

## EXPLANATORY STATEMENT

### *Consumer Goods (Babies' Dummies and Dummy Chains) Safety Standard 2017*

#### Overview

The Commonwealth Minister for Small Business (the Minister) has made a safety standard for babies' dummies and dummy chains pursuant to section 104 of the *Australian Consumer Law (ACL)*, which is Schedule 2 of the *Competition and Consumer Act 2010 (Cth) (CCA)*. This safety standard updates the safety standard for babies' dummies and repeals the *Trade Practices Act 1974 – Consumer Protection Notice No.4 of 2006 – Consumer Product Safety Standard: Babies' Dummies* (Federal Register of Legislation No. F2006L03455).

This safety standard also includes a standard for dummy chains and repeals both the *Competition and Consumer Act 2010 – Consumer Protection Notice No. 33 of 2011 – Revocation of interim ban and imposition of permanent ban on certain babies' dummies to which there are crystals, beads or other similar ornaments attached* (Federal Register of Legislation No. F2011L01874) and the *Competition and Consumer Act 2010 – Consumer Protection Notice No. 34 of 2011 – Revocation of interim ban and imposition of permanent ban on certain pins, ribbons, strings, cords, chains, twines, leathers, yarns, or any other similar article to which there are crystals, beads or other similar ornaments attached, which are designed to be attached to babies' dummies* (Federal Register of Legislation No. F2011L01877).

The safety standard comes into effect on the day after it is registered on the Federal Register of Legislation. Suppliers are able to continue to supply babies' dummies and dummy chains, which meet either the previous safety standard and bans, or the new safety standard until 1 July 2019. From 1 July 2019, suppliers will need to ensure that they comply with the new standard.

The purpose of the standard is to ensure babies' dummies and dummy chains have key safety features that address known safety hazards and reduce the risk of injury.

#### Requirements of the safety standard

The safety standard includes the following definitions:

- **Babies' dummy** means an article intended to satisfy the non-nutritive sucking needs of a baby, which includes a teat that the baby sucks.
- **Dummy chain** means pins, ribbons, strings, cords, chains, twines, leathers, yarns or any other similar article that is designed to be attached to babies' dummies.
- **Australian Standard** means Australian Standard AS 2432:2015 - Babies' dummies.
- **European soother standard** means European Standard EN 1400:2013+A1:2014 – Child use and care article – Soothers for babies and young children – Safety requirements and test methods.
- **European soother holder standard** means European Standard EN 12586:2007+A1:2011 – Child use and care articles – Soother holder – Safety requirements and test methods.

The safety standard applies to babies' dummies and dummy chains. Babies' dummies are required to meet certain requirements of either the Australian standard or the European soother standard. Baby dummy chains are required to meet certain requirements of the European soother holder standard.

The Australian standard could, in 2017, be purchased on SAI Global's website ([www.saiglobal.com](http://www.saiglobal.com)). The European standards can be purchased from a variety of online sources including, in 2017, from the European Committee for Standardization's website ([standards.cen.eu](http://standards.cen.eu)).

The Australian Competition and Consumer Commission can make a copy of the standards available for viewing in an ACCC office, subject to licensing conditions.

### **Requirements for babies' dummies**

The safety standard requires babies' dummies to meet certain requirements of either the Australian standard or the European soother standard that relate to the integrity of the shield, ring, handle and plug, teat strength, decorations, packaging, product identification, warning label and instructions. The Australian standard and the European soother standard detail these requirements for babies' dummies, which are summarised below.

#### *Design and construction requirements*

All components must be free from any sharp edges that could cause injury.

The shield of the dummy must be of a minimum size so that it does not fit fully inside the baby's mouth.

The shield must have two or more ventilation holes of a specific size and in certain positions to allow the baby to breathe in case the dummy becomes lodged in the mouth.

The teat must be smooth and not allow fluid to leak inside or fill the teat as bacteria can grow and potentially cause infection.

The ring or handle must be secure and not detach from the shield or come apart so as not to become a choking hazard.

The ring or handle must be able to be gripped to allow easy removal of the dummy by an adult carer in case it becomes lodged in the baby's mouth.

#### *Testing*

Certain testing must be performed. The tensile and shield tests ensure the dummy meets requirements for strength, durability and size.

When tested in accordance with prescribed tests no part of a dummy will become detached, torn, fractured or broken.

#### *Safety labelling*

The packaging of the dummy must come with a warning notice, use instructions and include contact information for the manufacturer or distributor.

The warning notice must include information about inspecting the dummy for damage or weakness before each use and the strangulation hazards associated with attaching the dummy with cord or ribbon.

#### *Packaging*

Dummies must be sold in a clean condition in a sealed pack and include instructions for use and hygienic care of the dummy.

#### *Decorations*

Dummies must not have any printing on the sucking side of the shield or any adhesive decals attached to any part of the dummy.

Decorations must not become detached during conditioning or testing of the dummy as these can become a choking, inhalation or ingestion hazard.

These requirements address safety concerns associated with unsafe decorations on babies' dummies and the permanent ban on the supply of dummies with unsafe decorations is repealed.

### **Requirements for dummy chains**

Baby dummy chains are required to meet certain requirements of the European soother holder standard for length, impact resistance, durability and tensile strength. The European soother holder standard details these requirements, which are summarised below.

A dummy chain must have a maximum length of 220 mm so as not to become a strangulation hazard.

No part of the dummy chain will break, tear or separate when subjected to impact resistance and tensile strength tests so as not to become a choking hazard.

The garment fastener must not break, tear or separate during testing which involves the repeated opening and closing of the jaws of the fastener, which attaches the dummy chain to the baby's clothing.

Adhesive decals and labels must not be attached to the dummy chain, as these can become a choking, inhalation or ingestion hazard.

These requirements address safety concerns associated with dummy chains with unsafe decorations and the permanent ban on the supply of these dummy chains is repealed.

### **Transitional arrangements**

Prior to 1 July 2019 babies' dummies must meet the requirements of either:

- *Trade Practices Act 1974 - Consumer Protection Notice No. 4 of 2006 - Consumer Product Safety Standard for Babies' Dummies and Competition and Consumer Act 2010 – Consumer Protection Notice No.33 of 2011 – Revocation of interim ban and imposition of permanent ban on certain babies' dummies to which there are crystals, beads or other similar ornaments attached.*

*or*

- *Consumer Goods (Babies' Dummies and Dummy Chains) Safety Standard 2017.*

On and after 1 July 2019 babies' dummies must meet the requirements of the *Consumer Goods (Babies' Dummies and Dummy Chains) Safety Standard 2017.*

Prior to 1 July 2019 babies' dummy chains must meet the requirements of either:

- *Competition and Consumer Act 2010 – Consumer Protection Notice No. 34 of 2011 – Revocation of interim ban and imposition of permanent ban on certain pins, ribbons, strings, cords, chains, twines, leathers, yarns, or any other similar article to which there are crystals, beads or other similar ornaments attached which are designed to be attached to babies' dummies.*

*or*

- *Consumer Goods (Babies' Dummies and Dummy Chains) Safety Standard 2017.*

On and after 1 July 2019 babies' dummy chains must meet the requirements of the *Consumer Goods (Babies' Dummies and Dummy Chains) Safety Standard 2017.*

## **Consultation**

A consultation paper was published in September 2016 for six weeks proposing four policy options:

Option 1 – Keep the current mandatory safety standard (status quo)

Option 2 – Allow the old and new voluntary Australian standards and incorporate the bans on certain dummy chains and on dummies with unsafe decorations

Option 3 – Allow the old and new voluntary Australian and European standards and incorporate the bans on certain dummy chains and on dummies with unsafe decorations

Option 4 – Revoke the mandatory safety standard.

In total 16 submissions were received from a range of stakeholders including consumer groups, co-regulators, manufacturers, suppliers and testing and certification companies. Most stakeholders favoured Option 3.

The ACCC's preliminary position, expressed in the consultation paper, was that Option 3 was likely to provide the greatest benefit for consumers, suppliers and regulators. Stakeholders said that the 1991 voluntary Australian standard should not be retained. Option 3 was modified to allow the European and new Australian standards, but not the old Australian standard.

The regulation would be streamlined by incorporating the European standard for dummy chains and revoking the bans on dummies and dummy chains with unsafe decorations.

Businesses that manufacture for the European market would not be required to package a product specifically for the Australian market. Removing this barrier may result in a cost saving for consumers and greater consumer choice. Safety would not be compromised and consumers would receive the same high level of protection they have now.

Suppliers of babies' dummies can choose to either meet the requirements of the Australian standard or the European soother standard as specified in this legislative instrument. Suppliers of dummy chains are required to meet the requirements of the European soother holder standard as specified in this legislative instrument, whether packaged individually or with babies' dummies.

## **Disallowance**

This legislative instrument is subject to disallowance under Chapter 3, Part 2 of the *Legislation Act 2003*.

## **Commencement**

This safety standard commences on the day after it is registered on the Federal Register of Legislation.

## **Sunsetting**

This legislative instrument is exempt from sunseting. Schedule 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (No. 158, 2015) 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*.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with subsection 9(1) of the Human Rights (Parliamentary Scrutiny) Act 2011.*

## *Overview*

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This legislative instrument is a safety standard that specifies requirements for the design and construction of babies' dummies and dummy chains.

## *Human Rights Implications*

The legislative instrument engages the right to health contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 24 of the Convention on the Rights of the Child.

Article 12 of the ICESCR 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 will promote these rights by requiring all babies' dummies and dummy chains meet safety standards. This will minimise the risk of death or serious injury to babies using these consumer goods.

## *Conclusion*

The legislative instrument does not limit, and is compatible with human rights. It advances the protection of human rights by requiring suppliers to ensure the babies' dummies and dummy chains they supply comply with safety standards, minimising the risk of injury or death to users.