

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Small Business, the Hon. Bruce Billson MP

Competition and Consumer Act 2010

Consumer Protection Notice No. 3 of 2014

Safety standard: Child Restraint Systems for use in motor vehicles.

1. Overview:

This Regulatory Instrument provides an updated safety standard for child restraints for use in motor vehicles.

The safety standard ensures that child restraints supplied in the Australian market have key safety features considered appropriate to reduce the risk of injury to a child involved in a motor vehicle accident. The safety standard adopts requirements in the standard approved by Standards Australia, AS/NZS 1754 *Child restraint systems for use in motor vehicles* which was last revised in 2013.

2. Background:

Legislative Power

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 *Trade Practices Act 1974* (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.

Subsection 105(1) of the ACL provides that the Commonwealth Minister may, by written notice published on the internet, declare that a standard prepared by, or approved by, Standards Australia, with variations specified in the notice, is a safety standard for consumer goods of a kind specified in the instrument.

Subsection 106(1) provides that a person must not, in trade or commerce, supply consumer goods of a particular kind if a safety standard for consumer goods of that kind is in force and those goods do not comply with the standard.

Safety requirements for the supply of child restraints are currently contained in *Competition and Consumer Act 2010* - Consumer Protection Notice No. 21 of 2011 - Safety standard: Child restraint systems for use in motor vehicles. The safety standard is a legislative instrument and is registered on the Federal Register of Legislative Instruments (FRLI)

Sunset Provisions

This safety standard is exempt from sunset provisions. Schedule 3 of the *Legislative Instruments Amendment (Sunsetting Exemptions) Regulation 2013* (SLIO No 212 of 2013) lists as exempt instruments made under section 104 or 105 (safety standards) of Schedule 2 (The Australian Consumer Law) to the *Competition and Consumer Act 2010*, including prescribed consumer product safety standards made under section 65C of the *Trade Practices*

Act 1974 that were in force immediately before the commencement of item 4 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*.

As a matter of good regulatory practice, the ACCC regularly reviews product safety standards to ensure they remain effective, efficient and appropriate and remain the best available solution, in the public interest, to an identified safety hazard.

3. Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

This Legislative Instrument is a safety standard concerning the supply of child restraints for use in motor vehicles.

Human Rights Implications

The Legislative Instrument engages, amongst others, the right to health and the rights of the child.

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Convention on the Rights of the Child recognises the right of the child to the enjoyment of the highest attainable standard of health.

The Legislative Instrument promotes these rights by requiring all child restraints to conform to the construction, design, testing and labelling requirements set out in the instrument and prohibiting from supply those restraints that do not meet these requirements.

Conclusion

The Legislative Instrument does not limit and is compatible with human rights because it advances the protection of human rights by requiring a supplier to supply goods which comply with current safety standards, thereby preventing harm or injury to people, including children.

4. Stakeholder consultation:

Following initial discussion with industry and advocacy groups, a Consultation Paper was released in November 2013 outlining proposed amendments to the standard, and was circulated to interested parties, including manufacturers, suppliers, State and Territory regulators, and consumer groups. Eighteen submissions were received, including from suppliers, manufacturers, laboratories, state and territory road authorities, industry associations, safety researchers, and child safety advocates.

On the basis of the comments received and further discussion and research by the ACCC, another Consultation Paper seeking stakeholder views and further information was released in June 2014. This consultation concerned a specific proposal to change the mechanism by which the voluntary standard, AS/NZS 1754, is supported. The proposal was to move from use of a specific safety standard to use of the general provisions of the ACL. Nineteen

submissions were received by the end of July 2014. Submissions from stakeholders were overwhelmingly in favour of retention of the safety standard.

Taken together, consultation with interested parties including manufacturers/suppliers of child restraints, State and Territory road authorities, State and Territory fair trading/consumer affairs agencies, consumer groups and child safety specialists strongly supports the continuing regulation of the supply of this product based on revision/update of the existing mandatory standard.

5. The requirements of the safety standard:

This instrument declares the 2004, 2010 and 2013 versions of the Australian / New Zealand standard for child restraint systems for use in motor vehicles AS/NZS 1754, as varied, to be alternatives for complying with the safety standard for the purposes of section 106. The purpose of the safety standard is to ensure that child restraints supplied on the Australian market have key safety features that reduce the associated risks of injury to a child involved in a motor vehicle accident. All versions of the Australian / New Zealand standard specifies minimum design, construction and performance requirements for child restraints in order to ensure a high level of protection for children placed in them. The declaration of the three most recent versions of AS/NZS 1754 as alternative standards is to ensure that hire services and second hand suppliers do not face an unreasonable burden of compliance.

Requirements of AS/NZS 1754 which are mandated in the safety standard relate to:

- Materials;
- Design and construction;
- Performance;
- Testing;
- Informative labelling, instructions, marking and packaging; and
- Appendices which relate to clothing for test dummies; spacers for attachment to test dummies; instructions to be supplied for installation of the upper anchorage fittings; recommended dummy types and an explanation of the new shoulder designation system for choosing an appropriate child restraint.

AS/NZS 1754 has been varied to simplify the language used in the scope of the mandatory safety standard, as well as to remove clauses which are not fundamental to the safety of child restraints and, as such, are not within the scope of a mandatory safety standard. The variations to each revision of AS/NZS are described by Table 1 below.

Table 1: Summary of variations and deletions

Clause in AS/NZS 1754:			Effect of variation:
2013	2010	2004	
1.1	1.1	1.1	Replaces wording to simplify the scope of mandatory safety standard.
1.1	1.1	1.1	Deletes a sentence to simplify the scope of mandatory safety standard.
2.3; 2.4 and 2.5	2.4; 2.5 and 2.6	2.4; 2.5 and 2.6	Deletion of clauses pertaining to flammability; toxicity and plastics stabilization, respectively, as these have been assessed as not being critical safety issues with regards to safe retention of a child occupant in the event of a motor vehicle accident.
3.13; 5.2.2(b) and 6.3(h)	3.12; 5.2.2(b) and 6.3(h)	3.12; 5.2.2(b) and 6.3(h)	Deletion of clauses pertaining to child restraints designed for children with disabilities, as these are not within the scope of the mandatory safety standard.
1.6, Appendix F			Deletes clauses relating to requirements for regular testing and demonstration so as to give suppliers flexibility as to how they demonstrate compliance.
3.14;4.6;5.8;6.3(r);6.4.3(oo); 6.6(n)(E) and 6.6(x). References to aircraft in Table 5.1. Figures 3.17 and 6.5			Deletes clauses and references to aircraft as these are not in the scope of the mandatory safety standard.
2 nd paragraph of 5.1			Deletes clause relating to use of a rebound sled so as not to limit accreditation of laboratories.