

EXPLANATORY STATEMENT

Consumer Goods (Non-refillable Helium Cylinders) Safety Standard 2022

Overview

The Assistant Treasurer, Minister for Financial Services (the **Minister**) has made the *Consumer Goods (Non-refillable Helium Cylinders) Safety Standard 2022* (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 mandatory standard for non-refillable helium cylinders seeks to reduce deaths by asphyxiation of helium.

Helium is a colourless, odourless gas that is used for a variety of purposes including high-tech equipment, medical, and scientific research. One of its most popular uses is to inflate balloons and other inflatable decorative items for celebrations, events and parties. When used as intended, helium in this form is safe. However, non-refillable helium cylinders are also misused as a means to suicide. The deliberate inhalation of helium gas is unsafe and can cause illness with prolonged use leading to death by asphyxiation. This is because when inhaled the helium gas displaces oxygen which rapidly leads to unconsciousness and death if the exposure continues.

Between 2016 and 2021, the Victorian, Queensland and ACT Coroners have written to the ACCC on 17 occasions to notify of asphyxiation deaths caused by the deliberate inhalation of helium gas. Various Coroners have recommended in reports and correspondence to the ACCC that it consider various risk controls for the regulation of non-refillable helium cylinders to reduce the number of suicides using these products. Analysis of coronial data in Australia indicates that non-refillable helium cylinders have not resulted in deaths, therefore, the New Safety Standard will only apply to non-refillable helium cylinders and not to refillable helium cylinders.

The New Safety Standard will make it more difficult to misuse non-refillable helium cylinders by requiring a blend of 21% +/- 1.0% oxygen along with 79% helium. This blend, if inhaled, will result in unpleasant side effects associated with cumulative levels of carbon dioxide including headaches, dizziness, and vomiting due to increasing levels of carbon dioxide from exhaled air and delayed loss of consciousness.

Requirements of the new standard

The New Safety Standard requires that consumer goods containing a non-refillable helium cylinder must comply with the following:

Gas composition requirements

- The oxygen composition of the gas within the non-refillable helium cylinder must be 21% +/- 1.0% of total gas composition by volume.

Marking requirements

- The following must be clearly marked on the non-refillable helium cylinder and on the packaging of the consumer goods:
 - (a) the composition of the gas within the cylinder, expressed as percentages of the total gas composition by volume;
 - (b) the following statement (or words to that effect): **WARNING: Do not inhale. May cause suffocation.**

- The markings must be in English, clearly legible, clearly visible, and indelible.

The New Safety Standard includes the following definition:

Non-refillable helium cylinder means a cylinder of pressurised gas if the cylinder contains predominantly helium gas and is not able to be refilled and reused.

A disposable helium cylinder falls within the definition of a 'non-refillable helium cylinder'.

Consultation

In March 2022, the ACCC conducted a confidential and targeted consultation (due to the sensitivity of the matter) with stakeholders via a briefing paper. The briefing paper invited stakeholder feedback on the following 3 options and indicated the ACCC's preference for Option 2.

Option 1 Take no action (maintain the status quo) - Take no regulatory action to address the current availability to consumers of high-purity helium in cylinders and their misuse in suicides.

Option 2 Mandatory Safety Standard - Require non-refillable helium cylinders to contain a mixture of 79% helium and 21% oxygen, along with labelling to inform consumers that the product is not pure helium, should not be inhaled and can cause suffocation when inhaled.

Option 3 Product Ban - A complete ban on non-refillable cylinders, making it illegal to sell the product to consumers. A permanent ban on the non-refillable helium cylinders would prevent the legitimate access and use and will significantly impact the gas industry, regulators and other stakeholders.

The ACCC received 17 submissions from a range of stakeholders such as industry groups, government, and retailers. Most stakeholders were in favour of the ACCC's preliminary position of introducing a mix (helium 79% and oxygen 21%) for non-refillable helium cylinders and requirements for warning labels to be included.

In addition to the consultation, the ACCC also conducted meetings with major stakeholders and the Department of Health.

Disallowance

The *Consumer Goods (Non refillable Helium Cylinders) Safety Standard 2022* is a legislative instrument for the purposes of the *Legislation Act 2003* (Cth). In accordance with the Australian Consumer Law, which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth), the *Consumer Goods (Non refillable Helium Cylinders) Safety Standard 2022* is not subject to disallowance or sunseting under the *Legislation Act 2003* (Cth) on the grounds that the standard is part of an intergovernmental scheme and gives effect to agreements between the Commonwealth and each of the States, the Australian Capital Territory and the Northern Territory to create a single national consumer law for Australia, including a national product safety law.

The making of this legislative instrument is authorised under the Australian Consumer Law. It is consistent with the purpose of s 44(1) in the *Legislation Act 2003* (Cth) that an instrument giving effect to a multilateral scheme is not subject to unilateral disallowance. To make it so would frustrate the importance of uniform product safety standards in reducing the supply of unsafe goods and related services for Australian consumers, which is a key

part of the Australian Consumer Law as an intergovernmental scheme involving the Commonwealth and the States and Territories.

Commencement

This legislative instrument commences 3 months 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* (Cth).

Regulation impact assessment.

A Regulation Impact Assessment has been undertaken by the Office of Best Practice Regulation (Ref 22-01864).