

## EXPLANATORY STATEMENT

### Ten unsafe goods notices under the *Trade Practices Act 1974*

This explanatory statement has been prepared with attention to sections 4 and 26 of the *Legislative Instruments Act 2003* (the LIA). It has been prepared by the Australian Competition and Consumer Commission (the ACCC). At the time the instruments to which this explanatory statement applies were made, there was not a requirement to provide an explanatory statement.

#### Background

The *Trade Practices Act 1974* (the TPA) empowers the administering Minister to take a range of actions to safeguard the Australian community from unsafe goods. Among other things, the Minister may declare goods to be unsafe goods by notice published in the Gazette (subsection 65C(5)). A notice under subsection 65C(5) remains in force until the end of 18 months after the date of publication of the notice in the Gazette unless revoked before the end of that period (subsection 65C(6)). The effect of this is to make a ‘temporary ban’ under the TPA.

The *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* together with the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*, amends the TPA to implement a new national consumer law regime known as the Australian Consumer Law (ACL).

The TPA will be renamed the *Competition and Consumer Act 2010* (CCA) on 1 January 2011. The ACL will form Schedule 2 to the CCA.

Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* sets out transitional matters relating to the commencement of the ACL. Item 2 of Schedule 7 provides that a notice under subsection 65C(5) of the TPA that was in force immediately before the commencement of the ACL, continues in force after the ACL takes effect ‘as if’ it were an interim ban imposed under section 109 of the ACL, starting on the day of commencement (1 January 2011).

Section 109 of the ACL provides that a responsible Minister may impose an interim ban on consumer goods of a particular kind if it appears to the responsible Minister that consumer goods of that kind will or may cause injury to any person or a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.

Under section 131E of Part XI of the CCA interim ban notices made under section 109 of the ACL are to be made by legislative instrument. Therefore, in order for pre-existing ‘temporary bans’ to be treated ‘as if’ they were made under the ACL, they must also become legislative instruments.

A total of 10 ‘temporary bans’, declared under the TPA, were in force immediately before 1 January 2011. For details of each instrument see [Appendix A](#).

#### Consultation

Consultation was undertaken with known suppliers before each ‘temporary ban’ was made under the TPA. Consultation about the decision to register the bans as legislative instruments was not considered necessary or appropriate, as it does not alter what is banned in any way.

**Commencement**

These instruments have already commenced in accordance with the TPA but, for the purposes of the LIA, they are taken to have commenced on 1 January 2011 as a consequence of the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*.

**Disallowance**

These instruments are subject to disallowance under Part 5 of the LIA.

**Sunsetting**

Legislative instruments are subject to sunset under Part 6 of the LIA. Ordinarily, legislative instruments such as these would sunset in 10 years. However, under the CCA, interim bans are in force for a period of 60 days. The ban period can be extended for two periods of 30 days each, after which time the ban will lapse. Interim bans may be made permanent bans prior to their lapsing.

**APPENDIX A**

**Detail of bans to which this explanatory statement relates**

<i><b>Banned goods</b></i>	<i><b>Reason for ban</b></i>	<i><b>History of ban</b></i>
Certain goods known to contribute to pool and spa entrapment	<p>Open, potty-shaped skimmer boxes can be installed in permanent swimming pools and spas. They may also be integrally moulded into transportable swimming pools and spas. These skimmer boxes:</p> <ul style="list-style-type: none"> <li>▪ operate at water level as a suction point for circulating the water</li> <li>▪ look like a child's potty or toilet device</li> <li>▪ have no fixed protective device to stop a person becoming lodged or caught by the suction when in use.</li> </ul> <p>People have suffered serious injuries or died after sitting on potty-shaped open skimmer boxes. Children are at great risk and there have been cases in Australia where children sitting on open skimmer boxes have been disembowelled by the strong suction action. There is also a risk of entrapment of body parts and hair by suction at the outlets.</p>	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 19 July 2010 by publication in the Gazette.
Novelty cigarettes	<p>Novelty cigarettes look like real cigarettes and often contain hydrated magnesium silicate, which is the primary ingredient in talcum powder. The user pretends to smoke by exhaling on the cigarette, which releases the hydrated magnesium silicate from the tip. This fine talc powder is meant to look like smoke rising from the (fake) cigarette.</p> <p>If the user inhales on the cigarette, there is a risk that they will ingest the hydrated magnesium silicate (or other similar substances) which can cause serious illness. The hazards associated with these goods include risk of respiratory tract irritation and inflammation, as well as a risk of lung, skin and ovarian cancers associated with inhalation of hydrated magnesium silicate.</p>	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 1 July 2010 by publication in the Gazette.

<i><b>Banned goods</b></i>	<i><b>Reason for ban</b></i>	<i><b>History of ban</b></i>
Inflatable toys, novelties and furniture containing beads	<p>Inflatable toys and novelties are made of soft plastic or other similar material and are designed to be inflated. Sometimes the toys and novelties also contain loose pellets or small particles, generally made from polystyrene or a similar synthetic material. Examples of such products include inflatable toy hammers, balls, children's chairs, plastic lounges and footstools.</p> <p>The hazard associated with these goods is that children may inhale the beads during inflation or deflation. Children can easily access polystyrene beads or other types of pellets in inflatable toys, novelties and furniture because:</p> <ul style="list-style-type: none"><li>▪ the beads may escape from the inflation point;</li><li>▪ PVC plastic inflatable products may burst or puncture when in contact with sharp objects;</li><li>▪ synthetic material is known to weaken with age, and PVC plastic may deteriorate to the point where it bursts and the beads fall out.</li></ul> <p>Children can suffer illness and respiratory infections of the airways and lungs after inhaling beads. They can also suffocate after lightweight beads that are very difficult to dislodge stick in the throat and block the airways. Risks are increased as medical experts may have difficulty diagnosing the cause of an associated illness because inhaled or swallowed beads do not show up on X-rays and are extremely difficult to locate inside the body. Young children have died after inhaling or swallowing polystyrene beads.</p>	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 1 July 2010 by publication in the Gazette.

<i><b>Banned goods</b></i>	<i><b>Reason for ban</b></i>	<i><b>History of ban</b></i>
Monkey bikes	<p>Monkey bikes are small replicas of popular motorcycles scaled down to about half the size. They are usually powered by petrol driven motors and are capable of speeds of up to 80 km/h. Monkey bikes are different from battery operated ride-on toys, which travel at a walking pace.</p> <p>Monkey bikes are unsafe and can cause serious injuries if they:</p> <ul style="list-style-type: none"><li>▪ have unstable structures and mechanical flaws</li><li>▪ lack an emergency stopping device</li><li>▪ lack effective brakes and steering</li><li>▪ lack adequate footholds.</li></ul> <p>The hazard associated with these goods is that they are capable of speeds of up to 80 km/h and can have weak structures or mechanical flaws that can lead to serious injury to, or death of, the rider.</p>	<p>Declared banned by the then Minister for Competition Policy and Consumer Affairs on 1 July 2010 by publication in the Gazette.</p>
Undeclared knives or cutters in children's stationery sets	<p>Art, craft and stationery sets for use by a child which contain an undeclared knife or cutter are banned. If the presence of a knife or cutter is declared on the packaging, the purchaser can make an informed decision whether to purchase the product and give it to their child.</p> <p>The hazard is the risk of laceration and puncture wounds from undeclared knives or cutters. Children have limited experience in handling knives, are physically underdeveloped and lack judgement. As a result, children using toy or novelty knives can suffer accidental injuries that may require surgery.</p>	<p>Declared banned by the then Minister for Competition Policy and Consumer Affairs on 1 July 2010 by publication in the Gazette.</p>

<i>Banned goods</i>	<i>Reason for ban</i>	<i>History of ban</i>
Yo-yo water balls	<p>A yo-yo water ball is a liquid-filled toy or novelty that has a soft and spongy texture; a centre filled with a hydrocarbon based liquid such as toluene (a product of petroleum); a thermal plastic rubber outer casing; an elasticised cord capable of extending at least 500 mm in length.</p> <p>Yo-yo water balls may also have a novelty feature inside the liquid filled ball, such as a flashing light; resemble the form of a cartoon animal; have a loop to put a finger through.</p> <p>There are several hazards associated with these goods, including:</p> <ul style="list-style-type: none"><li>▪ the cord provides a yo-yo effect, but because it can sometimes stretch to over one metre in length, it can wind around a child's neck, especially if swung around the head, and cause choking</li><li>▪ the highly elastic and 'sticky' nature of the cord can constrict breathing if wound tightly around a child's neck</li><li>▪ if the thermal plastic outer casing of a yo-yo ball is pierced, the liquid inside can cause illness if swallowed, and/or adverse reactions if it comes into contact with the skin.</li></ul>	<p>Declared banned by the then Minister for Competition Policy and Consumer Affairs on 1 July 2010 by publication in the Gazette.</p>

<i><b>Banned goods</b></i>	<i><b>Reason for ban</b></i>	<i><b>History of ban</b></i>
Children's plastic products with more than 1 per cent DEHP	<p>Diethylhexyl phthalate is a commonly used chemical plasticiser that is used to make plastics such as PVC soft and flexible. Research by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) into children's plastic products that do contain more than 1 per cent DEHP shows:</p> <ul style="list-style-type: none"> <li>▪ a risk of reproductive toxicity for children up to and including 36 months of age who may extensively chew and suck (mouth) objects on a recurrent basis for substantial periods of time—in excess of 40 minutes per day</li> <li>▪ no risk to older children or to adults because they have less substantial mouth contact with plastic materials that contain DEHP</li> <li>▪ no safety concerns for any age group, including infants, if their skin comes into contact with products containing DEHP.</li> </ul> <p>The hazard is the risk of reproductive toxicity (for example, infertility, altered sexual behaviour and possible birth defects in offspring) in children up to and including 36 months of age who may extensively chew and suck (mouth) such items.</p>	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 2 March 2010 by publication in the Gazette.
Combustible candle holders	Combustible candle holders can be a fire risk if they catch on fire and remain on fire for more than five seconds. Hazards associated with these products include burns, serious injury or death if the candle holder or decoration catches alight and causes a fire.	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 24 June 2010 by publication in the Gazette.
Toy-like novelty cigarette lighters	The hazard associated with these goods is the risk of children mistaking these lighters for toys and playing with them and potentially suffering serious burns.	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 30 December 2009 by publication in the Gazette.

<i><b>Banned goods</b></i>	<i><b>Reason for ban</b></i>	<i><b>History of ban</b></i>
Sky lanterns	Sky lanterns are miniature, unmanned hot air balloons. Lighting an open fuel source in the lantern creates a flame which heats the air inside and causes the lantern to lift into the atmosphere. The hazard is the risk of starting an uncontrolled fire if the open flame contacts combustible material, particularly in bushfire-prone areas.	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 24 September 2009 by publication in the Gazette.