Product safety

Testing to product standards
Principles for test organisations
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Introduction

Testing a product for compliance with a standard or to substantiate other claims made by the manufacturer requires expertise and great attention to detail. This involves care in product handling, meeting prescribed conditions and ensuring systems are in place to assure test accuracy and validity.

Test laboratories are often the only provider of the facilities and expertise required to test whether a product complies with a standard. Such laboratories can also provide a means of certification under accredited schemes.

Together with state and territory fair trading agencies, the Australian Competition and Consumer Commission (ACCC) is responsible for enforcing the Australian Consumer Law. In this capacity, the ACCC expects test laboratories to meet high standards of performance and professionalism in their work.

The principles contained within this publication provide important information for testers who are commissioned by suppliers or the ACCC to test whether a product complies with a standard or meets other claims. The principles are for general guidance and are not intended to constitute legal advice. They are provided in good faith to help testing agencies gain an understanding of the key role testing agencies play in the ACCC’s compliance and enforcement objectives.

The principles also provide important information about some of the steps testing agencies can take towards assuring the validity and value of the tests they perform.

In the event that legal or other expert advice is required about any matter contained in these principles, the testing agency should consult an appropriately qualified professional. These principles are no substitute for such advice.
Background

The Australian Consumer Law

The Australian Consumer Law (ACL) forms part of the Competition and Consumer Act 2010 (the Act) and is a single national law aimed at protecting consumers and promoting fair trading in Australia. The ACL includes a number of consumer protection provisions, in particular a national product safety regime, a consumer guarantees regime and rules about specific types of conduct.

Product claims

The ACL prohibits businesses from giving a false or misleading impression about their goods or services. Broadly, businesses are prohibited from engaging in conduct that misleads or deceives or is likely to mislead or deceive. More specifically, the ACL prohibits businesses from making false or misleading representations about the quality or characteristics of their goods or services. This includes claims about goods’ or services’:

- history
- place of origin
- standard, quality, grade, nature or composition of or manufacturing process
- sponsorship or approval
- performance characteristics.

Breaches of these provisions may attract civil and, in relation to the specific false or misleading representations mentioned above, also criminal sanctions.

This means that goods must comply with any description given or claim made on the labelling, packaging or promotional material. This includes claims made about compliance with mandatory and voluntary standards.

The ACCC notes that businesses should be able to substantiate their claims, including by using expert testing results.

Product testing

Product testing may be required to substantiate a broad range of claims about goods or services, including:

- compliance with product safety, information or other standards
- environmental impacts, emissions or efficiency
- nature and extent of ingredients, components, additives or allergens
- country or place of origin of ingredients or components
- extent of genetic or other technological modification involved in production
- health benefits or impacts.
Mandatory standards and bans under the ACL

Product safety provisions administered by the ACCC empower the Parliamentary Secretary to the Treasurer to make standards mandatory for certain consumer goods and product related services, or to ban the good or service completely. A company risks breaching the ACL if it supplies goods that do not comply with a mandatory standard or that are covered by a ban. Non-compliance is not an option.

Companies breaching sections 106 (safety standards) and 118 (permanent bans) of the ACL risk prosecution and a fine of up to $1.1 million. Offending companies may also be subject to significant civil pecuniary penalties or may be issued with an infringement notice.

Mandatory standards and bans are made under the ACL by legislative instrument. Mandatory safety standards are often based upon voluntary Australian standards published by Standards Australia and this may be by making (where the text of the voluntary standard is repeated within the legislative instrument) or by declaring (where the Australian standard is referred to in the legislative instrument but not contained within the instrument itself). Alternatively, where no suitable voluntary standard is pre-existing, a mandatory safety standard may simply make its own prescriptions.

When testing whether goods comply with the provisions of a mandatory standard which is based on a published Australian or overseas standard, it is essential that the tester has regard to the legislative instrument and, if a standard has been declared, the standard declared by the instrument. Failure to do this may result in a flawed or defective test process as the tester may not have taken into consideration critical variations which the legislative instrument has made to the published standard.

Product bans under the ACL can be interim or permanent. Interim bans can be made by a state/territory minister or the Commonwealth minister and last for a maximum of 120 days (including extensions of time). Permanent bans can only be made at the Commonwealth level. Bans are made by publication of a written notice on the internet by the Commonwealth minister. Permanent bans for consumer goods may be imposed by the Commonwealth minister when an interim ban is already in force, or if the Commonwealth minister perceives that the goods may cause injury to any person, including by their reasonably foreseeable use or misuse.

Consumer guarantees under the ACL

Under the Australian Consumer Law, consumers are provided with a number of guarantees when they purchase goods and services.

In particular, goods must be of acceptable quality, fit for any disclosed purpose and match any description given, sample or demonstration model shown to the consumer prior to purchase.

Test laboratories may be asked to test goods to determine whether they meet the guarantee of acceptable quality.
Acceptable quality

Goods are of acceptable quality if a reasonable consumer would consider that they are:

– safe, durable and free from defects
– acceptable in appearance and finish
– able to do all the things that the goods are ordinarily used for.

It is also important to take into account the nature and price of the goods (if relevant), and any statements made about them on packaging or labelling.

Complying with the ACL

It is important for testing agencies to remember that they must also comply with the ACL’s consumer protection rules. In particular, testing agencies must:

– Be honest and accurate when describing testing services—in particular, whether they are able to test to a certain standard. Just as businesses must not misrepresent their goods or services, testing agencies must not misrepresent their testing services.
– Provide services with care and skill—under the ACL there is a guarantee that all services costing less than $40,000 must be provided with care and skill, using an acceptable level of skill and/or technical knowledge.

The test process: The importance of ‘getting it right’

Together with state and territory fair trading agencies, the ACCC is responsible for enforcing the consumer protection provisions of the ACL, including those related to false and misleading claims, and the supply of products that do not comply with mandatory product standards or bans.

Investigation into alleged breaches of the ACL often involves gathering evidence for use in court proceedings. When the ACCC commissions a test company to test a product’s compliance with a mandatory standard, that company must meticulously observe all stipulated procedures relating to the handling and testing of the product. Such care is imperative because the product and the results of the testing may well form an essential piece of evidence in an ACCC legal proceeding. Accordingly, test companies must follow all required processes including those which maintain and preserve the integrity of the product as a potential source of evidence.

International Standard for testing procedures and systems

The International Organization for Standardization (ISO) has published a standard that deals with test laboratory procedures and systems: International Standard ISO/IEC 17025-2005, ‘General requirements for the competence of testing and calibration laboratories’.
This standard specifies requirements for laboratories and is the benchmark used in Australia and many other jurisdictions for assessing the competence of test laboratories to carry out tests and/or calibrations. This publication, including the principles outlined below, draws on the content of ISO/IEC 17025-2005 and we strongly recommend you read the full standard for more information.

Principles

Handle and store test products securely

Secure handling and storage is essential for all test products, particularly when testing may form part of the evidence in a court proceeding. Test laboratories are responsible for products in their care and they must be able to testify as to the identity of specific samples delivered to them. To enable this to occur, a careful record must be made of the following:

- the condition of the product upon receipt
- the unique identifiers of the product (for example, the serial number, name, brand) or unique identification provided by the supplier
- the full details of what the product comprises, including all components, accompanying material, hardware and tools for assembly, as well as packaging
- any identification marks applied by the ACCC.

Maintain the integrity of the goods

As with handling and storage, the integrity of goods must be maintained. Testers must:

- condition and use the samples strictly in accordance with the manner prescribed in the standard
- keep each sample and its component parts together. Testers must not allow these to mix with other samples
- assemble the goods (where necessary) according to instructions supplied
- be able to link the sample tested with the results recorded
- not tamper with or mishandle the product in any way except where prescribed testing includes simulated product abuse. For example, in the case of testing a vehicle jack for compliance with the mandatory standard, the testing process may subject the jack to unusual or abnormal stresses.

Ensure calibration of instruments and up-to-date equipment

Calibration is a fundamental prerequisite to proper testing. Laboratories must have a system in place to maintain standards of calibration and appropriate certification. Correct calibration (relevant to the tests being performed) must be in place for the tests to be accurate and reliable. Failure to calibrate effectively will at best impugn the integrity of the test results, and at worst render the results invalid.
Quality assurance system

Test laboratories should implement a system to ensure the quality of their operations is achieved and maintained. Certification to quality assurance standards such as ISO 9000 will assist in achieving this.

Follow the standard as laid down. Follow the test request

Before commencing the tests, gather the necessary documents and ensure correct procedures are followed. This will include careful consideration of the:

- written test request
- consumer protection notice or regulation
- correct edition of the published standard (and any relevant amendments)¹
- any supplementary standards.

Any instructions contained in these documents must be explicitly followed. Particular attention is needed where the mandatory standard differs from the referenced standard as published.

Some standards contain multiple requirements in particular clauses, each of which must be observed to ensure the test is properly carried out. Care must be taken to follow each element of a clause. This can include where tests apply to different product configurations, such as product conditioning, or with and without accessories fitted.

If test procedures are not mandated

Standards sometimes include requirements that do not specify performance tests or assessment criteria. These elements nonetheless form part of the standard for which compliance must be assessed. As such, it is important to record the way in which compliance for such requirements is tested.

Decide the method of assessment prior to commencing the test. Record a full description of the test method used and the rationale for selecting that method.

Reports

Standards usually prescribe a number of elements for inclusion in a report, as well as the format of the report. In addition to these requirements, testers should also observe some other basic rules in reporting the conditions, procedures and results of their testing and assessments:

- Any accreditation the company has must be accurately conveyed. This means conveying the precise nature of the accreditation and not implying any coverage beyond that either by exaggeration or omission.
- Results should be against the test specifications, noting any relevant conditioning and product configurations.

¹ If testing to a mandatory standard, the most recently published standard may not be the one that has been made mandatory.
• Opinions included in the report should be noted as such. They must not imply statements of compliance where inappropriate.
• Reports must include information about the goods supplied, including meaningful descriptions and identification references such as photos, assigned ID numbers and record of components, packaging, printed material and assembly kits.
• The report must be checked for accuracy and completeness before providing it to the client. Simple errors such as spelling mistakes detract from the credibility of the results reported and may harm the reputation of the testing company.

Confidentiality

As test laboratories are often party to regulatory investigations and commercially sensitive information, it is essential to ensure confidentiality at all times.

Role of testers in product safety

Test laboratories often see products in the development stages before their official release to the market. Through assessment and consultation experience, test personnel develop an understanding in product performance, design and compliance. Their advice can be invaluable in assisting suppliers to consistently achieve compliance and improve the safety of products.

Although one sample of a product may meet the requirements of a standard, this is not a guarantee of uniform compliance for the entire product line. Testers can help clients understand this and encourage them to implement means of assuring consistent compliance through effective design and quality assurance systems.

Sometimes suppliers whose product has been tested and found not to comply with a standard will ‘shop around’ several other test laboratories to see if another sample of the product can achieve a ‘pass’. Consistent application of quality testing and working to address any anomalies in standards should reduce the likelihood of clients obtaining different results between testers.

Testers can assist clients’ understanding of standards, the relevant laws and the agencies which administer them. They can also alert industry associations to any issues common within a particular area.

Test experts play a vital part in the standards-making process. Many participate and make valuable contributions in standards development. Any anomalies or interpretation issues found during testing should be reported to the standards-setting body, test accreditation bodies (such as NATA) and the ACCC. If testers allow anomalies to remain unchecked and unreported, there is considerable potential for disparity between test laboratories in assessment and certification. This can have serious legal consequences for both client and tester. Clients place heavy reliance on test laboratories to ascertain compliance with a standard.
Testers can also encourage participation by clients in standards development, especially where a need for revision is identified. Suppliers are not always proactive in driving improvements to standards. Where concern is expressed about any part of the standard being impractical, ambiguous or out-of-date, suppliers should be encouraged to express their concern in writing to Standards Australia or another relevant body to instigate revision.

Further information

http://www.accc.gov.au
Australian Consumer Law
http://www.consumerlaw.gov.au
SAI Global:
http://www.saiglobal.com