

January 19, 2022

Director
Consumer Safety and Sustainability Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

VIA Email: productsafety@treasury.gov.au

RE: Consultation - Improvements to mandatory standards regulation under the Australian Consumer Law

Dear Sir/Madam:

These comments are provided on behalf of The Toy Association in response to the public consultation on proposed amendments to the Australian Consumer Law (ACL) to enhance the mechanisms to adopting trusted overseas product safety standards in Australia. The Toy Association commends the Australian Government on its effort to initiate this policy review in pursuit of bolstering its product safety regime, while improving business competitiveness. We are very supportive of the guiding principles detailed in the consultation and believe the resulting impact will only enhance product safety and international trade. We also commend the Australian Government for its continued leadership in recognizing and adopting international toy safety standards.

Our efforts as an industry closely align with the objectives and principles detailed in the consultation document. Specifically, maintaining regulatory efficiency closely follows our principal mandate to promote and maintain toy safety. Ensuring regulatory mechanisms remain fluid enough to allow for the alignment of leading international safety standards is critical. Enhanced alignment of safety standards improve compliance and coordinated enforcement amongst regulators. To that effect, we regard aligning international toy standards to be a fundamental objective in creating a secure regulatory system for toys that advances child safety.

The Toy Association and member companies recognize the important role we have in supporting child safety. Indeed, toy safety is a top priority for the toy industry. For many years our industry has worked in an ongoing partnership with consumer representatives, government officials and technical experts to ensure safety programs and toy standards incorporate the latest child development research and risk assessment techniques. We continue to work with legislators and regulators around the world to reduce barriers to trade in order to align international risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for children.

We are grateful for the opportunity to provide comments in support of the Australian Government's regulatory reform of the ACL. In the attached appendix to this letter, we have detailed observations on the proposal for consideration. Please do not hesitate to contact me or my colleague Joan Lawrence if you have questions or would like further information on our position. I can be reached at _____ and Joan at _____.

Sincerely,

Alan P. Kaufman
Senior Vice President, Technical Affairs

APPENDIX – Comments on Consultation for supporting business through improvements to mandatory standards regulation under the Australian Consumer Law (ACL)

About The Toy Association and the ASTM Subcommittee on Toy Safety

The Toy Association is the North American based trade association; our membership includes more than 950 businesses – from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs – all involved in bringing safe, fun toys and games to children. The toy sector is a global industry of more than US\$90 billion annually, and our members account for more than half this amount. Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard and it serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children.

The ASTM standard is continually reviewed and revised, as needed, by the ASTM Subcommittee on Toy Safety using a multi-stakeholder process with industry, consumers, government, engineers, medical, child development, and other technical experts. The ASTM process ensures the Subcommittee remains open to participation by any international regulator if they so choose to contribute to the standard-making effort. Changes to the standard are done through consensus, whereby all participants have an equal vote in determining the standard's content. As emerging issues are identified (something at which the ASTM Subcommittee has become particularly adept), the Subcommittee readily shares its new standards and supporting information with its regulating counterparts. The Subcommittee also regularly contributes to and considers, as part of its standard operating process, opportunities to align with the ISO Toy Safety Standard (ISO 8124) or the EU Toy Safety standard (EN 71) for toys and other international standards. The Subcommittee then proposes revisions to ASTM F963 to align the standard with its international counterparts where valid and possible.

ACL Consultation – General Comments on Regulatory Experiences and Challenges

We agree with the regulatory concerns detailed in the ACL consultation and the overall principles that have been outlined to mitigate their impact on Australian businesses. Our members have direct experience with the challenges noted in the consultation brief. Amongst many countries, they continue to have to manage diverging consumer product safety standards, which have costly economic impacts. Inconsistency in regulations and testing between countries has impeded the toy industry's ability to sell products, especially as it relates to new testing costs. These negative impacts are compounded when regulations and standards are not harmonized with other leading international standards. Where regulations and standards are not harmonized or mutually recognized, companies are forced to create inventory segregation which in turn adds to costs. It also increases the investment costs to source materials as substitutes for some items. For certain toy products, the added costs can be outright prohibitive. Diverging standards can also contribute to additional waste in the product development process as sorting batches and testing for compliance to locate lots of material that meet new requirements takes a great deal.

ACL Consultation – Encouraging the Acceptance of International Standards

We agree that the proposed amendments to the ACL will help businesses by allowing flexibility to meet their compliance obligations. Enabling greater flexibility will reduce costs, but also enhance product safety. We believe ensuring safe play is a responsibility that no nation can undertake without being mindful of the safety standards and regulations of other nations. When regulators cooperate and coordinate their efforts, it not only facilitates trade and commerce, but strengthens related efforts such as enforcement and product recalls. It also allows safety experts in the different jurisdictions to focus their efforts on improving safety, rather than trying to meet varying requirements for the same issue. Coordination and consistency are vital to ensuring consumer confidence and product safety in a global economy. Ensuring that we can avoid unnecessary divergences in toy standards would be a significant achievement in promoting product safety.

ACL Consultation – Toy Safety and International Standards

For toys specifically, we are grateful for the leadership the Australian government has taken to date by allowing comparable overseas standards of toys for product being sold. Already, the Australian government has updated its mandatory toy safety standards to allow compliance with the ISO 8124 toy standard, as well as ASTM F963 17 and the European standard of EN 71. We would encourage the government to maintain this as it looks to bolster its approach for administering the ACL. As the consultation document details, leading international standards, such as ASTM F963, are being updated regularly to respond to emerging hazards and risks. By developing an easier approach under the ACL to accept trusted overseas standards, the Australian government will streamline its regulatory efforts, while making the compliance burden easier on businesses, without compromising safety.

Based on the proposed parameters to reform the ACL, we would recommend pursuing Option 3 as detailed in the consultation document. Amending the ACL to allow for the latest versions of overseas standards to be accepted would make the most sense in application for regulators, businesses, and consumers. This would give businesses flexibility in complying with either the Australian standard or the declared overseas/international standard and any updates made to the standard.

Ensuring the regular adoption of updates to overseas standards is important. The toy industry is constantly innovating, hence the effort that is placed to ensure leading international standards, such as ASTM F963, keep pace with innovation. As a hazard or risk is identified, effort is applied to update the standard accordingly. By pursuing Option 3, the Australian government would ensure the most up-to-date toy safety requirements are being applied. It would also enable the government to utilize existing efforts that have already audited trusted overseas standards organizations, such as the ASTM International.

Allowing for the ease of accepting international standards from such organizations as ASTM International or the European Committee for Standardization, will enable Australian businesses and U.S. exporters to streamline their operating costs while providing safe products to Australians. It may also help U.S. and Australia regulators to share research information and come up with coordinated recommendations that could regularly update and modernize leading international standards, such as the ASTM F963. This could also help enable closer cooperation and enforcement among regulators globally, allowing for strong consistent approaches to safety standards, while facilitating trade and reducing costs to consumers.