

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Assistant Treasurer

*Competition and Consumer Act 2010*

*Consumer Goods (Portable Swimming Pools) Safety Standard 2013*

### Overview

The *Consumer Goods (Portable Swimming Pools) Safety Standard 2013* (the safety standard) sets out mandatory labelling requirements for portable swimming pools supplied in Australia.

Portable swimming pools pose a drowning hazard to children and supervision is a key element of hazard prevention. Preventing unauthorised access to a pool via swimming pool fencing is also an important element of swimming pool safety.

State and territory swimming pool legislation requires that swimming pools of a depth 300mm or greater must be surrounded by a suitable swimming pool fence. This legislation applies to portable swimming pools as well as more permanent swimming pools.

The warnings to be applied to portable swimming pools and their retail packaging warns consumers of the drowning hazard, and advises to ensure active adult supervision at all times and that children should be kept at arm's reach. For smaller portable swimming pools of a depth less than 300mm, users are warned that the pools must be emptied and stored safely after use. For deeper portable swimming pools, users are warned that pool fencing laws apply. A safety sign must be applied adjacent to the warning on the portable swimming pool. The safety sign is not required on the retail packaging.

The warning on the portable swimming pool will alert consumers to the drowning hazard and their obligation in relation to fencing while using the pool and the warning on the retail packaging will inform consumers at the time of purchase.

Details of the safety standard are in Attachment A.

### Legislative power

Subsection 104(1) of the Australian Consumer Law, which is schedule 2 to the *Competition and Consumer Act 2010*, provides for the Commonwealth Minister, via a written notice published on the internet, to make a safety standard for consumer goods of a particular kind. Subsection 104(2) of the ACL states that a safety standard for consumer goods of a particular kind may consist of such requirements about matters as are reasonably necessary to prevent or reduce risk of injury to any person, including, the form and content of markings, warnings or instructions to accompany consumer goods of a particular kind.

Subsection 106(1) of the ACL provides that a person must not, in trade or commerce, supply consumer goods of a particular kind if a safety standard for consumer goods of that kind is in force and those goods do not comply with the standard.

## Consultation

For the purposes of section 17 of the *Legislative Instruments Act 2003* consultation on the safety standard has been undertaken.

In June 2011 the Australian Competition and Consumer Commission (ACCC) sent a draft regulatory proposal paper to stakeholders, including state and territory Government agencies, swimming pool suppliers and manufacturers and swimming pool industry associations. The draft regulatory proposal set out the reasons why a safety standard was being proposed and it included a draft form of the warnings proposed for portable swimming pools. Several stakeholders provided submissions and a number of amendments to the warnings were made.

In October 2012 a second round of consultation was conducted. Stakeholders were provided with a copy of the draft safety standard and several stakeholders made submissions to the ACCC. As a result, a number of minor amendments were made to the legislative instrument.

## Commencement

The safety standard commences on 30 March 2014.

## Sunset date

This instrument is subject to sunseting under Part 6 of the *Legislative Instruments Act 2003*. Unless action is taken to defer or exempt it from sunseting, it is expected to sunset on 1 April 2023. This estimate assumes it is registered on the Federal Register of Legislative Instruments on or before 31 March 2013.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## *Overview of the Legislative Instrument*

This Legislative Instrument is a safety standard which mandates warning labels for portable swimming pools and their retail packaging. The aim is to alert consumers to the drowning hazard and advise that supervision is a key element of hazard prevention. The safety standard also alerts consumers to their obligations under state and territory law to provide swimming pool fencing for some types of portable swimming pools.

## *Human Rights Implications*

The Legislative Instrument engages the right to health and the rights of the child.

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Convention on the Rights of the Child recognises the right of the child to the enjoyment of the highest attainable standard of health.

The Legislative Instrument promotes these rights by promoting the safe use of a product which has been associated with the death of children.

*Conclusion*

The Legislative Instrument does not limit human rights and is compatible with human rights because it advances the protection of human rights by warning of the drowning hazard and promoting the safe use of portable swimming pools.

Details of the *Consumer Goods (Portable Swimming Pools) Safety Standard 2013*

Section 1 – Name of Safety Standard

This section states that the name of the safety standard is the *Consumer Goods (Portable Swimming Pools) Safety Standard 2013*.

Section 2 – Commencement

This section states that the commencement of the safety standard is 30 March 2014.

Section 3 – Purpose

This section states that the purpose of the safety standard is to set out mandatory labelling requirements for portable swimming pools and retail packaging for portable swimming pools.

Section 4 – Definitions

This section sets out definitions in the safety standard.

Section 5 - Portable swimming pools

This section sets out that a portable swimming pool is a swimming pool that is intended for personal, domestic or household use and is either an inflatable swimming pool of any depth, a soft-sided swimming pool of any depth or a rigid-sided swimming pool that is not deeper than 300mm.

Section 6 - Warning message on portable swimming pools

This section sets out the warnings that must be displayed on a portable swimming pool. The warnings are different for portable swimming pools of a depth less than 300mm and for portable swimming pools of a depth 300mm or more. The key difference between the two warnings is that for portable swimming pools of a depth 300mm or more, the warning must include statements that the pool must be fenced and that consumers should consult their local government authority for fencing requirements.

This section also sets out requirements in relation to how the warning must be placed on the portable swimming pool including warning size, and legibility and visibility requirements.

Section 7 – Warning message on retail packaging for portable swimming pools

This section sets out the warnings that must be displayed on the retail packaging for a portable swimming pool. The warnings are different for retail packaging for portable swimming pools of a depth less than 300mm and for retail packaging for portable swimming pools of a depth 300mm or more. The key difference between the two warnings is that for retail packaging for portable swimming pools of a depth 300mm or more, the warning must include statements that the pool must be fenced and that consumers should consult their local government authority for fencing requirements.

This section also sets out requirements in relation to how the warning must be placed on the retail packaging for portable swimming pools including warning size, legibility and visibility requirements.

#### Section 8 – Safety sign on portable swimming pools

This section sets out that a safety sign must be included on portable swimming pools. A safety sign is not required on the retail packaging for portable swimming pools.

This section also specifies the size of the safety sign and how and where it is to be applied to a portable swimming pool.