

## EXPLANATORY STATEMENT

### *Consumer Goods (Baby Bath Aids) Safety Standard 2017*

#### Overview

The Commonwealth Minister for Small Business (the Minister) has made a safety standard for baby bath aids pursuant to section 104(1) of the Australian Consumer Law, which is Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

The safety standard comes into effect on the day after it is registered on the Federal Register of Legislation. A transitional period of 12 months will apply during which suppliers may supply baby bath aids that meet either the previous safety standard or the new safety standard. At the end of the 12 month transitional period, suppliers will need to ensure they comply with the new safety standard.

The purpose of the safety standard is to reduce the risk of babies drowning or acquiring permanent brain injury from the use of baby bath aids. The standard was introduced in 2005 following five deaths of infants in the five years prior to its introduction to address drowning deaths of infants (mostly under 12 months of age) while using baby bath aids in Australia. Data on near drowning incidents in baby bath aids is not available, but is estimated at two permanent brain injuries for every death<sup>1</sup>. The new safety standard seeks to reduce the risk of death and serious injury by introducing a permanency test and colour contrast requirements for warning notices.

#### Repealed Standard

The previous safety standard for baby bath aids was the *Trade Practices (Consumer Product Safety Standard) (Baby Bath Aids) Regulations 2005*.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Requirements of the safety standard

This safety standard applies to baby bath aids.

This safety standard includes the following definitions:

***baby bath aid*** means a device designed to support a baby while the baby is being bathed.



***transitional period*** means the period of 12 months beginning on the day this instrument commences.

***US Standard*** means the American Society for Testing and Materials Standard ASTM F1967-13 *Standard Consumer Safety Specification for Infant Bath Seats*, as in force or existing at the time when this instrument commences.

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<sup>1</sup> Based on Royal Life Saving Society – Australia's figures on accidental drowning of children in baths - *Bath Time Safety Fact Sheet No. 5*, published 2 October 2012.

The safety standard requires that a baby bath aid and its packaging must have the following warning statement:

	<p><b>WARNING – Children have DROWNED while using bath aids.</b></p> <p><b>This is NOT a safety device.</b></p> <p><b>ALWAYS keep baby within arm's reach.</b></p> <p><b>NEVER leave baby in care of children.</b></p>	
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The warning provided on the baby bath aid must be permanent and legible when tested in accordance with requirements in the US standard Clause 7.3 *Permanence of Labels and Warnings*, (with variations).

### Access to Australian and international standards

Where practicable, product safety legislative instruments should only reference extrinsic material that is readily accessible for free by the public. However, as in the current case,, many product safety legislative instruments need to incorporate extrinsic technical standards over which certain bodies have copyright. The US Standard referenced in this instrument is available for purchase at SAI Global's website (<https://www.saiglobal.com>).

The Australian Competition and Consumer Commission (ACCC) can also make a copy of the standard available for viewing at one of its offices, subject to licensing conditions.

### Transitional arrangements

The instrument provides a transitional period of 12 months beginning on the day this instrument commences. During the transitional period, suppliers must meet the requirements of either:

- the *Trade Practices (Consumer Product Safety Standard) (Baby Bath Aids) Regulations 2005*, or
- the *Consumer Goods (Baby Bath Aids) Safety Standard 2017*.

After the transitional period, suppliers must meet the requirements of the *Consumer Goods (Baby Bath Aids) Safety Standard 2017*.

### Consultation

The ACCC conducted a review of the safety standard for baby bath aids and recommended to the Australian Government Minister for Small Business that the warning requirements for permanence and legibility be amended and to introduce a test to assess the durability of the warning.

The ACCC released a consultation paper between 12 October 2016 and 25 November 2016 and circulated it to manufacturers, suppliers, industry, safety experts and consumer groups. The paper asked for comment on four policy options:

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

Option 2 – Improve the permanence and legibility of the safety warnings

Option 3 – Accept the ASTM standard

Option 4 – Revoke the mandatory safety standard

The ACCC's preliminary position considered options 2 and 3 to be the most effective options on the basis they would improve safety, clarify the requirements by specifying mechanical

tests to measure permanence and not impose any additional burden for suppliers. The ACCC concluded other options would not be suitable on the grounds they would reduce safety or were not necessary to prevent the risk from drowning.

The ACCC received nine responses, from retailers, a consumer group, an industry association, a test laboratory, injury prevention advocates, and government agencies. All submissions supported the proposed change from option 2 and/or option 3. Submissions stated there would be minimal cost to suppliers associated with the change.

On the basis of the comments received and further analysis, option 2 was assessed as likely to provide the greatest net benefit.

### **Disallowance**

This legislative instrument is not subject to disallowance due to subsection 44(1) of the *Legislation Act 2003* (Cth).

### **Commencement**

The legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Sunsetting**

The legislative instrument is not subject to sunsetting due to section 54 of the *Legislation Act 2003* (Cth).

### **Regulation impact assessment**

The Office of Best Practice Regulation advised a Regulation Impact Statement was not required.