

## EXPLANATORY STATEMENT

### *Consumer Goods (Basketball Rings and Backboards) Safety Standard 2017*

#### Overview

The Commonwealth Minister for Small Business (the Minister) has made a safety standard for basketball rings and backboards pursuant to section 104 of the Australian Consumer Law (ACL), which is Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

The safety standard comes into effect on the day after it is registered on the Federal Register of Legislation. Suppliers may supply basketball rings and backboards that meet either the previous safety standard or the new safety standard until the transitional period expires. After the transitional period, suppliers must ensure they comply with the new safety standard.

The purpose of the safety standard is to reduce the risk of death and serious injury resulting from the improper installation and use of basketball rings and backboards.

The previous safety standard was introduced in 2005 following three deaths in 1996, 1998 and 2002 as a result of improper installation on a structure which collapsed when the user performed a 'slam dunk'. Since 2005, there has been one reported death associated with a basketball ring and backboard in 2012 which was due to improper installation of a basketball ring and backboard on a garage which similarly collapsed when the user performed a 'slam dunk'.

#### Repealed Standard

The previous safety standard for basketball rings and backboards was the *Trade Practices (Consumer Product Safety Standard) (Basketball Rings and Backboards) Regulations 2005*.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Requirements of the safety standard

The safety standard has been amended to include an Application provision. This provision provides guidance about the type of basketball rings and backboards captured by the safety standard. Section 6 Application provides the following;

- (1) This instrument applies to basketball rings and backboards, including portable basketball systems, which are of a kind likely to be used for domestic use.
- (2) However, this instrument does not apply to toy basketball rings or backboards for toy basketball rings.

The safety standard has also been amended to include the following definitions under section 5;

**Portable basketball system** means a basketball ring, a backboard and a portable structure, that includes a pole and a base, for supporting the basketball ring and backboard.

**Toy basketball ring** means a miniature basketball ring (with or without a backboard) that is not designed to be permanently fixed to a fixture.

**Transitional period** means the period of 12 months beginning on the day this instrument commences.

The new provisions are intended to clarify that;

- (1) Basketball rings, backboards and portable basketball systems are required to comply with the safety standard.
- (2) Toy basketball rings are excluded from the safety standard, such as those clearly intended for in-home use and intended to be used with a miniature soft ball. Examples include but are not limited to toy basketball rings designed to be hung over internal doors or attached to internal doors by way of suction cups or similar temporary means, and miniature portable basketball systems intended for use by toddlers.

The safety standard continues to require basketball rings and backboards to have a warning label. The warning label states that improper installation or swinging on the ring may cause serious injury or death.

To strengthen consumer safety the new safety standard requires suppliers to include safe installation instructions where the product is designed to be fixed to a structure. The safe installation instructions must;

- (a) give details of the supporting structure to which the ring or backboard is to be fixed
- (b) give details of the hardware to be used to fix the ring or backboard to the supporting structure
- (c) strongly warn against fixing the ring or backboard to brickwork
- (d) include advice to consult a structural engineer if there is any doubt about the safety or stability of the installation.

Safe installation instructions provide guidance to persons installing a ring and/or backboard to do so in a manner that limits the likelihood of improper installation leading to serious injury or death. The instructions are intended to provide businesses scope to draft instructions commensurate with the intended use of the product.

### **Transitional arrangements**

The instrument provides a transitional period of 12 months beginning on the day the instrument commences. During the transitional period, suppliers must meet the requirements of either the:

- *Trade Practices (Consumer Product Safety Standard) (Basketball Rings and Backboards) Regulations 2005* made pursuant to 65C of the *Trade Practices Act 1974* (TPA).
- or
- *Consumer Goods (Basketball Rings and Backboards) Safety Standard 2017*.

After the transitional period, suppliers must meet the requirements of the *Consumer Goods (Basketball Rings and Backboards) Safety Standard 2017*.

### **Consultation**

The ACCC published a consultation paper in October 2016 detailing four options:

Option 1 - Keep the current safety standard (status quo)

Option 2 - Exclude portable basketball systems

Option 3 - Require safe installation instructions

Option 4 - Revoke the current safety standard.

Twelve submissions were received from retailers, consumer groups and retail associations. Of these seven supported exclusion of portable basketball systems and seven supported inclusion of safe installation instructions.

Where commenting, respondents stated that compliance costs would be minimal.

Respondents that did not support the inclusion of safe installation instructions were concerned that the array of possible installation options would lead to compliance challenges or that as many suppliers already do so the proposal was redundant.

The respondents that did not support the exclusion of portable basketball systems raised concerns about possible injury caused by their use. Submissions also noted that some suppliers already provide warning labels as a form of liability protection.

The proposed 12 month transitional period was supported by respondents.

### **Disallowance**

This legislative instrument is not subject to disallowance due to section 44 of the *Legislation Act 2003*.

### **Commencement**

This legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Sunsetting**

The legislative instrument is exempt from sunsetting. 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*.

### **Regulation impact assessment**

The Office of Best Practice Regulation advised a Regulation Impact Statement was not required.