

Australian Toy Association

Submission to: Director
Consumer Safety and Sustainability Unit
Market Conduct Division
The Treasury

By email: productsafety@treasury.gov.au

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Re: Consultation RIS - Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law

Introduction

The Australian Toy Association (ATA) is an industry association representing and servicing suppliers of products for children and family leisure, learning and entertainment. We have approximately 300 members that together represent 90% of the industry and \$3.0b in annual retail sales.

ATA members are suppliers of consumer products intended for use by or with children, so product safety and compliance is a high priority for them. The safety of children is also a high priority for the community and products intended for them are amongst the most highly regulated globally. It is therefore a key function of our association to provide members with information to facilitate the supply of product that is both safe and compliant with any applicable regulations.

We also support Australia's role in the development of international safety standards for products for children, in particular for toys, and the subsequent adoption of these as national standards. This work has the following key benefits:

1. By working internationally, we have access to more expertise and data and so can develop more robust requirements in a more timely manner than would otherwise be possible.
2. With international cooperation and agreement, requirements in different jurisdictions become naturally more aligned and this facilitates global trade and increases production efficiencies.
3. These voluntary standards provide a robust basis for regulation when deemed necessary by Governments

The ATA is therefore an advocate for the use of national or comparable overseas standards as the basis for determining the safety of products and for use as the source of requirements for mandatory standards when those are determined to be required. However, we have long been concerned at the impact both to cost and to safety of having mandatory standards reference outdated national standards for extended periods of time.

We are therefore fully supportive of the aims of this consultation and believe that the changes suggested, albeit with some modification, have the potential to support and enhance the operation of the Australian Consumer Law.

In summary, the ATA believes that the regulatory framework should be adjusted as follows:

- To allow comparable overseas and international standards to be declared alongside equivalent Australian Standards.
For situations where there is no Australian standard and the regulator wishes to reference an overseas standard in a mandatory standard, then it is more appropriate that the make process is followed

- To include a defined, semi-automatic process for incorporating new versions of referenced standards into declared mandatory standards.

This process should allow the regulator a defined period of time to consider the new document and if not rejected the new document would become the declared version. Suppliers would have an eighteen-month transition where either version could be used.

Improvements would be dependent on the great majority of mandatory standards being created by the declare process instead of the make process.

The process would be further supported by ensuring that regulators participate actively in the standards committees for documents referenced in mandatory standards.

Responses to each of the consultation questions are provided below.

The ATA is appreciative of the consultation and the opportunity to participate in it. We would be very happy to respond to any questions as required, perhaps by Zoom or MS Teams.

Yours sincerely

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Consultation Questions

The Problem

Q1. Do you agree or disagree with the identified problems?

The consultation identifies two problems as follows:

- **Barriers to compliance with trusted overseas standards**
- **Inefficient regulatory architecture for updating mandatory standards**

The ATA has reviewed this issue extensively and identified the following eight areas of economic cost / benefit to the economy when mandatory standards reference outdated /current versions of voluntary standards and comparable international or overseas standards:

i. Managing safety and compliance becomes less complex and takes less time when mandatory standards are aligned with current versions of a referenced voluntary standard

The ATA believes that the requirements specified in an actively maintained standard that is managed by a national or international standards committee provide the most robust way to determine a product's safety. Requirements developed with the participation of international expertise (including that of Australia) are likely to be better than those prepared by a single market. Suppliers should therefore always be encouraged to ensure that their products comply with the current version of these documents.

An environment where requirements made mandatory by law may be different to those of the current national standard is confusing for suppliers and adds complexity as they try to ensure conformity with both sets of requirements. They need to be aware of the differences and understand whether additional testing is required to ensure conformity with one or the other. Extra training and support is required for staff, vendors and laboratories.

ii. Laboratory evaluations for requirements in other markets are more likely to be useful to show conformity with our mandatory standards when they are aligned with the current versions of either Australian, international or overseas standards

Products sold in Australia are generally created for other markets first and are likely to have been tested to ensure conformity with the relevant requirements in those jurisdictions. There is a significant saving in compliance costs if that testing can also be used to provide certainty of conformity with Australian requirements. This can occur in one of two ways:

- When the requirements in the referenced Australian standard are closely aligned with those in the overseas document.
This may occur when Australian experts choose to align with international or overseas requirements as they develop a standard or where the standard is actively managed with international collaboration, e.g. through ISO or IEC, refer to example 1 below.

Example 1: Alignment between Australian and overseas standards facilitate the use of the overseas documents to show conformity with a mandatory standard.

CPN No. 1 of 2009 - Lead and certain elements in children's toys references AS/NZS ISO 8124.3 – Migration of certain elements in toys. The CPN specifies conformity with the limits in 8124.3; it does not specify that a test must be done to this standard.

The comparable European Standard, EN 71-3, has different limits to AS/NZS ISO 8124.3 but has the same test methods and is expected to give the same results in testing. Knowledgeable

suppliers are aware that a test done to EN 71-3 and showing results less than the limits allowed in 8124.3 is sufficient to be confident of conformity with CPN No. 9 of 2009.

Similarly, the United States standard, ASTM F963, now includes requirements for migration of certain elements with the same limits as 8124.3. Knowledgeable suppliers are aware that a test to these requirements in ASTM F963 is sufficient to be confident of conformity with CPN No. 1 of 2009.

- When the overseas document is referenced in our legislation directly.
This may be needed if the documents are not perfectly aligned but it is known that any one of them would result in a safe product, refer to example 2 below.

Example 2: Additional benefit by directly referencing an overseas document that is not perfectly aligned with the Australian one, but is known to provide an equivalent level of safety

CPN No. 14 of 2003 is the mandatory standard for Toys for Children up to and including 36 months of age and references AS/NZS ISO 8124.1 – Mechanical and physical properties of toys.

The comparable European Standard, EN 71-1, is well recognised as ensuring safe products in a large proportion of the world. However minor technical differences in drop heights and impact surfaces can cause products that pass EN 71-1 to fail 8124.1 and vice versa.

The comparable United States Standard, ASTM F963 is also well recognised and has almost identical requirements to AS/NZS ISO 8124.1 but conformity with this document is not currently seen as sufficient to give confidence of conformity with the mandatory standard

Conversely, mandatory standards that reference outdated documents or where the referenced Australian standard is not aligned internationally will likely require additional testing for suppliers to be confident of conformity with them.

iii. Injuries to consumers may be reduced by the adoption of the improved requirements contained in the current versions of national or overseas standards

Innovation is an important aspect in product development, but it does occasionally expose new hazards. The latest example of this was button and coin batteries and before that we had issues with strong magnets.

Actively managed national and international standards are updated to protect consumers from these risks as they become apparent. Standards developed with international collaboration have the advantage of a much larger source of injury data and are often updated before an issue occurs in Australia. The current versions of these documents provide a higher level of protection for Australian consumers than a mandatory standard based on outdated versions and are likely to prevent injuries from occurring.

Further to this, a mandatory standard that has outdated and less onerous requirements can act as an encouragement for less responsible suppliers to move unsafe product that can't legally be sold elsewhere onto the Australian market.

iv. Direct Product costs will be reduced due to supply chain efficiencies, e.g., suppliers can take stock from larger global production runs

Australia is a relatively small market in the global context with approximately 26 million people vs 330 million in the United States. Products made specifically for Australia are produced in smaller, comparatively more expensive production runs. Conversely, when Australia's requirements for products are aligned with international norms, suppliers

can reduce direct costs by accessing larger global production runs or even taking excess inventory from other markets.

v. Inventory holding and other indirect costs will be reduced by enabling smaller, more frequent product orders

Indirect business costs are also reduced when Australia's requirements are aligned with international norms. Inventory holding costs are one example. These are reduced because suppliers can access product from more frequent global production runs and so hold less inventory. This requires less capital to be tied up in inventory, smaller warehouses, less management time, less excess inventory write-downs, etc.

vi. Reduction in withdrawals or recalls caused by mistakes

In the more complex environment caused by mandatory standards that reference outdated documents, suppliers are more likely to make errors, and these may lead to expensive enforcement and withdrawal actions. The chances of this happening are greatly reduced by ensuring that mandatory standards are aligned with the current versions of referenced voluntary standards.

vii. An increase in product options may facilitate higher local revenues for suppliers

As mentioned, products are normally developed for other markets before Australia. When the mandatory requirements in Australia are different to the requirements in those markets, it acts as a barrier to trade and it is often not be economical to make the changes required to sell products here and, in that case, consumers miss out on product choices and suppliers miss out on the revenue from selling those products.

viii. Easier access to international markets may generate revenues for Australian businesses

Having Australia's requirements aligned with international jurisdictions broadens the market for Australian developed product. Local entrepreneurs will have more confidence to create product knowing that it can more easily be sold internationally if successful here.

Most of these costs / benefits are the difference between having mandatory standards that reflect outdated versions of a referenced voluntary standard versus referencing the current version. In order to illustrate the size of the problem, we have prepared Table 1 showing information on the mandatory standards that affect ATA members and that reference outdated documents. Table 2 has information on the mandatory standards that reference current documents. The columns shaded in purple illustrate the period in years that the different mandatory standards have referenced outdated voluntary documents. Most mandatory standards remain static for more than 10 years and some for much longer.

Table 1 – Mandatory standards affecting ATA members and currently referencing outdated documents

Mandatory Standard	Product	Date Created	Years Since Update	Referenced Standard	Superseding Standard	Date of Superseding Standard	Period out of date (Yrs)	Consultation Date	Review Period Since Consultation (Mths)	Method
<u>Consumer Goods (Baby Bath Aids) Safety Standard 2017</u>	Baby Bath Aids	19/10/2017	4	ASTM F1967-13	ASTM F1967-19	1/05/2019	3			Made
<u>Consumer Protection Notice No. 1 Of 2013</u>	Baby Walkers	10/02/2013	9	ASTM F977-12	ASTM F977-18	29/08/2018	3			Made

Mandatory Standard	Product	Date Created	Years Since Update	Referenced Standard	Superseding Standard	Date of Superseding Standard	Period out of date (Yrs)	Consultation Date	Review Period Since Consultation (Mths)	Method
Safety Standard: Baby Walkers										
Consumer Protection Notice No. 4 Of 2008 Consumer Product Safety Standard for Children's Portable Folding Cots	Folding Cots	19/02/2008	14	AS/NZS 2195:1999	AS/NZS 2195:2010	2/02/2010	12			Declare
Consumer Protection Notice No. 6 of 2005 Consumer product safety standard: children's household Cots	Household Cots	30/11/2005	16	AS/NZS 2172:1995 or 2003	AS/NZS 2172:2013	18/04/2013	9			Declare
Consumer Protection Notice No. 8 of 2007 Consumer Product Safety Standard for Prams and Strollers	Prams and strollers	27/06/2007	15	AS/NZS 2088:2000	AS/NZS 2088:2009	1/01/2009	13	8/02/2017	59	Declare
Consumer Protection Notice No. 1, 2009 Consumer product safety standard for lead and certain elements in children's toys	Toys	22/01/2009	13	AS/NZS ISO 8124.3:2003	AS/NZS ISO 8124.3:2012	25/01/2012	10	1/02/2017	60	Declare
Consumer Protection Notice No. 14 of 2003 Consumer Product Safety Standard: Toys for children up to and including 36 months of age as amended by Consumer Protection No. 1 of 2005.	Toys for Children Aged less than 36 Mths	1/12/2003	18	AS/NZS ISO 8124.1:2002	AS/NZS ISO 8124.1:2010	16/07/2010	12	1/02/2017	60	Declare

Table 2 – Mandatory standards affecting ATA members and referencing current documents

Mandatory Standard	Product	Date Created	Prior Standard	Period Between Updates (Yrs)	Referenced Standard	Consultation Date	Consultation Period (Mths)	Method
Consumer Goods (Aquatic Toys) Safety Standard 2020	Aquatic toys	3/06/2020	8/04/2009	11	AS/NZS ISO 8124.1:2019	1/02/2017	40	Made
Consumer Goods (Babies' Dummies and Dummy Chains) Safety Standard 2017	Dummies	8/05/2017	16/10/2006	11	AS 2432:2015	28/09/2016	7	Made
	Dummy Chains	8/05/2017			EN 12586:2007+ A1:2011	28/09/2016	7	Made
Consumer Goods (Children's Nightwear and Limited Daywear and Paper Patterns for Children's Nightwear) Safety Standard 2017	Children's nightwear and paper patterns for making children's nightwear	19/04/2017	15/02/2007	10	AS/NZS 1249:2014	28/09/2016	7	Declare
Consumer Goods (Portable Swimming	Portable Swimming Pools	4/01/2013	None		N/A	30/05/2011	19	Made

Mandatory Standard	Product	Date Created	Prior Standard	Period Between Updates (Yrs)	Referenced Standard	Consultation Date	Consultation Period (Mths)	Method
<u>Pools) Safety Standard 2013</u>								
<u>Consumer Goods (Projectile Toys) Safety Standard 2020</u>	Projectile toys	18/08/2021	30/06/2010	11	AS/NZS ISO 8124.1:2019	1/02/2017	55	Made
<u>Consumer Goods (Swimming and Flotation Aids) Safety Standard 2017</u>	Swimming and Flotation Aids	14/12/2017	8/04/2009	9	AS/NZS 1900:2014	12/10/2016	14	Made
<u>Consumer Goods (Toys Containing Magnets) Safety Standard 2020</u>	Toys with magnets	26/08/2020	10/02/2010	11	AS/NZS ISO 8124.1:2019	1/02/2017	43	Made

The primary problem, in our opinion, is therefore that mandatory standards are not updated to keep pace with the documents that they reference. It seems likely that there are issues with the regulatory architecture that contributes to these long periods, but the ATA is not aware of the extent to which different factors contribute.

A secondary problem is that when there are small differences in comparable overseas standards, or when the requirements are complex, and these standards are not directly referenced in the mandatory standard (in addition to the Australian document) then testing to these documents cannot be used to give confidence of conformity with the mandatory standard

Q2. Are there any other problems that you think should be considered?

An additional problem that should be considered is the time taken to initially create mandatory standards – see example 3.

Example 3: Mandatory standards that take an unacceptably long time to introduce
Mandatory standards for products using button and coin batteries were introduced in December 2020. However, coin batteries, in particular, had been identified as a safety concern as early as 2011 and standard requirements for toys were introduced in 2017 via IEC 62115.

An extended development process for mandatory standards adds to complexity for responsible suppliers and allows less responsible suppliers to continue selling unsafe product even though relevant requirements exist in standards.

It is expected that the options discussed in the consultation RIS will also address this issue, but it is important that this be explicitly stated as an objective of the changes.

Q3. Do you have any specific information, analysis or data that will help measure the impact of the problems identified?

The ATA agrees with the value of the benefits stated in example 4 of the consultation document for the three regulations for toys that have been updated to date. We expect further benefits of \$3.1 million annually when the mandatory standard for toys for children up to and including 36 months is updated and another \$3.9 million when the mandatory standard for lead and other elements in toys is updated (based on data from 2018)

The detail of the impact from the different areas identified in question 1 is given below in Table 3 for the five specific mandatory standards for toys.

Table 3 – Costs / benefits associated with the alignment of mandatory standards with referenced documents for toys.

Description of Cost / Benefit	Annual Value					
	Projectile Toys	Flotation Toys	Toys Containing Magnets	Toys for children up to and including 36 Mth	Lead and Other Elements in Toys	Total
Reduction in hours spent managing compliance due to reduced complexity	\$520,000	\$104,000	\$132,000	\$1,480,000	\$3,380,000	\$5,616,000
Reduced product evaluation costs due to enabling the use of existing laboratory test reports to show conformity with mandatory standards	\$123,500	\$23,400	\$0	\$407,000	\$0	\$553,900
Reduced injuries to users due to the adoption of improved requirements	\$0	\$0	\$250,000	\$100,000	\$500,000	\$850,000
Reduced product costs due to supply chain efficiencies, e.g., suppliers can take stock from larger global production runs	\$1,762,500	\$337,500	\$0	\$0	\$0	\$2,100,000
Reduced inventory holding costs from ordering more frequently and in smaller quantities	\$532,500	\$97,500	\$0	\$0	\$0	\$630,000
Reduced withdrawal / recall costs due to reduced complexity	\$100,000	\$0	\$0	\$0	\$0	\$100,000
Increased local revenues due to greater product selection enabled by the alignment of requirements with those of other jurisdictions	\$3,550,000	\$325,000	\$0	\$970,000	\$0	\$4,845,000
Increased international revenues for Australian businesses due to easier access to international markets	\$160,000	\$150,000	\$0	\$160,000	\$0	\$470,000
Total Cost / Benefit	\$6,748,500	\$1,037,400	\$382,000	\$3,117,000	\$3,880,000	\$15,164,900

Many assumptions and estimates have been made in developing this information and it is based on data originally collected in 2018. Nevertheless it is put forward as our best estimate and serves to illustrate the benefits available just within our industry by more effectively managing mandatory standards.

Policy Objectives

Q4. Do you agree that changes to the regulatory framework are required to address the problem?

The ATA agrees that changes to the regulatory framework are required to support the policy objectives.

We understand that the 'declare' process for creating mandatory standards is more streamlined and effective than the 'make' process and that this is appropriate for the adoption of voluntary standards that have been through a robust consensus development process required by Standards Australia and comparable organisations. We further understand that allowing overseas standards to be 'declared' alongside Australian standards will allow this 'declare' process to be used in most cases. Table 2 shows that the 'declare' process has generally not been used in recent updates of mandatory standards.

A streamlined process to update 'declared' mandatory standards as their referenced documents are updated is also appropriate and will not compromise product integrity.

Q5. Do you agree with the policy objectives as outlined?

The ATA recommends that the policy objectives be consolidated as follows:

- The first two stated objectives of:
Make it easier for suppliers and importers to comply with product safety requirements set under the ACL

and

Reduce compliance costs for business and barriers to trade by removing duplicative testing and compliance measures where a product has been manufactured overseas to the requirements of an equivalent trusted overseas standard

Could be restated as

Make it easier for regulators to develop and update product safety requirements under the ACL so that unnecessary regulatory complexities introduced by referencing outdated standards are eliminated and so that regulations remain aligned with the current minimum requirements in referenced Australian and other standards

It is important that the issue be understood as one of efficiency and safety and not just about making things easier for suppliers.

- The last objective of:
Provide benefits for Australian consumers and for the Australian market by increasing product availability and consumer choice, and decreasing the cost of consumer goods, without compromising consumer safety.

Seems fine as stated.

Q6. Are there any other policy objectives you think the Commonwealth, state and territory governments should be considering in addressing the problem?

The ATA suggests another objective of:

Enabling regulators to respond to breaches of mandatory standards in proportion to the risk presented by the breach.

This would provide an alternative to the suggested safe harbour approach when suppliers comply with the latest version of a referenced document and is more robust in that they would need to consider the risks that the mandatory standard is intended to manage and confirm that the new version continues to manage that risk appropriately.

Policy Options

Option 1: Status quo

Q7. Does the status quo achieve the policy objectives?

Q8. Is the current regulatory framework for developing mandatory standards under the ACL sufficient to address the problem?

The status quo does not achieve the policy objectives and it is important that changes be made to enable easier and faster updating of mandatory standards.

Q9. Does the current regulatory framework impose unnecessary costs or compliance burdens?

The current situation of mandatory standards referencing outdated voluntary standards imposes unnecessary costs and compliance burdens. The ATA doesn't have the information to know how much of this is related to the regulatory framework and how much is related to other factors.

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

Q10. Two alternatives have been presented to make it easier to comply with overseas standards: prescribing a list of trusted standards making associations whose standards may be declared; or taking a principles-based approach to declaring overseas standards.

a. Which alternative is preferable?

The ATA believes that a principles-based approach for declaring overseas standards is most appropriate for developing and updating mandatory standards for Australia. We further believe 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. In this situation, the Australian standard would be the primary declared standard with the comparable overseas standards declared as options. Example 2 above provides an example of a European and a United States standard that should meet the principles for being 'declared' as overseas standards along with the comparable Australian standard.

We are not comfortable with the possibility that any overseas standard, even from a trusted standards making association, could be declared as a mandatory standard in Australia without detailed Australian input. In the situation that there is no suitable Australian standard to cover a particular risk and an overseas standard is being considered, it would be more appropriate that the mandatory standard be developed by the 'make' process as this provides for that more detailed review.

b. Are there other alternatives to make it easier to comply that haven't been considered?

With reference to our responses to questions 4 and 5 above, the ATA prefers to consider this option as making it easier for regulators to develop mandatory standards while at the same time reducing complexity for suppliers.

Currently the great majority of mandatory standards are developed under the S104 – 'Make' process. In particular, if the regulators want to recognise a comparable overseas standard, then they have no option but to 'Make' the standard. Implementing the possibility of 'Declaring' overseas standards will allow regulators to use the simpler and more straightforward 'Declare' process for these situations

Q11. Are the standards making associations on the proposed list acceptable?

The ATA is not familiar with all of the organisations listed. We can confirm that the following associations have developed documents that are comparable to Australian documents and should be allowed to be 'declared' in Australian mandatory standards:

- ASTM International
- CEN — the European Committee for Standardization
- IEC — International Electrotechnical Commission
- ISO — International Organization for Standardization

We expect that other national and international associations in the list have developed documents that would be suitable to be referenced in Australian mandatory standards that are 'made'.

a. If not, please describe why.

We are not familiar with the work of UL and ASME. They don't appear to be standards associations and may not use the same consensus process and ensure broad community input in the same way that standards association do.

The CPSC is a regulatory body for the United States. We are concerned that they may not use the same consensus process and ensure broad community input in the same way that standards association do.

b. Should any other standards making associations be included?

We expect that there are other suitable national and international standards associations whose documents should be able to be considered. The ATA suggests that a principles-based approach be applied to which standards making bodies should be allowed. Principles should include:

- That the body publish national, regional or international documents
- That the documents are developed by a consensus process
- That there are processes for ensuring broad community involvement

c. Once a list of trusted overseas standards organisations is set, which approach ('opt-in' or 'opt-out') would achieve the best outcomes for consumers and businesses and why?

The ATA is not comfortable with the approach in alternative 1. An 'opt-in' approach is therefore most appropriate and should be applied under the principles discussed in our response to question 10 a).

Q12. Do you have any comments on the high-level criteria for a principles-based approach to declaring overseas standards, or any additional criteria?

a. Could these same criteria be adapted to determining 'trusted' standards making associations?

As mentioned in our answer to question 10 a), 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. The rationale for this is to ensure that mandatory requirements applied in Australia have been closely reviewed by the Australian community, i.e. either by 'declaring' Australian standards and overseas or international standards that are known to be comparable or by 'making' the mandatory standard and going through the associated consultation process.

Q13. Are there related provisions in the ACL that should be updated at the same time, for example section 108 (refer to the Introduction and Appendix A)?

The ATA is not aware of related provisions in the ACL that would need to be updated. We believe that S108 is appropriate to ensure that goods comply to one or other of any options provided in their entirety. There would be some risk in allowing compliance with a mixture of the options provided.

Q14. If adopted, what would the likely impacts be on affected businesses (large and small), consumers, consumer law regulators, or accredited conformance and testing authorities?

The realisation of any benefit will be dependent on the regulator taking prompt action to update mandatory standards and also using the 'declare' process in creating the new document.

We have provided annualised benefits / costs for each toy related mandatory standard in question 3 and these can be used to calculate a total cost for the period of time that a mandatory standard is out of date.

We understand that the current process for 'making' a standard creates a significant barrier for the regulator. More frequent staff movements add complexity as a review is often not able to be completed by the same person that started it and the complications with knowledge transfer adds further delays. We expect that enabling the 'declare' process to be used will greatly reduce the number of years that a mandatory standard is allowed to be out of date and save many millions of dollars for the Australian economy.

It should be noted that the benefits include a reduction in evaluation costs for certain mandatory standards and that this represents a reduction in payments to international laboratories. This will have some impact on those businesses, but this is small in proportion to the savings (3.7%).

Q15. Have any impacted stakeholders been missed?

What would the likely impacts be on these stakeholders?

We are not aware of any stakeholders that have been missed.

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

Q16. Two alternatives have been presented to make it easier to comply with the latest standards: permitting standards to apply as they exist from time-to-time; or including a safe harbour provision.

a. In your opinion, which alternative is preferable?

The ATA believes that the second option of providing a safe harbour for compliance with the latest version of a referenced standard seems to be the least problematic of the 2 options provided.

For the first option of permitting voluntary and overseas standards that are referenced in, or declared as, mandatory standards to apply as they exist from time-to-time, we expect that regulators would be concerned that this effectively allows standards committees to act as regulators. We are also concerned that the added responsibility may detrimentally affect or restrict the work of the standards committee. There may be situations where this option is appropriate and it should be allowed for those, but should not be the default.

b. Are there other alternatives to make it easier to comply with the latest standards that haven't been considered?

Both the United States and Europe provide useful examples of rapidly updating mandatory standards (or their equivalent in those markets) to reflect an updated version of a referenced voluntary standard.

In the United States, ASTM F963 has been effectively declared as a mandatory standard for children's toys. When an update is published, the Consumer Product Safety Commission (CPSC) has 180 days to review and make a decision on whether to accept the change or not. The new version is automatically 'declared' if the CPSC do not reject it. There is then a transition period for suppliers to show conformity with the new requirement. This process provides certainty for suppliers and also maintains the regulators authority. The CPSC is represented and participates actively on the standards committee, and this helps to provide them the comfort that the standard has been updated in a robust manner.

In Europe, specific versions of EN 71 standards are harmonised to the Toy Safety Directive and so are effectively 'declared'. The European Commission funds the development, participates indirectly and provides priorities for updating the documents, e.g. due to hazard data. Published documents are reviewed and formally 'harmonised' to the Directive. A transition period is provided for suppliers to comply with the newly harmonised version.

The ATA recommends a similar approach be taken for Australia within the context of the Australian Consumer Law, i.e. once a new version of a referenced standard is published, the regulator could have a defined period of time to reject it and ask for changes. If not rejected, it would be automatically declared, and a transition period would commence for the new version. Regulators would participate in and contribute to the development of the standards.

An alternative to the 'safe harbour' approach is to formally allow regulators to treat breaches of mandatory standards in proportional to the risk presented. The regulator would assess the supplier's compliance documentation and if satisfied that the product presents no higher risk than one in conformity with the mandatory standard, then the breach is treated as minor and there should be no penalty or loss of reputation. It should be the supplier's responsibility to demonstrate the equivalent level of safety.

Q17. If suppliers were required to comply with the latest standards as they exist from time-to-time, what would be a reasonable transition period?

Eighteen months is a reasonable transition period for suppliers to implement changes

Why?

This allows for any design changes required and for goods to move through the supply chain as well as for existing goods in the supply chain to flow through

How should updates to standards and transition periods be communicated to suppliers?

It is important that there is clarity for suppliers on which version of a voluntary standard is referenced in the mandatory standard and the transition dates that use of old versions is no longer allowed. It is expected that this information may be 'gazetted' or formally published in some equivalent way and a summary held on the ACCC Product Safety web pages. This is similar to the process in Europe for identifying the standards that are harmonised to their 'New Approach' Directives.

Q18. Do you support the proposal for the update of existing standards (voluntary Australian or overseas) that have previously been reviewed and incorporated into mandatory standards or declared as a mandatory standard without requiring further consultation and regulatory impact analysis?

Yes, although we would expect the regulators to do their own review within a defined time frame to ensure that the update continued to meet the objectives for the particular mandatory standard.

Q19. Would permitting standards to apply as they exist from time-to-time as described pose any additional safety risks to consumers?

The ATA believes that goods complying with voluntary standards will be safe for consumers. However, we are concerned that this option will confuse the role of standards committees and regulators and may have some unintended consequences. We believe that it is preferable for the regulator to have a defined time to identify any problems with a new version and that the version is automatically declared if no problem is identified.

Q20. Do you think the safeguards for disallowing updates if they are reviewed and demonstrated to be unsafe or unsuitable are sufficient to achieve the goal of consumer protection?

The ATA believes that the right of the regulators to determine mandatory standards should be protected. This is primarily about ensuring that each party in the regulatory framework understands their role with the overall aim of consumer protection.

What factors needs to be considered in triggering a review of an update?

The regulator should have the option to review any update to a voluntary document before it becomes a part of the mandatory standard. This may happen in the background as they participate in the development of the updated document.

Are alternate or additional safeguards needed?

The ATA's belief and experience is that the managed consensus process adopted by standards organisations result in robust and appropriate product safety requirements. Active regulator

participation in the development of those documents should ensure that they are suitable for adoption as mandatory standards and that they cover the known hazards in the product category.

Once published, regulators should have the option to accept or reject the document.

No further safeguards are needed.

Other alternatives for more efficiently capturing updates to standards

Q21. How can the current process for reviewing and updating mandatory standards to capture updates to referenced voluntary Australian and overseas standards be improved?

While the ATA believes that the current process for making, reviewing and updating mandatory standards could be improved, it would still be limited by the restriction around 'declaring' overseas documents. This means the current norm of 'making' mandatory standards would continue unnecessarily. The making process is long enough that it is likely to conflict with other priorities and staff movements and thus further delay the process.

Q22. Are the benefits from streamlining the current process for updating standards likely to be the same or greater than the proposed amendments to the ACL?

The ATA believes that amendments are needed to the ACL to achieve the desired benefits.

Q23. Are there any other ways that achieve the policy objective of more efficiently capturing updates to voluntary Australian and overseas standards without making amendments to the ACL?

The ATA is not aware of other options at this time.

Possible combination of Options 2 and 3

Q24. Do you agree that Options 2 and 3 should be combined and implemented?

If so, which elements should be combined? And if not, why not?

The ATA believes that elements of both options are required in order to facilitate the efficient development, review and update of mandatory standards.

As stated in our responses to the questions, it is very important that overseas standards (subject to the specified conditions) are able to be 'declared' as mandatory standards in conjunction with an Australian standard. It is further important that there is a process for automatically capturing updates to these documents (while incorporating the regulator's right to reject them).

Q25. Are there any options not presented in this consultation RIS that could be combined with Options 2 and/or 3 to address the identified problem?

It will be important to the smooth running of the process for regulators to actively participate in the development of related standards. This would include advising on priorities for development, e.g. based on injury data, and commenting on drafts to ensure that requirements are clearly and unambiguously stated so that they are suitable for subsequent referencing in mandatory standards.

Preliminary impact analysis

Q26. For each of the options do you agree with the preliminary assessment and with the benefits and costs outlined?

The ATA has provided its estimated benefits and costs for the mandatory standards for toys in our response to question 3. These could be extended to other mandatory standards to get a total cost / benefit.

Q27. Are there other costs and benefits that have not been considered that should be?

Please see the detail in the response to question 3

Q28. Do you have any specific information, analysis or data in support of the benefits or costs for each option?

Examples of costs could include testing costs, labelling costs and other compliance related administrative costs.

Examples of benefits could include the number and value of additional products that could be supplied to the Australian market under Options 2 and 3, and any time and cost savings.

We have provided our cost benefit analysis for the mandatory standards related to toys in question 3. This could be extended to other mandatory standards.