



Mr Luke Muffett
a/Assistant Secretary Cyber Policy & Strategy
Digital Economy Resilience and Market Reform Team
Department of Home Affairs
6 Chan Street
BELCONNEN ACT 2617

Via email: techpolicy@homeaffairs.gov.au

Dear Mr Muffett,

Re: Strengthening Australia's cyber security regulations and incentives

Thank you for the opportunity to comment on the discussion paper *Strengthening Australia's Cyber Security Regulations and Incentives*. This follows our discussion with the Department of Home Affairs on these issues on 30 July 2021.

As Australia's leading online shopping site, eBay Australia is committed to ensuring that both buyers and sellers can engage with confidence on our platform.

We note emerging cyber security concerns in relation to consumer smart devices. While we recognise these concerns, regulatory interventions need to be proportionate and appropriately balanced against potential costs and benefits for both business and consumers.

In responding to the discussion paper, we have focussed on specific issues relating to online marketplaces. In summary:

- Efforts to improve the security and safety of smart devices are best targeted towards manufacturers of these devices;
- In principle, as is the case for our existing policies in relation to product safety and other standards, we would remove smart devices that do not comply with a mandatory security standard from our marketplace. We do hold concerns however with the substance, breadth and scope of such a standard;
- We do not support the introduction of a labelling scheme or expiry date for smart devices;
- We encourage the Department to consider a targeted public education campaign in partnership with industry bodies to educate key smart device user groups on security issues

Our business model

As a pure third-party online marketplace, eBay partners with the 40,000 Australian business sellers on our marketplace but does not compete. For abundance of clarity, eBay does not sell, ship or stock any items appearing on our marketplace. Responsibility for listing and advertising on our platform remains with the individual or business that originally listed an item.

When a seller looks to list an item on eBay, they must agree to comply with a range of seller policies¹. These set out the rules of our marketplace. Failing to comply with these policies may see a range of actions taken against a seller including removal of a listing.

13. Would you be willing to voluntarily remove smart products from your marketplace that do not comply with a security standard?

eBay works closely with regulators in Australia and around the world on a range of product safety activities. This work includes sharing information with sellers and buyers; the removal of banned / prohibited products; and on product recalls.

eBay takes significant steps to block restricted products from listing on our platform. eBay Australia is an inaugural signatory to the Australian Product Safety Pledge².

Our 2020 Transparency Report³ demonstrates these efforts, and is illustrated in the infographic below.



eBay allows sellers to list items for sale across a range of categories. We do however make it clear to sellers that the following items cannot be listed:

¹ <https://www.ebay.com.au/help/policies/selling-policies/selling-policies?id=4214>

² <https://www.productsafety.gov.au/product-safety-laws/compliance-surveillance/australian-product-safety-pledge>

³ <https://www.ebaymainstreet.com/sites/default/files/2021-05/2020-eBay-Global-Transparency-Report.pdf>

- Items recalled by the manufacturer or any other government agency, or items whose sale is prohibited by law
- Items that pose a health or safety hazard as specified by any government agency
- Products failing to comply with Australian mandatory safety standards or which are subject to a product ban in Australia
- Items that pose a health or safety hazard as specified by government agencies. We will remove listings at the request of government agencies⁴.

While eBay takes steps to restrict the listing of prohibited items, we also monitor our marketplace to identify items that may still appear for sale. eBay relies upon our community, including regulators, who are able to report listings that fail to comply with regulatory measures to assist in the identification of items that should be removed.

As a clear demonstration of our cooperation with regulators, eBay's Regulatory Portal⁵ launched in Australia in 2021 is a first for an online marketplace. The Portal empowers trusted authorities from around the globe, including the ACCC and the Therapeutic Goods Authority, to efficiently report and remove listings for illegal or unsafe items. It allows a regulator to remove listings from the eBay marketplace without additional approval from eBay itself.

In the event a mandatory security standard was introduced for smart devices, we would remove items that do not meet this standard under our existing policies on a report and take down basis.

While we would be happy to support such a change, we do hold concerns with the potential scope and breadth of products that could be subject to the standard.

14. What would the costs of a mandatory standard for smart devices be for consumers, manufacturers, retailers, wholesalers and online marketplaces? Are they different from the international data presented in this paper?

It is unclear from the Discussion Paper the breadth, scope and substance of the mandatory standard being proposed.

As noted above, eBay utilises a range of strategies to keep our marketplace safe.

Our community of users can report items that are in breach of our policies and we also monitor for items that should not be listed for sale. Ultimately we look to build solutions at scale to address product safety issues (filters and blocks) to stop items that shouldn't be listed from appearing on our marketplace.

⁴ See <https://www.ebay.com.au/help/policies/prohibited-restricted-items/recalled-items-policy?id=4300>

⁵ <https://www.ebayinc.com/stories/press-room/au/ebay-launches-new-regulatory-portal-to-further-protect-consumers/>

The breadth of the standard (the number of goods that it is applied to) will have a flow on impact in terms of cost in terms of monitoring and responding to take down requests and investments in building scale solutions.

The substance of the standard will have a similar effect on the potential cost impact. We note that the mandatory standard for button batteries is referenced in the discussion paper. We believe the development of that standard should inform consideration of a standard for smart devices.

While eBay recognises the risks posed by button batteries and supports appropriate regulatory intervention to address these risks, the original proposal for the button battery mandatory standard included requirements for safety warnings to be provided by online marketplaces at point of sale for both button batteries and for products containing these batteries.

Although such a request may seem simple, considering the millions of products listed on ebay.com.au and the thousands of product categories which such a measure could potentially apply, the implementation process would be significant and complex.

While we weren't able to accurately estimate costs, in discussion with our product teams, in terms of time and resources, implementation of the proposed safety warnings for button batteries across thousands of product categories would have been similar to the implementation of the application of GST on low value imported goods. The implementation of low value GST changes took more than 12 months and required input and co-ordination across many of our global teams. From discussions with other large online marketplaces at that time, we understood that these similar costs would be borne generally by other marketplaces.

Ultimately, the ACCC recognised that these costs would be out of step with any potential benefit the measures could achieve and removed this requirement from the final standard. eBay has continued to support the roll out of the mandatory button battery standard with targeted seller communications and consumer education.

While it's appropriate that manufacturers and retailers provide warnings and information on items they sell, for the reasons we have outlined above, we strongly urge the Department to not mandate warnings or other information to be displayed by online marketplaces in development of a standard for smart devices.

15. Is a standard for smart devices likely to have unintended consequences on the Australian market? Are they different from the international data presented in this paper?

Without a defined standard, it is difficult to assess what consequences it may have. Generally however, with Australia being a net importer of technology, the implementation of the standard may see some manufacturers reduce their smart device offerings to the Australian market. This would create a consequent decline in consumer choice in these products.

As the Discussion Paper identifies, new features and capabilities of smart devices are key drivers for consumer engagement and purchase. These features may however reduce the overall safety of a given device. A new standard for smart devices (which consequently sees manufacturers reduce or limit the additional features on smart devices) may see consumers less motivated to purchase or update a smart device. This may mean that consumers use devices far beyond their supported life creating further cyber risks.

16. What is the best approach to encouraging consumers to purchase secure smart devices? Why? & 17. Would a combination of labelling and standards for smart devices be a practical and effective approach? Why or why not? & 19. Would a security expiry date label be most appropriate for a mandatory labelling scheme for smart devices? Why or why not?

In response to the above questions, we do not believe that the proposal for labelling smart devices is a practical solution to addressing cyber security risks.

While we appreciate the need to communicate to consumers in a simple, clear and obvious way, cyber security is not a set and forget activity but requires consistent monitoring. A labelling system runs the risk of consumer harm, with consumers purchasing a good under the false impression that its security is a constant over its lifetime.

As we indicated during our meeting with the Department, rather than a wholesale approach to consumer goods, eBay believes a more targeted educational approach to cyber security should be undertaken with a focus on key groups and devices that create risk.

According to the Australian Cyber Security Centre, cybercrime costs Australian businesses an estimated \$29 billion per year⁶.

With the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) estimating that small business is the target of 43% of all cybercrimes⁷, additional efforts to support businesses to both understand and take measures to address cyber security should be made a priority.

Similarly, while the drivers behind a security expiry date are understandable, this appears to be happening in isolation to other labelling discussions presently occurring within government.

We note the ACCC has recently expressed support for an durability labelling scheme for electronic devices (proposed by the Productivity Commission). Based on an existing French


⁶ <https://www.cyber.gov.au/acsc/view-all-content/news/announcing-acsc-small-business-survey-report>

⁷ <https://www.asbfeo.gov.au/>

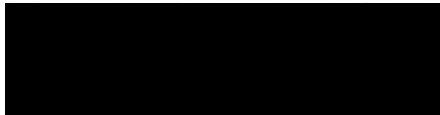
scheme, the label would help consumers understand how easy it is for their product to be repaired and how durable it should be.⁸

It's unclear how such a scheme could be implemented alongside or in conjunction with the current proposal.

While the Productivity Commission's durability label may cover a wider range of electronic goods, there would be inevitable cross over with smart devices. This could create significant confusion for consumers. In addition, a good may be operational for a number of years post a manufacturer's security support. How this might be balanced against the desire for consumers to use devices with current security settings would need to be considered carefully.

Thank you once again for the opportunity to participate in this consultation. If you wish to discuss these matters further, please feel free to contact me via 

Yours sincerely,



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⁸ <https://www.zdnet.com/article/proposed-right-to-repair-labelling-scheme-gets-backing-from-australias-consumer-watchdog/>