

## EXPLANATORY STATEMENT

### *Consumer Goods (Products Containing Button/Coin Batteries) Information Standard 2020*

#### Overview

In March 2019, the Commonwealth Assistant Treasurer issued a Safety Warning Notice about the dangers of button/coin batteries and in April 2019, requested that the Australian Competition and Consumer Commission (ACCC) expedite a regulatory impact assessment process for developing regulation to address button/coin battery safety.

The Commonwealth Assistant Treasurer (the Minister), has made an information standard for consumer goods containing button/coin batteries pursuant to section 134 of the Australian Consumer Law (ACL), which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (CCA).

This information standard has been introduced to reduce the risk of fatality and injury associated with the use of button/coin batteries. Button/coin batteries can cause severe injury and even death if swallowed, particularly for young children aged 0-5 years.

In Australia and globally, there is a growing record of serious injuries and deaths of children from button/coin batteries. In Australia, three children have tragically died as a result of swallowing a coin battery and there is an increasing number of young children suffering severe injuries following the ingestion or insertion of button/coin batteries. Globally, since 1977, there has been at least 66 deaths and thousands of exposures and injuries from button/coin batteries with some children sustaining lifelong injuries requiring ongoing treatments.

This instrument forms part of a package of safety and information standards to improve the product safety of consumer goods containing button/coin batteries, as well as button/coin batteries themselves. This information standard for consumer goods containing button/coin batteries has been developed in conjunction with the following instruments:

- Consumer Goods (Products Containing Button/Coin Batteries) Safety Standard 2020
- Consumer Goods (Button/Coin Batteries) Safety Standard 2020
- Consumer Goods (Button/Coin Batteries) Information Standard 2020.

The estimated cost to the Australian economy of button/coin battery related fatalities, injuries and exposures is at least \$47.5 million during a 10-year forecast period of 2022-2031.

Button/coin batteries are flat, round single cell batteries with a diameter of up to 32 mm which range in height from 1-11 mm. These batteries are referred to as button or coin cell batteries. In this instrument, they are collectively referred to as 'button/coin batteries'. Button/coin batteries generally operate using one of four chemistries: lithium, alkaline, silver oxide and zinc air. Lithium button/coin batteries pose the highest risk. Their typically larger diameter means they are more likely to become stuck in a child's oesophagus if ingested and their higher voltage means they can cause tissue damage more quickly.

Available data indicates that children gained access to button/coin batteries directly from the product in almost two thirds of cases where the source of the battery was known.

## **Purpose**

The purpose of this information standard is to reduce the risk of death or serious injury to children by requiring warnings be supplied with consumer goods containing button/coin batteries.

Warnings are necessary when supplying these consumer goods to alert consumers to the button/coin battery hazard and to provide relevant information so that appropriate action can be taken when it is suspected that a child has swallowed or inserted a button/coin battery.

## **Requirements and best practice recommendations**

This information standard includes warning requirements and best practice recommendations for consumer goods containing button/coin batteries. Consumer goods that contain button/coin batteries include consumer goods that use, are powered by, or are intended to operate with button/coin batteries, as well as consumer goods designed or intended to store button/coin batteries, such as storage containers and organisers. Accessories of consumer goods, such as remote controls that contain button/coin batteries, are subject to the requirements of this information standard. This information standard requires consumer goods containing button/coin batteries to include a warning in the accompanying instructions.

This information standard requires packaged consumer goods containing button/coin batteries to be marked clearly with a warning. At a minimum, symbol warnings are to be provided on the front panel of the packaging.

This information standard requires consumer goods with accompanying instructions to include a warning about the button/coin battery that is clearly visible, prominent and legible.

This information standard requires packaged consumer goods containing button/coin batteries that are not accompanied by instructions to have a warning attached to, or included with, the consumer good.

This information standard requires unpackaged consumer goods containing button/coin batteries to have a warning attached to the consumer good, such as by applying a swing tag or sticker to the unpackaged product.

Some categories of consumer goods that contain button/coin batteries pose a lower risk in terms of battery accessibility and more flexible warning requirements apply such that a warning is only required to be provided in the accompanying instructions. If a consumer good falls within a category that is deemed to pose a lower risk and is not accompanied by instructions, the warning must be attached to, or included with, the consumer good. Consumer goods deemed to pose a lower risk are: (1) hearing aids; (2) consumer goods where the button/coin battery is fully enclosed in the product; (3) consumer goods where the button/coin battery is not intended to be removed or replaced by a consumer; and (4) consumer goods where a specialist is required to install or remove the button/coin battery.

This information standard recommends that consumer goods containing button/coin batteries be marked clearly with a warning on the product itself. Warnings on the consumer good should be located on or close to where the battery is accessible.

This information standard recommends that packaged consumer goods containing button/coin batteries be marked clearly with a warning that includes both text and symbols.

This information standard recommends that consumer goods containing button/coin batteries supplied via an electronic platform include a warning in the product description that is clearly visible, prominent and legible.

It also recommends that consumer goods containing button/coin batteries be supplied with a warning containing the phone number for the Australian Poisons Information Centre and with advice about safe disposal of button batteries.

This information standard includes an example of an internationally recognised safety alert symbol that can be included in warnings.

## Exemptions

This information standard does not apply to consumer goods that were first supplied to a consumer before the requirements became mandatory. Consumer goods that are supplied after the requirements became mandatory are subject to the requirements of this information standard, including when re-supplied as second-hand goods, unless the re-supply is a one-off transaction being made by a consumer, such as a private sale.

This information standard does not apply to professional equipment, such as specialist trade tools and other professional products, subject to certain criteria that is focused on the risk profile of the product. For the purposes of this exemption, products are only deemed to be professional equipment where all of the following apply: (1) the equipment is intended to be used in trades, professions or industries; (2) the equipment is not intended for sale to the general public; and (3) the equipment is not intended to be used where children are present.

This information standard does not apply to audio-visual and information and communications technology equipment containing button/coin batteries that are soldered in place.

## Definitions

The definitions used in this information standard are set out in section 4 and include the following definitions:

- **Australian (Electric Toys) Standard** means the Australian/New Zealand Standard *AS/NZS 62115:2018 Electric toys—Safety*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing at the time when this instrument commences.
- **Design Principles** means the International Standard *ISO 3864-2:2016 Graphical Symbols—Safety colours and safety signs—Part 2: Design principles for product safety labels*, published by the International Organization for Standardization, as in force or existing at the time when this instrument commences.
- **International (Electric Toys) Standard** means the International Standard *IEC 62115:2017 Electric toys—Safety*, published by the International Electrotechnical Commission, as in force or existing at the time when this instrument commences.

## Access to Australian and international standards

Where practical, 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, which means the standards must be purchased.

The Australian (Electric Toys) Standard and the International (Electric Toys) Standard could in 2020 be purchased from SAI Global's website (<https://www.saiglobal.com>).

The Design Principles could in 2020 be purchased from the International Organization for Standardization's website (<https://www.iso.org>).

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

### **Consultation**

Section 131E of the CCA provides that an information standard made under section 134 of the ACL is a legislative instrument for the purposes of the *Legislation Act 2003*. Section 17 of the *Legislation Act* requires that the rule maker should consult prior to making a legislative instrument.

The ACCC released an issues paper in August 2019 and received 32 submissions from stakeholders in response to questions in relation to the issue of button/coin battery safety and how the safety hazards posed by button/coin batteries should be addressed. The issues paper was a necessary first step in the regulatory assessment process due to the wide range of products likely to be affected by any mandatory standard.

The ACCC released a *Button Battery Safety - Assessment of regulatory options - consultation paper* in March 2020. The Consultation paper sought stakeholder feedback on proposed regulatory options to reduce the likelihood of serious injuries resulting from child exposure to button/coin batteries. The ACCC received 67 submissions in response to the consultation paper from a broad range of stakeholders, including national and international representative bodies, medical experts, relevant government agencies, international product safety regulators and advocacy organisations.

In addition to the two formal consultation periods, the ACCC met individually with 43 key stakeholders and also distributed surveys to industry and health professionals.

The ACCC also notified the World Trade Organization (WTO) of proposed requirements for the button/coin battery related safety and information standards on 29 September 2020 under the WTO Agreement on Technical Barriers to Trade.

### **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.

### **Transitional arrangements**

This instrument provides a transitional period of 18 months, beginning on the day this instrument commences.

### **Sunsetting**

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

### **Regulation impact assessment**

The ACCC has self-certified that a process equivalent to that of a Regulation Impact Assessment has been undertaken. Office of Best Practice Regulation Ref. 25774

## **Details of the Consumer Goods (Products Containing Button/Coin Batteries) Information Standard 2020**

### **Part 1 - Preliminary**

#### Section 1 – Name

This section provides the title of the legislative instrument is the *Consumer Goods (Products Containing Button/Coin Batteries) Information Standard 2020*.

#### Section 2 – Commencement

This section provides that the instrument commences on the day after it is registered.

#### Section 3 – Authority

This section provides that the information standard is made under section 134 of the ACL.

#### Section 4 – Definitions

This section provides the definitions of terms used in the safety standard.

The Australian Electric Toys Standard is based on the international IEC standard. Both versions are provided because the Australian version contains region-specific modifications.

#### Section 5 – Meaning of internationally recognised safety alert symbol

This section provides a suitable example of an internationally recognised safety alert symbol referred to in the information standard.

#### Section 6 – Application

This section provides that the information standard applies to consumer goods containing button/coin batteries.

The section also provides that the information standard does not apply to second-hand goods where the re-supply is a one-off transaction made by a consumer, professional equipment subject to certain criteria, and some specific equipment where the battery is soldered in place.

### **Part 2 – Requirements**

#### Section 7 – Requirements to be complied with on and after application day

This section provides that consumer goods containing button/coin batteries and their packaging must comply with the requirements of this information standard from the application day.

#### Section 8 – Consumer goods with button/coin batteries – general requirement for warning

This section identifies the warning requirements that consumer goods containing button/coin batteries must comply with, including the content and location of warnings.

The purpose of this requirement is to ensure that consumer goods containing button/coin batteries provide consumers with clear and concise warnings about the hazards of these batteries.

### Section 9 – Warning requirements for consumer goods with lower risk profile

This section identifies the warning requirements for categories of consumer goods that contain button/coin batteries deemed to pose a lower risk. For these categories of consumer goods, warnings are only required to be provided in the accompanying instructions.

This section identifies consumer goods containing button/coin batteries that present a lower risk in terms of their accessibility to children, such as where the battery is not intended to be replaced or is fully enclosed inside the product (for example, personal computers), or where a service person is required to replace the battery (for example, premium watches).

If a consumer good falls within a category that is deemed to pose a lower risk and is not accompanied by instructions, the warning must be attached to, or included with, the consumer good. A button/coin battery is fully enclosed inside the consumer good where the battery is not intended to be replaced and is not accessible to a consumer.

The purpose of this section is to apply warning requirements that are commensurate with the risk profile of the consumer good.

### Section 10 – Warnings must comply with size, legibility and durability standards

This section identifies the size, legibility and durability requirements that warnings must comply with.

The purpose of this requirement is to ensure that warnings on consumer goods containing button/coin batteries, their packaging or accompanying instructions are clearly visible, legible and durable.

## **Part 3 – Recommendations**

### Section 11 – Purpose of this Part

This section provides that the sections in Part 3 are recommendations and not requirements. Compliance with the following sections is encouraged as best practice.

### Section 12 – Consumer goods containing button/coin batteries should have warning on goods

This section recommends that consumer goods containing button/coin batteries be marked clearly with a warning on the product itself. Warnings on the consumer good should be located on or close to where the battery is accessible.

The purpose of this recommendation is provide an additional warning to that on a product's packaging or in accompanying instructions. This is a best practice recommendation, rather than a requirement, as many consumer goods containing button/coin batteries are of a small size and such warnings will not be practical for all products.

### Section 13 – Packaging for consumer goods containing button/coin batteries should have warning about goods

This section recommends that packaged consumer goods containing button/coin batteries be marked clearly with a warning on the packaging that includes both text and symbols.

The purpose of this recommendation is to provide additional warning information for consumers. This is a best practice recommendation, rather than a requirement, as detailed text warnings on packaging will not be practical for all products. This section provides details of the text warnings that should be marked on the front of the packaging and elsewhere, subject to space limitations.

Section 14 – Consumer goods containing button/coin batteries supplied with electronic platform should include warnings

This section recommends that consumer goods containing button/coin batteries supplied online should include a warning in the product description that is clearly visible, prominent and legible.

The purpose of this recommendation is to alert consumers to the button/coin battery hazard when purchasing consumer goods containing these batteries online.

Section 15 – Contact information for Australian Poisons Information Centre should be included with consumer goods containing button/coin batteries

This section recommends the phone number for the Australian Poisons Information Centre be provided with warnings.

The purpose of this recommendation is to make available contact information with the consumer goods containing button/coin batteries so that timely assistance may be sought by consumers in the event a child swallows or inserts a battery.

Section 16 – Consumer goods containing button/coin batteries should include advice about the safe disposal of button/coin batteries

This section recommends advice on the safe disposal of button/coin batteries should be supplied with consumer goods containing button/coin batteries.

The purpose of this recommendation is to make available advice on the safe disposal of button/coin batteries as old or spent batteries can still have enough residual charge to cause serious harm.