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Director
Consumer Policy Unit
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

CONSULTATION ON THE *TREASURY LAWS AMENDMENT BILL 2024: PRODUCT SAFETY REGULATION (EXPOSURE DRAFT)*

SUBMISSION FROM STANDARDS AUSTRALIA LIMITED

Standards Australia welcomes the opportunity to comment on the *Treasury Laws Amendment Bill 2024: Product Safety Regulation* exposure draft.

We appreciate the intent of the draft exposure bill is to reduce compliance costs faced by importers. However, we have significant concerns about the draft exposure bill in its current form and, as we outline below, consider that it would risk introducing significant unintended consequences and confusion into the administration of product safety standards in Australia.

Our underlying motivation is to ensure that an appropriate level of domestic consultation is maintained on the international standards adopted in Australia, and not completely undermined. Our suggestions below are intended to be both constructive to the Government's overall agenda of reducing compliance costs and to reference sensibly Australia's existing standards setting institutions and approaches, which have a long history and are based on substantial learned experience over 100 years, rather than effectively bypassing those approaches by allowing "time-to-time" updates of standards.

We also appreciate the issues are complex, so in addition to this submission, **we would welcome the opportunity to meet Treasury and ACCC officials** to discuss in detail the risks posed by the current draft exposure bill and to work constructively on streamlined approaches referencing international standards.

For background, **Standards Australia** is the nation's peak, not-for-profit standards body recognised under a Memorandum of Understanding (MoU) with the Commonwealth Government. Our role in developing standards has been held for over 100 years and is underpinned by the support of Australian industry, consumers, academics and government representatives, including over 5,000 technical experts that participate in our technical committees. As Australia's national standards body, we harmonise specifications and procedures to help ensure products and services are safe, efficient, and benefit the Australian community.

To fulfill the obligations set under our MoU with the Commonwealth, Standards Australia develops standards of net benefit to the Australian community through a process of consensus. To achieve this, we aim to establish an acceptable balance of relevant interests in the technical committees that develop Australian Standards™ and make the standards development process accessible to the Australian public through providing opportunities for public comment and consultation. Importantly, these technical committees comprise of members from the private sector and relevant industries.

In addition, we are required to act in a way that is consistent with Australia's international obligations under the World Trade Organisation (WTO) Technical Barriers to Trade (TBT) Agreement. We are obligated to develop Australian Standards based on International Standards, unless there is a justifiable

reason not to do so, such as to ensure Australian Standards are suitable for Australia's unique climatic or geographical environment.

Australian Standards developed by Standards Australia are commonly referenced in mandatory safety standards enforced by the ACCC. Currently 49 Australian Standards are referenced to provide the technical specifications and guidelines that products should meet for safety and reliability objectives.

Our response to this consultation is driven by our objective of ensuring that standardisation in Australia remains robust, promotes economic efficiency and supports public safety.

Key points:

1. Standards Australia supports a more responsive Australian Consumer Law (ACL).
2. Appropriate consultation and engagement with Australian stakeholders is essential to maintain good regulatory practice and deliver product safety outcomes that are in the best interests of our nation.
3. International Standards must continue to be used as the first option in mandatory safety standards where they are appropriate. The adoption of any standard in Australia must follow the requirements within the WTO TBT Agreement.
4. The ACL amendments must be underpinned by improvements to the administrative processes for establishing and maintaining mandatory safety standards. The ACCC should leverage Standards Australia's proven standards development and review processes to achieve better and faster mandatory standardisation outcomes.
5. Standards Australia has made Australian Standards referenced in mandatory safety standards or declared as mandatory standards accessible at no cost for Australian consumers.
6. Adopting a performance-based framework should be considered as a longer-term solution for improving Australia's mandatory safety standards system.

We discuss each of these six points in further detail as follows.

Standards Australia supports a more responsive ACL that retains proper consultation and engagement mechanisms

Standards Australia supports the declaration of standards from any standards making association provided that Australian business and consumer stakeholders have an opportunity to consider and determine whether the proposed standards adequately support the national product safety policy objective.

We acknowledge the *Improving mandatory standards under the Australian Consumer Law – Decision Regulation Impact Statement* (Decision RIS) recommends against "Option 2", namely 'picking winners' through prescribing "trusted overseas standards making associations". The Decision RIS also recommends against using an opt-out approach to setting mandatory standards. We agree with these recommendations as these policy options risk significantly reducing consumer protection by removing Australian input into Australian mandatory standards.

It is Standards Australia's view that the policy approach that the Decision RIS has instead recommended, namely "Option 3" allowing updated standards to apply from "time-to-time", and which has now been incorporated into the *Treasury Laws Amendment Bill 2024: Product Safety Regulation* exposure draft holds the same risk, and will result in unintended consequences.

In particular, we have concerns that automatic incorporation of updates to referenced overseas standards, without consultation and engagement mechanisms, has the potential to:

- completely remove Australian industry and consumers from the development of consumer protections.
- open the doors for international players to influence protections for Australian consumers; and
- effectively cede the power to make law in Australia to overseas organisations.

Where a point in time voluntary standard is referenced in or declared as a mandatory standard, it should not be assumed that an updated standard will continue to maintain the integrity of product safety for Australian consumers and business. This is particularly the case for overseas standards that are developed and updated without Australian engagement and without consideration of Australian conditions or policy imperatives.

A stakeholder engagement process that allows for assessment of the updated referenced standard should be mandatory as it is essential to ensuring continued relevance and to avoid the risk of unintended consequences that place Australian consumers at risk.

Standards Australia proposes that appropriate consultation for updated referenced standards could be achieved through the establishment of a mechanism between the ACCC and Standards Australia that allows:

- Where a relevant Standards Australia technical committee exists, the technical committee to be engaged to support the development or assessment of appropriateness of updated referenced standards decision-making processes.
- Where a relevant technical committee does not exist, Standards Australia to provide assistance to Government to rapidly form a technical advisory group to assist in providing expedited and timely advice on referencing international updates “from time-to-time, and where helpful, broader standards development or assessment processes.

This consultation approach would have the advantage of drawing on the expertise vested in the industry and private sector membership of Standards Australia’s technical committees while operating in a responsive and timely manner in response to proposed updates. It would provide an appropriate means of drawing on the knowledge and expertise in Standards Australia with respect to (1) Australian Standards referenced in mandatory safety standards and (2) matters under consideration in international bodies such as the International Organization for Standardization and the International Electrotechnical Commission, where Standards Australia serves as Australia’s representative. By introducing a mechanism for consultation on updates, the risk of permitting updates that fail to adequately reflect knowledge already available to Standards Australia and its technical committees can be avoided.

We provide more detail on this proposal below in suggesting improvements to ACL administrative processes.

International Standards must continue to be used as the first option in mandatory safety standards where they are appropriate

Standards Australia has a clear and formalised process for adopting internationally aligned standards for the benefit of the Australian community that is built upon openness and transparency, consensus and balance of representation. Our MoU with the Commonwealth Government, for very good reason, provides that:

6.6 When preparing Australian Standards, Standards Australia will, in accordance with Articles 3 and 4 of the WTO TBT Agreement, utilize accepted international standards to the maximum extent possible and will only depart from this practice where there are compelling reasons to do so.

It is a requirement under Australia’s WTO obligations that Australia use relevant international standards, guides or recommendations as a basis for regulations, unless a relevant international standard does not exist, or the international standard is not appropriate to fulfill the policy objectives pursued due to factors such as climatic or geographical difference. (Articles 2.4, 2.9 and 5.4 of the WTO TBT Agreement).

According to the WTO's definition, International Standards are documents developed through the processes of organisations whose membership is open to the relevant bodies of at least all Members of the WTO (Annex 1 Para. 4 of the TBT Agreement), such as the:

- International Organization for Standardization (ISO);
- International Electrotechnical Commission (IEC); and,
- International Telecommunication Union (ITU).

In line with the WTO TBT Agreement, when implementing the *Treasury Laws Amendment Bill 2024: Product Safety Regulation*, the ACCC should use International Standards as the first option in mandatory safety standards where they are appropriate. According to WTO principles, where the ACCC incorporates standards that are not aligned with International Standards, it should demonstrate a fundamental climatic, geographical or technological need as justification to do so. It should also notify other WTO members of the proposed mandatory standard and allow reasonable time for Members to make comments on the standard and take all comments into account. These requirements should be adequately incorporated into the draft exposure bill.

Importantly, Standards Australia's mechanisms for setting voluntary standards in Australia already provide a well developed and tested approach for incorporating and aligning International Standards in accordance with WTO obligations. These mechanisms allow for appropriate domestic consultation and demonstration of decisions made. There is a risk in the draft exposure bill of not sufficiently recognising or respecting the institutions that already exist in Australia for International Standards incorporation.

Standards Australia will continue to implement the policy of utilising accepted international standards to the maximum extent possible across all sectors of the Australian economy including with respect to consumer product safety. We encourage the ACCC to engage in and leverage our processes, where it makes sense to do so.

The ACL amendments must be underpinned by improvements to the administrative processes for establishing and maintaining mandatory safety standards.

Standards Australia strongly suggests that to successfully implement improvements to Australia's mandatory safety standards, the ACL amendments in the *Treasury Laws Amendment Bill 2024: Product Safety Regulation* must coincide with improvements to the administrative machinery that supports establishing and maintaining Australian mandatory safety standards.

The current ACL administrative arrangements for assessing voluntary standards and maintaining mandatory product safety standards are not aligned with Standards Australia's standards development and review processes. The Australian Building Codes Board (ABCB) provides an important and useful precedent for establishing a relationship between mandatory and voluntary standards making bodies through a protocol for the assessment of referenced documents that sets out requirements and considerations for developing or updating referenced documents to achieve better and faster mandatory standardisation outcomes.

The development of a protocol that aligns developing and assessing voluntary standards with maintaining mandatory product safety standards in Australia would support greater interconnectedness and efficiencies under the ACL. Standards Australia is motivated to establish a protocol arrangement that supports greater engagement between the ACCC and Standards Australia on the development of mandatory standards referencing the industry and community experience and knowledge in Standards Australia's technical committees, by:

- Where a relevant Standards Australia technical committee exists, they are engaged in the decision making process.
- Where a relevant Standards Australia technical committee does not exist Standards Australia supports the ACCC to form a technical advisory group to assist in provided expedited and timely

advice on referencing international updates “from time-to-time”, and where helpful, broader standards development or assessment processes.

This arrangement would allow the ACCC to leverage Standards Australia’s standards development and review processes to streamline mandatory standards development and maintenance. Importantly, it would also ensure the ACCC is better informed about the progress of the development or revision of Australian voluntary standards (including Australian adoptions of International Standards) that are referenced or are intended to be referenced in mandatory safety standards. The mechanism could also support opportunities for the ACCC to more effectively engage directly in international standards development to influence relevant standards to ensure that they are developed and maintained with Australian consumer safety regulatory considerations in mind.

Standards Australia has made Australian Standards referenced in mandatory safety standards accessible at no cost for Australian consumers

Standards Australia notes that the newly established Standards Australia Reader Room provides access to Australian Standards, including most of those referenced in mandatory safety standards, for Australian consumers.

Standards Australia’s Reader Room provides free read-only access to more than 4500 Australian Standards for non-commercial personal, domestic, or household use to Australian residents. We suggest that the ACCC should consider referencing access via the Standards Australia Reader Room in the relevant mandatory standards web publications to support Australian consumers to access relevant Australian Standards.

Adopting a performance-based framework should be considered as a longer-term solution for improving Australia’s mandatory safety standards system.

Standards Australia suggests that a longer-term solution for improving Australia’s mandatory safety standards system that should be considered by Government is the adoption of a performance-based framework that would give the ACCC the ability to set performance measures for which standards could be used as a means to demonstrate compliance.

Standards Australia would welcome discussing the possibilities of this approach in greater depth with Treasury and ACCC officials, including as an appropriate and sensible alternative to “time-to-time” incorporation of updates without due domestic consultation.

The ACCC product safety framework is out of step with Australian regulatory frameworks that support performance-based regulatory approaches that set minimum necessary requirements to allow flexibility in compliance.

Standards Australia suggests that the Government considers implementing the recommendations made in the 2017 Australian Consumer Law Review that propose that the Government investigate amendments to the framework to make compliance with the mandatory standards performance-based through setting the minimum necessary requirements for product safety. This additional flexibility could incentivise the supply of safe products by traders and manufacturers by allowing:

- A performance solution pathway that allows compliance through unique solutions that meet the stated performance requirements of the mandatory standard.
- A deemed-to-satisfy approach that uses set methods that are deemed to meet the Performance Requirements of the mandatory standard.
- A combination of deemed-to-satisfy and performance solutions could also be permitted.

Standards Australia is well positioned and motivated to support the Government in the development of an approach that would facilitate the modernisation of the mandatory product safety standards framework. Any such amendment would provide a flexible and less prescriptive approach to compliance

Standards Australia Limited
Exchange Centre, Level 10, 20 Bridge Street, Sydney NSW 2000
GPO Box 476, Sydney NSW 2001
Telephone +61 2 9237 6000, Facsimile +61 2 9237 6010
www.standards.org.au

obligations under the ACL that would allow manufacturers and traders to choose the most appropriate way to comply, reducing costs for business and supporting supply of products in the Australian market.

Once again, we welcome the opportunity to contribute ideas to this call for input. I look forward to engaging further with the Treasury and ACCC on these matters and recommend that we meet before the draft exposure bill is further progressed. I would welcome being contacted to arrange such a discussion and to discuss the input provided in this submission and can be reached on
or

Yours sincerely,

Adam Stingemore
Chief Development Officer
Standards Australia Limited