E3 Approach to Implementing MEPS and Labelling

AIIA response

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About AIIA

The Australian Information Industry Association (AIIA) is Australia's peak representative body and advocacy group for those in the digital ecosystem. AIIA is a not-for-profit organisation that has, since 1978, pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment and drive Australia's social and economic prosperity.

AIIA does this by: providing a strong voice on policy priorities and a sense of community through events and education; enabling a dynamic network of collaboration and inspiration; and curating compelling content and relevant information. AIIA's members range from start-ups and the incubators that house them, to small and medium-sized businesses including many 'scale-ups' and large Australian and global organisations.

We represent global brands including Apple, Adobe, Deloitte, Gartner, Google, HP, IBM, Infosys, Intel, Lenovo, Microsoft and Oracle; international companies including Optus and Telstra; national companies including Ajilon, Data#3, SMS Management and Technology and Technology One. While AIIA's members represent around two-thirds of the technology revenues in Australia, more than 90% of our members are SMEs. Our national board represents the diversity of the digital economy; more detailed information is available on our web site.

Comments

1. The MEPS Labelling has undergone industry consultation to decide upon an appropriate approach. The AIIA outline our priority concerns for the ICT industry along with recommendations below.

2. Thank you for extending the time frames to allow wider consultation. The AIIA and Industry appreciate the extended time frame. As this process took place through the Christmas / New Year period – we would request in future that time frames are set with public holidays in mind.

3. On representation – currently the process of consultation does not include consensus, the AIIA feel this signals to industry that the Department is happy to consult but ultimately, the direction of how to proceed will be determined in unison, possibly in opposition to group consensus.

4. Members flagged concerns with how industry representatives are chosen. For instance, what is the Departments definition of “fair” in their criteria for deciding who is identified and leveraged for consultation?

5. Openness and transparency: only seems to happen where a working group is established, but doesn't require WGs to be established, so the E3 can make proposals on their own?

   We feel openness and transparency should apply regardless of whether a working group is established or other regulatory development approaches are applied.

6. The Trans-Tasman Mutual Recognition Agreement enables joint recognition of standards relating to goods and occupations. If a disagreement occurs in New Zealand between regulators and the public from public consultations regarding Australian decisions on standards – does New Zealand have capacity to dispute the Australian decision? How are the requirements for public consultations in New Zealand to be coordinated and considered along with the Australian public consultations?

7. On reducing regulatory burdens, members advise that using existing standards as the basis for regulation makes sense but in practice unless they adhere to acceptable Australian / New Zealand standards, burdens to industry to ensure compliance are high. Change to and the use of obscure international standards and specifications pose enormous cost impositions and create uncertainty in the market. And where it's not "possible" to use a standard, where are the requirements to be drawn from to ensure there are no non-tariff trade barriers?

   AIIA recommends that the international standards to be used are identified and agreed with Industry and are transparent, consensus-based, and listed for industry, and relevant to Australia and New Zealand.

8. Suitability of existing standards – any modifications from existing standards should be put through an Australian / New Zealand consensus process to get community and industry acceptance. Without consensus, we are concerned that the suitability of standards modifications may be extremely problematic.

9. Fit for purpose regulation - the Department introduces technical specifications in addition to standards. Where do these specifications come from? How does the Department consider industry acceptance, relevance and transparency in relation to regulation?

10. Flexibility – who decides on the best approach to standards regulation? Is it the E3 or industry consultation groups? At present, we’re concerned that there does not appear to be much focus on transparency re how decisions are made.

11. Appropriate test methods: should be the subject of the relevant compliance standard. We should avoid having a test method that varies from accepted worldwide use.

12. Access to information, members note that the availability of information is sometimes obscured by multiple layers of links – the information is available but the accessibility of it needs to be revised and simplified.

13. Labelling requirements – members advise that these should not be required automatically but considered on a case by case basis – can the intent of a label be met without labelling? For example, the Chinese Government have moved from standard labels on consumer goods (across industries) to QR codes that contain all the labelling content without displaying it traditionally. Can electronic labelling be used where labelling is required? ACMA and electrical authorities accept electronic labels under controlled conditions. Online labelling or labelling on packaging can also be considered as alternatives.

14. The current system for labelling goods by family and models is convoluted. It is noted that arbitrary limits on the number of models and family of goods a company produces is somewhat strained. The system on its face value appears to be designed to ensure maximum registrations of goods, resulting in additional regulatory revenue raising. The limits imposed should be at most necessary and not involve arbitrary limits that cannot be met for models and families of products. For example, if the product is the same kind and covered by the same or follow up test report, they should be able to be included in the family of products, and newer members of the family should be able to be added following initial registration without cost or at a minimal cost.

15. Lead-in time required: the Department should consider a minimum of 2 years from the date of publication of a new determination or other legal instrument. Longer lead times can also be considered, however shorter lead times should only be used for serious life-threatening emergencies. Even though industry has been consulted prior in the process, E3 and the Minister can override industry and public comment views and produce anything at all. Also, the outcomes and content of the final MEPS Determination is often withheld from industry until the Minister signs off on it.

    Suppliers cannot usually start the compliance process until they know with some high level of assurance what the requirements are, since the Minister can change them without notice at his or her discretion after the consultation and comment process. Once the requirements are made law, it can take a much time and cost for suppliers to make product changes, provide any necessary labelling, obtain compliant test reports, register products with the regulator, and flush existing products through the supply chain.