

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Small Business

Competition and Consumer Act 2010

Consumer Goods (Children's Nightwear and limited daywear and Paper Patterns for Children's Nightwear) Safety Standard 2017

Overview

The Commonwealth Minister for Small Business (the Minister) has updated the safety standard for children's nightwear, including limited daywear and paper patterns for children's nightwear.

The safety standard reduces the risk of child death and injury associated with nightwear catching fire in two ways. Firstly, highly flammable garments cannot comply with the safety standard and so must not be supplied under s.106 of the Australian Consumer Law. Secondly, the safety standard requires that consumers be informed whether children's nightwear has a high or low risk of flammability by requiring that garments carry a warning label appropriate to their category of risk.

The safety standard is made under section 105 of the Australian Consumer Law (ACL), and comes into effect on the day after it is registered on the Federal Register of Legislation. The previous safety standard, the *Trade Practices (Consumer Product Safety Standards) (Children's Nightwear and Paper Patterns for Children's Nightwear) Regulations 2007* (Federal Register of Regulation No. F2007L00215), is repealed under section 104 of the ACL.

Suppliers may supply children's nightwear which meet either the previous safety standard or the updated safety standard until 1 January 2020. After this date, suppliers must comply with the updated safety standard.

The safety standard incorporates results of a substantial review of the voluntary Australian/New Zealand Standard, AS/NZS 1249 *Children's nightwear and limited daywear having reduced fire hazard* (AS/NZS 1249: 2003 as varied) on which the previous safety standard is based. The review was undertaken by Standards Australia at the request of the Australian Competition and Consumer Commission to consider issues that had been identified with definitions, technical requirements and interpretation that were causing compliance problems and to consider whether consumers were confused over the meaning of the existing warning labels. The conduct of substantial research enabled AS/NZS 1249: 2003 to be simplified and the warning labels revised on the basis of significant testing of consumer comprehension. The updated voluntary Australian/New Zealand Standard was published on 30 June 2014 as AS/NZS 1249: 2014.

The requirement that paper patterns carry a warning to consumers has been retained on the basis of the continuing risk associated with nightwear made from paper patterns and feedback from stakeholders.

Requirements of the safety standard

The safety standard applies to children's nightwear and limited daywear and to paper patterns for children's nightwear.

Children's nightwear:

- (a) means a garment that:
 - (i) is of a size in the range 00 to 14 (the number scheme used in AS 1182:1997 — *Size coding scheme for infants' and children's clothing — Underwear and outerwear*, published by Standards Australia on 5 March 1997); and
 - (ii) is of a type that is suitable for nightwear; and
 - (iii) is not a second-hand garment; and
- (b) includes a garment that is mentioned in:
 - (i) paragraphs (a) to (e) of clause 0.2 of Australian/New Zealand Standard *Children's nightwear and limited daywear having reduced fire hazard*, published by Standards Australia on 29 December 2003; or
 - (ii) paragraphs (a) to (k) of clause 0.2.2 of Australian/New Zealand Standard *Children's nightwear and limited daywear having reduced fire hazard*, published by Standards Australia on 30 June 2014;

as applicable.

The safety standard requires that children's nightwear meet the provisions of AS/NZS 1249: 2003 as varied, with some minor changes, or AS/NZS 1249: 2014.

Australian standards can, in 2017, be purchased on SAI Global's website (www.saiglobal.com). The Australian Competition and Consumer Commission can make a copy of the standards available for viewing in an ACCC office, subject to licensing conditions.

Paper Patterns

The external packaging of any paper pattern for children's nightwear within the scope of this standard shall bear a clearly legible warning paragraph:

FIRE WARNING

Regardless of the fabrics recommended on this package as suitable for this garment, for the safety of your children, do not make loose-fitting or nightdress styles from fabrics which burn readily. Avoid chenille, molleton and flannelette fabrics made from 100% cotton

Transitional arrangements

Until 1 January 2020, suppliers may meet the conditions specified in the previous safety standard or the updated safety standard.

The former is based on AS/NZS 1249: 2003 as varied, with some minor changes. The latter is based on AS/NZS 1249: 2014.

On and after 1 January 2020, suppliers must meet the updated safety standard.

Consultation

The Australian Competition and Consumer Commission (ACCC) conducted a review of the safety standard for children's nightwear and recommended to the Australian Government Minister for Small Business that the standard be updated to incorporate the changes reflected in AS/NZS 1249: 2014 and, additionally, continue to require that paper patterns be required to carry an alert on flammability of children's nightwear.

Following extensive consultation with stakeholders in the process of the review of the Australian Standard and initial discussions with industry, the ACCC released a consultation paper on reviewing the safety standard, circulated it to manufacturers, suppliers and consumer groups seeking comment on the options and, specifically on the new 'melt and drip' test and on transition arrangements.

A consultation paper was released on 28 September 2016 and consultation ran until 14 November 2016. The paper outlined four policy options:

- Option 1 Retain the current safety standard (status quo)
- Option 2 Adopt the updated voluntary Australian standard
- Option 3 Adopt international standards
- Option 4 Revoke the safety standard.

The ACCC's preliminary position, expressed in the consultation paper, was that Option 2 was the most effective option on the basis it would improve safety, simplify the requirements and reduce costs for suppliers. The ACCC concluded that available international standards (Option 3) are not suitable for Australia on the basis of an expert review of the relevant international standards for children's nightwear.

Twenty-five submissions were received from retailers, consumer groups, child safety agencies, manufacturers, test laboratories, ACL co-regulators, one wholesaler and one individual. Twenty-two responses supported the change. There was comment on eight submissions concerning the new 'melt and drip' test and this occasioned additional discussion with stakeholders. Six of seven stakeholders contacted for additional comment strongly supported updating the standard and aligning requirements with those of New Zealand. The test is included in this revision on the grounds that it will improve safety. It is likely to cause some garments to move from a 'low' to a 'high' fire warning label. Two consumer organisations were concerned that paper patterns might no longer be required to carry a warning text. This warning will continue in relation to paper patterns.

There was agreement that there would be little or no cost to suppliers associated with the change.

Disallowance

This legislative instrument is subject to disallowance under Chapter 3, Part 2 of the *Legislation Act 2003*.

Sunsetting

This legislative instrument is exempt from sunseting. Schedule 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (No. 158, 2015) lists as exempt, instruments made under section 104 or 105 (safety standards) of Schedule 2 (the Australian Consumer Law) to the *Competition and Consumer Act 2010*.

Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

The 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*.

This legislative instrument is a safety standard that specifies requirements for children's nightwear and limited day wear and for paper patterns relating to children's nightwear.

Human Rights Implications

The legislative instrument engages the right to health contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The legislative instrument will promote these rights by setting conditions for supply of children's nightwear that minimise the risk of child death and injury associated with ignition of child nightwear.

Conclusion

The legislative instrument does not limit human rights and is compatible with human rights. It advances the protection of human rights by requiring suppliers to ensure the goods they supply comply with safety standards, minimising the risk of injury or death to users.