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**CESA Submissions: *Improving mandatory standards under the Australian Consumer Law – Exposure Draft Treasury Laws Amendment Bill 2024: Product Safety Regulation***

**Introduction**

The Consumer Electronics Suppliers Association (CESA) welcomes the opportunity to comment on the above exposure draft Treasury Laws Amendment Bill 2024: Product Safety Regulation.

We note also the publication of the Decision Regulation Impact Statement (DRIS) on 11 October 2024.

CESA is the premier national, industry body in Australia representing suppliers of electrical and electronic equipment. A number of CESA members also supply non-electrical goods covered by mandatory standards under the Australian Consumer Law (ACL), so CESA is a major stakeholder in the proposed changes to the Competition and Consumer act 2010 (CCA) via the Treasury Laws Amendment Bill 2024: Product Safety Regulation.

**Overall Support**

CESA members broadly supports the proposed legislation, viewing it as a positive step towards improving the regulatory framework for safety and information standards. CESA particularly welcome reforms that make it easier to adopt and reference international standards.

**Specific Comments and Recommendations**

**1. Adoption of time-to-time provisions**

Schedule 1 to the Bill is intended to improve the flexibility and enforceability of Australian safety standards and information standards by allowing safety standards and information standards to incorporate matters in instruments and other writings as they exist from time to time, including international standards. As previously stated in our January 2022 submission CESA would have preferred adoption of a safe harbour provision, rather than a requirement for standards to apply as they exist from time-to time.

The safe harbour option would have enabled businesses to comply with either earlier editions or updated “live” versions which we consider to be a more practical approach. Nevertheless, adoption of the 3(a) option is a positive move as it brings clarity concerning the use of updated standards.

CESA reiterates the preference for a "safe harbor" provision (allowing compliance with either older or newer standards) but acknowledges that the "time-to-time" approach (adopting standards as they exist) provides needed clarity.

## **2. Ability of the Minister to make and declare standards**

Replacing the Minister’s ability to declare safety standards and information standards with an expanded ability to make safety and information standards is a sensible and welcome revision. This will undoubtedly improve the efficiency and effectiveness of the mandatory safety standards process.

However, CESA emphasises the need for businesses and industry to be informed of changes or updates to standards, allowing suitable periods of transition in order to modify designs and adapt or sell through stock which complies with the original version of the voluntary standard. This could be dealt with in guidelines as noted at point 5 below.

This is particularly important where electrical safety standards are referenced. These standards are the responsibility of State regulators, and currently there are regulatory misalignments which cause trade barriers between jurisdictions, unnecessary costs, commercial risks, market confusion and non-compliance. Despite attempts by some regulators to work towards increased regulatory alignment, a significant opportunity still exists to reduce red tape, costs and complexity in this space.

## **3. Request by the regulator for information**

CESA supports the ability of regulators to request information related to compliance, finding the existing declaration process inadequate.

However, concern is expressed that certain record-keeping requirements at subsections 104(2)(e)&(f), 104(3)(f)&(g), and 134(2)(g)&(h)) are overly broad and could mandate record-keeping beyond what is necessary to support the new Section 108 provisions. CESA also stresses the importance of giving businesses reasonable notice of any information requests.

## **4. Civil penalties**

CESA supports the adoption of a civil penalty for breach of the requirement to nominate an alternative standard under new subsection 108(2).

While there is some debate among members regarding the level of penalty, the civil penalty provision offers an alternative to the existing criminal offence for failure to nominate an alternative standard under section 196.

CESA notes that the maximum pecuniary penalties for the civil penalty provision are set at a level that is higher than the maximum fines available for the criminal offence to ensure that the penalty will act as a deterrent, particularly for corporations.

## 5. Guidelines

The DRIS provides critical policy rationales but lacks the authoritative status of a formal policy document outlining the practical implementation of these significant legislative changes.

To ensure clarity and effective implementation for businesses, we strongly recommend the development and public release of guidelines. These should address key areas such as:

- **Transition Timeframes:** The DRIS notes the need for adequate "transition periods" and was the basis upon which a safe harbour provision was assessed as unnecessary. The DRIS however lacks specifics on determining appropriate transition periods for standards adopted "as amended from time to time." Clear guidance is needed on how these periods will be determined for each specific standard and amendment, ensuring sufficient time for industry adaptation.
- **Process for Adoption of Standards:** The process for nominating, reviewing, and adopting standards needs to be clear, transparent, and efficient. The guidance document should detail these procedures.

A guidance document would provide the necessary practical detail and clarity to support effective implementation of these important reforms.

## **Conclusion**

CESA supports the overall direction of the proposed legislation, recognising its potential to streamline the regulatory framework for safety and information standards.

However, we urge Government to consider our specific recommendations in relation to:

- clarifying overly broad record-keeping requirements;
- providing reasonable notice for information requests; and
- provision of guidelines for the practical implementation of the reforms and to give effect to the key considerations in the DRIS including the provision of sufficient transition periods and the process for adoption of standards.

We thank you for your consideration of the views provided in our response and please do not hesitate to contact us should you have any questions.

Yours sincerely,

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