



Australian Government
The Treasury

TSY/AU

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

Consultation Regulation Impact Statement
December 2021

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Manager
Media and Speeches Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

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About this consultation regulation impact statement

On 4 June 2021, the Minister Assisting the Prime Minister and Cabinet, the Hon Ben Morton MP, announced¹ the Australian Government's intent to develop potential amendments to the Australian Consumer Law (ACL) and associated legislation to support businesses to innovate, grow and minimise compliance costs, while maintaining protections for Australian consumers.

The potential amendments to the ACL are specifically aimed at improving the regulatory framework for mandatory safety and mandatory information standards (mandatory standards), which set out requirements for consumer goods² and product related services supplied in Australia. This will broaden the policy options for developing mandatory standards, including by making it easier to recognise trusted voluntary overseas standards, where they offer at least an equivalent level of safety as an Australian standard where one exists. The potential amendments also consider possibilities for more efficiently capturing updates to voluntary Australian and overseas standards recognised under Australian law and not preventing businesses from complying with current industry practices as reflected in voluntary standards. These potential amendments are intended to provide businesses with greater flexibility in meeting compliance obligations under the ACL and, in so doing, reduce compliance costs.

This consultation regulation impact statement (consultation RIS) has been prepared to seek stakeholder feedback on the policy options it canvasses and to determine the relative impact of those options including costs and benefits. The consultation RIS provides an overview of how mandatory standards are developed under the ACL, identifies issues for business and inefficiencies with the current regulatory framework, and provides a preliminary impact analysis of the policy options being considered.

The Treasury is undertaking this assessment and public consultation on behalf of the Commonwealth, states and territories in accordance with the process for making amendments to the ACL as outlined in the Intergovernmental Agreement for the ACL.³ This assessment and public consultation will inform a final decision regulation impact statement (decision RIS).

Consultation process

Making a submission

Interested parties are invited to comment on the options outlined in this consultation RIS. The consultation process is open until 21 January 2022, with the objective of gathering additional evidence and data on the extent of the problem and to seek views on the benefits and costs of the proposed policy options. In addition, there are a number of targeted consultation questions to consider when making a submission. There is no obligation to answer any or all of the consultation questions, and there is no limit to the length of submissions.

¹ Australian Government, '[Adopting overseas product safety standards](#)', (4 June 2021).

² Consumer goods are defined in the ACL as being 'goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption' (section 2).

³ Australian Consumer Law, '[Intergovernmental Agreement for the ACL](#)' (Webpage).

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect confidentiality of your submission.

View Treasury's [Submission Guidelines](#) for further information.

Closing date for submissions: 21 January 2022

Email productsafety@treasury.gov.au
(preferred)

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

Enquiries Director, Consumer Safety and Sustainability Unit by email
productsafety@treasury.gov.au

The policy options outlined in this paper have not received Australian Government approval and are not yet law. As a result, this paper is merely a guide as to how the policy options might be implemented to address the problem and improve the operation of the regulatory framework for mandatory standards under the ACL.

Introduction

The Australian Consumer Law

The Australian Consumer Law (ACL) is part of the *Competition and Consumer Act 2010*⁴ and aims to protect Australian consumers and encourage fair trade and competition. The ACL is a national law administered jointly by Commonwealth, state and territory consumer protection agencies. The ACL includes product safety provisions to prevent or mitigate safety risks and hazards from consumer goods and product related services⁵ including through mandatory standards.

Amending the Australian Consumer Law

As a law administered jointly by jurisdictions, certain processes must be followed to amend the ACL, set out in the Intergovernmental Agreement for the ACL.⁶ Any jurisdiction may submit a proposal to amend the ACL. A proposal which describes the problem being addressed and the features of proposed amendments, discusses alternatives, and includes supporting material (which may include a regulation impact statement, RIS), triggers the commencement of a formal consultation led by the Commonwealth and, subsequently, voting by jurisdictions. If carried, a bill to amend the ACL is prepared and publicly consulted on prior to being introduced into the Commonwealth Parliament.

Mandatory standards under the Australian Consumer Law

The Commonwealth Minister with responsibility for consumer affairs can make or declare a mandatory safety standard or a mandatory information standard (collectively, mandatory standards). Mandatory standards set out requirements which must be complied with to supply products in Australia, including technical specifications, and testing, packaging, instruction and warning requirements. Key provisions include powers to:

- **Make** a safety standard to prevent/reduce injury risk (s 104) or an information standard (s 134)
- **Declare** all or part of a standard developed or approved by Standards Australia, or an association prescribed by regulation, as a safety standard (s 105) or an information standard (s 135)

Where a mandatory standard allows two or more alternatives for compliance, the regulator may request that a supplier nominate which alternative they intend to comply with (s 108).

Making a mandatory standard – sections 104 and 134

The Australian Competition and Consumer Commission (ACCC) provides advice to the Commonwealth Minister about the need for and, suitability of, a mandatory standard to address a safety risk or information asymmetry, consistent with the Intergovernmental Agreement for the ACL. In developing this advice, the ACCC publicly consults on the problem, regulatory options, and the assessment of regulatory impacts. This consultation includes the states and territories, as ACL co-regulators. When a mandatory standard is first developed, this process typically includes development of a RIS. When finalised, the RIS forms the basis of advice to the Commonwealth

⁴ *Competition and Consumer Act 2010* (Cth) sch 2.

⁵ The ACCC and state and territory co-regulators take joint responsibility for applying and enforcing the ACL's product safety provisions. These provisions sit alongside specialist safety regimes covering products such as medicines (incl. veterinary), therapeutics, food, pesticides, and chemicals, regulated by specialist regulators.

⁶ *Intergovernmental Agreement for the ACL*, 30 August 2019.

Minister to determine whether to make a mandatory standard. In *making* a mandatory standard, relevant provisions of voluntary standards may be drawn upon and referred to. The process is resource intensive and typically takes 18 to 36 months, or longer in some circumstances.

Declaring a mandatory standard – sections 105 and 135

The Commonwealth Minister may also *declare* all or part of a voluntary standard as a mandatory safety or information standard. While the ACCC still undertakes stakeholder consultation and any required regulatory impact analysis before recommending declaration, the process is more direct than making a standard. Importantly, *declaring* an existing standard can be done more quickly than *making* a standard, as the rigorous processes and expertise which forms part of the voluntary standards development process can be recognised and does not need to be replicated. The threshold test for *making* (s 104) vs *declaring* (s 105) a mandatory safety is also different, with the Commonwealth Minister not required to specifically consider matters that are ‘reasonably necessary to prevent or reduce risk of injury to any person’ when declaring a safety standard, which potentially allows a more responsive approach to broader safety issues.

As there are no associations currently prescribed by regulation, only voluntary standards developed or approved by Standards Australia may be declared by the Commonwealth Minister.

Voluntary standards

Voluntary standards, developed by technical committees, can be used to support mandated legislative or regulatory requirements in several ways. For example, performance criteria contained in voluntary standards can be specified in legislation. Alternatively, the requirements of an established voluntary standard can be ‘referenced’ in the mandatory standard, a method which refers to relevant provisions of the voluntary standard without having to contain specifications in full in the legislative instrument. Referencing is the approach used by the ACCC, in consultation with state and territory co-regulators, for incorporating the technical aspects of voluntary standards into mandatory standards under the ACL.

When a voluntary standard is referenced in a mandatory standard, the commercial rights are retained by the voluntary standard making body and they remain subject to copyright protections. As such, businesses must often purchase voluntary standards to gain access to the technical requirements of a mandatory standard.⁷

Voluntary Australian standards

Mandatory standards *made* under the ACL often draw on voluntary standards made by Standards Australia. Standards Australia is recognised by the Commonwealth as Australia’s peak non-government standards body and representative to international bodies such as the International Organization for Standardization (ISO) and International Electrotechnical Committee (IEC).⁸

Additionally, mandatory standards *declared* under the ACL may draw on standards developed by Standards Australia. As outlined above, the declaration process is more direct and efficient than making a new mandatory standard.

⁷ People can inspect Australian voluntary standards referenced in mandatory standards at ACCC offices.

⁸ Memorandum of Understanding between the Commonwealth of Australia and Standards Australia.

Voluntary international standards

International bodies such as the ISO and IEC develop international standards which may be adopted in full or with amendment by national standards setting bodies. Standards Australia, as Australia's representative to both the ISO and IEC, is responsible for ensuring that Australia's viewpoint is heard and considered in the development of international standards and any subsequent adoption as Australian standards.

Voluntary overseas standards

Standards may also be developed by other overseas standards making associations such as ASTM International or the European Committee for Standardization. The term overseas standards includes both international standards and standards developed by overseas standards making associations. Overseas standards may be referenced in a mandatory standard *made* under the ACL. Several factors have limited the widespread referencing of overseas standards to date, even when a voluntary overseas standard may offer a comparable or better level of safety as an Australian voluntary standard. The Commonwealth's general policy is to reference a voluntary Australian or overseas standard in legislation where it is satisfied the standard represents a minimum effective solution to the problem being addressed. To meet this policy objective, the ACCC has established policy principles which set out criteria for accepting overseas standards.⁹ These include that the standard addresses safety concerns, is published in a jurisdiction comparable to Australia and is applicable in an Australian context.

In contrast with Australian voluntary standards, standards developed by overseas standards making bodies cannot be *declared* by the Commonwealth Minister to be a safety or information standard, even if the standard is internationally recognised and provides at least an equivalent level of consumer protection as an Australian voluntary standard, or there is no Australian standard.

The incorporation of existing overseas standards to a mandatory standard made under the ACL can only occur by making a new mandatory standard or reviewing an existing standard, processes which are resource intensive and typically take at least 18 months or more.

Updates to voluntary standards

When mandatory safety and information standards are *made* or *declared*, they are frozen at the point in time that they are made or declared, including with respect to the version of any voluntary Australian or overseas standard referenced within. This means that mandatory standards often reference a voluntary Australian or overseas standard which has been superseded and no longer aligns with current industry practice or developments.

Under the current framework, to update existing mandatory standards to align with up-to-date voluntary standards, the ACCC must undertake a review involving extensive stakeholder consultation and a preliminary impact assessment at a minimum, even if the update is minor or machinery.

Further detail setting out the product safety framework under the ACL, including for mandatory standards, the process for developing and referencing mandatory and voluntary standards in Australia, and previous relevant consultations is at [Appendix A](#). A full list of mandatory standards under the ACL considered in the scope of this RIS is at [Appendix B](#).

⁹ ACCC, *International Standards for the safety of consumer products: criteria for acceptance*, 23 July 2015.

Consultation objectives

Consistent with the Australian Government's announcement on 4 June 2021, this consultation's objective is to help assess options available for improving the mandatory standards regulatory framework to support businesses to innovate, grow and minimise compliance costs, while maintaining product safety protections for Australian consumers. The consultation also seeks views on any additional options that should be considered.

This consultation will also inform Consumer Ministers of the regulatory, financial, business and community impacts of each policy option being canvassed in this paper. This will assist relevant ministers to better assess the costs and benefits of each option before making a decision on how best to implement any options including through potential amendments to the ACL. If any amendments to the ACL are preferred, they will need to be voted on by all Consumer Ministers in accordance with the Intergovernmental Agreement for the ACL.

The Problem

The ACL and mandatory standards provide important protections for the Australian community. However, as with all regulation, if not well designed and reflective of the risks to the community, these standards can impose unnecessary costs on consumers, business and the broader economy and stifle innovation (Box 1).

Businesses have indicated to the Australian Government during various consultation processes that complex layers of regulation and a product safety framework that is slow to respond to changing international consumer markets can contribute to unnecessary costs and confusion about their obligations when supplying goods regulated under the ACL. This feedback has been provided through consultations on the review of the ACL in 2017,¹⁰ as well as subsequent consultation on improving the effectiveness of the consumer product safety system.¹¹ Separate to specific consultations on product safety, the Deregulation Taskforce, led by the Department of the Prime Minister and Cabinet, has also consulted extensively with businesses more broadly on reducing barriers affecting Australia's productivity, growth and competitiveness and making sure regulations are well-designed, fit-for-purpose and support businesses to grow and create jobs.¹²

In particular, the various consultations have identified that businesses consider that they are facing unnecessary confusion and costs in complying with Australia's consumer product safety requirements. Specifically, the existing framework for regulating certain categories of higher risk consumer goods through mandatory Australian standards does not easily allow for recognition of trusted overseas standards. Further, it does not efficiently allow mandatory standards to keep pace with (often minor) changes or updates to related voluntary Australian and overseas standards. This creates barriers for businesses to import and supply the latest products to the Australian market, even when these products have been demonstrated as being safe in comparable overseas markets.

Box 1: Effective regulation will consider a number of factors

Effective regulation is proportionate to risk and aligns with community expectations. This ensures that regulation does not impose unnecessary costs on businesses and consumers, hinder participation in productive activities or limit industry's capacity for growth. High-risk products and services, therefore, should attract more stringent oversight relative to low-risk products and services.

¹⁰ Australian Consumer Law, *'Australian Consumer Law Review'* (Webpage).

¹¹ The Treasury, *'Improving the Effectiveness of the Consumer Product Safety System'* (Webpage).

¹² Department of the Prime Minister and Cabinet, *'Progressing Australia's Deregulation Agenda'* (Webpage).

An effective regulatory framework promotes regulation that:

- Is based on a clearly articulated and transparent policy objective.
- Demarcates roles and responsibilities between different levels of government, the private sector and individuals. It also mitigates against unintended outcomes and policy 'drift'.
- Is appropriately targeted and proportionate to risk.
- Minimises compliance costs. This includes minimising the effect of regulation on competition (through increasing barriers to entry) and the ability of business to innovate and respond flexibly to the commercial environment.
- Is clear and accessible. This increases business compliance and promotes community understanding and support.
- Is responsive to changing business practices and technology. This avoids regulatory failures (such as, slowing the uptake of better and safer products or practices) and the associated costs to economic growth and consumer benefits.

Barriers to compliance with trusted overseas standards

Globally, consumer goods are often manufactured and tested to the specifications of the most current product safety standards for major markets like the United States and the European Union. When these products are imported to and supplied in Australia businesses may need to meet duplicative compliance requirements such as retesting or require relabelling to demonstrate compliance with the relevant mandatory Australian product safety standard, which may technically differ from other standards in relatively minor aspects. This adds unnecessary compliance costs for businesses, as well as likely increasing the cost of products for consumers, slowing the speed to the Australian market, and decreasing the range of products available, while arguably having no impact on product safety.

The current architecture of the ACL does not easily allow for trusted overseas standards that provide at least an equivalent level of safety to be recognised alongside Australian standards, or to be incorporated quickly and efficiently into Australian law. For a comparable overseas standard to be recognised in Australia, the ACCC must conduct extensive reviews and analysis to satisfy ACL consultation and regulatory impact analysis requirements associated with *making* a mandatory standard, which can take a minimum of 18 months. Of the 48 mandatory Australian standards considered in this consultation RIS, 33 do not recognise any other overseas standards (refer to [Appendix B](#)). Of the 15 mandatory standards that do recognise an equivalent overseas standard, 10 of these only incorporate one or two other overseas standards, while the other five incorporate more than two overseas standards. The current ACL architecture and the limited number of overseas standards which have been incorporated in mandatory standards to date have contributed to unnecessarily increasing the regulatory burden for businesses where equivalent manufacturing and safety requirements are not recognised in Australia. This is despite being widely accepted in other major economies and, as a result, duplicative testing or relabelling is required to demonstrate compliance.

Example 1: Bunk Beds

The current mandatory Australian standard for bunk beds (Consumer Protection Notice No. 1 of 2003)¹³ was introduced in 2002 and references the 1994 version of the voluntary Australian standard (AS/NZS 4220:1994). The voluntary Australian standard was updated in 2010 but this update has not yet been captured in the mandatory Australian standard.

¹³ ACCC, 'Product Safety Australia', [Bunk beds](#).

The standard sets out design and construction requirements for bunk beds to ensure their safety including a minimum guardrail height (260mm) and a definition of which beds are covered by the standard in terms of minimum upper mattress height (800mm).

In 2016 the ACCC conducted a review¹⁴ of the mandatory standard to determine if the standard remains effective and whether there are more efficient ways of achieving the same level of safety. The review considered referencing the updated voluntary Australian standard and the possibility of referencing three trusted overseas standards: the ISO standard (ISO 9098:1994), the ASTM standard (ASTM F1427-13) and the European standard (BS EN 747-2012).

The review noted that the major overseas standards may be slightly safer than the requirements in the current mandatory standard, as falls can only occur from a lower height and additional requirements for guardrail support and base stability are included. However, these widely used overseas standards cannot be readily referenced in the mandatory Australian standard due to the current architecture of the ACL and the requirement for the ACCC to conduct extensive reviews even where an improved safety outcome can be demonstrated as per the requirements set out in the Intergovernmental Agreement for the ACL and the threshold difference in *making vs declaring* a standard under the ACL. This means businesses who import bunk beds which have already been tested to one of these overseas standards are required to retest their products against the Australian standard.

This duplicates testing and compliance costs for business and creates barriers to the importation of bunk beds in a market where a majority of products are imported. In a related 2016 draft RIS, it was noted that the cost of testing to the overseas standards are on average cheaper than equivalent tests for compliance with the voluntary Australian standard.¹⁵

Example 2: Bicycle helmets

The current mandatory Australian standard for bicycle helmets is the Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001. It was last updated in 2009 and references the 2008 version of the voluntary Australian standard (AS/NZS 2063:2008). The voluntary Australian standard was most recently updated in 2020 (AS/NZS 2063:2020) although this has not yet been incorporated into the mandatory Australian standard.

The mandatory Australian standard sets out the design, construction, performance and testing requirements for bicycle helmets supplied in Australia. While this standard governs which helmets may be legally supplied, separate state and territory road safety authorities administer laws that govern which helmets can be legally used by bicycle riders on public roads ('use' laws). The supply and use laws overlap since they both require bicycle helmets to comply with the voluntary Australian standard (AS/NZS 2063).

The ACCC conducted a review in 2016 with several policy options being considered, these included the option to revoke the safety standard to address the overlap between the supply/use laws, or to adopt overseas standards.

There is currently no international (ISO) safety standard for bicycle helmets. Although some overseas standards, such as the United States and European standards, are broadly equivalent and are the most widely used bicycle helmet standards in the world. However, helmets which meet these overseas standards are unable to be supplied into Australia unless they have undergone duplicative testing to the Australian specific requirements at an additional cost.

¹⁴ ACCC, *'Review of the mandatory standard for bunk beds'* (29 February 2016).

¹⁵ ACCC, *'Review of the mandatory standard for bunk beds – Draft Regulation Impact Statement'* (29 February 2016).

Suppliers have indicated the mandatory Australian standard should be updated to allow compliance with these overseas standards. This would reduce the regulatory burden for industry and provide a greater choice of helmets for consumers at a reduced price.

The ACCC aims to conduct a further consultation to determine whether the updated voluntary Australian standard and overseas standards could be incorporated in a new mandatory Australian standard. The ability to declare the United States and European standards, as well as other appropriate standards, would provide an efficient and direct pathway to incorporating the requirements under the ACL

On 4 June 2021, it was announced that in consultation with Consumer Ministers, the Australian Government will look to develop amendments to the ACL to make it easier to recognise trusted overseas product safety standards, provided that an overseas standard offers at least an equivalent level of safety as a mandatory Australian standard. This is aimed at reducing 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 a comparable overseas standard.

Inefficient regulatory architecture for updating mandatory standards

When mandatory safety and information standards are developed, they are frozen at the point in time they are *made* or *declared*. This includes any voluntary Australian standards and trusted overseas standards referenced therein. This means any subsequent changes made to a voluntary Australian or overseas standard are not automatically incorporated into a mandatory standard or captured under Australian law. As a result, mandatory standards can become outdated very quickly and not align with the latest voluntary standards or current industry practice.

There is also no 'safe harbour' for businesses that manufacture and test products according to the latest voluntary standards. Accordingly, businesses may technically be in breach of a mandatory standard that refers to a superseded voluntary standard, even if complying with the up-to-date voluntary standard has improved safety requirements that reflect changes in corporate practice, technology or science. Businesses have reported this to be a limitation on their willingness or ability to innovate and supply the latest and safest products to Australian consumers as they take on additional legal risks.

To update a mandatory standard to align with current industry practice, the ACCC conducts extensive stakeholder consultation and a preliminary regulatory impact assessment at a minimum, consistent with the Australian Government Guide to Regulation. This creates an environment of regulatory stability, where businesses can plan ahead with a degree of certainty as to the rules they must comply with, but also means that the Australian consumer market may lag behind the latest trends and developments in global markets. The lag between when a voluntary standard is updated and when the update is reflected in a mandatory standard can be costly to business, with some mandatory standards being 10-20 years behind updated voluntary standards.

Barriers to trade are also created where products manufactured according to the latest overseas standards are not able to legally be supplied in Australia until the applicable mandatory standard is updated. Examples of this occurring include bicycle helmets and portable pools. In respect of the latter, a scenario has arisen where, despite correct warning information being displayed on the portable pool, not including a warning alert symbol as well meant that pools were technically non-compliant and had to be removed from sale in Australia and destroyed.

Further, the ability of consumers to purchase the latest and safest products available and at a competitive price is constrained. The reason for this lag is that the process to review and update a

mandatory standard under the existing architecture is lengthy, requiring a number of administrative and legislative processes to be followed.

Example 3: Projectile Toys

The mandatory Australian standard for projectile toys (Consumer Goods (Projectile Toys) Safety Standard 2020) sets out mandatory requirements intended to reduce the risk of choking, eye injuries and flesh wounds during play.¹⁶

In June 2020, the mandatory standard was reviewed and amended following its introduction in 2010. The mandatory standard was updated to keep pace with changes in industry practice and to allow compliance with the latest voluntary Australian and overseas standards including the 2019 edition of the voluntary Australian standard (AS/NZS ISO 8124.1:2019), or one of three comparable overseas standards: the ISO standard (ISO 8124 1:2018), the ASTM standard (ASTM F963 17) and the European standard (EN 71-1:2014 + A1:2018).

However, after the mandatory standard was updated in June 2020, the voluntary Australian standard was subsequently updated in December 2020, in line with updates to the ISO standard. The amendments included updates to the tension test applied to projectiles, and amendments to the requirements for rotors and propellers on projectile toys, including renaming the relevant section to 'Flying Toys'.

Due to the current architecture of the ACL, these relatively minor updates could not be automatically captured by the mandatory standard. Instead, the ACCC conducted a further consultation¹⁷ to assess the appropriateness of capturing the minor updates and, in July 2021, made a legislative amendment¹⁸ to the mandatory standard which had been updated only a year earlier. This process is consistent with the current government policy and requirements under the Intergovernmental Agreement for the ACL for reviewing and updating standards.

Example 4: Children's toys

The ACCC administers and enforces 5 mandatory Australian standards for toys designed to reduce the risk of serious injuries and deaths to children. These include aquatic toys, projectile toys, toys containing magnets, toys for children up to and including 36 months, and toys containing lead and other elements.

The ACCC has recently completed reviews for the first three mandatory Australian standards and intends to review the two remaining mandatory Australian standards (toys for children up to and including 36 months; and toys containing lead and other elements) as soon as practicable.

In each of the reviews undertaken, the ACCC has sought to update the mandatory Australian standards to allow compliance with the latest voluntary Australian and overseas standards including the 2019 edition of the voluntary Australian standard (AS/NZS ISO 8124.1:2019), or where appropriate and relevant, one of three comparable overseas standards: the ISO standard (ISO 8124 1:2018), the ASTM standard (ASTM F963 17) and the European standard (EN 71-1:2014 + A1:2018).

There are benefits in allowing businesses to comply with the updated voluntary Australian standard or any of the comparable overseas standards, namely a reduction in compliance and administrative costs. Businesses who supply toys to Australia are likely to already be testing to voluntary overseas standards in addition to the current voluntary Australian standard. Where

¹⁶ ACCC, 'Product Safety Australia', [Projectile toys](#).

¹⁷ ACCC, 'Review of the mandatory standard for projectile toys' (April 2021).

¹⁸ Consumer Goods (Projectile Toys) Amendment Safety Standard 2021.

various toys are manufactured overseas (Australia is a relatively small part of the global market), suppliers would no longer need to pay the additional compliance and administrative costs associated with complying with requirements specific to the Australian market.

Regulatory cost savings for industry, such as compliance and administrative costs, resulting from the three completed reviews is estimated to be around \$8.15 million per year. This comprises savings of \$1 million for aquatic toys, \$6.75 million for projectile toys and \$0.4 million for toys containing magnets.

On 4 June 2021, the Australian Government announced that more efficiently capturing updates to voluntary Australian and overseas standards referenced within mandatory standards will also be examined so Australia does not lag behind overseas or voluntary Australian standards when they are updated.

Consultation questions

- Q1. Do you agree or disagree with the identified problems? Please provide any evidence to support your position.
- Q2. Are there any other problems that you think should be considered? If so, please set out what they are, what effect you think these problems could have and how the problems should be addressed.
- Q3. Do you have any specific information, analysis or data that will help measure the impact of the problems identified? For example:
- What costs have you incurred from complying with an Australian mandatory standard where you were unable to rely on demonstrating compliance with a comparable overseas standard?
 - Has not being able to comply with the most recent voluntary Australian or overseas standards impacted your business in terms of cost, time and number of products you are able to bring to market? If so, please provide details.
 - Have you decided against supplying particular consumer goods in Australia so that you could avoid duplicative compliance costs under the current mandatory standards framework? If so, please provide details around the factors that influenced this decision and the consumer goods affected.

Policy objectives

The Australian Government has announced support for making amendments to the ACL to allow for the easier use of trusted overseas product standards and to potentially allow for the more efficient recognition of, and compliance with, updated voluntary Australian or overseas standards which have been referenced in mandatory standards. The objectives of these proposed amendments are to:

- make it easier for suppliers and importers to comply with product safety requirements set under the 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.

The proposed amendments to the ACL are also consistent with the Australian Government's broader objectives relating to trusted overseas standards as outlined in the 'Industry Innovation and Competitiveness Agenda: An Action Plan for a Stronger Australia' published on 14 October 2014.¹⁹

The Agenda states:

To reduce duplicative domestic regulation, the Government will adopt the principle that if a system, service or product has been approved under a trusted overseas standard or risk assessment, then Australian regulators should not impose any additional requirements, unless there is a good and demonstrable reason to do so. This will reduce costs and delays for businesses, increase the supply of products into the Australian market and allow regulatory authorities to focus on higher priorities.

Further, Australia is a member of the World Trade Organization (WTO) which brings with it certain international obligations. This includes agreement to the WTO's 'Agreement on Technical Barriers to Trade'²⁰ which aims to provide global harmonisation through mutual recognition of technical standards. Article 2.4 of the WTO Agreement on Technical Barriers to Trade requires WTO Members to use relevant international standards as a basis for national technical regulations unless such standards are judged to be unsuitable or unsafe.

The proposed amendments to the ACL would not change the process for developing new mandatory safety or information standards under the ACL. The ACCC would continue to develop mandatory standards according to the Intergovernmental Agreement under the ACL, with public consultation on potential options being considered, regulatory impact analysis consistent with the Australian Government Guide to Regulation and a final decision by the Commonwealth Minister, as appropriate. In this respect, if the Commonwealth Minister was considering *declaring* a standard developed by an overseas association as mandatory, it is proposed the ACCC would still consult on the standard and prepare a RIS as appropriate, which would be used to inform the Commonwealth Minister's decision.

This consultation RIS also considers appropriate amendments to ensure businesses are not penalised or restricted from manufacturing or supplying products in Australia that comply with the most up-to-date versions of voluntary Australian and trusted overseas standards because an outdated version of the standard is referenced in the mandatory Australian standard. This could be through permitting updates to standards as in force from time-to-time under the ACL, or by providing a safe harbour for businesses that want to comply with the most up-to-date versions of standards, or other appropriate alternatives.

The Intergovernmental Agreement for the IGA sets out requirements for *making* and amending (updating) standards under the ACL. In the case of updates to voluntary standards, either as they occur from time-to-time or through the existing review process, it is proposed that updates to voluntary standards already recognised under Australian law will occur without the formal requirement for further regulatory impact analysis provided an update to a standard is judged to not be unsuitable or unsafe. This is in recognition of the extensive consultation and impact analysis required when a standard is first introduced under the ACL, which establishes that a standard is 'trusted' and appropriate for the Australian context.

¹⁹ Australian Government, *Industry Innovation and Competitiveness Agenda*, 14 October 2014, 31.

²⁰ World Trade Organization, *Agreement on Technical Barriers to Trade* (Webpage).

Consultation questions

- Q4. Do you agree that changes to the regulatory framework are required to address the problem? If not, why not?
- Q5. Do you agree with the policy objectives as outlined? If not, why not?
- Q6. Are there any other policy objectives you think the Commonwealth, state and territory governments should be considering in addressing the problem?

Policy options

To address the problem defined above, this consultation RIS explores one non-regulatory option and two regulatory options:

- **Option 1** – Status quo
- **Option 2** – Amend the ACL to allow the Commonwealth Minister to more easily *declare* trusted overseas standards
- **Option 3** – Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards

These options are expected to affect businesses (large and small), consumers, consumer law regulators, accredited conformance and testing authorities, together with Commonwealth, state and territory governments. This consultation RIS does not present a preferred option, because further consultation and evidence on the likely impact of all options is required to conduct an informed evaluation of each option. The options considered may also be combined, depending on stakeholder feedback and the evidence gathered. The views of stakeholders will inform a final decision regulation impact statement (decision RIS).

Option 1: Status quo

Description

Under this option there would be no change to the regulatory framework for mandatory standards set under the ACL. The Commonwealth Minister can continue to *make* new mandatory safety and information standards that reference appropriate voluntary Australian standards and trusted overseas standards, and *declare* standards developed by Standards Australia. The ACCC will continue to periodically review and update existing mandatory standards to capture updates to any voluntary Australian and overseas standards referenced therein, and incorporate and reference any additional trusted overseas standards as appropriate. The process of reviewing and updating would be repeated when the mandatory standards inevitably become out of date. This process is likely to take an estimate of 10 years for all 48 mandatory standards.

Consumers will remain protected by mandatory Australian standards on certain products but are likely to have less choice of products available in comparison with international markets due to Australia's product safety standards framework not efficiently capturing updates to voluntary Australian and overseas standards.

Rationale

Australia's product safety framework, including the regulatory framework for developing mandatory standards, has been in place for over 10 years and is understood by businesses and consumers.

Under the current framework, unsafe and high-risk consumer goods can be regulated through mandatory standards to prevent or reduce the risk of injury to Australian consumers. Compliance with overseas standards can be permitted through referencing trusted overseas standards in mandatory standards following requisite consultation and regulatory impact analysis to examine the costs, benefits and impacts under the mandatory standards-making provisions of the ACL.

Consultation questions

- Q7. Does the status quo achieve the policy objectives?
- Q8. Is the current regulatory framework for developing mandatory standards under the ACL sufficient to address the problem?
- Q9. Does the current regulatory framework impose unnecessary costs or compliance burdens? If so, could you provide examples or evidence.

Option 2: Amend the ACL to allow the Commonwealth Minister to more easily *declare* trusted overseas standards

Description

This option would amend the ACL to allow the Commonwealth Minister to *declare* trusted overseas standards as either mandatory safety standards or mandatory information standards under sections 105 and 135 of the ACL respectively. A *declared* overseas standard would then become mandatory under the ACL with mandated requirements for regulating specific consumer goods. Where a mandatory Australian standard exists, this would give businesses flexibility in complying with either the Australian standard or the *declared* overseas standard.

At present, only standards prepared by Standards Australia can be *declared* by the Commonwealth Minister. While the ACL architecture allows for standards developed by other associations to be *declared* if the standard making association is prescribed in regulation, the ACL does not currently list any standards associations that can be drawn on (other than Standards Australia). To enable this option, two alternatives are considered that could be used to enable the Commonwealth Minister to *declare* a standard:

- prescribing a list of certain overseas standards making organisations in the ACL regulations or
- using a principles-based approach for *declaring* overseas standards.

Alternative 1 - Prescribing a list of 'trusted' overseas of standards making associations

In 2016, the ACCC consulted on a proposed list of nine overseas standards making associations to be prescribed in regulation.²¹ During the consultation process a further five standards making associations were also identified as being potentially suitable, for a total of 14 potentially suitable associations as per the table below.

Standards making association	Country or region
ANSI — American National Standards Institute	United States
ASTM International	United States

²¹ ACCC, *Consultation paper – International standards associations: Consumer Product Safety*, 9 May 2016.

Standards making association	Country or region
BSI — British Standards Institution	United Kingdom
CEN — the European Committee for Standardization	European Union
CSA Group	Canada
DIN — Deutsches Institut für Normung and Deutsches Institut für Bautechnik	Germany
IEC — International Electrotechnical Commission	Global
ISO — International Organization for Standardization	Global
UL — Underwriters Laboratories	United States
ASME – American Society of Mechanical Engineers	United States
CPSC – Consumer Product Safety Commission	United States
JISC – Japan Industrial Standards Committee	Japan
SNZ – Standards New Zealand	New Zealand
UNECE – United Nations Economic Commission for Europe	European Union

Utilising the existing ACL architecture to prescribe a list of trusted overseas standards organisations in regulations would provide certainty to business as to what organisations may be considered relevant for the Australian context. However, if they are not based on transparent criteria and assessments, their selection may also be perceived as ‘picking winners’ which could have potential implications for our trade relationships. The principles-based approach (described below) may address this issue, if criteria can also be applied to determine whether an overseas standards organisation is deemed to be ‘trusted’.

Once a list of trusted overseas standards organisations is set, a mechanism is needed to select overseas standards that will apply in Australia. This mechanism could either take an:

- ‘opt-in’ approach where specific standards from trusted overseas standards associations are incorporated under the ACL following a review process or
- ‘opt-out’ approach that incorporates relevant standards from trusted overseas standards associations, unless it is demonstrated to be unsafe for Australia. Under this approach when a specific product standard is considered potentially unsafe, a review would be undertaken. Following the review, Australia could opt-out of the specific standard if the expected costs outweighed the benefits.

The ‘opt-out’ approach safeguards consumer protections and would generate benefits for businesses and consumers by streamlining the acceptance of standards from trusted (or prescribed) overseas standards organisations alongside Australian standards. This approach would improve transparency and better target RIS activity by focusing on why safety standards in Australia need to differ from approaches adopted by other trusted overseas standards organisations.

Alternative 2 - Using a principles-based approach for *declaring* overseas standards

The threshold to ‘trust’ an overseas standard making association could potentially reduce the ability of the ACCC to recommend a wider variety of overseas standards making organisations that may be more relevant for particular product categories. An alternative approach would be to amend the ACL to allow the Commonwealth Minister to *declare* trusted overseas standards using a principles-based approach provided the standard meets certain criteria. This is distinct from specifically prescribing certain standards making associations in regulation. The criteria could apply equally to *declaring* voluntary Australian standards prepared by Standards Australia.

Each standard would need to be reviewed, including with a regulatory impact analysis if appropriate, against set criteria. These criteria could include:

- 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 a comparable level of safety to any applicable Australian standards (where an Australian standard exists).
- The standard is made by a trusted or competent association.

In practical terms, this approach could be achieved by reframing the current architecture of sections 105 and 135 to remove the requirement to prescribe other associations, including removing reference to Standards Australia, and instead make reference to criteria required for consideration by the Commonwealth Minister when *declaring* a standard. The principles-based criteria would be established in legislation to give the Commonwealth Minister flexibility in *declaring* appropriate standards from a range of standards making associations.

Rationale

The capacity to *declare* trusted overseas standards as set out above will give the Commonwealth Minister a wider choice in policy settings when considering standards appropriate for the Australian context, particularly where no equivalent Australian standard exists. This will enable well considered and appropriate voluntary standards made through rigorous processes with multi-sectoral input to be more efficiently specified for products. As a result, it is expected to give greater flexibility for businesses by allowing them to comply with certain overseas safety standards within a mandatory standard *declared* under the ACL.

This option would allow the Commonwealth Minister to *declare* an existing overseas product standard which is used, trusted and understood by industry, as a safety benchmark through its incorporation into Australian law. This is likely to make mandatory standards more accessible, transparent and make it easier for business to achieve compliance.

It is important to note the current architecture of the ACL does allow for the incorporation of trusted overseas standards in mandatory standards that are *made* under the law. Since April 2016, the ACCC has commenced a program to review all of the existing mandatory standards to assess their ongoing efficacy and the degree to which they can be harmonised with overseas standards. As a result, 15 of the 48 existing mandatory standards have been updated to reference a limited number of overseas standards (typically one or two) made by some standards making associations on the proposed list, including the ISO, ASTM International and the European Committee for Standardization. However, the current process for recognising trusted overseas standards is inefficient and indirect in comparison with potentially *declaring* overseas standards.

Amending the ACL to make it easier for the Commonwealth Minister to *declare* overseas standards, either by prescribing a list of standard-making associations or using a principles-based approach to

the *declaration* of standards, would go some way to addressing the current inefficiencies. The proposed amendments would better allow the Commonwealth Minister to consider any evidence in support of an overseas standard when making a decision as to the appropriateness of declaring a standard in Australia and thus provide a more direct and efficient pathway for standards development. *Declaring* voluntary Australian and overseas standards made by prescribed standard making associations, or using a principles-based approach, also recognises the technical competence and expertise of the standards making process, which is publicly accessible and has wide membership, and acknowledges that they can be relied upon to include technical specifications in standards that are likely to work and are likely to be accepted by businesses.

Providing greater access to overseas standards would also allow the Australian product safety regulatory framework to better keep pace with changes in technology and in emerging product areas. For example, in new and emerging areas where no relevant voluntary Australian standard exists, these changes would allow the Commonwealth Minister to *declare* a trusted overseas standard as a mandatory Australian standard. The increased agility and ability to respond to emerging product areas and risks through the *declaration* of overseas standards, would allow Australian businesses and consumers access to emerging products, while providing robust regulatory coverage and product safety protections for consumers. A potential emerging area where this could be particularly relevant is interconnected and smart devices where relevant standards which define security and safety measures expected in connected devices are an emerging issue internationally.²²

Under this option, the ACCC would continue to periodically review and update existing mandatory standards to consider updates and incorporate trusted overseas standards where applicable and repeat the process when the mandatory standards inevitably become out of date. The important role of Standards Australia would be maintained, to ensure where appropriate, mandatory standards continue to reference voluntary Australian standards developed by Standards Australia which are tailored to the Australian context.

Consultation questions

- Q10. Two alternatives have been presented to make it easier to comply with overseas standards: prescribing a list of trusted standards making associations whose standards may be *declared*; or taking a principles-based approach to *declaring* overseas standards.
- Which alternative is preferable?
 - Are there other alternatives to make it easier to comply that haven't been considered?
- Q11. Are the standards making associations on the proposed list acceptable?
- If not, please describe why.
 - Should any other standards making associations be included?
 - Once a list of trusted overseas standards organisations is set, which approach ('opt-in' or 'opt-out') would achieve the best outcomes for consumers and businesses and why?
- Q12. Do you have any comments on the high-level criteria for a principles-based approach to *declaring* overseas standards, or any additional criteria?
- Could these same criteria be adapted to determining 'trusted' standards making associations?
- Q13. Are there related provisions in the ACL that should be updated at the same time, for example section 108 (refer to the Introduction and [Appendix A](#))?

²² ESTI, *Cyber Security for Consumer Internet of Things: Baseline Requirements* (2020).

- Q14. If adopted, what would the likely impacts be on affected businesses (large and small), consumers, consumer law regulators, or accredited conformance and testing authorities?
- Q15. Have any impacted stakeholders been missed? What would the likely impacts be on these stakeholders?

Option 3: Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards

Description

This option considers appropriate amendments to the ACL to ensure businesses are not penalised or restricted from manufacturing or supplying products that comply with the most up-to-date versions of voluntary Australian and trusted overseas standards where the updates have not yet been incorporated into a mandatory standard. This option focuses on legislative amendments as a means of achieving the Australian Government's policy objectives consistent with the announcement on 4 June 2021, however other alternatives may also be considered, including non-regulatory alternatives.

The current ACL architecture does not permit mandatory standards, whether *made* or *declared*, to capture updates as they occur from time-to-time to any voluntary Australian or overseas standards that are incorporated into a mandatory standard. In order to update a mandatory standard to align with current industry practice, the ACCC follows the requirements set out under the Intergovernmental Agreement for the ACL and conducts extensive stakeholder consultation and a preliminary regulatory impact assessment at a minimum consistent with the Australian Government Guide to Regulation. To address the inefficiencies in the ACL architecture, two alternatives requiring legislative amendments have been considered:

- Permitting voluntary and overseas standards that are referenced in, or *declared as*, mandatory standards to apply as they exist from time-to-time.
- Providing a safe harbour provision for businesses that want to comply with the most up-to-date versions of voluntary Australian and overseas standards not yet incorporated into a mandatory standard.

Alternative 1 – Allowing updated standards to apply

This would add the ability for mandatory standards, whether *made* or *declared*, to incorporate any changes to referenced standards (voluntary Australian or overseas) when they are updated from time-to-time. This would allow Australia to keep pace with the latest developments for consumer goods in the international market. Permitting voluntary standards to be referenced as they exist from time-to-time under the ACL would remove the need for the ACCC to periodically review and update existing mandatory standards once an appropriate voluntary standard had been referenced in or *declared as* a mandatory standard. It would not preclude the ACCC from reviewing existing standards to incorporate any additional voluntary Australian or overseas standards that were not considered earlier.

This alternative could be implemented by requiring suppliers to comply with the latest voluntary Australian or overseas standards referenced within a mandatory standard, or declared as a mandatory standard, subject to a suitable transition period, consistent with the current practice for reviewing and updating standards. During the transition period, suppliers could choose between complying with the mandatory standard as established at the point in time it was *made* or *declared*,

or complying with the latest voluntary or overseas standards with suppliers to nominate which standard they are complying with, consistent with the current requirements under the ACL.

It is proposed that amendments to the ACL to permit updates to standards to apply as they exist from time-to-time would not trigger the need for consultation and regulatory impact analysis each time a mandatory standard is updated, as is currently required when updating mandatory standards *made or declared* under the ACL even when updates are very minor.

Safeguards would be included in any ACL amendment to ensure that substantial updates to standards are reviewed (for example, there is ACCC consultation with industry and a regulatory impact analysis) where appropriate. This review process could be triggered where updates: significantly differ to the requirements in the mandatory standards; or, as with the proposed 'opt-out' approach outlined above, only where the standard is considered to have the potential to be unsuitable or unsafe. For example, a mechanism to enable an update to be revoked or disallowed could be included to address the scenario where an update to a standard is judged to be unsuitable or unsafe. Alternatively, an update to a standard may be permitted to apply following a suitable timeframe unless the ACCC determines to not accept the update. A suitable timeframe could be 180 days, during which time the ACCC could also undertake procedural steps such as notification of affected stakeholders that an update will occur.

Retaining safeguards would protect against the lowering of safety standards for consumers in those circumstances in which Australia imposes more stringent safety requirements on certain products due to unique Australian conditions such as a higher threshold for UV protection in the mandatory standard for sunglasses (Consumer Goods (Sunglasses and Fashion Spectacles) Safety Standard 2017). However, it would be proposed the safeguards are used by exception, where differing Australian safety requirements are considered reasonably necessary rather than as a requirement to assess each and every individual update. This alternative would also provide greater flexibility for businesses to comply with updated voluntary Australian or overseas standards until such time as the mandatory standard is reviewed to reflect this.

There are a number of existing regulatory frameworks that permit regulations, such as mandatory standards, to apply as they exist from time-to-time. For example, recent amendments to the *Competition and Consumer Act 2010* in relation to the 'Motor Vehicle Service and Repair Information Sharing Scheme'²³ provides reference to certain motor vehicle standards 'as in force from time-to-time'. The *Work Health and Safety Act 2011*²⁴ includes regulation-making powers which permit regulations to reference documents that are in force or 'remade from time to time'. The *Export Control Act 2020* (ECA) is a framework Act regulating agricultural exports, which allows rules to be made underpinning the scheme. Generally, there is a different rule for each major category of goods, which sets out the requirements and conditions of export. Subsection 432(3) of the ECA allows rules made under the Act to make provision for matters by applying, adopting or incorporating, with or without modification, as in force or existing from time-to-time any instrument or writing that:

- sets out requirements for export operations in Australian territory, or in a part of Australian territory, in relation to a kind of prescribed goods that are to be imported into a country and
- is made by the authority or body that is responsible for regulating the importation of prescribed goods of that kind into that country.

Including such mechanisms in regulatory frameworks has the practical effect of providing greater flexibility for regulations that reference certain documents or standards to be updated as they come into force at any given point in time. As a result, businesses are provided certainty that they can

²³ *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2021*.

²⁴ *Work Health and Safety Act 2011* (Cth), s276.

automatically alter their practices to comply with the most up-to-date voluntary Australian and overseas standards as referenced in, or declared as, a mandatory standard, as appropriate.

Alternative 2 - Safe harbour provision

Safe harbour provisions are included in laws and regulations to specify that certain conduct or actions do not violate a given law or regulation and offer a legal defence for parties that have undertaken the specified conduct or action. They are typically used where it can be demonstrated that efforts to comply with a law or regulation have been made and where it can be demonstrated that technical non-compliance with a law or regulation would lead to a better outcome consistent with the intent of the law or regulation. Safe harbour provisions are used in financial frameworks where liability is assigned to individuals. The ACL includes a safe harbour provision at section 137A to give egg producers a legal defence in relation to the use of 'free range' when promoting or selling eggs, provided egg producers can demonstrate they comply with the free-range eggs standard.

With respect to mandatory standards under the ACL, a safe harbour provision could be included for both mandatory safety and information standards such that businesses would not be penalised for complying with the most up-to-date versions of a voluntary Australian or overseas standard incorporated into a mandatory standard where the update has not yet been recognised under Australian law. This would provide a legal defence for businesses who want to comply with the latest standards and provide certainty they will not be penalised for doing so. The inclusion of a safe harbour provision would not impact businesses that do not want to comply with the latest voluntary Australian and overseas standards and instead want to comply with the requirements of a mandatory standard as currently *made* or *declared*, until such time it is reviewed and updated as per the existing process administered by the ACCC.

Rationale

Amending the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards will allow businesses to innovate and improve their products according to real-time industry practices, instead of waiting for the ACCC to review a particular standard as per the existing requirements for developing standards under the ACL. For example, bunk beds currently imported to Australia must comply with a mandatory standard *made* in 2003.²⁵ The bunk beds mandatory standard currently references a voluntary Australian standard from 1994. The voluntary Australian standard was updated in 2010 but this update has not yet been captured in the mandatory Australian standard due to the current architecture of the ACL not efficiently allowing for updates.

This means businesses that supply bunk beds in Australia that have been manufactured according to the specifications in the 2010 voluntary Australian standard could technically be in non-compliance with the mandatory Australian standard where technical specifications differ from those detailed in the 1994 voluntary Australian standard. This could potentially lead to businesses being penalised for non-compliance even if the difference in technical specifications in the updated voluntary Australian standard result in better safety outcomes for consumers. By amending the ACL to permit standards to apply as they exist from time-to-time (capturing updates as they occur) or provide a safe harbour provision, Australian businesses could import bunk beds that meet the latest voluntary Australian standard and/or the latest trusted overseas standards without the risk of non-compliance and penalty.

If the manufacturer is permitted to produce products that comply with the latest trusted overseas standards, this would increase the variety of bunk beds available to consumers and allow Australian companies who manufacture bunk beds to sell their products more easily to an overseas market if the manufacturer is permitted to produce products that comply with the latest trusted overseas

²⁵ ACCC, 'Product Safety Australia', [Bunk Beds](#).

standards. Given the rapid innovation and technological advancements in many consumer goods, including in relation to design, materials used and construction, it would ensure products made in Australia and those supplied to Australian consumers reflect the most up-to-date safety requirements and practices.

Consultation questions

- Q16. Two alternatives have been presented to make it easier to comply with the latest standards: permitting standards to apply as they exist from time-to-time; or including a safe harbour provision.
- In your opinion, which alternative is preferable?
 - Are there other alternatives to make it easier to comply with the latest standards that haven't been considered?
- Q17. If suppliers were required to comply with the latest standards as they exist from time-to-time, what would be a reasonable transition period? Why? How should updates to standards and transition periods be communicated to suppliers?
- Q18. Do you support the proposal for the update of existing standards (voluntary Australian or overseas) that have previously been reviewed and incorporated into mandatory standards or *declared* as a mandatory standard without requiring further consultation and regulatory impact analysis?
- Q19. Would permitting standards to apply as they exist from time-to-time as described pose any additional safety risks to consumers?
- Q20. Do you think the safeguards for disallowing updates if they are reviewed and demonstrated to be unsafe or unsuitable are sufficient to achieve the goal of consumer protection? What factors need to be considered in triggering a review of an update? Are alternate or additional safeguards needed?

Other alternatives for more efficiently capturing updates to standards

While amendments to the ACL are likely to provide the most efficient and direct mechanism for capturing updates to standards, there are potential risks associated with this approach. This may include that limiting reviews of updates by Australian stakeholders may lead to recognition of updates to voluntary standards which are not appropriate in the Australian context, or have the potential to lower safety standards for consumers in some circumstances. While it is expected that appropriately managed safeguards attached to the proposals under consideration would be likely to mitigate these risks, it is acknowledged that the current process for reviewing and updating mandatory standards (see [Appendix B](#) for a list of current mandatory standards) manages these risks by including extensive consultation and preliminary regulatory impact assessment at a minimum, even where updates are minor and inconsequential. However, the trade-off is an inefficient and resource intensive updating process that has created a system where mandatory standards often lag behind industry trends in a global marketplace. Streamlining the current process for updating standards would also support business through reduced compliance costs by making it easier for suppliers and importers to comply with the latest voluntary Australian and overseas standards.

Consultation questions

- Q21. How can the current process for reviewing and updating mandatory standards to capture updates to referenced voluntary Australian and overseas standards be improved?
- Q22. Are the benefits from streamlining the current process for updating standards likely to be the same or greater than the proposed amendments to the ACL?
- Q23. Are there any other ways that achieve the policy objective of more efficiently capturing updates to voluntary Australian and overseas standards without making amendments to the ACL?

Possible combination of Options 2 and 3

Options 2 and 3 presented in this consultation RIS should not be considered mutually exclusive, given they are both aimed at improving the regulatory framework for mandatory standards to reduce compliance costs for businesses whilst maintaining or improving consumer protections. It is likely that the various alternatives considered under Options 2 and 3 could be combined for maximum benefit and we would be interested in receiving feedback during the consultation process on the merits of possible combinations. If after consultation it becomes apparent the combination of the options is warranted, this may be explored in advance of a decision RIS.

Consultation questions

- Q24. Do you agree that Options 2 and 3 should be combined and implemented?
- a. If so, which elements should be combined? And if not, why not?
- Q25. Are there any options not presented in this consultation RIS that could be combined with Options 2 and/or 3 to address the identified problem?

Preliminary impact analysis

Option 1: Status quo

We have assessed that Option 1 would not have any net regulatory impact as the current framework for making and updating mandatory standards will be maintained, as per the preliminary analysis set out below.

Potential Benefits

Preservation of the status quo maintains the current regulatory framework for mandatory product standards in Australia which has been in operation for some time and is familiar to businesses. There would be no additional costs to businesses in complying with the regulatory framework beyond what they already incur. There would also be no additional cost to government beyond those already incurred in administering and reviewing the mandatory standards.

Maintenance of the status quo would continue to ensure only product standards that meet the unique requirements of the Australian market and our conditions are mandated. Consumers would continue to be protected by the mandatory standards which regulate higher risk products to minimise the risk of injury to consumers.

Maintenance of the status quo would not have impacts on Australian accredited conformance and testing authorities as the system for capturing updates to referenced voluntary Australian and overseas standards would be retained, which creates duplicative testing requirements for supply to the Australian market where an update has not been captured.

Potential Costs

Businesses will continue to face ongoing uncertainty about whether an imported product already tested against an overseas standard needs to be tested again to a mandatory Australian standard where a voluntary Australian or overseas standard referenced in mandatory standard lags behind the latest versions of the respective standards. Businesses will also continue to incur unnecessary compliance costs from additional testing and administrative costs from needing to understand multiple standards to ensure compliance. Consumers would potentially not have access to a range of products currently regarded by other overseas jurisdictions as safe, unless they meet the current mandatory Australian standard requirements. Products which can be imported and supplied to the Australian market may be available at a higher cost when compared to other markets due to the additional compliance and administrative costs on businesses which are passed on to consumers.

There will also continue to be a cost for businesses that must pay to access the technical details contained in voluntary Australian and overseas standards referenced within a mandatory standard in order to understand and comply with the mandated requirements to legally supply products. These costs can vary depending on the standard making association that developed the standard and the commercial arrangements of respective associations. As an example, to purchase the current voluntary Australian standard for bunk beds (AS/NZS 4220:2010) via the Standards Australia website costs \$127.40, and the standard for projectile toys (AS/NZS180 8124.1:2019) costs \$275.12.²⁶

Mandatory standards that reference voluntary Australian standards and overseas standards will continue to become out of date as they are set at a point in time without an efficient process for capturing updates. This is likely to increase compliance costs for business in comparison with complying with the most current version of referenced standards and it may also become increasingly difficult for suppliers to arrange testing to outdated voluntary Australian and overseas standards in circumstances where a testing house does not continue to test to these standards. There will be a continued high administrative burden on the ACCC to periodically review and update the mandatory standards when they become significantly out of date.

Option 2: Amend the ACL to allow the Commonwealth Minister to more easily *declare* trusted overseas standards

We have assessed that Option 2 would not initially have any net regulatory impact solely through making amendments to the ACL; rather, the alternatives canvassed in this option would trigger a regulatory impact at the point at which amendments to the ACL are utilised by the Commonwealth Minister in *declaring* a new standard. This regulatory impact would be considered on a case-by-case basis depending on the nature of the standard being *declared* and the products to be regulated by the standard, as currently occurs when the ACCC *makes* or updates a mandatory standard.

On balance, it is expected that allowing the Commonwealth Minister to more easily *declare* trusted overseas standards as mandatory Australian standards would have a medium positive impact to businesses through reduced compliance costs, particularly for the large number of businesses which import, or rely on the importation of, products manufactured for markets such as the United States and the European Union. It is also likely to have a net positive impact on consumers through increased product choice and decreased product cost. These impacts are difficult to quantify in

²⁶ Prices correct at 16 September 2021 <https://store.standards.org.au/>.

aggregate as it would require examination of the impacts from individual mandatory standards due to the differing number and type of products and market size regulated by each mandatory standard.

Potential Benefits

The legislative amendments as proposed in Option 2 will have no direct impact on business, either as a benefit or cost, in and of themselves. However, allowing the Commonwealth Minister to *declare* trusted overseas standards more easily will give a wider choice in policy settings. It is at the point when the Commonwealth Minister *declares* an overseas standard that the benefits will be realised.

Businesses may benefit when an overseas standard is *declared* as they will be able to more easily import products which already comply with applicable overseas standards, from a broader range of international markets. Products that comply with applicable trusted overseas standards will no longer need to be tested against both the overseas standard and any mandated Australian standard; compliance with the overseas standard will be sufficient. This will significantly reduce the cost, time and confusion involved when importing certain goods, and therefore support businesses without compromising consumer safety.

Consumers will also benefit from a potentially greater range of products due to reduced barriers to entry, lower cost due to greater competition from broader international markets and reduced regulatory burdens, whilst still maintaining a robust product safety framework. Consumers can also be confident that any overseas standard that is *declared* by the Commonwealth Minister has been through rigorous review and consultation, consistent with the current process for making a new standard or updating an existing standard.

The legislative amendments would also allow Australia to keep pace more easily with changes in technology and in emerging product areas. For example, in new and emerging areas a relevant voluntary Australian standard may not exist, in which case the Commonwealth Minister would be able to *declare* a trusted overseas standard as a mandatory Australian standard, allowing Australian businesses and consumers access to products that comply with the overseas standard and providing a more robust level of regulatory coverage for consumers.

Potential Costs

The legislative amendments as proposed in Option 2 will have no direct impact on businesses, either as a benefit or cost, in and of themselves, and will only trigger a regulatory impact at the point at which *declaration* of an overseas standard occurs.

Businesses are likely to incur administrative costs navigating changes to the mandatory standards regulatory framework. This may be a particular burden to smaller businesses with limited resources. The administrative cost component could be mitigated by continuing to allow businesses to choose which of the *declared* standards (voluntary Australian or overseas) in a mandatory standard to comply with, which retains the familiarity with the current framework. On balance this option would reduce the compliance cost on businesses relative to the status quo.

There is likely to be an administrative burden on the ACCC in reviewing an increased number of available trusted overseas standards that can be potentially *declared* by the Commonwealth Minister and an administrative burden on ACL co-regulators in interpreting and enforcing a wider range of standards.

There is a risk that prescribing a list of trusted standards making associations in regulation could be viewed as 'picking winners' which could have potential trade implications or could allow the introduction of standards without appropriate consideration of safety and the Australian context. Further, it risks providing greater influence over Australian mandatory standards to international business and overseas players, potentially at the expense of Australian industry and consumers.

However, the safety risk to consumers is likely to be minimised by only *declaring* trusted overseas standards with at least an equivalent level of safety protection and having the ACCC continue to review and consult on overseas standards when they are first *declared* or referenced. Together these safeguards are likely to maintain or possibly even improve the current levels of consumer safety.

As per Option 1, there will continue to be a cost resulting from out-of-date mandatory standards that reference voluntary Australian standards and overseas standards frozen at a point in time without an efficient process for capturing updates.

The costs to businesses associated with accessing a referenced standard, whether it is a voluntary Australian or overseas standard, is likely to be similar. In some cases, the cost of accessing comparable overseas standards may be cheaper than the cost of accessing the relevant voluntary Australian standard.

Offering greater choice in complying with overseas standards may have downstream impacts on Australian conformance and testing authorities. This is more likely to be the case where business models are based on the current regulatory framework for developing mandatory standards, which does not easily allow for recognition of trusted overseas standards even when they provide at least an equivalent level of safety. While suppliers would be free to choose both which standard they wish to comply with and selection of an appropriate testing authority, it is expected suppliers that currently have their products tested overseas and must duplicate testing in Australia would no longer do so if this requirement was removed. Testing products with overseas testing authorities may provide cost savings to businesses. Overall, it could be expected that a supplier would use an overseas testing authority if there are cost savings associated with doing so.

Option 3: Amend the to the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards

We have assessed that Option 3 will have an immediate medium positive impact for businesses by allowing compliance with latest voluntary Australian and trusted overseas standards referenced in, or declared to be, a mandatory standard, as appropriate. In particular, this is likely to positively impact small businesses who can be more confident that products they import from reputable manufacturers are likely to comply with the latest versions of a trusted overseas standard and will not have to be specifically tested or relabelled to meet outdated Australian requirements.

Given the variety of consumer goods subject to mandatory safety standards and the businesses that supply them, the significance of the impact is likely to vary widely. For example, some product categories see regular innovation with respective standards being updated frequently whereas others product categories are much more stable and standards are updated infrequently.

As with Option 2, the impacts are difficult to quantify and will occur on a case-by-case basis depending on the mandatory standard and product category.

Potential Benefits

This option would provide certainty for businesses in complying with any changes made to the voluntary Australian and overseas standards referenced by a mandatory standard and allow businesses to keep in step with the latest regulatory developments in international markets. This will provide an immediate benefit for businesses that import products which have been manufactured overseas according to the latest trusted overseas standards or which comply with the latest voluntary Australian standards. There will also be a benefit to Australian manufacturers that supply products to a variety of different markets. The benefits will include reduced confusion about whether

a new product complies with outdated mandatory Australian standards and reduced compliance costs for businesses by not having to test products to outdated mandatory Australian requirements.

Reduced barriers to entry that result from permitting businesses to comply with the latest standards will also result in a greater choice of products for consumers and at a lower cost due to decreased compliance costs for businesses. Consumers can be confident that the products they are purchasing comply with the latest voluntary Australian and overseas standards and not be confined to purchasing a product based on mandatory Australian standards that may be out of date.

Permitting the update of voluntary Australian and overseas standards referenced in mandatory standards to apply as they exist from time-to-time will also be of significant benefit to the ACCC, who may no longer have to perform the resource intensive task of periodically reviewing and updating mandatory standards to ensure they are up-to-date. This will ultimately depend on an assessment of the extent that safety requirements in the current voluntary Australian and overseas standards are different to the outdated requirements contained in the mandatory standard.

Potential Costs

There is likely to be some impact to Australian businesses that have built their business model on the current framework for *making* and updating mandatory standards which is slow and creates a situation where mandatory Australian standards impose unique requirements compared with other overseas standards by virtue of being out of date. By permitting compliance with the updates to any overseas standards referenced in an Australian mandatory standard, through a more efficient updating process or a safe harbour provision, it is also likely that cheaper products will enter the Australian marketplace more quickly. This could make it difficult for Australian companies to compete on price where they have been 'protected' by virtue of out-of-date mandatory standards imposing unique testing and compliance requirements on businesses supplying to Australia.

These costs could be mitigated to some extent by setting a reasonable transition period for businesses that comply with out-of-date standards to clear stock and adjust their business model, as currently happens when the ACCC updates a mandatory standard. By allowing businesses a reasonable time period during which they have the choice of continuing to comply with standards set at a point in time or the latest updates, it would ensure no business is disadvantaged by the amendments, but still allow other businesses to innovate and comply with the latest versions of standards if they choose.

Allowing businesses to comply with latest voluntary Australian and overseas standards could also potentially lead to a lowering of safety standards for consumers in limited circumstances if appropriate safeguards are not in place. For example, Australia legitimately imposes more stringent safety standards on certain products due to unique Australian conditions such as a higher threshold for UV protection in the mandatory standard for sunglasses (Consumer Goods (Sunglasses and Fashion Spectacles) Safety Standard 2017). This could be addressed at the time that the Commonwealth Minister gives effect to proposed changes by updating a mandatory standard to ensure that any standards referenced therein are consistent with Australian safety requirements, as is current practice. From that point on, referenced standards would be permitted to apply as they exist from time-to-time on an 'if not, why not' basis, with the capacity to reverse or disallow any updates by exception if it can be demonstrated it will result in an unacceptable safety outcome for Australian consumers.

As per Option 2, permitting standards to apply as they exist from time-to-time is also likely to have downstream impacts on Australian conformity and testing authorities, especially where business models are based on the current regulatory framework which does not efficiently capture updates to standards and creates a system where mandatory standards may lag behind industry trends.

Consultation questions

- Q26. For each of the options do you agree with the preliminary assessment and with the benefits and costs outlined?
- Q27. Are there other costs and benefits that have not been considered that should be?
- Q28. Do you have any specific information, analysis or data in support of the benefits or costs for each option? Examples of costs could include testing costs, labelling costs and other compliance related administrative costs. Examples of benefits could include the number and value of additional products that could be supplied to the Australian market under Options 2 and 3, and any time and cost savings.

Next Steps

Treasury will undertake a public consultation process in relation to the issues explored in this consultation RIS. The objective of the consultation process is to build on previous stakeholder engagement, to gather additional evidence and data on the extent of the problem and to seek views on the benefits and costs of the proposed policy options.

The consultation process will consist of:

- a formal written submission process and
- targeted meetings with key stakeholders and interested parties.

If you are interested in meeting with Treasury to discuss the consultation RIS or your submission please contact

Director
Consumer Safety and Sustainability Unit
Market Conduct Division
The Treasury
Email: productsafety@treasury.gov.au

Written submissions to this process may reference how previous consultation submissions address particular questions posed in this consultation RIS.

Once this consultation process has concluded, a decision RIS will be produced to discuss the results of the consultation process, the evidence that has been gathered and the preferred policy option.

Specific questions are likely to arise from this consultation paper which may have not been considered at the time of drafting. Treasury may undertake further targeted consultation with key stakeholders if necessary. Please note that Treasury does not intend to reply to each submission.

Both this consultation RIS and the decision RIS will be published on the Office of Best Practice Regulation (OBPR) website.

Appendix A – Further background

The Australian Consumer Law

The Australian Consumer Law (ACL) is contained in Schedule 2 of the *Competition and Consumer Act 2010*²⁷ and aims to protect Australian consumers and encourage fair trade and competition.

It is a national law that operates on a ‘single law/multiple regulator’ approach, which means that it is administered and enforced jointly by Commonwealth and state and territory consumer protection agencies. This means that no matter where you are in Australia, consumers have the same rights, and all businesses have the same obligations, regardless of where the transaction took place.²⁸

The ACL governs business behaviour when advertising and interacting with consumers. It also sets out a number of consumer rights and protections, including those relating to unfair contract terms, misleading and deceptive conduct and consumer product safety.

Product safety provisions

Included in the ACL are product safety provisions which regulate consumer goods and product related services supplied in Australia to address safety hazards. The Australian Competition and Consumer Commission (ACCC) and state and territory co-regulators take joint responsibility for the application and enforcement of the product safety provisions under the ACL. This includes responsibility for monitoring the market to detect unsafe goods and address hazards, as well as encouraging and promoting safe practices.

The product safety provisions include regulatory options for taking action to address or mitigate identified safety risks and hazards in consumer goods. Actions to mitigate safety risks and hazards include bans, recalls, safety warning notices and mandatory standards (each discussed below). The product safety provisions also outline the responsibilities of suppliers to facilitate the supply of safe products within the Australian market.

Bans – Bans can be imposed by the Commonwealth and/or state and territory ministers on consumer goods or product related services if there is a risk of serious injury, illness or death associated with the use of a product. Only the Commonwealth Minister can issue a permanent ban, and permanent bans apply nationally.

Recalls – If a product is found to present a safety risk, it may need to be recalled. Recalling products identified as posing safety hazards can help to prevent injuries to consumers. There are two types of recalls, a voluntary recall, which is voluntarily initiated by suppliers after becoming aware a product presents a safety risk, or a compulsory recall which is issued by the responsible minister. A compulsory recall notice may be issued if the minister is satisfied that the goods will or may cause injury, a ban is in force, or the goods do not comply with a mandatory safety standard, and the supplier has not taken satisfactory action to prevent those goods from causing injury. Only the Commonwealth Minister can issue a compulsory recall that applies nationally.

Safety Warning Notice – This is a formal warning which can be issued by the responsible minister to warn consumers and suppliers that an investigation is underway and/or of the possible risks related to a particular consumer good or product related service. It allows consumers and suppliers to stay informed of product safety risks.

²⁷ *Competition and Consumer Act 2010* (Cth) sch 2 (‘Australian Consumer Law’).

²⁸ Australian Consumer Law, ‘*Resources and Guides*’ (Webpage).

Mandatory Standards—These standards set out specific safety or information requirements for consumer goods or product related services. It is an offence to supply goods that do not comply with mandatory safety or information standards.

It is important to note the product safety provisions for general consumer goods or product related services in the ACL also sit alongside specialist safety regimes at the Commonwealth and state and territory level that regulate specialist products. For example, at the Commonwealth level, medicines and therapeutic goods are regulated by the Therapeutic Goods Administration, food products are regulated by Food Standards Australia New Zealand, pesticides and veterinary medicines are regulated by the Australian Pesticides and Veterinary Medicines Authority and industrial chemicals are regulated under the Australian Industrial Chemicals Introduction Scheme. The states and territories regulate electrical, gas and building products. In some circumstances, a consumer good or product related service may be regulated by a specialist regulator and by the ACCC and states and territories. In these circumstances, and in line with Australian Government expectations, regulators seek to avoid duplication of supervisory activities between them to ensure an integrated regulatory framework and to minimise compliance costs for business.

Amending the ACL

It is important to review and update the ACL where appropriate to ensure it continues to respond to changing markets and address new and emerging safety risks and hazards. The process to amend the ACL is set out in the [Intergovernmental Agreement for the ACL](#),²⁹ an agreement between the Commonwealth, states and territories.

The Intergovernmental Agreement for the ACL allows for any jurisdiction to submit a proposal to amend the ACL. The proposal must address certain criteria to ensure its validity including a description of the problem to be addressed by potential amendments and evidence in support of the need for the amendments. The Commonwealth must then commence a formal consultation with jurisdictions, allowing them three months to consider and respond to the proposal and propose any valid amendments. At the end of the consultation period all jurisdictions vote on the proposal to amend the ACL; this vote must occur no less than 35 days from when the notice to vote is given. A successful vote requires agreement on the proposed amendments by the Commonwealth and four other parties (including at least three states). Following a successful vote, a bill is then prepared and public consultation on the bill is conducted with the view to introducing it into Commonwealth Parliament to amend the ACL.

Mandatory standards under the ACL

Under the ACL, the Commonwealth Minister with responsibility for consumer affairs (presently the Assistant Treasurer and Minister for Housing, Homelessness, Social and Community Housing, the Hon Michael Sukkar MP) can regulate unsafe and high-risk consumer goods and product related services by setting a mandatory standard. Mandatory standards apply nationally and prescribe compulsory safety or information requirements which must be complied with for legal supply of the product into the Australian market. It is an offence to supply goods that do not comply with mandatory standards where applicable. Mandatory standards can take the form of a mandatory safety standard or a mandatory information standard (collectively, mandatory standards) as outlined below. The scope of this consultation RIS applies to 48 existing mandatory standards regulated under the ACL, which includes 44 mandatory safety standards and four mandatory information standards, as well as potential future mandatory standards regulated under the ACL. The information standards

²⁹ [Intergovernmental Agreement for the Australian Consumer Law](#) 30 August 2019.

for tobacco health warnings and free-range eggs are out of scope. A full list of the 48 mandatory standards is included at [Appendix B](#).

Mandatory safety standards

Under section 104 of the ACL, the Commonwealth Minister has the power to *make* mandatory safety standards containing requirements that are reasonably necessary to prevent or reduce the risk of injury to any person. Mandatory safety standards can include requirements for design, method of manufacture or processing, construction, performance, composition, contents, finish, testing, packaging, warnings and instructions.

Suppliers must comply with any relevant safety standard to legally supply a consumer good or product related service in Australia. Non-compliance with mandatory safety standards can result in a fine or civil penalty of up to \$500,000 for individuals or, for body corporates, the greater of \$10,000,000, or three times the value of the benefit received, or if a court cannot determine the benefit obtained from the offence 10% of the annual turnover in the preceding 12 months.

There are currently 44 mandatory safety standards under the ACL³⁰ covering a broad range of consumer goods including automotive products (six standards), sports and exercise equipment (six standards), products for babies (six standards) and children's toys (five standards).

Mandatory information standards

Similarly, the Commonwealth Minister can *make* mandatory information standards under section 134 of the ACL, prescribing when and how information about a consumer good or product related service is disclosed to consumers. An information standard can specify the content, type and form of information to be provided (or not provided) with a good or service, typically on a product label or packaging.

Suppliers must comply with a relevant information standard to legally supply a product in Australia. A potential fine or civil penalty may be imposed for non-compliance. In addition to potential future information standards under the ACL, this consultation RIS applies to the four information standards under the ACL listed below:

- Information standard for care labelling³¹
- Information standard for cosmetics ingredients labelling³²
- Information standard for products containing button/coin batteries³³
- Information standard for button/coin batteries³⁴

Unlike requirements for mandatory safety standards, information standards do not necessarily have to be associated with a safety message. For example, the information standard for care labelling for clothing and textiles is not intended to prevent the user from becoming physically injured or harmed, but rather is to ensure information is provided to avoid damage to the product itself.

³⁰ ACCC, *'Product Safety Australia'*, [Mandatory Standards](#).

³¹ ACCC, *'Product Safety Australia'*, [Care labelling for clothes & textiles](#).

³² ACCC, *'Product Safety Australia'* [Cosmetics Ingredients Labelling](#).

³³ ACCC, *'Product Safety Australia'* [Button and coin batteries](#).

³⁴ ACCC, *'Product Safety Australia'* [Button and coin batteries](#).

Developing mandatory standards under the ACL

Making mandatory standards

Sections 104 and 134 of the ACL provide the Commonwealth Minister with the power to *make* mandatory safety and information standards respectively. The ACCC provides advice to the Commonwealth Minister about the need for and suitability of a mandatory standard to address a safety risk and/or information asymmetry, including the potential impacts of using a mandatory standard as a regulatory option.

In providing advice, the ACCC develops enforceable mandatory standards according to the Intergovernmental Agreement for the ACL which requires the ACCC to undertake any required regulatory impact analysis, and consult with state and territory agencies. Impact analysis is conducted according to the Australian Government Guide to Regulation, including public consultation on the proposed standard and other regulatory options that could be used to address the problem. When a mandatory standard is first being introduced and imposes additional regulation on a product or industry sector, the ACCC typically develops a RIS that examines the costs and benefits of the various regulatory options. A final decision RIS then forms the basis of the ACCC's advice to the Commonwealth Minister to determine whether to impose a mandatory standard. The process for developing a mandatory standard is time and resource intensive and typically takes 18 to 36 months (or longer in some circumstances).

Mandatory standards *made* under the ACL are enforceable as Australian law. Unlike other laws, they are not subject to full Parliamentary scrutiny. The ACL empowers the Commonwealth Minister to introduce a legislative instrument which gives effect to the mandatory requirements of a standard provided certain requirements are met (as outlined above). These instruments are subject to Senate scrutiny but are not subject to disallowance. This is due to the instruments being developed in accordance with the Intergovernmental Agreement for the ACL which has been agreed between the Commonwealth, states and territories. This process provides the Commonwealth Minister with flexibility to respond to emerging safety issues or the need for technical updates in a timely way, provided the response does not go beyond the constraints of the ACL.

Referencing voluntary Australian and overseas standards

Development of product standards often requires a high level of technical expertise due to the nature of the products being regulated and the requirements relating to product design, manufacture and testing. In recognition of this, the ACCC typically relies on advice and guidance from external technical experts.

Mandatory safety standards often draw on voluntary Australian standards developed by Standards Australia. A [Memorandum of Understanding \(MoU\) between Standards Australia and the Australian Government](#) recognises Standards Australia as the peak non-government standards body and Australia's representative to international standards setting bodies including the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). The MoU is administered by the Department of Industry, Science, Energy and Resources. Voluntary standards set out specifications and procedures designed to ensure that products, services and systems are safe, reliable and consistently perform as intended. Their scope is not limited to addressing safety concerns and they do not impose legal obligations on an entity, unless they are referenced in legislation. The Commonwealth's general policy is to reference voluntary Australian and overseas standards in legislation only where it is satisfied the standard represents a minimum effective solution to the problem being addressed.

Voluntary standards can be utilised to support mandated legislative or regulatory arrangements in a variety of different ways. For example, performance criteria or technical requirements drawn from

voluntary standards may be specified in legislation to establish minimum requirements for products. However, a different approach is used by the ACCC, in consultation with jurisdictions. Rather than setting out specific performance criteria or technical requirements in the ACL, the requirements applying to a consumer good or product related service in a mandatory standard are set by 'referencing' relevant parts of an established voluntary Australian or overseas standard where appropriate. The current approach of referencing relevant standards allows all of the safety requirements and test methods to be set, without including the details of each specific requirement in the legislative instrument. An example of the referencing approach is in relation to mandatory requirements for child restraints for use in motor vehicles, which takes the approach of referencing the voluntary standard (AS/NZS 1754: 2013) in a three-page mandatory safety standard³⁵, rather than specifying each individual performance criteria and technical requirement in the 148 page long voluntary standard.

Overseas standards may also be referenced in a mandatory standard. For example, the mandatory standard for toys containing magnets³⁶ references the comparable European (EN 71-1:2014+A1:2018), American (ASTM F963 – 17) and International (ISO 8124-1:2018) standards, in addition to the voluntary standard (AS/NZS ISO 8124.1:2019).

To meet the Commonwealth's objectives, in 2015 the ACCC established guidelines for incorporating overseas standards (which were at the time referred to as international standards) into mandatory standards.³⁷ These guidelines include that the standard addresses safety concerns, is published in a jurisdiction comparable to Australia and is applicable in an Australian context. Since establishing the guidelines, the ACCC has implemented a review program that actively seeks to reference trusted overseas standards in mandatory standards, consistent with the guidelines.

Fifteen of the 48 existing mandatory standards reference at least one overseas standard (refer to [Appendix B](#)). There are several factors which have limited more widespread referencing of overseas standards including, in some instances, a lower safety threshold or a standard not being tailored to the Australian context. The current architecture of the ACL also does not readily enable the efficient recognition of trusted overseas standards. Consequently, reviews conducted by the ACCC to reference overseas standards in accordance with the ACL architecture are resource intensive and typically take a minimum of 18 months to complete even where a voluntary overseas standard may offer a comparable level of safety to a voluntary Australian standard.

Businesses across various industry sectors have reported the limited referencing of overseas standards has led to increased regulatory costs and prices for consumers and a reduction in consumer choice.

When a voluntary Australian or overseas standard is referenced in a mandatory standard, the commercial rights to the voluntary standard are retained by the technical standards making association that developed the standard and are subject to copyright laws. This creates a situation in which a mandatory standard that is enforceable under Australian law does not necessarily provide free and unfettered access to the specific requirements that a supplier must comply with to legally supply products to the Australian market, unless otherwise agreed by the commercial owner of the standard. Instead, businesses must purchase the relevant voluntary standard to know what their regulatory obligations are, including in relation to the technical requirements for manufacturing and testing.

³⁵ *Competition and Consumer Act 2010* (Cth) sch 2 ('Australian Consumer Law') [Consumer Protection Notice, No.3, 2014](#).

³⁶ *Competition and Consumer Act 2010* (Cth) sch 2 ('Australian Consumer Law') [Consumer Goods \(Toys Containing Magnets\) Safety Standard, 2020](#).

³⁷ ACCC, '[International standards for the safety of consumer products: criteria for acceptance](#)', 2015

Paying for the use of technical standards is typical practice both in Australia and overseas as the payments often support the infrastructure that creates, reviews and modifies standards. There are no current Australian Government plans to negotiate with Standards Australia for free public access to standards referenced in Commonwealth, state or territory legislation. Decisions on whether to fund access to standards referenced in legislation is the prerogative of relevant regulatory authorities and should be considered on a case-by-case basis. Standards Australia has mechanisms in place to enable regulatory authorities, industry groups and other affected stakeholders to provide subsidised access to standards for select groups of users, discussed further below. In addition, to facilitate access to mandatory standard requirements under the ACL, the ACCC allows in person inspection of voluntary Australian standards developed by Standards Australia where they are referenced in mandatory standards, at its offices.

Declaring a new mandatory standard

Under sections 105 and 135 of the ACL, the Commonwealth Minister also has the power to *declare* mandatory safety and information standards respectively, using existing standards (either in part or in full) that have been prepared or approved by Standards Australia or other standards making associations (such as those overseas) which have been prescribed in regulation. This is distinct from the power to *make* mandatory standards, which uses an indirect method to reference existing standards and limits the Commonwealth Minister by requiring consideration of technical matters that are reasonably necessary to prevent or reduce risk of injury. This creates a different evidentiary threshold for *making* vs. *declaring* a standard; this difference reflects that the declaration path recognises the work already undertaken by reputable standards making associations who follow rigorous processes to develop voluntary standards. Consequently, it is more direct and responsive to *declare* a standard because it can be done more quickly and efficiently than the process of *making* a standard.

Currently, the ACL allows *declaration* of voluntary standards made or approved by Standards Australia. While the ACL also provides for the *declaration* of standards made or approved by other bodies set out in the regulations, no such bodies are currently set out. As a result, the Commonwealth Minister does not currently have the ability to *declare* a standard (or a part of one) developed by any association other than Standards Australia, even if an overseas standard is internationally recognised and provides at least an equivalent level of consumer protection. The power to declare a mandatory standard has only been used in three mandatory standards to date (trolley jacks, ramps and stands for vehicles). Building on existing voluntary standard making arrangements and broadening the range of standards that can be *declared* may provide more flexibility to business in supplying safe products to Australian consumers.

Providing greater flexibility to *declare* standards under section 105 as an alternative to *making* a new standard under section 104 may also increase consumer safety by allowing the Australian Government to respond faster to emerging safety issues. This is because section 105 has a different threshold to section 104 which requires consideration of matters that are 'reasonably necessary to prevent or reduce risk of injury to any person'. This can make it challenging to respond to instances of potential harm other than injuries, such as house fires, which are a safety issue in their own right. As section 105 does not have such a constraint, it can enable regulators to be more responsive to emerging issues and quickly recommend appropriate safety requirements, consistent with the Intergovernmental Agreement for the ACL. Having more possibilities for *declaring* standards can also improve responsiveness in instances where a relevant voluntary standard developed by Standards Australia is not yet available.

Reviewing and updating existing mandatory standards

When mandatory safety and information standards are developed, they are frozen at the point in time they are *made* or *declared*. This includes any voluntary Australian standards and trusted

overseas standards referenced therein, which means they can become outdated very quickly and not align with current industry practice. The ACL does not currently permit referenced voluntary Australian and overseas standards to apply as they exist from time-to-time which means any updates to standards are not captured.

Under the current regulatory framework, to update a mandatory standard to align with the latest industry practices, the ACCC conducts extensive stakeholder consultation and a preliminary regulatory impact assessment at a minimum, consistent with the Australian Government Guide to Regulation. This occurs even if the update to a voluntary standard is minor or machinery, such as where specifications for the content or form of a product label is updated. In recognition of the resources required to review and update all 48 mandatory standards, the ACCC endeavours to review the mandatory standards every 10 years. In April 2016, the ACCC commenced a program to review all the existing standards to assess their ongoing efficacy and the degree to which they can be harmonised with overseas standards, with around half having been reviewed in this time.

Requirement to nominate a mandatory safety standard

Section 108 of the ACL provides that, where there are alternative methods of complying with a mandatory safety standard, a regulator may require suppliers to nominate the referenced standard that they intend to comply with to provide greater certainty about which safety requirements will be complied with. However, in practice, the lack of clarity in this section may present challenges for both businesses and the ACCC as, for example, it does not allow the setting of a specific timeframe for the period of compliance with a nominated alternative or a clear mechanism for businesses to advise the ACCC of an intention to change the safety requirements they wish to comply with.

Developing voluntary Australian standards

Standards Australia is recognised by the Australian Government as Australia's peak non-government standards body. Standards Australia develops and adopts internationally aligned voluntary Australian standards in the national interest through a process of consensus. This is achieved through the provision of a neutral meeting ground and rigorous framework in which government, industry, consumers, academics, professionals, the community and employee bodies can discuss and debate issues with the aim of developing standards which meet the needs of the Australian community.

Standards Australia's policy is to base the development of voluntary Australian standards on current international standards, where they exist, to avoid unnecessary duplication and ensure that Australia meets the requirements of the World Trade Organisation's Agreement on Technical Barriers to Trade. Standards Australia, as Australia's representative to both the ISO and IEC, is responsible for ensuring that Australia's viewpoint is heard and considered in the development of international standards and any subsequent adoption as Australian standards.

Standards are developed by Standards Australia based on the principles of transparency, consensus and balanced expert committee representation. Before a project to develop a new Australian standard or revise an existing Australian standard commences, there must be demonstrable evidence that the standard will deliver a net benefit to the Australian community. Stakeholders must also demonstrate that there is sufficient industry and stakeholder support for the development of the standard.

Once net benefit and stakeholder support is established, Standards Australia facilitates the establishment of a technical committee consisting of technical experts representing various interest groups across the sectors with an interest in the standard being drafted and supports them through the drafting process. Prior to the publication, the draft is released for public comment and all comments are responded to, including through determining which proposed amendments will be

incorporated into the standard. Finally, the standard goes through a consensus-based ballot process. Publication of the voluntary Australian standard is dependent upon consensus being reached.

Access to voluntary Australian standards

The development and revision of voluntary Australian standards is the responsibility of Standards Australia, Australia's peak non-government standards body. Access to standards is based on a user pays model, which is not unique internationally. This model supports the development, maintenance and distribution of current and future standards.

The Australian Government is conscious of industry and business interests in ensuring fair access to voluntary standards. Under the Australian Government's MoU with Standards Australia, Standards Australia has undertaken, where it is able to do so, to take all reasonable action to ensure fair and equitable access to voluntary Australian standards for all users. It has undertaken to work to provide competition in the distribution of standards by supporting multiple channels for distribution; to provide innovative digital, mobile and other channels for accessing standards; and provide flexibility in pricing structures and options for partnering to facilitate forms of public access to voluntary Australian standards, particularly when referenced in regulation, or where they relate to public interest outcomes, such as health and fire and safety.

Standards Australia is supporting increased access to voluntary Australian standards through expanding its distribution arrangements for voluntary Australian standards. Standards Australia has designed a new distribution model that aims to ensure better access to its content through:

- building a Standards Store that allows online access of purchased publications in a range of formats, including printed, PDF and Web Reader formats, and provides subscription options for small business that include convenient collections of standards at affordable prices
- operating a multi-channel, multi-segment model, where a number of different distributors are licensed to distribute Standards Australia's content in existing formats
- encouraging innovative partners to develop new products to serve different market needs using Standards Australia content in their products and
- a commitment to providing free access to content for personal, domestic and household use by December 2023.

Voluntary Australian standards are currently available through multiple channels, including direct from Standards Australia's Standards Store, and through additional distributors Firemate, HIA, SAI Global and Techstreet. Over time, it is anticipated these initiatives will improve the accessibility and affordability of standards for Australian businesses and individuals.

Previous consultations

2015 ACCC consultation on accepting overseas standards

In 2015, the ACCC conducted a public consultation on the criteria and processes it will use to determine whether overseas standards are suitable for use in Australia and should be referenced in relevant mandatory standards. The ACCC proposed the criteria would be applied within the regulatory impact analysis process that already occurs when mandatory standards are reviewed or considered under the ACL.

The consultation received widespread support for both the proposed criteria and, more generally, the appropriateness of using and referencing trusted overseas standards in Australia. Following this

consultation, the ACCC published its criteria on its website.³⁸ At a high-level the final criteria included that the overseas standard: addresses the relevant safety concerns; is produced by a comparable jurisdiction to Australia; and is applicable to the Australian context.

In publishing these criteria, the ACCC advised it would be applied on a case-by-case basis and more than one overseas or Australian standard may be referenced or included in a mandatory standard. It also indicated there may be occasions where overseas standards are unsuitable and only an Australian standard (if one exists) would be suitable.

2016 ACCC consultation on prescribing overseas standards making associations

In 2016, the ACCC consulted³⁹ on a proposed list of overseas standards making associations to be prescribed in regulation, for the purpose of allowing the Commonwealth Minister to *declare* standards from the prescribed associations under sections 105 and 135 of the ACL. The proposed list included nine overseas standards making associations as detailed in the table below.

In that consultation there was not unanimous support for the listed associations and stakeholders expressed some concern that establishing a list would allow overseas standards to be introduced without appropriate consideration of safety and the Australian context. Concern was also expressed that prescribing a list of trusted standards making associations in regulation could be viewed as ‘picking winners’ which could have potential trade implications.

Standards making association	Country or region
ANSI — American National Standards Institute	United States
ASTM International	United States
BSI — British Standards Institution	United Kingdom
CEN — the European Committee for Standardization	European Union
CSA Group	Canada
DIN — Deutsches Institut für Normung and Deutsches Institut für Bautechnik	Germany
IEC — International Electrotechnical Commission	Global
ISO — International Organization for Standardization	Global
UL — Underwriters Laboratories	United States

The Australian Government is proposing to conduct additional consultation to address these issues and explore additional alternatives not previously considered to make it easier for businesses to comply with a wider range of trusted overseas standards.

³⁸ ACCC, ‘Product Safety Australia’, [ACCC publishes criteria for accepting international standards](#) (22 July 2015).

³⁹ ACCC, ‘International standards consultation’ [Overview](#) (9 May 2016).

Appendix B - Current mandatory standards under the ACL considered in this RIS

Mandatory standard	Type	Overseas standard referenced
Aquatic toys	Safety	ISO (2018)
Baby bath aids	Safety	ASTM (2013)
Baby dummies and dummy chains	Safety	EN (2014)
Baby walkers	Safety	ASTM (2012)
Balloon blowing kits	Safety	-
Basketball rings & backboards	Safety	-
Bean bags	Safety	-
Bicycle helmets	Safety	-
Bicycles	Safety	-
Blinds, curtains and window fittings - safety standard	Safety	-
Blinds, curtains and window fittings - regulations	Safety	-
Bunk beds	Safety	-
Button and coin batteries - button batteries	Safety	EN (2016) IEC (2019) ISO (2015 & 2018)
Button and coin batteries - products containing button batteries	Safety	IEC (2017 & 2018) ISO (2019) UL (2020)
Child restraints for use in motor vehicles	Safety	-
Decorative alcohol fuelled devices	Safety	EN (2015)
Disposable cigarette lighters	Safety	ASTM (2010) EN (2016)
Elastic luggage straps	Safety	-
Exercise cycles	Safety	-
Folding cots	Safety	-
Hot water bottles	Safety	-
Household cots	Safety	-
Miniature motorbikes	Safety	-
Moveable soccer goals	Safety	EN (2004)
Nightwear for children	Safety	-
Portable aerosol fire extinguishers	Safety	-
Portable non-aerosol fire extinguishers	Safety	-
Portable ramps for vehicles	Safety	-
Portable swimming pools	Safety	-
Prams & strollers	Safety	-
Projectile toys	Safety	EN (2014) ISO (2018) ASTM (2017)
Quad bikes	Safety	EN (2011) ANSI (2017)
Recovery straps for motor vehicles	Safety	-
Reduced fire risk cigarettes	Safety	-
Self-balancing scooters	Safety	IEC (2010 & 2017) UL (2016)
Sunglasses & fashion spectacles	Safety	-
Swimming & flotation aids	Safety	-
Toys containing lead & other elements	Safety	-
Toys containing magnets	Safety	EN (2014) ISO (2018) ASTM (2017)

Mandatory standard	Type	Overseas standard referenced
Toys for children up to and incl. 36 months of age	Safety	-
Treadmills	Safety	-
Trolley jacks	Safety	-
Vehicle jacks	Safety	-
Vehicle support stands	Safety	-
Button and coin batteries - button batteries	Information	ISO (2016) IEC (2019)
Button and coin batteries - products cont. button batteries	Information	ISO (2016) IEC (2017)
Cosmetics ingredients labelling	Information	
Care labelling for clothing & textiles	Information	

* Excludes the tobacco health warnings standard