



Submission in response to

ACCC Button battery safety
Assessment of regulatory options
Consultation paper

May 2020

Response to the ACCC Button battery safety assessment of regulatory options consultation paper

Introduction

Lighting Council Australia Members supply products that are used to light the built environment including residential, commercial, industrial and public lighting. These products are mainly installed by licensed electrical contractors and are required to comply with state electrical safety regulations and Australian Standards such as AS/NZS 60598.1 *Luminaires General requirements and tests*.

A small percentage of lighting products supplied in Australia use remote controls to vary luminaire colour temperature and brightness. These remote controls are mainly 'credit card' sized and powered by button batteries. It is worth noting a significant market trend is the movement away from the use of remote controls and towards the use of smart phone applications to control lights.

Lighting Council Australia's views on improving safety across the entire button battery and containing products markets follow.

Reliance on existing standards and regulations

Any additional regulation should allow compliance to rely on existing electrical safety regulations and Australian Standards that include button battery requirements. The Australian Standard for luminaires (As/NZS 60598.1 Luminaires) was updated in 2017 and now includes both a button battery security and consumer warning requirement aligning with the requirements and recommendations contained in the Industry Code for Consumer Goods that Contain Button Batteries (Industry Code 2016). This standard is mandated by all Australian state electrical safety regulations.

The lighting industry in Australia acted voluntarily and responsibly during 2016 and 2017 to drive the inclusion of a button battery amendment within the Australian Standard for luminaires. Yet we are now faced with being penalised through the implementation of duplicative regulations.

State electrical safety regulators have not indicated to us any issues or problems associated with the enforcement of existing lighting standards and regulations. We urge and encourage the reporting of any non-compliance directly to electrical safety regulators and we continue to forward reports of non-compliance to regulators.

Remote controls for luminaires are sold with low voltage luminaires that are installed by electricians. State and territory electrical safety regulators acknowledge they are able to enforce the button battery provisions in AS/NZS 60598.1 on lighting equipment that operates down to 50VAC. General lighting equipment installed in residential installations by electrical contractors is supplied at 240V AC. All state and territory electrical safety regulations contain similar provisions that allows enforcement against general lighting equipment.

Victorian electrical safety regulations include additional scope that allow the Victorian regulator to enforce the requirements in AS/NZS 60598.1 (or any other relevant product standard) on any button battery powered lighting product including torches, bike lights, tea candles, novelty lights. Such provisions are triggered when a consumer in Victoria purchases a product from anywhere within Australia. Products supplied to the Australian market are generally supplied on a national basis.

Lighting Council Australia suggests any additional ACCC regulation should exempt areas of the market such as the lighting market where standards and mandatory regulations already exist. An alternative solution would be to allow compliance to be demonstrated using the existing Australian Standard for luminaires (i.e. AS/NZS 60598.1)

Australian Consumer Law Consumer Guarantees

The Australian Consumer Law Consumer Guarantee includes a requirement to supply safe, quality products that are fit for purpose. The Industry Code of Conduct published in 2016 put suppliers of button battery powered products on notice that battery compartment security was paramount and additional warnings were recommended.

The ACCC should seriously examine the ability of consumer law regulators to utilise the existing Consumer Guarantee provisions to remove unsafe button battery powered products and provide that advice to the Minister. The examination should acknowledge the Industry Guide (2016), The ACCC Button battery Safety Warning Notice (2019) and the various product standards that include button battery safety requirements.

Develop a hierarchy of button battery requirements

A hierarchy of button battery compartment security and marking requirements should be developed:

- Highest priority should be a secure battery compartment to make sure that children are not able to access button batteries within products.
- Markings should be regarded as a lower priority than a secure battery compartment and any marking requirements should be risk dependent. Toys should be regarded as higher risk than products such as a lighting remote control that would usually be deliberately kept well away from children to stop nuisance switching of lights. AS/NZS 60598.1 contains significant user instruction marking requirements to warn parents of the dangers to children of button batteries when the product is purchased, used and batteries replaced.

The benefits of any additional markings on lower risk products seem questionable. General lighting product battery compartments are secure and a hazard will only exist at the time a button battery is replaced. At that time warnings should be visible on replacement battery packaging and lighting product user instructions (AS/NZS 60598.1 contains user instruction warning requirements).

- Button battery packaging should contain warnings so that parents are reminded of dangers when they replace batteries. This is the time when batteries are removed from products/packaging and children are at an increased risk.
- Marking with the poison information number (PIC) would be high cost and we doubt the benefit would exceed the cost. Lighting Council Australia's preference is that the PIC number not be made mandatory for lighting products that contain button batteries. If utilised, the PIC number should only be required on the original battery container/packaging and not be required on a product that uses a button battery. By comparison we note that oils, solvents, herbicides etc. include the PIC number on their packaging. Whereas, the consumer products that use such poisons (e.g. spray packs, lawnmowers, spray painting equipment etc.) are not required to be marked with the PIC number even though poisons can be left in those products and containers for extended periods.

Increased regulator surveillance, education and enforcement should be undertaken

We note the existence of the Australian Consumer Law Consumer Guarantee requiring all consumer products to be safe (amongst other aspects). The publication of the Industry Guide in 2016 put all suppliers on notice that button battery security was paramount. Consumer products that allow children to access button batteries are unsafe and can be removed from the market by the ACCC and their state counterparts using existing voluntary or mandatory product recall provisions associated with the Consumer Guarantee.

Increased levels of ACCC and state regulator surveillance and enforcement utilising the existing Australian Consumer Law Consumer Guarantee safe product requirements could and should occur now including market education, requesting voluntary recalls and issuance of mandatory recall notifications. Many sectors already have specific regulatory and standards requirements (e.g. toys, lighting, appliances, IT equipment). The ACCC Button battery safety campaign (2017-2019) found significant levels of unsafe and non-compliant toys on the market. We note regulators are responsible to ensure non-compliant products are removed from the market. Non-compliant products within a market should not be regarded as a market failure.

Increased regulatory enforcement in problem and high-risk markets should occur as soon as possible. The Commonwealth Department of Home Affairs compiles import data including importer details using statistical and tariff codes and shares this data with regulatory agencies on request.

Improved consumer education regarding the dangers of button batteries could occur via direct marketing to households that contain young children. We understand the Australian Government should be aware of the location of all children though information compiled by the Services Australia Department.

Cost/benefit statement is lacking information

Supplier costs

The *Consultation paper* erroneously concludes that additional regulation in this area will not increase costs to product suppliers. The additional economic impact of this standard would likely be in excess of \$70 Million per year based on:

- 58 Million batteries per year sold in Australia and assuming 2 batteries used per year per device giving an estimated 29 Million button battery using products in the Australian market;
 - Assuming a turnover and new product rate of 1 product in 5 each year (i.e. a conservative average product life of 5 years) would mean around 5.8 Million new button battery products are sold into the Australian market each year.
 - Assuming 10% of these 5.8 Million products do not require any product modification or marking modification – i.e. no additional cost on this 10% of the market.
 - Assuming 50% of products on the market will require unique Australian battery compartment security modifications (this percentage acknowledges the ACCC is proposing to remove one of two currently acceptable methods of securing button batteries), would add around \$10 in cost (at supplier level) and \$20 per product (at retail level) leading to an additional \$57 Million cost on the market.
- Lighting Council Australia members inform us that any significant changes to standards and regulations that require changes to injection moulding tools (the dies used to mould product casings) would cost between \$3,000 and up to \$15,000

per product mould and such changes would be required for additional items such as product markings (due to the reduced reliability of stickers over time).

- These costs are amortised over the life cycle of a product and so the cost per product will depend on the number of products produced. If a product is produced for the global market then the costs would be significantly lower than if product requirements are unique to Australia.
- Assuming 40% of products will require additional unique Australian Standards marking on products and packaging (Some Australian Standards do not currently require product and packaging marking) will cost around \$3 per product to unpack/sticker/repack leading to an additional \$6 cost at retail level or total of around \$13.9 Million cost to the market.
- The above does not include any additional costs on novelty items that are supplied with a button battery (and so not part of the replacement battery market) and thrown away when the product breaks or battery expires (e.g. greeting cards etc.). We suggest the ACCC should investigate and include costs in this area.

Government costs

The *Consultation paper* does not include any additional Government costs along with proposed additional regulation indicating that no additional regulatory surveillance or enforcement resourcing will occur. LCA highlights that regulatory systems comprise both pre and post-market requirements with regulators responsible for many post market aspects. If post-market enforcement activity continues to remain under-resourced then non-compliant products will continue to flow through markets in Australia.

Lighting Council Australia suggests that the ACCC and other regulators should increase their resourcing of button battery compliance activities.

Standards

Several International and Australian Standards exist for products that contain button batteries and button batteries themselves. We note that the requirements of the various Australian Standards for products are quite different in terms of their information, design and testing requirements.

The sectors that have shown the leadership and responsibility to include button battery requirements in their product standards should not now be penalised by having similar but slightly different requirements imposed by the ACCC that would cause product re-designs or additional markings particularly given that the ACCC is not highlighting market failures in those markets that have product standards in place (also noting that any non-compliant products found should not be regarded as a market failure but instead should be regarded as a regulatory responsibility).

Lighting Council Australia's preference is that regulation should rely on recognised existing Australian/international standards that already include button battery requirements and should not deviate from those standards.

International standard development should be the highest priority

Lighting Council Australia's experience in dealing with international standards committees is they often have greater experience and wider views compared to Australian committees and this often leads to improved international standards compared with unique Australian Standards. We note international standards proposals are often accompanied by significant research and testing data to

justify a precise level of requirements (i.e. design, marking and test requirements). Such an approach is more likely to lead to widespread international acceptance of proposals.

A horizontal international standard is more likely to lead to faster reductions in Australian injury incidents (compared with a unique Australian Standard) due to the increased likelihood that such an international standard will be widely recognised and used by global manufacturers.

Our further experience in international standards matters is that proponents need to be prepared to devote resources and lead international standards work projects. If the International Organisation for Standardisation (ISO) COPOLCO committee is the correct committee to develop an international horizontal button battery standard then Australian representatives on that committee (with the assistance of the ACCC and Standards Australia committee CS-118) should propose to develop a horizontal international standard as a high priority.

We note that an international battery powered luminaire standard project is underway within IEC TC34 *Lighting* and is due to be published in 2023. Any COPOLCO project should coordinate with stakeholders including international standards committees that have developed or are developing button battery product standards.

Unique Australian Standards often increase costs and reduce compliance rates

Lighting Council Australia's experience with unique Australian Standards is that they impose trade barriers, reduce competition, increase consumer costs and decrease market compliance rates particularly amongst small and micro business importers and particularly when compared with the outcomes associated with internationally aligned standards.

Horizontal Australian Standard

Measures adopted by a horizontal Australian Standard should align with the button battery safety provisions of existing product safety standards. This will avoid isolation of the Australian market from international supply chains.

Any unique, horizontal Australian Standard should include an exemption for products covered by existing product safety standard provisions for button batteries or an allowance to satisfy requirements via compliance with the various product standards. Such an allowance should be provided along with the expectation that such Australian Standards will move to reference international product standards when horizontal button battery safety requirements flow through those international products standards.

Removal of the option to allow access to button batteries using two simultaneous and different actions

Lighting Council Australia notes that Standards Australia committee EL-041 is preparing an amendment to AS/NZS 60598.1 *Luminaires* that would allow the use of two simultaneous and different actions to access button batteries. This amendment was proposed to align with other product standard requirements, increase competition and reduce consumer costs.

The *Regulatory options consultation paper* proposes to remove this method of battery access using a comparison with medicine bottles that require a push and turn motion to open. We note that button battery compartments that use two simultaneous actions to open are very different to medicine bottles and such a comparison is unjustified due to the following:

- The tightness of medicine bottle lids can vary anywhere on the scale between zero percent to one hundred percent secure. In comparison, button battery products that use two independent and simultaneous actions to access batteries have discrete designs that result in battery compartments being either fixed closed or not secured.
- The access actions for button battery compartments are very different to medicine bottle lids and require instructions to be read and actions performed in a precise way to open. The push and turn action to open a medicine bottle is very different and should not be directly compared with button battery compartment actions. We are unaware of any button battery compartments that include a 'push and turn' action to open.
- The *consultation paper* does not include any evidence that would indicate button battery compartments using two simultaneous and independent actions to open are failing and allowing children to access button batteries.

Answers to the consultation paper questions

1. The ACCC considers the status quo and proposes three options to improve the safety of button batteries. Which is your preferred option and why do you prefer it to the others?

None of the proposed options seem to reasonably apply to the Australian lighting market given the voluntary action already taken by all lighting market stakeholders (i.e. small battery requirement in AS/NZS 60598.1:2017 was agreed by industry, regulators, consumers, installers etc.), the mandatory application of a published standard by all State and Territory electrical safety regulations and the lack of any evidence pointing to a market failure in the general lighting products market.

The proposed regulatory changes are highly prescriptive and are not in alignment with the recommendations of the ACCC Industry code (2016), ACCC safety warning notice (March 2019) as well as the status quo of current national and international product safety standards that additionally allow button batteries to be secured by the use of two or more independent and simultaneous actions.

The *consultation paper* now includes options not mooted during any previous ACCC consultation (e.g. ACCC Button Battery Safety Issues paper, August 2019). Market investments rely on the consistent application of standards and regulations so changing the course of requirements removes that certainty.

Existing standards should be relied upon until a horizontal international standard is developed.

2. What effect do you believe each of the proposed options will have in saving lives and reducing severe injuries caused by button batteries?

Lighting Council Australia does not believe that any additional regulation is needed in the lighting market as mandatory lighting product standards and regulations already apply.

Compliance to existing legislation should be prioritised before raising anti-business red tape and compliance costs. The proposed regulatory changes will impose prescriptive and duplicative regulation on products that already have Australian Standard requirements for button batteries, dedicated regulations (i.e. electrical safety) and have not experienced market failure to date. (e.g. the general lighting products industry).

In other market areas (i.e. not general lighting products) and as suggested above, we understand that regulation already exists (i.e. ACL Consumer Guarantee) that would allow the Minister to

implement mandatory recalls against unsafe products. No evidence has been presented supporting the case that implementing the proposed changes is likely to improve compliance rates beyond the current situation.

As an example, we are aware that the children's toy market has mandatory regulation/standards for button battery safety requirements (i.e. similar to that proposed), yet non-compliance rates in that market are reportedly high and resulting in hazardous exposure (as reported in the ACCC Button battery issue paper, August 2019). Regulators are responsible to address non-compliance. However, instead of proposing additional enforcement action, the ACCC is simply proposing additional and duplicative regulation on the toy market.

This situation adds weight to our argument that significant improvements should be made in the areas of regulatory responsibility (surveillance, education and enforcement) before any additional regulation is implemented.

Regarding the options presented in the *consultation* paper:

- The options assume that increased regulation without increased compliance activity will result increased market compliance. This is not our experience and we suggest that effective regulation comprises both pre and post market activities.
- The options proposed have included very little examination of maintaining the status quo and making better use of existing standards and regulations. The discussion on the business as -usual case is limited to about 500 words out of a 90-page document – suggesting that this was never a real option, even though the Office of Best Practice Regulation guidance and *Guide to Government Regulation* says explicitly this should be the preferred option unless there is a compelling case. Lighting Council Australia suggests that the existing ACL Consumer Guarantee regulation, toy regulation and State electrical safety regulation should already be enough regulation. What is really needed is a significant increase in surveillance, identification of all suppliers, education and enforcement activity.
- The options recognise that international standards activity will be needed at some point but do not prioritise the development of an international standard ahead of an Australian Standard. The vast majority of button battery products are produced outside of Australia and a published international standard would be more effective at increasing compliance in Australia than a unique Australian Standard. An international horizontal standard would provide surety for product manufacturers and all market sectors to move to aligning with such an international standard.

The majority of global manufacturers would not become aware of unique Australian Standards or regulatory requirements unless informed by Australian suppliers. Based on our experience in the lighting market, the majority of micro and small businesses importing button battery products into Australia do not become aware of any standard or regulatory requirements until a regulator knocks on their door.

- If only considering the limited options presented, by far the most effective strategy would be to make sure that all button battery products have secure battery compartments. A secondary priority should be market education and this should not just consider the options presented but include button battery packaging marking, education of suppliers and education of consumers who have small children.

3. Provide comment on the ACCC's essential requirements for secure battery compartments, child-resistant packaging and warnings and information. Are there any additional requirements that should be included?

The proposed regulatory changes are highly prescriptive and would mandate a tool be used to gain access to the batteries of a product containing button batteries. This contrasts with the requirements of the ACCC Industry code (2016), ACCC safety warning notice (March 2019) as well as the status quo of current national and international product safety standards that additionally allow button batteries to be secured by the use of two or more independent and simultaneous actions.

Regulations should be in alignment with the ACCC 'Industry Code for Consumer Goods that Contain Button Batteries (2016)' which have been developed in consensus by ACCC Button Battery Industry Working Group as well as the status quo of relevant national and international voluntary safety standards that include provisions regarding button battery safety.

The ACCC should not move the compliance goal posts as this imposes significant costs and uncertainty on the market.

Lighting products containing button batteries are currently required to be secured using a tool. However, it would be preferable for alignment with other product areas to exist via the option to allow two independent and simultaneous actions.

Lighting Council Australia is of the view that warnings on user instructions and on button battery packaging is adequate. As above, direct marketing to consumer with toddler and all market suppliers is likely to be more effective than any additional product or packaging marking. Product and packaging marking requirements should be agreed at an international level to maximise uptake and minimise costs.

4. In relation to the requirement for secure battery compartments in which button batteries are only accessible with the use of a tool, do you consider that the use of a 'tool' should include the use of a coin? Why/why not?

From a principle perspective, coins should be allowed to be used if the security provided by such a mechanism is sufficient to stop a child from accessing a battery. If standards exist to specify such an allowance then those standards should be cited or similar requirements included.

Coins are more widely available than fine tools and are much more likely to be available to consumers both when they are at home and especially when away from their homes. The use of a coin to access is more practical than a specific tool.

5. Do you supply products that currently meet the essential requirements for secure battery compartments, child-resistant packaging and warnings and information? If not, which requirements do your products not meet and why?

Lighting Council Australia Member products are regulated under State electrical safety regulations that in turn require compliance with relevant product standards. The *AS/NZS 60598.1:2017: Luminaires General requirements and tests* standard is relevant to lighting equipment and accessories such as button battery powered remote controls and other professional lighting product accessories.

AS/NZS 60598.1:2017 was developed as a world leading standard for the safety of button cell battery powered lighting products and their accessories. It currently requires button or coin cell batteries only be accessible with the use of a tool. EL-041, the Standards Australia committee responsible for this standard, has drafted an amendment to further allow the battery compartment to be opened by two independent and simultaneous movements. This to align with international and Australian electrical appliance standards, increase competition in the Australian lighting market, reduce consumer costs, increase consumer choice and increase product availability. A further requirement in AS/NZS 60598.1:2017 is that safety warnings must be provided in user instructions accompanying the equipment.

Lighting Council is opposed to additional mandatory Australian only packaging and product marking requirements until such requirements are included in international product standards (i.e. IEC and ISO standards) and then picked up as Australian product standards. The Australian lighting industry has shown leadership and responsibility by including button battery security and user instruction warnings in Australian lighting equipment standards and is very willing to pick up further changes that carry through the international standards process.

We note that the AS/NZS 60598.1:2017 lighting standard containing button battery requirements was agreed by consensus amongst industry, test laboratory, Government regulators and consumer representatives. We also note that a principle of the Industry Code was not to override or conflict with existing product standard requirements.

Further, the *Safety Warning Notice* issued by the Assistant Treasurer on 29 March 2019 required button battery compartments to be secure. Product and packaging marking was not mandated in the Industry Code or ACCC Safety Notice. Regardless, AS/NZS 60598.1 requires button battery warnings to be included in user instructions provided with products.

6. Provide comment on the ACCC's proposed information standard for warnings and information to be made available at point of sale. Are there any additional requirements that should be included for products sold online, or for unpackaged products supplied to consumers?

The requirements regarding product marking should be defined based on the status quo of existing product safety standards as well as the recommendations of the ACCC Industry Code for Consumer Goods that Contain Button Batteries (2016) and the ACCC safety warning issued March 2019. These requirements have been developed in consensus with all stakeholders and are as follows:

Have information available where the product is displayed for sale (including online) indicating that the product (or any included peripheral device) requires button batteries to operate and that these are hazardous to young children. The information preferably shall be provided on packaging or, where that is not possible, as separate signage.

7. If you are a manufacturer, importer, distributor or retailer of button batteries or consumer goods that use button batteries, what impact will the proposed options have on your business?

The ACCC regulatory proposal will introduce prescriptive and duplicative regulation that is not aligned with the status quo of mandatory safety standards for professional lighting equipment that already includes provisions for button batteries. The proposed changes will add significant costs for both businesses and consumers and is likely to create an international trade barrier for many of the 30 million button battery products that are estimated to be supplied each year in Australia. The lighting industry in Australia is outraged that in our current dire economic environment a government agency would propose such restrictive, duplicative, anti-business regulation.

The proposed regulation would reduce competition and consumer choice and increase consumer costs with no evidence provided to date by the ACCC that the professional lighting products market is responsible for any incidents or non-compliance in Australia.

8. Do you agree with the proposed exemption for hearing aid devices and associated zinc air batteries? Why/why not? (see section 5.2)

Lighting Council Australia has no views on hearing aid devices.

An exemption should be extended to lighting products that already include button battery requirements in standards and regulations including dedicated State based electrical safety regulators.

9. Do you consider that any other categories of consumer goods should be exempt from any of the proposed requirements?

An exemption should be included for all products that are already covered by standardised requirements with dedicated regulators relating to button battery safety. Safety standards such as those developed by Standards Australia and the International Electrotechnical Commission are developed as consensus documents by technical experts for the products they apply to. This exemption will avoid regulation duplication and provide market certainty for manufacturers and distributors.

In addition, an exemption for marking requirements should apply for, products with button batteries that are NOT intended to be replaced by the consumer including those that are not accessible when the device is subjected to normal use and reasonably foreseeable misuse or also not accessible without the use of a unique tool commonly only available to professional technicians. For example, technician's tools such as hexalobular drive type including the 'security torx' drive head. As these products are not exposed to general consumers the additional requirements are unnecessary.

Further, an exemption should also extend to lighting products that are designed or marketed for professional/commercial use only as these products would only be accessible to professionals and not children and toddlers.

10. What are the likely costs to implement each of the requirements (design changes, child resistant packaging, labelling), and what do you consider is the likely effect on prices for consumers?

The cost to manufacturers would vary between \$3,000 and \$15,000 per product range. The end cost passed on to the consumer would be significantly higher.

Our members have estimated that the additional cost for implementation of option 2 (child resistant packaging) would cost around US\$0.50 per product sold where the battery packaging is not already child resistant.

The extra information for Option 3 would add the following costs. There will be a print tooling charge (if it is on the colour box). This can range for US\$300-US\$700 per product range depending on the printing process. The end cost passed on to the consumer would depend on the number of units sold.

If suppliers want warnings to be moulded then the above tooling change costs would apply.

Due to the relatively small volume of lighting accessories sold that include button batteries, the increase in consumer pricing will be significant and likely increase consumer pricing by 100%.

Limiting battery access to only the use of a tool would deny the lighting industry the ability to move to using common products that allow access using two independent and simultaneous means. Such an allowance would reduce the cost of lighting remote controls. Denying this option would effectively impose a cost increase on the lighting market compared to the likely business-as-usual.

Consumers are price driven and now realise they can easily access products from a global market. Following significant Australian price increases more consumers will be driven to shop using online overseas based retailers that are not within Australian regulatory reach. The perverse outcome associated with this regulatory development is that it is likely to push more consumers towards offshore retailers that are not required to comply with Australian regulations and pose a higher risk of not complying with any product requirements.

11. Do you think that all potential costs to business have been considered? Can you provide any further information about likely costs/impacts of each of the options?

Lighting Council Australia is alarmed by the apparent unwillingness of the ACCC to grapple with the central question which should be the careful evaluation of the costs against the benefits. Based on the following two quotes taken from the *regulatory options consultation* paper it seems that the ACCC is unable to clearly quantify either side of the cost/benefit equation:

- *It was not possible to determine the economic costs to industry associated with each button battery safety requirement option. While many products on the market use button batteries, the per-unit cost increase associated with each of the proposed options is small. Costs to government are expected to be minimal in respect of implementing each option.*
- *If no government action is taken, it is estimated that four fatalities, 138 to 331 severe injuries and 8600 emergency presentations will occur during the forecast period of 2020–2029. Quantitatively derived estimates of the cost of these button battery incidents are in the range of \$26.4–\$62.3 million. The true total costs of fatalities and severe injuries to children that have resulted from button batteries are impossible to quantify.*

The cost benefit analysis contained in the *regulatory options consultation paper* is misleading and fails to address the likely costs that will be borne by suppliers, Government and consumers.

As the *regulatory options consultation paper* does not make any attempt to quantify the costs to industry of the proposed changes, Lighting Council Australia has provided (see above) an estimate of the additional costs to industry of button battery regulation. As above, we expect that option 3 would impose an additional \$70million dollar cost (retail value) on the market that would be passed on to consumers.

We also note the ACCC expect regulation to be implemented 12 months after a determination is made. Lighting Council Australia highlights a 12-month implementation would not allow sufficient time for existing stocks to be sold through the market leading to many products at retail and wholesale level needing to be written off. This is an added cost not included in the cost benefit analysis.

Assuming 5.8 Million new button battery products are sold each year at an average retail cost of \$20 per product and assuming 10% remain unsold and non-compliant with any of the details (i.e. including marking) contained in new regulation would lead to \$11.6 Million in written off stock. Lighting Council Australia's experience is that a minimum implementation period of two-years is needed to implement product re-designs and a three-year 'grandfathering' period is required to sell existing manufactured stock through at retail level.

The regulatory options paper assumes that implementation of the proposed regulation alone will eliminate all button battery incidents. Lighting Council Australia's experience is that significant post market compliance activity is required as part of any effective regulatory system. As Government is responsible for the majority of post market surveillance and enforcement activity and as no additional funding is proposed in this area, we forecast non-compliance rates will remain at around the current levels of unsafe products in the market.

We again stress the point that compliance rates will only increase when regulatory compliance activity increases significantly and when an international standard is published and widely used. Lighting Council Australia suggests that the ACCC and responsible regulators should increase their resourcing of button battery compliance. These costs should be included in the analysis.

The *regulatory options consultation paper* states that 'targeted education campaigns'¹ will accompany any additional warnings provided with products. Yet no additional costs are attributed to Government in the cost benefit statement? We suggest that the 'targeted education campaigns' should be adequately budgeted and accounted for in the analysis. We also suggest that new approaches are needed for such campaigns to reach a much wider audience compared with previous campaigns.

We note that no cost is expected regarding the development of an international horizontal standard. Lighting Council Australia's experience is that international standards proponents are expected to adequately resource projects including international meetings attendance (Note the reduced costs now with international travel restrictions in place), project development and administration.

12. Provide comment on the transition period for the proposed options (see section 7).

We note the ACCC expect regulation to be implemented 12 months after a determination is made. Lighting Council Australia highlights a 12-month implementation would not allow sufficient time for existing stocks to be sold through the market and would not allow adequate time for all products to be re-designed including any new markings.

We do not agree with the assertion that products that currently comply with the industry code would largely meet the requirements of the proposed mandatory safety and information standard. Two independent and simultaneous actions to unlock a battery compartment is allowed in the Industry Code and proposed to be disallowed in proposed regulation. Also, the industry code

¹ 2020 ACCC button battery safety regulatory options consultation paper, page 63, paragraph 4.

recommends but does not mandate product markings. Both the above areas of change would require re-design/re-tooling/re-marking of products.

Lighting Council Australia's experience is that a minimum implementation period of two-years is needed to implement product re-designs and a three-year 'grandfathering' period is required to sell existing manufactured stock through at retail level.

Button battery products generally have a market life of approximately 5 years with costs amortised over that period. The Implementation of regulation that is different to the recommendations in the Industry Code (2016), the ACCC Safety Warning Notice (March 2019) and current lighting standards would impose a significant cost on industry. As above, these costs will increase if grandfathering provisions are inadequate.

13. Provide comment on the principles-based approach to a mandatory safety standard (see section 7.2). A principles-based approach: – sets out safety principles that need to be met rather than specifying detailed standards – incorporates external instruments for compliance tests only – includes administrative guidance which provides examples of relevant clauses in external standards that are considered to comply with each requirement.

The outline of the proposed principles-based approach does not provide sufficient detail to allow us to assess whether or not it would be sufficient to address the compliance issues that are at the core of button battery exposure.

Manufacturers and product designers primarily use product standards that contain all product safety requirements. The danger in a principles approach is that a manufacturer may believe that their product complies with a principle but then be judged non-compliant against specific details contained in administrative guidance or an explanatory memorandum to which they were unaware.

Manufacturers prefer to use a published standard that contains all design requirements, marking requirements, test method and pass criteria in the one document.

As an example, the current lighting standard AS/NZS 60598.1 provides all the above requirements, was developed in consensus with stakeholders and is used by manufacturers, regulators and test laboratories to determine product compliance. The total and detailed requirements are essential for all stakeholders to develop products and determine compliance.

If, in addition to a published test standard, the ACCC wished to publish a education bulletin that summarised the detailed requirements contained in a published test standard then that summary bulletin would certainly not be used by manufacturers or test laboratories to design products or determine compliance but it may be useful to educate consumers and retailers.

Manufacturers, suppliers, test laboratories and regulators regularly purchase and access published standards and we suggest the ACCC should not attempt to implement any different approach (i.e. principles and guidance documents) as this will only confuse the market and ultimately lead to reduced compliance rates.

Manufacturers, suppliers and regulators have a responsibility to ensure product safety and this can only be determined against the details contained in a published standard.

14. Provide any additional information or data that you think may be useful to informing the ACCC's recommendation to the Minister

Stakeholder views

The Minister should be informed that the submissions from manufacturers, product suppliers and installers all oppose the prescriptive, duplicative regulations proposed by the ACCC.²

Accurate cost benefit analysis

The cost benefit study in the *Consultation Paper* lacks significant detail and lacks any careful evaluation of the costs against the benefits. The ACCC should make a serious effort to provide the Minister with an accurate account of the costs and benefits.

Standards and regulations already exist

The ACCC should examine the ability of consumer law regulators to utilise the existing Consumer Guarantee provisions to remove unsafe button battery powered products and provide that advice to the Minister. The examination should acknowledge the Industry Guide (2016), The ACCC Button battery Safety Warning Notice (2019) and the various product standards that include button battery safety requirements.

The Minister should also be informed that State electrical safety regulations exist that require button battery powered lighting equipment to meet the Australian Standard for luminaires (AS/NZS 60598.1 *Luminaires*). Both the New South Wales and Victorian electrical safety regulators confirm they have the ability under existing laws to enforce the button battery requirements contained in AS/NZS 60598.1 on lighting equipment that operates down to 50V AC. General lighting equipment installed in residential installations by electrical contractors is supplied at 240V AC.

All other state and territory electrical safety regulations contain similar provisions to NSW and Victoria.

General lighting equipment should be excluded from any additional regulatory requirements otherwise existing lighting standards and electrical safety regulations should satisfy any additional ACCC regulation.

The ACCC has not produced evidence of market failure in the general lighting product market

Lighting Council Australia has not been provided with any evidence that general lighting products are posing a risk to consumers. The ACCC is proposing to penalise products that have not proven to be a problem to date. The main Australian Standard for lighting products includes button battery safety provisions and state electrical safety regulations exist that mandate the application of that standard.

The Australian Standard for luminaires includes button battery requirements that align with the Industry Code (2016) and ACCC button battery safety notice (2019) and no evidence has been provided indicating that standard or regulation is deficient in enabling regulators to undertake compliance on

² Responses to ACCC Issues paper August 2019 from Lighting Council Australia, Consumer Electronics Suppliers Association, Ai Group and The National Electrical and Communications Association.
https://consultation.accc.gov.au/product-safety/button-battery-safety-issues-paper/consultation/published_select_respondent

the general lighting market. Finally, no non-compliant general lighting products have been brought forward.

The development of an international standard should be prioritised

The publication of an international button battery standard would provide greater certainty for global and Australian markets compared with Australian Standards/regulations and should be prioritised. We expect this international horizontal button battery standard would be referenced by international product standards including lighting. Australian lighting standards are predominantly adoptions of international standards.

About Lighting Council Australia

Lighting Council Australia (LCA) is the peak body for the lighting industry in Australia, representing 100 of Australia's leading manufacturers and suppliers and around 80% of all lighting equipment supplied in Australia. Lighting Council Australia's goal is to encourage the use of environmentally appropriate, energy efficient, quality lighting systems. The lighting industry represents approximately 5,000 manufacturing jobs across Australia, and many thousands more in related product development and research, engineering, distribution, sales and installation.