



**CONSUMERS'
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

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By email: productsafety@treasury.gov.au

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

Dear Madam/Sir

CONSULTATION REGULATION IMPACT STATEMENT

Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law

The Consumers' Federation of Australia (**CFA**) welcomes the opportunity to provide a submission to the Consultation Regulation Impact Statement (**CRIS**), *Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law*.

CFA is the peak body for consumer organisations in Australia, advocating in the interests of Australian consumers. It promotes and supports its members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

CFA also plays an important role in ensuring consumer interests are represented in the development of standards. In recognition of the importance of promoting consumer involvement in standardisation, CFA recruits, facilitates, and supports the participation of expert consumer representatives on technical committees that are responsible for the development of Australian Standards. This work is supported through an annual grant from Standards Australia.

In summary, CFA supports regulatory change that delivers robust and effective mandatory standards that protect and empower consumers. The problem identified by the CRIS is that businesses

experience unnecessary costs and confusion in complying with the product safety framework. However, it is important that changes made to reduce costs and confusion for business do not result in a reduction of consumer safety and protection. To prevent an inappropriate shifting of costs from business to consumers, it is essential that consumer involvement in the development of standards be maintained and there be no diminution of the quality of standards in supporting consumer safety. Regulatory change aiming to reduce costs or confusion for business should also aim to improve consumer outcomes in forms that are verifiable by consumer advocates.

Summary of CFA's views

- An objective of any regulatory change must be not only to maintain, but also improve, protections for Australian consumers.
- A guiding principle in consideration of the various regulatory options proposed by the CRIS should be that any regulatory change to make it easier to recognise trusted overseas standards should not be at the expense of consumer participation and engagement.
- Effective public consultation, including engagement with consumer representatives, is essential in the development of standards, including in any process for declaring or incorporating trusted overseas standards.
- CFA supports Option Two, Alternative Two as proposed by the CRIS, so that any amendment to more easily declare trusted overseas standards is transparent and meets designated criteria that promote consumer input and safety. However, this support is conditional on
 1. the review criteria including a requirement that consumers are represented effectively in any overseas standards committees and that the standard has the support of key overseas consumer advocacy groups, and
 2. that the criteria to be applied for an overseas standard to be 'trusted' should adopt modern performance-based regulatory approaches that set minimum necessary requirements and place a clear onus on suppliers to ensure the safety of products before they enter the market.
- CFA opposes any regulatory processes that result in the automatic adoption of overseas standards without consideration of whether they are appropriate in the Australian context.
- CFA supports measures to streamline the process of updating referenced voluntary Australian standards in mandatory standards.
- CFA recommends that any regulatory change be accompanied by a General Safety Provision, that requires products to be safe at the point of supply.

Policy objective

The CRIS identifies policy objectives of regulatory change as being to:

- make it easier for suppliers and importers to comply with product safety requirements set under the Australian Consumer Law (ACL);
- reduce compliance costs for business and barriers to trade by removing duplicative testing and compliance measures where a product has been manufactured overseas to the requirements of an equivalent trusted overseas standard; and
- provide benefits for Australian consumers and for the Australian market by increasing product availability and consumer choice, and decreasing the cost of consumer goods, without compromising consumer safety.

CFA considers that any proposals to amend Australia's Consumer Product Safety Framework must include as a policy objective the improvement of consumer safety and protections. This is missing from the stated policy objectives in the CRIS.

In 2019, the Australian Competition & Consumer Commission (ACCC) estimated that unsafe consumer products cause around 780 deaths and 52,000 injuries each year.¹ This points to weaknesses and failings in the current Consumer Product Safety Framework.

While ensuring the Framework is efficient and can be complied with without undue cost are legitimate policy objectives, it would be perverse to elevate them above the central purpose of the Framework to protect consumers. If pursued in isolation from policy objectives to protect consumers and enhance consumer safety, there is a risk the pursuit of efficiency and reduced costs could diminish the capacity of the Framework to protect consumers, or opportunities to improve its capacity to protect consumers could be missed.

In this light, the assessment of potential benefits and costs with regulatory options should not just be measured against the status quo. We should expect any changes to deliver an improvement in safety outcomes for consumers and the community.

Consumer engagement and consultation in standards processes

Public consultation is a core part of the standards-making process, including mandating or amending mandated standards. Standards-setting in Australia is built upon transparency, consensus, and representation from affected stakeholders, including consumers.

Consumer engagement in standards processes enables consumer perspectives to be shared with others involved in the development of standards. Consumers directly enhance the market relevancy of a standard² by:

- providing feedback on acceptable levels of risk for the products defined by standards;
- offering advice on communication issues, including labelling, product instructions, and warnings;
- suggesting features needed by consumers with special needs such as children, older adults, or people with disabilities; and
- giving examples of how goods and services are actually used (or predictably misused) in practice.

CFA standards representatives, in the role described above, play an integral role in the adoption of international standards in Australia. This includes participating in the development of international standards, through technical committees and working groups of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), as well as national mirror committees which facilitate the adoption of international standards locally. These standards setting processes are designed to ensure a balance of representation and consumer input in the development and adoption of international standards.

¹ ACCC 2019, Unsafe goods should be illegal to sell, accessed on 11 January 2022, <https://www.accc.gov.au/media-release/unsafe-goods-should-be-illegal-to-sell>

² International Organization for Standardization. Involving Consumers: Why and How. <https://www.iso.org/obp/ui#iso:pub:PUB100277>

In making and amending mandatory standards, the ACCC conducts stakeholder consultation in accordance with *The Australian Government Guide to Regulation*.³ As stated by the Federal Government's recently released Regulator Performance Guide, "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".⁴

CFA considers that any regulatory change to make it easier to recognise trusted overseas standards should require consumer consultation to occur during the process to decide on recognition. This should be a guiding principle in consideration of the various regulatory options proposed by the CRIS.

Regulatory options

CFA does not support Option One in the CRIS, being the status quo, as this does not appear to meet the policy objectives and will do little to improve consumer safety through effective and robust mandatory standards.

CFA provides support for Option Two in the CRIS, that is, to amend the ACL to allow the Commonwealth Minister to more easily declare trusted overseas standards, with provisos.

We do not, however, support prescribing a list of 'trusted' overseas standards making organisations (alternative one in Option Two), particularly where this would result in the automatic adoption of standards made by such organisation (described in the CRIS as an 'opt-out' approach). While the CRIS states that an opt-out approach would safeguard consumer protections, we consider that this approach would suffer from a severe diminution of consumer input and engagement and risk. 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.

CFA 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.

³ Australian Government, Guide to Regulation, <https://www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation>

⁴ Australian Government, Regulator Performance Framework, Principle 3 <https://deregulation.pmc.gov.au/priorities/regulator-best-practice-and-performance/regulator-performance-guide>

Alternative two in Option Two, which proposes using a principles-based approach for declaring overseas standards incorporating a review process would be far preferable, provided that there is a substantial review, including consumer representative input, as to whether to adopt each particular standard, not just declaring a 'trusted' overseas standard-setting body.

The CRIS suggests that any opt-in approach would require a standard to be reviewed, including with a regulatory impact analysis if appropriate, against criteria. The criteria listed are:

- the standard is available in English;
- the standard is widely used and accepted by manufacturers;
- there is no evidence that the standard is inappropriate to the Australian context;
- the standard offers at least comparable level of safety to any applicable Australian standard (where an Australian standard exists);
- the standard is made by a trusted or competent association.

We would only support this option if the criteria were enhanced to include a requirement that consumers are represented effectively in any overseas standards committees, and the standard has the support of key overseas consumer advocacy groups. This would be a measure to ensure that standards meet the needs of local consumers and ensure there is no diminution of safety standards.

Furthermore, the criteria to be applied for an overseas standard to be 'trusted' should adopt modern performance-based regulatory approaches that set minimum necessary requirements. This approach should place a clear onus on suppliers to ensure the safety of products before they enter the market. A performance-based approach also allows flexibility in compliance, reducing business costs.

We note that this approach may result in suppliers being able to choose which standard to meet in order to comply with the mandatory requirements (i.e., the Australian standard which may be mandated, or a trusted international standard). A key risk is that this choice results in a race to the bottom in terms of consumer safety standards. Any review process must mitigate against this key risk. Mitigation strategies are likely to require investment from regulatory authorities in assessing the overseas standards as to whether they are appropriate and meet Australian safety expectations. Further investment in regulatory authorities will be required to enable them to monitor compliance with competing standards, which may have different compliance requirements.

CFA also does not support Option Three in the CRIS, being to amend the ACL to more easily allow businesses to comply with the latest version of voluntary Australian and overseas standards, as it is described in the consultation paper. CFA's view is this option increases the risk to consumer safety as it would allow suppliers to meet compliance requirements by adopting the latest version of overseas standards without a compulsory and thorough review process, and reduce opportunities for input from Australian consumer representatives. If there was a review process, as described above, then this may be more appropriate.

CFA acknowledges that amendments to law or administrative reforms could provide opportunities to update standards more efficiently. However, this would only work acceptably where the changes maintained meaningful review and consumer engagement in the updating process. For example, there could be requirements or triggers to review mandatory standards when an updated voluntary standard has been published. A more streamlined process might also be achieved on administrative

basis, without changes to law, by improving the cooperation between Standards Australia and the ACCC.

General Safety Provision

CFA considers that any amendments to Australia's Consumer Product Safety Framework should be accompanied by a general safety provision. We note that consumer affairs officials consulted on options to introduce such a provision in 2019, following a recommendation of the 2017 review of the Australian Consumer Law. CFA understands that the ACCC, as well as state and territory product safety regulators, uniformly support the introduction of a general safety provision.

A general safety provision would place a positive onus on all suppliers (and those in the supply chain, such as importers) to ensure the safety of a product before placing it on the market. This provision would support flexibility for suppliers by being principles-based so that compliance would not be prescriptive. A general safety provision could provide support for the system of mandatory standards, and also provide further safeguards should there be any reform that increases reliance on overseas standards. For example, a supplier may, depending on how the law is framed, be able to demonstrate compliance with a trusted overseas safety standard, in the absence of a specific Australian standard, as a way of managing risk.

Ultimately, a general safety provision would require suppliers to adopt a culture of safety by taking positive steps to ensure their products are safe prior to sale rather than the consumer protection system relying on recalls and 'after the fact' compliance initiatives. Many suppliers already have good systems in place to ensure products are safe and may welcome the opportunity to work within a flexible framework that a principle-based general safety provision would bring.

We strongly urge that any amendments aiming to support business compliance with mandatory standards be accompanied by the enactment of a general safety provision.

Should you have any questions about this submission, please contact me at

Yours sincerely

CONSUMERS' FEDERATION OF AUSTRALIA

Gerard Brody, Chair