EXPLANATORY STATEMENT

Consumer Protection Notice No. 2 of 2009

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

Trade Practices Act 1974

Consumer Product Safety Standard – Flotation Toys and Aquatic Toys

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) 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 (Consumer Protection Notice No 2 of 2009) revokes the previous Consumer Product Safety Standard for children's flotation toys and swimming aids (Consumer Protection Notice No. 4 of 1992) and declares Australian Standard AS 1900-1991 *Flotation toys and swimming aids for children* (as varied), and Australian Standard AS 1900-2002 *Flotation aids for water familiarization and swimming tuition* (as varied), to be a Consumer Product Safety Standard for the purposes of section 65C. The purpose of the safety standard is to ensure swimming and flotation aids are manufactured and labelled to have key safety features relative to their intended use.

The Consumer Product Safety Standard adopts only those parts of the Australian Standards considered necessary to address the critical safety hazards of the product, and comprises requirements that include performance requirements, markings and directions for safe use. Clauses of these Standards that are not considered primary safety requirements have not been included in the Consumer Product Safety Standard.

A Regulation Impact Statement (RIS) for this Consumer Product Safety Standard is at Attachment 1. The RIS identifies the product safety issues for flotation toys and aquatic toys and considers the options for addressing those issues. The case is presented for updating the mandatory safety standard and the rationale for the content of the new standard is explained.

A draft RIS was circulated for consideration by interested parties including suppliers of aquatic toys and flotation toys, industry representative bodies, state and territory fair trading/consumer affairs agencies, consumer groups, water safety and product testing agencies. Comment received supported the proposed update of the mandatory standard and the variations to the voluntary Australian standards. 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 Consumer Product Safety Standard commences on the day after it is 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, a choice between the current and the new product safety standard is available until 31 March 2010. From 1 April 2010 only the new Consumer Product Safety Standard for aquatic toys will apply.

Attachment 1

REGULATION IMPACT STATEMENT

REVIEW OF CONSUMER PRODUCT SAFETY STANDARD – CHILDREN'S FLOTATION TOYS AND SWIMMING AIDS

PROPOSED NEW CONSUMER PRODUCT SAFETY STANDARDS:

CONSUMER PRODUCT SAFETY STANDARD – AQUATIC TOYS

AND

CONSUMER PRODUCT SAFETY STANDARD – CHILDREN'S FLOTATION AIDS

JULY 2008

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

BACKGROUND

Flotation toys and swimming aids come in a countless variety of shapes, colours, sizes, uses and quality. They are almost exclusively manufactured overseas and are widely available in a variety of large and small retail outlets throughout Australia as well as specialist pool supply stores and online retail stores. Items vary in price and can be relatively inexpensive starting from as little as $2.

Due to the mild climate in Australian and our subsequent lifestyle choices, the popularity of these items continues throughout the year with sales peaking in the summer season.

The current mandatory consumer product safety standard for flotation toys and swimming aids was initially introduced in 1986. The standard has been reviewed once with the current mandatory standard enacted under the consumer protection notice No 4 of 1992.

The major objectives of the mandatory standard are to:

1. Prescribe performance requirements for swimming aids and flotation toys to ensure their fitness for intended use;
2. Provide via labelling for persons supervising, clear and concise advice on the dangers of leaving a child unsupervised in or near water;
3. Reduce the likelihood of misuse of these swimming aids and flotation toys to keep the user afloat.

The mandatory standard is limited in its application to products which are intended for use by children from 0-15 years of age. This group are considered to be most vulnerable as they often still only have developing motor skills and are not as able to assess or react effectively to potentially dangerous situations.

The current mandatory standard prescribes compliance to the Australian Standard: AS 1900-1991 Flotation Toys and Swimming Aids for children in its entirety.

Since the mandatory standard was reviewed in 1992, the Australian Standard 1900-1991 *Flotation Toys and Swimming Aids for Children* has been reviewed and is now superseded by two new Australian Standards: AS1900-2002 *Flotation aids for water familiarization and swimming tuition* and AS/NZS ISO 8124.1:2002 *Safety of toys Part 1: Safety aspects related to mechanical and physical properties (ISO 8124-1:2000.MOD).*

‘Swimming aids’ remain in AS 1900-2002 but are now referred to as ‘flotation aids’. However their defined use has been limited for use in water familiarization and swimming tuition. Further, this standard now encompasses swimming aids for people of all ages whereas the earlier standard, AS1900-1991, limited its scope to products for use by children 0-15 years of age.

Flotation toys which are referred to as "aquatic toys" are now referenced by the Australian New Zealand Standard AS/NZ ISO 8124.1:2002 *Safety of toys, Part 1 Safety aspects related to mechanical and physical properties (ISO 8124.1:2900, MOD)*. These products are now being defined differently, as well as having new performance and labelling requirements.

Flotation aids and aquatic toys as now defined have quite separate functions from each other as well as from Personal Flotation Devices (PFD's). This RIS will explore the case for regulation of flotation aids and aquatic toys only and it is not intended to include PFD's as part of this review. PFD's are covered by a separate Australian Standard and are not regulated under the product safety provisions of the Trade Practices Act 1974. Any regulation arising from this review will provide a clear distinction between PFD's and flotation aids and the circumstances under which they are intended to be used.

The Australian Competition and Consumer Commission (ACCC) enforces mandatory standards through monitoring the market and where necessary, taking action to remove from the market any products identified that are found not to comply. The mandatory standard for flotation toys and swimming aids provides a mechanism for identifying and removing from the market products that fail to meet minimum safety standards, thereby potentially reducing the risk to children using these products.

From the information available it has not been possible to quantitatively assess the effectiveness of the TPA mandatory safety standard for these products. Unfortunately the available data does not provide sufficient detail to distinguish product failure or misuse in incidences of drowning, or near drowning or associated injuries, where flotation aids or swimming toys were in use.

The importance of maintaining the safety of these items should not be underestimated as these products are used in a water environment. Such environments do pose a risk for children as shown in the statistics from the Australian Bureau of Statistics (ABS).

Through identified trends in product related injuries, injury prevention specialists are confident that, by ensuring minimum levels of product performance and the provision of 'safe use' warnings and instructions, the safety standards for these products are effective in moderating the associated injury rate. Prominent and permanent warnings on the product reinforce the safety message by providing a present and constant reminder of the hazards.

It is desirable that TPA consumer product safety standards are reviewed periodically to ensure they remain current and continue to meet the needs of consumers and industry. Industry recognises the importance of the mandatory standards and many have called for the adoption of the updated versions of the Australian Standards for flotation aids and aquatic toys.

PROBLEM

The problem being addressed is the risk of drowning or near drowning amongst 0-14 year old children associated with the misuse and/or failure of flotation aids and aquatic toys.

In the past 10 years there have been some 12 national recalls of swimming aids and flotation toys and several undertakings by suppliers to remove product considered unsafe from the market. Complaints received from throughout Australia also suggest that safety hazards still remain with some flotation aids and aquatic toys used by children.

The Australian Standard 1900-1991 *Flotation Toys and Swimming Aids for children* is now superseded by the new Australian Standard 1900-2002 *Flotation aids for water familiarization and swimming tuition* and AS/NZS ISO 8124.1:2002 *Safety of toys Part 1: Safety aspects related to mechanical and physical properties (ISO 8124-1:2000.MOD).*

These two current Australian Standards were published in 2002 however the current 1992 consumer product safety standard references AS 1900-1991, the superseded Australian standard, and has not been reviewed and updated to reflect the changes.

The relocation of aquatic toys to AS/NZS ISO 8124.1:2002 has resulted in a lessening of some performance and labelling requirements for these products. In reviewing the mandatory standard it needs to be examined if the Australian Standard requirements for aquatic toys should be reflected in the revised mandatory standard, or if there is a need to enhance current requirements for aquatic toys.

Finally, Australian Standard 1900-2002 *Flotation aids for water familiarization and swimming tuition,* has expanded its scope to cover all age groups rather than the 0-15 year old children as specified in the scope of the previous standard AS 1900-1991. It needs to be explored if there is justification for continuing to limit the application of the mandatory standard to a particular age group.

DEATHS AND INJURIES

Research has shown that drowning is still a significant cause of death amongst the wider Australian population. However, one fact that has been regularly highlighted is that drowning is consistently shown to be the leading or second leading cause of death amongst young children between the ages of 0-14 years. This group is considered to be the most vulnerable to drowning as they are still developing their motor skills and are not of an age to judge hazards.

Drowning deaths have been reported[1] as occurring in a variety of locations and include

- Swimming Pool
- Coast or river
- Lake/lagoon

[1] ABS report Mortality and Morbidity: Children's Accidents and Injuries-*Australian Social Trends 2005 released 12/07/2005,* Royal Life Saving Society Australia: The National Drowning reports 2006

Whist drowning occurred in locations listed above, there were re occurring circumstances relating to the death or injury in conjunction with these locations. Amongst the general population three particular circumstances[2] that were linked to a significant number of accidental drownings included: the person either fell or wandered into water, when swimming, paddling or wading and watercraft accidents.

The top three circumstances associated with drowning or near drowning for children between 0-14 years of age were 1) absence of a pool fence, 2) inadequate pool fence and 3) inadequate pool gate.

When explored further, it was found overwhelmingly that effective supervision was a key to reducing or minimising the likelihood of drowning amongst this group. Supervision was commonly found to be absent or there was confusion as to who was supervising or some other disruption, ultimately resulting in a child being left by themselves for a period of time.

ABS reports[3] listed 16 specific circumstances in which drowning occurred in over 400 incidences over a 6 year period amongst children less than 5 years of age. Whilst product failure specifically was not listed, 'safety features', 'misuse' and 'floaties' (with no further explanation) were listed as circumstances associated with the reported drowning incidents.

Flotation aids and aquatic toys are sold throughout Australia and are both significant product categories generating hundreds of thousands of dollars in sales annually. This is reinforced by the fact that swimming is one of the leading organised and non organised sports undertaken by Australian children. Due to climate and lifestyle choices, it is likely that a high percentage of Australian households are likely to have one or several flotation aids or aquatic toys.

Given the wide distribution of these products and their high rate of use, should there be ineffective supervision, product failure and or absence of effective warning labels, the potential risk of death is increased. There is thus a need for effective standards.

CHANGES IN THE MARKET

Suppliers have responded to the continuing demand for flotation aids and aquatic toys by providing the consumer with an increased variety of designs, colours, shapes and potential uses. The need for innovation has been a major driver for suppliers and consequently there are continuous changes to the design of product, the fabrics, the buoyancy materials, closures, tapes and sewing threads used.

In the rush to maintain relevance in a competitive market suppliers are constantly looking for something new for the coming season. Due to the proliferation of manufacturers and suppliers of flotation aids and aquatic toys in the past decade, inadequately researched and substandard product may be entering some sectors of the market as evidenced by ongoing withdrawals and recalls of product from the market.

[2] ABS report Mortality and Morbidity: Accidental drowning -*Australian Social Trends 2000 released 04/07/2000*

[3] ABS report Mortality and Morbidity: Accidental drowning -*Australian Social Trends 2000 released 04/07/2000*

OBJECTIVES

The objective of government action in implementing the consumer product safety standard for children's flotation aids and aquatic toys is to minimise the likelihood of drowning or near drowning resulting from the misuse and or failure of these products during use.

The current mandatory standard is directed at flotation aids and aquatic toys intended to be used by children 0-15 years of age. This group are a more vulnerable group of consumers due to a reduced ability to recognise risks to their safety and immature motor skills. Injury statistics support this.

There is also an emerging need to support education in creating awareness in particular groups such as migrant families and visitors to Australia, who may not be familiar with water safety.

The Trade Practices Act 1974 includes provisions to support these objectives 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.

This standard forms part of a suite of drowning prevention measures. It complements other strategies such as community education, swimming tuition programs and pool fencing regulations.

Changes to requirements for AS 1900-1991

The product testing regime outlined in the new AS 1900-2002 was developed by the Standards Australia committee CS-021 with the primary focus to develop a standard that delivered a safe product with security of fit. The selection of test methods that best achieved this aim as selected by this expert committee is reflected in the new standard.

The committee, in undertaking the review of AS 1900-1991, looked to other Australian and international standards. They found that the EU had the only other standard worldwide that addressed the issue of flotation aids or aquatic toys. The committee also found that the EU standards contained a number of requirements relating to product safety in conjunction with a number of other requirements that were not considered to be contributing to the safety of the product. An example of this was the test for colour fading from saliva.

The CS-021 committee considered the relevant sections and test methods of the EU Standard at the time and the committee refined and included some additional testing criteria they drew from existing Australian testing methods such as the test specified for determining sewed seam strength. This process was undertaken in order to minimize the introduction of new and potentially untried testing methods.

OPTIONS

1. Mandate relevant parts of AS 1900-2002 and AS/NZS ISO 8124.1:2002

This option proposes that separate TPA consumer product safety standards for both flotation aids and aquatic toys adopt and mandate most provisions of AS1900-2002 for flotation aids and certain provisions of AS/NZS ISO 8124.1:2002 for aquatic toys. It is proposed to limit the age applicability of both consumer product safety standards to 0-14 years due to their particular vulnerability to drowning and injury whilst using such products.

NOTE: The European Standard EN 13138-1:2003 *Buoyant aids for swimming instructions-Part 1: Safety requirements and test methods for buoyant aids to be worn* was drawn upon to aid in determining performance requirement parallels between it and *AS 1900-2002 Flotation aids for water familiarization and swimming tuition*, and to ensure unnecessary barriers to trade did not arise in mandating test methods prescribed in AS 1900-2002.

Flotation Aids

The revised AS1900-2002 Flotation Aids redefines and narrows the range of products that are covered by this standard, as well as being increasingly specific about the intended use of these products: i.e. use in the instance of water familiarization and swimming tuition only.

The complexity of the labelling requirements for flotation aids in AS1900-2002 has also been reduced and simplified from that prescribed in AS1900-1991. Warning label options have been reduced from 3 to 2 options. The same wording is used in both options with an additional line in one to distinguish flotation aids from personal flotation devices (PFD's) used in boating.

The labelling requirements of the Australian standard are shorter and are considered to be more succinct than the EU standard and as such, should not be aligned with the EU wording. As is currently common, suppliers to both markets will probably continue to mark flotation aids with both the Australian and EU standard wording requirements.

The updated and new performance tests in AS 1900-2002 are designed to more effectively address potential issues with normal wear and tear of a product, changes to components (types of buoyancy materials, fabrics, closures, fasteners etc.) and designs. The tests have been selected to work together in order to also assist in determining the overall security of fit of a product. It should be noted at this point, that there is no specific test prescribed for security of fit in Section 2.1.1 of AS 1900-2002. Whilst useful as a guide to suppliers this section need not be mandated as the mandating of specific product tests as outlined above are considered sufficient to achieve a reasonable prospect of security of fit.

Further the Australian standard has similar requirements as outlined in each of the sections below, from the European Union (EU) standard, however for compliance to the Australian standard there is a marginally higher level of performance.

Specifically from EN 13138-1:2003:

- Section 5.3.1 Adjustability -Type B devices (such as back bubbles) there is no test method but the use of a check list is prescribed. This assessment sheet assesses certain design aspects such as sharp edges already included in Section 2.1.2 of AS 1900-2002 . Although the check list is more an awareness raising exercise than an enforcement tool, it does go further than AS 1900-2002 in assessing aspects such as likelihood of displacement during use, confusion as to whether the item is put on back to front etc.

- Section 5.3.2 Security of buckles and other fixtures. The EU standard requires only that the buckle survive the securing of the buckle and the application of 50N of force once. However in *AS 1900-2002 Appendix E Method for determination of fastener release security* after the force is applied once, the buckle is then opened and closed 98 times and then closed. The buckle needs to survive the 50N of force which is then re applied. The Australian standards test assesses the buckle after this simulated use.

- Section 5.5.1 - The EU standard required sample conditioning to include soaking in chlorinated water and exposure to hot and cold conditions rather than exposure to UV light. AS 1900-2002 also provides for a very specific sequence for the conditioning: including exposure to UV light and then, testing of the product.

The tests prescribed in AS 1900-2002 are more suitable for Australian conditions and should be mandated in the revised mandatory standard. The Australian Standard addresses specific climatic conditions which can affect the longer term safety of the product – a view supported from feedback received.

Aquatic toys

Aquatic toys (flotation toys) have been removed from AS 1900-1991 and are now referenced in Australian Standard AS/NZS ISO 8124.1:2002. As a result of the Standards Australia Committee review of AS/NZS ISO 8124.1:2002, the Committee concluded that only minimal performance standards are required for aquatic toys.

This was a deliberate change as the Standards committee defined aquatic toys as an item of play and not one that is specifically designed and tested to ensure buoyancy.

The definition for ‘aquatic toys’ has been re defined to describe their specific intended use. Labelling for aquatic toys has been revised as outlined in AS/NZS ISO 8124.1:2002 and whilst there are parallels between the European standard for toys, AS/NZS ISO 8124.1:2002 is somewhat more simplified in its requirements.

All clauses of AS/NZS ISO 8124.1:2002 referring to aquatic toys should be mandated which include the definition, performance and labelling requirements.

Currently Australian and European Union suppliers are required to label product in accordance with the differing requirements. The updating of the mandatory standard to adopt AS 1900-1991 and AS/NZS ISO 8124.1:2002 will not alter this current status.

The mandating of the newly entitled *Consumer Product Safety Standard – Aquatic Toys* referencing AS/NZS ISO 8124.0:2002 and *Consumer Product Safety Standard – Children's Flotation Aids* referencing AS1900-2002 would be accompanied by a consumer and trader education campaign. The education campaign would include the development of a supplier guide for flotation aids and aquatic toys and the development of updated 'safe use' advice for consumers. Enforcement of this proposed option would be performed by the ACCC.

2. Remove the mandatory standards and revert to industry self-regulation

Self-regulation could range from a simple code of ethics to a code drafted with legislative precision together with sophisticated customer dispute resolution mechanisms.

Industry self-regulation is most effective in cohesive industries with like minded participants motivated to achieve similar goals. These characteristics are features not evident of the industries supplying aquatic toys or flotation aids. The vast majority of flotation aids and toys are manufactured overseas and are supplied into a wide range of businesses from small low cost variety stores to multi-national toy companies.

Removing the current mandatory standards and adopting an industry self-regulation model would allow relevant industry bodies to develop a safety regime to encourage compliance with minimum safety standards. However, it is considered that the industry does not have the cohesiveness or sufficient long term investment by the majority of players, to allow an effective self regulatory system to develop. Therefore it is considered highly unlikely that enough suppliers of these products would comply with only voluntary product safety standards should the mandatory standard no longer apply.

Whilst industry self-regulation implies that a minimum safety standard would be maintained, there would in fact be no legislative requirement for industry to comply with any aspects of the self-regulation model.

Any regulation of the industry would be from within or from pressure created by consumers if there is a significant reduction in sales (due to poor quality or unsafe products).

A range of other drowning prevention strategies are in place and ongoing and it could be argued that these provide adequate measures without the need for product regulation.

3. Mandate labelling requirements only

This option proposes that the mandatory Consumer Product Safety Standard declared for flotation aids and aquatic toys would adopt the labelling requirements only (but not performance requirements) from AS 1900-2002. Additionally, the labelling requirements for aquatic toys would be adopted from AS/NZS ISO 8124.1:2002.

Labelling would provide guidance to consumers as to the safe use of these products.

IMPACT ANALYSIS

Impact Groups

The proposed options would affect consumers who purchase flotation aids and aquatic toys and the end user, businesses involved in the supply of these products: manufacturers, importers, distributors and retailers, government (including consumer product regulators) and providers of emergency hospital services (in the treatment of victims).

Option 1: Mandate revised Australian Standard/s

Costs and Benefits for Consumers

In mandating the revised version of AS 1900-2002 in conjunction with relevant sections of AS/NZS ISO 8124.1:2002 there will be a requirement for compliance to improved performance standards at minimal additional cost.

The new Australian standard for flotation aids has drawn on a number of requirements from the EU standard and thus is somewhat more aligned than the previous versions.

Some suppliers, who are producing specifically for the Australian market and producing product that only meet the current mandatory standard AS 1900-1991, may find that the introduction of compliance to the new Australian standard AS 1900-2002 with the improved performance requirements may have some increased production costs that they will pass onto the consumer.

It would be reasonable to assume however, that suppliers manufacturing product for the EU market would be sending this same product into the Australian market. This being the case, these products would already be meeting some substantially equivalent and sometimes greater performance expectations of the EU standard for these same products.

Despite the variations in performance and labelling requirements between the Australian and EU standards previously discussed, it is considered that they will not substantially add significant additional cost for manufacturers.

Consequently, it is unlikely that there will be any significant price increase as suppliers would have already absorbed any manufacturing increase when developing product for the significantly larger EU market. Feedback suggests overall support for this despite the differing requirements.

As the primary user of flotation aids are 0-14 year olds, many of whom cannot swim, if children are to get into difficulty in water there is little that they can do to protect themselves. There is consequently a heavy reliance by that individual and the person supervising, that the flotation aid will work effectively and maintain buoyancy. Performance standards are needed to achieve this.

Consumers will have the benefit of more products which will most likely already meet higher performance standards without any cost increase.

The cost of product compliance testing is relatively low. For swimming aids, it has been estimated that there may be an increase of approximately $300 (per model) to the cost of compliance testing here in Australia whilst there is the potential that this cost will be lower if tested overseas. However, in trying to recoup compliance costs there is the potential that suppliers may pass on a very small price increase.

Clear and concise labelling requirements for safety warnings will allow consumers to select the appropriate product for the intended use. It will reduce the potential for misuse which is one of the leading reasons for injuries associated with the products with the added benefit of a constant reminder for the need for constant supervision.

Minimising the incidence of a drowning or near drowning reduces the emotional and financial burden (through associated medical expenses) on consumers.

Costs and Benefits for Business/Industry

With the introduction of a mandatory standard all suppliers supplying into the Australian market whether they are local or internationally based, will be required to meet an effective level of compliance. Some suppliers may already be meeting a higher level of compliance, but it is those suppliers who are only meeting the current minimal and now superseded standards, who will be the most likely to pass on a cost increase for having to improve their product manufacturing standards.

Many suppliers manufacture and label their products so as to meet both the current Australian mandatory and EU standards. With the introduction of the new AS, as there are greater parallels with the EU standards, there is potential to reduce manufacturing costs as there will be fewer variables in the performance and labelling requirements.

Retailers greatly benefit as it would make it far easier to source compliant product

In addition to the above cost-benefit analysis, the Australian Government requires the use of the business cost calculator (BCC) to assess whether the impending regulations are likely to involve business compliance costs. The BCC has been developed to provide an automated and standard process for quantifying compliance costs of

regulation on business. The BCC identifies eight categories of compliance tasks and a ninth category to capture costs not readily classifiable to one of the eight.

The majority of flotation aids and aquatic toys in the Australian market are imported with very few if any manufactured locally. These products are primarily a seasonal range with peak supply occurring during the warmer months of the year.

The actual size of the market is not able to be quantified as there are numerous suppliers of these products and many are of an ad hock and transient nature and therefore insufficient global information is available to conduct a complete analysis of regulation associated costs to business.

Feedback from the consultation process did not provide any concise insight to associated costs. However several comments from suppliers during the consultation process who raised the issue of cost, all advised that adoption of AS 1900-2002 and the relevant sections of AS/NZS ISO 8124.1:2002 will have very minor cost implications for business.

For example the suppliers stated:

> *"the option to mandate sections of AS/NZS ISO 8124.1:2002 and AS 1900-2002 was considered as providing the greatest improvement to consumer safety with minimal cost increase"*
>
> *"….it will bring the regulation into alignment with published standards and remove confusion to the market. Supplier cost will be reduced as a result"*
>
> *"The cost of doing business will increase slightly…due to testing requirements. This is still our preferred option as we believe the requirements of two well recognised, published Australian standards will be more straightforward for suppliers, manufacturers and retailers*

Suppliers of aquatic toys and flotation aids have been required to comply with a mandatory consumer product safety standard since 1986. The introduction of two new mandatory standards (one each for aquatic toys and flotation aids) aimed at reflecting the changes in the Australian standards is unlikely to produce any significant additional cost burden for suppliers.

There is also the potential for a reduction in cost for certain industries; in particular, those who manufacture aquatic toys. The proposed mandatory standard actually lessens the performance and testing requirements of these products compared to current requirements (without affecting the safety of the product).

Costs and Benefits for Government

Costs to government in administering the mandatory standard covering flotation aids and aquatic toys are estimated to be about $60,000 to cover market surveys, product testing, standard review, enforcement actions and other legal and educational expenses.

These products are aimed for use primarily by vulnerable consumers; young children between 0-14 years of age. There are a number of government funded, private and voluntary groups all working together to ensure the safety of children and adults when in or near water. Introduction of improved mandatory standards would serve to enhance and support the work that is already being done.

By continuing to mandate performance and labelling requirements it is most likely that the current trend of ongoing reductions in deaths and injuries associated with the use of these products will continue. It is unlikely that the use of products that comply with the revised mandatory standard will add to the current burdens on the hospital system.

Option 2: Remove Mandatory Standards – Industry Self-Regulation

Costs and Benefits for Consumers

Removing any form of mandatory standard would have the potential of allowing flotation aids and aquatic toys into the Australian market where there is uncertainty by consumers and enforcement agencies as to which products have been manufactured to agreed safety standards and those which are not.

Consumer confidence will be affected as there would be no assurances that the goods they purchase will be safe to use. This assurance is critical, in particular, in the instance of products used by young children who are unable to swim.

The removal of mandatory standards could lead to an increase of drowning or near drowning in particular amongst 0-14 year olds and the creation of an ongoing risk that cannot be managed until an injury occurs. From this there are the associated financial and personal costs to consumers.

One benefit of a self-regulated market is that there could be an unrestricted supply of goods that could lead to more competitive pricing and a wide range of goods available in the market. However this may not be as significant as could be expected as many flotation aids and aquatic toys are relatively inexpensive with variety and supply already plentiful.

Costs and Benefits for Business/Industry

If there was to be no mandatory standard, suppliers could benefit from a potential reduction in cost of production. However there may be a cost due to increased product liability premiums, the continued uncertainty about potential for litigation, compensation and other associated costs. The damage to the industry could be

significant as the perception of the products desirability as safe consumer items could suffer.

Consideration needs to be given to the potential for an increase in the need to recall products that are found to be unsafe. The cost of recalling a product including initial and ongoing loss of sales could be significant for the manufacturer and retailer.

Should a supplier choose to maintain even minimal safety standards, there would be confusion and uncertainty as to which particular standard (the Australian or EU standard) they should follow and which particular tests are most appropriate.

Costs and Benefits for Government

Having no mandatory standard would mean that government agencies would not directly bear the costs of an enforcement regime. However, whilst relevant administrative and enforcement costs could be saved, they could easily be absorbed in investigating a potential increase in complaints, recalls and litigation with recalcitrant suppliers.

Medical costs associated with the treatment of injuries from the use of unsafe products must be borne by the hospital system along with the personal loss that would be experienced by a victims' family.

Option 3: Mandate labelling requirements only

Costs and Benefits for Consumers

A significant cost to consumers could be an increase in incidents of drowning or near drowning as result of the misuse of the products, the failure of the product during use, or a combination of both.

Removing performance requirements and only mandating labelling can have the consequence of consumers losing confidence in the safety of these products. Some suppliers may still voluntarily choose to manufacture product to the Australian Standard or EU Standard but these may not be easily distinguishable from non compliant product in the market. Consumers would not necessarily be able to identify and compare the safety of products, especially if products do not provide information about compliance with a standard.

These effects may not be evident immediately as there will be product on the market in the short term that meets certain safety standards.

Whilst the labelling requirements in the standard are very important for consumers as it can influence behaviour and potentially decrease the likelihood of misuse, labelling alone however, will not necessarily ensure the performance and overall safety of the products themselves.

Costs and Benefits for Business

With the removal of performance standards, some suppliers may choose to reduce their manufacturing standards and begin producing to a price rather than with safety in mind.

Initially consumer confidence may not be altered, however if there was to be an increase in the number of deaths or injuries, and/or recalls and failing product and/or an increase in consumer complaints, there could be a consumer backlash with decreased sales potentially significantly impacting the entire industry.

By maintaining the current performance standards and labelling requirements, there is likely to be no increase and, in fact, a possible decrease in production costs of some products.

Costs and Benefits for Government

In deregulating the performance requirements of the mandatory standards the government would have to bear any increase in cost to the hospital system where there are product failures and resultant injuries and or deaths.

Enforcement costs would significantly be reduced as compliance checks would extend only to visual checks of product labelling and there would be a reduced necessity to purchase product. This could be further supported by the fact that there are numerous organisations that actively pursue the issue of water safety.

CONSULTATAION

This regulatory impact statement setting out a series of options for the regulation of flotation aids and aquatic toys was submitted for consideration to stakeholders including

- relevant industry associations including the Australian Toy Association and The Royal Life Saving Society
- suppliers including manufacturers, distributors and retailers
- Commonwealth, State, Territory and New Zealand Consumer Affairs/Fair Trading Ministers/officers
- test laboratories
- child safety experts such as Kidsafe
- medical and health sector representatives
- consumer groups
- representatives of Standards Australia (committee CS-021)

A total of 28 organisations were consulted for their comment.

CONCLUSION AND RECOMMENDED OPTION

Comments received overall supported the updating of the mandatory safety standards for flotation aids and aquatic toys as described in option 1 of the RIS, as being the most effective option for ensuring the safety of these products on the Australian market. Support for this proposal was received from consumer groups, industry and other state/territory consumer affairs/fair trading agencies.

A summary of the views expressed have been reviewed and a considered is response provided. See Attachment A.
Flotation aids and aquatic toys form a part of the everyday life of many Australians. ABS statistics show that swimming has the highest formal participation rate of any sport with children between 5 to 14 years and recreational participation, being amongst the top five activities along with drowning being the second most likely reason for death amongst 0-4 year old children.

With this high level of participation and correspondingly high level of exposure to the products included in the definition of AS 1900-2002 and AS/NZS ISO 8124.1:2002 it is reasonable to expect that the potential of death or injury is also high. Consumer confidence and expectation of these products is justifiably high.

Australian Standards are evolving documents that take account of industry innovation, advancements in technology, changes to manufacturing methods, choice of raw materials and eliminating or at least minimizing hazards hence the current Australian Standard that aims to reflect this.

To support and maintain consumer confidence of products in the Australian market, as well as the industry itself, it would be beneficial as per option 1, to adopt the Australian standard AS 1900-2002 *Flotation aids for water familiarization and swimming tuition* with variations and the relevant parts of AS/NZ ISO 8124.1:2002 for aquatic toys.

It is further proposed to limit the application of the standard to apply to those products which are specifically designed for use by children aged 0-14 years of age due to their particular vulnerability to drowning or injury and use of the relevant products. It should be noted that support has been received with regards to limiting these requirements for products intended for children 0-14 years both from regulators as well as safety interest groups and suppliers alike.

The purpose of a mandatory standard is to address an identified risk. Aquatic environments have been shown to pose a significant risk to children and statistics clearly show that 0-14 year olds are the most vulnerable to this risk.

Consumers can be confident in knowing that the products entering the Australian market are manufactured with safety in mind as well as continuing to enjoy the current low level of injury and death associated with these products. At the same time, manufacturers will have the ability to be innovative and produce products complying with standards with reduced variation from EU standards and manufacture to a quality that should minimise risk of product failure (performance), misuse (labelling) and limit potential product liability claims.

Whist is has been acknowledged by retailers that there may be a slight increase in the cost of doing business, the option to mandate relevant sections of AS 1900:2002 and AS/NZS ISO 8124.1 were considered to provide the greatest improvements to consumer safety with a minimal cost increase. This is considered to be the preferred option as the requirements of two well recognised and published Australian standards would be easily understood by suppliers, manufacturers and retailers.

To maintain explicit government regulation by declaring new mandatory standards for key safety requirements of flotation aids and aquatic toys was considered to be the most effective means of maintaining and improving the safety of these goods. The proposed regulation would impose minimal burden for suppliers.

Further the proposed regulations would simplify the requirements and bring them up to date with the revised Australian Standard. Option 1 is the preferred option.

IMPLEMENTATION AND REVIEW

It is proposed to implement the preferred option 1 by gazetting new safety standards. Due to there being considerable changes to the description and definition of the use of these products, it has been decided to introduce two new safety standards.

One Consumer Protection Notice (CPN) will address the products defined in the current mandatory standard and AS 1900-1991 as children's swimming aids, and flotation aids for water familiarization and swimming tuition as defined by AS1900-2002. The second CPN will address products defined in the mandatory standard and AS1900-1991 as flotation toys, and aquatic toys as defined by AS/NZS ISO 8124.1.

Due to the predominantly seasonal nature of the retail cycle of these products with the majority of sales occurring during the warmer months i.e.: October through to March, it was considered unreasonable to impose a new mandatory standard immediately on industry as many suppliers have already placed orders to meet consumer demand for this coming summer season of 2008/2009. Requiring compliance in the short term is likely to create a significant economic burden on industry.

Suppliers will be given a period of 12 months to comply with the new requirements. These arrangements will allow for clearance of any stock made to the current mandatory standard and for any minor modifications to manufacturing and compliance testing where necessary, to meet the new requirements.

Suppliers will have the option to comply with the requirements for flotation toys and swimming aids for children as defined by CPN No. 4 of 1992 or adopt the requirements for flotation aids and aquatic toys as defined by AS1900-2002 and AS/NZS ISO 8124.1 and as modified by the CPN.

The effectiveness of the new standard will be monitored by evaluation of available injury data, feedback from industry and consumers and retail surveys.

It is Australian Government policy to periodically review safety standards and this standard will be reviewed as required to ensure it remains appropriate and effective.

ATTACHMENT A

CONSULTATION COMMENT

A draft regulation impact statement proposing the regulation of flotation aids for water familiarization and swimming tuition and aquatic toys was circulated for consideration and comment to stakeholders. Feedback received was assessed to aid in determining whether the proposed mandatory safety standard is necessary to manage the issues identified, as well as which parameters should be mandated.

Respondents overall supported the proposal to maintain a mandatory standard. It was considered to be an effective option in addressing the potential injuries associated with these products.

Comment was received on the various options, questions and proposed variations outlined in the RIS. The recommendations have been reviewed and taken into account in the finalisation of the RIS process and the development of the draft standard.

In addition to the comments that necessitated a direct reply, many positive endorsements from stakeholders were received supporting the proposal. A small selection included:

> *"May I take this opportunity to congratulate you on the thoroughness of the review. It is most pleasing to see the matter addressed so seriously and comprehensively"*.
>
> *"I concur with your recommendations, particularly in regard to not allowing industry self-regulation"*.
>
> *"(The organisation) agrees with the draft RIS and has no further comment to offer"*.
>
> "*Support for the referencing of Australian Standards AS 1900:2002 and AS/NZS ISO 8124.1:2002 in the new mandatory safety standard along with* the labelling requirements listed in AS 1900:2002, the mandatory labelling of aquatic toys in the new mandatory safety standard inclusion of the performance tests listed in AS 1900:2002".
>
> "*Felt that the requirements in the published Australian standard to be straight forward for supplier, manufacturers and retailers"*.

A summary of comments and responses from stakeholders are listed on page 19.

COMMENTS	**RESPONSE**
The proposed regulation will apply to product intended for use by children only. AS1900:2002 does not specify an age range.	Statistics have clearly shown that one of the leading causes of death among children is drowning. Children are considered to be the most vulnerable to drowning as they are still developing their motor skills and are not of an age to judge hazards and are less aware of the associated risks. The purpose of a mandatory standard is to address an identified risk. In this instance, the identified risk is to children.
The proposed regulation will apply to product intended for use by children 0-15 years. This age range is at variance with the toy standard which applies to product intended for children under 14 years of age.	As raised in the previous point, the most at risk group to drowning are children. AS 1900:2002 is silent on age limits for flotation aids whereas the previous version of AS 1900 limited the application of the standard to "children aged up to 15 years". However, AS/NZS ISO 8124.1 2003 defines toys (including aquatic toys) as being intended for use by children up to 14 years of age. In order minimise confusion and improve consistency for industry, with AS 1900:2002 being silent with regards to an age group and AS/NZ ISO 8124.1 2003 defining a toy as an item intended for children 0-14 years of age, the application of both consumer protection notices for flotation aids and aquatic toys will be limited to the 0-14 age range.
If the mandatory standard was to limit the coverage use of these flotation aids to children, would this limit the use of these products for the physically and intellectually disabled and adults that do not know how to swim or are not water familiar.	As raised in the previous points, children are less aware of the risks involved with water. Adults who are unable to swim are more able to recognise the risks or dangers associated with water and make a judgement as to the safety of entering the water. Physically and intellectually disabled individuals may require more intensive and individualised support during tuition. They also may require far more specialised equipment and any products designed specifically for disabled individuals should be subject to their own technical standards. This RIS has not sought to identify the risk of drowning amongst physically and intellectually disabled individuals.

The security of fit is an important section of the standard to provide evidence that the model of jacket, once it has passed all of the other sections of the standard, verifies that the flotation aid does not obstruct the user and is secure on the wearer during normal use. The security of fit should be an integral part of the mandated standard so that the flotation aid can be shown by the manufacturer to be able to perform to the level required when in use.	The security of fit requirement is not adequately covered in the standard as there is no definitive test or assessment method for this requirement. There is no specific test that has been identified by the Standards committee that can determine security of fit as a stand alone requirement. Therefore, in the absence of a defined assessment for security of fit, the updated and new performance tests in AS 1900-2002 address potential issues with normal wear and tear of a product; changes to components (types of buoyancy materials, fabrics, closures, fasteners etc.); and designs. The tests have been selected to work together in order to assist in determining the overall security of fit of a product. This is a technical parameter and as such will be referred to Standards Australia for the consideration of the relevant technical committee.
A query was raised with regards to adopting the recently published version of the European standard for similar products. It was suggested that certain "variances" should be considered as part of your review and consideration given to these accordingly to ensure that consistency and the highest safety standards are attained on products which fall under this classification. Adopting the European Standard would also reduce confusing messages to consumers as well as make easier the commercial marketing over the continents. Section 5.3.1 from EN could be useful for increasing safety because it is more explicit and thorough.	It is acknowledged that the EU standards are more current with parts 2 and 3 being published as recently as late 2007. However, the EU standards are significantly different to the Australian standard and in particular do not addresses the specific Australian climatic conditions which can affect the longer term safety of the product. For example, AS/NZS 1900:2002 requires product to be tested under ultra-violet light. Any technical differences between Australian and international standards are considered to be best dealt with by the Standards Australia technical committee. The Committee has the expertise to consider the differences between the EU and AS standards and ultimately what parameters are critical to ensure safe products used in Australian climatic conditions. This matter will be raised with Standards Australia for consideration by the relevant technical committee.

Our only issue is the lack of test facilities. Most of our testing is done in Australia and as a result is quite expensive. I think this is definitely something that doesn't seem to be taken into account by Government regulators. It must be quite difficult for smaller businesses that have little knowledge on compliance requirements, test facilities etc. There is a lack of test facilities. As a result, testing performed in Australia is quite expensive.	Noted. Local testing facilities have been identified and consulted during this review process. Costings in the RIS are based on product testing in Australia. The risks involved with the use of these products necessitate mandatory consumer product safety standard.
A query was raised as to the range of products that would be covered, for example, a surf board by any proposed regulation. The qualification to the legislation needed would be to clearly define aquatic toys as opposed to items listed in AS1900:2002. Unless this is clear, producers of flotation aids may modify the equipment slightly so that they avoid the restrictions of the standard.	AS 1900:2002 is clear in its intention that its application is for products used for water familiarisation or learning to swim. Consideration will be given to ensuring a clear and concise definition of flotation aids and aquatic toys to minimise confusion as to what products are encompassed by the mandatory standard.
In addition to the requirement for marking flotation toys in AS/NZS 8124.1:2002 it would be necessary to specify the size of the warning, as no dimensions are quoted in AS/NZS 8124.1:2002.	Dimensions are identified in Appendix ZZ of AS/NZ ISO 8124.1:2002.
Labelling under the AS/NZS ISO 8124.1:2002 is not optional.	Noted and has been rectified in the RIS.

A concern was raised regarding a change-over period for product that may comply with the 1991 Australian standard and will become illegal with the introduction of a new mandatory standard adopting the AS1900:2002. Changes to the AS1900:2002 were highlighted, in particular, the requirement for inflatable aids to have 2 separate chambers and the fastener security clause. The matter related to the need for suppliers to have sufficient time to adapt	It is intended that there will be a 12 month transition period which would allow suppliers to accommodate the new requirements.
The requirement for strength of sewed seams- clause 2.6.3- was highlighted as being too onerous and potentially an error.	Noted. This matter will be referred to Standards Australia for the consideration of the relevant technical committee.
The requirement for resistance to leaking and bursting- clause 3.4.2- was noted as having been reduced in the 2002 standard, however it is still more onerous than the EU standard.	Noted. As this is a technical parameter it will be referred to Standards Australia for the consideration of the relevant technical committee.
Education campaigns were mentioned by a number of respondents	As outlined in the draft RIS, the release of a mandatory standard will be accompanied by supplier and consumer education.