



Decision regulation impact statement

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

October 2024

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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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Abbreviations

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
Ai Group	Australian Industry Group
ANSI	American National Standards Institute
ARA	Australian Retailers Association
ASME	American Society of Mechanical Engineers
ASTM International	ASTM International, formerly the American Society for Testing and Materials
BSI	British Standards Institution
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
CEN	European Committee for Standardization
Consultation RIS	Consultation Regulatory Impact Statement entitled ‘Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law’ published on 1 December 2021
CPSC	Consumer Product Safety Commission
CSA Group	CSA Group, formerly the Canadian Standards Association
Decision RIS	Decision Regulatory Impact Statement entitled ‘Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law’
DFAT	Australian Department of Foreign Affairs and Trade
DIN	Deutsches Institut für Normung (German Institute for Standardisation Registered Association) and Deutsches Institut für Bautechnik (German Institute for Structural Engineering)
DISER	Australian Department of Industry, Science, Energy and Resources
ECA	<i>Export Control Act 2020 (Cth)</i>
ETSI	European Society of Thoracic Imaging
FTA	Free Trade Agreement
GATS	WTO General Agreement on Trade in Services
IEC	International Electrotechnical Commission
Intergovernmental Agreement for the ACL	Intergovernmental Agreement for the Australian Consumer Law
ISO	International Organization for Standardization
JISC	Japan Industrial Standards Committee
OIL	Office of International Law, Attorney-General’s Department (Australia)
PM&C	Australian Department of the Prime Minister and Cabinet
RIS	Regulation Impact Statement
SNZ	Standards New Zealand
TBT	WTO Technical Barriers to Trade Agreement
UL	Underwriters Laboratories
UNECE	United Nations Economic Commission for Europe
WTO	World Trade Organization

Executive Summary

On 4 June 2021, the former Government announced that it would consult on amendments to the Australian Consumer Law (ACL) to make it easier to recognise overseas product safety standards in Australia, provided they offer at least an equivalent level of consumer protection.

Mandatory product safety standards and information standards set out requirements for consumer goods and product related services supplied in Australia. There are 48 mandatory standards regulating a range of product categories including infant and nursery products, children's toys, recreational equipment, and household goods. A full list is provided in Appendix B.

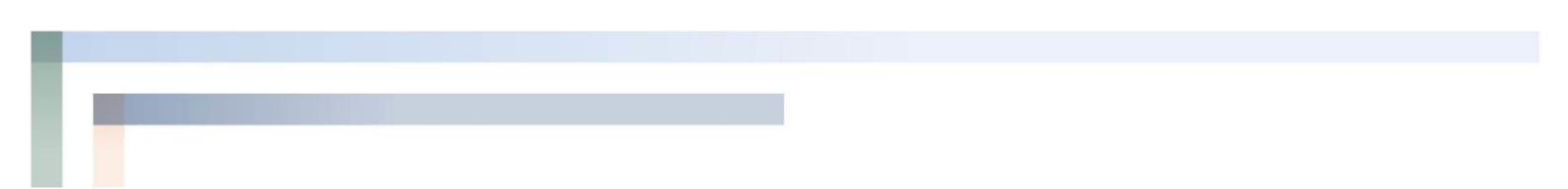
On 1 December 2021, Treasury released a [Consultation Regulation Impact Statement](#) (Consultation RIS) seeking views on options for reform. The following broad policy options were presented for consideration:

- **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

The consultation period ran from 1 December 2021 to 21 January 2022. Treasury received 59 submissions from a broad range of stakeholders, including industry representatives, government, consumer groups, test laboratories, standards setting bodies, safety experts, and suppliers. There was strong support across the board for improving the regulatory framework to allow easier recognition of overseas standards in Australian mandatory safety standards, provided they offered an equivalent level of safety to an existing mandatory standard where one exists. Importantly, stakeholders indicated this should only occur following assessment and recommendation by the ACCC. There was also strong support for improvements to the regulatory framework to more easily allow mandatory standards to reference voluntary standards as they are updated from time-to-time. There was little support for maintaining the status quo.

This Decision Regulation Impact Statement (Decision RIS) proposes amendments to the ACL to allow the Commonwealth Minister to recognise overseas product safety standards alongside Australian safety standards when creating a new or updating an existing mandatory safety or information standard. This proposal is a variation of Option 2 under the Consultation RIS which will allow the Minister to declare a standard from *any* standards making association upon recommendation from the ACCC, and not be restricted to a select set of standards making associations as considered under Option 2(a). This is the preferred approach as it is non-discriminatory from an international trade perspective and allows the Minister to declare standards through long established consultation and review procedures.

This option would make it easier for the Commonwealth Minister to declare an existing overseas standard (in addition to Australian standards) which is used, accepted 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. Businesses will benefit from this policy approach as they will be able to more easily import products which already comply with applicable overseas standards, from a broader range of international markets. This will significantly reduce the cost, time and confusion involved when importing certain



goods, and therefore support businesses while maintaining consumer safety. Consumers will also benefit from a potentially greater range of safer and cheaper products resulting from reduced barriers to entry and lower cost due to greater competition from broader international markets, whilst still maintaining a robust product safety framework.

At the same time, this Decision RIS proposes amendments to the ACL to more easily allow businesses to comply with the latest Australian and overseas standards as they are updated from time-to-time. This proposal would ensure that Australian mandatory standards do not become outdated and prevent businesses from using the latest and safest Australian or overseas standards that are available.

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 developments in international markets. The benefits will include reduced confusion about which version of an Australian or overseas standard a product must comply with, and reduced compliance costs for businesses by not having to test products to outdated 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 safety and best practice industry developments from Australian and overseas standards and not be confined to purchasing a product based on outdated standards.

Additionally, this Decision RIS proposes subsequent amendments to the ACL to extend the obligation of nominating standards to manufacturers, in conjunction with suppliers, and to ensure that the regulator can obtain documentation from either party to substantiate compliance with the nominated standard.

When they are fully implemented, which may take some time in relation to all 48 standards, these reforms are estimated to save Australian businesses a minimum of \$136 million per year. These savings are expected to benefit consumers through reduced product prices and extended product lines while improving consumer safety through the introduction of safer products to the market sooner.

The two most recent reviews conducted by the ACCC indicate the benefits to business will likely be much greater than previously estimated, with the potential savings for bicycle helmets and care labelling estimated at up to \$14 million and \$30 million respectively. If an estimated benefit to business of \$10 million per mandatory standard is applied, the total benefit would equate to \$500 million per year across all 50 standards, or 5 billion over the next 10 years.

Impacts on consumers are likely to vary with product type and the nature of the change, however, in aggregate, consumers are likely to benefit from a potentially greater range of products due to reduced barriers to entry, lower costs due to greater competition from international markets, and flow on cost savings from reduced compliance costs.

About this Decision Regulation Impact Statement

What is the objective of this Decision RIS?

This Decision Regulation Impact Statement (Decision RIS) has been published by the Australian Government to outline the preferred policy options following extensive stakeholder consultation and feedback from the Consultation RIS process. An underlying objective of this Decision RIS is to improve the regulatory framework around Australian mandatory safety and information standards, which will in turn provide a greater choice of products to consumers at lower prices while ensuring consumer safety is maintained. It will also support businesses and reduce their regulatory burden in complying with their obligations under the ACL.

The Australian Government proposes amending the ACL to allow the Commonwealth Minister to more easily recognise international and overseas standards in Australian mandatory standards. The Australian Government also proposes amending the ACL to more easily allow business to comply with the latest Australian, international and overseas standards as they are updated from time-to-time.

What is the scope of this Decision RIS?

On 1 December 2021, Treasury released a Consultation RIS on *Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law*. The Consultation RIS sought stakeholder feedback on a set of proposed policy options to determine the relative impact of those options as well as the cost and benefit to Australian businesses and consumers. The consultation period was open until 21 January 2022 and 59 submissions were received from a broad range of stakeholders including industry representatives, government, consumer groups, test laboratories, standards setting bodies, safety experts, and suppliers. Treasury also met with a number of stakeholders who expressed a desire to do so including the Australian Competition and Consumer Commission (ACCC), the Australian Industry Group (Ai Group), the Australian Retailers Association (ARA), the Department of Foreign Affairs and Trade (DFAT), the Department of Industry, Science, Energy and Resources (DISER), the Department of the Prime Minister and Cabinet (PM&C), the Office of International Law (OIL) and Standards Australia.

The Consultation RIS provided an overview of how mandatory standards are developed under the ACL, identified issues for business and inefficiencies within the current regulatory framework, and provided a preliminary impact analysis of the policy options available. Policy assessment and public consultation has been undertaken by the Commonwealth on behalf of the states and territories. Amending the ACL will require agreement from the states and territories in accordance with the Intergovernmental Agreement for the ACL.¹

The purpose of this Decision RIS is to identify the options that yield the greatest net benefit for Australian consumers and businesses. The results of the Consultation RIS and the stakeholder consultation process have shaped the preferred policy approach and how it will be implemented, monitored and reviewed.

What is the identified problem?

On 4 June 2021, the former Australian Government announced that in consultation with all state and territory Consumer Ministers, it would look to develop amendments to the ACL to make it easier to

¹ Australian Consumer Law, '[Intergovernmental Agreement for the ACL](#)' (Webpage).

recognise overseas standards in Australian mandatory safety standards, providing they offer at least an equivalent level of consumer protection. Additionally, the former Government also announced it would look to develop amendments to the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards.

Businesses have indicated 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 that are regulated by mandatory Australian standards under the ACL. The most common problems that have arisen through consultation include:

- increased compliance costs for business and barriers to trade through duplicative testing and compliance measures where a product has been manufactured to the requirements of an equivalent overseas standard; and
- inefficient capturing of updates to voluntary Australian and overseas standards recognised under Australian law, which has prevented businesses from quickly moving to the latest manufacturing processes, therefore slowing the supply of safer and cheaper products to market.

Barriers to compliance with overseas standards

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 and supplied in Australia, business may need to meet duplicative compliance requirements such as retesting or require relabelling to demonstrate compliance with the relevant mandatory Australian standard, which can technically differ from other overseas standards in relatively minor aspects. However, this is dependent on the product and there are some exceptions to this rule. This adds unnecessary compliance costs for businesses, as well as likely increasing the costs 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 Consultation RIS provided an example of this problem as it applies to bicycle helmets (see Example A).

Example A: 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. 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.²

The current architecture of the ACL does not easily allow for 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 is generally required to conduct extensive reviews and analysis to satisfy ACL consultation and regulatory impact analysis requirements associated with making a mandatory standard, which takes a minimum of 18 months. The current ACL framework 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.

Inefficient regulatory architecture for updating mandatory standards

When mandatory safety and information standards are developed, any Australian or overseas standard referenced in the mandatory standard is frozen at a particular point in time. 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 quickly outdated 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, when businesses move to the latest voluntary standards they may contravene a mandatory standard that refers to a superseded voluntary standard, even if 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 Regulatory Impact Analysis. This creates an environment of

² On 22 March 2024, the bicycle helmet safety standard has been updated.

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. The Consultation RIS provided an example of this problem as it applies to projectile toys (see Example B).

Barriers to trade are also created where products manufactured according to the latest overseas standards are not able to be legally 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 B: 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.³

In June 2020, the mandatory standard was reviewed and amended after being made 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 consultation⁴ to assess the appropriateness of capturing the minor updates and, in July 2021, made a legislative amendment⁵ 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.

³ ACCC, 'Product Safety Australia', [Projectile toys](#).

⁴ ACCC, '[Review of the mandatory standard for projectile toys](#)' (April 2021).

⁵ Consumer Goods (Projectile Toys) Amendment Safety Standard 2021.

1. Policy Context

The Australian Consumer Law

The ACL is part of the *Competition and Consumer Act 2010* (CCA)⁶ 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 services⁷ 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.⁸ The ACL can only be amended with the agreement of the Commonwealth and four other states or territories (including at least three states) following a period of formal consultation. 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 ACL, the responsible Commonwealth Minister can make or declare a mandatory safety standard or a mandatory information standard. Mandatory standards set out requirements which must be complied with to supply products in Australia, including requirements relating to performance, composition, methods of manufacture or processing, design, construction, finish, packaging or labelling. Key provisions include powers to:

- **Make** a safety standard to prevent or reduce the risk of injury (s 104) or an information standard (s 134); and
- **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 safety or information 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).

The process for *making* a safety or information standard is resource intensive and typically takes at least 18-36 months. A regulation impact statement may be required and public consultation is undertaken on a proposal to make a mandatory standard which is followed by ministerial decision, and the creation and registration of a legislative instrument if approved.

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

⁶ *Competition and Consumer Act 2010* (Cth) sch 2.

⁷ 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.

⁸ Australian Consumer Law, '[Intergovernmental Agreement for the ACL](#)' (Webpage).

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 declaring (s 105) a mandatory safety standard 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. However, the utility of section 105 is greatly limited because there are no overseas standards-making organisations prescribed in the regulations. This restricts the utility of sections 105 and 135, and means only standards developed or approved by Standards Australia may currently be declared by the Commonwealth Minister.

Voluntary standards

Voluntary standards are published documents setting out specifications and procedures designed to ensure products, services and systems are safe, reliable and consistently perform as intended. A voluntary standard often exists where experts have already identified ways to address the safety problem. In these instances, the Federal Government may make all or part of the voluntary standard mandatory.

Voluntary standards are developed by standards associations with input from a range of stakeholders and can be ‘referenced’ in a mandatory standard. 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. Often a mandatory standard will refer to relevant provisions of a voluntary standard without having to specify the full text of the voluntary standard.

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).⁹ Standards may also be developed by other overseas standards making associations such as ASTM International or the European Committee for Standardization (CEN). 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.

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. To update existing mandatory standards to align with up-to-date voluntary standards, the ACCC is generally required to undertake a review involving extensive stakeholder consultation and a preliminary impact assessment at a minimum. The incorporation of existing overseas voluntary standards to a mandatory standard made under the ACL can only occur by making a new mandatory standard or varying an existing standard, processes which are resource intensive and typically take at least 18 months or more.

⁹ Memorandum of Understanding between the Commonwealth of Australia and Standards Australia.

2. Policy Objectives

The objective of the proposed reforms is to make it easier to recognise overseas standards and to recognise updates to voluntary Australian and overseas standards which have been referenced in mandatory standards. This will:

- provide benefits for Australian consumers and for the Australian market by increasing product availability, consumer choice and speed to market, thereby decreasing the cost of consumer goods, while maintaining consumer safety;
- reduce the regulatory burden for suppliers and make it easier for them to comply with mandatory safety standards for high-risk products regulated 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 to the requirements of an equivalent overseas standard; and
- increase consumer safety through improved recognition of developments in technical expertise from Australian and overseas standards.

The ACCC will maintain administration of its regulatory role for mandatory standards including providing relevant advice to the Commonwealth Minister on the development of new mandatory standards and review of existing mandatory standards. The ACCC will also continue to monitor existing mandatory standards to ensure they remain appropriate for the Australian market.

The preferred policy options outlined in this Decision RIS have also been informed by the Australian Government's obligations under the WTO's 'Agreement on Technical Barriers to Trade'¹⁰ (TBT) which aims to provide global harmonisation through mutual recognition of technical standards.

10 World Trade Organization, [Agreement on Technical Barriers to Trade](#) (Webpage).

3. Policy Options, Stakeholder Views and Impact Analysis

SUMMARY	
To address the problem identified above, this Decision RIS considers one non-regulatory option and two regulatory options:	
Option 1	Status quo (no change)
Option 2	Amend the ACL to allow the Commonwealth Minister to more easily declare equivalent international and overseas standards
Option 3	Amend the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards

Options 2 and 3 above explored a range of alternatives in achieving their outcome.

Alternatives considered under Option 2 included:

- prescribing a list of standards making associations in the regulations, to complete the existing intention of section 105 and permit the Commonwealth Minister to declare a standard developed or published by overseas associations in addition to Standards Australia, this included:
 - an ‘opt-in’ approach where specific standards from overseas standards associations are recognised under the ACL following a review process, or
 - an ‘opt-out’ approach that automatically incorporates relevant standards from equivalent international and overseas standards associations, without a review by the regulator, unless it is demonstrated to be unsafe for Australia.
- using a principles-based approach for declaring overseas standards.

Alternatives considered under Option 3 included:

- allowing Australian and overseas standards that are referenced in mandatory standards, to apply as they exist from time-to-time
- providing safe harbour provisions to allow compliance with later versions of recognised Australian and overseas standards.

Treasury received 59 submissions from a broad range of stakeholders including consumer advocates, industry associations, suppliers, standards associations and test agencies, academics and safety experts. Following the receipt of written submissions, Treasury met with a number of key stakeholders who expressed a desire to do so.

Stakeholders expressed support for:

- recognising overseas standards, provided they are assessed as suitable by the regulator prior to being introduced;
- prescribing a list of standards associations and using a principles-based approach for recognising overseas standards; and
- adopting time-to-time updates to Australian and overseas standards as they become available as long as suitable safeguards and transition periods are provided.

Stakeholders did not express support for:

- maintaining the status quo for mandatory standards regulation; and
- introducing an 'opt-out' model to automatically adopt overseas standards.

3.1. Option 1 – Status Quo

Description

Option 1 was the only non-regulatory option presented in the Consultation RIS. Under this option, there would be no change to the current regulatory framework for mandatory standards under the ACL. The Commonwealth Minister would continue to *make* new safety standards (s 104) or information standards (s 134) and to *declare* new safety standards (s 105) or information standards (s 135). The Minister would *only* be able to declare safety or information standards developed by Standards Australia and would not be able to declare standards developed by any other standards making association even though this is the intention of section 105. Mandatory standards would continue to be frozen at the point in time they are made or varied, including any voluntary standard referenced in them.

Under this option, there would be no increased efficiencies for businesses that operate or supply relevant consumer goods in Australia. The regulatory burden of Australian businesses in relation to mandatory standards would remain the same. The inefficient and costly process of re-testing products to an Australian standard where they have already been tested to an equivalent overseas standard would continue. Business would be unable to move to the latest and safest standards in real time.

A continuation of the status quo is likely to prevent increased product choice for consumers. The potential cost savings from a reduction of duplicative testing to an Australian standard would not be passed on to consumers and they would not benefit from safer products. This is because the existing legislative framework will remain restrictive and slow to respond to industry developments.

Context

The current product safety framework, including the regulatory framework for developing mandatory standards, has been in place for over 10 years. Under this framework, unsafe and high-risk consumer goods can be regulated through mandatory standards to prevent or reduce the risk of harm to Australian consumers. Incorporating overseas standards can be permitted through referencing approved 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.

The ACCC has published criteria which it uses to assess the suitability of overseas standards to consider whether they are appropriate to be incorporated into a mandatory standard under the ACL framework.¹¹ In 2015, an extensive consultation process received widespread support for both the proposed criteria and, more generally, the appropriateness of using and referencing equivalent overseas standards in Australia.¹²

¹¹ ACCC, 'Product Safety Australia', [ACCC publishes criteria for accepting international standards](#) (22 July 2015).

¹² Ibid.

Option 1 – Stakeholder Views

There was little support for maintaining the status quo (option 1) with only 8 of 59 stakeholders indicating a preference for not changing the current regulatory environment. Stakeholders in support of Option 1 expressed concern that allowing mandatory standards to reference overseas standards could weaken effective regulatory practice and industry consultation processes. Stakeholders who supported this option were in a minority. The majority of stakeholders, including the ACCC, CHOICE, the Business Council of Australia and the National Retail Association expressed dissatisfaction with the status quo.

Those who supported Option 1 viewed other policy options as a threat to consumer safety suggesting this could undermine standards that are developed to meet unique Australian conditions. For example, stakeholders mentioned that Australia's high-UVR environment has resulted in more stringent sun protection standards when compared with overseas standards, to reduce the likelihood of sun-related skin disease. Stakeholders who supported the status quo also mentioned that Australian standards should be preferred unless there was no existing voluntary Australian standard. In such cases it would then be appropriate to defer to overseas standards developed by a select number of overseas bodies.

Some stakeholders who supported the status quo, including Standards Australia, claimed that the other policy options would weaken good regulatory practice, reduce accountability and transparency by removing consultation from the mandatory standard setting process, and allow overseas players to influence consumer protection in Australia at the expense of Australian industry and consumers.¹³ Other stakeholders echoed similar concerns, such as Kidsafe and the Consumers' Federation of Australia, arguing that the regulator must maintain control and oversight of mandatory standards to ensure product safety, ensure that standards be developed through a consultation process with experts in government, industry and the community, and that consumers be involved in the development of standards to ensure consumer safety is not compromised.¹⁴

These concerns have been acknowledged noting that the Consultation RIS explored a wide range of policy options to gauge stakeholder views, including the opt-out model which had the potential to automatically adopt overseas standards from a select number of overseas standards making associations without undergoing a review. This option received opposition because it prevented the regulator from first reviewing the suitability of a standard and undertaking consultation before it could become part of Australian law through incorporation in a mandatory standard. From a safety perspective, this was considered to provide insufficient protection for consumers. For these reasons, this policy option as presented in the Consultation RIS is not supported. Importantly, the proposed policy reform in this Decision RIS would not reduce the current level of safety in Australia. International and overseas standards would only be declared by the Commonwealth Minister where they provide an *acceptable* level of safety. The proposals set out in this Decision RIS intend to respect and maintain safety objectives related to standards designed specifically for the Australian environment.

Stakeholders were supportive of policy options other than maintaining the current regulatory environment. Government stakeholders such as the ACCC, considered that the current regulatory settings involve unnecessary costs and confusion for businesses which acts as a barrier to

¹³ Standards Australia submission to Consultation RIS, p. 1.

¹⁴ Kidsafe submission to Consultation RIS, pp. 2-4; Consumers' Federation of Australia submission to Consultation RIS, pp. 2-3.

compliance.¹⁵ These costs include further testing and labelling of products to meet Australian requirements, even where the product has already been tested and found to comply with an overseas standard that offers an equivalent or better level of consumer protection. The ACCC also noted:¹⁶

'[the] inability of mandatory standards to efficiently capture updates to standards leads to increased regulatory costs for businesses. In the ACCC's six recent reviews of mandatory standards under the ACL, the average conservative estimated benefit to business from updating out of date references in the mandatory standards is \$2,842,000 per annum.'

This sentiment was echoed by stakeholders in the business community, such as the Business Council of Australia, who expressed that Australia's product safety framework is critically important, but current processes of reviewing and updating this framework are slow, cumbersome, and result in unnecessary costs and complexity.¹⁷ In supporting Australia's commercial and trading interests, Amazon stated that implementing any of the outlined options beyond the status quo will have the greatest impact to businesses and consumers.¹⁸ Amazon stated that a key blocker for business partners selling into Australia, as well as other countries, is the need to complete additional testing specifically for Australia, even where products have been confirmed to meet similar, and sometimes identical, required safety standards in other countries.¹⁹ These unnecessary compliance costs and delays for businesses importing and supplying products in Australia was echoed by the NSW Productivity Commissioner.²⁰

From a legal perspective, the Law Council of Australia expressed that it should be a primary policy objective to permit compliance with overseas standards for the removal of duplicative testing and compliance measures.²¹ An important case study for achieving this can be drawn from the regulatory experiences of the Australian Communications and Media Authority (ACMA) who provided a submission. ACMA was supportive of streamlining requirements to allow appropriate overseas standards to be incorporated as mandatory standards in Australia, which is currently their approach to standards setting in a similar legislative framework under the *Radiocommunications Act 1992* (Cth) and *Telecommunications Act 1997* (Cth). This framework recognises appropriate overseas standards as an alternative to domestic standards wherever possible, consistent with Australia's obligations under the TBT and other free trade agreements. In ACMA's view, international standards reflect the globalisation of products and should be an available option for importers to Australia, except in the rare event that they do not adequately address Australian circumstances.²²

Consumer advocacy groups such as CHOICE emphasised the importance of addressing the most frustrating aspects of the current product safety standards making process. Given the nature of the risks to consumers from unsafe products – physical harm or death – CHOICE considered it is appropriate for the ACCC to assess if overseas standards offer appropriate safety protections for consumers rather than to continue under the current framework.²³ This was echoed by the business community, including the National Retail Association, which stated that adopting the most current

15 ACCC submission to Consultation RIS, p. 4.

16 Ibid, p. 5.

17 Business Council of Australia submission to Consultation RIS, p. 1.

18 Amazon submission to Consultation RIS, p. 6.

19 Ibid, p. 3.

20 NSW Productivity Commissioner to Consultation RIS, p. 1.

21 Law Council of Australia submission to Consultation RIS, p. 3.

22 ACMA submission to Consultation RIS, p. 2.

23 CHOICE submission to Consultation RIS, pp. 1-4.

version of Australian or overseas standards can improve the reduction of injuries, as these take the latest product developments and consumer behaviour insights into account. The National Retail Association’s Technical Standards Committee noted that current policy settings present significant business costs for additional testing, delays to market and confusion across the whole supply chain. Overall, the National Retail Association emphasised that allowing the system to remain unchanged would not address the existing problems and would compound the difficulties experienced across the consumer market.

In summary, this option will **not** be pursued for the purposes of this Decision RIS.

Option 1 – Impact Analysis

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

BENEFITS	COSTS
<ul style="list-style-type: none"> Certainty for businesses as the law applying to mandatory standards would be maintained. 	<ul style="list-style-type: none"> Businesses will continue to incur unnecessary compliance costs for duplicative unnecessary testing.
<ul style="list-style-type: none"> Businesses could maintain their current compliance procedures. 	<ul style="list-style-type: none"> Businesses will continue to pass on the additional compliance costs to consumers through increased product prices.
	<ul style="list-style-type: none"> Businesses will continue to incur administrative costs to access technical details contained in voluntary standards that are referenced in Australian mandatory standards.
	<ul style="list-style-type: none"> Mandatory standards which reference voluntary standards will continue to become outdated through an inability to easily recognise updates.


Potential Benefits

The current regulatory framework for mandatory standards in Australia has been in operation for some time. 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 the regulatory framework for mandatory standards.

Maintaining the status quo would continue to ensure only standards which meet the unique requirements of the Australian market and conditions are mandated. Consumers would continue to be protected by mandatory standards which regulate high-risk products to minimise the risk of injury or death, although the current time lag in updating mandatory standards means they may not keep pace with the latest safety developments.

Potential Costs

Businesses will continue to face a duplication in testing and compliance costs to ensure the products they supply which have already been tested against an overseas standard are tested again to an Australian standard. This will continue to be required even if the overseas standard provides an equivalent or better level of safety compared to the Australian standard.



Outdated Australian and overseas standards referenced in the mandatory standards will also continue to increase costs for business as they will not be able to transition efficiently to the latest and safest industry standards. This may again mean duplication of testing to the old and new standard to ensure compliance with mandatory standards.

Consumers would potentially not have access to a range of products currently regarded by other overseas jurisdictions as safe, unless these products also meet the requirements of the current mandatory Australian standard. Products 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.

Mandatory standards that reference voluntary Australian standards and overseas standards will continue to become out of date because they are frozen at the point in time they are made, and they do not have an efficient process to recognise updates to standards they reference, no matter how minor they are. This will continue to increase compliance costs for business in comparison with complying with the most current version of referenced standards. It may also become increasingly difficult for suppliers to arrange testing to outdated voluntary Australian and overseas standards in circumstances where a test house does not continue to test to these standards.

3.2. Option 2 – Amend the ACL to allow the Commonwealth Minister to more easily declare equivalent international and overseas standards in Australia

Description

Option 2 would amend the ACL to allow the Commonwealth Minister to declare both Australian and overseas standards as either mandatory safety standards or mandatory information standards under sections 105 and 135 of the ACL. This option would give businesses the flexibility to supply relevant consumer products which comply with either an Australian or overseas standard deemed suitable to be recognised under the ACL.

At present, only standards prepared or approved by Standards Australia may be declared by the Commonwealth Minister. The current ACL architecture allows standards developed by other standards making associations to also be declared, but only where the standard making association is prescribed in the ACL regulations.

This option considers two alternatives which would allow the Commonwealth Minister to more easily declare overseas standards under the ACL:

1. prescribing a list of overseas standards making associations in the regulations; and/or
2. a principles-based approach to determine when the Minister may declare an overseas standard.

Context

Sections 105 and 135 of the ACL allow the Commonwealth Minister to *declare* (recognise) Australian and overseas standards under the ACL, but only where a standard is developed by Standards Australia or a standards making association listed in the ACL regulations. However, at present there are no standards making associations listed in the regulations. The intention of section 105 is to provide ‘a mechanism for the Minister to draw on approaches to setting standards that may develop over time through other expert organisations’.²⁴ Separately, the Minister may *make* a mandatory standard under section 104 of the ACL where a standard has not been developed by Standards Australia or an association listed in the regulations, setting requirements that ‘are reasonably necessary to prevent or reduce risk of injury to any person’.

In 2016, the ACCC commenced a program to review all of the 48 mandatory standards it currently administers to assess their effectiveness and to consider whether they can be harmonised with overseas standards. Following extensive review processes which includes a period of public consultation, the ACCC has so far recommended 14 of the 48 existing mandatory standards be updated to reference a limited number of overseas standards (typically one or two). In this review, we have noted that the current process for the Minister to *make* a mandatory standard under section 104 is inefficient and indirect in comparison with potentially *declaring* overseas standards under section 105.

²⁴ [Explanatory Memorandum – Trade Practices Amendment \(Australian Consumer Law\) Bill \(No. 2\) 2010](#), pp. 247-248 [10.30].

Declaring standards from overseas standards making associations would allow the Commonwealth Minister to consider a wider range of standards that may be appropriate for the Australian context, particularly where no Australian standard is available. This would enable well considered and appropriate voluntary standards made through rigorous processes with multi-sectoral input to be more efficiently recognised in Australia. As a result, it is expected to give greater flexibility for businesses by allowing them to comply with suitable overseas safety standards declared in a mandatory standard under the ACL.

Option 2(a) – Prescribing a list of overseas standards making associations

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

Where a list of overseas standards making associations is set, a mechanism would then be needed to select which overseas standards are suitable to apply in Australia. This mechanism could either take an:

- ‘opt-in’ approach where specific standards from overseas standards associations are incorporated into a mandatory standard under the ACL following a review process, or
- ‘opt-out’ approach that automatically incorporates relevant standards from overseas standards making associations, unless they are 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 would generate benefits for businesses by streamlining the acceptance of standards from prescribed overseas standards organisations alongside Australian standards. This approach would improve transparency and focus government resources on why safety standards in Australia need to differ from approaches adopted by other overseas standards associations.

Option 2(a) – Stakeholder Views

Stakeholders indicated that prescribing a list of standards making associations in the regulations would provide certainty as to what organisations may be considered relevant for the Australian context. It was commonly mentioned that this option would allow mandatory standards to keep pace with updates to overseas standards and reduce significant compliance costs, delays and barriers to trade associated with out-of-date standards.

Government stakeholders such as the ACCC indicated that overseas product safety requirements could be more efficiently included in Australian mandatory standards under this option. The ACCC expressed this option would increase competition, provide consumers with greater product choice and decrease business compliance costs where products already meet existing overseas standards.²⁵ Additionally, support was expressed for the ‘opt-in’ approach, in which specific standards from

²⁵ ACCC submission to Consultation RIS, p. 2.

overseas standards associations are incorporated into a mandatory standard under the ACL following a review process. The 'opt-in' approach enables the ACCC to assess every standard considered for incorporation into law and consider whether it has been suitably developed and provides an appropriate level of safety for Australian consumers.

This was echoed by the Australian Automotive Dealer Association who fully supported the efficiency improvements that would flow from harmonising selected Australian standards with those of appropriate overseas jurisdictions.²⁶ IKEA also supported making it easier to recognise voluntary overseas standards, where they offer at least an equivalent level of safety as Australian standards in order to reduce compliance costs for businesses and facilitate trade.²⁷

Standards-making associations like ASTM International have encouraged the Australian Government to implement policies which can enable the regulator to recognise international voluntary standards.²⁸ They noted that the alignment of mandatory government regulations with international voluntary standards developed by consensus can provide a range of benefits to regulators, businesses, industries and consumers.²⁹ Importantly, ASTM International stated that their standards are consistently reviewed and revised as necessary by governing technical committees to keep pace with changing technologies and market needs with updates being made at least every five years, if not earlier.³⁰

The Ai Group recommended that any Australian or overseas standard referenced in the ACL should be recognised in its *entirety*.³¹ They consider that standards are 'developed with very broad and deep contexts and this is not always understood by regulators' which leads to a 'cut and paste' method through the existing ACL framework.³² This was further iterated in the following excerpt:³³

'The current approach makes it difficult for suppliers to understand the compliance requirements for their product, as they need to read both the mandatory standard and the product standard together - this is difficult for seasoned compliance professionals and would be a barrier to trade for smaller companies. The best outcome possible from this RIS would be for the ACCC^[34] to cease making standards and focus instead on declaring standards...'

Conversely, some stakeholders commented that prescribing a set list of standards making associations in the regulations could be seen as picking winners, suggesting there may be other associations that could be added to the list, either now or in the future.

In considering the introduction of an 'opt-out' approach, stakeholders such as the NSW Productivity Commissioner were supportive of its adoption with standards developed by appropriate international standards organisations used as a default position, unless it is demonstrated to be unsafe for Australian conditions through a cost-benefit analysis.³⁵ This was echoed by Accord who considered the opt-out approach as likely to be the most efficient model because Australia should align its standards

26 AADA submission to Consultation RIS, p. 1.

27 IKEA submission to Consultation RIS, p. 1.

28 ASTM International submission to Consultation RIS, p. 1.

29 ASTM International submission to Consultation RIS, p. 1.

30 Ibid, p. 2.

31 Ai Group submission to Consultation RIS, pp. 2, 6.

32 Ibid, p. 6.

33 Ibid, pp. 6-7.

34 The Commonwealth Minister is empowered to make or declare standards under the ACL.

35 NSW Productivity Commissioner submission to Consultation RIS, pp. 1-2.

with its international trading partners unless there is a good reason not to as required by Australia's international trade obligations.³⁶ However, Accord noted that this should be predicated on the continuation of a rigorous Regulation Impact Analysis process and that all equivalent overseas standards are accepted as providing equivalent levels of safety.³⁷

On the other hand, some stakeholders such as Standards Australia expressed concerns that the 'opt-out' approach presented in the Consultation RIS and the proposal to incorporate changes to referenced overseas standards removes proper consultation with Australian industry and risks the safety of Australian consumers.³⁸ Ultimately, their position was that all proposals for updating recognised standards present significant risks for Australian business and consumers.³⁹ Other opponents to the 'opt-out' approach presented in the Consultation RIS included Waterview Bay Consulting who stated in their submission:⁴⁰

'...devolving responsibility to an overseas standards-making body for providing designated safety standards to be used in Australia, and to take those standards at face value, without further examination, we would be taking a rather large leap into the dark, based on the false assumption that these bodies always operate in an identical manner to Standards Australia.'

However, Waterview Bay Consulting considered that the same concerns would not apply to an 'opt-in' approach where proper review processes for each designated standard were made on a case-by-case basis.⁴¹

Academics such as Dr Catherine Niven held doubts about the operation of the 'opt-out' approach in practice, and the threshold required to prompt a review.⁴² Dr Niven stated this approach could be viewed as reactive.⁴³

This Decision RIS acknowledges the opposition to the 'opt-out' approach as presented in the Consultation RIS and considers this approach would significantly alter the existing processes used to create Australian mandatory standards. This would be inconsistent with the policy intention of the mandatory standards framework under the ACL. The 'opt-out' approach also has the potential to increase the risk of unsafe products entering the Australian market as under this approach any overseas standards they are manufactured to would not have first been assessed for suitability in the Australian context by the ACCC. The proposed 'opt-out' approach will not be pursued for the purposes of this Decision RIS.

As noted above, ACMA supports streamlining requirements to allow equivalent international and overseas standards to be recognised and incorporated as mandatory standards in Australia as they oversee a similar standards framework under the *Telecommunications Act 1997 (Cth)*.⁴⁴ The preferred approach of ACMA is to permit compliance to be demonstrated through adherence to international standards as an alternative to domestic standards wherever possible, consistent with Australia's obligations under the TBT.⁴⁵ Their view is that international standards reflect the globalisation of

36 Accord submission to Consultation RIS, p. 6.

37 Ibid.

38 Standards Australia submission to Consultation RIS, p. 2.

39 Ibid.

40 Waterview Bay Consulting submission to Consultation RIS, p. 4.

41 Ibid.

42 Dr Catherine Niven submission to Consultation RIS, pp. 1-2.

43 Ibid.

44 ACMA submission to Consultation RIS, pp. 1-2.

45 Ibid, p. 2.

products and should be an available option for importers to Australia, except in the rare event that they do not adequately address Australian circumstances.⁴⁶

In 2016, the ACCC consulted on a proposed list of nine overseas standards making associations to be prescribed in the ACL regulations.⁴⁷ In the Consultation RIS, a further five standards making associations were identified as potentially suitable, for a total of 14 potentially suitable associations. During the ACCC's 2016 consultation, stakeholders expressed 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 standards making associations could be viewed as 'picking winners' which could have potential trade implications.

As a result, Option 2(a) will not be pursued for the purposes of this Decision RIS.

The preferred policy approach is to amend sections 105 and 135 of the ACL to allow the Commonwealth Minister to declare suitable standards from any Australian or overseas standards making association, rather than being limited to a pre-determined list of associations that would require regular updating. In taking this approach the suitability of overseas standards would be based on whether an overseas standard provides an appropriate level of safety in the Australian context.

This policy approach enables the Commonwealth Minister, under sections 105 and 135 of the ACL to consider standards from any standards-making association without the need for a prescriptive list. In addition to this, declared standards may also be recognised in their entirety, thereby reducing regulatory burden for businesses.

Importantly, this would be achieved through existing review and consultative processes conducted by the ACCC. This policy approach does not seek to implement the 'opt-out' approach as presented in the Consultation RIS to automatically adopt overseas standards by default and without review.

Nominating standards under section 108

In addition to these proposed amendments, submissions to the Consultation RIS also indicated that subsequent changes to section 108 of the ACL should be considered to provide clarity around suppliers nominating which standard they intend to comply with, where more than one option is available to them. Currently under section 108, the regulator may only require a 'supplier' to nominate which standard they intend to comply with when more than option is available to them, but this obligation does not extend to 'manufacturers'. In addition to this, section 108 does not provide a mechanism for the regulator to require a supplier to provide information such as test reports to substantiate a claim of compliance with the nominated standard.

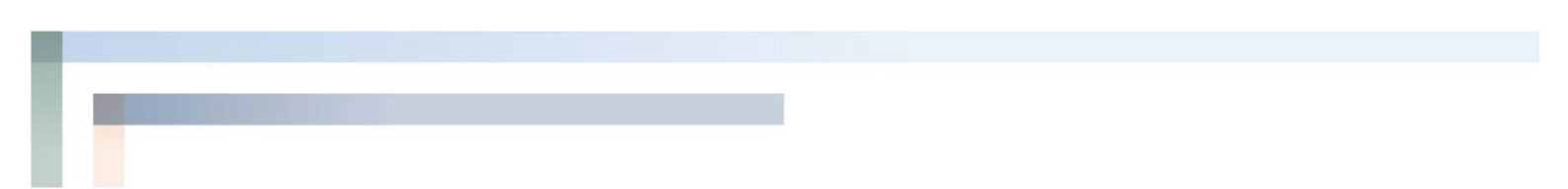
In their submission, Waterview Bay Consulting mentioned that when multiple standards are deemed to be acceptable, there must also be a requirement that the Australian supplier nominates which of those standards their product is claimed to meet.⁴⁸ Additionally, Product Safety Solutions argued it is necessary that suppliers be legally accountable to comply with a nominated standard, particularly if multiple standard options are available to meet declared mandatory ACL standards – otherwise they consider the regulator's ability to demonstrate non-compliance with the mandatory standard could be significantly compromised.⁴⁹ The Australian Toy Association was also supportive of ensuring goods

⁴⁶ Ibid.

⁴⁷ ACCC, *Consultation paper – International standards associations: Consumer Product Safety*, 9 May 2016.

⁴⁸ Waterview Bay Consulting submission to Consultation RIS, pp. 2-3.

⁴⁹ Product Safety Solutions submission to Consultation RIS, p. 11.



comply with one standard in their entirety, and that a level of risk is posed in allowing compliance with a mixture of the standards options provided.⁵⁰

The ACCC considered there may be scope to include further complementary amendments to section 108.⁵¹

'This provision presents challenges in practice as it is a point-in-time requirement and does not set out a timeframe for the period of compliance, or a clear mechanism for businesses to advise a regulator of an intention to change the safety requirements they intend to comply with. Amendments to section 108 to clarify these issues would provide greater certainty to assist businesses in meeting their obligations. Such changes would be consistent with the broader policy objectives of the CRIS.'

The proposed changes to section 108 would include manufacturers, along with suppliers, in the requirement to nominate the standard they are currently complying with or intend to comply with. The changes would allow the regulator to require information such as test reports from a supplier or manufacturer to substantiate which standard they intend to comply with. In addition, the regulator would only be required to test to the standard nominated by the supplier or manufacturer to verify compliance or non-compliance with the nominated standard.

⁵⁰ Australian Toy Association submission to Consultation RIS, p. 11.

⁵¹ ACCC submission to Consultation RIS, p. 9.

Option 2(b) – Using a principles-based approach for declaring overseas standards

As mentioned above, prescribing a list of overseas standards making associations could potentially reduce the ability to recognise overseas standards that may be relevant for Australia. This is because the list of standards making associations would sit within the regulations and would require updating before an association not listed could be drawn on. An alternative approach would be to amend the ACL to allow the Commonwealth Minister to declare 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 an equivalent level of safety to an existing Australian mandatory standard (where one exists); and
- the standard is made by an appropriate or competent association.

In practical terms, this approach could be achieved by reframing sections 105 and 135 to remove the requirement to prescribe associations in the regulations. This would include removing reference to Standards Australia and instead making reference to criteria that must be considered by the Commonwealth Minister when declaring a standard. The principles-based criteria would be established in legislation to provide the Commonwealth Minister flexibility in declaring appropriate standards from a range of standards making associations.

Option 2(b) – Stakeholder Views

Stakeholders indicated a principles-based approach would have the potential to provide a more targeted regulatory environment as regulators can pick and choose standards that are suitable for the Australian context. Simply identifying that a standard comes from a reputable standards organisation was not seen as enough.

For similar reasons, stakeholders who focused on consumer safety felt that a principles-based approach provided a better standard of consumer protection as regulation could be tailored to Australian conditions. Sun protective clothing, hats, sunscreen and sunglasses were commonly raised as examples of standards which are tailored to the Australian environment.

Stakeholders such as the Australian Toy Association expressed that a principles-based approach for declaring overseas standards is most appropriate for developing and updating mandatory standards in Australia.⁵² They further stated that one of the principles should be that there is a comparable Australian standard and that the overseas standard is closely comparable to that Australian standard.⁵³ This was echoed by Ai Group who expressed that a predetermined list of selection criteria

⁵² Australian Toy Association submission to Consultation RIS, p. 10.

⁵³ Ibid.

should be developed in conjunction with consumers and industry with the most important criterion being safety equivalence with the applicable Australian standard.⁵⁴ The Law Council of Australia also supported this option but went further to state:⁵⁵

'A principles-based approach to declaring overseas standards should focus on whether a comparative Australian standard is available, whether the overseas standard provides an improvement on the Australian standard and whether there is any feature unique to Australia which means that the standard is inappropriate. Overseas standards should only be mandated where there is no appropriate Australian standard. A manufacturer should be able to identify and obtain a declaration of "equivalency" for an alternative standard with which it complies for the same goods sold in other western countries.'

An important distinction which also arose amongst stakeholders who supported the principles-based approach, such as Kidsafe, was that standards should be declared from any source using a principles-based approach provided that the standard meets certain criteria as described in the proposal and is reviewed through a regulatory impact analysis and through proper public consultation and engagement processes.⁵⁶ This was echoed by Standards Australia who expressed support for this option 'provided that the principles are enhanced to include a requirement that the standard is reviewed through proper public consultation and engagement processes'.⁵⁷

Opponents to this policy option included the ACCC who indicated it had the potential to exacerbate the problem rather than to improve the current framework.⁵⁸ In addition to this, the ACCC stated a principles-based approach would reduce flexibility and increase inefficiencies for government to reference standards developed by overseas standards associations:⁵⁹

'...[the] current limited scope of the option to declare a standard under the ACL means a more time consuming and inefficient approach must be adopted when making recommendations to the Minister on any overseas standards to be referenced within an Australian mandatory standard to protect Australian consumers.'

This Decision RIS acknowledges both the support and opposition from stakeholders in relation to the principles-based approach. However, on balance we consider this approach has the potential to create a less efficient regulatory framework and increase the Australian Government's regulatory burden in circumstances where the principles-based criteria are established in *legislation*. This may further exacerbate current barriers and delays to declaring standards and facilitating appropriate updates to them. As a result, this policy option will be not pursued for the purposes of this Decision RIS.

Option 2 – Stakeholder Findings

Following the consultation process, stakeholders expressed support for option 2 generally to more easily recognise acceptable overseas standards under the ACL. The most common benefits identified by stakeholders in allowing overseas standards included efficiency improvements from harmonising Australian and overseas standards to allow for new products to hit the Australian market sooner, a

54 Ai Group submission to Consultation RIS, p. 8.

55 Law Council of Australia submission to Consultation RIS, p. 9.

56 Kidsafe submission to Consultation RIS, p. 4.

57 Standards Australia submission to Consultation, p. 13.

58 ACCC submission to Consultation RIS, p. 3.

59 Ibid, p. 4.

reduction in testing and compliance costs for business leading to an increased range of products and lower prices for consumers, simplifying the regulatory environment to help businesses in complying with their safety obligations, and improvements in product safety as newer and safer standards are adopted in shorter timeframes.

Option 2 – Impact Analysis


Option 2 would not have any immediate net regulatory impact or benefit to business or consumers solely through amending the ACL. Rather, the alternatives canvassed under this option would provide benefits to businesses, consumers and regulators in circumstances where a new mandatory standard is declared or an existing mandatory standard is updated to recognise suitable overseas standards. This would follow a review by the ACCC with a subsequent recommendation to the Commonwealth Minister. The regulatory impact would be considered on a case-by-case basis depending on the nature of the products to be regulated as currently occurs when the Commonwealth Minister *makes* or updates a mandatory standard.

On balance, it is expected that allowing the Commonwealth Minister to *declare* acceptable overseas standards as mandatory Australian standards would have a positive impact on 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 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.

BENEFITS	COSTS
<ul style="list-style-type: none"> A principles-based approach, in combination with a prescribed list of associations, will ensure products are assessed against a consolidated set of criteria. 	<ul style="list-style-type: none"> Setting a principles-based approach in legislation risks increasing regulatory burden and worsening timeframes for updates.
<ul style="list-style-type: none"> An ‘opt-in’ approach will maintain current review processes when specific standards from overseas standards associations are incorporated under the ACL. 	<ul style="list-style-type: none"> An ‘opt-out’ approach as presented in the Consultation RIS to standards setting poses significant risks to diminishing consumer safety and by-passes existing review and consultative processes.
<ul style="list-style-type: none"> A prescribed list of standards making associations will allow the Minister to consider a broader range of associations and standards under the ACL framework. 	<ul style="list-style-type: none"> A prescribed of list of standards associations could have international trade law implications.
	<ul style="list-style-type: none"> A prescribed list of standards making associations risks limiting the Commonwealth Minister’s ability to consider any potential standard on a case-by-case basis.

Potential Benefits

The legislative amendments under Option 2 will have no immediate or direct impact on business, either as a benefit or cost, in and of themselves. However, allowing the Commonwealth Minister to declare overseas standards 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. This option



would allow the Commonwealth Minister to more easily *declare* an existing overseas standard which is used, accepted 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.

Amending the ACL so that the Commonwealth Minister may more easily *declare* overseas standards, either by prescribing a list of standard-making associations or using a principles-based approach, 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 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 more easily *declare* a suitable 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. A potential emerging area where this could be particularly relevant is interconnected and smart devices where relevant standards which define security and safety measures in connected devices are an emerging issue internationally.⁶⁰

Businesses will benefit from this policy approach 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 the equivalent 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 while maintaining consumer safety.

Consumers will also benefit from a greater range of potentially safer and cheaper 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 declared by the Commonwealth Minister has been through rigorous review and consultation, ensuring consumer safety is maintained or improved.

Under this option, the ACCC would continue to periodically review and update existing mandatory standards to consider updates and incorporate equivalent 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

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



tailored to the domestic context. This approach would make it easier for standards that are not developed by Standards Australia to be recognised under sections 105 and 135 of the ACL.

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 any change to the mandatory standards regulatory framework. This may be a particular burden to smaller businesses with limited resources. The administrative cost component would be mitigated by continuing to allow businesses to choose whichever voluntary standard (Australian or overseas) in a mandatory standard they wish to comply with, retaining familiarity with the current framework. On balance, this option would reduce compliance costs for businesses relative to the status quo.

There is likely to be an administrative burden on the ACCC in reviewing an increased number of available equivalent 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. Additionally, there is a risk that prescribing a list of 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 overseas standards that provide at least an equivalent or suitable level of safety 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 improve or at least maintain 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 equivalent 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 overseas standards even when they provide an equivalent level of safety. While suppliers would be free to choose which standard to comply with and which testing authority to use, it is expected suppliers that currently have their products tested overseas and must duplicate testing in Australia would no longer need to 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.

3.3. 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 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 to make it easier to recognise equivalent international and overseas standards in Australian mandatory safety standards, consistent with the announcement on 4 June 2021.

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 Regulatory Impact Analysis. 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.

Context

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 a regulatory review to update 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 2003.⁶¹ 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

61 ACCC, ‘Product Safety Australia’, [Bunk Beds](#).

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 providing a safe harbour provision, Australian businesses could import products that meet the latest voluntary Australian standard and/or the latest equivalent overseas standards without the risk of non-compliance and potential penalties.

If the manufacturer is permitted to produce products that comply with the latest equivalent 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 equivalent overseas 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.

Option 3(a) – Allowing updated standards to apply from time-to-time

This option would allow mandatory standards, whether *made* or *declared*, to incorporate any changes to referenced standards (voluntary Australian or overseas) when they are updated. 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 a 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 option would provide the legislative mechanism (once implemented in a mandatory standard) to allow suppliers to comply with the voluntary Australian or overseas standards referenced within a mandatory standard, or any later editions of the referenced standards, subject to a suitable transition period. This is 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.

The Consultation RIS 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.

Existing safeguards could be drawn on to ensure that any substantial updates to standards are appropriate, including ACCC consultation with industry and regulatory impact analysis where required. This review process could be triggered where updates: significantly differ to the requirements in the mandatory standards, or where the standard is considered to have the potential to be unsuitable or unsafe. Where updates to standards are found to be unsuitable, the Minister is empowered to amend or repeal the mandatory standard as required.

These existing safeguards would protect against the lowering of safety standards for consumers in circumstances where Australia imposes more stringent safety requirements on certain products due

to unique Australian conditions. One example is the higher threshold for UV protection in the mandatory standard for sunglasses (Consumer Goods (Sunglasses and Fashion Spectacles) Safety Standard 2017). Proposed safeguards would be used by exception, where differing Australian safety requirements are considered reasonably necessary. There would not be a requirement to assess each and every individual update. This option would 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 CCA in relation to the 'Motor Vehicle Service and Repair Information Sharing Scheme'⁶² provides reference to certain motor vehicle standards 'as in force from time-to-time'. By way of a case study, ACMA stated they have successfully overseen a similar legislative framework where time-to-time updates to Australian and overseas standards are adopted under the *Telecommunications Act 1997* (Cth). Direct comparisons were drawn from Option 3(a) to the ACMA framework which involves incorporating industry standards that are in force at the time of the relevant legislative instrument, and then permits the incorporation of amendments or a single replacement of the industry standard. The second replacement of a particular standard is not automatically incorporated and will require an amendment to the legislative instrument if it is to be incorporated. It was noted that ACMA participates as an observer in various Standards Committees and working groups for standards development and monitors automatic updates to mandatory standards.

Including such mechanisms in regulatory frameworks has the practical effect of providing greater flexibility for legislative instruments 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 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.

Option 3(a) – Stakeholder Views

Many stakeholders supported the option of allowing businesses to comply with the latest voluntary standard as soon as it comes into effect but should not be required to do so immediately. A common theme raised was that suitable transition arrangements or safeguards must form part of any reform in this area.

Stakeholders noted significant detriments to both businesses and consumers when a voluntary standard is updated, leaving the mandatory standard based on a superseded voluntary standard. The most common benefit expressed by stakeholders was that this option would allow Australia to keep pace with international developments, providing consistency and lower compliance costs and allowing businesses to adopt newer, safer standards that maintain and support consumer protection.

There was broad support for allowing compliance with voluntary standards as they are updated from 'time to time'. However, there was minimal opposition by stakeholders to the implementation of a time-to-time provision.

Overwhelmingly, stakeholders reported that this option must provide adequate transition periods to allow suppliers to sell through existing stock and move to updated standards, while also providing an

⁶² Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2021.

opportunity for the regulator to prevent any updates that were considered inappropriate or unsafe. A transition period of 18 months was most commonly suggested.

Stakeholders such as the Law Council of Australia considered that permitting standards to apply as they exist from time-to-time would not pose additional safety risks to consumers.⁶³ This was echoed by Dr Andrew McIntosh who expressed that mandatory standards, whether made or declared, should be able to capture updates as they occur from time-to-time to any voluntary Australian or international standards that are incorporated into a mandatory standard.⁶⁴

In contrast to other stakeholders, Standards Australia considers that permitting standards to apply as they exist from time-to-time would pose additional safety risks to consumers. They argue that automatically updating standards without consultation on whether the updated standard still meets the consumer safety policy intent and is still relevant to the Australian context holds risks for Australian consumers.⁶⁵

Some stakeholders, such as Dr Catherine Niven, stated that while there are potential benefits to all stakeholders by incorporating changes to referenced standards when they are updated from time-to-time, it will be essential to ensure safeguards are in place to ensure that any updates do not lower safety requirements.⁶⁶

Stakeholders such as Ai Group emphasised that whenever changes to legislation, regulation and mandatory standards are made it is important that government allows manufacturers time to change product design with a reasonable transition period.⁶⁷ However, Decathlon stated that businesses should be allowed to comply with the latest voluntary standard as soon as it comes into effect but should not be immediately required to do so.⁶⁸ They added there also needs to be a sufficient transition period to enable businesses to have adequate time to make any changes required to comply with the latest version compared to the existing mandatory standard at that time – opining that a transition period should be at least 18 months as shorter transition periods have not always allowed enough time to make required changes or sell through existing stock.⁶⁹

The standards setting responsibilities of ACMA under the *Telecommunications Act 1997* (Cth) generally provide a transition period for manufacturers to continue using the previous version of the standard for up to two years, to reasonably adapt production and supply processes and replace stock on hand.

This Decision RIS acknowledges these concerns about time-to-time updates. However, under this policy option the ACCC would maintain administrative responsibility of all mandatory standards including responsibility to ensure time-to-time updates to referenced Australian and overseas standards are suitable for the Australian context. The ACCC would monitor the effect of updates to Australian and overseas standards, so that action could be taken by the Minister to stop any unsuitable update being incorporated into a mandatory standard if required (such as amending or repealing that mandatory standard).

The benefits of this proposal are wide-ranging as demonstrated by the ACMA approach which provides flexibility for minor or machinery updates, removes unnecessary and obsolete requirements,

63 Law Council of Australia submission to Consultation RIS, p. 5.

64 Dr Andrew McIntosh submission to Consultation RIS, p. 5.

65 Standards Australia submission to Consultation RIS, p. 18.

66 Dr Catherine Niven submission to Consultation RIS, p. 2.

67 Ai Group submission to Consultation RIS, p. 7.

68 Decathlon submission to Consultation RIS, p. 4.

69 Decathlon submission to Consultation RIS, pp. 4-5.

allows manufacturers to immediately achieve operational efficiencies, utilise new technology and improve processes in accordance with the updated standards.

Ultimately, the potential benefits of this option significantly outweigh the potential costs, if implemented within the parameters of existing review and consultative processes. As a result, the policy option of adopting time-to-time updates to declared mandatory standards will be pursued for the purposes of this Decision RIS.

Option 3(b) – Safe harbour provision

Safe harbour provisions are included in laws and regulations to offer a legal defence for parties that have undertaken a 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.

Option 3(b) – Stakeholder Views

There was support for a ‘safe harbour’ provision designed not to penalise businesses who comply with the latest voluntary standard, where that standard has not yet been referenced in a mandatory safety standard.

The ACCC stated in their submission they do not support the option of a safe harbour provision as a stand-alone option but recognise it could be included with time-to-time updates under option 3(a).⁷⁰ They consider a safe harbour provision may provide greater certainty to businesses that they are not in breach of a mandatory standard when they comply with the latest version of an Australian or overseas standard referenced within a mandatory standard.⁷¹ However, the ACCC considers that option 3(b) will not address the underlying inefficient regulatory architecture for updating mandatory standards and is likely to increase regulatory confusion for businesses.⁷² Additionally, there may be an unintended consequence of creating a compliance divide where some businesses comply with updated standards and some with the superseded version.⁷³

70 ACCC submission to Consultation RIS, pp. 2, 8.

71 ACCC submission to Consultation RIS, p. 8.

72 Ibid.

73 Ibid.

These views were echoed by Ai Group who support the inclusion of a safe harbour provision in the ACL to give businesses a defence if they are using the latest voluntary standards that may not yet be mandated.⁷⁴ They argue this should apply to both Australian standards and equivalent international standards where prior versions have been mandated. In their submission they stated:⁷⁵

'...the safe-harbour proposal would likely give business more scope to make judgement calls on compliance with up-to-date standards. Particularly where an international business has global compliance teams who are both familiar with global standards improvements, and are in frequent contact with testing laboratories, and would be in a position to make these judgement calls.'

The Consumer Electronics Suppliers Association also supported inclusion of a safe harbour provision, which they argue will enable businesses to comply with either outdated or the most updated versions of the same Australian or overseas standards.⁷⁶ This was echoed by the Communications Alliance who commented that the implementation of a safe harbour provision is the most practical approach, allowing for flexibility and responsiveness to changing market demands and product designs.⁷⁷ Importantly, they argue suppliers should not be permitted to mix and match different clauses between different Standards or editions when claiming compliance – simply that suppliers must comply with one standard by itself.⁷⁸

The implementation of a safe harbour provision is unnecessary as it would be the intention of time-to-time updates to provide sufficient transition periods for businesses to adapt as a general policy objective within any relevant legislative instruments. As a result, this policy option will not be pursued for the purposes of this Decision RIS.

Option 3 – Impact Analysis

We have assessed that Option 3 would not have any immediate net regulatory impact or benefit to business or consumers solely through amending the ACL. Rather, the alternatives canvassed under this option would provide benefits to business and consumers in circumstances where a mandatory standard is updated to recognise referenced standards as they are updated from time-to-time. This would follow a review by the ACCC with a subsequent recommendation to the Commonwealth Minister. The regulatory impact would be considered on a case-by-case basis depending on the nature of the products to be regulated by the standard, as currently occurs when the ACCC makes or updates a mandatory standard.

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.

74 Ai Group submission to Consultation RIS, pp. 5, 9.

75 Ibid, p. 9.

76 CESA submission to Consultation RIS, p. 2.

77 Communications Alliance submission to Consultation RIS, pp. 2, 9.

78 Ibid, pp. 9-10.

BENEFITS	COSTS
<ul style="list-style-type: none"> A safe harbour provision would not penalise businesses who comply with the latest Australian or overseas standard referenced in a mandatory standard. 	<ul style="list-style-type: none"> A safe harbour provision may be unnecessary as time-to-time updates intend to allow for sufficient transition periods.
<ul style="list-style-type: none"> Time-to-time updates would allow the ACCC to maintain administrative responsibility for all mandatory standards, including responsibility to ensure time-to-time updates are suitable for the Australian context. 	<ul style="list-style-type: none"> Permitting standards to apply as they exist from time-to-time could pose additional safety risks to consumers if existing review and consultative processes are not followed.
<ul style="list-style-type: none"> Permitting standards to apply as they exist from time-to-time would not pose additional safety risks to consumers provided existing review and consultative processes are maintained. 	

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. There would be no immediate benefits once amendments to the ACL are implemented under this option. Rather, the benefits would be realised after time-to-time referencing is incorporated into mandatory standards on a case-by-case basis. When this occurs businesses will benefit from being able to supply products which have been manufactured according to the latest Australian and overseas standards without having to wait, sometimes years, for that standard to be incorporated into a mandatory standard. The benefits will include reduced confusion about which version of an Australian or overseas standard a product must comply with, and reduced compliance costs for businesses by not having to test products to outdated 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 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 benefit government by increasing efficiencies and reducing the time it takes to update existing mandatory standards. As each mandatory standard is updated over time, benefits will be realised and these will continue to flow when there are subsequent updates to referenced voluntary standards until all 48 mandatory standards have been updated.

Several stakeholders also provided information confirming other regulatory models in Australia have already incorporated updates of voluntary standards into their legislation, and that this approach has not resulted in any adverse effects.

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 some businesses 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 providing reasonable transition periods 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 may 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 determine (in rare circumstances) that particular updates should not be permitted as it would 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.

4. Preferred Policy Approach

Recommended policy options

Option 1 – Status quo

Option 1 is **not** recommended to be pursued for the purposes of this Decision RIS.

The proposed amendments identified in this Decision RIS would not remove the ACCC's existing administrative and regulatory processes, including its public consultation and regulatory impact assessment requirements, prior to the Commonwealth Minister exercising an authority to make or declare a new mandatory standard or updating an existing mandatory standard under the ACL. International and overseas standards would only be declared by the Commonwealth Minister where they provide at least an equivalent level of safety to an existing mandatory standard, where one exists. The proposals set out in this Decision RIS intend to respect and maintain safety objectives related to standards designed specifically for the Australian environment.

Option 2(a) – Prescribing a list of overseas standards making associations

Option 2(a) is **not** recommended to be pursued for the purposes of this Decision RIS.

This policy option would limit the ability of the Australian Government to recognise suitable overseas standards as mandatory safety standards in Australia. Prescribing a list of standards making associations could be considered as picking winners and could have implications under the TBT and other free trade agreements. Prescribing a list of standards making associations means the Australian Government would need to periodically review and update the list as required to either add new associations to it or remove unwanted associations from it.

Opposition to the 'opt-out' approach as presented in the Consultation RIS has been acknowledged as it would significantly alter the existing review and consultative processes which will be inconsistent with the policy intention of the mandatory standards framework under the ACL. The 'opt-out' approach as presented in the Consultation RIS would also increase the risk of unsafe products entering the market as the overseas standards they are manufactured to have not been assessed by the ACCC. Following extensive consultation with stakeholders, the 'opt-out' approach is not recommended to be pursued for the purposes of this Decision RIS.

Option 2(b) – Using a principles-based approach for declaring overseas standards

Option 2(b) is **not** recommended to be pursued for the purposes of this Decision RIS.

This Decision RIS acknowledges both the support and opposition from stakeholders in relation to the principles-based approach. However, on balance we consider this approach has the potential to create a less efficient regulatory framework and increase the Australian Government's regulatory burden in circumstances where the principles-based criteria are established in *legislation*. This may further exacerbate current barriers and delays to declaring standards and facilitating appropriate updates to them.

Option 3(a) – Allowing updated standards to apply from time-to-time

Option 3(a) is **recommended** for the purposes of this Decision RIS.

This Decision RIS acknowledges concerns raised by stakeholders in relation to allowing mandatory standards to update in line with incorporated voluntary standards as they are amended from time-to-time. However, under this policy option the ACCC would maintain administrative responsibility for

reviewing all mandatory standards to ensure that any time-to-time updates to referenced Australian and overseas standards are suitable for the Australian context. The ACCC would continue to monitor potential updates to Australian and overseas standards, so that action could be taken to stop any unsuitable update being incorporated into a mandatory standard.

The benefits of this proposal are wide-ranging as demonstrated by the ACMA approach which provides flexibility for minor or machinery updates, removes unnecessary and obsolete requirements, allows manufacturers to immediately achieve operational efficiencies, utilise new technology, and improve processes in accordance with the updated standards.

This Decision RIS acknowledges the benefits of this policy option significantly outweighs the potential costs, if implemented within the parameters of existing review and consultative processes including ensuring appropriate transition periods are provided.

Option 3(b) – Safe harbour provision

Option 3(b) is **not** recommended to be pursued for the purposes of this Decision RIS.

The implementation of a safe harbour provision has been assessed as unnecessary as it would be the intention of time-to-time updates (option 3(a)) to provide sufficient transition periods for businesses to adapt to changes as a general policy objective within any legislative instruments. A safe harbour provision would also only be a defence against potential liability for non-compliance with the latest version of a voluntary standard and does not resolve the problem that mandatory standards do not keep pace with developments in industry practices as prescribed in voluntary standards both in Australia and overseas.

Preferred policy approach

The recommended policy approach is three-pronged, noting these proposals are independent of each other and can be implemented separately.

(1) Implement variation of Option 2


Amend sections 105 and 135 of the ACL to allow the Commonwealth Minister to *declare* standards from any Australian or overseas standards making association.

This proposal removes the need to prescribe and subsequently maintain, a specific list of standards making associations in the regulations, including Standards Australia. It also removes any assertion of favouritism or preference which may result where a select group of associations are prescribed, thereby ensuring Australia's compliance with international trade law obligations under the TBT and other free trade agreements.

The list of identified principles under Option 2(b) would not be drafted into legislation, rather the ACCC would maintain administrative responsibility for the mandatory standards framework under the ACL. In providing advice to the Minister, the ACCC would consider any matters relevant to it, including whether an overseas standard provides a suitable level of safety, before making a recommendation to the Minister to *declare* an Australian or overseas standard as a mandatory standard.

(2) Implement time-to-time update provision under Option 3(a)

Amend sections 104, 105, 134 and 135 of the ACL, to allow referenced Australian and overseas standards to be incorporated as they are updated from time-to-time.



This proposal would have no immediate net regulatory impact or benefit to business or consumers solely through amending the ACL. Rather, this option would provide benefits to business and consumers in circumstances where a new mandatory standard is created, or where an existing mandatory standard is updated, to recognise referenced standards as they are updated from time-to-time.

For existing mandatory standards, time-to-time updates could be introduced after each standard has been assessed by the ACCC and implemented via legislative amendment by the Minister. The regulatory impact would be considered on a case-by-case basis depending on the nature of the products being regulated, as currently occurs when the ACCC reviews existing mandatory standards.

The proposal 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 voluntary standard which is incorporated into a mandatory standard is updated.

Appropriate measures currently exist and would be further developed by the ACCC to ensure that updates to referenced standards are monitored and reviewed as required to safeguard against updates that may be inappropriate for the Australian context. Where the ACCC identifies that a referenced standard is unsuitable, the Commonwealth Minister would use existing authorities to repeal, rescind, revoke, amend or vary the mandatory standard as required to ensure the safety of Australian consumers.

Permitting time-to-time updates would be more efficient and provide greater flexibility over a safe harbour provision. It would increase efficiencies for government and business, and any remaining confusion for businesses about the standard they need to comply with would be eliminated. When fully implemented, these amendments would permit the use of Australian and overseas standards that are recognised at that time, as well as subsequent updates to those standards.

The ACCC would review and update all existing mandatory standards to incorporate time-to-time updates where appropriate, in doing so the ACCC would also provide appropriate transition periods for businesses to move to the latest standards.

(3) Implement amendments to section 108 of the ACL

Amend section 108 of the ACL to extend the requirement to nominate a safety or information standard to both suppliers and manufacturers, and to require these parties to provide documentation to substantiate their compliance with the nominated standard if requested by a regulator. This is a compliance tool by the regulator to assist a supplier or manufacturer in selecting and meeting safety obligations under a mandatory standard where there is more than one standard which may be complied with.

Currently under section 108, a regulator may only require a 'supplier' to nominate which standard they intend to comply with when more than one option is available to them, but this obligation does not extend to 'manufacturers'. Additionally, section 108 does not provide a mechanism for the regulator to require a supplier to provide information such as test reports to substantiate their claim as to which standard they chose to comply with.

This proposal will amend section 108 to include manufacturers, in addition to suppliers, in the requirement to nominate a standard they chose to comply with. The changes would also include

allowing the regulator to require information such as test reports from a supplier or manufacturer, to substantiate which standard they chose to comply with.

Key benefits of preferred policy approach

A number of key benefits can be achieved through the preferred policy approach (following the implementation of the changes to existing mandatory standards), which includes:

- allowing a broader range of overseas standards to be referenced in an Australian mandatory standard, and not limiting that range to only a standard published by Standards Australia or an association on a prescribed list;
- not requiring a mechanism to periodically update a prescribed list (where one was to be made);
- alleviating concerns raised by some stakeholders that making a list is seen as picking winners; and
- removing the potential to be in breach of Australia's international trade obligations by not limiting the standards associations whose standards could be referenced in a mandatory standard.

The Department of Foreign Affairs and Trade were consulted in relation to the Australian Government's international trade obligations to promote global harmonisation through mutual recognition of technical standards. These interactions have assisted in developing the preferred policy options outlined in this Decision RIS.

Estimated regulatory burden


There would be no additional regulatory burden for the Australian Government as the ACCC would continue their current review program and provide recommendations to the Commonwealth Minister under existing regulatory processes.

5. Implementation and Evaluation

Implementation

Option 3(a) will be fully implemented to allow incorporation of time-to-time updates (where suitable) into mandatory standards that have been made or declared by the Commonwealth Minister.⁷⁹ A nuanced approach to option 2(a) will also be implemented, this will ensure that the scope of standards available for the Commonwealth Minister to declare in a mandatory standard is not limited by association or the country from which the standard originates. Rather, it would be the responsibility of the ACCC through internal review processes to ensure any overseas standard is suitable to be referenced in a mandatory standard, is consulted on prior to incorporation, and provides at least an equivalent level of safety to the current Australian level of safety (where it exists).

⁷⁹ See *Competition and Consumer Act 2010* (Cth) (CCA), Schedule 2, Australian Consumer Law, ss 104, 105, 134, 135.



Subsequent minor amendments will also be implemented to require suppliers and manufacturers to nominate which standard they intend to comply with where more than one option is available, and to provide supporting documents if requested to do so by the relevant ACL regulator.

Under the Intergovernmental Agreement for the ACL, the proposed amendments will require the agreement of the states and territories before they can be implemented, and a voting process will need to be undertaken prior to the introduction of any bill to amend the ACL.

The ACCC, in conjunction with state and territory consumer protection agencies, will continue to enforce product safety protections, oversee compliance and support the operational objectives of the Intergovernmental Agreement for the ACL to: ensure consumers are sufficiently well informed to benefit from and stimulate effective competition; ensure goods and services are safe and fit for the purposes for which they were sold; prevent practices that are unfair; meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage; provide accessible and timely redress where consumer detriment has occurred; and to promote proportionate, risk-based approaches to updating and enforcing mandatory standards.

These proposed amendments intend to support the role of regulators in addressing marketplace misconduct, employing the most effective means of addressing consumer harm through cooperative and complementary enforcement action, avoiding unnecessary duplication of effort in the effective administration of the ACL, and ensuring, wherever appropriate, a consistent approach to dispute resolution and enforcement action.

Review

These amendments will improve the mandatory standards framework under the ACL, however, they will not have any immediate effect on individual mandatory standards. Rather the effect of these amendments will only be realised when a new mandatory standard is created or where an existing mandatory standard is reviewed and updated to incorporate relevant overseas standards and time-to-time referencing. As noted earlier, this may take several years to complete in relation to all affected mandatory standards.

It is expected that where an existing mandatory standard is updated to incorporate these amendments, a reasonable transition period would be provided to support business to move to the new requirements. The ACCC will continue to monitor and evaluate existing mandatory standards to ensure they remain fit for purpose as it will maintain administrative responsibility for this framework.

Appendix A – List of stakeholders who provided a public submission

Below is a list of stakeholders who provided a written submission to the Consultation RIS - *Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law*. This list does not include stakeholders who marked their submission as ‘confidential’.

No.	Stakeholder
1	Accord Australasia Limited (Accord)
2	Amazon
3	American Society for Testing and Materials (ASTM International)
4	Australasian Furnishing Research and Development Institute (AFRDI)
5	Australian Automotive Dealer Association (AADA)
6	Australian Centre for Health Services Innovation (AusHSI)
7	Australian Communications and Media Authority (ACMA)
8	Australian Competition and Consumer Commission (ACCC)
9	Australian Industry Group (Ai Group)
10	Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)
11	Australian Retailers Association (ARA)
12	Australian Small Business and Family Enterprise Ombudsman (ASBEFO)
13	Australia Toy Association (ATA)
14	Bicycle Industries Australia (BIA)
15	Britax Childcare
16	Business Council of Australia (BCA)
17	Cancer Council Victoria
18	Cement Concrete & Aggregates Australia (CCAA)
19	CHOICE
20	Communications Alliance
21	Consumer Electronics Suppliers Association (CESA)
22	Consumers’ Federation of Australia (CFA)
23	Decathlon Australia
24	European Federation of Precision Mechanical and Optical Industries (EUROM)
25	Federal Chamber of Automotive Industries (FCAI)
26	Gas Energy Australia (GEA)
27	German Industry Association for Optics, Photonics, Analytical and Medical Technologies (SPECTARIS)
28	Group of Industrialists and Manufacturers of Optics (GIFO)

29	IKEA
30	Infa Group
31	Infant & Nursery Products Alliance of Australia (INPAA)
32	Italian Association of Manufacturers of Optical Articles (ANFAO)
33	John Duke Design
34	Kidsafe Australia
35	Law Council of Australia
36	Luxottica Group
37	Lighting Council Australia
38	McIntosh Consultancy & Research (Dr. Andrew McIntosh - PhD)
39	National Association of Testing Authorities (NATA)
40	National Retail Association (NRA)
41	New South Wales (NSW) Productivity Commissioner
42	Optical Distributors & Manufacturers Association (ODMA)
43	Optometry Australia (Luke Arundel)
44	Product Safety Solutions (Gail Greatorex)
45	Queensland Consumers Association
46	Rudy Project (Greg Rule)
47	SLR Consulting
48	Spotlight Group
49	Standards Australia
50	Stephen Dain
51	The Toy Association (Washington, DC)
52	University of New South Wales School of Optometry & Vision Science (Dr Maitreyee Roy)
53	University of Sydney (Professor Luke Nottage)
54	Watchdog Compliance
55	Waterview Bay Consulting

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

Mandatory standard	Type	Overseas standard referenced in legislative instrument
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); ISO (2015 & 2018); IEC (2019); US Poison Prevention Packaging Standard
Button and coin batteries - products containing button batteries	Safety	IEC (2017 & 2018); ISO (2019); UL (2015)
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	-
Nightwear for children	Safety	-
Portable aerosol fire extinguishers	Safety	-

Mandatory standard	Type	Overseas standard referenced in legislative instrument
Portable non-aerosol fire extinguishers	Safety	-
Portable ramps for vehicles	Safety	-
Portable swimming pools	Safety	-
Prams & strollers	Safety	-
Projectile toys	Safety	EN (2018); 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 (2018); ISO (2018); ASTM (2017)
Toys for children up to and including 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 containing button batteries	Information	ISO (2016); IEC (2017)
Cosmetics ingredients labelling	Information	-
Care labelling for clothing & textiles	Information	-

* Excludes the tobacco health warnings standards