

EXPLANATORY STATEMENT

Consumer Goods (Disposable Cigarette Lighters) Safety Standard 2019

Overview

The Commonwealth Assistant Treasurer (the Minister) has made a safety standard for disposable cigarette lighters 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. A transitional period of 12 months will apply during which suppliers may supply disposable cigarette lighters which meet either the previous safety standard or the new safety standard. At the end of the 12 month transitional period, suppliers will need to ensure they comply with the new safety standard.

The purpose of the safety standard is to detail requirements, including for child resistance, so that disposable cigarette lighters are manufactured to a standard that provides for a reasonable degree of safety for normal use or reasonably foreseeable misuse. The safety standard also includes requirements for a warning that the product is to be kept away from or out of reach of children.

Between 2002 and 2009, which is the most current available data, the Australian Competition and Consumer Commission identified the deaths of 17 children aged under five years in ten fires which were caused by a young children accessing and using a disposable cigarette lighter which resulted in a fire. Eight fires were linked to cigarette lighters with the probable cause of the other two being cigarette lighters or matches.

Repealed Standard

The previous safety standard for disposable cigarette lighters was the *Trade Practices (Consumer Product Safety Standard) (Disposable Cigarette Lighters) Regulations 1997*.

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 requires the supply of disposable cigarette lighters to comply with either;

1. the European Standard EN 13869:2016: Lighters - Child Safety Requirements For Lighters - Safety Requirements and Test Methods; or
2. the American standard ASTM F400 10: Standard Consumer Safety Specification for Lighters.

Definitions

Disposable cigarette lighter means a flame producing device that:

1. is designed to light cigarettes, cigars and pipes; and
2. is designed to:
 - i. be discarded when its fuel supply is exhausted; or

- ii. incorporate a separate container of fuel that is designed to be discarded when empty; or
 - iii. be refillable with fuel; and
3. if the device is designed to be refillable with fuel—is not a refillable repairable lighter within the meaning of the European Standard.

European standard means *European standard EN 13869:2016: Lighters – Child Safety requirements for lighters – Safety requirements and test methods*, as in force or existing at the time at the time when this instrument commences.

American standard means *ASTM Standard ASTM F400-10 Standard consumer safety specification for lighters*, as in force or existing at the time at the time when this instrument commences.

Access to Australian and international standards

Where practical, product safety legislative instruments only reference material that is readily accessible or free to 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 European Standard (EN 13869:2016) and the ASTM Standard (ASTM F400-10) are available for purchase at SAI Global's website (<https://saiglobal.com>). The American Standard (US Consumer Product Safety Commission Standard 16CFR Part 1210) is accessible and published in the Federal Register of the United States of America (<https://www.ecfr.gov>).

The Australian Competition and Consumer Commission can make a copy of the standards available for viewing in an ACCC office, subject to licensing conditions.

Transitional arrangements

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

1. the *Trade Practices (Consumer Product Safety Standard)(Disposable Cigarette Lighters) Regulations 1997*; or
2. the *Consumer Goods (Disposable Cigarette Lighters) Safety Standard 2019*.

After the transitional period suppliers must meet the requirements of the *Consumer Goods (Disposable Cigarette Lighters) Safety Standard 2019*.

Consultation

The Australian Competition and Consumer Commission published a consultation paper for disposable cigarette lighters in October 2016 for eight weeks. The paper detailed four policy options for stakeholder consideration:

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

Option 2 - Accept the voluntary Australian standard

Option 3 - Accept the voluntary Australian standard or trusted international standards

Option 4 - Revoke the mandatory safety standard.

Eight submissions were received from a range of stakeholders, including a retail group, a community group, two fire and emergency authorities, a manufacturer and distributor, a state government department and two ACL state and territory product safety co-regulators.

All stakeholders supported option 3. One agreed this was the best option, however preferred that the voluntary Australian standard was reviewed. The current voluntary Australian standard has not been updated since 2002 and therefore references a defunct iteration of the International Standards Organisation ISO 9994, Lighters – Safety Specification (ISO standard) which renders the voluntary Australian standard unsuitable.

Option 3 allows suppliers of disposable cigarette lighters to choose to meet the requirements of trusted international standards for compliance with general and child resistance requirements.

Four stakeholders did not think it was necessary to reference the out of date voluntary Australian standard. One respondent suggested that the same outcome could be achieved by only referencing the ISO standard (which is mirrored by the voluntary Australian and ASTM standards) and the European standard (which references the latest version of the ISO and the USCPSC standards) as these are the most up to date versions for each type of requirement.

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 sunseting due to section 54 of the *Legislation Act 2003*.

Regulation impact assessment

The Office of Best Practice Regulation advised a Regulation Impact Statement was not required (advice no. 21200).