

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Parliamentary Secretary to the Treasurer

*Trade Practices Act 1974*

*Consumer Product Safety Standard – Children’s household cots*

Subsection 65E(1) of the *Trade Practices Act 1974* (the Act) provides that the Minister may, by notice in writing, declare that, in respect of goods of a kind specified in the notice, a particular standard, or a particular part of a standard, prepared or approved by Standards Australia, with additions or variations specified in the notice, is a consumer product safety standard for the purposes of section 65C.

Paragraph 65C(1)(a) of the Act provides that a corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, if the goods are of a kind in respect of which there is a consumer product safety standard and they do not comply with that standard.

Subsection 65C(2) of the Act provides that a regulation may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as are reasonably necessary to prevent or reduce risk of injury to any person. These requirements may relate to: performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; testing of the goods during, or after the completion of, manufacture or processing; and the form and content of markings, warnings or instructions to accompany the goods.

The Consumer Product Safety Standard for children’s household cots requires children’s household cots to comply with certain parts of Australian/New Zealand Standards for children’s household cots AS/NZS 2172:1995 and AS/NZS 2172:2003, as varied by the Consumer Product Safety Standard. The purpose of the safety standard is to ensure that children’s household cots have key safety features that address the product’s known safety hazards and so reduce the associated incidence of injury.

The Consumer Product Safety Standard replaces an existing safety standard established in 1998, effectively updating the standard to reference the latest (2003) version of the relevant Australian/New Zealand Standard, simplifying and clarifying some of the requirements and creating separate requirements for new and second hand cots.

The Consumer Product Safety Standard for new cots specifies dimensional safety requirements designed to minimise falls, entrapment and the snagging of clothing, and sets performance requirements to help ensure that the product will provide a safe environment for infants over the product’s life. Second hand cots are subject to dimensional safety requirements, but not performance testing.

A Regulation Impact Statement for this Consumer Product Safety Standard, including a copy of the new standard, is at [Attachment A](#). The Statement details the review of the original standard for children’s household cots and the development of the new

standard. Relevant parties in the community consulted in the review process included suppliers of new and second hand cots, State and Territory Fair Trading/Consumer Affairs agencies, consumer groups and child safety specialists. The consultation proceedings are reported on page 11 of the Regulation Impact Statement.

The Consumer Product Safety Standard is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

# **REGULATION IMPACT STATEMENT**

## **Review of Trade Practices Act Consumer Product Safety Standard for CHILDREN'S HOUSEHOLD COTS**

**Australian Competition and Consumer Commission  
Product Safety Policy Section  
2005**

## **BACKGROUND**

### ***The Mandatory Standard***

A Trade Practices Act mandatory safety standard for children's household cots was established in July 1998, and is now subject to its first periodic review to verify that the regulation is justified, and to address problems identified in the application of the standard.

The objective of the standard is to ensure that the products provide consumers with a reasonable level of safety, and thereby help reduce the incidence of injuries associated with the product. A regulation impact statement developed in 1997-98 found that government action was necessary to reduce the rate of injury to children using household cots. A major concern with children's cots was the failure of many products on the market to provide key safety features that can help prevent serious and common injuries to children.

The serious injuries are asphyxiation resulting from head entrapment in gaps in the cot structure and strangulation resulting from clothing being snagged on protrusions on the cot. Other injuries are typically broken limbs and bruising resulting from the child climbing out and falling from the cot.

The government addressed the problem by establishing a mandatory consumer product safety standard under the Commonwealth Trade Practices Act (TPA). The standard makes it mandatory for cots supplied in the market to conform to certain parts of the Australian/New Zealand Standard for the safety of household cots, AS/NZS 2172:1995. TPA safety standards apply to corporations and interstate trade. The mandatory safety standard is administered by the Australian Competition and Consumer Commission (ACCC).

The safety standard has also been made law under State and Territory Fair Trading/Consumer Affairs legislation, providing for enforcement at the State level and extending the effect of the regulation to sole traders.

### ***Provisions for Selling Antique Cots***

When the mandatory standard was introduced, antique dealers made submissions to State/Territory Fair Trading agencies that the standard prevented the sale of antique and collectable cots. The case was made that many antique and collectable cots do not comply with the mandatory standard, but this is not a safety consideration when the cots are purchased for display or exhibition rather than for use by a child. After consultation with relevant parties, the Ministerial Council on Consumer Affairs agreed that the mandatory standard should provide for the supply of antique and collectable cots where they are fitted with permanent labels advising that the cot is not safe for a child. These amendments were incorporated into the current standard.

## **THE PROBLEM BEING ADDRESSED**

A mandatory safety standard for children's household cots was introduced in 1998 to address the long-term problem of child deaths and injuries associated with use of the product in Australia. National injury estimates based on available data indicated that

prior to 1998 cots were associated with at least 1 infant death each 2 years and 100 serious injuries per year.

The fact that many cots on the market at that time did not comply with safety standards illustrated a failure of the market to recognise the value of product safety. It is apparent that consumers did not demand proof of product safety and suppliers did not consider safety to be a major selling factor in the market. The market was driven by factors such as price competitiveness and the attractiveness of the product. The introduction of the mandatory standard required that all cots on the market include nominated safety features, and many suppliers had to revise their cot designs in order to comply.

Injury data collated by Monash University Accident Research Centre (MUARC) from Victorian hospital emergency department data for the period 1996 to 2004 show that cots continue to be associated with child injuries. The data covers 80% of all emergency department presentations in Victoria, and show an increase from 44 cot related cases in 1998 to 96 cases in 2004. However, MUARC advises the identification of cot related incidents is dependent on hospitals coding the data correctly, and the recent increase in recorded injuries probably results from improvements in the quality of data recorded by hospitals rather than an actual increase in cot related injuries. The data records only one death, in 1997.

Accurate interpretation of the injury data is difficult due to the variability of the data quality and the limited detail included. An example of the variable data quality is the change from 1998 when 17 of the 44 cot incident records did not nominate an external cause, but since 2000 the cause has been entered in all records, thereby boosting the various category numbers. The lack of identification of cot types in the data is a major problem because the records do not differentiate between household cots and folding portable cots which are not subject to a mandatory standard.

The data indicates that in 2004 most of the cot related injuries result from falls (84%), which is up from 54% in 1998. When the data variability over time is taken into account, this may not indicate any trend in the cause of cot related injuries, but does show that a major proportion of injuries result from children climbing on their cots. It is noted that for a normal cot that is open at the top, standard specifications for minimum side height and elimination of footholds will only reduce the fall problem for babies with limited climbing ability. The data show that the child age profile for all cot related injuries in 2004 is similar to the profile in 1998, with a significant peak at age 1 year.

Unfortunately, taking account of developments and limitations in the injury data system, analysis of this data does not allow any meaningful assessment of trends in cot related injuries, apart from the clear absence of fatalities since 1997.

The National Coroners Information System (NCIS) currently holds coronial case records from 2000 to the present. The System shows that since 2000, three child deaths have been linked to defective children's household cots. The cases involved a home made cot that appeared to collapse on the child, entrapment in a gap in the side of a cot where a rod was missing, and entrapment where a child slipped through a gap between the side of the cot and the base. While the records provide only limited

information on the cots involved, it appears the cots were old and in a poor state of repair, and it is clear that a lack of compliance with the safety requirements of the mandatory standard resulted in the deaths. These cases confirm that compliance with the safety standard for children's household cots is critical in the prevention of cot related deaths and injuries.

In summary, the available information confirms that deaths and injury continue to be associated with the use of cots. In particular, older model cots that do not meet the requirements of the safety standard have been linked to a number of child deaths in Australia. This is seen to confirm the need to apply the standard to eliminate such hazardous products from the market.

### ***Problems Selling Second Hand Cots***

The mandatory standard has created difficulties in the sale of second hand cots. A number of second hand dealers specialising in nursery furniture advised that the mandatory standard effectively prevents them selling cots because they are not able to show that used cots comply with many of the performance tests specified in the standard.

The dealers noted that with the mandatory standard being in place since 1998, most of the cots they obtain for sale have been manufactured to the requirements of the Australian/New Zealand Standard. While these cots are assessed to be in sound condition and would probably continue to meet the specifications of the Standard, a dealer wishing to confirm compliance with the standard would need to have each cot retested by a qualified test laboratory. Testing individual second hand cot to the standard is not practical as it would be prohibitively expensive and destructive so as to render the cot unserviceable.

Accordingly, the current mandatory standard is effectively a legal barrier to dealers wishing to sell second hand cots.

It is noted that of the large number of cots in circulation in the community, relatively few are sold through second hand dealers. It appears that the majority of second hand cots circulate through private sales or are passed on from family to family.

### ***Deficiencies in AS/NZS 2172:1995***

The nursery furniture industry also raised concerns about differing interpretations in the application of AS/NZS 2172:1995 (on which the current mandatory standard is based) resulted in inconsistent compliance testing of some new products. Choice magazine published its test results indicating a number of products on the market failed to meet the standard, but this was disputed by suppliers who had their products certified by qualified testing agencies. The problem of differing interpretations of AS/NZS 2172 has been addressed by Standards Australia, and the 2003 version of the Standard has been formulated to help overcome the problems and to refine the safety requirements. Amendments to this Standard have also been developed to provide further clarification.

In not referencing the latest version of the Australian/New Zealand Standard, the current mandatory safety standard requires industry to use a superseded standard and prevents the adoption of improved technical specifications and safety requirements.

## **OBJECTIVES**

The objective of government action in relation to children's household cots is to reduce to incidence of child injuries associated with use of the product.

## **OPTIONS**

### ***1. Industry Self Regulation***

Under the self regulation option, the mandatory standard would be removed and the safety of cots in the market would be dependent on industry voluntarily complying with product safety standards.

In the supply of children's household cots, industry might voluntarily adhere to the product safety standards where the market gives priority to product safety such that it is significantly less profitable or even unviable for suppliers to deal in goods without the desired safety features.

Dealers in new, second hand and antique cots would be free to decide what standards they wish to apply to the goods they sell.

### ***2. Quasi-regulation***

The quasi-regulation option would involve the removal of the mandatory standard and the establishment of industry product safety standards through mechanisms such as an industry code of practice.

In the supply of cots, industry and government might agree that industry will follow a product safety standard as an alternative to government regulation.

Dealers in new, second hand or antique cots might agree to follow different codes that are appropriate for each category of product.

### ***3. Explicit Government Regulation***

Explicit government regulation has three main characteristics: it attempts to change the behaviour of groups or individuals by detailing how regulated entities should act; it generally relies on government inspectors and/or monitoring to detect non-compliance; and it imposes punitive sanctions – such as fines – if the regulations are not complied with. This approach establishes clear and standardised rules and can be successful for addressing well-defined and stable problems.

Explicit government regulation is often considered to offer more certainty, including industry-wide coverage, and greater effectiveness compared to other forms of regulation because of the available legal sanctions. However, it can also be standardised, inflexible and complex.

Children's household cots are currently regulated by a TPA mandatory consumer product safety standard that specifies a set of safety requirements applicable to all cots supplied in the Australian market, except antique and collectable cots that carry prescribed labelling.

This option would maintain regulation of the market through a TPA mandatory safety standard for household cots. Recognising the problems identified in the implementation of the present standard, renewal of the standard provides an opportunity to address those problems and so minimise undesirable effects on the market. Accordingly, any new standard should address problems identified in the current standard in relation to the supply of second hand cots and facilitate industry's use of the latest Australian/New Zealand standard.

## **IMPACT ANALYSIS**

### ***Who is Affected***

Initiatives to ensure the safety of children's household cots impact on consumers, the nursery furniture industry and government.

Consumers purchase household cots for use by their children. Injuries and deaths resulting from use of the product can create major trauma and financial costs for the family. Consumers expect that cots will provide a safe environment for their children, and there is a widespread belief that such products should be required to pass safety tests. Cots are an essential item of nursery furniture and need to be affordable.

For the nursery furniture industry, household cots are a significant business. Suppliers compete for a share of the market, seeking to provide products that are attractive and commercially viable.

The Australian Government has responsibilities under the provisions of the Trade Practices Act to ensure that consumer products are reasonably safe, and has the power to declare safety standards for particular products where necessary. Government is also a major participant in the supply of medical services and is therefore sensitive to the costs of treating cot-related injuries.

### ***1. Self-regulation***

Regulation guidelines advise that self regulation should be considered where:

- there is no major public health and safety concern;
- the problem is a low risk event, of low impact/significance;
- there is a reasonable degree of industry cohesion; and
- the problem can be fixed by the market itself.

Prior to the introduction of the mandatory standard, children's household cots were effectively subject to industry self regulation. Under those conditions the demand for safety features on cots was not sufficient to drive the market and ensure that cots



supplied in the market provided key safety features. Many suppliers of new cots did not test their products to any safety standard, and it was apparent that other factors such as product appearance and cost were more important in the market.

Previous experience with market behaviour is that it is not reasonable to expect consumers to have the knowledge of injury mechanisms that would allow them to recognise the importance of safety features in cots.

Accordingly, if the regulation was withdrawn it could be expected that competition in the market would result in many suppliers giving priority to market factors other than product safety that are perceived to be more influential, and the market would likely revert to supplying cots that do not meet safety standards. Information on the safety of nursery furniture published by the government should encourage some consumers to demand products with safety features, but it is considered likely that many consumers will be more influenced in their purchase of a cot by factors such as price and appearance, probably in the belief that such products are required by law to be safe.

The effectiveness of self-regulation is limited by a lack of industry cohesion. The nursery furniture industry comprises suppliers who specialise in these products, and general furniture suppliers. The specialists might be expected to have a good appreciation of the safety aspects of nursery furniture and support the voluntary product safety initiatives of relevant industry associations. General furniture suppliers on the other hand may not necessarily appreciate the safety concerns and may not be committed to safety standards. Suppliers wishing to maintain compliance with safety standards would therefore be pressured by competition from suppliers who focus only on products that appeal to consumers and are price competitive.

Based on previous industry behaviour it is considered likely that self-regulation would result in only about 30% of new cots complying with recognised safety standards.

It is expected that consumers would benefit from the absence of regulation through the availability of a wider range of cots on the market, with increased competition from cheaper cots. In a competitive market, suppliers might cut costs by omitting compliance testing of their products. The retail price reduction would be dependent on the number of each model of cot being supplied, but industry sources estimate this could amount to 5-10%. On the other hand, consumers would also bear the cost of the corresponding reduction in the level of safety of cots on the market, resulting in higher levels of child injury. While current consumer education campaigns seek to raise community awareness of the need for particular safety features on cots, past experience indicates that it is unrealistic to expect consumer education to eliminate untested cots from the market through a community wide demand for cots with safety features.

The benefit to government of self-regulation would be savings in the cost of maintaining the government regulation, including compliance costs, amounting to about \$20 000 per year. However, government would be likely to incur additional costs in the investigation of increased product safety complaints and responding to community expectations to ensure the safety of consumer products. An expected increase in product-related injuries would also be a cost to government in the form of increased demand for associated medical services.

Overall, evidence of past market behaviour indicates that this option would not meet the objective of substantially moderating the injury rate associated with household cots through improved levels of product safety.

## *2. Quasi-regulation*

Quasi-regulation should be considered where:

- there is a public interest in some government involvement in regulatory arrangements and the issue is unlikely to be addressed by self-regulation;
- there is a need for an urgent, interim response to a problem in the short term;
- government is not convinced of the need to develop or mandate a code for the whole industry;
- there are cost advantages from flexible, tailor made solutions and less formal mechanisms such as access to a speedy, low cost complaints handling and redress mechanisms; and
- there are advantages in the government engaging in a collaborative approach with industry, with industry having substantial ownership of the scheme.

Difficulties in implementing quasi-regulation arise from a lack of industry cohesion.

The nursery furniture industry comprises suppliers who specialise in these products, and general furniture suppliers. The specialists are considered to be a largely cohesive group, with many being members of industry organisations such as the Infant and Nursery Products Association of Australia. The specialists might be expected to have a good appreciation of the safety aspects of nursery furniture and support the product safety initiatives of relevant industry associations. This group might therefore be encouraged to follow a code of practice for the supply of safe cots, and would potentially have a marketing advantage by being able to promote their products as being safer. General furniture suppliers on the other hand may not necessarily appreciate the safety concerns and may not see the need to follow a code of practice.

As with the self regulation option, suppliers who choose not to voluntarily adhere to safety standards would be expected to secure a significant share of the market. They would avoid the need to undertake compliance testing of their cots, enabling them to compete in the market by supplying cots that could be 5-10% cheaper. This fragmentation of the market is likely to result in about 50% of the market adhering to a code of practice, leaving the other 50% of products untested for safety. While this is unsatisfactory for ensuring the safety of these products on the market, it is likely to be an improvement on the level of product safety achievable under the self regulation option.

For consumers, quasi-regulation may result in about half the products on the market complying with appropriate safety standards. As noted above, cots that do not comply with safety standards may be cheaper, and they may offer more choice to consumers. Unfortunately, as noted under the self regulation option it is not reasonable to expect that consumers will appreciate the technicalities of cot safety and select safe products.

Accordingly, consumers would be likely to purchase untested cots which bring increased risk of child injuries. Products in the market not adhering to safety standards would provide more choice for consumers, and possibly cheaper products.

It is not clear that quasi-regulation would benefit industry overall. Suppliers who are signatories to an industry code would be committed to supply only products that are tested to agreed safety standards. Other suppliers would be free to compete in the market with a wider range of products that may also be cheaper.

Quasi-regulation is likely to result in increased costs for government. Government would avoid costs of about \$20 000 pa for the maintenance of the current mandatory standard, but similar costs would be incurred for the maintenance of an agreement with industry for a code of practice. In addition, government would incur increased costs in hospital services to treat an expected increase in child injuries associated with untested cots coming into the market. Government may also incur criticism that it is failing to protect consumers when safety standards are not met.

In summary, quasi-government regulation would be expected to gain significant industry commitment to a product safety code and so have some moderating effect on the injuries associated with cots. However, it is expected that a large proportion of products on the market would no longer comply with recommended safety requirements, possibly leading to an increase in cot-related injuries. Government would be likely to incur additional costs in implementing the quasi-regulation option.

### ***3. Explicit Government Regulation***

Explicit government regulation should be considered where:

- the problem is a high risk, high impact/significance;
- the government requires certainty provided by legal sanctions;
- universal application is required;
- there is a systemic compliance problem; and
- existing industry bodies lack adequate coverage of industry participants.

The safety of children using household cots is considered to warrant government regulation of cot safety.

Child deaths and injuries associated with the use of infant nursery furniture are considered to be a high risk and high impact problem in the community. The risk of injury and death in household cots that lack key safety features is high, but may not be apparent to parents. Babies are totally reliant on the safety of their environment. As an observation of reported incidents where children have sustained serious injury in their cots, the safety hazards of cots are often not apparent to parents and carers.

The accidental death of babies is a major trauma for parents and the community, inevitably causing disruption to the family.

The introduction of the safety standard has required that all cots supplied have specific safety features. As a result, many suppliers completely revised their products to take account of the standard, and there was a major upturn in product testing commissioned with third party test organisations. Liaison with industry revealed that before the safety standard became mandatory, few suppliers tested their cots to the Australian/New Zealand Standard and a number of suppliers were not even aware of the existence of the Standard.

Since the introduction of the mandatory standard, cots on the market have been surveyed by the ACCC, State and Territory Fair Trading/Consumer Affairs agencies and product testing organisations to check compliance with the new requirements. Upgrading of product safety has been sought where necessary.

While the mandatory safety standard for cots has had a clear impact on the market, for the present it has not been possible to show that this has had a significant impact on the incidence of cot-related injuries. Injury data supplied by Monash University Accident Research Centre and sourced from Victorian hospital emergency departments from 1996 to 2004 is not sufficiently reliable and detailed to identify injury trends. It is expected that the safety standard will take some time to impact on injury rates because cots are a long-lasting reusable item, and in 1998 when the new standard became law there was already a very large pool of children's cots in the community. Families often keep their cots for later use or for handing on to relatives. The overall improvement in the level of safety of cots in the community will therefore be gradual as new cots replace older models.

The coroner's information system records 3 deaths since 2000 that are linked to faulty household cots. These cases appear to involve older cots and the deaths result from inadequate levels of product safety. This reinforces the value of applying the standard to the market.

### ***Changes to the TPA standard***

The mandatory standard has proved successful in improving the safety of household cots in the market. However, since the introduction of the initial safety standard in 1998, a number of application problems have arisen as noted earlier. It is considered that these problems can be readily resolved by amending the specifications of the standard, without compromising product safety.

In applying the current standard it became apparent that some specifications in the standard do not address key safety hazards and are therefore not justified. These include requirements in relation finger entrapment hazards and product labelling. To better meet government objectives to only regulate where necessary to achieve the desired outcomes, any renewal of the standard should omit references that are not considered essential safety features.

The present mandatory safety standard, in referencing the 1995 version of the Australian Standard for cots is an impediment to industry. While the Standard addresses the key safety issues, it lacks clarity in some areas and industry prefers to use the latest (2003) version of the Standard, which has been formulated to overcome the earlier difficulties. In order to facilitate industry's migration to the latest Australian/New Zealand Standard for the supply of new cots, it is proposed that the

mandatory standard should reference AS/NZS 2172:2003, and amendments to that Standard which are currently being finalised by Standards Australia. The amendments are relatively minor, but provide further clarification of the standard and have been endorsed by industry.

There are some technical differences between the new standard and the currently mandated AS/NZS 2172:1995, such that cots made to comply with the current mandatory standard may not comply with the new standard. Accordingly, to avoid possible disruption to product supply it will be necessary for the mandatory standard to continue referencing the earlier standard as an alternate for a suitable period to facilitate the changeover to the new Standard.

The difficulties identified in establishing that second hand cots comply with the current mandatory standard arise from the inclusion in the standard of strength and durability tests. The strength and durability tests are intended to verify that cot designs are sound and ensure that a new cot will provide a reasonable period of safe use. The tests are severe, involving the repetitive operation of mechanisms and dropping a 30 kg mass onto the cot base, and the application of various forces to the structure, and could be seen as analogous to crash testing that is used to verify the safety of motor vehicle designs. The tests are considered very important for application to new cots.

While second hand cots can readily be assessed to comply with the critical entrapment and snagging safety requirements of the mandatory standard, it is impossible for second hand dealers to establish that the cots they sell continue to comply with the strength and durability requirements set for new products. Compliance with these performance requirements can only be established through destructive and expensive laboratory tests, which is not practical for individual second hand products.

Enforcement of these requirements is similarly impractical, requiring compliance enforcement authorities to commission destructive laboratory tests on individual second hand cots in order to establish whether they comply with the mandatory standard. In practice the authorities have confined their assessments of second hand cots to aspects of the standard that can be checked visually, such as the dimensional specifications. They do not apply the strength and durability tests. The authorities are satisfied that the omission of the strength and durability tests from the standard for second hand cots will not affect their ability to control the safety of the cots in the market.

It is proposed to apply a single standard to second hand cots that is based on the key safety requirements of the latest Australian/New Zealand Standard for children's household cots, AS/NZS 2172:2003, generalised where necessary to make it applicable to cots made to both the 1995 and 2003 Australian/New Zealand standards. A single standard specifying a short list of key safety requirements for second hand cots will simplify requirements for both suppliers and compliance enforcement authorities.

### ***Consumer Education***

None of these options specifically addresses the safety of cots that are not being traded, such as those that are currently in use, or being kept as family heirlooms or passed on directly from one family to another. While there is no way of estimating

with any certainty the proportion of cots in the community that bypass any trade restrictions, observations of the second hand market indicate that few second hand cots are sold through dealers.

To address this limitation of the regulatory regime, since its inception, the regulation for cots has been supplemented by a consumer and dealer awareness campaign. The Commonwealth produced leaflets to explain the critical aspects of cot safety to both dealers and consumers, and this information is also included in a comprehensive guide to nursery furniture titled *Keeping Baby Safe*, published under the auspices of the Ministerial Council of Consumer Affairs (MCCA). The guide has been distributed free of charge through various mechanisms including direct mail on request, baby bounty packs, child care centres and retail chains, and has been made available online through the Treasury and ACCC websites.

*Keeping Baby Safe* has been adopted by the ACCC as an ongoing consumer education strategy to promote the safe use of nursery furniture, including cots, in the community. A revised version of the guide was published by the ACCC in 2005 and is being widely distributed. Copies are being provided to State and Territory fair trading offices for distribution through child care and education centres, including community health centres, hospitals and child care centres. The guide can also be ordered through the ACCC national 1300 telephone number and is available online through the ACCC website.

## CONSULTATION

The proposal to introduce a two tier safety standard for household cots was circulated in November-December 2004 for consideration by consumer groups, representatives of the nursery furniture industry, child safety specialists and government regulators. Thirteen formal submissions were received.

There was general support for the proposal. Two objections to the two tier standard were received. Concerns were raised about applying a lower safety standard to second hand cots as compared to that applied to new cots, and it was recommended that alternatively the standard could have a reduced set of requirements that apply to both new and second hand cots. A second recommendation was that the present single tier comprehensive standard is sufficient because enforcement authorities do not apply the prescribed performance and durability testing to second hand cots anyway.

These views do not negate the concerns and reasons discussed earlier in the development of the proposed two tier safety standard. For new cots the specification of performance and durability testing of the Australian/New Zealand is seen to be important because it provides some assurance that cots will maintain structural integrity over the life of the product. Coroner records show that since 2000 three child deaths were associated with older cots in a poor state of repair. For second hand cots the present detailed standard including performance and durability tests is considered not necessary to control the safety of the product and it is causing disruption to the market. Applying a subset of the principal standard to this market sector has been shown to be an effective means of control.

A number of respondents recommended that all second hand cots offered for sale privately or by traders should be independently checked for compliance with basic

safety requirements as specified in the proposed second tier requirements. Their proposal is to establish a network of dealers licensed to undertake the safety checks at a nominal cost and to issue compliance certificates. This concept has merit in that theoretically it has the potential to ensure that all second hand cots on the market meet essential safety requirements. While there are no provisions for implementing such a system nationally under the Commonwealth Trade Practices Act, State and Territory Governments may wish to consider the proposal in relation to their respective legislative provisions. It is noted that State/Territory Governments may be able to distribute product safety information to second hand dealers through their dealer licensing networks.

A number of respondents suggested that second hand cots be required to display product safety information, such as the recommended mattress size, on swing tags or labels. It is considered that the Australian/New Zealand standard for cots addresses this issue by requiring essential information relevant to the ongoing use of the cot to be stamped on the mattress base. It is envisaged that seeking to make second hand dealers responsible for providing labelling carrying additional safety information is probably not realistic as many would not be competent to provide accurate information.

In relation to the requirements for second hand cots, a respondent noted that the proposed standard includes tests that require the use of a defined test probe applied to the cot with a specified force. Such tests are normally applied by a laboratory, and it would be difficult for second hand dealers to apply these tests accurately. This point is accepted and the requirements have been omitted where considered not critical, but it has been determined that the probe test to check for head entrapment gaps needs to remain as this is an important safety requirement, and there is no effective alternate means of assessment.

A regulator recommended that the requirements regarding finger entrapment be omitted from the safety standard. The rationale is that finger entrapment is not identified as a key safety issue for cots, and in practice the relevant standard specifications have been found to be too broad in that they apply to areas of the cot that are not normally accessible to a child in the cot. This point is accepted and the draft standard has been amended to delete the finger entrapment requirements.

Concerns were also raised that some technical detail of the 2003 Australian/New Zealand Standard for cots should be improved. It is thought that these issues need to be considered by the relevant Standards Australia technical committee. The committee has now addressed some of these issues and it is proposed to adopt agreed amendments in the mandatory standard. The committee is examining further issues, and if this results in additional amendments to the Standard, a minor review of the mandatory standard might be considered at a later date.

## **CONCLUSION AND RECOMMENDATION**

The continuation of a mandatory safety standard for children's household cots is considered to be the only effective means for ensuring these products provide the safety features that can help minimise injuries to children. Accordingly, it is proposed to implement a safety standard for cots that specifies key safety requirements while

taking account of problems identified in the implementation of the initial standard in relation to second hand cots, the technical improvements in latest version of the Australian/New Zealand standard, and the submissions from interested parties.

***Proposed mandatory standard***

It is proposed to implement a revised version of the mandatory safety standard for children's household cots that addresses the issues identified above.

The present standard adopts the majority of requirements of the Australian/New Zealand Standard, AS/NZS 2172:1995. Experience in implementing the initial standard has highlighted that not all of the initial technical requirements relate directly to the known serious or common injuries sustained by children. The current high level of detail has contributed to difficulties in the supply of both new and second hand cots, and it is considered that such a detailed standard is not necessary or desirable in addressing the key safety issues. Accordingly, it is proposed to rationalise the technical detail of the standard.

The mandatory standard also needs to reference the latest version of the Australian/New Zealand Standard, AS/NZS 2172:2003, and recently agreed amendments to the Standard, in order to take advantage of technical improvements in the Standard and maintain consistency with it so as to minimise compliance problems for industry.

There is general support for the proposed mandatory standard applying two tier requirements to new and second hand cots. For new cots the standard would require the provision of nominated key safety features designed to help eliminate injuries with the product, and compliance with strength and durability performance requirements that help ensure the product design is sound and will maintain safety over its lifetime. Second hand cots would be required to have nominated key safety features sufficient to exclude dangerous second hand cots from the market.

The requirements of the proposed safety standard for **new household cots** are:

- Elimination of head and limb entrapment gaps;
- Elimination of protrusions that could snag clothing;
- Elimination of sharp points and edges within the cot;
- Minimum side height to help prevent climb outs and falls;
- Drop side latches to be child resistant;
- Not more than 2 legs to have castors without brakes in order to limit the mobility of the cot when in use; and
- Durability testing of cot structure and mechanisms to ensure that it can maintain structural integrity over a reasonable period of use without coming apart or developing other safety hazards.



The requirements of the proposed safety standard for **second hand household cots** are:

- Elimination of head entrapment gaps;
- Elimination of protrusions that might snag clothing;
- Elimination of sharp points and edges within the cot;
- Minimum side height to help prevent climb outs and falls; and
- Not more than 2 legs to have castors without brakes in order to limit the mobility of the cot when in use.

### ***Control of Second Hand Market***

A number of respondents to the community consultation recommended the introduction of a compliance system for second hand cots to help eliminate from the market any dangerous cots. The proposals were that second hand cots offered for sale should be certified as complying with the mandatory safety standard, with certification being provided by dealers licensed to check the safety of cots.

There is no provision to implement this proposal under the Trade Practices Act, but the ACCC will continue to address this matter through its education campaign to raise parent and carer awareness of the safety hazards relating to cots.

However, it is recommended that State and Territory authorities consider what action they might take in addition to the enforcement of the safety standard to help ensure that cots offered for sale by second hand dealers provide a reasonable level of product safety.

Possibilities for product safety in the second hand market might include some form of licensing control for second hand dealers or an education campaign that targets licensed second hand dealers.

### ***Comparison of the Current and Proposed New Mandatory Safety Standards***

The proposed mandatory standard would differ from the existing standard by including references to the latest Australian/New Zealand Standard, AS/NZS 2172:2003, and the introduction of a reduced set of requirements applicable to second hand cots.

In respect of second hand cots, the proposed new standard would essentially differ from the current standard based on AS/NZS 2172:1995 by omitting performance and durability tests specified in clause 9, the labelling requirements in clause 11 and the marking requirements in clause 12.

Attached is a comparison of the differences between the mandatory standard specifications contained in AS/NZS 2172:1995 and AS/NZS 2172:2003.

The proposed new mandatory standard would need to include the present provisions for the sale of antique and collectable household cots to prevent undue disruption to this market sector.

A draft of the proposed new mandatory safety standard is attached.

### ***Trans-Tasman Mutual Recognition***

The proposed new mandatory standard will better align with the New Zealand mandatory safety standard for children's household cots, which is based on AS/NZS 2172:1995. The proposed separate requirements for new and second hand cots are modelled on similar provisions in the New Zealand standard.

Mandatory requirements for new cots will essentially be the same in Australia and New Zealand, resulting in the removal of any significant technical barriers to trade between the two countries. There is no known trans Tasman trade in second hand cots.

### **IMPLEMENTATION**

The new mandatory safety standard would be made law at the earliest opportunity, with expected implementation by November 2005. For new cots the safety standard would reference both AS/NZS 2172:1995 and AS/NZS 2172:2003 as alternate standards for a period of 12 months to allow suppliers to source models made to the new standard and to clear existing stock made to the current standard. Following this changeover period, the standard based on AS/NZS 2172:1995 would be deleted as an option, leaving only the standard based on AS/NZS 2172:2003 applicable to new cots. Accordingly, new cots made to the current standard might be supplied until November 2006.

Second hand cots would be subject to a reduced set of requirements based on AS/NZS 2172:2003. These requirements will be formulated to be compatible with cots that have been made to comply with either AS/NZS 2172:1995 or AS/NZS 2172:2003 standards, thus simplifying compliance requirements for this market segment.

The ACCC will supplement the effect of the regulation with a consumer awareness campaign on the safety of children's cots. A new version of the *Keeping Baby Safe* guide to nursery furniture which includes cot safety was published in 2005 and is being distributed to hospitals, community health centres and child care centres through State and Territory fair trading offices. The guide is also available free of charge direct from the ACCC and is published on the ACCC website.

It is proposed to review the new mandatory standard after approximately 5 years in accordance with Product Safety policy, unless circumstances dictate that it is desirable to undertake an earlier review.

Recognising that the intended effect of the mandatory standard to reduce injury rates associated with cots is yet to become evident in injury data, this aspect will again be examined at the next review of the standard.

## **Comparison of Mandatory Requirements Specifications in AS/NZS 2172:1995 and AS/NZS 2172:2003**

AS/NZS 2172:2003 includes amendments intended to clarify the standard and to make some requirements more rigorous. Changes to the 2003 version of the standard as they relate to the proposed mandatory standard are as follows:

### *Clause 3, Definitions:*

To provide clarification - additional definitions 3.3 "child", 3.4 "cot" and 3.10 "within the cot", and changed definitions 3.6 "drop-side mechanism", 3.8 "filler bars" and 3.8 "gap".

### *Clause 5, Construction:*

References clause 9 to better define construction requirements. Omits specific requirements for timber and metal cots.

### *Clause 6, Design:*

References clause 9.2 to clarify intent.

6.1 Dimensions (a) and (b)(i) - add minimum side height of 250 mm when access open for fixed base cots and for adjustable bases in the upper position.

6.1(d) - gap around mattress reduced from 25 mm to 20 mm.

6.1(g) - removal of 12 mm maximum gap between corner post and drop-side.

6.2 Footholds - additional specifications.

6.3 Design of access fastening - additional specifications for drop-side mechanism.

6.7 Protrusions and snag points - snag protrusions reduced from 8 mm to 5 mm.

6.8 Sharp edges and sharp points - additional specifications to better define sharp edges.

### *Clause 9, Safety and Performance Requirements:*

9.1 General – Entrapment hazard test 9.2 repeated at end of test sequence (previously repeated after individual tests).

9.2 Entrapment hazard test (c) - new finger entrapment test permits slotted holes.

9.4 Strength test – adds requirement that no part shall become detached and the drop side shall not inadvertently open.

### *Clause 11, Informative Labelling:*

11.1 Information leaflet (b) - adds requirement for maintenance instructions.

11.3 Information on external packaging - addition of reference to suffocation hazard in warning on correct mattress dimensions.

*Clause 12, Marking:*

12.2 Marking legibility - new specifications.

12.3 Marking durability - new test for durability of marking.

*Appendix A, Limb and Head Entrapment Hazard Test:*

A2, A3 - increase probe force from 50N to 100N.

A3 - add finger probe test.

*Appendix C, Strength Test:*

C4(d) – applied force increased from 100 N to 125 N.

## COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974*

Consumer Protection Notice No. 6 of 2005

### CONSUMER PRODUCT SAFETY STANDARD: CHILDREN'S HOUSEHOLD COTS

I, CHRIS PEARCE, Parliamentary Secretary to the Treasurer, pursuant to subsection 65E(1) of the *Trade Practices Act 1974* and for the purposes of section 65C of that Act, hereby REVOKE the consumer product safety standard declared by Consumer Protection Notice No.10 published in Commonwealth Gazette GN 25 of 25 June 2003 and DECLARE that the consumer product safety standard for children's household cots, other than folding cots, carry cots, cradles and antique or collectable cots as described in the Schedule is:

(a) in respect of new children's household cots (i.e. cots that are not second hand) either:

(1) Australian/New Zealand Standard AS/NZS 2172:1995, *Cots for household use – safety requirements* approved by Standards Australia on 30 January 1995, varied by deleting clauses 1, 2, 4, 6.6, 7, 8, and 10; or

(2) Australian/New Zealand Standard AS/NZS 2172:2003, *Cots for household use – safety requirements* approved by Standards Australia on 19 September 2003, varied by deleting clauses 1, 2, 4, 6.1(f), 7, 8, 9.2(c), and 10, and varying clauses as follows:

- Delete existing subclause 6.1(g) and insert a new subclause 6.1(g) as follows:

"With the dropside in the closed position and the mattress base in the lower position, when tested in accordance with Appendix A with a force of 50 N it shall not be possible for a 30 mm probe to pass through any aperture between the mattress base and the sides and between the mattress base and the ends.";

- In clause 6.3 following the note at 6.3(e) add the words, "For a lift and push dropside release mechanism, either the lift or push action shall comply with 6.3(d).";

- In clause 6.7 delete note 1;

- Delete existing subclauses A5(h) and A5(i);

- Insert new subclause A5(h) as follows:

"For any gaps recorded in Step (g) between the mattress base in the lower position and the sides and ends with the dropside in the closed position, insert the 30 mm diameter probe and apply a force of 50 N.";

- Insert a new subclause A5(i) as follows:

"For any gaps recorded in Step (g) except for the gaps tested in Step (h), insert the 30 mm diameter probe and apply a force of 100 N.";

- Insert a new subclause A5(j) as follows:

"Record all gaps that allowed the passage of the 30 mm diameter probe when tested in accordance with A5(h) and A5(i) except for the following:

(i) Gaps formed between -

(A) fixed sides and the mattress base in the upper position; and

(B) fixed ends and the mattress base in the upper position.

(ii) Gaps formed between the dropside in both open and closed positions and the mattress base in the upper position.

(iii) Gaps formed between the dropside in the open position and the mattress base in the lower position.";

- Renumber the succeeding A5 subclauses accordingly;
- In subclause A6(b) delete, "but not the 50 mm diameter probe as noted in Paragraphs A5(i) and A5(g) respectively" and replace with, "as recorded in Paragraph A5(j)";

with the condition that the standard at (a)(1) based on AS/NZS 2172:1995 will cease to have effect from 1 November 2006; and

(b) in respect of second hand children's household cots:

(3) Australian/New Zealand Standard AS/NZS 2172:2003, *Cots for household use – safety requirements* approved by Standards Australia on 19 September 2003, varied by deleting clauses 1, 2, 4, 6.1(f), 6.1(g), 6.8(c), 6.8(d), 6.8(e), 7, 8, 9.2(b), 9.2(c), 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 10, 11 and 12, and in clause 6.7 deleting "5 mm" and substituting "8 mm" and deleting Note 1.

## Schedule

An antique or collectable cot is exempt from this consumer product safety standard if the cot:

- i. is accompanied by a certificate from the supplier to the consumer stating that it is not safe to place a child in the cot, and

