory costs can also detract from investment and can cause confusion and uncertainty for businesses and consumers. Broader consumer policy frameworks can also play a role in the international competitiveness of an economy to the extent that they promote regulatory coherence or add to red tape in an economy.

Given the costs associated with complex regulatory regimes, it is important there be a clear rationale for any variations between consumer and product regulations at the State and Territory level, particularly with the increasingly globalised nature of markets and production. There could be value in identifying specific areas of consumer regulation where unnecessary divergences in requirements have significant costs, and developing a pathway towards harmonisation.

Regulatory arrangements that are more compatible with the national and international nature of the Australian economy could deliver a more seamless regulatory environment, while achieving the same consumer protection objectives.