

## **EXPLANATORY STATEMENT**

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

### ***Competition and Consumer Act 2010***

*Consumer Goods (Bean Bags) Safety Standard 2014*

*Consumer Protection Notice No. 4 of 2014.*

#### **1. Overview:**

This Legislative Instrument provides an updated safety standard for bean bags, bean bag covers and retail packages which contain bean bag filling. Bean bags are regulated because of their association with injuries, particularly through children swallowing and suffocating on bean bag filling if it is released; the danger of children climbing into and suffocating inside a bean bag; and a new hazard associated with infants being placed on bean bags as a sleeping surface.

#### **2. Background:**

##### *Legislative Power*

A national consumer law regime known as the Australian Consumer Law (ACL) was implemented in the *Competition and Consumer Act 2010* (CCA) on 1 January 2011. The ACL forms Schedule 2 to the CCA.

Subsection 104(1) of Schedule 2 to the CCA provides that the Commonwealth Minister may, by written notice published on the internet, make a safety standard for consumer goods of a particular kind, consisting of such requirements (as are specified in subsection 104(2)) as are reasonably necessary to prevent or reduce risk of injuries.

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 bean bags are currently contained in Regulation 11 of the *Trade Practices (Consumer Product Safety Standards) Regulations 1979*. Item 4 of Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* provides that a product safety standard made under 65C of the *Trade Practices Act 1974* (TPA) will continue in force under the ACL as if it had been made under section 104 of the ACL.

##### *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*. The list includes prescribed consumer product safety standards made under section 65C of the TPA 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 bean bags (which are defined broadly as cushions or similar items) bean bag covers and retail packages containing bean bag filling.

#### *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 bean bags to display a warning label alerting consumers to the hazards of suffocation on bean bag filling; children climbing in and suffocating inside bean bags; and the risks of using a bean bag as a sleeping surface for infants.
- Requiring that where a bean bag has more than one slide fastener, that each such fastener be child resistant.
- Prohibiting for sale with bean bags, the supply of objects such as paper clips which can make it easy for children to circumvent the child-resistant nature of the slide fastener to gain access to the filling inside bean bags.

#### *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, a Consultation Paper was released in September 2013 outlining several proposed amendments to the standard, and was circulated to potentially affected parties, including manufacturers, suppliers, State and Territory regulators, and consumer groups. A total of eleven submissions were received; the respondents consisting of retailers, manufacturers and one industry association.

Based on the feedback received in response to the paper, the significant issues requiring further consideration were those relating to the broad scope of the standard; proposed wording of warning labels and amending the standard to allow additional access openings.

The formal consultation and the informal discussions with stakeholders were used to identify issues and practical matters of definition, testing and compliance that have been incorporated in the regulation and will be used to inform the education and compliance program to support it.

## 5. Application of the standard to cushions:

The ACCC noted that instances of non-compliance had occurred in the past where suppliers of cushions had not identified that the standard applied to cushions which contained bean bag filling. The new standard will continue to apply to cushions that contain bean bag filling, but in line with the other amendments, will only apply where the cushion also has a filler access opening.

To address any potential confusion amongst suppliers of cushions, consideration was given to whether the title of the standard should be amended to include a reference to 'cushions'. This change did not proceed and the ACCC proposes instead to undertake specific education and communication work and to provide relevant guidance on the Product Safety Australia webpage to ensure suppliers of cushions are aware of the requirements of the regulation.

## 6. The requirements of the safety standard:

### Definitions:

- **Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act 2010.
- **Bean bag filling** means pellets, or small particles, of polystyrene or other similar synthetic material used to fill a bean bag;
- **Child resistant slide fastener** means a slide-fastener having a sliding piece which:
  - (a) does not have attached to it any tag, handle or other object which could facilitate the movement of the sliding piece; and
  - (b) incorporates a locking mechanism which prevents the sliding piece opening the slide-fastener unless a wholly separate device is used to disengage the locking mechanism and act as a handle in moving the sliding piece between the teeth.
- **Slide fastener** means a device comprising two sets of teeth, each set of teeth being located on adjacent edges of the device and having an attached sliding piece which, by moving between the adjacent teeth of each edge, causes the teeth to interlock or cease to interlock, as the case may be, with teeth of the adjacent edge.
- **Bean bag** means a cushion or similar item which consists of a bag or cover surrounded by bean bag filling which contains an opening through which bean bag filling can be accessed.

- **Bean bag cover** means a bag or cover capable of being filled with bean bag filling and which, if filled with bean bag filling, would constitute a bean bag and includes a bag or cover intended as a separate inner lining for a bean bag.

*Safety requirements:*

Warning label:

Every bean bag, bean bag cover and retail package containing bean bag filling shall have fixed securely to, or stamped on it, a label or notice in the following form:

**WARNING:** Children can suffocate if bean bag filling is swallowed or inhaled. Do not let children climb inside this bean bag. A bean bag is **not a safe** sleeping surface for an infant under 12 months of age.

The warning label shall:

- Bear the word 'WARNING' in upper case red letters of not less than 5 millimetres in height on a white background;
- Bear the remaining words in upper and lower case letters as shown in paragraph (1), the upper case letters being of not less than 5 millimetres in height and the words 'not a safe' in bold font; and
- Be conspicuously displayed.

Child resistance requirements:

- Every bean bag and bean bag cover shall have a child-resistant slide-fastener fitted to every opening through which bean bag filling can be inserted or removed.
- If a bean bag or bean bag cover has more than one slide-fastener, each such slide-fastener shall be child-resistant.
- A bean bag or bean bag cover shall not be supplied with any tag, handle or other object which could facilitate the movement of the child-resistant slide-fastener sliding piece.

**7. Commencement date:**

The new mandatory standard will come into operation on 1 January 2016.