

19 January 2022

Director
Consumer Safety and Sustainability Unit
Market Conduct Division
The Treasury

Good afternoon,

Thank you for providing the opportunity to comment on the government's proposal to improve the consumer product safety mandatory standards process. At the outset, I think it is important to highlight that a piecemeal approach to reform is not desirable, and given that mandatory standards form a key component of the Australian product safety system, these proposals need to be carefully considered in light of the preferred option being advanced following the 2019 CRIS *Improving the Effectiveness of the Consumer Product Safety System*. There would be some benefit in advancing reforms as a package so the costs and benefits, and operation of provisions, are fully considered, and that government efficiency is gained at both the federal and state level by not duplicating the lengthy process involved in amending the Australian Consumer Law.

The CRIS provides a compelling case for the need to improve mandatory standards in Australia with the **status quo option** placing Australian businesses at a disadvantage and not providing consumers with the latest product safety protections. This mirrors the feedback provided in a recent survey of international expert opinion on child product safety that was conducted as part of our Australian Research Council funded child product safety project. The online survey¹ included open questions related to issues and challenges for child product safety and thematic analysis was conducted to identify reoccurring themes, of which one related to mandatory standards. In summary, respondents identified concerns with either the lack of or outdated mandatory safety standards, and issues related to the standards development process related to expert involvement, slow pace, evidence-base and international alignment. Respondents highlighted achievements related to specific safety standards such as button batteries and nightlights and moves towards acceptance of international standards. Ongoing challenges highlighted by respondents centred around the standards development process including the need for local expertise, adoption of a horizontal approach addressing hazard groups and product characteristics, and more transparent processes including the evidence-base and tolerances, with some Australian respondents suggesting the need for a permanent standards committee on product safety.

I would advocate that **Option 2 alternative 2** as preferable requiring each standard to be reviewed upfront against the set criteria. While alternative 1 'opt-in' would also involve a review, it is limited to the prescribed list of associations which may reduce options for specialised product categories. I am unsure how the 'opt-out' alternative 1 would operate in practice, and what would be the trigger for identifying the standard to be unsafe that then prompts a review. This could be viewed as reactive and therefore would not necessarily safeguard consumer protections as suggested.

¹ By way of background, the key demographic characteristics of the fifty-five participants (N=55) that completed the online survey are that approximately 1,137 years of product safety experience are represented in the responses, with respondents indicating their experience related to the Americas (25.5%), Asia (16.4%), Europe (23.6%), Oceania (56.4%) and Global (23.6%); and their areas of expertise were industry product risk/safety management (36.4%), consumer product assessment and testing (30.9%), product safety policy and regulation (56.4%), consumer product safety research (30.9%), paediatric injury medicine (10.9%) and consumer product liability (12.7%).

Providing greater access to overseas standards would not only allow the product safety regulatory framework to keep pace with changes in technology and emerging product areas (e.g smart devices and interconnected products), but it also provides options to declare standards for existing products associated with high injury risk where Australian standards do not exist. For example, our study of child product safety reviewed and compared regulatory responses in Australia and the US. During the study period 2011-17, the US Consumer Product Safety Commission (CPSC) introduced 19 mandatory standards for durable infant and toddler products. This class of products is defined as a durable product intended for use by children under the age of five years. The injury data supporting the introduction of the mandatory standards reveal the severe safety issues associated with this class of products with 11,972 safety incidents, 3,776 injuries and 592 fatalities identified (see Table below). This continues to be a priority area for the US CPSC with the CPSC 2020 Operating Plan identifying the development of a further four standards for this product class. Australia does not use the classification durable infant and toddler products, but analysis of safety standards in force during the study period revealed Australia had five safety standards for products in this class suggesting a potential gap in regulatory coverage. Amending the Australian Consumer Law to allow the Commonwealth Minister to declare trusted overseas standards as mandatory Australian standards could improve Australia's responsiveness where standards are currently lacking.

With regards to the alternatives to make it easier to comply with the latest standards, I prefer **Option 3 alternative 1** permitting standards to apply as they exist from time-to-time. While there are potential benefits to all stakeholders by incorporating changes to referenced standards when they are updated from time-to-time, it will be essential to ensure safeguards are in place to ensure that any updates do not lower safety requirements. For substantial updates (not very minor updates), I would advocate that a trigger be put in place to ensure that the ACCC conduct at least a preliminary assessment to determine if the update impacts on any key safety requirements and a mechanism be included allowing the update to be disallowed if it introduces a lower safety threshold. While consultation with industry will be important, as suggested in the example on page 19, I suggest that any such consultation be broadened to include targeted consultation with other stakeholders to assist with determining potential safety impacts of the update. With regards to alternative 2, I would have concerns if the safe harbour provision were used in a situation where an updated safety standard has a lower safety threshold.

Please do not hesitate to contact me if you would like to discuss this further.

Kind regards,
Dr Catherine Niven
Research Fellow (Product Safety)
Australian Centre for Health Services Innovation
Queensland University of Technology

US Durable Infant and Toddler Product Safety Standards 2011–17—Incidents and Injuries

Durable Infant or Toddler Product	Safety Incident	Fatalities	Injury Mechanism	Non-Fatal Injuries	Nature of Injuries	Injury Mechanism
Bassinets/Cradles	71	38	Suffocation(Asphyxia); Unspecified	16	Head Injuries; Unspecified	Fall; Unspecified
Bedside Sleepers	40	4	Suffocation(Asphyxia/Entrapment/Strangulation)	3	Respiratory Difficulties; Bruises	Near-suffocation; Entrapment
Carriages/Strollers	1,297	4	Suffocation(Compression/Drowning/Entrapment)	391	Head Injuries; Amputations(finger); Teeth Injuries; Lacerations	Fall; Crushing; Unspecified
Children's Folding Chairs/Stools	108	-	-	52	Head Injuries; Amputations (finger); Fractures; Bruises	Fall; Crushing
Frame Child Carriers	49	-	-	34	Closed-head Injuries; Fractures; Dislocated Arms; Lacerations; Contusions	Fall; Unspecified
Full-Size Baby Cribs	3,520	147	Suffocation(Asphyxia/Entrapment/Strangulation); Unspecified	1,675	Head Injuries; Fractures(Limb/skull); Unspecified	Fall; Entrapment; Unspecified
Hand-Held Infant Carriers	252	43	Suffocation(Asphyxia/Entrapment/Strangulation); Fall; Unspecified	60	Head Injuries; Bruises; Lacerations; Allergic Reactions; Near-choking	Fall; Unspecified
Infant Bath Seats	474	174	Suffocation(Drowning)	300	Submersion; Entrapment(Limb); Lacerations	Entrapment; Crushing; Near-suffocation
Infant Bathtubs	247	31	Suffocation(Drowning)	32	Near-drowning; Concussion; Burns; Lacerations; Respiratory Infections	Near-suffocation; Fall; Thermal; Crushing
Infant Bouncer Seats	349	14	Suffocation(Asphyxia); Fall; Unspecified	54	Serious Head Injuries; Fractures(Skull/Limb); Bruises; Lacerations; Burn	Fall; Struck; Crushing; Thermal
Infant Swings	2,619	17	Suffocation(Asphyxia); Unspecified	624	Head Injuries; Bruises; Lacerations; Unspecified	Fall; Unspecified
Infant Walker	86	8	Fall; Suffocation(Drowning/Airway Obstruction); Struck	78	Burns; Lacerations; Abrasions; Pinching; Unspecified	Fall; Crushing; Thermal; Unspecified
Non-Full-Size Baby Cribs	64	6	Suffocation(Asphyxia/Entrapment); Unspecified	28	Fractures; Bruises; Laceration; Unspecified	Fall; Entrapment
Play Yards	2,169	64	Suffocation(Asphyxia/Entrapment/Drowning/Strangulation); Unspecified	173	Head Injuries; Brain Damage; Lacerations; Unspecified	Fall; Near-suffocation; Crushing; Unspecified
Portable Bed Rails	155	17	Suffocation(Entrapment/Strangulation); Unspecified	48	Fractures; Lacerations; Entrapment(Limb); Choking; Contusion	Entrapment; Fall; Crushing; Foreign Body; Unspecified
Portable Hook-on Chairs	100	1	Suffocation(Strangulation)	57	Fractures; Concussions	Fall; Entrapment
Sling Carriers	122	16	Suffocation(Asphyxia); Unspecified	54	Head Injuries; Fractures(Skull, Wrist); Contusions; Abrasions; Lacerations	Fall; Near-suffocation; Unspecified
Soft Infant/Toddler Carriers	124	4	Suffocation(Asphyxia)	54	Fractures(Skull/Limb); Contusions; Abrasions	Fall; Unspecified
Toddler Beds	126	4	Suffocation(Asphyxia/Entrapment/Strangulation)	43	Fractures; Teeth Injuries; Bruises; Sprains; Abrasions; Lacerations; Near-choking	Fall; Entrapment; Crushing; Foreign Body
Total	11,972	592		3,776		