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

ARA SUBMISSION TO REVIEW OF PRODUCT SAFETY STANDARDS UNDER AUSTRALIAN CONSUMER LAW

The Australian Retailers Association (ARA) welcomes the opportunity to make a submission to the Federal government's review of mandatory product safety standards regulation under Australian Consumer Law (ACL).

The ARA is Australia's oldest, largest and most diverse retail trade association, representing two-thirds of Australia's $360 billion retail sector. As Australia's leading peak body for retail, the ARA represents a diverse mix of independent, national and international retailers, with more than 100,000 retail shop fronts nationally.

Our members employ the vast majority of the sector's 1.3 million workers and operate across all retail categories - from food to fashion, hardware to homewares, and cosmetics to computers. And while we are proud to represent most of Australia's largest national retailers, more than 95% of our members are small to medium size businesses.

Product safety is an area of high concern for retailers and consumers alike. The ARA's position is that the sector must continue to deliver the highest standards of product safety in the most efficient manner.

The ARA notes the government is considering two options:

- Option One: Amend the ACL to more easily allow government to declare trusted overseas product safety standards, and
- Option Two: Amend the ACL to more easily allow businesses to comply with the latest voluntary Australian and overseas standards.

The ARA suggests that the two options should not be considered mutually exclusive as there are aspects from both, that could be combined into a hybrid model for maximum benefit.

The ARA therefore supports the adoption of trusted, internationally recognised standards used in Australia's comparable markets across Europe and North America, alongside robust voluntary standards that are well defined and have high levels of consumer trust.

This position and submission have been informed by discussions with members of the ARA's Advisory Committee for Industry Affairs and subject matter experts from member organisations. The structure of our submission is based on the relevant questions outlined in the Consultation Regulation Impact Statement (December 2021).

QUESTION 1
DO YOU AGREE WITH THE PROBLEMS IDENTIFIED IN
THE CONSULTATION REGULATION IMPACT STATEMENT?

Yes, the identified problems are broadly appropriate. The current framework of mandatory requirements is outdated and, in some cases, no longer fit-for-purpose because it lacks clarity and creates inconsistencies between Australian Standards and Regulations.

QUESTION 2
DO YOU AGREE THAT CHANGES TO THE REGULATORY
FRAMEWORK ARE REQUIRED TO ADDRESS THE PROBLEM?

Yes, the ARA agrees with the proposition that the current regulatory framework needs to be updated to ensure it remains fit-for-purpose.

While the ACL and mandatory standards provide important protections for the Australian community, the current product safety framework is complex and slow to respond to changing international trends and consumer expectations. This creates unnecessary cost and compliance risk for Australian retailers.

Efforts to amend the ACL to allow for use and recognition of trusted overseas product standards is welcomed. So too is the potential of recognising voluntary Australian or overseas standards.

QUESTION 3
DO YOU AGREE WITH THE POLICY OBJECTIVES?

Yes, the ARA agrees with the policy objectives as described in the consultation paper. If implemented, these changes will:

- Make it easier for suppliers, importers and retailers to comply with product safety requirements set under the ACL;
- Reduce compliance costs for business and barriers to trade by removing duplicative testing and compliance measures where a product has been manufactured overseas to the requirements of an equivalent trusted overseas standard; and
- Provide benefits for Australian consumers by increasing product availability and consumer choice, without compromising safety.

QUESTION 4
DOES THE STATUS QUO ACHIEVE THE POLICY OBJECTIVES?

No, the ARA does not believe that the status quo meets the policy objectives. The current policy settings are often slow, contradictory, and difficult and expensive to implement.

As Australia becomes more engaged with global suppliers and manufacturers, there is the need to increase the ability of all retailers to access clear and consistent information describing their requirements under the ACL, and to reduce duplication in testing to meet multiple safety frameworks required by different jurisdictions.

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QUESTION 5
DOES THE CURRENT REGULATORY FRAMEWORK IMPOSE UNNECESSARY COSTS OR COMPLIANCE BURDENS?

Yes, the current regulatory framework imposes unnecessary costs and compliance burdens, particularly for larger retailers who are required to educate offshore manufacturers and suppliers about the complexities of Australian regulation, to ensure their products meet Australian standards.

Often these products have met European or North American standards, undergoing significant testing to do so, leading to frustration from the supplier's perspective and compliance risk for the Australian retailer.

QUESTION 6
OF THE TWO OPTIONS PROPOSED FOR FUTURE STATE, WHICH IS PREFERABLE? WOULD YOU SUPPORT THE COMBINATION OF THE TWO OPTIONS?

As noted, the ARA suggests that the two options should not be considered mutually exclusive as there are aspects from both options that could be combined into a hybrid model for maximum benefit.

However, ARA members indicate it is important that any alternative should:

- not water down the high levels of safety provided by the current standards in Australia for products that must meet uniquely Australian conditions (like sunglasses and sunscreen), and

- be focused upon providing clarity and consistency to retailers, while also ensuring clear and concise communication of any updates.

If, after this consultation process, it becomes apparent that the combination of options is warranted, the ARA would welcome the opportunity to consult further on this matter.

QUESTION 7
IN RESPECT OF OPTION ONE, ARE THE STANDARDS-SETTING ASSOCIATIONS ON THE PROPOSED LIST ACCEPTABLE?

Yes, the ARA believes all standards-setting associations on the list provided are acceptable. And the proposed high-level criteria for a principles-based approach are also reasonable.

ARA members have indicated a preference for an opt-out model as this will provide greater safeguards to consumer protections. An opt-out approach is also more likely to provide benefit to retail businesses by streamlining the acceptance of overseas standards alongside Australian standards; improving transparency and trust for retailers and consumers alike.

However, there are complexities in assessing an opt-in / opt-out model that cannot be adequately expressed in a written submission, so the ARA would welcome the opportunity to consult further on this matter.

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QUESTION 8
IF OPTION ONE WAS ADOPTED, WHAT WOULD THE LIKELY IMPACT BE ON BUSINESSES, CONSUMERS, REGULATORS, OR ACCREDITED COMPLIANCE AND TESTING AUTHORITIES?

The ARA strongly believes that any amendments made to the ACL should only be made with the specific purpose of providing clarity and consistency to retailers, with regard to actioning their responsibilities under the ACL. This approach would minimise impacts and unintended consequences for all parties concerned.

QUESTION 9
IF OPTION TWO WAS ADOPTED, WHAT WOULD THE LIKELY IMPACT BE ON BUSINESSES, CONSUMERS, REGULATORS, OR ACCREDITED COMPLIANCE AND TESTING AUTHORITIES?

The ARA believes that amending the ACL to allow businesses to adopt and comply with the latest voluntary standards (from Australia and overseas) would allow businesses to innovate and improve their products in step with changing consumer behaviour, instead of waiting for the ACCC to review a particular standard as per the existing requirements for developing standards under the ACL.

QUESTION 10
WHAT WOULD BE A REASONABLE TRANSITION PERIOD FOR SUPPLIERS REQUIRED TO COMPLY WITH THE LATEST STANDARDS AS THEY CHANGE FROM TIME-TO-TIME?

It is important for all updates to be communicated to retailers in a clear and concise manner giving as much notice as possible (depending on the complexity of the change). As Australia's largest, oldest and most diverse retail peak body, the ARA could play a leading role in communicating these changes to members and the broader Australian retail sector.

QUESTION 11
HOW CAN THE CURRENT PROCESS FOR REVIEWING AND UPDATING MANDATORY STANDARDS TO CAPTURE UPDATES TO REFERENCED VOLUNTARY AUSTRALIAN AND OVERSEAS STANDARDS BE IMPROVED?

The ARA suggests that any adjustments to the current processes for reviewing and updating mandatory standards should be focused upon providing clarity and consistency to retailers, while also ensuring clear, concise and timely communication of any updates.

QUESTION 12
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 ARA believes streamlining the current process for updating standards will provide benefit to retailers, as it would provide certainty for businesses in complying with any changes made to the ACL and allow retailers to keep in step with the latest regulatory developments in international markets.

QUESTION 13
FOR EACH OF THE OPTIONS DO YOU AGREE WITH THE PRELIMINARY ASSESSMENT AND WITH THE BENEFITS AND COSTS OUTLINED?

The ARA agrees with each of the preliminary assessments and with the cost/benefit analysis provided but would welcome the opportunity to consult further on this matter.

Thank you again for the opportunity to make a submission to this review. Given the compliance risk associated with mandatory standards and regulations on Australian retailers, any effort to simplify processes and bring Australia's product safety framework in-line with trusted overseas standards would be welcomed by the ARA, our members and the Australian retail community.

Yours sincerely

Paul Zahra
Chief Executive Officer