

## EXPLANATORY STATEMENT

### *Consumer Goods (Swimming and Flotation Aids) Safety Standard 2017*

#### **Overview**

The Commonwealth Minister for Small Business (the Minister) has made a safety standard for swimming and flotation aids pursuant to section 104 of the Australian Consumer Law, 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. A transitional period of 24 months will apply during which suppliers may supply swimming and flotation aids that meet either the previous safety standard or the new safety standard. At the end of the 24 month transitional period, suppliers will need to ensure they comply with the new safety standard.

The purpose of the safety standard is to reduce the risk of children drowning when using a swimming or flotation aid. The safety standard requires swimming and flotation aids to meet specific design and construction requirements, pass safety and performance tests, and to have a safety warning label alerting to the hazards of children in water.

#### **Repealed Standard**

The previous safety standard for swimming and flotation aids was the *Consumer Product Safety Standard: Swimming Aids and Flotation Aids for Water Familiarisation and Swimming Tuition (Consumer Protection Notice No 3 of 2009)* (Federal Register of Legislation No F2009L01476).

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 applies to swimming and flotation aids. The standard requires suppliers of swimming and flotation aids comply with the voluntary Australian standard *AS/NZS 1900:2014 Flotation aids for water familiarization and swimming tuition* (with variations).

The safety standard includes the following definitions:

***Australian/New Zealand standard*** means Australian/New Zealand standard *AS/NZS 1900:2014 Flotation aids for water familiarization and swimming tuition*.

***Flotation aid*** means an article:

- a) designed for children under 14 years of age; and
- b) to be worn on or attached to the user's body, or sat in by the user, for the purpose of enabling them to gain confidence through water familiarisation, or to assist them in acquiring unaided buoyancy through swimming tuition; and
- c) that is not any of the following:
  - i. a flotation toy;
  - ii. an unattached flotation device;

- iii. an article designed only for therapeutic use;
- iv. an article designed for use by disabled persons;
- v. a personal flotation device for use in boating or other recreational water activities.

**Transitional period** means the period of 24 months beginning on the day this instrument commences.

### **Access to the Australian standard**

Where practicable, product safety instruments only reference extrinsic material that is readily accessible for free by the public. However, as in the current case, many product safety legislative instruments need to incorporate extrinsic technical standards over which certain bodies have copyright. The voluntary Australian standard referenced in this instrument is available for purchase at SAI Global's website (<https://www.saiglobal.com>).

The Australian Competition and Consumer Commission (ACCC) can also make a copy of the voluntary Australian standard available for viewing at one of its offices, subject to licensing conditions.

### **Transitional arrangements**

The instrument provides a transitional period of 24 months beginning on the day this instrument commences. During the transitional period suppliers must meet the requirements of either:

- the *Consumer Product Safety Standard: Swimming Aids and Flotation Aids for Water Familiarisation and Swimming Tuition (Consumer Protection Notice No 3 of 2009)*, or
- the *Consumer Goods (Swimming and Flotation Aids) Safety Standard 2017*.

After the transitional period suppliers must meet the requirements of the *Consumer Goods (Swimming and Flotation Aids) Safety Standard 2017*.

### **Consultation**

The ACCC published a consultation paper for swimming and flotation aids and invited stakeholder feedback from 12 October to 25 November 2016. The paper detailed four policy options for dealing with the current safety standard:

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

Option 2 - Adopt the updated version of the voluntary Australian standard (AS/NZS1900:2014)

Option 3 - Allow compliance with either the updated version of the voluntary Australian standard or a trusted international standard (a 2014 version of a voluntary European standard)

Option 4 - Revoke the mandatory safety standard.

Ten submissions were received from suppliers, consumer associations, industry associations, test laboratories, health organisations and government. All ten submissions supported maintaining a safety standard in some form. Four stakeholders supported adopting the updated Australian standard only (option 2), two stakeholders supported

adopting the updated Australian standard or the European standard (option 3), and four stakeholders supported adopting either option 2 or option 3.

### **Disallowance**

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

### **Commencement**

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

### **Sunsetting**

This legislative instrument is not subject to sunsetting due to section 54 of the *Legislation Act 2003*.

### **Regulation impact assessment**

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