



# Review of the mandatory safety standard for baby bath aids

Consultation paper

October 2016



### Disclaimer

The Australian Competition & Consumer Commission (ACCC) has developed this consultation paper to seek the views of stakeholders about the mandatory safety standard for baby bath aids.

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# 1. Introduction

The ACCC is reviewing the safety standard for baby bath aids to:

- improve the permanence and legibility of the safety warnings
- assess whether international standards are suitable for Australia.

The ACCC seeks stakeholder information that could assist in the review.

**The consultation process outlined in this paper may be the only opportunity for you to provide input into this review.**

**You are encouraged to make submissions.**

## 2. Policy options

This consultation paper discusses 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.

## 3. Background

### 3.1 Baby bath aids in Australia

Baby bath aids are intended to provide limited support in the water so that carers' hands are free to bathe infants. They have been in use in Australia since the 1980s. Based on 2004 figures, we estimate that Australian consumers buy around 190 000 baby bath aids every year.<sup>1</sup> They are widely available from specialist infant and nursery stores, major department stores, suppliers of general merchandise, discount and variety suppliers, as well as online. Most baby bath aids in Australia are imported and prices range from around \$20 to \$170.

Baby bath aids come in a wide range of designs, with new types being developed from time to time such as shower chairs, combination products, change tables with baby baths and incorporated supports, or accessories. Products are made from a wide range of materials, from fabric and foam, to rigid plastic constructions, and are made in various designs from hammocks on frames to upright rings and seats. Their durability means that consumers often supply them on the second hand market, give them away, or store them for future use.

### 3.2 Deaths and injuries

There have been infrequent but ongoing deaths of infants in baby bath aids overseas and in Australia for many years. The most recent Australian death was in 2014.

Australian coronial investigations about babies who died when using bath aids found:

- all the deaths involved a lapse in adult supervision

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<sup>1</sup> Sydney Morning Herald 'Revealed: deadly bath cradles in thousands of homes' May 24, 2004

- the risk increases when co-bathing other children.

Coroners found that some carers had:

- thought the water level was not ‘too high’ – however, although higher water levels increase the risk of drowning, no volume of water is safe
- thought that they would hear something if the child was in distress
- left the child in the care of a sibling
- thought that they had not been away for ‘too long’
- previously left the child unattended on several occasions and nothing had happened.

Coroners also made findings about bath aid safety warnings:

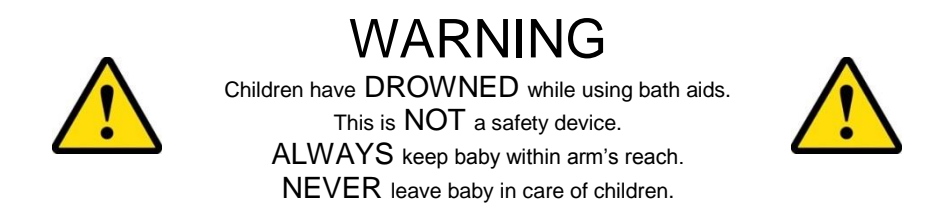
- some carers were distracted and had not heeded or noticed bath aid safety warnings
- some carers did not understand bath aid safety warnings in English. Note: three per cent of Australians speak English either not well or not at all (2011 Census)
- some old baby bath aids did not have permanently affixed safety warnings
- marketing baby bath aids as promoting safety undermines safety warnings – some carers ignored safety warnings because they believed baby bath aids improved safety.

### 3.3 The safety standard

There is no voluntary Australian standard for baby bath aids. The mandatory safety standard (Trade Practices (Consumer Product Safety Standard) (Baby Bath Aids) Regulations 2005) was introduced in 2005 following three reported deaths in 2002. We have not reviewed the mandatory standard since it was introduced.

The mandatory safety standard requires a permanently affixed safety warning on baby bath aids to alert carers to not leave children unsupervised in the bath aid. The warning must be positioned so that it can easily be seen at all times while in use. The mandatory standard does not have any performance, design or construction requirements.

The following is an example of the safety warning (not to scale):



At least three deaths in Australia in recent years involved bath aids that had the mandated safety warnings.

### 3.4 Compliance with the safety standard

Most suppliers in Australia provide the mandated safety warning on baby bath aids and the packaging. However, there have been compliance issues where the safety warning was:

- hard to read because of low contrast (e.g. black writing on a dark blue label). The safety standard requires ‘a contrasting colour to the colour of the baby bath aid’ but does not specify contrast with the background of the label
- on a label that was poorly bonded to the product, water-absorbing or not water resistant

- easy to peel off by hand because it did not mould to the shape of the product, had overhanging edges or was poorly applied
- affixed via alternative technologies to adhesive labels, such as hot-stamping onto the product. The standard refers to 'a notice' so the compliance status of alternative technologies is less clear.

## 4. Adopting trusted international standards

The ACCC has assessed the US and European requirements for baby bath aids against the following criteria:

- Addressing safety concerns: Is there evidence that the international standard provides an acceptable level of consumer safety?
- Comparable jurisdiction to Australia: Is the international standard published or developed by a legitimate standards body or government agency from an economy or nation with comparable economic and regulatory processes to Australia?
- Applicability to the Australian context: Is the international standard applicable and sufficient in the Australian context?

### 4.1 European standards

The European Commission has directed<sup>2</sup> the European Committee for Standardization (CEN) technical committee for child use and care articles (TC 252) to develop European standards. CEN develops standards for use in Europe and is a reputable standards development body. Europe is a jurisdiction with comparable economic and regulatory processes to Australia.

The CEN Technical Committee 252 for *Child use and care articles* is currently working on two projects (WI) for baby bath seats and baby bath tubs standards:

- prEN 17022 (WI=00252099) Child care articles - Bathing aids - Safety requirements and test methods, expected voting date, 22 May 2017
- prEN 17072 (WI=00252100) Child care articles — Bath tubs and stands — Safety requirements and test methods, expected voting date 2 November 2017

As CEN is unlikely to complete and publish these European standards before 2018, we have not considered their suitability for Australia.

### 4.2 ASTM standard

The US regulations for baby bath aids are in the Code of Federal Regulations at 16 CFR Part 1215 and are based on the American Standard ASTM F 1967– 11a *Standard Consumer Safety Specification for Infant Bath Seats* (ASTM).

The US Consumer Product Safety Commission (CPSC) administers the US regulations for baby bath aids, and fulfils a similar role to the ACCC's consumer product safety function. ASTM is a reputable standards development body and the US is a jurisdiction with comparable economic and regulatory processes to Australia.

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<sup>2</sup> European Commission Decision of 6 January 2010 on the safety requirements to be met by European standards for bath rings, bathing aids and bath tubs and stands for infants and young children (2010/9/EU) under the General Product Safety Directive 2001/95/EC

The ASTM standard does not apply to every type of baby bath aid but, for most bath aids, it specifies performance, construction, testing and design requirements. The ASTM standard includes performance requirements that address additional safety risks of falls, lacerations and choking. The Australian mandatory safety standard does not address these issues but targets the most common factor in baby bath aid-related deaths in Australia, which is lapse in adult supervision.

The standard specifies tests for label and warning permanence. This could provide a solution to some of the permanence issues that have happened with the Australian mandatory safety standard.

The ASTM safety warnings align closely with those required by the Australian mandatory safety standard, except it does not require a warning against co-bathing. The ASTM standard specifies that information with the product must not indicate or imply that the infant may be safely left in the device without a caregiver in attendance. The ASTM standard requires the following safety warnings:

**WARNING – NOT A SAFETY DEVICE**

Babies have **DROWNED** while using bath seats

**ALWAYS** keep baby within adult’s reach

**STOP** using when baby begins pulling to a standing position

We are considering if the ASTM standard warning requirements are suitable for Australia.

## 5. Detailed description of policy options

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

#### **Description**

Maintaining the status quo would mean no changes to the mandatory safety standard.

#### **Benefits**

The products would be subject to the same mandatory safety standards that suppliers must currently meet before they can legally supply them. There would be no increase in costs to business. Consumers would have the same level of protection they have now. The mandatory safety standard has operated for a number of years and is well known in the infant products industry.

#### **Limitations**

Leaving the safety standard as is would not address the problems with the permanence and legibility of the safety warnings.

The status quo would not give suppliers the opportunity to reduce compliance costs via more flexible requirements.

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

### Description

This would update the mandatory safety standard to clarify the permanence and legibility requirements for the safety warnings. This would improve the effectiveness of the warnings throughout the life of the product and make compliance easier for suppliers by:

- clarifying the permanence requirements in the standard or via guidance
- amending the colour contrast requirements to specify that the warning must be in a contrasting colour to the colour of the warning's background
- specifying performance requirements that are technology-neutral, rather than prescriptive requirements that assume particular labelling techniques – for example, deleting the term 'notice' from the standard.

This option would clarify compliance and give consumers better protection, without introducing any substantively new requirements.

Suppliers would have a transition period of between 12 to 24 months to adjust to the updated regulations, where they would still have the option to comply with the existing regulations and sell through existing stock.

### Benefits

The updated standard would address the problems with the permanence and legibility of the safety warnings and give consumers a higher level of protection.

This would also make compliance easier for businesses.

### Limitations

We expect the compliance burden would be about the same as the status quo.

**We encourage suppliers to comment on any changes to compliance costs if the mandatory safety standard were updated to clarify the permanence and legibility requirements for the safety warnings.**

## Option 3 - Accept the ASTM standard

### Description

This would update the mandatory safety standard to specify parts of the ASTM standard as an alternative. This would improve the effectiveness of the warnings throughout the life of the product and make compliance easier for suppliers by:

- clarifying the permanence requirements via the relevant clauses of the ASTM standard
- accepting the safety warnings of the ASTM standard as an alternative to the current warning.



## Benefits

The updated standard would address the problems with the permanence and legibility of the safety warnings and give consumers a higher level of protection.

Under this option, suppliers could supply products that already comply with the ASTM standard without needing to retest or re-assess the products for uniquely Australian requirements.

## Limitations

The ASTM standard specifies warnings that are similar to those of the current mandatory safety standard. However, this standard does not address the hazard of co-bathing and this could mean some users are not aware of this risk. We seek specific stakeholder feedback about the significance of this difference, in light of the other benefits of the ASTM standard.

**We encourage stakeholders to comment on whether it is important for the warning to address the hazard of co-bathing, in light of the other benefits of the ASTM standard.**

**We also encourage stakeholders to comment on whether Australia should accept specific parts of the ASTM standard or only parts of it.**

## Option 4 - Revoke the mandatory safety standard

### Description

The mandatory safety standard for baby bath aids would be revoked. Suppliers of baby bath aids would no longer need to provide prescribed safety warnings to consumers.

Some suppliers may voluntarily provide warnings on products and consumers would retain general protections under the Australian Consumer Law (ACL).

### Benefits

Revoking the mandatory standard would remove compliance costs by allowing suppliers to import and supply products without needing to provide prescribed warnings. This would reduce compliance costs for suppliers.

The government would no longer incur the costs of administering the standard. The general provisions of the ACL would remain available.

### Limitations

Revoking the mandatory standard presents an unreasonable degree of risk to a highly vulnerable category of consumers – babies.

The risk of babies drowning from incorrect use of baby bath aids could increase with deregulation. Consumers would be less able to identify potential hazards. This may reduce consumer confidence in the products.

## 6. Preliminary position

The ACCC is currently of the view that both Options 2 and 3 provide the greatest benefit for consumers, suppliers and regulators. Options 2 and 3 are compatible and are not mutually exclusive. They will not increase any compliance requirements nor introduce any new underlying requirements.

Maintaining the status quo (option 1) or revoking the standard (option 4) will not address the problems we are trying to resolve and are unlikely to result in an acceptable level of consumer safety and confidence.

Stakeholder submissions to this consultation will help us test the above positions and to recommend the most appropriate option to the Minister.

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement (RIS) may not be required as the proposed changes are likely to be administrative and minor.

## 7. Consultation questions

1. Do you support the ACCC's preliminary position to adopt Option 2 or 3? If so, please specify the option you prefer best or whether you support combining the two.
2. Would there be any increase or decrease in compliance costs if Option 2 were adopted?
3. Do you believe that the US standard provides a suitable level of safety for baby bath aids in Australia? Should Australia accept the entire ASTM standard or only specific parts of it?
4. Is it important for the warning label to address the hazard of co-bathing?
5. Are there any other safety issues or policy options that the ACCC should consider?
6. Do you have any other comments or information?

## 8. Have your say

The ACCC invites stakeholders and interested parties to comment on these policy options.

Consultation is open from 12 October to 25 November 2016.

The ACCC prefers submissions via the ACCC consultation hub at [consultation.accc.gov.au](http://consultation.accc.gov.au).

The ACCC will alert stakeholders and interested parties to the consultation through the Product Safety Australia website [www.productsafety.gov.au](http://www.productsafety.gov.au) and [www.business.gov.au](http://www.business.gov.au).

Alternatively, email submissions to [productsafety.regulation@acc.gov.au](mailto:productsafety.regulation@acc.gov.au) or via post:

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Submissions will be published on the ACCC website at the end of the consultation period.

Please note any information that you believe to be of a confidential nature should be clearly marked or identified as confidential. The ACCC will not disclose the confidential information to third parties, other than advisors or consultants engaged directly by the ACCC, without first providing you with notice of its intention to do so, such as where it is compelled to do so by law.

## Glossary

Term	Definition
<b>Baby bath aids</b>	A baby bath aid is a device designed to support a baby while the baby is being bathed.
<b>Mandatory safety standard</b>	Trade Practices (Consumer Product Safety Standard) (Baby Bath Aids) Regulations 2005.
<b>ASTM standard</b>	American Standard ASTM F 1967– 11a <i>Standard Consumer Safety Specification for Infant Bath Seats</i> mandated in the US Code of Federal Regulations at 16 CFR Part 1215