

Submission to the Australian Government Treasury.

**Supporting business through improvements to
mandatory standards regulation under the Australian
Consumer Law**

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1. INTRODUCTION

1. My expertise is in the fields of biomechanics, ergonomics /human factors, ‘accident’ investigation and safety. My highest university qualification is a Doctor of Philosophy (PhD). I am the self-employed director of McIntosh Consultancy and Research, an Adjunct Professor at the School of Engineering, Edith Cowan University, and Adjunct Associate Professor at MUARC, Monash University.
2. I have been active for over 25 years in drafting, developing, assessing, applying and reviewing product standards. I continue to participate in Standards Australia committees, and have participated in a British Standard committee (Cricket helmets) and chair an ISO committee which is currently reviewing and revising the occupational protective helmet standard.
3. The majority of my involvement in standards has been on helmets (bicycle, equestrian, motorcycle, sports (various) and occupational). My standards work has also involved fall arrest systems, quad bikes, motor vehicles, personal floatation devices, ‘body armour’, and personal ventilator systems.
4. My involvement in standards is based on my interest in safety and the supply of effective and fit-for-purpose safety systems and personal protective equipment (PPE).
5. In my consulting and research work I have developed tests for standards, written technical specifications for organisations, tested systems and PPE in the laboratory, and evaluated the performance of systems and PPE in the field.
6. This submission and the responses reflect my personal views only.

2. RESPONSES TO THE CONSULTATION QUESTIONS

2.1. *Barriers to compliance with trusted overseas standards and Inefficient regulatory architecture for updating mandatory standards*

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

8. **Responses:**

- In general, I disagree with the identified problems, how the problems are framed and the quality of the evidence presented. The 'problem' is framed as being primarily relevant to suppliers of consumer safety products, rather than the whole of society. I disagree with the use of the term 'trusted overseas standards.'
- The examples presented in the Treasury's document do indicate that the system is not functioning optimally, but offer little critical self-reflection.

9. 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.

10. **Responses:**

- In general, the framing of the problem is on the supply side and does not consider the intended safety and health outcomes of using fit-for-purpose safety systems and PPE.

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

12. **Response:**

- I am not a supplier.

2.2. *Policy Objectives*

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

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

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

16. **Responses.**

- I agree that based on a critical review and evidence-based approach to the issues raised in Treasury's document that some changes to the regulatory framework may be required.
- Various assertions and statements in the document regarding compliance and testing do not align with my understanding of the process of testing and product certification. Standards Australia, and the other standards bodies listed in the Treasury's document, do not approve products, they develop and publish standards. In Australia, there is an important system of third-party certification involving private certifiers, NATA and JASANZ.
- **Other policy objectives.** The most critical objective as per the Treasury's document is "*without compromising consumer safety*". However, in the context of the policy objectives, this essentially means that safety won't be reduced. The ideal policy objective should be that changes to mandatory and/or voluntary standards improve consumer safety not simply maintain the status quo.

2.3. Policy options

17. In my opinion the best option is to make the current system work better, i.e. 'Option 1 +'. A component of this best option may include elements of option 3.

1. 'Option 1 +' to include:
 - i. Improving the systems and functions of Standards Australia in order to serve better the Australian public.
 - ii. Utilising the committee structure of Standards Australia to obtain and consider inputs from a wide range of stakeholders, including government, business, technical experts and the public. Apply a formal consensus based decision-making process.
 1. The ACCC and the relevant Commonwealth Minister do not have content matter expertise nor a formal consensus based decision-making process.
 - iii. Utilising the public comment process of Standards Australia to obtain further feedback and comment from the public.
 1. Standards Australia and its committees are best placed to run a public comment process, not the

ACCC or relevant Commonwealth Minister.
Content matter expertise is critical to reviewing
and responding to public comment.

- iv. Regular, e.g. every five years, revisions of voluntary standards that are referenced in mandatory standards.
 - v. Clear communication between the relevant Commonwealth Minister and the relevant standards committee regarding issues specific to a mandatory standard.
 - vi. Developing a focus on market surveillance and product compliance.
 - vii. Maintaining an objective, independent and rigorous third party certification and compliance program.
 - viii. From option 3. Mandatory standards, whether made or declared, should be able to capture updates as they occur from time-to-time to any voluntary Australian or national/regional/international standards that are incorporated into a mandatory standard. I agree that a transition period would be required for businesses.
18. I do not support option 2. In short, the options do not describe an assessment and review process of standards that improves on the current system.

3. OTHER COMMENTS

19. The term "trusted overseas standards" is used throughout the Treasury's document, but it is not clearly defined.
1. The use of term word "overseas" is redundant and/or wrong. Either there is a "trusted standard" or there is a "trusted national/regional/international standard."
 2. What is the definition of a trusted overseas standard?
 3. What criteria are applied to determined trustworthiness?
 4. What stakeholder and community input is there into the process of establishing trustworthiness?
20. At present, there is a process whereby an Australian Standard can mirror a national or regional standard, e.g. EN or ISO. That process involves a community and stakeholder consultation process. Therefore, the current standards system in Australia does not preclude both Australians accessing products that are optimal and fit-for-purpose in Australia and minimising barriers to 'business'. We have an existing process for developing and publishing 'trusted standards.'

21. Example 2 refers to **bicycle helmets** and its 2016 review. Where is the review report? There is strong evidence that AS/NZS 2063 is a superior standard to EN 1078 and the CPSC standard.
22. One concern is the availability of EN 1078 or CPSC compliant helmets that would most likely fail the mandatory standard and not offer an optimal level of protection (Figure 1). The EN 1078 compliant Carrera foldable helmet in Figure 1 was available for sale in Europe (as of October 2016) and on 24 January 2022 via eBay. It comprises blades of expanded polystyrene helmet together by elastic straps.
23. MORPHER helmets claimed compliance with CE EN:1078 and CPSC. MORPHER refused to supply helmets to Australia for independent laboratory assessment. Helmets.org note: *"Morpher began raising funds on November 1, 2013 through Indiegogo to launch a new line of helmets that fold flat. They folded the company in 2020 and CPSC has issued a recall for the helmet, with instructions to discard it."* See also - <https://www.cpsc.gov/Recalls/2020/CPSC-and-Morpher-Warn-Consumers-to-Stop-Using-and-Dispose-of-Bicycle-Helmets-Due-to-Risk-of-Head-Injury-Recalling-Firm-is-Unable-to-Conduct-Recall-Recall-Alert>
24. When the **mandatory motorcycle helmet standard** was removed, road rules were updated to permit the use of UNECE 22 compliant helmets, which now dominate sales. There is no Australian stakeholder process of review for UNECE 22 equivalent to CS 076. The point of contact between the UNECE working group and Australia is the Department of ITRDC. This will be the same point of contact for UNECE 129. Australian reference/stakeholder groups need to be established to work with ITRDC and the UNECE WG.



Figure 1: An EN 1078 compliant Carrera foldable helmet. This helmet is currently for sale in Europe (as of October 2016). It comprises blades of expanded polystyrene helmet together by elastic straps.