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Dear Director, Consumer Policy Unit

**Re: Product safety regulation – exposure draft legislation**

The ACCC welcomes the opportunity to make this submission to the Treasury's consultation on reforms to the mandatory standards framework through the proposed amendments to the *Competition and Consumer Act 2010*.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010*, regulate national infrastructure and undertake market studies.

The proposed reforms to the mandatory standards framework are strongly endorsed by the ACCC. We understand that these reforms have also received significant support from the states and territories.

The proposed amendments set out in the exposure draft legislation will ensure that mandatory standards can remain up-to-date by allowing them to reference voluntary Australian and overseas standards as they exist from time to time. Where a mandatory standard incorporates these ambulatory provisions, Australian businesses will be better able to supply products that comply with contemporary Australian and overseas standards, providing more modern and safer products to consumers.

The proposed amendments will also make it easier to make mandatory standards that recognise overseas standards, and provide suppliers with alternative methods of compliance with mandatory standards. This will, in turn, provide Australian consumers with a greater range of products of equal or greater levels of safety. Because suppliers will not need to undertake additional testing to bespoke Australian standards if their products comply with the requirements of a referenced overseas standard, products supplied under these new arrangements should also be cheaper for consumers. These options will also allow Australian suppliers to more easily participate in global markets as both importers and exporters.

The ACCC remains strongly committed to ensuring suppliers meet the requirements for safe goods and services applied through the ACL's suite of mandatory safety and information standards. Our program of compliance and enforcement activities will continue to monitor supplier compliance with mandatory standards, and we will continue to take appropriate action in relation to suppliers that fail to meet their requirements.

The proposed amendments also have the potential to improve regulators' ability to effectively enforce compliance with mandatory standards that allow alternative methods of compliance, for example, where compliance with the mandatory standard can be achieved by complying with the relevant set of requirements in a referenced overseas standard.

### **Penalties should reflect the seriousness of non-compliance with a standard**

While the ACCC is supportive of the amendments providing extra flexibility to suppliers, we consider that suppliers nominating a set of requirements (where a mandatory standard provides multiple options) should be held to account when they or their goods do not comply with these requirements. The proposed amendments would create a new contravention provision to this effect at s108(4), which the ACCC welcomes. However, we are concerned that the maximum penalty proposed for suppliers failing to comply with the set of requirements nominated for their products (where a mandatory standard provides suppliers with multiple options) can be 1/1000<sup>th</sup> the maximum penalty for non-compliance with a mandatory standard where there is no choice of requirements. Such a discrepancy in penalties for effectively analogous offences is problematic, as it provides vastly different consequences for similar behaviours. Suppliers should have confidence that the products they are supplying meet the set of requirements that has been nominated.

In order to ensure adequate penalties are available for non-compliance with a mandatory standard under the proposed amendments, regulators would need to pursue suppliers for contraventions of s106, rather than s108(4). This would mean that enforcing mandatory standards that provide alternative methods of compliance would be more complex and resource-intensive than enforcing mandatory standards that have only one set of requirements. This, in turn, will make it more difficult for regulators to remove unsafe products from the market in a timely way.

The ACCC therefore considers that the maximum penalty for a contravention of the proposed s108(4) should be equivalent to the penalties currently in place for a contravention of s106. This will ensure suppliers continue to take their product safety obligations seriously, and help realise the benefits of referencing more overseas standards.

### **Clarification of application of s108**

The current wording proposed for s108 also refers to a *person* complying with a set of requirements. The ACCC considers there would be merit in extending this to a person supplying a *product* that does not comply with the nominated set of requirements.

Furthermore, we are concerned that proposed drafting of s108(4) may inadvertently limit this provision to those persons that have nominated a set of requirements, either in response to a regulator notice issued under s108(2), or if such a nomination is required by a mandatory standard. The ACCC notes that in the latter case, the person making the nomination may be a manufacturer or importer, and this could preclude taking action against a distributor, retailer or other supplier. To avoid uncertainty, the ACCC suggests suppliers generally be prohibited from supplying goods that do not comply with a nominated set of requirements, where the nomination of a set of requirements is a requirement of the mandatory standard.

If you would like to discuss the ACCC's submission, please contact Nick O'Kane, General Manager (a/g), Risk Management and Policy Branch, Consumer Product Safety Division on or at

Yours sincerely

Gina Cass-Gottlieb  
Chair