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

Email: [productsafety@treasury.gov.au](mailto:productsafety@treasury.gov.au)

Dear Sir/Madam,

Accord welcomes this opportunity to provide our submission on *Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law – Consultation Regulatory Impact Statement (CRIS)*.

Accord is the peak national industry association representing the manufacturers and marketers of formulated hygiene, personal care and specialty products, their raw material suppliers, and service providers. Accord member companies make and/or market broad range of consumer and commercial goods that play integral roles in safeguarding public health, promoting personal hygiene, boosting confidence and emotional wellbeing, maintaining comfortable homes and enhancing quality of life, as well as keeping the wheels of commerce and industry turning. Member companies include large global manufacturers as well as small dynamic Australian and family-owned businesses. A list of Accord member companies is available on our website: <http://accord.asn.au/about/members>.

Headline statistics<sup>1</sup> for our industry's economic footprint include:

- Accord's membership is approximately 100 companies.
- Collectively, Accord member companies directly contribute more than 12,000 full-time equivalent jobs.
- Nationally, more than 175 offices and more than 65 manufacturing sites are operated by Accord member companies.
- 80% of member companies export products overseas.

We note that the CRIS identifies that the current product safety framework does not efficiently allow mandatory standards to keep pace with changes or updates to related voluntary Australian and overseas standards, or new standards that are created in an emerging technology/innovation.

Accord agrees with the Treasury in its identification of the problem and the stated policy objectives, to:

- make it easier for suppliers and importers to comply with product safety requirements set under the ACL,

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<sup>1</sup> Results from Accord Industry Size and Scale Survey 2018

- reduce compliance costs for business and barriers to trade by removing duplicative testing and compliance measures where a product has been manufactured overseas to the requirements of an equivalent trusted overseas standard, and
- provide benefits for Australian consumers and for the Australian market by increasing product availability and consumer choice, and decreasing the cost of consumer goods, without compromising consumer safety.

We welcome this opportunity to provide comments on the options presented in the CRIS to assist the Treasury in achieving its stated objectives. Our responses to the questions contained in the CRIS are provided as Attachment 1.

Should you require further clarification on the points raised please do not hesitate to contact me on

Yours sincerely,

Catherine Oh  
**Director, Regulatory & Supply Chain Strategy**

21 January 2022

## **Attachment 1 – Responses to Consultation Questions**

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

Accord agrees with the identified problems insofar as that the current processes for updating the existing mandatory standards are slow, which can then potentially negatively impact on trade and safety by not allowing internationally accepted and/or safer standards to be adopted or recognised as equivalent in Australia.

***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.***

The CRIS does not appear to have considered cases where mandatory standards conflict with overseas regulatory requirements. For example, the *Consumer Goods (Cosmetics) Information Standard 2020* contains a requirement to disclose the concentration of alcohol of hand sanitisers on the label – in some of the EU countries, it is against the rules to disclose the alcohol concentration on the label of alcohol-based hand cleaners. It is interesting to note that both Australia and the EU considered the issue at around the same time, in response to the market disruption cause by COVID and came to two very different conclusions. This in turn, created a new trade barrier for those businesses importing these products into Australia and indeed for Australian businesses wishing to export to the EU which now have to create a separate line for exports due to the labelling requirements.

We also note that the Australian update to the *Consumer Goods (Cosmetics) Information Standard 2020* was not preceded by a Regulation Impact Analysis. At the time of our discussion, we were informed that any changes to the label of a product is deemed minor and does not require Regulation Impact Analysis. Noting that many of the trade barriers we face are due to the different product labelling requirements, making the ease of movement of goods from one region to another difficult, we are likely to see continued increase in trade barriers if we continue to disregard label changes as minor.

Accord suggests that every proposed change should consider trade impact as a minimum to ensure that we do not continue to create technical barriers to trade without understanding the regulation impact.

***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?***

As advised above, a labelling change is not considered a minimal impact for fast moving consumer goods and other products which have a global supply chain. As the CRIS notes, Australia is an importer of manufactured goods and regulatory decisions which do not consider this issue can have a significant impact on the Australian market leading either to higher prices, reduced consumer access to certain goods or withdrawal from the market all together. Multinational companies have advised Accord

that as the Australian market is very small, product labelling is usually part of the product range for a larger market area such as the ASEAN region or the EU. Therefore, any labelling changes for the Australian market have to fit within the global supply chain strategy which may mean that labelling changes can take up to 12 months to achieve and not be achievable within the 180 days as currently proposed in the CRIS.

Members advise some years ago that the cost of over labelling a product to meet labelling change requirements within the time frame can be 25 to 50 cents a unit and this can at times run to \$1. This can amount to \$10k to \$75k for a particular product run depending on the number of units. We expect these costs to have increased since the information was provided to us.

Re-labelling a product is not a simple task. It needs to take into account the following processes:

- Costs of the label itself – which depends on the size and colour match required;
  - Design of the label – whether it just puts “100mL” or if from a presentation perspective there is a need to design a whole new label to cover the entire front panel so that the over label is ‘seamless’ or not obvious to a consumer;
  - Costs to unpack good (which will already be in sealed cartons);
  - Costs to repack and re-seal;
  - Costs associated with damages (accidental or otherwise) in the exercise.
- ***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.***

See above.

- ***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.***

See above.

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

Yes, we agree that a change to the regulatory framework is required to achieve the stated policy objectives.

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

Yes, we agree with the stated policy objectives, especially reducing compliance costs where a product has been manufactured overseas to the requirements of an equivalent trusted overseas standard; and increasing product availability and consumer choice, and decreasing the cost of consumer goods without compromising consumer safety. With regard to recognising equivalent trusted overseas standards, Accord would also

like to see trusted overseas technical regulations (i.e. regulations that mandate a specific quality, safety and efficacy requirement) recognised, as well as standards.

We would also like to draw a distinction between *recognising* equivalent overseas standards and *mandating* equivalent overseas standard. *Recognising* overseas standards allows flexibility where multiple standards may be deemed acceptable as they provide equivalent safety outcomes e.g. allowing compliance with either DIN or BSI standards, where the two standard setting organisations have standards with technical differences but provide equivalent outcomes. *Mandating* a specific standard reduces flexibility by not allowing compliance to any other equivalent standard.

Accord would like to see an outcome where equivalent overseas standards are recognised, not necessarily mandated.

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

See above.

**Q7. Does the status quo achieve the policy objectives?**

No. The CRIS summarized the current issues with status quo – status quo would not deliver the objectives which aim to do better than status quo.

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

No.

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

Yes. Some examples are provided in responses to above questions.

**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?**

A hybrid option could be used with a list of trusted standards making associations and taking a principles-based approach where a standard is not made by one of the standards making associations on the list. This would make use of the efficiency of having a list of recognized trusted standard making bodies without seemingly cherry-picking by allowing consideration of other standards as well. The principles-based approach should be broad enough to allow recognition of any standard regardless of who wrote the standard, provided proper Regulation Impact consideration has been followed.

A process to amend or update the list of trusted standards making associations should also be considered, so that a trusted standard making organisation can be either added or removed from the list based on the criteria.

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

As mentioned in response to Q5, we would like to see an outcome where we recognise compliance with any standards that are considered equivalent i.e. where there are multiple standards (or regulatory requirements) for a specific product that provide equivalent safety, all of the standards or regulations should be recognised as equivalent. Picking one specific standard to set as a mandatory standard in Australia in such a situation would deliver the opposite regulatory outcome as the stated policy objectives.

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

Yes.

**a. If not, please describe why.**

N/A

**b. Should any other standards making associations be included?**

International Fragrance Association (IFRA) Standards should also be considered. The New Zealand Group Standards Regulations refer to the IFRA Standards for fragrance components. In the EU and the ASEAN, the IFRA Standard is accepted as evidence in safety dossiers for cosmetic products. Similar acceptance should be considered in Australia, noting that fragrances is a component in a wide range of consumer goods.

**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?**

Opt-out approach is likely to be the most efficient, as it starts with the premise that Australia should align its standards with its international trading partners unless there is a good reason not to as required by Australia's WTO obligations. This is predicated on the assumption that there will still be a rigorous Regulation Impact Analysis to show that the specific product/s require regulation, and all trusted overseas standards for that specific product/s will be accepted as providing equivalent safety.

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

The high-level criteria for a principles-based approach to declaring overseas standards appears reasonable i.e. technical competence and expertise of the standards making process, which is publicly available and has wide membership, and acknowledges that they can be relied upon to include technical specifications in standards that are likely to work and are likely to be accepted by businesses.

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

Yes.

**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.

**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 are likely to be both positive and negative impacts.

The positive impact would most likely arise from certainty that complying with overseas standards would be enough to meet Australian obligations. This would be particularly relevant where a product is an imported product meeting a standard mandated in the exporting country and recognized in Australia. The compliance check would be simpler for the Australian importer. Australian exporters could also potentially benefit by having an option of complying with their major export country requirements.

There is a potentially negative impact from increased regulatory burden from mandating standards that were not previously mandated. Where an overseas standard is declared to be a mandatory standard, SMEs may not have the resources to keep up to date with the new obligations. Some thought is required on appropriate communication to the regulated entities, training/information provision if required and appropriate transition provisions.

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

No comment.

**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?**

There are pros and cons to each option.

A safe harbour provision would allow companies to transition to the newer, safer standards at their own pace. However, this may create an uneven playing field where some companies do not adopt newer, safer standards in a timely manner.

Permitting standards to apply as they exist from time-to-time provides the benefit that all companies are on an even playing field i.e. no-one can be a laggard in adopting the newer standard. If the general transition time applied is appropriate (3-5 years) so that companies have enough time to digest the new information and allows efficient transition taking into account company processes, then this would be the preferable option. A short transition timeframe, coupled with lack of effective communication with regulated entities would make this option unworkable.

We note that 3-5 years would not be required for most changes that are expected to be minor. However there will be some changes where shorter timeframe would place

undue burden on the regulated entities. It may be useful to consider the different types of potential changes and appropriate transition timeframes for those changes.

***b. Are there other alternatives to make it easier to comply with the latest standards that haven't been considered?***

See above.

***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?***

Minimum 3-5 years to allow for measured transition to the newer requirements e.g. including in business plan/work plan, resource allocation, change management, etc. Also see our response to Q16a.

***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, mostly. Where the change is significant, additional consultation may be prudent.

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

This approach should improve consumer safety as the standards would be updated as and when the technical experts and/or standards making associations considered there was a need to change the standard. This would ensure that the most contemporary standard was in place at any one time.

***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 needs to be considered in triggering a review of an update? Are alternate or additional safeguards needed?***

It would be reasonable to have safeguards for disallowing updates if they are reviewed and demonstrated to be unsafe or unsuitable. However, the bar for disallowing an update must be set high and should only be used where there is good justification why a standard that is safe elsewhere in the world is not safe in Australia.

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

No 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?***

No comment.

**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 comment.

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

Yes.

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

The option to comply with trusted international standards and permitting standards to apply as they exist from time-to-time is likely to provide the greatest benefit.

**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?**

No comment.

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

No comment.

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

No comment.

**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.**

No comment.