



28 January 2022

Director
Consumer Safety and Sustainability Unit
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

Dear Director, Consumer Safety and Sustainability Unit

RE: Treasury consultation paper: Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law

Thank you for the opportunity to comment on the *Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law* consultation paper.

Standards Australia is recognised as Australia's peak national standards body under a Memorandum of Understanding (MoU) we hold with the Commonwealth of Australia. As Australia's national standards body, we harmonise specifications and procedures to ensure products and services are safe, efficient, and benefit the Australian community. In addition, as representatives of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), we are also specialists in the development and adoption of internationally-aligned standards in Australia.

As per the obligations set under our MoU with the Commonwealth, Standards Australia develops standards of net benefit to the Australian community through a process of consensus. To achieve this, we are obligated to:

- establish an acceptable balance of all relevant interests in the technical committees that develop Australian Standards; and,
- make the standards development process accessible to the Australian public through providing opportunities for public comment and consultation.

In addition, we are required to act in a way that is consistent with Australia's international obligations under the WTO TBT Agreement. In particular, we are obligated to develop Australian Standards based on International Standards, unless there is a justifiable reason not to do so because of fundamental climatic or geographical factors or fundamental technological problems.

Our response to this consultation paper is driven by our objective of ensuring that standardisation in Australia remains robust, promotes economic efficiency and supports consumer safety. We are strongly opposed to amendments to mandatory standards regulation that will weaken good regulatory practice. Namely by **reducing accountability and transparency by removing consultation from the mandatory standard setting process, or by allowing overseas players to influence consumer protection in Australia at the expense of Australian industry and consumers.**

On this basis, of the options proposed by the Treasury under the consultation paper Standards Australia **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; and,
- Option 3: Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards.

Standards Australia is concerned that these proposals could result in the adoption of overseas voluntary standards developed with **no Australian input into Australian standards**. In particular, we hold concerns that the 'opt-out approach' and the proposal to allow automatic incorporation of changes to referenced overseas standards **removes proper consultation with Australian industry and risks the safety of Australian consumers**. These proposals both hold significant risk for Australian business and consumers.

In addition, Standards Australia is deeply concerned that the 'picking of winners' through the proposal to prescribe a list of trusted standards making associations in regulation could have **trade implications**, undermines Australia's commitment to international standards development and risks providing trust to organisations that may not align with Australian industry, consumer and policy objectives. Shifts of this nature **risk not only trade relations with key countries but may well jeopardise foreign policy objectives**.

We note some challenges remain in the mandatory standards framework, however under these proposals the risks of the proposed solutions far outweigh the problem.

Australia has a well-developed mandatory standard regulatory framework that is based on a commitment to public consultation as outlined under the *Australian Government Guide to Regulation*. Standards Australia suggests that instead of considering amendments that weaken public consultation good practice and that may be misaligned with Australia's international obligations, the Treasury focuses on updating the framework in line with the findings from the ACL Review and on increasing efficiency in the ACCC's processes.

Increased efficiency could be achieved through adopting a performance-based framework that would give the ACCC an ability to set performance measures for which standards could be used as a means of demonstrating compliance. In addition, streamlining administrative processes of the standards setting process to be more responsive to industry and government needs would be a more productive exercise of greater benefit.

These views are expanded upon in our responses to the questions posed in the consultation paper in the below. Should you have any queries about this submission, I would be happy to discuss and can be contacted on _____ or at _____.

Yours sincerely

Adam Stingemore

General Manager Engagement and Communications

Treasury consultation paper: Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law – Standards Australia's Response to Questions

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

Standards Australia agrees with the problem identified in the CRIS that businesses can experience costs and confusion in complying with the Australian Consumer Law (ACL) product safety framework, due to:

- the product safety framework being slow to respond to Australian business and consumer needs; and,
- the ACCC having inefficient administrative machinery for updating mandatory standards in a timely manner.

Standards Australia does not agree with the argument that this inefficiency is due to the existing framework not easily allowing for recognition of overseas standards.

The ACL allows the Commonwealth Minister to refer to relevant voluntary standards in part or in their entirety, be they international, regional, national or private standards, as long as the standard is deemed to be suitable for inclusion to address a safety risk through a best practice public consultation process. Standards Australia notes that in many instances overseas standards have been recognised in an Australian mandatory standard, while in other cases overseas standards were considered under the ACCC's regulatory impact statement (RIS) consultation process but were deemed to not meet the policy objective or to not be relevant in the Australian context.

Further, while it is true that the ACL restricts the Commonwealth Minister to declaring all or part of a standard developed or approved by Standards Australia, we note that the process for declaring a standard under the ACL has typically been the same as the process for making a standard. In the instances where a standard has been declared, a RIS consultation process has been undertaken to determine suitability of the standard and the ACCC has written a legislative instrument with variations to the declared standard to make it appropriate for the policy intent.

Standards Australia recognises the value in amending the ACL to allow declaration of an appropriate standard without pre-selecting a source, particularly as it may support increased responsiveness in circumstances where a fast response is necessary. We note, however, that outside of these rare instances, the declaration process should not be at the expense of best practice consultation and risk assessment processes, and as such is unlikely to resolve the identified responsiveness issue.

Consistency with standards making and regulatory good practice

It is Standards Australia's view that any changes to Australia's mandatory product safety framework that aim to reduce costs for business should not be at the expense of public consultation in the development of standards. We wish to reinforce that regardless of whether the ACCC seeks to directly reference or declare standards in regulation, it is critical that the ACCC continues to conduct stakeholder consultation and a regulatory impact assessment at a minimum, consistent with *The Australian Government Guide to Regulatory Impact Analysis*.¹ We find it difficult to reconcile that on the one hand, the Commonwealth asks all agencies to abide by a set of rules published by the Commonwealth, and on the other, the Commonwealth through this process is considering by-passing the very rules it put in place. This point extends to the obligations set out in the MOU the Commonwealth maintains with Standards Australia that includes obligations related to balance, transparency and public consultation in our standards development processes.

¹ The Australian Government, 2020, *The Australian Government Guide to Regulatory Impact Analysis: The Second Edition*, accessed at: <https://obpr.pmc.gov.au/sites/default/files/2021-06/australian-government-guide-to-regulatory-impact-analysis.pdf>.

Public consultation, openness and transparency are internationally recognised principles that form a core part of the standards making process, including developing or amending mandated standards. The ACCC recognises these principles in making and amending mandatory standards through conducting consultation in accordance with *The Australian Government Guide to Regulatory Impact Analysis* and the approach outlined in the Federal Government's recently released *Regulator Performance Guide*, which states that "genuine consultation processes are in place to ensure that stakeholders are engaged in essential decisions that involve them, with critical information shared in a timely way".²

We support the statement on Page 9 of the CRIS that makes a commitment to not introduce changes to the product safety framework that would remove public consultation and analysis best practice from the ACCC's processes. However, we suggest that the following proposals in the CRIS contradict this statement:

- an 'opt-out' approach that would allow the incorporation of relevant standards from 'trusted' overseas standards associations, unless it is demonstrated to be unsafe for Australia. Under this approach, it is proposed that a review would be undertaken only when a specific product standard is considered potentially unsafe, presumably removing the consultation process for product standards that the ACCC consider are trusted; and,
- allowing updated voluntary standards to be automatically updated under the mandatory standards without conducting a consultation process.

Australian stakeholders and experts should not be removed from the process of establishing or amending mandatory standards. Without proper public consultation with Australian experts there is a risk that the mandatory standard will not be appropriate in the Australian context, will not meet or continue to meet the safety policy objective or will not be suitable in the context of Australian business practice. These proposals run against standards development and adoption good practice and would weaken Australia's product safety framework, potentially resulting in poor safety outcomes for Australian consumers or negative economic impacts for business.

Consistency with Australia's trade obligations

Standards Australia notes that it is critical that any proposal to amend the product safety framework aligns with Australia's trade obligations.

It is a requirement under Australia's WTO obligations that Australia use relevant international standards, guides or recommendations as a basis for regulations, unless a relevant international standard does not exist, or the international standard is not appropriate to fulfill the policy objectives pursued due to factors such as climatic or geographical difference. (Articles 2.4, 2.9 and 5.4 of the TBT Agreement).

According to the WTO's definition, International Standards are documents developed through the processes of organisations whose membership is open to the relevant bodies of at least all Members of the WTO (Annex 1 Para. 4 of the TBT Agreement), such as:

- International Organization for Standardization (ISO);
- International Electrotechnical Commission (IEC); and,
- International Telecommunication Union (ITU).

Separately assessing International Standards from other standards developed by national and overseas standards writing bodies is important because Article 2.5 of the WTO Agreement provides:

2. 5. A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member,

² The Australian Government Department of Premier and Cabinet, 2021, *Regulator Performance Guide*, accessed at: <https://deregulation.pmc.gov.au/priorities/regulator-best-practice-and-performance/regulator-performance-guide>.

explain the justification for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade. (Emphasis added)

The rebuttable presumption does not apply to regional (for example, CEN Standards), national (Standards developed by national standards bodies), or private standards (developed by organisations, companies, and consortia outside of the International and national standards setting process). Standards Australia's MOU with the Commonwealth government, for very good reason, provides that:

6. When preparing Australian Standards, Standards Australia will, in accordance with Articles 3 and 4 of the WTO TBT Agreement utilize accepted international standards to the maximum extent possible and will only depart from this practice where there are compelling reasons to do so.

Standards Australia will continue to implement this policy across all sectors of the Australian economy including with respect to consumer product safety.

Standards Australia has a clear and formalised process to adopt international standards for the net benefit of the Australian community that is built upon openness and transparency, consensus and balance of representation. This process includes coordinating the attendance of Australian experts at international meetings to facilitate Australian participation in the development of international standards. If the ACCC were to pursue such an avenue of adopting standards from other National Standards Bodies or overseas Standards Development Organisations, it would need to demonstrate a market driven need and clear process in which to do so, including adequate stakeholder consultation across, industry, consumers, regulators and academia.

Further considerations

In addition to being developed in alignment with Australia's international obligations and through proper public consultation and engagement processes, it is Standards Australia's view that to the extent the ACCC seeks to directly reference standards and other technical specifications in regulation, it is critical that:

- they be referenced at a point in time to provide certainty for businesses that are required to comply with the standards, and to ensure that the technical content of a standard continues to meet the consumer safety policy objective;
- they be established under the authority of the regulator, not through ceding law making responsibilities to external sources; and,
- they improve regulatory coherence and technical convergence. It should not be assumed that because a 'standard' has been published in another jurisdiction that it is automatically going to work in Australia.

On the first point, it is a recommendation of the Australian Government's *Best Practice Guide to Using standards and risk assessments in policy and regulation* that dated standards should be used in regulation that indexes specific technical content to a solution. This ensures that any amendments to specific clauses, subclasses, tables, figures or annexes in updated referenced voluntary standards are considered for their appropriateness prior to being taken up in regulation. In comparison, undated standards provide for the technical content in revised versions of a referenced voluntary standard to be automatically taken up into legislation. This can result in policy issues in instances where the technical content no longer meets the policy requirements and could trigger legal issues as the authority over the indexed regulation is shifted to the standard organisation, rather than the regulator.³

³ The Australian Government Department of Industry, Innovation and Science, 2016, *Best Practice Guide to Using standards and risk assessments in policy and regulation*, accessed at: <https://www.industry.gov.au/sites/default/files/2019-03/best-practice-guide-to-using-standards-and-risk-assessments-in-policy-and-regulation.pdf>.

Notably, in relation to this last point on authority over the regulation, the underpinning assumption in both the Australian Government's *Best Practice Guide to Using standards and risk assessments* and the Australian Government's *Regulator Performance Guide* is that it is the responsibility of the regulator to undertake an assessment of policy options and to undertake a RIS to make any substantive regulatory policy change. Standards Australia notes that without a RIS process or decision-making point in place at the initiation of setting the mandatory standard, as appears to be proposed in the 'opt out' approach under Option 2 and under Option 3 of the CRIS, the authority over making Australia's mandatory safety standards would sit with the 'trusted' overseas voluntary standards writers, and not with the regulator. We suggest that it is unacceptable to consider any approach that would cede the sovereignty on the making of Australian law to external sources.

To the final point, Standards Australia rejects the assertion on Page 7 of *The Problem* section in the CRIS that states:

"... businesses may need to meet duplicative compliance requirements such as retesting or require relabelling to demonstrate compliance with the relevant mandatory Australian product safety standard, which may technically differ from other standards in relatively minor aspects. This adds unnecessary compliance costs for businesses, as well as likely increasing the cost of products for consumers, slowing the speed to the Australian market, and decreasing the range of products available, while arguably having no impact on product safety."

Australian mandatory standards are recognised as being authoritative in Australia as they are developed through close consultation with Australian industry and consumers, and because they often reference Australian voluntary standards or international standards that Australian stakeholders have developed or supported for adoption. Australian Standards are internationally aligned, unless there is good reason for the Australian Standard to differ based on the Australian context.

The differences between Australian standards and comparable standards developed by other voluntary standards writers should not be assumed to be minor, and Australian testing and labelling requirements should not be written off as unnecessary. In many instances there will be no difference in Australian and International Standards, so businesses may not need to meet multiple testing and labelling requirements to ensure compliance. In others where there are differences, these differences have been adopted through processes where Australian experts have provided critical input into the development of a standard that ensures that the standard meets the safety policy objectives and is appropriate for use in the Australian context.

The example of portable fire extinguishers

The current Australian mandatory standards for portable fire extinguishers showcase the importance of maintaining a product safety framework that is built on stakeholder consultation to ensure that any adopted mandatory standard is appropriate for the Australian context.

The mandatory standard for aerosol extinguishers (the mandatory aerosol standard) calls up and varies the voluntary Australian standard AS/NZS 4353:1995 Portable fire extinguishers – Aerosol type, while the mandatory standard for non-aerosol extinguishers (the mandatory non-aerosol standard) calls up and varies the voluntary Australian standard AS/NZS 1841:1997 Portable fire extinguishers, parts 1 to 8.

A range of overseas standards were considered as an option for referencing when introducing and reviewing the portable fire extinguisher mandatory standards. It was determined that:

- the BSI standard is not appropriate in the Australian context because it does not prescribe the same long-established labelling requirements found in Australia and it does not require exposed non-metallic elements to be UV stabilised; and,
- the ISO, CEN and NFPA standards are not appropriate in the Australian context because they do not prescribe the same labelling, fire classification and rating requirements as the Australian standard.

Clearly, in this instance, there should be no presumption that a standard published in another jurisdiction should be 'trusted' in Australia. The Australian standards have been developed to meet local requirements by Australian experts. In comparison, the comparable overseas standards are not appropriate in the Australian context and products manufactured to them would have different labelling requirements that may cause confusion about which type of fire extinguisher to use for a particular fire, increasing the hazard of injury or death.

2. 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.

Bringing the product safety framework in line with best practice regulatory frameworks

Rather than focus on developing a list of 'trusted' overseas standards writers or making amendments to allow overseas standards to be automatically adopted with reduced Australian stakeholder oversight, Standards Australia suggests that the Government focuses on the problem of the lack of efficiency in the ACCC's mandatory standards framework through bringing it in line with best practice overseas product safety models and domestic regulatory frameworks.

As identified in the ACL Review, the ACCC product safety framework and allocation of risks between consumers and traders is outdated compared to overseas product safety models in that it does not place a clear onus on traders to ensure the safety of products before they enter the market. It is also out of step with Australian regulatory frameworks that support performance-based regulatory approaches that set minimum necessary requirements to allow flexibility in compliance.

Standards Australia suggests that the Government considers implementing the recommendations made in the ACL Review that are relevant to the product safety framework. At a minimum, there should be consideration of the introduction of a general safety provision that would require traders to ensure the safety of a product before it enters the market would allow for efficiencies through a more flexible and less prescriptive approach to compliance under the framework.

In addition to this, the Government should investigate amendments to the framework to make compliance with the mandatory standards performance-based through setting the minimum necessary requirements for product safety. This additional flexibility could incentivise the supply of safe products by traders and manufacturers by allowing:

- a performance solution pathway that allows compliance through unique solutions that meet the stated performance requirements of the mandatory standard;
- a deemed-to-satisfy approach that uses set methods that are deemed to meet the Performance Requirements of the mandatory standard; and,
- a combination of deemed-to-satisfy and performance solutions could also be permitted.

This would facilitate the modernisation of the framework. It would also provide a flexible and less prescriptive approach to compliance obligations under the ACL that would allow manufacturers and traders to choose the most appropriate way to comply, reducing costs for business and supporting supply of products in the Australian market.

Making non-legislative improvements to the framework's administrative arrangements

There is also a case for enhancing the ACCC product safety framework through non-legislative improvements to the framework's administrative arrangements. The current ACL administrative arrangements do not apply a set of principles and rules for the assessment and maintenance of voluntary standards referenced within the architecture. The processes of the ACCC and Standards Australia are not aligned, and there is no clear set of processes or procedures that give guidance at an administrative level on how the processes of a voluntary standards organisation and the administrative arm of government that reference the voluntary standards should work. Additionally,

there is no framework in place for the assessment of other standards and specifications that could be developed by other voluntary standards writers.

The mandatory Australian standard for bunk beds is a prime example of voluntary and mandatory Australian standards setting being misaligned. The Australian mandatory standard for bunk beds (Consumer Protection Notice No. 1 of 2003) was introduced in 2002 and references the 1994 version of the voluntary Australian standard (AS/NZS 4220:1994). The voluntary Australian standard has since been updated in 2003 (AS/NZS 4220:2003) and again in 2010 (AS/NZS 4220:2010).

It was not until 2016 that the ACCC conducted a review of the mandatory safety standard to consider amending the standard. When the review was undertaken, while amending the mandatory standard by adopting sections of the updated voluntary Australian standard was one of the four proposed policy options considered by the ACCC, the mandatory safety standard for bunk beds still references the 1994 version of the voluntary Australian standard. In this instance, the ACCC responsiveness to updated voluntary Australian standards needs to be examined and process improvements considered.

Standards Australia suggests that the establishment of a Protocol between the ACCC and Standards Australia could be considered to support greater interconnectedness and alignment between the process of developing and updating mandatory standards under the ACL and the development and revision processes of voluntary standards undertaken by Standards Australia, as well as other voluntary standards writers such as the international standards bodies.

This proposal would facilitate greater engagement between the ACCC and Standards Australia on the development of voluntary Australian standards that are relevant to mandatory standards under the ACL. It would ensure that the ACCC are kept fully informed about the progress of the development or revision of Australian voluntary standards that are referenced or are intended to be referenced under the ACL. It could also allow the ACCC to leverage the Standards Australia consultation process to determine whether it is appropriate to automatically update referenced voluntary Australian standards in mandatory standards. In the instances where it is not appropriate and further review and consideration is necessary, it would allow the mandatory standards update process to be run more simultaneously with the voluntary Australian standards process.

Further detail on this proposal is outlined in Standards Australia's response to Question 16 b.

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

In 2019, the Australian Competition & Consumer Commission (ACCC) estimated that unsafe consumer products caused approximately 780 deaths and 52,000 injuries each year.⁴ This showcases the need to ensure that the Consumer Product Safety Framework and standardisation in Australia remains robust. While efforts can be directed towards ensuring the framework is efficient and can be complied with without undue cost is important, this should not be at the expense of regulatory efforts to maintain and improve consumer product safety.

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

Standards Australia agrees that changes to the product safety regulatory framework should be made to address the problem outlined in our response to Question 1, that the framework can be slow to respond to Australian business and consumer needs and that the ACCC has inefficient administrative machinery for updating mandatory standards in a timely manner.

⁴ The Australian Government Australian Competition and Consumer Commission, 2019, *Unsafe goods should be illegal to sell*, accessed at: <https://www.accc.gov.au/media-release/unsafe-goods-should-be-illegal-to-sell>.

We consider that the amendments outlined in our response to Question 2 will address this issue by bringing the framework in line with best practice overseas product safety models and domestic regulatory frameworks, while maintaining the integrity of mandatory standards development and amendment in Australia.

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

Standards Australia supports the Government's policy objectives that are outlined, in part.

As detailed in our response to Question 1, Standards Australia does not support the proposed response to these objectives through developing a list of 'trusted' overseas standards writers or making amendments to allow overseas standards to be adopted with reduced Australian stakeholder oversight. We consider that these proposed responses would undermine the Government's policy objective of making amendments to the framework *"without compromising consumer safety."*

We reiterate our view that for the mandatory standards framework to be coherent, the standards must be developed through:

- Proper and appropriate consultation with industry, government and the community;
- Compliance with WTO requirements and obligations; and,
- Point in time referencing which is essential for regulatory certainty and coherence.

Further, we note that the statement that *"the proposed amendments are also consistent with the Australian Government's broader objectives relating to trusted overseas standards as outlined in the 'Industry Innovation and Competitiveness Agenda'"* and the related quote from the Agenda is inaccurate.

The Government's Industry Innovation and Competitiveness Agenda states that in order to reduce duplicative domestic regulation, the Government will adopt the principle that if a system, service or product has been approved under a trusted international standard or risk assessment, **not** an overseas standard, as is erroneously stated in the CRIS.

Standards Australia reminds the Treasury that International Standards do not equate to trusted overseas standards. As detailed in Standards Australia's response to Question 1, International Standards are documents developed through the processes of the:

- International Organization for Standardization (ISO);
- International Electrotechnical Commission (IEC); and,
- International Telecommunication Union (ITU).

This is an important point because, as already detailed, this definition has trade law implications as the WTO TBT Agreement's rebuttable presumption does not apply to standards that are not International Standards.

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

As per Standards Australia's response to Question 2, the Commonwealth, state and territory governments should consider the policy objectives of bringing the product safety framework in line with best practice regulatory frameworks and making non-legislative improvements to the framework's administrative arrangements.

It is our view that the problems raised by manufacturers and suppliers around the complexity of the mandatory product safety standard framework could be resolved through amendments to the framework that put in place a general safety provision and make compliance with the mandatory

standards performance-based. These amendments would provide businesses with greater flexibility in meeting compliance obligations under the ACL and, in so doing, reduce compliance costs.

Standards Australia also considers that the problem of the ACCC's mandatory standards development and review process running behind updates to voluntary standards could be resolved through improvements to the framework's administrative arrangements, including the establishment of a Protocol between the ACCC and Standards Australia to support greater interconnectedness and alignment between the process of developing and updating mandatory standards under the ACL and the development and revision processes of voluntary standards. See our response to Question 16b for more detail on the Protocol proposal.

7. Does the status quo achieve the policy objectives?

Consideration of whether the status quo can achieve the policy objectives cannot properly be undertaken without knowledge of the feasibility of the ACCC investing in additional resources and process improvement to support greater efficiency in the mandatory standard development and update processes. Without this information, we cannot justifiably comment on whether the status quo could achieve the policy objectives.

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

Under the current regulatory framework for developing mandatory standards under the ACL, the ACCC conducts extensive stakeholder consultation and a preliminary regulatory impact assessment at a minimum, consistent with the *Australian Government Guide to Regulation*. This ensures that Australian business and consumer stakeholders are provided with the opportunity to shape mandatory standards to make sure that the standards are a necessary policy response, are relevant to the Australian context and will effectively reduce risk for Australian consumers.

Standards Australia considers that any amendments to the current regulatory framework that aim to 'address the problem' must maintain the ACCC's commitment to stakeholder consultation and to undertaking a regulatory impact assessment to ensure that policy options are carefully assessed and to ensure that industry experts can provide views into decision making.

If the ACCC move away from maintaining a regulatory best practice approach, through developing a list of 'trusted' overseas standards writers or making amendments to allow overseas standards to be automatically adopted with reduced Australian stakeholder oversight, there is a real risk that a new set of problems will be built into the ACL product safety framework. In particular, there will be increased risk that the ACCC will directly reference standards and other technical specifications in regulation that are not supported by Australian stakeholders or that do not adequately meet product safety requirements in the Australian context.

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

Standards Australia considers that the current mandatory standard regulatory framework can impose unnecessary costs or compliance burdens. In stakeholder consultations on this matter, Standards Australia heard from a range of industry and consumer group stakeholders that the unnecessary costs stem from the framework being slow to respond to Australian business and consumer needs and mandatory standards not being updated to reflect changes in the market in a timely manner.

None of the stakeholders that Standards Australia consulted with held the view that the unnecessary costs or compliance burdens are due to the existing framework not easily allowing for recognition of overseas standards. In fact, it was noted by many that they had previously provided input into ACCC RIS processes that considered referencing a range of standards, including Australian, international and standards developed by other voluntary standards writers, when developing or considering amendments to product safety standards.

Additionally, many stakeholders noted that international or overseas standards are not referenced in mandatory standards, as they are not appropriate in the Australian context or because mandatory standards based on multiple voluntary standards would be viewed as confusing, and potentially as more complex than a single standard.

One example that was provided is the mandatory standard for labelling of children's nightwear that is based on the voluntary standard *AS/NZS 1249:2003 Children's nightwear and limited daywear*. In this case, there are a number of comparable overseas standards that the ACCC have considered for referencing under the mandatory standard, including European standard: EN 14878, British standard: BS 5722 and US standards 16 CFR 1615 (0-6) and 1616 (7-14).

Australian stakeholders opposed their inclusion on the basis that the European, British and US standards are unsuitable for Australia on the basis of:

- the European standard covering different product types to the Australian standard, and having less stringent performance requirements, design rules and labelling requirements; and
- the British standard and the US standard both covering different products to the Australian standard, and both including product specific requirements and warning label requirements that are misaligned with the Australian standard.

The current Australian mandatory standards for labelling of children's nightwear showcases the importance of maintaining a product safety framework that is built on stakeholder consultation to ensure that any adopted mandatory standard is appropriate for the Australian context. The use of overseas standards under Australia's mandatory standard would lead to ineffective and inconsistent labelling, and various product requirements that have different performance requirements and design rules. This would confuse consumers and reduce safety outcomes.

It also highlights that it should not be assumed that because a standard has been published in another jurisdiction that it is automatically going to work in Australia. Standards Australia does not support Treasury's assertion that Australian product safety standards that differ from overseas standards create unnecessary compliance costs, while having no impact on product safety. Moves to make it easier for the ACCC to accept overseas standards holds risks for Australian businesses and consumers.

Standards Australia notes that the CRIS lacks any significant evaluation of these types of costs and risks against the benefits of promoting the easier recognition of overseas standards. The Treasury should make a serious effort to provide the Minister with an accurate account of the costs and benefits on this matter.

- 10. 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?**

Option a

Standards Australia does not support prescribing a list of 'trusted' standards making associations whose standards may be declared. We hold a range of concerns related to this proposal, including that:

- it undermines Australia's commitment to international standards development;
- it could result in misalignments with Australia's WTO commitments;
- it could remove Australian industry and consumers from the process of developing and updating mandatory standards in Australia; and,
- it could open the door for overseas players to influence consumer protection in Australia.

It is Standards Australia's view (and a requirement under Australia's commitments under the WTO) that industry driven, consensus based international standards should underpin product safety standards in Australia. International standards are developed and adopted in Australia through a process that is based on transparency, consensus and balance of representation across industry, government and consumers.

The proposal to provide 'trust' in overseas standards bodies, outside of the international standards framework, undermines the international standards development and adoption practice. This will weaken Australia's position on international harmonisation and technical alignment, as other standards bodies would not see the need to consider Australian views in the international standards development setting if their standards are automatically referenced otherwise.

The proposal may also result in misalignments with Australia's trade obligations, due to perceptions of 'picking winners' and potential impacts on the trade interests of third parties. As outlined in our response to Question 1, the rebuttable presumption relating to unnecessary obstacle to international trade applies to international standards, not standards developed by foreign National Standards Bodies or overseas Standards Development Organisations. Should the ACCC pursue such an avenue of adopting 'trusted' overseas standards, it would need to demonstrate a market driven need and clear process in which to do so, including adequate stakeholder consultation across, industry, consumers, regulators and academia. Without such a process in place, as appears to be proposed in the 'opt out' approach, Australia would be open to disputes from third parties if they consider the decision to adopt a standard has impacted trade.

Another key factor to note is that Australia has concluded a large number of Bilateral and Regional Trade Agreements over recent years that offer considerable scope for enhanced standards and conformance co-operation. The development of a 'trusted' list may in fact raise questions from a number of our key trading partners as to why their NSBs or other Standards Development Organisations are not included on the list and again may result in disputes if WTO commitments have not been followed.

In addition to the international considerations, Standards Australia notes that the proposal to mandate a list of 'trusted' standards making associations in legislation risks removing Australian stakeholders from the process of developing and adopting standards, particularly where this would result in the automatic adoption of standards made by such organisations (as per an 'opt-out' proposal in the CRIS). The ACCC's current process under the mandatory product safety standards framework is built on a commitment to regulatory best practice under the Australian Government Guide to Regulation, which includes requirements to engage with impacted stakeholders in the development of regulation.

Standards Australia does not support any move to weaken this best practice approach through providing a blanket level of trust to standards making associations that develop standards with limited, if any, Australian stakeholder involvement. Standards, regardless of source, should be considered for their appropriateness to meet the product safety objective through proper public consultation and engagement processes that are not compromised by a pre-conception of trust.

In particular, Standards Australia is concerned by the proposal to mandate a list of 'trusted' standards making associations whose standards may be declared through an 'opt-out' approach. While the CRIS states that an opt-out approach would safeguard consumer protections, we consider that this approach would severely weaken consultation processes, or could see standards adopted into regulation without consultation or a review, where the ACCC deem the 'trusted' overseas standard to not be 'unsafe'. This approach would create a default setting that an overseas standard is 'trusted', with very limited, if any, consideration about whether it is suitable to the Australian context. In this instance international business and overseas players that may not align with Australian industry, consumer and policy objectives would have more ability to influence Australian mandatory standards than the Australian stakeholders that are impacted by the standards.

Standards Australia notes that several of the current mandatory standards respond particularly to the Australian marketplace. For example, mandatory standards relating to aquatic toys and portable swimming pools respond to the fact that backyard pools are far more common in Australia compared with jurisdictions like the EU, Canada or Japan. Similarly, the mandatory standard for sunglasses

recognises that Australians experience high levels of UV radiation from sunshine compared to other jurisdictions. Where these (and other) mandatory standards adopt international standards, this has followed Australian involvement in the development of those international standards and consideration of whether adoption creates a net benefit for Australia.

Adopting an approach that allows suppliers to meet standards that are developed by foreign national standards-setting bodies, without substantial review and consideration as to whether this is appropriate for the Australian market (including consumer engagement and input), risks a reduction in consumer safety for Australian consumers. Standards Australia strongly suggests that this approach is not further considered.

Option b

Standards Australia could support 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 principles are enhanced to include a requirement that the standard is reviewed through proper public consultation and engagement processes. This review process should include consideration of the criteria outlined in the Option B proposal under the CRIS, as well as the additional criteria outlined in our response to Question 12.

We support the view outlined on Page 16 of the CRIS states that attributing 'trust' to an overseas standard making association will reduce the ability of the ACCC to recommend a wider variety of voluntary standards making organisations that may be more relevant for particular product categories. Standards Australia supports this alternative approach of amending Subsection 105(1) of the ACL by removing the requirements around the standard being prepared by a particular body, Standards Australia or otherwise.

As above, Standards Australia considers that there is significant risk in naming 'trusted' standards setting bodies in legislation. It is more appropriate for the ACCC to reference or declare an applicable standard without pre-selecting 'trusted' sources, as long as this is done in accordance with best practice regulatory consultation and assessment requirements.

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

Standards Australia does not support the establishment of a list of 'trusted' overseas standards bodies for the reasons outlined in our response to Question 10.

a. If not, please describe why.

As detailed in the response to Question 10, Standards Australia considers that there is significant risk in naming 'trusted' standards setting bodies in legislation, particular where Australian stakeholders and policy makers have limited, if any, influence over the body in question. Standards should be considered for appropriateness for use under the ACL product safety framework on their own merits, regardless of their source and not based on a pre-determined level of trust.

b. Should any other standards making associations be included?

Standards Australia does not support listing any of the proposed standards making associations as trusted under Subsection 105(1) of the ACL. In addition, we do not consider any standards development organisations should be included on the proposed list.

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?

Standards Australia is opposed to both the 'opt-in' and the 'opt-out' approach based on a list of trusted overseas standards organisations, and as noted in our response to Question 10 consider that the proposed 'opt-out' approach that would see standards adopted unless it is determined they are considered unsafe on the basis of trust is particularly problematic.

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

Standards Australia notes that the Government's *Best Practice Guide to Using standards and risk assessments in policy and regulation*⁵ includes detailed principles for selecting standards for use in Australian Government regulation. It suggests the following criteria to assess applicability of standards and risk assessments to the Australian context:

- Can the standard or risk assessment be used by stakeholders?
- Is the standard or risk assessment in wide circulation and use?
- Does the standard or risk assessment have an impact on state/territory procedures? If so, Policy officers should work with their counterparts in State and Territory governments to ensure the standard or risk assessment can be applied across jurisdictions and that practices and procedures are harmonised.
- Has Australia had some involvement or influence in the development of the standard or risk assessment?
- Does the use of the standard or risk assessment allow Australia to meet its international obligations?

Standards Australia suggests that the high-level criteria for a principles-based approach should align with the principles under the Government's *Best Practice Guide to Using standards and risk assessments in policy and regulation*, where possible, to support harmonisation of regulatory processes across government.

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

Standards Australia does not support listing 'trusted' standards making associations.

13. 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)?

Standards Australia does not have a view on whether there are related provisions in the ACL that should be updated at the same time as any updates made through this process.

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

As per Standards Australia's response to Question 10, it is our view that if Option A is adopted it risks removing Australian stakeholders, including businesses, consumers, consumer law regulators and accredited conformance and testing authorities, from the process of developing and adopting mandatory standards in Australia. This could result in the adoption of mandatory standards that are not fit for purpose in Australia to the harm of Australian business, consumers or regulators.

The current Australian mandatory standard for sunglasses and fashion spectacles showcases the potential impacts of allowing overseas voluntary standards to be mandated in Australia through a product safety framework that provides trust to standards setting bodies that do not have Australian representation and do not consider the Australian context.

The Consumer Goods (Sunglasses and Fashion Spectacles) Safety Standard 2017 sets out the mandatory requirements for sunglasses and fashion spectacles in Australia. It calls up and varies the

⁵ The Australian Government Department of Industry, Innovation and Science, 2016, *Best Practice Guide to Using standards and risk assessments in policy and regulation*, accessed at: <https://www.industry.gov.au/sites/default/files/2019-03/best-practice-guide-to-using-standards-and-risk-assessments-in-policy-and-regulation.pdf>.

voluntary Australian standard AS/NZS 1067.1:2016 Eye and face protection - sunglasses and fashion spectacles.

There are a range of overseas voluntary standards for sunglasses and fashion spectacles that could be referenced under the Australian mandatory standard. However, the overseas standards do not offer the same level of protection as the Australian voluntary standard, as the AS/NZS 1067.1:2016 standard sets more stringent requirements for ultraviolet exposure limits that is reflective of Australia's higher UV exposures. Consequently, any move to reference the overseas standards risks allowing the introduction of sunglasses and fashion spectacles with inferior protection properties in the Australian market, which would result in reduced consumer protection in Australia.

If adopted, the proposal would also have implications for Australia's international standardisation and trade objectives and commitments. Participation by Australian stakeholders in international standardisation activities is an integral part of Australia's efforts to increase the competitiveness of businesses in the global market and to help remove obstacles and barriers to trade at an international level.

As outlined in our response to Question 10, the proposal to mandate 'trusted' status to overseas standards making associations, however, could disincentivise engagement with Australian international standards development and adoption. It could also weaken Australia's focus on international harmonisation and technical alignment, as other standards bodies would not see the need to consider Australian views in the international standards development setting if their standards are automatically referenced otherwise.

This runs counter to the Australian Government's agenda on international standardisation. It has been recognised by the Australian Government that the standards arena is seeing new challenges, influences and investments, often propagated outside accepted international standards bodies, which will have implications for future trade and economic development in the region. Indeed, in a recent speech at a Lowy Institute event on the Australia's future interests the Prime Minister of Australia the Hon Scott Morrison MP remarked,

*"We cannot afford to leave it to others to set the standards that will shape our global economy. I'm determined for Australia will play a more active role in standards setting."*⁶

This comment reflects that the changing landscape for global standards, from an industry driven to a politically driven agenda, raises questions for our national long-term prosperity. The Government has stated openly that it is critical now, more than ever before, that Australia supports industry-led, voluntary, consensus-based international standards development. Any moves that could weaken this ambition will cost Australian business by impacting Australia's potential to be a driving force to influence international standards development in our country's interest.

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

Given the potential implications for Australia's international trade obligations, Standards Australia suggests that the trade law sections at the Department of Foreign Affairs and Trade and the Attorney General's Department are consulted.

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?

⁶ The Hon Scott Morrison MP, Prime Minister of Australia, *Lowy Lecture Speech: "In our interest"*, <https://www.pm.gov.au/media/speech-lowy-lecture-our-interest>.

Standards Australia does not support either of the alternatives that are presented in the CRIS to make it easier to comply with the latest standards. We consider that both options would remove Australian stakeholders from the process of updating mandatory standards in Australia.

Our key concern is that the automatic adoption or a safe harbour provision that allows compliance with overseas standards developed with limited, if any, Australian stakeholder input, without consultation on whether the standard continues to be appropriate in the Australian context and continues to meet the safety policy objective, cedes Australian mandatory standards development to overseas bodies, without Australian industry and consumer expert oversight.

Australian stakeholders and experts should be removed from the process of establishing or amending mandatory standards. Without proper consultation, there is a risk that the automatic update approach could lead to a lowering of safety standards for Australian consumers or have negative economic impacts for business. This may result in an Australian mandatory standard automatically referencing a voluntary standard that no longer meets the policy objectives of the mandatory standard or the technical specifications that are relevant in the Australian context.

A recent example for why we hold this concern is the European Chemicals Agency's proposal to classify titanium dioxide as a category 2 suspected carcinogen by inhalation due to its inhalation hazard for powders, containing 1% or more of titanium dioxide in the form of or incorporated in particles with aerodynamic diameter $\leq 10 \mu\text{m}$, as well as for liquids. Reportedly, Australian industry opposed the proposal, which ran against the NICNAS (now AICIS) Report on TiO₂ hazard risks that found no definitive evidence that demonstrates that TiO₂ causes cancer in humans in powder form, let alone in liquid state. One of the key concerns reported by industry was that this new classification would result in amended warning labelling requirements on a broad range of consumer products, including cosmetics, paints and sunscreen.

While the proposal was amended to omit liquids-based products by the European Commission after several countries made representations on this matter at the WTO TBT Committee, it shows the risks of ceding influence over Australia's mandatory standards to overseas players that may make product safety determinations that result in updates to standards that Australian industry do not support.

In addition to this key risk, we note a further risk that automatically updating voluntary standards referenced under the ACL could result in confusion around compliance for manufacturers and suppliers, as well as uncertainty for consumers. We hold this concern as automatically updating standards, without consultation with industry on suitable lead times, could see the mandatory standards outstrip the operations of the local industry resulting in non-conformance.

There is also a risk that automatically updating voluntary standards will create confusion in instances where there is a divergence between 'supply' laws and State and Territory 'use' laws for products where 'supply' and 'use' laws overlap. The States and Territories have a range of approaches to referencing and updating voluntary standards in their Legislation. One of many examples of this is State and Territory Road Rules Legislation where the approach for child restraints for vehicles is divergent. For child restraints, automatically updating the referenced voluntary standard under the ACL may result in a conflict or perceived conflict between the mandatory safety standard and road regulation user laws, creating uncertainty for both consumers and suppliers.

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

Standards Australia suggests that another option to make it easier to comply with the latest standards that has not been considered would be to make the administrative machinery that supports referencing of standards more responsive to industry and government needs and to support automatic referencing of voluntary Australian standards. This could allow for a better assessment process for referencing standards and keeping references up to date through considered automatic referencing of voluntary Australian standards.

The current ACL administrative arrangements do not apply a set of principles and rules for the assessment and maintenance of voluntary standards referenced within the architecture. The

processes of the ACCC and Standards Australia are not aligned, and there is no clear set of processes or procedures that give guidance at an administrative level on how the processes of a voluntary standards organisation and the administrative arm of government that reference the voluntary standards should work. Additionally, there is no framework in place for the assessment of other standards and specifications that could be developed by other voluntary standards writers.

A precedent example of an operating model

The Australian Building Codes Board (ABCB), a body of the National Cabinet, is a standards and codes writer. The ABCB develops a national construction code which is adopted by the States and Territories and within the code, voluntary standards developed by Standards Australia, and other International, national and Overseas standards writing bodies. The ABCB has a relationship with Standards Australia which is set out in an MOU which supplements the MOU between Standards Australia and the Commonwealth which sets out the assessment criteria for the acceptance of voluntary standards into the code.

The ABCB also maintain a protocol for the assessment of referenced documents which sets out the requirements for a referenced document, together with information needed to be supplied at the time of referencing. This model, which has worked since its inception around 1996 provides precedent for a model that can achieve better outcomes when working across mandatory and voluntary standards making bodies.

Developing a Protocol for the assessment of voluntary standards in a mandatory framework

A Protocol would support greater interconnectedness and alignment between the process of developing and updating mandatory standards under the ACL and the development and revision processes of voluntary standards undertaken by Standards Australia, as well as other voluntary standards writers.

The proposed amendments to the ACL administrative arrangements would facilitate greater engagement between the ACCC and Standards Australia on the development of voluntary Australian standards that are relevant to mandatory standards under the ACL. This would ensure the ACCC are fully informed about the progress of the development or revision of Australian voluntary standards that are referenced or are intended to be referenced under the ACL. It would allow the ACCC to leverage the Standards Australia consultation process to determine whether it is appropriate to automatically update referenced voluntary Australian standards in mandatory standards. In the instances where it is not appropriate and further review and consideration is necessary, it would allow the mandatory standards update process to be run more simultaneously with the voluntary Australian standards process.

Standards Australia is obligated under its MoU with the Australian Government to seek consensus and a fair and acceptable balance of all relevant interests when developing or updating Australian Standards, through taking full account of the needs of producers, service providers, users and others who are materially affected. As previously described, this is achieved through the principles of transparency, consensus and balanced expert committee representation, as well as an extensive public comment process.

By aligning with the Standards Australia voluntary standards development process and leveraging the results of related consultation processes, the ACCC will be able to determine based on feedback from Australian experts and the public whether an updated voluntary standard is suitable for automatic updating under a mandatory standard, and will be able to keep pace with the latest developments in Australian and International voluntary standards.

In addition, a protocol will assist to ensure that the standards prepared or revised by a voluntary standards organisation are appropriate for use under the ACL architecture. It would set the best practice process for drafting voluntary standards for reference in mandatory standards, as well as the format and drafting style for organisations that propose to undertake the development or amendment of an ACL referenced voluntary standard. This would facilitate acceptance of voluntary standards by the ACCC. It would also streamline the mandatory standard drafting and development processes

through supporting voluntary standards writers to better meet the requirements of the mandatory standards under the ACL.

Avoiding the unintended consequence and risk of automatic referencing of new editions and amendments without public consultation

Establishing a Protocol that allows for a better assessment process for referencing standards and greater efficiencies in keeping references up to date will support mandatory standards to keep pace with the latest developments in voluntary standards, while maintaining the integrity of safety standards for Australian consumers and business.

This proposal avoids the risks of unintended consequences that may arise from allowing businesses to immediately comply with automatically updated voluntary standards that have not been through a public consultation process. Without proper consultation, there is a risk that the automatic update approach could lead to a lowering of safety standards for Australian consumers or have negative economic impacts for business. This may result in an Australian mandatory standard automatically referencing a voluntary standard that no longer meets the policy objectives of the mandatory standard or the technical specifications that are relevant in the Australian context.

It is typical that voluntary standards writing bodies periodically review and update their standards to ensure that they mirror the practice and reflect current views on safety, quality and environmental impact in the context for which they are drafted. Without alignment of processes between the ACCC and the voluntary standards writer or advice and guidance from external technical experts on whether an updated standard continues to meet the requirements of the mandatory standard, the ACCC runs the risk of accepting voluntary standards that no longer specify the required level of safety.

The Protocol approach addresses this risk through supporting greater interconnectedness and alignment between voluntary and mandatory standards development processes to streamline the process for developing mandatory standards, while maintaining ACL public consultation good practice processes. The voluntary standards within the ACCC Mandatory standards will be updated automatically, if consultation processes undertaken on the voluntary standards support such an outcome. Alternatively, where automatic updating is not appropriate, the Protocol approach will allow the mandatory standards to be created or updated in greater unison with the voluntary standards that they reference. This will ensure that mandatory standards keep pace with the latest developments in voluntary standards while the process will continue to ensure that any standards referenced therein are consistent with Australian safety requirements, as is current practice.

17. 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?

Standards Australia does not support the proposal to allow compliance with standards as they exist from time-to-time, as outlined in our response to Question 16.

18. 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?

Standards Australia does not support this proposal, as outlined in our response to Question 16.

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

Standards Australia considers that permitting standards to apply as they exist from time-to-time as described would pose additional safety risks to consumers. Automatically updating standards without consultation on whether the updated standard still meets the consumer safety policy intent and is still relevant to the Australian context holds risks for Australian consumers.

In recognition of this risk, it is a recommendation of the Australian Government's *Best Practice Guide to Using standards and risk assessments in policy and regulation* that dated standards should be used in regulation that indexes specific technical content to a solution.⁷ Permitting standards to apply as they exist from time-to-time would see any amendments to the technical specifications in referenced voluntary standards automatically taken up without consideration of whether these amendments are appropriate in the context of the mandatory safety standard. If they are not appropriate, it could result in products entering the Australian market that hold additional safety risks for consumers.

20. 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?

Standards Australia does not support this proposal, as outlined in our response to Question 16.

We consider that, instead of safeguards for disallowing updates if they are reviewed and demonstrated to be unsafe or unsuitable, it is necessary to consult industry and consumer experts on proposed amendments to Australian mandatory standards to ensure that the amendment meets the product safety policy objective and will not have unnecessary negative economic impacts for business.

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

See Standards Australia's response to Question 16 b.

22. 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?

Standards Australia considers that streamlining the current process for updating standards through making non-legislative improvements to the framework's administrative arrangements is likely to have greater impacts than the proposed legislative amendments to the ACL, while maintaining the integrity of mandatory standards development and amendment in Australia.

As outlined in our response to 16. b, Standards Australia considers that there would be real value in the establishment of a Protocol that supports greater interconnectedness and alignment between voluntary and mandatory standards development processes to streamline the process for developing mandatory standards in Australia. A Protocol could address the problem of the ACCC's mandatory standard development and review process running behind updates to voluntary standards by allowing the ACCC to leverage Standards Australia's standards development process that is based on three internationally recognised principles, openness and transparency, consensus and balance of representation. This would support greater interconnectedness and alignment between the process of developing and updating mandatory standards under the ACL and the development and revision processes of voluntary standards.

⁷ The Australian Government Department of Industry, Innovation and Science, 2016, *Best Practice Guide to Using standards and risk assessments in policy and regulation*, accessed at: <https://www.industry.gov.au/sites/default/files/2019-03/best-practice-guide-to-using-standards-and-risk-assessments-in-policy-and-regulation.pdf>.

23. 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?

See Standards Australia's response to Question 16 b.

24. 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?

Standards Australia does not support Option 3 as a standalone option or as a combined option with Option 2.

25. 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?

Standards Australia suggests that the proposal outlined in response to Question 16 b. could be combined with Option 2 b. to address the identified problem. This would address:

- the problems raised by manufacturers and suppliers associated with having to meet prescriptive standards by providing businesses with greater flexibility in meeting compliance obligations under the ACL and, in so doing, reducing compliance costs; and,
- the problem of the ACCC's mandatory standard development and review process running behind updates to voluntary standards through the establishment of a Protocol between the ACCC and Standards Australia to support greater interconnectedness and alignment between the process of developing and updating mandatory standards under the ACL and the development and revision processes of voluntary standards.

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

Option 1

Overall, Standards Australia agrees with the preliminary assessment of the benefits and costs outlined for Option 1, with the below additional points.

We consider that an additional benefit of Option 1 is that it retains the ACCC's commitment to public consultation and the RIS process, as outlined under the Australian Government Guide to Regulation. This ensures that the views of Australian industry and consumers are considered in setting Australia's mandatory safety standards.

Additionally, Standards Australia considers that the statement in the costs section that businesses will continue to incur unnecessary compliance costs is problematic. While this may be the case in certain instances, Standards Australia notes that Australian Standards are internationally aligned, unless there is good reason for the Australian Standard to differ based on the Australian context.

In many instances there will be no difference in Australian and International Standards, so businesses may not need to understand multiple standards to ensure compliance. In others where there are differences, these differences have been adopted through processes where Australian experts have provided critical input into the development of a standard that ensures that the standard meets the safety policy objectives and is appropriate for use in the Australian context.

Option 2

Standards Australia considers that a review of a single set of costs and benefits for Option 2 a and Option 2 b cannot properly be undertaken given the different risk profiles of the two options.

For Option 2 a, Standards Australia reiterates that we consider that the Treasury has not significantly evaluated the costs and risks associated with providing 'trusted' status to overseas standards setting

organisations and with allowing the less rigorous recognition of overseas standards. We consider that there are substantial risks associated with this proposal, including:

- that mandatory standards may be set that do not meet the product safety policy considerations or that do not apply in the Australian context, which could result in poor public safety outcomes;
- that mandatory standards that do not align with Australian business practices may be set, which will result in additional administrative costs for industry;
- that providing 'trusted' status to particular overseas standards setting bodies could be seen as 'picking winners' and may have international trade implications, which could result in a trade dispute under the WTO or one of Australia's Free Trade Agreements; and,
- that prescribing 'trusted' standards setting organisations could weaken Australia's position in international standardisation, which could create costs for businesses that benefit from the level playing field and the consistency and interoperability that international standards provide.

Standards Australia does not consider that the above costs are attributable to Option 2 b, provided that this option maintains public consultation and analysis best practice processes.

Option 3

Standards Australia does not support Option 3, as we consider the cost of ceding Australian mandatory standards development to overseas bodies, without Australian industry and consumer expert oversight to far outweigh the benefits.

Our view is that the automatic adoption or a safe harbour provision that allows compliance with overseas standards developed with limited, if any, Australian stakeholder input, without consultation on whether the standard continues to be appropriate in the Australian context and continues to meet the safety policy objective, may lead to:

- mandatory standards being set that do not meet the product safety policy considerations or that do not apply in the Australian context, which could result in poor public safety outcomes; and,
- mandatory standards being set that do not align with Australian business practices, which will result in additional administrative costs for industry.

Similarly to Option 2, we also consider that automatically accepting updated overseas standards could weaken Australia's position in international standardisation, which could create costs for businesses that benefit from the level playing field and the consistency and interoperability that international standards provide.

In addition, we also consider that there is a potential cost that automatically updating voluntary standards referenced under the ACL could result in confusion around compliance for manufacturers and suppliers, and uncertainty for consumers. This is particularly the case in an instance where there is a divergence between 'supply' laws and State and Territory 'use' laws for products where 'supply' and 'use' laws overlap.