



Kidsafe Australia. Response to the Treasury consultation paper: Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law

To: Director
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Required: 21 January 2022 extended to 4 February 2022

For more than 15 years, Kidsafe representatives from every state and territory in Australia have sat on technical committees to develop standards and review Australian Standards under the guidance and auspice of Standards Australia.

Kidsafe is Australia's peak body specializing in the prevention of injury in children and recognizes the importance of rigorous standards developed by experts in a variety of fields to address safety risks and provide valuable information to government, professionals and the community generally. Committee representation is voluntary and Kidsafe representatives have contributed many hours on over a dozen committees, and our representatives are currently consulting on 16 technical committees.

Kidsafe would like to acknowledge the ongoing work of Australia's national standards body, Standards Australia, for coordinating the technical committees - providing a process of openness with robust discussion and a balance of expert representation; and for coordinating Australian attendance on international standards meetings.

Moreover, Standards Australia ensures that relevant overseas standards are considered by the technical committees and referenced or included where applicable.

It is our opinion that Australian Standards are extremely robust and will protect Australians from injury when developed by Australian experts who take into consideration relevant overseas standards.

As stated in the consultation regulation impact statement, the process of developing Standards, making mandatory standards and the necessary consultation process is time consuming and resource intensive. However, the people on these technical committees represent a variety of sectors including (but not limited to) retail, manufacturing, safety, medical, compliance etc. thus

ensuring that costs and ease/difficulty of compliance, are taken into consideration as well as risk and safety.

Further, these multi-sectoral experts with extensive knowledge of the existing processes, standards, intentions of the industry and knowledge of the average Australian consumer, freely give their time and expertise to ensure that products and services sold and used in this country are safe and that the standards are relevant to our Australian community. The consultation process ensures transparency with inclusion of experts and key stakeholders.

Kidsafe believes that the speedy introduction of the general safety provision would make the need for the proposed amendment moot.

This general safety provision was raised as a Product Safety Priority in 2019 by the ACCC following the Australian Consumer Law Review in 2017 but has not been implemented.

Proposal 6: *“Introduce a general safety provision that would require traders to ensure the safety of a product before it enters the Australian market including:*

- a flexible and less prescriptive approach to compliance by reference to product safety standards (for example, a ‘safe harbour’ defence to a breach of the general safety provision)*
- a penalty regime for breaches of the general safety provision, consistent with the ACL penalties regime”.*

In consideration of the Treasury consultation paper:

Kidsafe does not support Option 2 Alternative 1 – Amend the ACL to allow the Commonwealth Minister to more easily declare trusted overseas standards by prescribing a list of ‘trusted’ overseas standards making associations.

Kidsafe does not support Option 3 – Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards.

Response to questions:

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

Kidsafe agrees with the identified problems that:

the process to review and update a mandatory standard under the existing architecture is lengthy and that mandatory standards can become outdated very quickly and not align with the latest voluntary standards or current industry practice.

Kidsafe would like it noted that Australian standards are developed in consultation with industry and consumers via multi-sectoral committees. Standards Australia ensure that Australian standards are closely aligned with or reference overseas standards when relevant and appropriate.

- 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.

A general safety provision has not been introduced despite the ACL Review in 2017.

By developing a random list of ‘trusted’ overseas standards and allowing mandatory Australian standards to be automatically updated without proper consultation with Australian stakeholders and experts, there is a risk that the mandatory standard

would not be appropriate in the Australian context or meet the safety policy objective – it simply might not work in Australia.

Compliance cost. Kidsafe recommends that Australian Standards mandatory or voluntary be made freely available at no cost to all interested parties including (but not limited to) designers, manufacturers, importers, retailers and consumers. We believe that a barrier to compliance with standards is often the cost- especially in cases where multiple standards are required as in the case of the design and installation of a playground and equipment.

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

Kidsafe agrees with the policy objectives as outlined but **not** through the development of a list of ‘trusted’ overseas standards writers or making amendments to allow overseas standards to be adopted with reduced Australian experts and stakeholder oversight. ‘Trust’ can change. There is no mention of a review process for determining the ‘trusted’ overseas standards bodies. Kidsafe is concerned that many of the ‘trusted’ overseas standards bodies may have limited or no Australian involvement or influence; thereby not meeting the expected level of quality involvement of Standards Australia.

We strongly disagree with Australian standards being automatically updated by overseas standards without public consultation.

Mandatory standards should be developed through a consultation process with experts in the government, industry and the community.

We are pleased that the proposed amendments to the ACL would not change the role of the ACCC or the public consultation process.

“The proposed amendments to the ACL would not change the process for developing new mandatory safety or information standards under the ACL. The ACCC would continue to develop mandatory standards according to the Intergovernmental Agreement under the ACL, with public consultation on potential options being considered, regulatory impact analysis consistent with the Australian Government Guide to Regulation and a final decision by the Commonwealth Minister, as appropriate. In this respect, if the Commonwealth Minister was considering declaring a standard developed by an overseas association as mandatory, it is proposed the ACCC would still consult on the standard and prepare a RIS as appropriate, which would be used to inform the Commonwealth Minister’s decision.”

Q7. Does the status quo achieve the policy objectives?

As outlined in this response, we do not believe the status quo achieves the policy objectives. However, we do not agree with disregarding the status quo entirely as it remains robust and has been the most effective end to achieving our priorities to date.

Policy Options

Option 1 – Status Quo

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

Option 3 – Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary and 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?

Alternative 2. Kidsafe supports the proposal to amend the ACL to allow the Commonwealth Minister to declare standards from any source using a principles-based approach provided that the standard meets certain criteria as described in the proposal, and is reviewed through a regulatory impact analysis and through proper public consultation and engagement processes.

We agree with the view in the proposal that attributing ‘trust’ to an overseas standard making association could potentially reduce the ability of the ACCC to recommend a wider variety of overseas standards making organisations that may be more relevant for particular product categories.

We agree with “Under this option, the ACCC would continue to periodically review and update existing mandatory standards to consider updates and incorporate trusted overseas standards where applicable and repeat the process when the mandatory standards inevitably become out of date. The important role of Standards Australia would be maintained, to ensure where appropriate, mandatory standards continue to reference voluntary Australian standards developed by Standards Australia which are tailored to the Australian context.”

Q 11. Are the standards making associations on the proposed list acceptable?

Kidsafe disagrees with naming ‘trusted’ standards in legislation.

Q 12. Kidsafe does not support listing ‘trusted’ standards making associations.

Q 16. 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?

Kidsafe does not support either of the alternatives in Option 3 of the document, as this option effectively removes Australian experts from the process of developing or amending mandatory standards.

Susan Teerds

Kidsafe Australia

3 February 2022