

## EXPLANATORY STATEMENT

### *Consumer Goods (Infant Sleep Products) Safety Standard 2024*

#### 1. Authority

The Assistant Treasurer and Minister for Financial Services (the **Minister**) has made the *Consumer Goods (Infant Sleep Products) Safety Standard 2024* (the **Safety Standard**), pursuant to section 104 of the Australian Consumer Law (the **ACL**), which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **CCA**).

#### 2. Purpose and Background

The Australian Government introduced the *Consumer Protection Notice No. 6 of 2005 – Consumer Product Safety Standard: Children’s Household Cots*; and the *Consumer Protection Notice No. 4 of 2008 – Consumer Product Safety Standard: Children’s Portable Folding Cots* (the **Repealed Safety Standards**) to minimise the risk of injury or death to infants and children from hazards associated with household cots and folding cots.

These 2 standards will be repealed and replaced by the Safety Standard which covers a more complete range of infant sleep product categories, including household and folding cots.

The Safety Standard prescribes requirements from voluntary Australian and overseas standards which seek to minimise the risks to infants associated with the issues of incline, curvature, rigidity and materials used in infant sleep products, in addition to the currently regulated hazards of entrapment, falls and suffocation addressed by the Repealed Safety Standards.

The Safety Standard references the latest voluntary Australian standards for household cots and folding cots as well as relevant requirements from comparable overseas standards.

#### Operation of the Safety Standard

This Safety Standard places requirements on infant sleep products drawn from the following:

- **Australian/New Zealand Standard for folding cots:** AS/NZS 2195:2010, *Folding cots—Safety requirements*
- **Australian/New Zealand Standard for household cots:** AS/NZS 2172:2013, *Cots for household use—Safety requirements*
- **Australian/New Zealand Standard for infants’ rocking cradles:** AS/NZS 4385:1996, *Infants’ rocking cradles—Safety requirements*
- **Australian/New Zealand Standard for Methods of testing infant products - Method 1: Sleep Surfaces—Test for firmness:** AS/NZS 8811.1:2013, *Methods of testing infant products—Method 1: Sleep Surfaces—Test for firmness*
- **British Standard for Furniture - Children’s cots and folding cots for domestic use:** BS EN 716-1:2017, *Incorporating corrigendum March 2019—Furniture—Children’s cots and folding cots for domestic use, Part 1: Safety requirements*
- **European Standard for Children’s furniture—Mattresses for cots and cribs—Safety requirements and test methods:** EN 16890:2017+A1:2021, *Children’s furniture—Mattresses for cots and cribs—Safety requirements and test methods*
- **United States Standard Consumer Safety Specification for Crib Mattresses:** ASTM F2933-21a, *Standard Consumer Safety Specification for Crib Mattresses*

- **United States Standard Consumer Safety Specification for Full-Size Baby Cribs:** ASTM F1169-19, *Standard Consumer Safety Specification for Full-Size Baby Cribs*
- **United States Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards:** ASTM F406-22, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*

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

### Repealed Safety Standards

The Safety Standard repeals the *Consumer Protection Notice No. 6 of 2005 – Consumer Product Safety Standard: Children’s Household Cots* and *Consumer Protection Notice No. 4 of 2008 – Consumer Product Safety Standard: Children’s Portable Folding Cots*.

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.

### 3. 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 Standards, the British Standard, the European Standards and the United States Standards referenced in this instrument are available for purchase at the *Intertek Inform* website (<https://www.intertekinform.com/en-au>).

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.

### 4. Consultation

Before the 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*.

In February 2021 the ACCC consulted with 14 stakeholders in a targeted consultation to understand if the risk of incline for inclined sleep products was applicable in the Australian market.

In July 2021 the ACCC published an Issues Paper which considered the risks associated with inclined sleep products, inclined non-sleep products and possible options to address those risks. The ACCC received 27 submissions from a range of stakeholders.

In August 2022 the ACCC published a Consultation Paper which considered the broader risks associated with infant sleep and the likely effectiveness and cost of regulatory and non-regulatory options to address the risks identified. The ACCC received 27 submissions from a range of stakeholders.

In March 2023 the ACCC sought further targeted feedback from industry in relation to possible test methods and requirements for surface materials (breathability), firmness and bassinets.

The ACCC detailed 4 policy options to address the risks associated with infant sleep products:

- Option 1 – Take no action (status quo), retain the current mandatory safety standards for household cots and folding cots.
- Option 2 – Amend the existing mandatory standards for household cots and folding cots in line with updated voluntary Australian standards for those products, plus an education campaign.
- Option 3 – Implement a mandatory information standard for infant sleep products and inclined non-sleep products, plus an education campaign.
- Option 4 – Implement a mandatory safety standard for infant sleep products, mandatory information standard for infant sleep products and inclined non-sleep products, and revoke the household cots and folding cots mandatory standards.

The ACCC's position outlined in the Consultation Paper supported Option 4 as this option would provide the greatest net benefit to consumers, suppliers and regulators. Stakeholders generally agreed with the ACCC's proposed recommendation. The ACCC then recommended the Commonwealth Minister exercise his power under subsection 104(1) of the ACL to make a Safety Standard in relation to infant sleep products to mitigate the identified risks associated with their use.

## **5. 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*.

## **6. Commencement**

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

## **7. Transitional Arrangements**

The instrument provides a transitional period of 18 months beginning on the day this instrument commences. During the transitional period, household cots and folding cots must comply with either:

- *Consumer Protection Notice No. 6 of 2005 – Consumer Product Safety Standard: Children's Household Cots and Consumer Protection Notice No. 4 of 2008 – Consumer Product Safety Standard: Children's Portable Folding Cots*; or
- the *Consumer Goods (Infant Sleep Products) Safety Standard 2024*.

After the transitional period, suppliers of all infant sleep products, including household cots and folding cots, must meet the requirements of the *Consumer Goods (Infant Sleep Products) Safety Standard 2024*.

## **8. Regulation Impact Assessment**

The Office of Impact Analysis (**OIA**) advised a Regulation Impact Statement was required (OIA ID SS123ZE232).

## Details of the *Consumer Goods (Infant Sleep Products) Safety Standard 2024*

### PART 1 – PRELIMINARY

#### Section 1 – Name

This section sets out that the title of the Standard is the *Consumer Goods (Infant Sleep Products) Safety Standard 2024*.

#### Section 2 – Commencement

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation. The Federal Register of Legislation may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

#### 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 – Application

This section identifies which infant sleep products the instrument applies to, and which products are excluded.

#### Section 6 – Definitions

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

**Australian/New Zealand Standard for folding cots** means Australian/New Zealand Standard AS/NZS 2195:2010, *Folding cots—Safety requirements*, 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.

**Australian/New Zealand Standard for household cots** means Australian/New Zealand Standard AS/NZS 2172:2013, *Cots for household use—Safety Requirements* 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.

**Australian/New Zealand Standard for infants' rocking cradles** means Australian/New Zealand Standard AS/NZS 4385:1996, *Infants' rocking cradles—Safety requirements* 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.

**Australian/New Zealand Standard for Methods of testing infant products—Method 1: Sleep Surfaces—Test for firmness** means Australian/New Zealand Standard AS/NZS 8811.1:2013, *Methods of testing infant products—Method 1: Sleep Surfaces—Test for firmness* 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.

**Bassinet** means an infant sleep product with free standing legs that is designed to provide an enclosed sleeping facility for an infant who cannot yet push up on hands or knees or sit up unaided.

**British Standard for Furniture—Children’s cots and folding cots for domestic use** means British Standard BS EN 716-1:2017 Incorporating corrigendum March 2019 - *Furniture—Children’s cots and folding cots for domestic use, Part 1: Safety requirements*, as in force or existing at the time when this instrument commences.

**European Standard for Children’s furniture—Mattresses for cots and cribs—Safety requirements and test methods** means European Standard EN 16890:2017+ A1:2021, *Children’s furniture—Mattresses for cots and cribs—Safety requirements and test method*, as in force or existing at the time when this instrument commences.

**Folding cot** means an infant sleep product that is designed to provide an enclosed sleeping facility which can be folded or collapsed, without disassembly, when not in use. This includes playpens with a floor.

**Household cot** means an infant sleep product with raised sides and ends that is designed to provide an enclosed sleeping facility.

**Infant** in relation to an infant sleep product, means a person under the age of 12 months, or a person over the age of 12 months that might reasonably use the product as a sleeping facility.

**Infant sleep product** means a product that is designed, intended, marketed, supplied, or offered for supply, for use as a sleeping facility for an infant and has a surface on which an infant may lay.

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

**United States Standard Consumer Safety Specification for Crib Mattresses** means the American Society for Testing and Materials Standard ASTM F2933-21a *Standard Consumer Safety Specification for Crib Mattresses*, as in force or existing at the time when this instrument commences.

**United States Standard Consumer Safety Specification for Full-Size Baby Cribs** means the American Society for Testing and Materials Standard ASTM F1169-19, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, as in force or existing at the time when this instrument commences.

**United States Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards** means the American Society for Testing and Materials Standard ASTM F406-22, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, as in force or existing at the time when 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 2 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).

## **PART 2 – REQUIREMENTS DURING THE TRANSITIONAL PERIOD**

### **Section 7 – During the transitional period – folding cots**

This section provides that during the transitional period folding cots need to meet the requirements of the existing Consumer Product Safety Standard for folding cots, or the new Safety Standard as it applies to folding cots.

## Section 8 - During the transitional period – household cots

This section provides that during the transitional period household cots need to meet the requirements of the existing Consumer Product Safety Standard for household cots, or the new Safety Standard as it applies to household cots.

## Section 9 – Repeal of this Part

This section indicates that this part will cease at the end of the last day of the transitional period.

# **PART 3 – REQUIREMENTS AFTER THE TRANSITIONAL PERIOD**

## **Division 1 – Requirements after the transitional period**

### Section 10 – After the transitional period – folding cots

This section provides that after the transitional period folding cots need to meet the requirements of the new Safety Standard as it applies to folding cots.

### Section 11 – After the transitional period – household cots

This section provides that after the transitional period household cots need to meet the requirements of the new Safety Standard as it applies to household cots.

### Section 12 – After the transitional period – bassinets

This section provides that after the transitional period bassinets need to meet the requirements of the new Safety Standard as it applies to bassinets.

### Section 13 – After the transitional period – other infant sleep products

This section provides that after the transitional period other infant sleep products need to meet the requirements of the new Safety Standard as it applies to other infant sleep products.

## **Division 2 – General requirements**

### Section 14 – Incline (horizontal)

This section identifies requirements for a maximum allowable level of incline of the surface of an infant sleep product of 7 degrees, including a test method. Sleep surfaces with inclines of greater than 7 degrees to the horizontal are not allowed. Inclined surfaces greatly increase the risk of suffocation and positional asphyxiation for a sleeping infant and promote a hazardous chin to chest position.

### Section 15 – Incline (vertical)

This section provides requirements for the maximum allowable level of vertical tilt or incline of an infant sleep product, including a test method. Infant sleep products which rock or tilt are not allowed to tilt more than 7 degrees to reduce the risk of an infant being placed in a hazardous chin to chest position.

### Section 16 – Curvature

This section provides requirements that the surface of an infant sleep product must be flat with no curvature, including a test method. Curved surfaces promote the hazardous chin to chest position for a sleeping infant. Only firm, flat surfaces are allowed in infant sleep products.

### Section 17 – Surface rigidity

This section provides requirements that the sleep surface of an infant sleep product comply with mattress firmness requirements, including options for test methods. Firm sleeping surfaces reduce the risks associated with an infant which may roll into or be placed in a prone sleeping position. Soft surfaces pose a suffocation risk for infants when in a face down position.

### Section 18 – Mattress

This section provides requirements for mattresses that are supplied with, or which are in themselves, an infant sleep product. As well as complying with surface rigidity requirements, mattresses must have dimensions clearly displayed, must not fold or separate (if segmented) when laid upon and must fit the infant sleep product snugly. Incorrectly sized mattresses or mattresses which do not fit the infant sleep product pose a safety risk whereby gaps are created into which an infant may roll and become entrapped.

### Section 19 – Material of sides

This section provides requirements for the sides of infant sleep products which are of fabric or mesh design and into which an infant may roll. Soft surfaces which are not sufficiently firm may form to the contours of an infant's face which can create a suffocation hazard by compromising an infant's breathing.

### Section 20 – Restraint system prohibited

This section provides a requirement that restraints or harnesses are not allowed in infant sleep products. Restraints and harnesses can be hazardous to a sleeping infant as they may become entangled in the straps.

### Section 21 – Castors or wheels

This section provides a requirement that infant sleep products with castors or wheels must have at least 2 of these fitted with a brake. Infant sleep products which can be inadvertently moved by a person may be hazardous to the sleeping infant.

### Section 22 – Entanglement hazard

This section provides a requirement that no cords or ribbons are allowed to be attached to an infant sleep product. Loose cords or ribbons pose a potential entanglement or strangulation hazard to an infant in the product.

### Section 23 – Fit for purpose

This section provides a requirement that an infant sleep product must be fit for purpose in terms of its strength, integrity, and stability in being able to support an infant whilst sleeping without the product collapsing or overturning.

### Section 24 – Locking mechanism

This section provides requirements for infant sleep product locking mechanisms. Locking mechanisms which are not correctly engaged or secured can result in the infant sleep product inadvertently failing or collapsing and entrapping an infant.

### Section 25 – Materials (component requirements)

This section provides requirements for infant sleep product materials and components. This includes hazards associated with snag points on which an infant's clothing may become



caught and sharp edges and points which may cause puncture or impact injuries to an infant.

#### Section 26 – Entrapment hazard

This section provides requirements for hazardous gaps which may result in injury if an infant's fingers, limb, head, or neck becomes entrapped whilst in an infant sleep product.

#### Section 27 – Small parts

This section provides requirements for small parts. No small parts should be able to be liberated from an infant sleep product. Small parts can present a choking hazard should they be ingested by an infant.

### **Division 3 – Specific requirements**

#### **Subdivision A – Specific requirements for bassinets**

##### Section 28 – Bassinets to which this Subdivision applies

This section provides additional requirements for infant sleep products which are bassinets.

##### Section 29 – Side height

This section provides requirements for a minimum side height for bassinets, to reduce the possibility of an infant falling out of a bassinet.

##### Section 30 – Filler bars

This section provides requirements for the size of any gaps in bassinets with filler bars or slats, to reduce the possibility of infant entrapment in the bassinet.

##### Section 31 – Materials

This section provides requirements for bassinets with mesh or textile sides to reduce the risk of suffocation.

##### Section 32 – Base width

This section provides requirements for the base of bassinets to be sufficiently wide to ensure the infant is safely contained and the bassinet is stable.

##### Section 33 – Warnings

This section provides a requirement for a specific warning to be provided on bassinets. The warning alerts the user to not use the bassinet once the infant is able to push themselves up on hands and knees or has reached a certain age.

#### **Subdivision B – Specific requirements for folding cots**

##### Section 34 – Folding cots to which this Subdivision applies

This section provides additional requirements for infant sleep products which are folding cots.

##### Section 35 – Specific requirements

This section provides specific requirements for folding cots. It references clauses from the various applicable standards relating to design, construction, performance and marking.

## **Subdivision C – Specific requirements for household cots**

### Section 36 – Household cots

This section provides additional requirements for infant sleep products which are household cots.

### Section 37 – Specific requirements

This section provides specific requirements for household cots. It references clauses from the various applicable standards relating to design, construction, performance and marking.

### Section 38 – Dropside requirements

This section provides specific additional requirements for cots with a dropside. It references clauses from the applicable standard relating to the strength and integrity of the dropside. A dropside is a side of the cot which moves up and down to allow easier access to the infant.

## **PART 4 – ORDER OF APPLICATION**

### Section 39 – Order of application

This section sets out test order requirements which requires each applicable section to be tested in the order the sections appear in the instrument.

## **SCHEDULE 1 – REPEALS**

### Sections 1 and 2 – The whole of the instruments

This section provides that the whole of the *Consumer Protection Notice No. 6 of 2005 – Consumer Product Safety Standard: Children’s Household Cots* and the *Consumer Protection Notice No. 4 of 2008 – Consumer Product Safety Standard: Children’s Portable Folding Cots* are repealed.