

Submission by Spotlight Group Holdings Pty Ltd (SGH)

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

Consultation Regulation Impact Statement – December 2021 (RIS)

Spotlight Group Holdings Pty Ltd (SGH) on behalf of the Spotlight Retail Group (SRG) welcomes the RIS and the Australian Government's intent to amend the Australian Consumer Law (ACL) and associated legislation to support businesses to innovate, grow and minimise compliance costs, while maintaining protections for Australian consumers.

About Spotlight Retail Group (SRG)

SRG is privately owned and operated retail group that began in 1973. Over the years it has grown to become one of Australia's largest retail groups and includes:

- **Spotlight** – tracing its roots back to a fabric stall at the Queen Vic Markets, Spotlight has become one of Australia's largest fabric, craft, party and home interiors retailers. The business started in the 1970s and has grown to have over 140 stores throughout Australia, New Zealand and Asia and employ more than 7000 team members.
- **Anaconda** – launched in 2004 with a vision to be Australia's one stop, outdoor adventure & sporting retailer and now has over 70 stores across Australia.
- **Mountain Designs** – this iconic brand was acquired by the group in 2018 and the premium range of men and women's apparel, hiking, camp and everyday outdoor gear is available online and in Anaconda stores Australia-wide.
- **Harris Scarfe** - one of Australia's longest trading retailers, with over 160 years of experience was acquired by the group in 2020. Harris Scarfe is a department store with a wide product range and 48 retail stores across the metro and regional areas of South Australia, Victoria, Tasmania, New South Wales, ACT and Queensland.

SRG supplies products that are subject to several mandatory standards in force under the ACL. SRG takes product safety very seriously and is committed to compliance with the ACL including ensuring all products that it supplies meet the requirements of applicable mandatory standards in force under the ACL (mandatory standards).

Key Points

The policy objectives should also include reducing the cost of obtaining access to, and utilising, voluntary Australian standards that form the basis for mandatory standards.

SRG does not support option 1. SRG supports the implementation of option 2 and option 3 and considers they are both essential to achieving the policy objectives of the RIS.

Businesses face significant compliance costs and barriers to trade from duplicative or additional testing and compliance measures where a product has been manufactured overseas to the requirements of a comparable overseas standard.

It is essential for the ACL to be amended to easily allow for updated voluntary Australian standards and trusted overseas standards to be recognised, declared and incorporated quickly and efficiently into a mandatory standard.

Issues

Policy Objectives – Access to Standards

SRG supports the policy objectives of:

making amendments to the ACL to allow for the easier use of trusted overseas product standards and to potentially allow for the more efficient recognition of, and compliance with, updated voluntary Australian or overseas standards which have been referenced in mandatory standards.

However, SRG also considers the policy objectives should include reducing the cost for businesses of obtaining access to mandatory standards that are based on voluntary standards.

Currently, if a mandatory standard is based on a voluntary standard then a business must purchase a copy of that voluntary standard from a supplier such as Standards Australia, SAI Global, etc in order to identify the requirements of the mandatory standard.

Also, the ACCC's compliance program templates (often seen in section 87B enforceable undertakings and court orders) include a clause that says the company will:

*maintain up-to-date copies, at its business premises, of all consumer product safety standards and consumer information standards made or declared under the Australian Consumer Law, schedule 2 to the CCA that relate to products [COMPANY NAME] supplies (**the Standards**);*

These costs are significant as purchasing a copy of a voluntary standard can cost hundreds of dollars in most cases. If a business purchased a copy of every voluntary standard that forms part of the current mandatory standards the cost would be in the tens of thousands of dollars. Further, additional costs are incurred when a voluntary standard is updated as the updated voluntary standard also needs to be purchased.

SRG considers that obtaining a copy of a voluntary standard that forms part of a mandatory standard should be free for all businesses, both Australian based business and overseas based businesses. At a minimum, this should apply to such voluntary standards obtained from Standards Australia.

Licence and copyright restrictions also currently apply that prevents or limits the sharing of such voluntary standards. The cost of purchasing a voluntary standard

increases proportionally to the number of users or type of licence that is selected when purchasing a voluntary standard from Standards Australia. SRG submits that such voluntary standards should be able to be shared freely to ensure they are readily accessible for all businesses.

Option 2: Amend the ACL to allow the Commonwealth Minister to more easily declare trusted overseas standards

Many products supplied by SRG in Australia are manufactured overseas and imported by SRG. These products are initially designed and tested to meet the requirements of an overseas standard for a major market (e.g. the United States, European Union, China, etc). SRG bears the responsibility, and legal obligation, for ensuring every product it supplies that is subject to a mandatory standard meets the requirements of that mandatory standard. As the majority of mandatory standards do not recognise overseas standards, SRG is required to undertake additional compliance checks, testing and relabelling to ensure compliance with a mandatory standard despite the product meeting the requirements of an overseas standard and demonstrated as being safe in comparable overseas markets.

SRG experiences significant additional compliance costs as a result, which includes:

- purchasing copies of standards;
- identifying the differences between a mandatory standard and an overseas standard that has been referenced during the manufacture of the product;
- arranging for additional testing to be undertaken or checking additional test reports;
- redesign or modifications to a product that may be required for the product to meet the requirements of a mandatory standard;
- relabelling of products, which can be minor or significant but still required for most products to comply with a mandatory standard regardless of whether there are only minor technical differences to the overseas standard;
- obtaining specialist expert or legal advice on a wide range of matters relevant to ensuring products comply with mandatory standards as a direct result of their being differences between overseas standards and most mandatory standards.

These additional compliance costs lead to an increase in the cost of products for consumers and slow the speed of products to the Australian market or simply prevent the supply of some products by SRG in Australia.

SRG submits that it is essential for the ACL to be amended to easily allow for allow for trusted overseas standards to be recognised, declared and incorporated quickly and efficiently into a mandatory standard. The ACL also needs to efficiently allow mandatory standards to keep pace with changes or updates to such overseas standards.

In terms of the two alternatives proposed under option 2 of the RIS, SRG submits that both alternatives should be implemented. There are limitations of each alternative, which could be minimised if both alternatives were implemented.

Alternative 1 (prescribing a list of trusted overseas standards organisations in regulations) would provide certainty as to what organisations may be considered relevant for the Australian context. SRG submits the 'opt-out' approach described in the RIS should be the preferred approach as this will allow for overseas standards to be recognised, declared and incorporated quickly and efficiently into a mandatory standard and allow mandatory standards to keep pace with changes or updates to such overseas standards. However, this is subject to their being certainty as to what standards from those organisations are acceptable for the purposes of meeting the requirements of a mandatory standard. If there is ambiguity or room for doubt as to what standard can be referenced for the purposes of a mandatory standard this will lead to confusion and uncertainty, which must be avoided.

Further, if a voluntary standard was found to be 'unsafe' for Australia following a review then it would be important to allow a sufficient transition period for businesses to move to another standard. SRG would submit that a minimum of 18 months should be allowed for such a transition.

SRG submits that two other standards organisations should also be considered, being the American Association of Textile Chemists and Colorists (AATCC) and the U.S. Food and Drug Administration.

Alternative 2 (using a principles-based approach for declaring overseas standards) would provide certainty as to what overseas standards are acceptable for the purposes of a mandatory standard but it would appear to have a downside in terms of the time it would take to declare a standard.

Further issues to consider with option 2 include:

- ensuring the most recent version of an overseas standard can be adopted as soon as it comes into effect; and
- how to identify the parts of a standard that apply for the purposes of a mandatory standard if the whole of the overseas standard is not required for the mandatory standard. Currently, there are a number of mandatory standards that only require compliance with specific sections of a voluntary standard. So there will need to be clarity as to how to identify the relevant sections of an overseas standard.

Option 3: Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards

SRG submits alternative 2 is the better approach for option 3.

The RIS recognises the detriment to business and consumers when a voluntary standard is updated leaving the mandatory standard based on a superseded voluntary standard. Some examples are discussed in the RIS. Another such example includes the mandatory standard for prams and strollers. This mandatory standard is based on AS/NZS 2088:2000, which was updated in 2009 and most recently in 2013. If only the current voluntary standard is referenced, then prams or strollers produced in 2009 will

not comply with the mandatory standard as different wording is specified in the updates to AS/NZS 2088:2000 for one of the required warnings.

Businesses should be allowed to comply with the latest voluntary standard as soon as it comes into effect but should not be automatically required to do so. If there was an automatic requirement to comply with the latest version of a voluntary standard (even allowing for a transition period) this would place a large burden on businesses to implement adequate measures to ensure they are made aware of such updates when they occur and be in a position to quickly alter products.

Rather, there should not be a requirement to comply with the latest voluntary standard until such time as it is reviewed and updated as per the existing process administered by the ACCC. Adequate notification of updates by the ACCC will also be essential (such as ACCC email alerts to subscribers of the product safety Australia website and publishing updates on the product safety Australia website).

There also needs to be a sufficient transition period to enable businesses to have adequate time to make any changes required to comply with the latest version compared to the existing mandatory standard at that time. A transition period should be at least 18 months as shorter transition periods do not provide sufficient time to make required changes or sell through existing stock. This is particularly the case in the current climate where global supply chain issues have substantially increased lead times for manufacturing and lead times for some products are 12-18 months.

Also, alternative 1 has the downside of putting businesses in the difficult position of having to wait to see if the ACCC determines to not accept an update. If a business has moved to the updated standard then it will then have to 'undo' all the work that was done to move to the updated standard, leading to even higher compliance costs. The RIS comments that a *'suitable timeframe could be 180 days, during which time the ACCC could also undertake procedural steps such as notification of affected stakeholders that an update will occur'*. SRG submits that 180 days would not be enough time to 'undo' the work to move to the updated standard and that it would be concerned that it may not become aware of any such notification in a timely manner.

Further issues to consider include identifying updated standards. Clear criteria will be needed to ensure business know what updates can be applied. For example, if the name of a standard changes but the number of the standard is the same (or vice versa) will that be an update that can be applied. For example, *AS/NZS 2063-2008 Bicycle helmets* was superseded by *AS/NZS 2063:2020 Helmets for use on bicycles and wheeled recreational devices*.

Thank you for the opportunity to make this submission.