

EXPLANATORY STATEMENT

Consumer Goods (Toys Containing Magnets) Safety Standard 2020

Overview

The Minister for Housing and Assistant Treasurer (the **Minister**) has made the Consumer Goods (Toys Containing Magnets) Safety Standard 2020 (the **new safety standard**), pursuant to section 104 of the Australian Consumer Law, which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

The new safety standard comes into effect on the day after registration on the Federal Register of Legislation. A transitional period of 12 months will apply during which suppliers either may comply with the new safety standard or the repealed safety standard. At the end of the 12 month transitional period suppliers must comply with the new safety standard only.

The Australian Government introduced the Consumer Protection Notice No. 5 of 2010 (the **repealed safety standard**) to mandate requirements for toys containing magnets to reduce the risk of injury or death to children who ingest hazardous magnets.

Repealed safety standard

The repealed safety standard for toys containing magnets was the *Consumer Protection Notice No. 5 of 2010* (Consumer Product Safety Standard: Children's Toys Containing Magnets) (Federal Register of Legislation No. F2010L00195).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Cth), 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 new safety standard

The new safety standard applies to toys containing magnets (magnetic toys). A magnetic toy is defined in the new safety standard as a product or material supplied new that is:

- designed or clearly intended for use in play by a child under 14 years of age; and
- supplied with one or more magnets or magnetic components.

The new safety standard includes the following additional definitions:

Australian/New Zealand Standard means the Australian/New Zealand Standard *AS/NZS ISO 8124.1:2019 Safety of toys Part 1: Safety aspects related to mechanical and physical properties*

European Standard means the European Standard *EN 71-1:2014+A1:2018 Safety of toys – Part 1: Mechanical and physical properties*

International Standard means the International Standard *ISO 8124-1:2018 Safety of toys – Part 1: Safety aspects related to mechanical and physical properties*

US Standard means the American Society for Testing and Materials Standard *ASTM F963 - 17 Standard Consumer Safety Specification for Toy Safety*.

The new safety standard requires the supply of a magnetic toy to comply with the relevant clauses of the latest voluntary Australian/New Zealand Standard (with variations), or with

the relevant clauses from one of the above overseas standards (with variations), as particularised by the instrument.

The new safety standard continues to address the hazards from children ingesting small high-powered magnets or small high-powered magnetic components supplied with children's toys, i.e. neodymium iron boron type magnets. If ingested, small high-powered magnets or magnetic components from a toy may attract to each other across a child's intestinal wall causing perforation or blockage, and potentially serious injury or death. The new safety standard also covers toys supplied with one magnet or magnetic component, which may also cause intestinal perforation or blockage when attracted to an ingested ferromagnetic object, such as an iron or nickel object.

Other hazards, such as suffocation and asphyxiation from swallowing small parts of a toy, are addressed by the separate mandatory safety standard for toys for children up to and including 36 months of age (Consumer Protection Notice No. 14 of 2003, as amended by Consumer Protection Notice No. 1 of 2005).

Magnets and magnetic components that are small enough to be ingested by a child are determined by reference to the small parts test. While the small parts test cylinder was not developed to identify objects that can be ingested by children over 36 months of age, magnets and magnetic components that have been involved in known incidents have all fit into the prescribed cylinder with a large margin.

The new safety standard also determines a hazardous magnet or a hazardous magnetic component based on whether it exceeds a magnetic flux index level of 50 kG²mm². Expert opinion has determined this to be an appropriate limit, with a safe margin, for magnetic attraction.

Permanent ban on small high-powered magnets

In 2011, a one-year-old child died after ingesting 12 small high-powered magnets. This tragic death, as well as other serious incidents, led to the introduction of a permanent ban in 2012 on small high-powered magnets (Consumer Protection Notice No. 5 of 2012), which remains in effect.

This ban is distinct from the new safety standard as it has a narrow focus on separable or loose magnetic objects supplied in multiples of two or more where the magnetic objects are, among other things, marketed by the supplier as, or supplied for use as, a toy, game or puzzle (including but not limited to an adult desk toy, an educational toy or game, a toy, game or puzzle for mental stimulation or stress relief), or a construction or modelling kit, or jewellery to be worn in or around the mouth or nose.

Access to Australian and international standards

Where practicable, product safety legislative 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 Australian/New Zealand Standard (AS/NZS ISO 8124.1:2019), European Standard (EN 71-1:2014+A1:2018) and US Standard (ASTM F963 - 17) referenced in this instrument are available for purchase at SAI Global's website (<https://www.saiglobal.com>). The International Standard (ISO 8124-1:2018) referenced in this instrument is available for purchase at the International Organization for Standardization's website (<https://www.iso.org>).

The Australian Competition and Consumer Commission (**ACCC**) can make a copy of the above standards available for viewing at one of its offices, 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:

- the *Consumer Goods (Toys Containing Magnets) Safety Standard 2020*, or
- the *Consumer Protection Notice No. 5 of 2010 (Consumer Product Safety Standard for Children's Toys Containing Magnets)*.

After the transitional period, suppliers must meet the requirements of the *Consumer Goods (Toys Containing Magnets) Safety Standard 2020*.

Consultation

The ACCC published a combined consultation paper for toys regulated by existing standards from 1 February to 9 April 2017. The paper detailed five policy options for dealing with the current mandatory safety standards for toys:

- Option 1 – Retain the current mandatory safety standard (status quo)
- Option 2 – Adopt the updated voluntary Australian standard
- Option 3 – Allow compliance with the updated voluntary Australian standard or trusted overseas standards
- Option 3A – Allow principles-based compliance with the current voluntary Australian standard and overseas standards
- Option 4 – Revoke the mandatory safety standard.

The ACCC's preliminary position outlined in the paper supported Option 3 as this option would provide the greatest benefit for consumers, suppliers and regulators.

Sixteen submissions were received from retail groups, community groups, industry bodies, child safety advocates and an insurer. Thirteen stakeholders supported allowing compliance with trusted overseas standards through Option 3 (nine submissions) and 3A (four submissions). One stakeholder each supported option 4 and option 2. The remaining stakeholder did not express a preference.

Following the submission process the ACCC undertook additional consultation, analysis and scrutiny and reaffirmed that option 3 is likely to have the greatest net benefit to the Australian community.

Disallowance

This legislative instrument is not subject to disallowance due to subsection 44 of the *Legislation Act 2003* (Cth).

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* (Cth).

Regulation impact assessment

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR reference ID 25925).