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FCAI Response to  
*Supporting business through  
improvements to mandatory  
standards regulation under the  
Australian Consumer Law*  
Regulatory Impact Statement

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January 2022

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## 1.0 GENERAL RESPONSE

- The FCAI welcomes the Commonwealth's decision to examine the case for supporting business through improvements to mandatory standards regulation under the Australian Consumer Law. FCAI and its members are committed to continuing to make a strong contribution to national efforts to reduce the impact of regulation on Australia businesses.
- Australia is a small market comprising only 1.2% of global vehicle sales. To offer vehicles, parts and accessories which meet with world-class safety standards, Australia must continue its policy of harmonizing regulations with leading overseas markets, wherever practical and feasible.
- FCAI and its member brands directly support the development of Australian Standards which are relevant to the automotive industry through the participation of technical experts in Australian Standards committees. FCAI notes that Standards Australia have, in recent years, introduced a process whereby they can adopt a suitable international standards as Australian Standards either directly, without modification, or indirectly with appropriate modification for the Australian market. This provides the potential for more timely publication of Australian Standards than has previously been the case and may result in the issue this RIS seeks to address being less significant.
- On a global basis, the parent companies of FCAI brands contribute similarly to international standards developed in their domestic and overseas markets which may form the basis of standards adopted as Australian Standards, or contemplated for adoption using alternatives considered in this RIS.
- FCAI believes that the basis for good regulation is that it should be evidence based, fit for purpose and appropriate for the target market. Similarly, standards used within regulation should be technology neutral and performance based rather than prescriptive. Regulation and any referenced standards should be justified through due process including the conduct of a sound Regulatory Impact Analysis including a review of cost versus benefit.
- Another key factor in any regulation where an increase in stringency is contemplated, is the provision for appropriate lead time for suppliers to design, develop, certify and prepare for production introduction of changes to the product. The product cycles for automotive products are generally much longer than for most other general consumer products.
- The responses to specific questions included in this submission should be taken as FCAI endorsement of a reduction in either the process of justifying the inclusion of alternative standard/s into a Consumer Product Safety Standard or the provision of appropriate lead time for their introduction.

## 2.0 RESPONSE TO SPECIFIC QUESTIONS IN THE REGULATORY IMPACT STATEMENT

Please note: FCAI will not provide comment to all questions posed in this Regulatory Impact Statement.

### Consultation questions

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

Have you decided against supplying particular consumer goods in Australia so that you could avoid duplicative compliance costs under the current mandatory standards framework? If so, please provide details around the factors that influenced this decision and the consumer goods affected.

- A1 FCAI members represent global manufacturers of automotive products. FCAI supports the Commonwealth's policy of harmonization of automotive regulation with United Nations regulations developed through the international forum for vehicle regulation. Concurrent with this policy, FCAI broadly agrees with the problems relating to consumer goods safety standards and information standards identified in this Regulation Impact Statement and supports the concept of supplying consumer goods to the Australian market where these goods have been developed to comparable overseas standards.

There are a number of products relating specifically to the automotive sector that are listed in Appendix B including;

- Button and Coin Batteries
- Child Restraints for use in motor vehicles
- Elastic Luggage Straps
- Portable aerosol fire extinguishers
- Portable ramps for vehicles.
- Quad Bikes
- Trolley Jacks
- Vehicle Jacks
- Vehicle Support stands

Any unique requirement imposes additional burden on manufacturers in terms of design, development, testing and adds to the piece cost of the product being supplied.

A2/A3 Costs imposed are particularly difficult to quantify and FCAI will leave it to individual brands to provide this information if it is available and not commercially sensitive.

FCAI membership includes global motorcycle manufacturer brands. Motorcycle helmet standards are not regulated under the mandatory safety standards under the ACL, and are not included in the list provided as Appendix B. However, motorcycle helmet use is mandated within state and territory Road Rules based on template law published by the National Transport Commission. State and Territory laws allows UN Regulation compliant motorcycle helmets to be used. Unfortunately, these laws reference a superseded version of UN Regulation 22<sup>1</sup>. FCAI suggests that it would be more appropriate for motorcycle helmets to be regulated under the ACL through a mandatory safety standard which references the latest version of UN Regulation 22 as amended from time to time. This would allow the transitional arrangements of the UN regulation to flow through seamlessly to the regulated use of these helmets in Australia.

#### Consultation questions

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

A4 FCAI agrees that changes are required to address the problem.

#### Consultation questions

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

A7 No

A8 No

A9 Yes, as discussed at A1~A3

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<sup>1</sup> UN Regulation 22

<https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/r022r4e.pdf#:~:text=Regulation%20No.%2022%20UNIFORM%20PROVISIONS%20CONCERNING%20THE%20APPROVAL,DRIVERS%20AND%20PASSENGERS%20OF%20MOTOR%20CYCLES%20AND%20MOPEDS>

### Consultation questions

- Q10. Two alternatives have been presented to make it easier to comply with overseas standards: prescribing a list of trusted standards making associations whose standards may be declared; or taking a principles-based approach to declaring overseas standards.
- Which alternative is preferable?
  - Are there other alternatives to make it easier to comply that haven't been considered?
- Q11. Are the standards making associations on the proposed list acceptable?
- If not, please describe why.
  - Should any other standards making associations be included?
  - Once a list of trusted overseas standards organisations is set, which approach ('opt-in' or 'opt-out') would achieve the best outcomes for consumers and businesses and why?
- Q12. Do you have any comments on the high-level criteria for a principles-based approach to declaring overseas standards, or any additional criteria?
- Could these same criteria be adapted to determining 'trusted' standards making associations?
- Q13. Are there related provisions in the ACL that should be updated at the same time, for example section 108 (refer to the Introduction and Appendix A)?
- Q14. If adopted, what would the likely impacts be on affected businesses (large and small), consumers, consumer law regulators, or accredited conformance and testing authorities?
- Q15. Have any impacted stakeholders been missed? What would the likely impacts be on these stakeholders?

- A10a FCAI believes that Alternative 2, using a principles-based approach represents an acceptable compromise retaining a level of scrutiny to ensure consumer safety is not reduced.
- A11a The list of standards making associations is comprehensive, whilst not complete. If Alternative 1 is adopted in spite of FCAI's preference for Alternative 2, FCAI has no objection to the inclusion of the organisations currently on the list. It is worth noting that the UNECE – United Nations Economic Commission for Europe is incorrectly noted as 'European Union' rather than 'Global' under the 1958 agreement (Australia is a signatory to this treaty).
- A11c If Alternative 1 is adopted, FCAI believes that 'opt-in' would provide more of the necessary scrutiny to ensure consumer safety than 'opt-out' and is therefore preferable.

### Consultation questions

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

- A16. First supply of Motor Vehicles to the Australian market is regulated by the Road Vehicle Standards Act 2018 <sup>2</sup>(RVSA) which provides for mandatory regulatory standards, the Australian Design Rules (ADR). The ADRs themselves rely heavily on international United Nations regulations and incorporate the text of the relevant UN R into the text of the ADR. It then generally allows suppliers to utilize either the referenced UN R or any later version of that UN R as the basis for complying with the ADR.

FCAI believes that a similar concept applied to declared standards, effectively a variation of Option 3 Alternative 1, is the most efficient and appropriate method of achieving the objective of this Option. Permitting standards to apply 'as in force from time-to-time' would allow suppliers to comply with more recent versions, but not necessarily the most recent version of trusted international standards.

FCAI believes that this suggestion also provides a greater degree of flexibility to suppliers over the Safe Harbour provisions suggested as the Alternative 2, without increasing the risk.

- A17. It is not possible to generalize on what represents reasonable transitional arrangements. This will differ depending on the product being regulated. In the automotive sector, there is generally a period of at least two years up to five years where products can continue to be supplied whilst being compliant with superseded standards. The ACL generally refers to date of supply of a specific product, rather than date of demonstration (certification) of compliance of a type/model/variant which is used under the RVSA. This would need to be taken into account when any transitional arrangements are considered.
- A19. FCAI is not aware of any incremental standard development which has resulted in a reduction of in the level of safety afforded by compliance with the updated standard. Standards are generally developed collaboratively by stakeholders who have significant experience and expertise in the specific product being regulated. FCAI believes that permitting standards to apply as they exist from time to time represents an acceptable (very low) safety risk to consumers.

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<sup>2</sup> Road Vehicle Standards Act 2018 - <https://www.legislation.gov.au/Details/C2018A00163>

### Consultation questions

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

- A23. FCAI is aware that Standards Australia has already, and continues to, implemented efficiencies which should improve the timeliness and effectiveness of updates to Australian Standards referenced within the ACL. This includes using technologies to improve collaboration and direct adoption of ISO and IEC standards into Australian Standards where proven appropriate.

### Consultation questions

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

- A24. FCAI agrees that a combination of Options 2 (Alternative 2) and 3 (Alternative 1) may prove to be the most effective way to achieve the policy objectives of the RIS.

### Consultation questions

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

FCAI has no response to this group of questions.

[END OF SUBMISSION]



## APPENDIX A - ACTIONS REQUIRED TO INTRODUCE A NEW MODEL TO MARKET

Time to Market	Actions
5 to 7 years	<ul style="list-style-type: none"> <li>• Design of vehicle structure, architecture.</li> <li>• Work with Tier 1 suppliers to specify, design and develop sub-systems.</li> </ul>
4+ years	<ul style="list-style-type: none"> <li>• Design and development of the major sub-systems that are not part of the vehicle structure, e.g. brake systems.</li> <li>• Build of prototypes and installation of new systems in model prototype.</li> <li>• Initial calibration and laboratory testing.</li> </ul>
3 years	<ul style="list-style-type: none"> <li>• Undertake on-road vehicle calibration.</li> <li>• Undertake initial seasonal variation testing (i.e. summer/winter).</li> </ul>
2 years	<ul style="list-style-type: none"> <li>• Finalise on-road vehicle calibration.</li> <li>• Additional seasonal variation testing.</li> <li>• Supply preparation, contracts, advanced orders.</li> <li>• Commence production preparation including tooling, parts approval including PPAP.</li> </ul>
1 year	<ul style="list-style-type: none"> <li>• Confirm production preparation with system and parts suppliers.</li> <li>• Build certification pre-production vehicles.</li> <li>• Undertake certification testing.</li> <li>• Undertake certification processes and obtain certification approval from authorities.</li> <li>• Quality process confirmation.</li> <li>• Production build.</li> <li>• Logistics to bring to market.</li> <li>• Sales launch.</li> </ul>

## APPENDIX B - THE AUSTRALIAN AUTOMOTIVE INDUSTRY

