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Director
Consumer Safety and Sustainability Unit
Market Conduct Division
The Treasury
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Consultation Regulation Impact Statement: Supporting Business through improvements to mandatory standards regulation under the Australian Consumer Law

Dear Director

Thank you for the opportunity to comment on the Consultation Regulation Impact Statement (December 2021) *Supporting Business through improvements to mandatory standards regulation under the Australian Consumer Law*.

Lighting Council Australia is the peak body for Australia's lighting industry. Lighting Council's goal is to encourage the use of environmentally appropriate, energy efficient, quality lighting systems. Our members manufacture products in Australia and import products manufactured overseas. Those products are exported to overseas markets and sold into the Australian lighting market.

Lighting Council Australia's comments on the consultation paper are outlined below. Our approach to this consultation has been informed, in-part, by a discussion between Lighting Council Australia and Treasury Senior Advisor, Todd Owen.

Please contact me if you would like to discuss this submission.

Yours sincerely

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The Treasury Consultation Regulation Impact Statement: Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law

Background and market context

Lighting Council Australia highlights that each product sector in Australia is different in terms of manufacturing basis and technical capabilities and each sector should be consulted regarding the approach to standards that should occur in its sector.

The safety and installation of lighting equipment in Australia is primarily regulated under state and territory electrical safety laws. These laws differ in each jurisdiction in Australia including different: Regulatory scope; Application of standards; Certification requirements; Product marking requirements; and Registration requirements.

A very small percentage of lighting equipment would contain button batteries and so would additionally be regulated under the ACCC mandatory button battery standards.

The majority of lighting equipment in Australia is now imported. Some of the lighting products that are manufactured in Australia are exported to overseas markets. This current manufacturing position differs greatly to the situation of 20 years ago when the majority of lighting products used in Australia were manufactured in Australia.

The main lighting product standards used globally by lighting manufacturers are International Electrotechnical Commission (IEC) standards. Australian lighting standards are mainly amended versions of IEC standards.

The majority of amendments contained in Australian lighting standards include historical minor marking requirements, different definitions and minor technical deviations. These differences cause significant market non-compliance (due to poor awareness by global manufacturers and no compliance enforcement undertaken at the border), additional compliance costs, reduced consumer choice, and increased consumer prices. The overall effect is reduced Australian productivity with no discernible safety benefits.

Lighting Council Australia recommends that lighting standards (and likely many other product sector standards) should be developed at an international (e.g. IEC) level (including active Australian participation). Then those international (e.g. IEC) standards should be adopted for use in Australia with minimal, if any, amendments.

Any amendments should be restricted to only the minimum necessary to accommodate unique Australian infrastructure requirements (e.g. 240V AC electricity rating, unique Australian three pin plug and socket, etc.).

Any issues or concerns identified in IEC standards should be discussed and resolved at an international level rather than forming unique Australian Standard requirements.

Referring to the ACCC's development of mandatory button battery information and safety standards, Lighting Council Australia suggests that it may have been better (in terms of market compliance and safety outcomes) for Australia to have led the development of an international horizontal button battery standard starting in 2012 (i.e. when Australia first identified button battery safety issues), rather than developing an Australian industry code, then an Australian regulatory standard, and then an Australian Standard for button batteries and the products that use them.

Australia is a very small percentage of the global market for goods (e.g. estimated at one to two per cent of the global market overall) and it is likely that significant non-compliance will remain in the button battery market until international button battery standards are published.

Manufacturers are significantly more aware of international standards compared to national standards and they may not be aware of all the export countries for their products when those products are developed. Inexperienced product importers regularly demonstrate that they have little to no understanding of the regulations and standards that apply to the products they import.

Lighting Council Australia's responses to some of the issues highlighted in the consultation paper are included below. Our responses should be read in the context of the background information above specifically noting that our views mainly refer to the existing Australian electrical safety regulatory framework in Australia and the significant regulatory improvements that we suggest are needed in that area.

Separately, Lighting Council Australia requests the De-Regulation Taskforce start a project aimed at achieving a single electrical safety regulatory framework in Australia.

Responses to specific issues identified in the consultation paper

Inefficient processes for making and declaring mandatory standards in Australia

Lighting Council Australia recommends Australian stakeholders (e.g. regulators, industry, consumers) should take a more proactive role in international standards developments and lead international standards development projects instead of, or in parallel with, the development of mandatory standards.

Australian safety regulators should acknowledge that simply making or declaring mandatory standards in Australian regulation does not translate to significant global awareness of those standards nor significant Australian market compliance.

Australian product markets rely heavily on global manufacturers so international standards developments and the adoption of those international standards in Australia should be given the highest priority in order to achieve global awareness of any safety improvements/requirements that Australian regulators, consumers and industry see as necessary.

Lighting Council Australia suggests that such an approach and prioritisation would achieve the best results for Australia including high product compliance rates, low compliance costs (and the flow on benefits of decreased consumer prices, increased consumer choice and increased productivity).

The approach suggested in the consultation paper to allow the additional referencing of overseas national standards and the automatic updating of those standards may lead to a reduction in consumer safety due to a lack of Australian awareness and participation in the development of such national standards. Such an approach may also not align with Australia's trade obligations under the World Trade Organisation agreement.

Australian lighting standards

Lighting Council Australia recommends that Australian lighting standards should be adoptions of IEC lighting standards without amendments or with only the minimum amendments necessary to accommodate Australia's unique technical infrastructure (e.g. 240V AC electricity rating, Australian three pin plug and socket system, etc.).

Australian Standards are cheaper to purchase than their IEC equivalents. Referencing both the Australian and IEC Standards (where identical) in Australian regulation would reduce compliance costs for both Australian industry and overseas manufacturers.

Referenced standards should include multiple editions of standards (used in parallel and overlapping in their validity periods) including at least the latest and previous standards editions and a generous notification period before the expiry of the previous edition.

Product manufacturers need time to move to the latest standards so the parallel use of multiple editions of standards with generous validity periods and significant advanced notice of the expiry of a standard would be appropriate.

Compliance with standards should be determined based on the date of product manufacture and not based on the date that the last product is sold in the Australian market.

Regulations should include provisions to allow for the removal and/or recall of any unsafe products from markets.

The approach taken by New South Wales electrical safety regulations to the application of product standards is not preferred or practical for the lighting industry. For example, New South Wales electrical safety regulations require compliance with the latest standard at every point of sale in the market.

Product manufacturers and suppliers are unable to control the sell-through of their products by wholesalers, retailers and contractors. So, it is highly likely that non-compliance with NSW regulations occurs on a regular basis. Even though non-compliance is likely to regularly occur, this is rarely a safety concern.

The market has adapted to this regulatory difficulty through the use of transition periods in Australian Standards. However, this is a 'band-aid' solution that does not always fix the market problems that regularly occur due to this clumsy application of standards within the NSW regulation.

The use of overseas standards and the endorsement of overseas standards development agencies

Lighting Council Australia supports increased Australian participation in IEC lighting standards developments and the adoption in Australia of IEC lighting standards with few, if any, amendments.

Lighting Council Australia does not support the use of other overseas (i.e. non-international) lighting standards as the Australian lighting industry has not

participated in the development of those standards and we do not know their contents.

Overseas national lighting standards (i.e. non-international standards) that have been developed without Australian participation have not likely been evaluated by Australian lighting industry stakeholders and may not be suitable for Australian industry, consumers and regulations.

Regulatory good practice

Lighting Council Australia highlights that the approach to the development and application of product standards in each market sector should be determined in close consultation with each market sector and follow a regulatory impact assessment process.

Automatic updating of standards

Lighting Council Australia is not yet comfortable with the proposed process of automatically updating lighting standards due to a small number of bugs that can be identified with such a process.

For example, unique Australian infrastructure technical requirements (e.g. 240V AC voltage, the unique Australian three pin plug and socket system, etc.) need to be included in Australian lighting standards. Also, the regulatory application of those standards needs to be practical for all stakeholders and aligned across all jurisdictions. For example, as highlighted above, standards compliance should be determined at the point of product manufacture. An overall regulatory safety net provision should include the ability of a regulator to determine that a product is unsafe and should be withdrawn or recalled.

Lighting Council Australia suggests that the automatic updating of standards may be acceptable to the Australian lighting industry when all the following is in place:

- Active Australian participation in the development of IEC lighting standards (or agreement by all stakeholders that particular standards be accepted and automatically updated) – Historically, Australian representation at international lighting standards committees was relatively weak. However, this situation is improving;
- The adoption in Australia of unamended IEC lighting standards; and
- Reasonable and aligned regulatory application of those standards should occur across all jurisdictions in Australia – As above, multiple editions of standards should be referenced in regulation to allow manufacturers and suppliers time to move to the latest standards and time to sell out old stock.

Australia's trade obligations

Lighting Council Australia highlights that the use of international (IEC) lighting standards or Australian Standards based on IEC standards satisfies Australia's trade obligations under the World Trade Organisation (WTO) Agreement.

We do not agree that the use of non-international standards (e.g overseas national standards) in Australian regulation would satisfy Australia's WTO agreement obligations.

Such non-international standards are also more likely to be mis-aligned with Australian infrastructure requirements and may not satisfy Australian stakeholders.

Improving the product safety framework

As highlighted above, there are significant productivity and compliance improvements that would likely occur in the Australian lighting market through the alignment and improvement of state and territory electrical product safety regulations.

Despite the repeated claims by jurisdictions over the past fifteen years that they are working on harmonisation, the regulatory misalignments in this market sector have increased and opposing views have become entrenched. This situation continues to cause widespread confusion, significant market risk, significant non-compliance and significant additional compliance costs.

State electrical safety regulators have repeatedly demonstrated that they are incapable of aligning their approaches. Alignment is well overdue in this sector and would achieve significant productivity and compliance improvements not just for the lighting industry but right across the electrical product supply sector.

Separate to this consultation process, Lighting Council Australia requests the De-Regulation Taskforce start a project aimed at achieving a single electrical safety regulatory framework in Australia.