



Australian
Competition &
Consumer
Commission

Consultation Paper

Draft of Proposed Regulation

SERVICES STANDARD: Corded Internal Window Coverings

August 2013

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Purpose

To invite public comment on the details of the proposed regulation for a services standard relating to the safe installation of corded internal window coverings (CIWC).

This is the second round of public consultation on regulating the installation of CIWC. The ACCC will consider feedback received via this consultation process before forming its recommendation to the Minister.

Summary

Comment is sought on proposed regulation on the installation of corded internal window coverings (CIWC) which is outlined in this consultation paper.

Due to concerns over child strangulation CIWC must, by law, be accompanied by safety warnings, safety instructions and any devices necessary to stop the formation of dangerous loops and lengths of cord. The proposed regulation concerns the installation, undertaken in trade or commerce, of CIWC in domestic dwellings. It requires the installer to follow the safety instructions and use the safety device(s) supplied so that hazardous lengths or loops of cord are not formed.

On the basis of response to a 2011 Discussion Paper on this proposal and subsequent discussion with stakeholders, the ACCC has concluded that there is no general objection to the regulation. Given that hazardous installations resulting in dangerous cords or loops have occurred, the ACCC believes that a services standard requiring suppliers to install CIWC in a manner consistent with the instructions provided with the product is justified. On the basis of discussion with stakeholders the ACCC is of the view that such a regulation would involve minimal disruption or cost to industry.

Some details of the draft regulation have been amended in line with specific concerns raised in discussion and informed by further research. This paper includes specific stakeholder comments, and a response from the ACCC including any adjustment to the proposal that was made. The Draft Regulation is attached.

If the proposed regulation is adopted a person in trade or commerce installing a CIWC in a domestic dwelling and, against the safety instructions, leaving a dangerous length or loop of cord, would be in breach of the law. Such a regulation would only apply to installations made after the law comes into force.

Consultation

Submissions on the proposed regulation attached to this paper are invited. The closing date for feedback to the ACCC is **13 October 2013**.

Addressed to:

Email: productsafety.regulation@acc.gov.au
Subject: Proposed CIWC services standard

OR

Mail to: ACCC
Director Regulated Products and Compliance
Product Safety Branch
PO Box 3131
Canberra ACT 2601

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The ACCC may be compelled by law to disclose submissions (for example under subpoena or following a request under the *Freedom of Information Act 1982*). For more information see the ACCC-AER Information Policy available via www.accc.gov.au.

Background

Since 1 January 2011, when the Australian Consumer Law was introduced, the Commonwealth Minister has had the power to create mandatory requirements covering services related to consumer goods. This requirement is referred to as a 'services standard'.

A services standard can contain a range of requirements including but not limited to prescribing how the service is to be performed, the materials to be used, and/or the skills or qualifications of the person performing the service. Examples of services that could potentially be covered by a services standard include installation, repair, maintenance and removal.

This consultation paper contains a draft services standard for the installation of CIWC. It was developed following discussion with state and territory fair trading agencies and analysis of the deaths associated with CIWC. It also incorporates feedback received in response to an initial discussion paper on the proposal which was released for public comment in October 2011. The initial paper is available at: <http://www.productsafety.gov.au/content/index.phtml/itemId/989975/fromItemId/974977>.

The ACCC is now seeking stakeholder comment on the detail of the proposed services standard.

The proposed services standard does not cover the sale or supply of CIWC. Sale and supply of CIWC are regulated under a supply standard which came into full effect after 30 June 2011. Similarly, any service standard would not apply to existing CIWC but only to those installed after any regulation comes into force (see "Timing").

The supply standard prescribes requirements which must be met before CIWC can be legally sold in Australia. The requirements were introduced because of concerns about child strangulation. At the time the national standard was proposed, the ACCC was aware of 10 child window cord strangulation deaths in Australia in the period from 2000 to 2010.

The ACCC is now aware of 16 Australian child window cord strangulation deaths during the period 1999 to 2013. At least one of these deaths was caused by inappropriate and unsafe installation.

The United States Consumer Product Safety Commission (CPSC) reports that there were at least 200 child deaths in the US in the period 1991 to 2005.

Requirements under Australian mandatory supply standard for CIWC

The supply standard for CIWC:

- includes window coverings with a cord, whether looped or not;
- sets measurement of a hazardous loop at 220 mm;
- provides that a cord guide must be designed
 - to remain firmly attached to a wall or other structure when subjected to a tension force of 70 Newtons applied in any direction for 10 seconds, and
 - to prevent the possibility of a cord forming a loop of 220mm or longer at a height less than 1600mm above the floor.
- A CIWC must come with all of the following:
 - a warning label on any retail packaging
 - a warning label or swing tag attached to the cord; installation instructions containing required information
 - any components specified in the installation instructions as necessary for cord safety requirements.

The wording in the warning labels attached to the products and the additional warning label on retail packaging must make it clear that the hazard is death.

Warnings labels and swing tags must conform to specified requirements, including that they are legible, and are in red uppercase letters at least 5mm high on a white background.

The text for warnings and for swing tags is prescribed and must indicate the reason for the warning, the threat to children and safety advice.

Why a services standard for CIWC installation?

A number of factors support a mandatory services standard for the installation of CIWC:

- failure to properly install a CIWC represents a potentially life threatening hazard—as evidenced by the number of deaths associated with CIWC;

- unsafe installation is a contributory factor to the hazard presented by CIWC and, although industry submission and anecdotal evidence indicates most suppliers follow supply instructions, there are indications that some unsafe installation continues to occur. If a services standard is adopted then installation (by someone in trade or commerce) of a CIWC with dangerous loops or lengths and/or without the safety devices required to prevent the formation of dangerous loops or lengths would be a breach of the law.
- safe installation is consistent with, and only a small extension of, existing requirements relating to supply;
- installing CIWC safely involves very little additional effort during the installation process
- any instructions and safety devices required for safe installation of CIWC must already be available and supplied with the product under the provisions of the supply standard;
- the compliance cost to industry is likely to be very low as safety devices and information on safe installation are already available and advice to the ACCC is that safe installation advice is substantially being followed.

A services standard would enable regulators to take action where installations are hazardous and non-compliant with the services standard.

Feedback received and changes to proposed standard

Fourteen submissions were received in response to the initial discussion paper in October 2011. Most were from industry groups or individual companies and two were from community groups.

The ACCC received further comment and feedback from discussion with suppliers at a Blind Manufacturers Association industry forum, as well as from discussions with individual stakeholders since October 2011.

Feedback provided to the ACCC, and the ACCC's response, has been grouped into five key areas.

1. General support for a services standard

Community advocacy groups supported the proposals as necessary to improve safety.

One submission in response to the October 2011 consultation, and much of the subsequent discussion with industry, suppliers and consumer groups, commented that any regulation needs to be strongly supported by education and compliance campaigns to be effective.

The ACCC will continue to educate parents and carers about the hazards associated with CIWC and loose or looped cords— including by continuing proactive distribution of the education material such as the ACCC's "Loose curtain and blind cords can kill" publication.

If a services standard is adopted, the ACCC will develop and implement compliance education activities for installers and the CIWC industry more broadly.

2. Requests to clarify aspects of the proposed regulation

Most industry stakeholder responses did not comment on the concept of the proposed services standard.

Specific feedback on requirements of the proposed standard was provided and/or suppliers asked the ACCC to clarify some of the detail of the proposal. This feedback included comments on the scope, labelling and performance requirements, the documentation that installers would be required to keep, and the issue of consumers cutting warning labels off CIWC. These comments are grouped by subject:

- **Scope**

A number of submissions sought exemption for places where children do not normally go or where they are under supervision—such as commercial buildings – on the basis of reduced risk in these environments. In direct contrast to this, one submission considered that the requirements should apply regardless of location, as children can be anywhere.

One submission asked whether CIWC in caravans would be captured by the proposed regulation.

The ACCC reviewed the scope of the proposal in light of the comments received and analysis of the location of child strangulation deaths.

No deaths outside of domestic settings were identified.

The ACCC proposes that boats caravans and mobile homes be excluded from the scope of the proposed standard on the grounds that the CIWC in these locations do not fit the risk profile. Windows are smaller and do not have long, thin cords capable of wrapping around a child's neck. No incidents have been identified as occurring in these locations.

- **Instructions/performance**

Provisions that the services standard specify the performance requirements set out in the supply standard and that installers follow installation /safety instructions supplied with CIWC, were supported by all submissions that commented on this issue.

Two submissions noted difficulties associated with determining non-compliance over time, including the effect of wear and tear, the potential for a consumer to adjust or alter the installation, and the possible effect of maintenance, cleaning and re-installation on the safety of the initial installation.

Concern was expressed about consumers removing safety devices after installation and/or refusing the installation of safety devices such as cleats at

the time of installation. Clarification on the treatment of these matters was requested.

One submission requested practical guidance or development of a test method for determining whether a safety device meets the 70 Newtons force-in-any-direction requirement when it is installed.

In response to feedback about consumer behaviour, the ACCC proposes to include messages about retaining warning information / swing tags with CIWC in consumer education campaigns on the subject. The ACCC also proposes to work with industry on the development of messages to consumers concerning the necessity of installing safety devices and the requirements of the services standard. This work will include information on the 70 Newtons test.

If the services standard outlined in this paper is adopted then installation (by someone in trade or commerce) of a CIWC without the safety devices required to prevent the formation of dangerous loops or lengths would be a breach of the law.

An installer would not be held responsible if a consumer subsequently alters the installation, such as by cutting off a warning label or swing tag or removing a safety device.

- Documentation

The 2011 discussion paper requested comment on possible requirements to fix contact details to the CIWC, supply a document to the consumer affirming correct installation, and keep records of installation.

A community group submission argued that it is reasonable to require a contact label on installed CIWC. Two industry submissions noted that a focus on the individual installer was inappropriate and, in subsequent discussions with industry, a number of other industry stakeholders did not support any requirement for installer contact details to be given. It was suggested that high workforce turnover would render naming installers ineffective and would result in installer concerns about ongoing continuing liability. Some industry stakeholders believed that this could deter new installers from entering the industry.

It was suggested that requiring contact information for the retailer or the company responsible for installation, rather than the individual installer would be both more reasonable and more effective.

In response to this feedback, the proposed services standard requires contact details for the “person or company responsible for the installation” rather than the individual installer.

Two submissions commented on the possible requirement that records of installation be kept. This was raised for consideration in the initial discussion

paper. One agreed on the need for records to be kept and for audits to be made; the other suggested that such records be kept by the retailer rather than the installer.

Two submissions, and a number of discussants, asked for clarification of how long records should be (or would be required to be) kept for.

In response to stakeholder feedback, the explicit requirement for record keeping has been removed from the proposed services standard. While the ACCC is of the view that record keeping makes good business sense and would encourage installers to do so, discussion following the first round of consultation emphasised the impact of the proposed requirement to fix contact details to the installed CIWC and de-emphasised the additional value of requiring detailed record keeping by installers.

It is proposed that any need for record keeping be included in the post implementation review of any regulation.

- Other

An advocacy group raised concern over the effect of giving too narrow an age range for the children at risk.

One submission reported that it is common practice for housing developers to purchase packaged coverings and to have them installed without safety devices.

The ACCC is not proposing a regulation based on an ‘at-risk’ age range, or whether there are children under a certain age in a household.

In relation to the reported practice of housing developers, if the proposed services standard is made mandatory, it would be illegal for developers/their installers to install CIWC without safety devices.

3. A services standard is unwarranted or would introduce difficulty

Three industry submissions did not support the proposal on the basis that it was unwarranted or an over-reaction to the safety risk. A subset of this position was that the safety of children is a parental responsibility. These submissions characterised the proposed services standard as ‘attacking our industry’ or ‘[hindering] industry because of a small demographic’.

Associated comments were that the measure would be ‘counterproductive and confusing’ and ‘increase risk for older people’.

The ACCC is of the view that the proposed services standard will place little if any compliance burden on suppliers. This is consistent with anecdotal advice to the ACCC that the majority of installers follow the instructions provided with the CIWC.

Hazardous loops which can be formed when installation instructions are not followed are a potentially life threatening risk to children, as demonstrated by the injury and death data. Given that hazardous installations resulting in dangerous cords or loops have occurred, the ACCC believes that a services standard requiring suppliers to install CIWC in a manner consistent with the instructions provided with the product is justified. Furthermore, the ACCC is of the view that the compliance cost to industry of a services standard would be very low. The feedback received from industry to-date is that the proposed services standard is not a concern for them.

The ACCC believes it is unlikely that any regulation would increase risk for older people, or be counterproductive or confusing: the proposed services standard is simply mandating that installers install CIWC in a way consistent with the installation instructions that come with the product.

One submission sought the repeal of existing supply regulation and its replacement with an obligation on industry to educate consumers at the point of sale. This is outside the scope of the consultation and is not currently being considered by the ACCC.

One submission, which gave no opinion on the basic proposal, noted the measures would cause difficulty for people using wheel chairs. The ACCC's view is that requiring installers to securely affix cords so they are not able to form a hazardous loop is unlikely to add particular difficulties for people using wheelchairs. Community groups and consumer advocates actively supported the proposed services standard.

In summary, the ACCC has not made substantial changes to the proposed services standard in response to the feedback noted in this section.

4. A services standard will not effectively mitigate the hazard

Two submissions commented that the measure would have little or no effect or would not be as effective in mitigating the hazard when compared with alternatives such as the education of parents.

The ACCC educates parents and carers about the hazards for children associated with CIWC and will continue to do this. However the ACCC does not believe that parental education alone sufficiently mitigates the hazard.

One submission said that the main safety concern is 'backyard operators' and these people would not comply with the proposed regulation anyway.

If a services standard is implemented, the ACCC and other regulators would have the power to enforce compliance and prosecute any non-compliance. At present, there is little regulators can do to require installers to follow instructions and take action when this does not occur.

An installer suggested that the focus of action should be on improving window coverings themselves as ‘all blinds can be made safe’.

The ACCC is aware of existing and ongoing effort related to the development of cordless window coverings and devices that do not permit formation of or access to hazardous lengths or loops. Technical solutions that reduce or remove hazardous cords and loops will continue to be encouraged—however the reality of the current market is that corded products can and will continue to be supplied into the foreseeable future, so other ways to address the hazard need to be implemented.

5. A services standard won't improve the safety of 'DIY' blinds that consumers install themselves

A supplier expressed support in principle for action but argued that the regulation would have limited effect because of the proportion of self-installation that occurs.

An industry association noted that supply is split between measured/fitted product and pre-packaged and/or DIY/self-install CIWC. This association argued that the proposed regulation would not improve the safety of the latter.

‘DIY’ blinds intended for consumers to self-install are already required by law to be supplied with installation instructions for consumers to follow. This will not change. Safe ‘DIY’ installation of CIWC will continue to be part of the education campaigns and safety promotion efforts of the ACCC.

Proposed Regulation

As noted in the first Discussion Paper it is intended that the specific provisions of the services standard be fully consistent with the existing supply standard.

The key provisions in the October 2011 discussion paper have not changed in the proposed services standard. However in response to feedback received through that public consultation and from other feedback from stakeholders, the ACCC has changed some of the detail of the proposed services standard:

- The scope of the proposed standard has been limited to domestic dwellings (on the basis that this is where all known deaths have occurred).
- The explicit requirement for record keeping has been removed.
- The contact details required to be affixed to the installed CIWC are less specifically focussed on the individual installer.

Any services standard would not be retrospective. CIWC which have previously been installed would not require reinstallation. Therefore any existing hazards associated with unsafe installation will not be affected by any regulatory intervention and will need to be dealt with when CIWC are replaced and/or as part of other efforts such as education campaigns.

Following public comments and discussion with legal drafters it is proposed that the key provisions of the regulation be:

Application

- domestic dwellings excluding caravans, mobile homes and boats.

Installation requirements

- Ensuring that a loose cord cannot form a loop 220 mm or longer at less than 1,600 mm above floor level and using any components specified in the installation instructions as necessary to meet requirements for cord safety.
- Installation in accordance with the installation instructions on any retail packaging and with any other information provided in the installation instructions about how to install the covering for the purpose of ensuring that a loose cord cannot form a loop.
- No part of a cord guide installed lower than 1,600 mm above floor level unless the cord guide will remain firmly attached to a wall or other structure specified in the installation instructions when subjected to a tension force of 70 N applied in any direction for 10 seconds and the cord is sufficiently secured or tensioned to prevent the formation of a loop 220 mm or longer.
- A cleat used to secure a cord must be installed at least 1,600 mm above floor level.

Labelling requirements

- A person installing a corded internal window covering must attach a label to the covering containing the name and contact details of the person or company responsible for the installation and ensure that any warning label or swing tag supplied with the covering remains attached to the cord.

Penalties

- The penalties for non-compliance are up to \$1,100,000 for corporations and \$220,000 for individuals.

Supporting activities

- The ACCC proposes to develop and implement a compliance and education program to complement this regulation.

Anticipated impact on industry

Anecdotal feedback to the ACCC from industry is that most installations are undertaken by experienced contractors in a manner consistent with the information provided in the supply standard (which would therefore be consistent with the requirements of any services standard).

However the ACCC believes that there continue to be some CIWC installations which are inconsistent with the advice in the supply standard and are therefore potentially hazardous. It is unclear what proportion of installations falls into this category.

An investigation into CIWC installation in Western Australia in 2008 found that one in five installations that were the subject of consumer complaint were unsafely installed—that is, they were installed in a way that was inconsistent with the installation advice required to be supplied with the product.

Timing

A Regulation could be available to register in late 2013, to take effect from 1 January 2014 , because:

- the terms of the services standard are consistent with the existing supply standard;
- the ACCC understands that there is already substantial industry compliance with the proposed terms of a services standard; and
- the requirements would only apply to new installations.



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DRAFT ONLY

**Competition and Consumer (Corded Internal Window Coverings)
Safety Standard 2012**

Competition and Consumer Act 2010

I, David Bradbury, Assistant Treasurer, make the following safety standard under subsection 104 (1) of the Australian Consumer Law, set out in Schedule 2 to the Competition and Consumer Act 2010.

(Dated)

(Signature) Assistant Treasurer

1. Name of safety standard

This safety standard is the Competition and Consumer (Corded Internal Window Coverings) Safety Standard 2012.

1. Commencement

This safety standard commences on the day after it is registered.

2. Purpose

This safety standard sets out mandatory installation requirements for corded internal window coverings.

3. Application

This safety standard applies to the installation of corded internal window coverings in domestic dwellings other than:

- (a) caravans; and
- (b) mobile homes; and
- (c) boats.

4. Definitions

In this safety standard:

cleat means a device that has a bar with arms around which a cord can be wound, and that can be attached to a wall or other structure.

cord means a rope, strap, string, chain, line or wire used to manipulate a corded internal window covering.

corded internal window covering means any of the following, that can be used inside a building and has a cord:

- (a) a window covering, such as a curtain or blind;
- (b) fittings used with a window covering, such as a traverse rod or track.

cord guide means a device designed to retract, tension or secure a cord.

retail packaging means the packaging in which a corded internal window covering is supplied when it is offered for retail sale.

5. Installation of corded internal window coverings

(1) A corded internal window covering must be installed:

- (a) in a way that ensures that a loose cord cannot form a loop 220 mm or longer at less than 1,600 mm above floor level; and
- (b) using any components specified in the installation instructions as necessary to meet requirements for cord safety.

(2) A corded internal window covering must also be installed in accordance with:

- (a) the installation instructions on any retail packaging for the covering; and
- (b) other information provided in the installation instructions about how to install the corded internal window covering for the purpose of ensuring that a loose cord cannot form a loop as described in paragraph (1) (a).

(3) No part of a cord guide may be installed lower than 1,600 mm above floor level unless:

- (a) the cord guide will remain firmly attached to a wall or other structure specified in the installation instructions when subjected to a tension force of 70 N applied in any direction for 10 seconds; and
- (b) the cord is sufficiently secured or tensioned to prevent the formation of a loop 220 mm or longer.

(4) A cleat used to secure a cord must be installed at least 1,600 mm above floor level.

6. Labelling requirements

1. A person installing a corded internal window covering must:

(a) attach a label to the corded window covering containing the name and contact details of the person or company responsible for the installation; and

(b) ensure that any warning label or swing tag supplied with the corded internal window covering remains attached to the cord.