



2 February 2022

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

RE: Mandatory standards regulation under Australian Consumer Law

Reform to make it easier for businesses to identify and sell safe products has clear benefits for consumers. CHOICE is supportive of the intent of the proposals outlined in the Consultation Regulation Impact Statement "Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law" (the Consultation paper). This is a relatively straightforward reform that should address the most frustrating aspects of the product safety standards making process.

Question one - CHOICE agrees with the identified problems

We agree with the problems identified in the consultation paper. As an independent consumer advocacy organisation that operates a NATA accredited testing lab, CHOICE frequently finds issues where mandatory safety standards in Australia lag well behind the voluntary standards or appropriate international standards. The examples provided in the consultation paper about delays in updating the mandatory standard or out-of-sync updates between the voluntary and mandatory standards are too common.

Question two - other problems that should be considered to create a robust product safety system in Australia

The biggest problem with Australia's product safety framework is the lack of any general rule or requirement for businesses to sell safe products. CHOICE maintains that the Federal Government should implement general safety duty, as explored in the 2019 consultation that has yet to be acted on.¹

Quality of external testing

CHOICE regularly hears from companies that claim to have test reports showing their product is safe but the product has failed tests conducted by experts within the CHOICE lab. While we think it is appropriate for products to meet equivalent or stronger standards from other countries, we also need to make sure that the testing conducted is done in a way that manufacturers and consumers can rely on. We suggest that the ACCC develop further guidance to manufacturers about appropriate testing options and investigate testing quality issues further.

¹ <https://consult.treasury.gov.au/market-and-competition-policy-division-internal/main-consultation/>

Costs to access standards prevents broad understanding of and compliance with safety requirements

As the Consultation paper identifies, often businesses and testing labs need to purchase voluntary standards to understand the technical requirements of a mandatory standard. These costs can place unreasonable barriers towards stakeholders understanding key factors that make products safe. For example, ISO 23767:2021, the standard for safety requirements and test methods for mattresses for cots and cribs, costs \$222.38 for a one user licence.² This standard includes key information to prevent products from causing suffocation to infants. There is a strong public interest in this information being made available at a significantly cheaper price or for free.

Question three - costs to consumers to consider as part of the RIS process

Failure to update safety standards creates costs for consumers as well as businesses. CHOICE regularly finds products that fail to pass basic safety checks but are not covered by mandatory standards in Australia. These failures add costs to consumers who need to spend significant time identifying safe products as they can't assume that all products available for sale meet basic expectations. And, most importantly, unsafe products are very likely to directly cause harm, especially to Australian infants, increasing the risk of suffocation, limb entrapment, strangulation and death.

For example, we regularly see issues with bassinets. While there is a mandatory standard for cots, there is no Australian standard covering bassinets, despite the products having identical functions (a place for an infant to sleep). There are international standards that cover bassinets, such as the US safety standard ASTM F2194-16 and the EU standard 1130:2019. CHOICE tests bassinets by looking at standards for similar children's products like cots and folding cots as well as international standards.³

In March 2021, five of the eight bassinets CHOICE tested failed key safety tests, following on from a 2019 test where 24 out of 33 bassinets failed safety tests in our labs.⁴ These failures create serious risks to Australian infants. The cost of out-of-date safety standards should be considered as part of the RIS process.

² Prices correct as of 24 December 2020, <https://store.standards.org.au/product/iso-23767-2021>

³ <https://www.choice.com.au/babies-and-kids/baby-furniture/cots/articles/how-we-test-bassinets-and-bedside-sleepers>

⁴ <https://www.choice.com.au/unsafebassinets>

Bassinet tested in 2021	Major safety risks found in CHOICE testing
4baby Serenity EA12172	The large warning label obscures the breathable material and creates a suffocation risk The mattress is insufficiently firm in areas and the slight sagging of the mattress base creates a suffocation risk
4baby Sleep and Stay EA12173	The large warning label obscures the breathable material and creates a suffocation risk The mattress is insufficiently firm in areas and the slight sagging of the mattress base creates a suffocation risk
Collective Sol Lyla	Pieces of wicker tying material on the sides detached in our tension test and were found to be a choking hazard Limb entrapment hazard in the gaps between the sticks at the mattress base
Grottime Bebe 31105	Supplied mattress does not fit snugly and could create a significant gap which could cause a suffocation risk if baby rolls face first into it The fabric ends of the mattress are also insufficiently taut Bassinet has insufficient depth, causing a potential fall risk
Quirky Bubba Sienna Cradle	Pieces of wicker tying material from the bassinet sides detached in the tension test and were found to be a choking hazard Head entrapment hazards in the openings on the headboard Limb entrapment hazards in certain openings on the sides and ends of the bassinet

Questions four to six: CHOICE support for the policy objectives

CHOICE supports the policy objectives in the Consultation Paper. We believe there is one additional objective that the reforms should and will meet: that products are safer for Australian consumers.

As outlined above, delays in adopting standards or gaps in Australian standards mean that many unsafe products are available for sale to Australian consumers, especially products for infants. The proposed reforms could greatly improve on the status quo.

Questions seven to 25: policy options

We see benefits to both option two and option three and support the combination of these approaches. Option one, the status quo, will mean ongoing costs for businesses, consumers and leave many unsafe goods for sale across Australia.

Option two - allowing the Commonwealth Minister to declare trusted overseas standards as well as those developed by Standards Australia

This option would meet the policy objectives. We can see merits with alternative one (allowing standards to be declared from a set list of overseas standard making bodies) and alternative two (using a principles based approach for declaring overseas standards). Both approaches should require assessment from the ACCC about the appropriateness of various standards for the Australian market before the standard is adopted (an opt-in approach).

We do not support an opt-out model that requires the ACCC to demonstrate why an overseas standard would not be appropriate for the Australian market. Given the nature of the risks to consumers from unsafe products - physical harm or death - it is appropriate for the ACCC to assess if overseas standards offer appropriate safety protections for consumers rather than default to allowing it to be adopted.

The criteria for reviewing international standards for potential declaration in Australia should require that standards lead to safe products or safe outcomes for Australian consumers, rather than the consultation paper's proposed criteria of a "comparable level of safety to any applicable Australian standard". This principle of only adopting standards that lead to safe products will ensure that consumer needs are appropriately recognised in the assessment process.

Option three - amending the ACL to more easily allow businesses to comply with the latest versions of voluntary Australian and overseas standards

We are supportive of option three provided the opt-in model from option two is implemented. An opt-out model could lead to safety risks for Australian consumers that outweigh the benefits of this reform.

At minimum, businesses should not be penalised for meeting higher safety standards in voluntary or appropriate overseas standards. However, given the safety issues that can exist when products don't meet some voluntary standards, efforts should be taken to encourage all businesses to adopt higher safety standards as soon as possible.

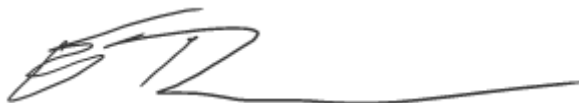
We regularly see challenges with children's products where the voluntary standard has higher requirements for safety than the mandatory standard. Updates to the mandatory standard can take an unacceptable amount of time, leaving consumers at risk. For example, the standard for prams and strollers was last updated in 2013.⁵ CHOICE tests strollers to both the voluntary and mandatory standards and regularly finds safety issues with products. In 2018 we found 18 strollers with safety risks, with most products failing because of the buckle on the stroller's harness. The buckle's design fails to separate the straps and prevent them from forming a loop, which is a potential strangulation risk.⁶ This issue is addressed in the voluntary standard but isn't covered by the mandatory standard. This is an excellent example of a standard that should be adopted by businesses immediately, rather than waiting for the mandatory standard to be updated.

⁵ <https://www.standards.org.au/standards-catalogue/sa-snz/consumer/cs-020/as-slash-nzs--2088-2013>

⁶ <https://www.choice.com.au/babies-and-kids/baby-transport/strollers-and-tricycles/articles/18-prams-fail-choice-test>

Broadly, CHOICE is supportive of the reforms outlined in the consultation paper. We are able to provide further detail of product safety issues identified in our labs on request. For further information please contact us on campaigns@choice.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'ET', followed by a long horizontal line extending to the right.

Erin Turner
Director - Campaigns & Communications
CHOICE