

Director
Consumer Safety and Sustainability Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Re: Response to Treasury's Consultation Regulation Impact Statement

Dear Director,

Britax is pleased to provide this submission and provide comments on Treasury's Consultation Regulation Impact Statement dated December 2021.

The black text is in response to the questions raised plus the additional information provided. The questions in blue have been taken from the CRIS.

The Problem

Q1. Do you agree or disagree with the identified problems? Please provide any evidence to support your position.

Britax can see that there may be issues with some CPN's, but our experience is that is the current CPNs offer minimal or no restrictions for our offering in Australia. Each CPN differs in the way it is applied. The products sold by Britax are covered by 4 CPNs covering the following product categories:

Consumer Protection Notice No. 8 of 2007 Strollers – based on AS/NZS 2088:2000. Subsequent revision published AS/NZS 2088:2009 and AS/NZS 2088:3013 Britax needs to add a couple of labels and need to conduct an additional test to the 1999 standard.

Consumer Protection Notice No. 3 of 2014 Child restraints – based on AS/NZS 1754: 2004, 2010 and 2013. Britax manufactures to the latest standard AS/NZS 1754:2013. When the standard is revised, Britax has to wait until the CPN is updated by Product Safety to include their latest requirements and the most recently released standard for consultation is then released. No additional testing is required for the CPN. Compliance to the complete AS/NZS 1754 is required for State and Territory governments as part of their Road Rules and the use of child restraints in vehicles. The CPN is required to be updated to allow child restraints, made to the latest standard, to be sold without contravening the CPN and the ACLs.

Consumer Protection Notice No. 1 of 2013 Baby Walkers – based on ASTM F977-00. Subsequent revision published in 2003, 2009, 2012 and 2018. Often the factories used by Britax do not have the appropriate test reports as their customers own the reports and Australia needs older versions of

the ASTM standard. The older reports are not applicable to their current production. Testing is required to the 2000 standard and the latest standard, as the latest standard is quoted on the packaging.

Consumer Protection Notice No. 4 of 2008 Folding cots – based on AS/NZS 2195:1999. Latest revision AS/NZS 2195:2010 including amendments 1 (2013) and 2 (2015). Britax needs to add a couple of labels and need and additional test to the 1999 standard.

Clearly changes to the CPN could simplify the compliance for Britax.

Britax tests all its products as they are designed for the Australian market. Testing is done to support any compliance statements as well as for supporting evidence in case of a product liability law suit. Britax uses the current Australian Standard or where there is no Australian Standard then an appropriate and latest ASTM or EN standard is used.

Addressing the problems as mentioned in the CRIS

- 1- There is a concern about unnecessary costs and confusion to consumers, businesses, and the economy (p6).
- 2- There is a concern that mandatory standards do not keep pace with changes to voluntary standards, resulting in barriers for import when O/S products are demonstrated as being safe in O/S markets (p6).
- 3- There is a suggestion that testing is duplicated in Australia in order to meet Australian requirements which results in inefficiencies as there are only minor differences between O/S standards and the Australian Standards (p7).
- 4- There is a suggestion that the current system is slow and costly and arguably has no impact to product safety (p7).

Whilst there may be some validity to these concerns, it should be noted that with regard to items 3 and 4 above, it's our belief that these problems do not exist.

For Example, the Australian Standard for the design of child restraints is widely recognised as the most strenuous regulatory testing of child seats globally. It tests child restraints to significantly higher G forces, using larger (heavier) test dummies than any other region in the world. With the objective of increasing product safety, beyond that of other markets. It provides for significantly different categories of child restraints that are not seen elsewhere in the globe i.e. Forward facing harnessed seats to approximately 8 years of age, booster seats to 10 years of age, extended rear facing seats and Low birthweight categories.

With this in mind, it would be incorrect to consider the ACL governing Australian Child Restraints as similar to their O/S counterparts or having little or no impact to product safety.

Similar statements could be made with regard to Strollers and Cots, examples are provided later in this response.

Q2. Are there any other problems that you think should be considered? If so, please set out what they are, what effect you think these problems could have and how the problems should be addressed.

Britax has nothing else to add.

Q3. Do you have any specific information, analysis or data that will help measure the impact of the problems identified? For example:

- What costs have you incurred from complying with an Australian mandatory standard where you were unable to rely on demonstrating compliance with a comparable overseas standard?

Typical testing costs for products sold by Britax are:

Strollers

- Complete AS/NZS 2088:2013 including the requirements of the CPN \$640

Folding cots

- Complete AS/NZS 2195:2010 (including amendments 1 and 2) including the requirements of the CPN \$728.

Baby Walkers

- Complete ASTM F977-18 including the requirements of the CPN \$445

Child Restraints

- The CPN has no effect on the testing cost of child restraints just for the CPN as they are required to be compliant to the Standard by the various Road Rules around Australia and in some States need to be certified

Britax has no concerns with testing costs that relate to compliance to Australia standards.

- Has not being able to comply with the most recent voluntary Australian or overseas standards impacted your business in terms of cost, time and number of products you are able to bring to market? If so, please provide details.

The CPNs have never prevented Britax from importing products that we wish to sell in Australia and has not affected any sales of our products in Australia. The additional testing requirements is a minimal cost to us.

Q3 (continued)

- Have you decided against supplying particular consumer goods in Australia so that you could avoid duplicative compliance costs under the current mandatory standards framework? If so, please provide details around the factors that influenced this decision and the consumer goods affected.

Never.

Policy objectives

- Q4. Do you agree that changes to the regulatory framework are required to address the problem? If not, why not?

Minimal change, as described earlier, would be ok however the current framework is acceptable.

- Q5. Do you agree with the policy objectives as outlined? If not, why not?

Britax partly agrees with objectives.

With regard to the ease at which suppliers and importers are able to comply with product safety requirements set under the ACL, we agree only to the extent where safety is not compromised, and the Australian context is recognised.

With regard to costs, we do not see a significant issue here and therefore the objective is not relevant. Furthermore, with regard to Child Restraints, it can be argued that duplicative testing does not exist due to the extent at which overseas standards differ to the Australian Standard.

With regard to increasing product availability and choice, we agree only to the extent where safety is not compromised, and the Australian context is recognised.

The use of the WTO agreement for products should not automatically imply that any overseas standard can be used in addition to an Australian standard. The Australian Standards tend to incorporate safety requirements as a result of historical reports of death or injury experienced in Australia.

- Q6. Are there any other policy objectives you think the Commonwealth, state and territory governments should be considering in addressing the problem?

Where Product Safety considers that there is no Australian Standard, then having Product Safety engage with Standards Australia to create an Australian Standard tailored to the safety concerns that exist in Australia market, would be beneficial.

Standards Australia could be utilised more effectively in its ability to write safety standards and leverage their reach with regard to contributors/stakeholders who are attuned to the Australian context.

Policy options – Option 1 - Status Quo

Q7. Does the status quo achieve the policy objectives?

Perhaps not entirely, but it is an acceptable process for Britax.

Q8. Is the current regulatory framework for developing mandatory standards under the ACL sufficient to address the problem?

No. It currently takes a considerable amount of time to have the nominated standard updated to the latest standard and subsequently within a few years a new revision is introduced.

Q9. Does the current regulatory framework impose unnecessary costs or compliance burdens? If so, could you provide examples or evidence.

The costs involved are minimal as can be seen in the testing costs in Q3.

Policy options – Option 2 – Amend the ACL to allow more easily trusted overseas standards -

Q10. Two alternatives have been presented to make it easier to comply with overseas standards: prescribing a list of trusted standards making associations whose standards may be declared; or taking a principles-based approach to declaring overseas standards.

a. Which alternative is preferable?

b. Are there other alternatives to make it easier to comply that haven't been considered?

Britax does not agree that overseas standards should simply be used as an alternative to an Australian Standard. Each product should be considered against the Australian context and the associated safety risks in our market. Britax supports Australian Standards being the basis of a mandatory standards but does not support the proposal of overseas standards as being equivalent. Especially in regard to Child restraints, the Australian Standards includes critical design elements and performance requirements that are essential in keeping Australians safe.

Trusted overseas standards bodies should only be a reference of possible standards that could be used by Product Safety in a CPN if there was no Australian Standard and the creation of a suitable Australian standard was not possible.

Preferably Product Safety should seek Australian Standards or support the creation of an Australian Standard.

Britax is concerned that if so called "trusted overseas associations" were referenced for their standard, then there may be a significant lessening of safety standards in our products.

Examples of CPNs used by Britax that have safety based on the Australian Standard

Strollers

The Australian Standard for Strollers AS/NZS2088 has been revised in 1993, 2000, 2009, 2013 to include revisions to address reported deaths and injuries. The standard over this time has been revised to include requirements to prevent deaths as well address the associated Coroner's findings.

Examples:

- Death related to a child left unattended to sleep in a reclined stroller and their subsequent movement resulted in the stroller overbalancing and the child falling out. The child subsequently asphyxiated by the structure of the stroller.
- Death related to a child left unattended in a stroller where the child tried to get out and was subsequently asphyxiated by the stroller's harness.
- Death related to a child left unattended in a stroller where the child tried to get out and was entrapped and subsequently asphyxiated by the stroller's bumper bar
- Deaths related to children as a result of strollers without their brakes applied and rolling away unattended. Two children drowned.
- Amputation of finger by a reversible handle.
- Requirements for shoulder straps on harnesses to prevent a child escaping.

AS/NZS 2088 has revised its requirements over the years to prevent these hazards from reoccurring. ASTM and EN standards do not have requirements to prevent most of these hazards. There is now a new ISO standard for Strollers and Australia has representation. Australia proposed resolutions for the above hazards, but most were not accepted by the ISO committee, which is dominated by representatives from European countries. AS/NZS 2088 protects Australians far better than overseas standards.

Folding Cots

The most recent standard AS/NZS 2195:2010 was revised following the consideration of deaths of infants in folding cots. From the data provided one area of concern included the sides of cots that were made of a non-breathable fabric that could prevent babies from breathing. The standard was revised to have all sides use an open mesh above the mattress. In addition, the requirements for the mattress and base were revised to reduce the risks of a baby suffocating. These new requirements together with requirements for the folding mechanism and the risks associated with folded sides, plus those safety features utilised in common with AS/NZS 2172 are not available in any overseas standards for folding cots.

Child restraints

There are three key Standards for child restraints in the world, Europe (UNECE) ECEr44/r129, USA/Canada FMVSS 213 and Australia's AS/NZS 1754. These standards are very different and establish their safety levels differently. Although they create products with the same end purpose, they are not interchangeable. Use of UNECE child restraints in Australia would create confusion as their sizing and consumer advice is very different from AS/NZS 1754. UNECE in most cases doesn't use tether straps. The use of tether straps in Australia has contributed to better performance and safer products. This along with other difference previously mentioned validate AS/NZS 1754 and highlight the potential of a reduction in safety if overseas standards were accepted.

Baby Walkers

As there is no Australian standard for Baby walkers and no request via Product Safety to have Standards Australia create an Australian standard, ASTM F977-00 is utilised.

Q11. Are the standards making associations on the proposed list acceptable?

- a. If not, please describe why.
- b. Should any other standards making associations be included?
- c. Once a list of trusted overseas standards organisations is set, which approach ('opt-in' or 'opt-out') would achieve the best outcomes for consumers and businesses and why?

A long list of trusted overseas standards bodies (associations) should only be provided as a reference of possible standards that could be used by Product Safety in creating a CPN. Preferably, Product Safety should seek Australian Standards or support the creation of an Australian Standard.

No other body/association is proposed.

Q12. Do you have any comments on the high-level criteria for a principles-based approach to declaring overseas standards, or any additional criteria?

- a. Could these same criteria be adapted to determining 'trusted' standards making associations?

Overseas standards should only be considered when there is no Australian Standard, or the Australian Standard cannot be revised to provide the requirements to protect Australians. There needs to be more involvement in Product Safety requesting Standards Australia to address any safety concerns that arise.

Q13. Are there related provisions in the ACL that should be updated at the same time, for example section 108 (refer to the Introduction and Appendix A)?

No comment from Britax.

Q14. If adopted, what would the likely impacts be on affected businesses (large and small), consumers, consumer law regulators, or accredited conformance and testing authorities?

There is currently no Australian body that could seek revisions to these standards, the exception being for ISO and IEC standard which are currently not used by an CPN. The lack of Australian participation in the generation and revision of these standards would materialise in a little or no consultation with Australia, while providing increased ability for overseas players to influence Australian standards. If products were to be sold that comply with various overseas Standards, then the level of safety could be reduced, and Australian consumers could face an increased risk of injury.

Following from this, these standards could potentially put consumers at risk of increased harm and importers at risk of product liability, if claims are made that an Australia Standards product was safer and could have prevented an injury occurring.

Q15. Have any impacted stakeholders been missed? What would the likely impacts be on these stakeholders?

No comment from Britax.

Policy options – Option 3 – Allow compliance with latest version of voluntary Australian and overseas standards

Q16. Two alternatives have been presented to make it easier to comply with the latest standards: permitting standards to apply as they exist from time-to-time; or including a safe harbour provision.

- a. In your opinion, which alternative is preferable?
- b. Are there other alternatives to make it easier to comply with the latest standards that haven't been considered?

Automatically allowing updated Australian Standards to apply would be desirable. We assume that Product Safety would be involved in the Standards Australia committee that is developing the standard. Preferably the whole Standard should be mandated rather than selected clauses which would exclude Product Safety from deciding which requirements to mandate.

Q17. If suppliers were required to comply with the latest standards as they exist from time-to-time, what would be a reasonable transition period? Why? How should updates to standards and transition periods be communicated to suppliers?

Older standards should also be acceptable as these would be required in hire or rental markets. Perhaps 10 years could be considered as the life of the product, as it would be expected that more recent versions should produce a safer product. Revisions of the standard within that period could be suitable. Of course, if there was a specific safety issue addressed by the latest Standard then that would need to be addressed. Note - In the case of Child restraints, there is a product age limit of 10 years referenced in the Standard.

Q18. Do you support the proposal for the update of existing standards (voluntary Australian or overseas) that have previously been reviewed and incorporated into mandatory standards or declared as a mandatory standard without requiring further consultation and regulatory impact analysis?

Yes.

Q19. Would permitting standards to apply as they exist from time-to-time as described pose any additional safety risks to consumers?

If older Standards were permitted but a future update addressed a specific consumer safety risk, then the CPN may need to be reassessed. In essence controlling compliance of new products to the latest standard but also controlling the use of products to earlier standards i.e in the case of hire or rental.

Q20. Do you think the safeguards for disallowing updates if they are reviewed and demonstrated to be unsafe or unsuitable are sufficient to achieve the goal of consumer protection? What factors need to be considered in triggering a review of an update? Are alternate or additional safeguards needed?

This could be avoided if Product Safety were to be involved in the process to revise the Australian Standard and /or were afforded the opportunity for preliminary comment when the draft standard was available for public comment. Product Safety could outline their concerns and nominate the changes that may be unacceptable to them. Using overseas Standards would likely mean that any consultation would not be limited or not possible.

Policy options –Alternatives

Q21. How can the current process for reviewing and updating mandatory standards to capture updates to referenced voluntary Australian and overseas standards be improved?

As mentioned previously, Product Safety could utilise Standards Australia to review or create standards to address particular safety concerns including the creation of possible new Australian Standards to replace an existing overseas standard.

Product Safety may be able to negotiate for preliminary rights to comment when the draft Australian Standard was available for public comment.

Q22. Are the benefits from streamlining the current process for updating standards likely to be the same or greater than the proposed amendments to the ACL?

As mentioned previously, if Product Safety was actively involved in the Australian Standards writing process for new and revised Standards it could streamline its process and effectively mandate the entire standard upon its release.

Q23. Are there any other ways that achieve the policy objective of more efficiently capturing updates to voluntary Australian and overseas standards without making amendments to the ACL?

No other suggestions.

Policy options – Possible combination of Option 2 and 3 -

Q24. Do you agree that Options 2 and 3 should be combined and implemented?

a. If so, which elements should be combined? And if not, why not?

As Britax have suggested revisions to Options 2 and 3, we do not offer suggestions in combining these options.

Q25. Are there any options not presented in this consultation RIS that could be combined with Options 2 and/or 3 to address the identified problem?

We have no other suggestion apart than those previously mentioned.

Preliminary impact analysis

Q26. For each of the options do you agree with the preliminary assessment and with the benefits and costs outlined?

For Britax the cost advantages are minimal.

Q27. Are there other costs and benefits that have not been considered that should be?

None offered.

Q28. Do you have any specific information, analysis or data in support of the benefits or costs for each option? Examples of costs could include testing costs, labelling costs and other compliance related administrative costs. Examples of benefits could include the number and value of additional products that could be supplied to the Australian market under Options 2 and 3, and any time and cost savings.

None offered other than that already supplied.

Thankyou for the opportunity to submit these comments.

Should you need further information please do not hesitate to contact us.

Yours sincerely

Britax Childcare Pty Ltd