

EXPLANATORY STATEMENT

Issued by the Authority of the Parliamentary Secretary to the Treasurer

Competition and Consumer Act 2010

Permanent ban on yo-yo water balls

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 yo-yo water balls.

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 yo-yo water balls 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 yo-yo water balls is imposed pursuant to subsection 114(1)(a) of Schedule 2 to the CCA.

Permanent ban on yo-yo water balls

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.

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.

The purpose of the permanent ban on these goods is to ensure ongoing consumer safety by prohibiting the supply of yo-yo water balls. There are several hazards associated with these goods, including:

- 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
- the highly elastic and 'sticky' nature of the cord can constrict breathing if wound tightly around a child's neck
- 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.

Under the CCA, a permanent ban on yo-yo water balls 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.