

EXPLANATORY STATEMENT

Consumer Goods (Toys for Children up to and including 36 Months of Age) Safety Standard 2023

1. Purpose and Background

The Commonwealth Assistant Treasurer (the **Minister**) has made the *Consumer Goods (Toys for Children up to and including 36 Months of Age) Safety Standard 2023* (the **Safety Standard**), pursuant to section 104 of the Australian Consumer Law (**ACL**), which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

The Australian Government introduced the *Consumer Product Safety Standard: Toys for children up to and including 36 months of age (Consumer Protection Notice No. 14 of 2003)* in December 2003 (the **Repealed Safety Standard**) to minimise the risk of injury or death to children up to and including 36 months from hazards associated with small parts in toys.

Children up to and including 36 months of age have not yet fully developed their reflexes to be capable of coughing out small items which they may place in their mouth. Therefore, they are especially vulnerable to inhaling or ingesting hazards because they are incapable of recognising, and hence avoiding, these hazards. In addition, button batteries pose a risk to young children if they fall out of the battery compartments in toys.

This Safety Standard prescribes requirements from the voluntary Australian and overseas standards which seek to minimise the risk of young children choking or suffocating on small parts in toys and therefore preventing serious injury or death.

In addition, this Safety Standard prescribes a requirement that accessible battery compartments of toys must only be openable with a tool. The relationship between this Safety Standard and safety standards for button batteries is explained later in this document.

This Safety Standard references the latest voluntary Australian standard (2023) and comparable overseas standards, while maintaining the existing level of consumer safety.

Operation of the Safety Standard

This Safety Standard requires children's toys for children up to and including 36 months to comply with one of the following:

- **Australian/New Zealand Standard** – *AS/NZS ISO 8124.1:2023 Safety of toys – Part 1: Safety aspects related to mechanical and physical properties* (with variations) and the **Electric Toy Standard**: *AS/NZS 62115:2018 Electric toys – Safety* (with variations); or
- **European Standard** – *EN 71-1:2014 + A1:2018: Safety of toys – Part 1: Mechanical and physical properties* (with variations) and the **Electric Toy Standard** (with variations); or
- **International Standard** - *ISO 8124-1:2022 Safety of toys – Part 1: Safety aspects related to mechanical and physical properties* (with variations) and the **Electric Toy Standard** (with variations); or
- **US Standard** - *ASTM F963-17 Standard Consumer Safety Specification for Toy Safety* (with variations) and the **Electric Toy Standard** (with variations).

A description of the provisions is set out later in this document.

Repealed Safety Standard

This Safety Standard repeals the *Consumer Product Safety Standard: Toys for children up to and including 36 months of age* (Consumer Protection Notice No.14 of 2003) (Federal Register of Legislation No. F2008C00607).

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.

2. Incorporated 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 which means the standards must be purchased.

The Australian/New Zealand Standard, the Electric Toy Standard, the European Standard and the US Standard referenced in this instrument are available for purchase at SAI Global's website (<https://www.saiglobal.com>). The International Standard referenced in this instrument is available for purchase at the ISO'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, by prior arrangement and subject to licensing conditions.

3. Consultation

Before this Safety Standard was made, the Minister was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003*.

The ACCC published a combined consultation paper for the five toy standards regulated by existing standards from 1 February to 9 April 2017. The mandatory safety standard for toys for children up to and including 36 months was one of the five standards. The paper detailed five (5) policy options for dealing with the mandatory safety standards for toys:

- Option 1 – Retain the current mandatory safety standards (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 net benefit to consumers, suppliers and regulators.

The ACCC received 16 submissions from a range of respondents including retail groups, community organisations, industry bodies, child safety advocates and other stakeholders including the Australian Toy Association, and state regulators responsible for product safety. Most stakeholders (13) supported the proposal to update the mandatory safety standard to reference the latest voluntary Australian standard and to also include compliance with the voluntary European, International and American standards.

In November 2019 the ACCC further consulted on how to effectively address the issue of toys containing button batteries. This consultation assessed whether to maintain and/or expand the requirements with respect to the security of battery compartments of toys with button/coin batteries to include warnings as further safety measures.

4. Disallowance and Sunsetting

By operation of subsections 44(1) and 54(1) of the *Legislation Act 2003*, the instrument is not subject to disallowance or sunsetting because its enabling legislation, the ACL (at Schedule 2 of the CCA), facilitates the operation of an intergovernmental scheme involving the Commonwealth and all the States and Territories (the *Intergovernmental Agreement for the Australian Consumer Law*), and the ACL authorises the making of the instrument for the purposes of that scheme. 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 ACL as an intergovernmental scheme involving the Commonwealth and the States and Territories.

Item 16 in the table at section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* also provides that the instrument is not subject to the sunsetting provisions of the *Legislation Act 2003*.

5. Commencement

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

6. Transitional Arrangements

The instrument provides a transitional period of 18 months beginning on the day this instrument commences. During the transitional period, relevant children's toys must comply with either:

- The *Consumer Product Safety Standard: Toys for children up to and including 36 months of age (Consumer Protection Notice No.14 of 2003)*, or
- The *Consumer Goods (Toys for Children up to and including 36 Months of Age) Safety Standard 2023*.

After the transitional period, suppliers must meet the requirements of the *Consumer Goods (Toys for Children up to and including 36 Months of Age) Safety Standard 2023*.

7. Regulation Impact Assessment

The Office of Impact Analysis (OIA) advised a Regulation Impact Statement was not required (OIA reference ID44355).

Details of the Consumer Goods (Toys for Children up to and including 36 Months of Age) Safety Standard 2023

PART 1 – PRELIMINARY

Section 1 – Name

This section sets out that the title of the Standard is the *Consumer Goods (Toys for Children up to and including 36 Months of Age) Safety Standard 2023*.

Section 2 – Commencement

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under section 104(1) of the ACL. Section 104 of the ACL allows the Minister to make safety standards for consumer goods and product-related services.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule is repealed as set out in that Schedule, and any other item in a Schedule has effect according to its terms.

Section 5 – Definitions

This section provides the definitions of terms used in the instrument.

Australian/New Zealand Standard means the Australian/New Zealand Standard AS/NZS ISO 8124.1:2023 *Safety of toys Part 1: Safety aspects related to mechanical and physical properties*.

Electric Toys Standard means the Australian/New Zealand Standard AS/NZS 62115:2018 *Electric toys – Safety*.

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 8124-1:2022 *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*.

Transitional period means the period of 18 months beginning on the day this instrument commences.

This section includes definitions of industry standards that are incorporated by reference into the instrument. In each definition, the phrase “as in force or existing at the time when this instrument commences” is intended to capture the latest version of that industry standard as at the time the instrument commences. For example, if an industry standard has two amendments as at the time the instrument commences, then the definition in this section is intended to capture the version of that instrument that incorporates those two amendments. This is consistent with section 14 of the *Legislation Act 2003* (Cth).

Section 6 – Application of this instrument

This section sets out the consumer goods to which the instrument applies. It applies to children's toys as defined in subsection (2) of the instrument. Subsection (3) provides that the instrument does not apply to certain products.

Section 7 – Relationship with the Button Batteries safety standard

This section sets out the interaction of the Safety Standard with the *Consumer Goods (Products Containing Button/Coin Batteries) Safety Standard 2020* (the **Button Batteries Safety Standard**), especially relating to access to the battery compartment in toys for children up to and including 36 months of age.

The Button Batteries Safety Standard, which applies to all products containing button or coin batteries (including toys for children up to and including 36 months of age), provides for 2 options to access the battery compartment, i.e., through the use of a tool or through two independent but simultaneously applied movements.

However, to ensure stronger protection for young children who are more susceptible to injuries and harm, the Safety Standard in referencing the Electric Toys Standard in sections 19 and 20 of this instrument provides that a battery compartment for a toy that contains any type of batteries (coin/button or non-coin/button batteries, whether or not they are intended to be replaceable) will only be able to be opened by the use of a tool.

In other words, this Safety Standard overrides the Button Batteries Safety Standard with respect to toys for children up to and including 36 months of age in relation to accessibility to batteries held in a compartment. The intention is that if a children's toy contains any battery which may be accessed, then it can only be accessible with a tool. This requirement is intended to provide stronger protection for children up to and including 36 months of age against hazards associated with choking or consuming batteries. All the other requirements of the Button Batteries Safety Standard, including the requirement relating to compartment fasteners, still apply to all toys for children up to and including 36 months that contain batteries.

PART 2 – BASIC REQUIREMENTS

Section 8 – Requirements during transitional period

This section provides that during the transition period (18 months), suppliers must comply with either:

- the Repealed Safety Standard, or
- the Australian/New Zealand Standard (with variations) and the Electric Toy Standard (with variations), or
- the European Standard (with variations) and the Electric Toy Standard (with variations), or
- the International Standard (with variations) and the Electric Toy Standard (with variations), or
- the US Standard and the Electric Toy Standard (with variations).

The intention of the transition period is to assist suppliers to understand and adjust to the change in legislation.

The intention of Note 1 in section 8 of this instrument is to advise that under section 108 of the ACL, the regulator may request a supplier to nominate which set of requirements they intend to comply with as their method of complying with this Safety Standard.

Section 9 – Requirements after the transitional period

This section provides that after the transitional period (18 months) has ended, suppliers must comply with the requirements of the Safety Standard. They can no longer comply with the Repealed Safety Standard.

The intention of the Note in section 9 of this instrument is to advise that under section 108 of the ACL, the regulator may request a supplier to nominate which set of requirements they intend to comply with as their method of complying with this Safety Standard.

PART 3 – DETAILS OF REQUIREMENTS

Section 10 – Australian/New Zealand Standard

This section sets out the parts of the Australian/New Zealand Standard which are incorporated into this instrument. It provides that the requirements listed in subsections 10(a) to (i) of the Australian/New Zealand Standard apply to the relevant children's toys.

This section is based on the existing requirements of the Repealed Safety Standard.

The requirements listed in subsections 10(a) to (i) are then modified as set out in sections 11 and 12 of this instrument.

Testing requirements are specified in the referenced provisions of the Australian/New Zealand Standard set out in this section.

Section 11 – Australian/New Zealand Standard – general modifications

This section modifies the requirements in the Australian/New Zealand Standard listed in section 10 of this instrument. These modifications replicate the modifications made previously to the Repealed Safety Standard.

Section 12 – Australian/New Zealand Standard modifications to testing standards

This section modifies the testing requirements in the Australian/New Zealand Standard listed in section 10 of this instrument. These modifications replicate the modifications made previously to the Repealed Safety Standard.

Section 13 – European Standard

This section sets out the parts of the European Standard which are incorporated into this instrument. It provides that the requirements listed in subsections 13(a) to (d) of the European Standard apply to relevant children's toys.

This section is based on the existing requirements of the Repealed Safety Standard.

Testing requirements are specified in the referenced provisions of the European Standard set out in this section.

Section 14 – International Standard

This section sets out the parts of the International Standard which are incorporated into this instrument. It provides that the requirements listed in subsections 14(a) to (i) of the International Standard apply to relevant children's toys.

This section is based on the existing requirements of the Repealed Safety Standard.

Testing requirements are specified in the referenced provisions of the International Standard set out in this section.

Section 15 – International Standard – general modifications

This section modifies the requirements in the International Standard listed in section 14 of this instrument. These modifications replicate the modifications made previously in the Repealed Safety Standard.

Section 16 – International Standard modifications to testing standards

This section modifies the testing requirements in the International Standard listed in section 14 of this instrument. These modifications replicate the modifications made previously in the Repealed Safety Standard.

Section 17 – US Standard

This section sets out the parts of the US Standard which are incorporated into this instrument. It provides that the requirements listed in subsections 17(a) to (j) of the US Standard apply to relevant children's toys.

This section is based on the existing requirements in the Repealed Safety Standard.

Testing requirements are specified in the referenced provisions of the Australian/New Zealand Standard set out in this section.

Section 18 – US Standard – general modifications

This section modifies the requirements in the US Standard listed in section 17 of this instrument.

These modifications replicate the modifications made previously to the Repealed Safety Standard.

Section 19 – Electric Toy standard

This section sets out the parts of the Electric Toy Standard which are incorporated into this instrument. It provides that clause 13.4.1 of the Electric Toy Standard (as modified by section 20 of this instrument) applies to the relevant children's toys. The policy intent of incorporating clause 13.4.1 (as modified by section 20 of this instrument) is to require that the battery compartment (if any) in relevant children's toys cannot be opened and batteries removed without the use of a tool.

Section 20 – Electric Toy Standard – general modifications

This section modifies the requirements in the Electric Toy Standard set out in section 19 of this instrument. The policy intent is to require that the battery compartment (if any) in a relevant children's toys cannot be opened and the batteries removed without the use of a tool. This provides a critical level of safety for children up to and including 36 months of age.

SCHEDULE 1 – REPEALS

Section 1 – The whole of the instrument

This section provides that the whole of the *Consumer Product Safety Standard: Toys for children up to and including 36 months of age (Consumer Protection Notice No. 14 of 2003) (Federal Register of Legislation No. F2008C00607)* is repealed.