

EXPLANATORY STATEMENT

Consumer Protection Notice No. 4 of 2008

Issued by the Authority of the Minister for Competition Policy and Consumer Affairs

Trade Practices Act 1974

Consumer Product Safety Standard – children’s portable folding 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.

This instrument declares certain parts of the Australian/New Zealand Standard for Folding cots – Safety requirements, AS/NZS 2195:1999, as varied, to be a Consumer Product Safety Standard for the purposes of section 65C. The purpose of the safety standard is to ensure that portable folding cots have key safety features that address the product’s known safety hazards and so reduce the associated risk of injury to infants.

The Australian/New Zealand Standard specifies safety requirements relating to the materials, design, construction and performance of portable folding cots, together with instructions and warnings for their use.

The Consumer Product Safety Standard adopts only those parts of the Australian/New Zealand Standard considered necessary to address the critical safety hazards of the product, and comprises requirements that address known entrapment, climb out and inappropriate use safety hazards.

Where considered necessary, the requirements adopted from the Australian/New Zealand Standard have been simplified to make them substantially compatible with the corresponding requirements of the European Standard for cots. The Australian market includes products made to comply with the Australian and European Standards, and the key safety features of these standards are similar, but not identical.

A Regulation Impact Statement (RIS) for this Consumer Product Safety Standard is at [Attachment 1](#). The RIS identifies the product safety issues and considers the options for addressing the issues. The case is presented for introducing a mandatory safety standard for portable folding cots and the rationale for the content of the new standard is explained.

A draft of the RIS was circulated for consideration by interested parties including manufacturers and suppliers of portable folding cots, State and Territory Fair Trading/Consumer Affairs agencies, consumer groups and child safety specialists. Comment received supported the regulation of portable folding cots. Consultation proceedings are reported in the RIS.

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, but in order to allow a reasonable period of time for suppliers to ensure that all stock complies with the new safety standard, the date of effect is 1 March 2009.

REGULATION IMPACT STATEMENT



THE REGULATION OF CHILDREN'S PORTABLE FOLDING COTS UNDER THE TRADE PRACTICES ACT 1974

DECEMBER 2007

**Product Safety Policy Section
Australian Competition & Consumer
Commission**

INTRODUCTION

This regulation impact statement was developed by the Australian Competition and Consumer Commission (ACCC) to examine the need for government regulation of the supply of children's portable folding cots. The decision maker is the Minister for Competition Policy and Consumer Affairs.

Portable cots are widely used in the community to provide temporary sleeping accommodation for infants. They are designed to be easily transported in a compact package and erected where needed. For some families, due to factors such as limited accommodation space or the sharing of care arrangements with relatives, a portable cot is used as the primary sleeping accommodation in place of a household cot.

Concerns have been raised over recent years about the safety of portable cots in the Australian market. In particular, there have been a number of instances where children have been caught in portable cots which have collapsed accidentally, and where babies have become wedged between a mattress and side of the cot, resulting in deaths.

The Infant and Nursery Products Association of Australia estimates that 125,000 portable cots are sold in Australia each year. None are produced in Australia, with the majority being sourced from Asia.

Portable cots on the Australian market range in price from about \$80 to \$600. These cots are sometimes sold with a range of accessories such as a drop-in bassinet and clip-on change table. Many products are labelled to indicate they comply with safety standards.

PROBLEM

What is the problem being addressed?

The problem to be addressed is the protection of infants against the risk of injury and death associated with the supply of unsafe portable cots. Currently, portable cots supplied on the Australian market are not required to comply with any safety standards, and examples have been found that fail to provide basic critical safety features.

As infants are left unattended in portable cots for considerable periods of time, the product must provide an environment that is free of safety hazards, similar to that provided by household cots.

The known injury mechanisms associated with portable cots have been analysed by child safety specialists and addressed in the development of relevant safety standards. However, because of the technical nature of the injury mechanisms, it would be unlikely that consumers would recognise the product safety hazards, or the safety features needed to address those hazards.

The majority (estimated 90%) of these products on the market in Australia are understood to meet voluntary safety standards such as the Australian or European Standards or the US regulation, and appear to provide adequate levels of product safety. The remainder may not comply with any standard and may therefore be a risk to infants.

Standards Australia established a voluntary safety standard for portable cots, AS 2195 *Folding cots – safety requirements*, in 1978. The objective of the Standard is to provide manufacturers with functional, durability, stability and performance criteria to reduce the likelihood of death or injury to infants in portable cots, and to provide a guide to regulators on the key safety features for portable cots. When the Standard was introduced, portable cots were mostly wooden folding cots, but over recent years the current style of portable cot comprising a light folding frame and fabric side panels has developed. The Standard was revised in 1999 to address safety problems identified with new product designs. Standards Australia is currently undertaking a further review of the standard to ensure that it remains relevant to the market.

Deaths

A search of the Australian National Coroners Information System (NCIS) found 25 infant deaths associated with children's cots since January 2000. Generally, the data does not specifically identify whether the associated cots are household cots or portable cots. However, from the incident descriptions eight of the cots appear to be household cots, five were identified as portable cots and the remainder could be either type. The deaths were attributed to children climbing or falling out of the cot and becoming trapped between the cot and the wall, falling through the cot base, entrapment between the mattress and side of the cot, strangulation by a window blind cord hanging in the cot, and being smothered by bedding.

Deaths examined by Coroners before this period are not currently recorded on the NCIS. However, product safety investigations in the 1990s found that at least 4 infant deaths in Australia were attributed to accidents where portable cots collapsed while in use.

Injury data

Currently there is no nationally coordinated injury data collection that would allow a direct measure of total injuries in Australia associated with portable cots. However, available State injury data do identify the types of injuries being sustained and provide a means of estimating the dimensions of the problem. Monash University Accident Research Centre (MUARC) analyses data collected by 37 Victorian hospital emergency departments and compiled for the Victorian Emergency Minimum Dataset (VEMD), which provides a significant data sample.

MUARC reports that for the period 1995 to 2005 the VEMD database lists 19 cases where injuries sustained by infants were associated with portable cots. Twelve of these injuries occurred when infants fell while climbing out or into the cots. Other significant injuries were a laceration sustained when a child

climbed into a portable cot and a partial amputation of a child's finger caught in a joint of a portable cot that was being unfolded by a parent.

Coroner's reports and injury statistics do not generally provide a level of detail that allows identification of the make or model of cot associated with reported incidents. Accordingly, while the available data is helpful in identifying injury mechanisms, the absence of product identification usually prevents injuries being linked to products that fail to meet safety standards. It should be noted that instances of where children become trapped in the gap between the cot sides and a mattress are usually found to result from the use of an additional mattress not provided by the manufacturer. Safety standards address this potential hazard through safety warnings printed on the products.

Consumer Reports

A search of ACCC consumer complaints records for the period January 2000 to April 2007 found a total of 6 reports of serious safety concerns with portable cots.

Product Recalls

A search of Product Recalls Australia data found 1 recall of a portable cot for the period January 1990 to April 2007.

Product Surveys

The ACCC has undertaken informal surveys of portable cots in the market to monitor design trends and levels of safety. Also, Choice magazine has periodically reviewed the performance of portable cots.

Potential for Injury

Child health and safety specialists recognise that infants are vulnerable to a range of hazards due to their limited physical and mental development. As infants spend many hours unattended in their cots, a cot needs to provide an environment that is free of hazards.

The more serious potential hazards for this product include possible gaps that may entrap heads, points that may snag clothing causing a hanging hazard, inadequate side height that may assist climbing out, poor latching mechanisms that may contribute to the collapse of the cot resulting in entrapment and asphyxiation, and lack of adequate assembly and use instructions, particularly inadequate warnings about using only the correct mattress for the particular cot.

OBJECTIVES

What are the objectives of government action?

The Government's consumer protection policy includes the objective of ensuring that consumer products are safe. Particular attention is paid to products intended to be used by children because children cannot be expected to recognise risks to their safety and are therefore reliant on products they use being inherently safe.

The Trade Practices Act includes provisions to support this objective through the establishment of mandatory consumer product safety and information standards, product bans, recalls of unsafe products and the issuing of product safety warning notices.

The Government's aim in relation to the safety of portable cots is to reduce the risk of serious injury and death to children as a result of accidents in the use of the product.

Is there a regulation currently in place? Who administers it?

There is no national or State regulation specifically for the safety of portable cots manufactured or supplied in Australia. However, the Trade Practices Act provides some control of the supply of such goods through provisions requiring goods to be fit for purpose and provisions for the recall of products that are found to be unsafe. These provisions are necessarily correctional, usually being applied when a safety problem is identified in the community through reports of injury. Accordingly, these mechanisms are limited in their effectiveness, being applied after deaths or injuries have occurred, and are not efficient in that hazardous products would have been produced and supplied into the market, and the remedy to dispose of or repair these products is likely to be expensive and inconvenient for both the supplier and consumer.

It should be noted that a TPA mandatory safety standard was established for children's household cots in 1998, based on the relevant Australian/New Zealand Standard AS/NZS 2172. In view of the injuries associated with portable cots, the lack of a suitable safety standard for the product is seen as an anomaly in regulation of consumer products.

The US regulates portable cots under requirements for non-full-size cribs in its Code of Federal Regulations, Title 16, Part 1509. Safety requirements for portable cots include minimum side height, elimination of entrapment gaps, security of latching devices, mattress specifications, and the provision of assembly instructions and cautionary statements.

The European Product Safety Directive requires consumer products to comply with relevant national standards, which effectively means that children's portable cots supplied in Europe must comply with the European Standard for children's cots and folding cots, EN 716. This Standard specifies a range of safety requirements covering materials, structural integrity, side height,

elimination of entrapment gaps, security of folding mechanisms, mattress specifications and the provision of instructions for use.

OPTIONS

The viable options available to achieve the product safety objective are:

1. Maintain the status quo, i.e. rely on current industry self-regulation;
2. Quasi-government regulation, being government endorsement of a voluntary industry program, such as a code of practice, that requires suppliers to adhere to safety standards;
3. Government regulation of children's portable cots. The appropriate regulatory mechanism would be to control the supply of portable cots through a Trade Practices Act consumer product safety standard that specifies compulsory safety requirements drawn from existing safety standards.

Consumer education on the safe use of portable cots is currently provided by the ACCC and State Offices of Fair Trading/Consumer Affairs through the distribution of consumer awareness material on the safety of nursery products. It is envisaged that consumer education would continue as an adjunct to the three options.

On present experience, consumer education could not be considered a viable stand-alone option to ensure the supply of safe products. This is because the technical nature of portable cot safety mechanisms is such that it is unlikely that an average consumer would be able to reliably assess the safety of a portable cot. It is considered that the present consumer awareness material on the safety of cots and of nursery furniture provides a good level of consumer education on the safety of the product, but this has not proved sufficient to eliminate hazardous products from the market.

IMPACT ANALYSIS

Impact Groups (See table of costs and benefits at **Attachment A**)

The proposed viable options would affect families and businesses such as childcare and motels that purchase portable cots for infants, businesses involved in the supply of portable cots (manufacturers, importers, distributors and retailers) and government (including consumer product regulators and providers of emergency hospital services).

Option 1: Status Quo – Industry Self-Regulation (voluntary compliance with standards)

Continuing the present arrangements whereby industry determines which products it will supply would permit the supply of any portable cots regardless of compliance with product safety features. To date, this has resulted in the sale of some products that do not provide basic safety features, and the exposure of infants to serious risks.

Theoretically, under present arrangements it should be feasible to educate consumers about the hazards associated with the products, and advise consumers to buy only products that address those hazards through compliance with major safety standards. However, past experience is that a range of difficulties prevent this mechanism being effective. The problems include:

- In the case of portable cots the injury mechanisms are not obvious and it would be difficult to convince consumers of the potential hazards;
- Some consumers would be persuaded to buy cheaper products that are attractive, regardless of safety standards; and
- There is potential for suppliers to promote products as safe by implying compliance with unspecified safety standards.

Costs and benefits to consumers

The potential costs to consumers include:

- Continuing uncertainty that portable cots on sale provide an adequate level of safety;
- A continuation of the risk to infants where portable cots do not provide basic levels of safety; and
- Medical and other costs of injury/death where this occurs.

The potential benefits to consumers include:

- Unrestricted supply of portable cots, providing consumers with a wide choice of products and competitive prices. As noted above, this current arrangement allows the sale of products that may not comply with safety standards comprising about 10% of the market. The cost saving for these products is estimated to be 10-20%;
- Price competition in the market due to the lack of market restrictions. However, the overall advantages of an unrestricted market are considered minimal because most products currently on the market comply with safety standards, including some of the cheaper products.

Costs and benefits to industry

The costs to industry include:

- Continuing uncertainty that portable cots offered for sale provide an adequate level of safety. Not all products carry labelling to indicate compliance with reliable safety standards, and consumers might be misled by supplier claims;
- Continuing uncertainty about what safety standards are appropriate for the Australian market. Some suppliers adhere to the Australian Standard while some 50% of product on the market is made to comply with the widely used European Standard; and
- Potential for recalls of products that are identified as unsafe after they are supplied.

The benefits to industry are cost savings where suppliers choose not to comply with safety standards, allowing unrestricted product selection and pricing competition.

Costs and benefits to government

The costs to Government are:

- The need for consumer safety agencies to react to incidents involving unsafe products. It is understood that 4 product safety investigations relating to portable cots have been conducted since 1996 at an estimated total cost of \$50,000; and
- Medical costs associated with the treatment of injuries associated with the use of unsafe portable cots.

The benefit to Government of maintaining the status quo is the avoidance of costs associated with the introduction of explicit product safety controls.

Option 2: Quasi-Regulation

This option would comprise the development of a voluntary industry program for the supply of portable cots. The program would typically involve a Government endorsed industry code of practice whereby suppliers of portable cots voluntarily adhere to agreed product safety standards.

The benefits and costs of this option would be dependent on the level of supplier cooperation that could be achieved. In general it is expected that the estimated 70% suppliers who are currently members of industry associations such as INPAA would adhere to a voluntary code of practice. It is estimated that these suppliers supply some 90% of portable cots in the market, and accordingly the likely improvement in the level of market compliance with safety standards under this option would be marginal in comparison with the status quo.

Costs and benefits to consumers

The costs to consumers could be

- A reduced choice in the market, as some existing products would be withdrawn because either they do not meet voluntary standards or the supplier would not be prepared to undertake testing of the product to confirm compliance;
- Not all suppliers would follow an industry code, leaving untested products on the market and requiring consumers to assess the safety of the product;
- The cost of injuries associated with portable cots that do not provide adequate levels of product safety.

The benefits to consumers would be a small overall increase in the level of product safety, and an expected corresponding reduction in injuries related to portable cots.

Costs and benefits to industry

- The cost of putting in place and maintaining the infrastructure to support quasi-regulation. Previous experience with industry codes of practice suggests that these costs would amount to approximately \$30,000 per year;
- This would require an on-going cooperative commitment by all industry participants, involving some form of supplier registration, monitoring of the market and a system of review and redress for cases of non-compliance; and
- The costs to individual suppliers of ensuring that products meet agreed safety standards.

The benefit to industry would be improved consumer confidence that products on the market are safe.

It is considered that a large part of the market comprising major retailers already complies with voluntary safety standards for portable cots, and the introduction of an industry code of practice would be unnecessary for these groups. However, the remaining sections of the market, such as independent retailers who are not members of retail chains or franchises may not be members of industry associations and would need to be convinced of the benefits to their businesses of following a code of practice.

Costs and benefits to government

- The cost of negotiating a suitable industry program, monitoring the program and monitoring the market to ensure that the initiative is effective. The estimated cost to government is \$40,000 per year.

The benefit to government would be an expected small reduction in injuries related to portable cots due to improved levels of product safety, which would result in less demand on public hospital emergency departments.

Option 3: Introduce a Mandatory Minimum Standard

It would be appropriate that a mandatory safety standard for portable cots be based on the relevant Australian Standard as it specifies key safety requirements that are widely accepted and are also reflected in the corresponding US regulation and European Standards.

Accordingly, an appropriate mandatory minimum standard might reference the key requirements of the Australian Standard, varied where necessary to ensure the requirements are substantially compatible with the corresponding European and US Standards. Industry advice is that product currently on the Australian market made to comply with the US regulation or European Standard would be expected to comply with the key requirements of the Australian Standard.

The key portable cot safety features of these standards considered justified for inclusion in a mandatory minimum standard are:

- Specification of a minimum side height to help prevent children climbing out of the cot and so reduce injuries from falls;
- Security of folding mechanism latches to prevent accidental collapse (entrapment);
- Avoidance of dangerous protrusions (snagging) and gaps (entrapment);
- Mattress to fit snugly (entrapment);
- Warning labels on the safe use of the product, including advice to use only the correct mattress.

A mandatory minimum standard incorporating these specifications would:

- Eliminate from the market those portable cots that do not meet the key safety requirements, thereby reducing the level of risk to infants;
- Give consumers confidence that products on the market provide a reasonable level of safety; and
- Provide a framework for industry to determine appropriate levels of safety for these products.

It should be noted that the proposed minimum set of mandatory requirements is intended to address only the critical safety hazards identified through injury and Coronial data. It is a Government requirement that regulations should provide the minimum control necessary to address identified problems.

This approach should not be taken to indicate that the safety requirements not included in the proposed standard such as the elimination of finger entrapment or sharp points and sharp edges are considered unimportant. Rather, injuries associated with those hazards do not currently predominate, which is taken to indicate that products on the market voluntarily provide adequate safety in those areas. Accordingly, the proposed mandatory standard is not intended to replace existing major safety standards, and there are sound commercial reasons why suppliers should voluntarily adhere to comprehensive safety standards.

The minimum list of safety features simplifies the mandatory requirements and avoids unnecessary conflict with existing major safety standards involving minor technical differences. This helps to make the standard compatible with other major standards such that products currently complying with those standards would not be outlawed by the proposed mandatory standard.

Possible trade implications

The Commonwealth Government has obligations to ensure that its regulations do not impose unnecessary barriers to trade by setting standards that make compliance by overseas manufacturers difficult. However, under the terms of the Agreement on Technical Barriers to Trade, a Government may regulate to protect human life and health, especially where it can be shown to be necessary to achieve reasonable levels of consumer protection.

The US has a Regulation in place and the European Product Safety Directive is considered to provide its 25 member countries with similar effective consumer protection from unsafe portable cots. There is a high degree of conformity among standards in respect of the key safety requirements, and therefore Australia is not setting a precedent by establishing a mandatory minimum standard for portable cots.

When the 1999 Australian Standard for portable cots was developed it was based on the European standard, EN 716 which addressed safety hazards associated with some recent product designs. As a result, the Australian Standard is closely aligned with the European Standard. It is Standards Australia policy to mirror international (ISO) standards where appropriate, but in this case the relevant Standards committee found that the then International Standard ISO 7175:1997 did not address the identified safety hazards as effectively as the European Standard.

The Australian Standard differs from other similar safety standards to some degree, and it is considered that mandating the Australian Standard as a whole would impose an unreasonable barrier to trade and may be seen to impact significantly on Australia's WTO commitments. Accordingly, it is proposed that a mandatory safety standard might be based on key common elements of the Australian Standard.

Standards Australia has commenced a review of the Australian Standard, which will likely lead to a change in some of the technical specifications of the

Standard. The review process might be expected to take 6-12 months to complete.

The proposed mandatory minimum standard would facilitate compliance by overseas manufacturers by being compatible with major overseas standards.

Costs and benefits to consumers

The costs to consumers would be some reduction in the choice of portable cots and a possible loss of access to some cheaper models. In accordance with previous estimates, it is expected that about 10% of products on the market would be affected, with possible outcomes being the elimination of some of the cheaper products or the upgrading of the products to comply with the proposed standard. Some cheaper products in the market might therefore increase in price by 5-10%. This might be expected to impact on consumers in the lower socio economic groups.

The benefits to consumers would be a reduced cost of injury associated with unsafe portable cots due to the exclusion of unsafe products from the market, and an assurance that portable cots on the Australian market are as safe as anywhere in the world.

Costs and benefits to industry

The possible costs to industry will be the loss of opportunity to retail an unrestricted choice of portable cots and the cost of ensuring that products comply with prescribed safety requirements.

It is estimated that about 10% of portable cots on the Australian market do not comply with suitable safety standards, mainly involving products supplied by independent retailers and smaller furniture stores. These suppliers would need to source alternate products or require the existing products to be upgraded to comply with the proposed mandatory standard. Such an upgrade would generally require amendment of the product design and product testing.

It should be noted that consumer products are required to comply with TPA mandatory safety standards, but it is not a requirement that the products be independently certified to the standard. However, it is understood that major retailers often require third party certification of products as part of their commercial risk management strategies.

For the suppliers of product that currently does not meet the key safety requirements, the additional unit cost of sourcing products that comply with the proposed mandatory safety standard is estimated to be 5-10% depending on the volume of products supplied, and they might choose to supply complying products within their price structure. Because these suppliers do not specialise in baby products, portable cots would represent a minor component of their business and they may decide to discontinue selling the product with minimal effect on their business.

A mandatory minimum standard provides benefits to industry because it provides clarity as to what is required in providing a safe product, and should make it easier for suppliers to identify complying products.

This can reduce management and administrative effort to ensure compliance, provide a higher level of confidence in compliance and reduce the potential for product recalls and possible litigation.

Costs and benefits to government

Enforcement costs are estimated at \$40,000 per annum, which would include the costs of market surveys to monitor the compliance of products with safety requirements and any associated enforcement action deemed necessary. To enforce the safety standard the ACCC would establish rigorous monitoring of the market to identify any non-complying products and secure their prompt removal. It is expected that the State and Territory Fair Trading agencies would mirror the Commonwealth regulation, thereby multiplying the capacity for monitoring the safety of the market.

The benefits to government would be improved consumer safety due to the elimination from the market of unsafe products, an associated reduction in personal and community trauma, reduced medical and hospitalisation costs and a stronger and more responsible market. The wellbeing of the community in general, and especially those most vulnerable, such as children, is a keystone of government policy, and establishing product regulation will assure the community that product safety is being addressed.

CONSULTATION

A draft of this Regulation Impact Statement setting out the case for action to address the injuries to infants associated with the use of portable cots was submitted for consideration by:

- consumer groups;
- the Consumer Products Advisory Committee (CPAC) to the Ministerial Council on Consumer Affairs (MCCA) (comprising Commonwealth, State, Territory and New Zealand Consumer Affairs/Fair Trading officers);
- industry representatives;
- industry organizations including manufacturers, distributors and retailers;
- child safety experts such as Kidsafe; and
- the medical and health sector.

The draft RIS was circulated to a total of 55 people or organisations, and a period of 4 weeks was allowed for responses.

Comments received

Eleven written responses were received during public consultation. The responses supported the proposal to adopt option 3 proposing the introduction of a TPA mandatory standard for portable cots. Comment also included specific recommendations on the proposed mandatory standard, and these recommendations are summarised in the Attachment B as they relate to particular clauses of the standard, together with ACCC responses.

The recommendations were accommodated to the extent possible, on the basis of the practicality of the recommendations, the perceived majority view, and the government objective to impose the minimum regulation considered necessary to achieve the desired product safety outcomes.

CONCLUSION AND RECOMMENDED OPTION

Option 1 to continue the present industry self-regulation is not considered viable, given the level of risk to children and the lack of industry self-governance. An education campaign is not considered feasible on its own for the same reasons, in addition to the difficulties for consumers in assessing the safety of portable cots.

Option 2 to ensure the provision of safe portable cots through quasi-regulation is not considered feasible because of the uncoordinated nature of the market. Product sold through major retailers might be effectively controlled through industry associations, but the product is also sold through a myriad of supply chains and retail outlets for which there is no effective means of coordination.

Option 3 establishing explicit government regulation through a mandatory minimum standard for portable cots that includes the common safety requirements of Australian Standard AS/NZS 2195:1999, European Standard EN 716 and US Regulation 16 CFR Part 1509, is considered the only effective means of achieving an improved level of protection for consumers. The proposed regulation would make compliance simple for industry and impose a minimum burden on consumers and industry. For these reasons, Option 3 is the preferred option.

Option 3 would comprise a mandatory safety standard declared under the Trade Practices Act, supplemented by consumer and supplier product-specific safety awareness materials and programs. The planned product safety awareness campaign would cost an initial \$20,000 for the program and materials.

The program would aim to ensure consumers purchased only portable cots which meet the mandatory minimum standard and encourage carers to take reasonable precautions when the cots are used for infants. A supplier's guide would raise awareness of a supplier's responsibility to ensure that only portable cots meeting the prescribed standard are manufactured or imported for sale in Australia.

The campaign would be ongoing with specific opportunities to target consumers being identified over the next 3-5 years and materials reprinted on a needs basis.

IMPLEMENTATION AND REVIEW

It is proposed that the new mandatory minimum standard for portable cots be declared without delay to take full effect in 12 months time. This course of action would immediately highlight concerns about the safety of the product to suppliers and consumers, providing guidance on key safety requirements, while providing suppliers with a reasonable period of time to source alternate complying products where necessary.

It is expected that the new mandatory standard would be declared in January 2008 and be subject to review five years later, or when the Australian Standard is revised.

Compliance with the new mandatory standard would be facilitated via comprehensive supplier information and guidance, and the mandatory minimum standard would be enforced by regular market surveillance and selected product testing by the ACCC.

The effectiveness of the regulation will be assessed through analysis of market survey findings, recall action, and reviews of injury data to identify the incidence of portable cot injuries.

ATTACHMENT A

TABLE OF COSTS AND BENEFITS

		Option 1: Maintain Status Quo (Industry Self-Regulation)	Option 2: Quasi-Regulation (Industry Code)	Option 3: Government Regulation (preferred option)
COSTS	Consumers	Continuing uncertainty about the safety of portable cots on the market. Continuing incidence of injuries associated with portable cots that do not have key safety features.	Reduced choice in the market with the withdrawal of some non-complying products.	Reduced choice in the market with the withdrawal of non-complying products.
	Industry and Small Business	Continuing uncertainty about appropriate safety standards for portable cots supplied in Australia. Continuing potential for product liability claims and product recalls where portable cots prove to be hazardous.	Need to put in place and maintain the infrastructure to support quasi-regulation. Previous experience with industry codes of practice suggests that these costs would amount to approximately \$30,000 per year. The cost of ensuring that products meet safety standards.	Loss of opportunity to retail an unlimited choice of portable cots. The cost of ensuring that products meet safety standards.
	Government	The need for consumer safety agencies to react to incidents involving unsafe products.	The need to invest considerable time and effort consulting with industry to educate and encourage the development of	Enforcement costs of approximately \$40,000 per annum, to be supported by an ongoing safety awareness

		Option 1: Maintain Status Quo (Industry Self-Regulation)	Option 2: Quasi-Regulation (Industry Code)	Option 3: Government Regulation (preferred option)
		<p>Potential costs incurred as a result of reliance on the judicial system for redress in the case of the supply of dangerous goods.</p> <p>Public health system costs related to the treatment of injuries associated with unsafe portable cots.</p>	<p>arrangements for industry codes.</p> <p>Estimated costs of \$40,000 per annum.</p>	<p>campaign costing an initial \$20,000</p>
BENEFITS	Consumers	<p>Continuation of the present wide choice of portable cots on the market.</p>	<p>Some reduction in infant injuries associated with portable cots due to expected small overall improvement in product safety.</p> <p>Increased confidence that the goods they buy are safe.</p>	<p>Minimised incidence of injuries associated with unsafe portable cots.</p> <p>An assurance that portable cots on the Australian market are as safe as anywhere else in the world.</p>
	Industry and Small Business	<p>Freedom to supply an unrestricted range of portable cots and to decide appropriate levels of safety for the products supplied.</p>	<p>Industry guidance on appropriate levels of product safety.</p>	<p>Access to clear specific requirements which offer the opportunity to reduce management and administrative effort to ensure compliance.</p> <p>Reduced potential for product recalls and litigation.</p>

		Option 1: Maintain Status Quo (Industry Self-Regulation)	Option 2: Quasi-Regulation (Industry Code)	Option 3: Government Regulation (preferred option)
	Government	The absence of any requirement to formally monitor the safety of products on the market.	A stronger and more responsible market. Some improvement in product safety.	Provides mechanism to ensure that product complies with world safety standards. Minimised community and personal trauma associated with the product. Reduced medical and hospitalisation costs.

ATTACHMENT B

Summary of comment received on proposed standard for children's portable cots - September 2007

<i>Clause</i>	<i>Comment</i>	<i>ACCC Response</i>
General comment	Government intervention in establishing a mandatory safety standard is welcomed and could help eliminate unsafe products from the market. It is considered that the second option of an industry code of practice would not capture all of the market.	Support for a proposed mandatory standard is noted.
General comment	Wait for publication of revised AS/NZS 2195 to be basis of mandatory standard. The revised AS/NZS 2195 will address more safety hazards and overcome technical deficiencies in current Standard, resulting in a safer outcome for consumers.	Delay not justified as satisfactory safety requirements can be based on present (1999) standard.
General comment	With AS/NZS 2195 standard currently under review, partial adoption of the standard would be a workable solution.	Agreement noted.
General comment	The reasons for omitting from the mandatory standard many of the safety requirements of AS/NZS 2195 are queried, and it is recommended that all safety requirements be adopted.	Noted, but not agreed as the content of the standard must be justified (eg related to injuries).
General comment	The folding feature of portable cots is inherently unsafe and the hazard is not obvious to users. The product therefore needs to comply with safety standards.	Support of case for a mandatory standard noted.
General comment	The market has a high level of compliance with the current Australian Standard. The proposed compatibility with various standards should result in no significant burden to industry.	Expectation of minimal market disruption noted.
General comment	<ol style="list-style-type: none"> 1. It should be clarified that the mandatory standard does not apply to second hand goods. 2. The proposed mandatory standard might apply to second hand goods. 	It is intended that the simplified form of standard could apply to second hand cots.
General comment	Portable cots are likely to be operated by people not familiar with them – eg hotel/motel guests using a borrowed cot. A safety awareness campaign might target this industry.	Importance of awareness campaign noted.

<i>Clause</i>	<i>Comment</i>	<i>ACCC Response</i>
General comment	The proposed 12 month timeframe for introduction of the mandatory standard will provide retailers, suppliers/manufacturers with a reasonable period of time.	Agreement noted.
General comment	The need for a product safety awareness campaign is strongly supported, but the proposed \$20,000 budget would be insufficient.	Support for safety awareness campaign noted. Budget is based on planned strategy, but may be revised.
7 Construction and assembly	Recommended that the proposed standard include a requirement to exclude the use of inflatable components due to the potential for asphyxiation. A case was cited where a young child apparently died of asphyxiation when its head pressed into the folds of an inflatable children's bed.	Hazard noted. Agreed to add a new requirement to exclude inflatable components within the cot.
8.1(b) Depth of folding cot upper position	Omit reference to accessories in the note and Foreword paragraph 2 because accessories may not comply with the proposed standard but are not identified as a safety hazard.	Agreed. Omit note and Foreword paragraph 2.
Proposed new clause (8.2) - Breathability	The proposed standard should adopt new requirements for breathable mesh panels being drafted for the revised AS/NZS 2195 standard. The panels aim to reduce the risk of asphyxiation due to wedging between the side and any extra mattress.	Hazard noted. Considered that the requirement should be tested in the market before adoption as mandatory.
8.3(a) Mattress and base	Requirement for firmness of padding or cushioning to prevent asphyxiation lacks a test to verify compliance.	Lack of a test is noted, but it is considered that requirement warrants inclusion.
8.4.2 Folding mechanism design	Requirements duplicate but may conflict with clause 10.14. Recommend possible omission of clause 8.4.2 or adoption of revised wording and new figures from the revised draft AS/NZS 2195.	Agreed to omit clause and rely on clause 10.14.
8.4.2 Folding mechanism design	Reported that a product complying with EN-716 probably does not comply with this clause of AS/NZS 2195 due to lack of equivalence.	Noted. Requirement considered important and proposed to be tested using 10.14. Compliance is not generally a problem.

<i>Clause</i>	<i>Comment</i>	<i>ACCC Response</i>
8.4.3 Activation of folding mechanism	This is an important safety requirement and should be retained.	Agreed. Retain requirement.
8.6 Protrusions and gaps	There is a lack of evidence of a strangulation hazard with portable cots, and it is recommended that the requirement be omitted from the standard.	Agreed that hazard not found on current portable cots. Omit clause.
8.7(b) Sharp edges and points	The requirement for edges to be 5 mm radius cannot be met in some designs due to thickness of material used. Recommend adopting 1 mm radius requirement as proposed for the revised AS/NZS 2195.	Sharp edges and points not identified as problem with current products. Omit clause.
10.1 Safety and performance and 10.15 cots with folding accessories	Proposed omission of requirement to test cot with accessories attached is supported as test not considered relevant.	Support noted.
10.16 Protrusions and gaps test, + Appendix N	The ball and chain test specified in clause 10.16 and Appendix 4 is considered to give false results and it is proposed to omit the test from the revised AS/NZS 2195 standard. Recommend the test be omitted from the mandatory standard. If considered justified, alternate words from the household cot standard might be adopted.	Agreed, omit reference to clause and appendix.