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Director
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The Treasury
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**GAS ENERGY AUSTRALIA RESPONSE TO AUSTRALIAN GOVERNMENT -
THE TREASURY: CONSULTATION REGULATION IMPACT STATEMENT -
SUPPORTING BUSINESS THROUGH IMPROVEMENTS TO MANDATORY
STANDARDS REGULATION UNDER THE AUSTRALIAN CONSUMER LAW
DECEMBER 2021**

Dear Consumer Safety and Sustainability Unit,

Gas Energy Australia (GEA) appreciates the opportunity to respond to Commonwealth Treasury Consultation Regulation Impact Statement – Supporting Business through Improvements to Mandatory Standards Regulation under Australian Consumer Law - Consultation Regulation Impact Statement (CRIS) December 2021.

By way of background, GEA is the national peak body which represents the bulk of the downstream gas fuels industry which covers Liquefied Petroleum Gas (LPG), Liquefied Natural Gas (LNG), Compressed Natural Gas (CNG) and Hydrogen (H₂). The industry comprises major companies and small to medium businesses in the gaseous fuels supply chain; refiners, fuel marketers, equipment manufacturers, gas transporters, consultants and other providers of services to the industry. We have a significant interest in the standards that provide the backbone of our industry regulation and ensure the safe use of gas equipment and appliances by industry and consumers every day in Australia. We note that the laws that protect the consumer which includes trusted international standards are the providence of state and territory regulatory frameworks and these can place the burden on the consumer and not the seller of the gas equipment and appliances.

Gas Energy Australia suggests that while the Australian Consumer Law (ACL) and mandatory standards provide important protections for the Australian community the scope of the issue is broader than that outlined in the CRIS. GEA agrees with the issues identified in the CRIS but does not agree that they are a comprehensive list of identified problems.

GEA considers that while the consumer has protections under the ACL which relate to minimum product standards there are often more well-defined consumer product protections provided for under jurisdictional technical regulations, but these place the onus on the consumer rather than the seller of the product.

As an example, our industry relies on Australian Standards including AS 1596 Storage and Handling of LP Gas ¹, AS 5601 Gas Installations (Part 1 and 2) ² and AS 5263 (Suite of Standards) Gas Appliances ³. These standards draw on trusted international standards to maintain the highest level of safety. These standards include references to Joint Australian/New Zealand Standards (AS/NZS) and other trusted standards development organisations including American Society of Mechanical Engineers (ASME), American Society for Testing and Materials (ASTM), British Standards (BS), European Standards (EN), International Standards Organisation (ISO), National Fire Protection Association (NFPA) (US), United Nations Economic Commission for Europe (UNECE), and Underwriters Laboratories (UL) (US). These standards are used in most cases as mandatory and normative references which describe an element of a Standard to which it is necessary to comply with in order to be able to claim conformance with the Standard.

Furthermore, these standards are called up in regulations, often with the title “Gas Safety”, by each State and Territory making them mandatory requirements. In relation to the consumer, these regulations mandate that a gas appliance has a certification which conforms to Australian Standards (AS 5263 series as an example) before it can be connected to a gas supply. These include consumer portable gas appliances such as barbecues, area heaters and camping equipment. This makes eight different regulatory frameworks, all of which operate slightly differently and through mutual recognition provide mandatory standards for consumer gas appliances. There is not one national law, so the approach offered by the ACL of a ‘single law/multiple regulator’ approach is hamstrung from the start.

While this appears to operate relatively effectively (based on the number of recalls) it is not what you would classify as efficient and more worryingly it exposes a gap in responsibilities as most of the “Gas Safety” regulations apply penalties to the connection and use of gas appliances (the consumer) and not to the sale of non-compliant gas appliances. This issue is exacerbated with the internet as online products can be bought and shipped into Australia without any conformance checks.

GEA recommends that the Australian, State and Territory Governments review consumer protections currently residing within jurisdictional regulations to identify efficiency gains that could be achieved by making them national standards and offering the consumer greater protections.

In relation to keeping standards up to date GEA offers the following observation of alternate administrative practices that could assist. GEA notes that jurisdictional regulators are changing their regulatory drafting processes in relation to referencing Australian Standards in two ways. First, they are moving the referencing of the standard into Schedules within Regulation, which are easier to change than an Act. Second, they are removing the reference to the year of the standard which negates the need to continually update the regulation schedules when a standard is reviewed. GEA provides the Queensland Gas and Petroleum (Safety) Regulation 2018 – Schedule 2 as an example of this practice ⁴.

GEA recommends reviewing the structure of the ACL in relation to referencing practices to streamline standard incorporation and review processes.

¹ <https://www.standards.org.au/standards-catalogue/sa-snz/manufacturing/me-015/as-slash-nzs--1596-colon-2014>

² <https://www.standards.org.au/standards-catalogue/sa-snz/electrotechnology/ag-006/as-slash-nzs--5601-dot-1-2010>

³ <https://www.standards.org.au/standards-catalogue/sa-snz/manufacturing/me-015/as-slash-nzs--1596-colon-2014>

⁴ <https://www.legislation.qld.gov.au/view/html/inforce/current/si-2018-0135#sch.2>

GEA is also concerned that there appears to be confusion within the CRIS about standards, compliance, and conformity assessment. It is GEA's understanding that a Standard is just that, a document that contains performance criteria (a standard) for a product or service. Adopting a standard does not automatically mean that the product meets the requirements of that standard. This requires conformity assessment of the products compliance to a standard. Manufacturers demonstrate their product is compliant with the requirements of a standard or standards through a conformity assessment process. Once a manufacturer has completed conformity assessment, they affix a certification mark to the product denoting its compliance to that process. Certification marks can mean compliance to different things with United Laboratories (UL) certification⁵ on products referring to standards, whereas the CE mark used by the European Commission can also relate to European Directive compliance as well as conformity to standards. Adoption of an international standard needs to be supported by a trusted conformity assessment process.

GEA recommends that, in unison with the adoption of trusted international standards, comes the recognition of trusted conformity assessment. This is currently the case for our industry with gas components certified by UL and recognised in Standards such as AS1596.

GEA supports a principles-based approach in relation to the declaration of voluntary and mandatory standard and supports the adoption of processes that are operating within Standards Australia when selecting International Standards to adopt. This includes a process of consensus with extensive consultation, checking for unnecessary duplication, ensuring international agreements are considered, making sure the adoption will deliver a net benefit to the Australian community and engagement with Standards Australia Technical committees who already have technical experts representing various interest groups to identify any unintended consequences with existing Australian Standards. GEA is concerned that without integration and coordination with the existing Australian Standards frameworks we could end up with two overlapping standards for compliance which would create greater red tape and regulatory burdens for businesses in Australia.

GEA supports a principles-based approach to the declaration of consumer standards and recommends an integrated approach with existing standards frameworks in Australia. Further, any consumer standard should be available freely to all Australians and not be hidden behind a paywall.

In summary, our industry already uses trusted international standards through referencing in current Australian Standards which are called up in jurisdictional regulation to protect consumers. We also support a principles-based approach to the declaration and adoption where there is a net benefit to the Australian community. GEA considers there is scope to harmonise existing consumer protections built into technical regulation in States and Territories and extend these protections to consumers. Finally, GEA considers where a standard (either international or Australian) is adopted it should be made available freely to all Australians.

For your consideration

Mr Brett Heffernan
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⁵ <https://www.ul.com/services/certification/product-certification>