

EXPLANATORY STATEMENT

Issued by the Authority of the Parliamentary Secretary to the Treasurer

Competition and Consumer Act 2010

Permanent ban on inflatable toys, novelties and furniture containing beads

Background

Prior to 1 January 2011, a notice declaring goods to be unsafe was made pursuant to subsection 65C(5) of the *Trade Practices Act 1974* (TPA) in relation to inflatable toys, novelties and furniture containing beads.

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

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

Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* sets out the 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 takes effect 'as if' it were an interim ban imposed under section 109 of Schedule 2 to the CCA, starting on the day of commencement (1 January 2011). Therefore, an interim ban on inflatable toys, novelties and furniture containing beads came into force on 1 January 2011. An interim ban under the ACL exists for a period of 60 days and is able to be extended on two separate occasions by a period of 30 days.

Subsection 114(1) of Schedule 2 to the CCA provides that the Commonwealth Minister may impose a permanent ban on consumer goods of a particular kind if an interim ban exists for those goods, or it appears to the Commonwealth Minister that consumer goods of that kind will or may cause injury to any person or a reasonably foreseeable use (including misuse) of consumer goods will or may cause injury to any person. A permanent ban on inflatable toys, novelties and furniture containing beads is imposed pursuant to subsection 114(1)(a) of Schedule 2 to the CCA.

Permanent ban on inflatable toys, novelties and furniture containing beads

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.

The purpose of the permanent ban on these goods is to ensure ongoing consumer safety by prohibiting the supply of inflatable toys, novelties and furniture containing beads. The hazard associated with these goods is that young children may easily access polystyrene beads or other types of pellets in inflatable toys, novelties and furniture because:

- PVC plastic inflatable products may burst or puncture when in contact with sharp objects
- synthetic material is known to weaken with age, and PVC plastic may deteriorate to the point where it bursts and the beads fall out.

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.

Under the CCA, a permanent ban on inflatable toys, novelties and furniture containing beads is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). For the purposes of section 17 of the LIA, consultation has been undertaken both at the time the notice was made under subsection 65C(5) of the TPA and also in January 2011 when the proposed ban notice was published on the internet in accordance with subsection 132(3) of Part XI to the CCA. There are no known suppliers of these banned goods.

This instrument is subject to sunseting under Part 6 of the LIA. Unless action is taken to defer or exempt it from sunseting, it is expected to sunset on 1 April 2021. This estimate assumes it is registered on or before 31 March 2011.