



Australian
Competition &
Consumer
Commission

Review of the mandatory safety standard for balloon blowing kits

Consultation paper

December 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 balloon blowing kits.

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Table of contents

| | |
|--|---|
| 1. Introduction | 3 |
| 2. Policy options | 3 |
| 3. Background..... | 3 |
| 3.1 Hazard..... | 3 |
| 3.2 The mandatory safety standard..... | 4 |
| 4. Adopting trusted international standards | 4 |
| 4.1 Canadian regulation..... | 5 |
| 4.2 European regulation..... | 5 |
| 4.3 US regulation | 5 |
| 5. Detailed description of policy options | 6 |
| Option 1 - Keep the current mandatory safety standard (status quo: no benzene) | 6 |
| Option 2 - Set a maximum benzene level of 5 parts per million (same as Europe) | 6 |
| Option 3 - Revoke the mandatory safety standard..... | 7 |
| 6. Preliminary position..... | 7 |
| 7. Consultation questions..... | 8 |
| 8. Have your say | 8 |
| 9. Glossary..... | 9 |

1. Introduction

The ACCC is reviewing the mandatory safety standard for balloon blowing kits that prohibits the presence of benzene.

We seek information and comment from stakeholders to assist in the review.

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

We encourage you to make a submission.

2. Policy options

This consultation paper discusses three policy options:

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| Option 1 | Keep the current mandatory safety standard (status quo: no benzene) |
| Option 2 | Set a maximum benzene level of 5 parts per million (same as Europe) |
| Option 3 | Revoke the mandatory safety standard. |

3. Background

Balloon blowing kits contain a glue-like substance used to make balloons when a consumer, often a child, blows into a pipe or tube to create and then inflate a balloon. These are distinct from kits used to inflate ready-made latex party balloons.

Balloon blowing kits are normally available online and these products are not commonly available from bricks and mortar retailers in Australia. The ACCC conducted comprehensive surveys from 2005-2016 with State and Territory fair trading agencies and only three brands, Magic Balloon, Magic Goo Balloon and Magic Plastic Balloons, were available for purchase in limited numbers.

All balloon blowing kit manufacturers are overseas. Most manufacturers are in China.

3.1 Hazard

Benzene is a naturally occurring organic compound and a common industrial chemical used in manufacturing plastics and some types of rubbers, detergents, drugs and pesticides. Benzene is also an automotive petroleum additive. Exposure to benzene is common through car fuel, cigarette smoke, domestic solvents, groundwater and soil contamination. Benzene has been found in food associated with cooking and its migration from food packaging and plastic cookware.

Benzene is a carcinogen, increasing the risk of leukaemia and other illnesses leading to bone marrow failure. It has the potential to cause harm at low exposure and requires special precautions during its manufacture, handling or use. Schedule 7 of The Poisons Standard controls its use in Australia as a 'Dangerous Poison'.

We commissioned independent toxicological advice that concluded that there is unlikely to be a risk of cancer to school-age children exposed to benzene at or below 5 parts per million (5 mg/kg), if the child uses the balloon blowing kit under plausible circumstances (one hour a day, ten days a year for 13 years, from age 5 to 18).

The toxicological advice also concluded that the plausible long-term cancer risk starts at 6 parts per million (6 mg/kg) of benzene and the plausible short-term risk of imminent harm starts at 16 parts per million (16 mg/kg).

On expert advice, we do not assess the plausible long and short-term risk levels as cumulative. The environmental risk of exposure to children is low except when around petroleum (and children don't generally refuel cars).

We are not aware of any reported deaths or injuries associated with exposure to benzene from balloon blowing kits.

3.2 The mandatory safety standard

The current mandatory safety standard came into effect in 1979 and requires that the substance contained in balloon blowing kits does not contain benzene.¹

Measurement techniques have improved considerably since 1979. Such techniques, including gas chromatography, are readily available and can detect benzene at much lower concentrations.

There has been one recall for balloon blowing kits in Australia: Big W recalled [B'loonie balloon blowing kits](#) in October 2004 because the product contained solvents that may be harmful if ingested or inhaled. We do not know if the product contained benzene.

4. Adopting trusted international standards

The ACCC uses the following criteria when assessing international standards for use in Australia:²

- 1) Addressing safety concerns: Is there evidence that the international standard provides an acceptable level of consumer safety?
- 2) 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?
- 3) Applicability to the Australian context: Is the international standard applicable and sufficient in the Australian context?

The following comparable jurisdictions regulate the supply of balloon blowing kits:

- Canada: Toys Regulations SOR/2011-17 ss.22, 24 annexed in the Canada Consumer Product Safety Act 2011
- Europe: EU Toy Safety Directive 2009/48/EC
- USA: Federal Hazardous Substances Act Regulations 16 CFR 1500.14- Regulations requiring special labelling under section 3(b) of the Act.

¹ Trade Practices (Consumer Product Safety Standards) Regulations 1979 r.10, www.legislation.gov.au/Details/F2004C00303

² ACCC, *International standards for the safety of consumer products - criteria for acceptance*, ACCC policy principles, viewed 22 July 2015, www.productsafety.gov.au/content/index.phtml/itemId/1014180

4.1 Canadian regulation

In Canada, balloon blowing kits have been subject to a product safety ban since 1973.³ A toy that a child uses to blow balloons must not contain an aromatic, aliphatic or another organic solvent if the solvent or any vapour coming from the solvent, may be released directly into the mouth during or as a result of the normal use of the toy.⁴ Canadian regulation bans benzene in toys.⁵

Health Canada advised the ACCC in January 2013 that they do not test balloon blowing kits for benzene as the ban applies to groups of organic solvents.

The ACCC does not propose to ban balloon blowing kits.

4.2 European regulation

The European Union (EU) Toy Safety Directive 2009/48/EC requires toys to comply with the EU Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation.⁶ The European regulation restricts benzene in toys in concentrations above 5 mg/kg (5 parts per million) of the weight of the toy or part of the toy.⁷ Non-compliant toys or parts of toys cannot be placed on the market, or used as a substance, as a constituent of other substances or in mixtures, in concentrations equal to or greater than 0.1 per cent by weight.⁸ Similar restrictions existed before the current EU Toy Safety Directive.

In 2008, a balloon blowing kit was recalled in Germany because it contained excessive benzene.

We seek stakeholder feedback on the option to set a limit of 5 parts per million for benzene in balloon blowing kits in Australia. This is equivalent to the European standard.

4.3 US regulation

The Consumer Product Safety Commission is a federal agency of the US Government that administers the Federal Hazardous Substances Act (FHSA) Regulations. FHSA Regulations 16 CFR 1500.14 imposes mandatory labelling requirements for products containing benzene.⁹ Products containing five per cent or more by weight of benzene must be labelled with the signal word “Danger”, the statement of hazard “Vapour harmful”, the word “poison” and the skull and crossbones symbol. Products containing 10 per cent or more by weight of benzene must carry the additional statements: “Harmful or fatal if swallowed” and “Call physician immediately”.

If applied to balloon blowing kits, the US regulation would allow an unacceptable level of benzene in the product. Warning labels also control risk less effectively than addressing the underlying hazard, particularly when children use the product. The ACCC therefore does not propose to accept the US regulation for balloon blowing kits in Australia.

³ Toys Regulations SOR/2011-17 annexed in the Canada Consumer Product Safety Act 2011 s.24, viewed 26 September 2016, laws-lois.justice.gc.ca/eng/regulations/SOR-2011-17/

⁴ Ibid

⁵ Toys Regulations SOR/2011-17 annexed in the Canada Consumer Product Safety Act 2011 s.22, viewed 26 September 2016, laws-lois.justice.gc.ca/eng/regulations/SOR-2011-17/page-1.html#h-8

⁶ European Union Toy Safety Directive 2009/48/EC, viewed 26 September 2016, eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474862539207&uri=CELEX:32009L0048

⁷ European Union, Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), viewed 26 September 2016, eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006R1907-20140410

⁸ Ibid

⁹ Federal Hazardous Substances Act Regulations (US) 16 CFR 1500.14- Regulations requiring special labelling under section 3(b) of the Act, viewed 28 September, www.law.cornell.edu/cfr/text/16/1500.14

5. Detailed description of policy options

Option 1 - Keep the current mandatory safety standard (status quo: no benzene)

Description

The mandatory safety standard does not allow balloon blowing kits to contain any benzene.

Benefits

The penalties associated with breaching a mandatory safety standard under the Australian Consumer Law (ACL) would continue to apply and provide an incentive for suppliers to supply products with no measurable levels of benzene.

There would be no new compliance or regulatory costs.

Limitations

There has been significant research on what level of benzene represents a danger to children and increased technical ability to detect benzene since this standard began in 1979. The mandatory safety standard would continue to prevent the supply of products with low benzene levels that represent no danger to children. The ongoing regulatory burden for suppliers may not be necessary.

Option 2 - Set a maximum benzene level of 5 parts per million (same as Europe)

Description

The Minister would amend the mandatory safety standard to set a limit for benzene in balloon blowing kits at 5 parts per million (5 mg/kg). This level is consistent with the EU REACH regulation referenced in the EU Toy Safety Directive 2009/48/EU.

Benefits

This would reduce the regulatory burden and compliance costs for suppliers. Suppliers could rely on compliance with European regulation for products they supplied in Australia. They would not need to arrange additional testing to ensure zero levels of benzene. The level of safety would remain the same.

The Australian regulatory requirement would harmonise with a major international market.

As all products are imported, the use of an international benchmark may result in a wider range of products becoming available to Australian consumers. Greater availability and competition may exert downward pressure on prices.

Limitations

Allowing some benzene in balloon blowing kits might increase consumer concern over safety. However, the independent toxicological advice concluded that the risk from benzene in balloon blowing kits at 5 parts per million was negligible and the risk did not become plausible until the higher concentration of 6 parts per million.

Option 3 - Revoke the mandatory safety standard

Description

Very few consumer goods in Australia are regulated by mandatory safety standards. Revoking the mandatory safety standard would mean suppliers would still need to have regard to the consumer protection provisions of the Australian Consumer Law (ACL). The ACL provides consumers with specific protections for consumer transactions called statutory consumer guarantees every time they purchase goods or services. One of those guarantees is that goods will be of acceptable quality, meaning they are safe and fit for purpose.

Consumer protections also exist to safeguard against suppliers engaging in conduct that is likely to be misleading or deceptive. Additionally, there are provisions for injury reporting, recalls and product liability. These provisions give suppliers an incentive to ensure that the goods they supply are safe.

Suppliers of balloon blowing kits may independently choose to limit the amount of benzene in the product, but this would not be legally required. Without a specific regulation, the European limit of 5 parts per million would effectively become the benchmark limit for benzene in these products. The ACCC would provide guidance on acceptable levels of benzene and make the advice it has received on the risk available to the public.

The ACCC would still be able to take safety action if needed – for example, through recalls of balloon blowing kits found to contain benzene at concentrations of 6 parts per million or higher.

Benefits

This would reduce the regulatory burden and compliance costs for suppliers. Suppliers would not need to arrange additional testing to ensure zero levels of benzene and could rely on European regulation limits to ensure safety. The level of safety would therefore remain about the same.

Governments would also save the costs associated with maintaining a specific safety regulation for balloon blowing kits. Regulators could deploy resources to bigger safety concerns.

Limitations

The absence of a mandatory safety standard might, over time, reduce supplier awareness of acceptable limits for benzene. Without the penalties associated with a specific mandatory safety standard, there may be less incentive to ensure the products contain acceptable levels of benzene. This could reduce consumer and retailer confidence in toy safety.

6. Preliminary position

The preliminary position of the ACCC is that, on balance, setting a maximum level of benzene at 5 parts per million (Option 2) is the most appropriate option.

This option is consistent with the safety advice on benzene and adapts the regulation to current information and benzene testing capabilities. It would also allow alignment with the European standard. A mandatory safety standard empowers regulators to stop sale and to take action against suppliers. Stakeholder submissions to this consultation will help us test this position before we settle on a final recommendation to the Minister.

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement (RIS) is unnecessary, as the current proposal to revoke will have a minor regulatory impact on business, community organisations and individuals.

7. Consultation questions

Please consider the following questions when making a submission:

1. Does the hazard still exist in balloon blowing kits?
2. Are there any other policy options that the ACCC should consider?
3. Do you support the ACCC's preferred option to set a maximum 5 parts per million level for benzene? Why/why not?
4. If you do not support setting a maximum level for benzene, do you support the existing standard or support revoking the standard? Why?
5. Do you have any other comments?

8. Have your say

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

Consultation is open from **7th December 2016 to 24th February 2017**.

The ACCC prefers submissions via the ACCC consultation hub at 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 and www.business.gov.au.

Alternatively, email submissions to 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.

9. Glossary

| Term | Definition |
|--|--|
| Australian Consumer Law (ACL) | Legislation enacted in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) and applied nationally through State and Territory legislation in accordance with the Intergovernmental Agreement of July 2009. |
| Balloon blowing kit | A good that contains a substance capable of being used to make inflated balloons by the action of blowing the whole or a portion of the substance from a tube (not being a container) contained in the goods. |
| Mandatory safety standard | The Australian mandatory safety standard for balloon blowing kits (Trade Practices (Consumer Product Safety Standards) Regulations 1979). |
| Trusted international standards | Canada: Toys Regulations SOR/2011-17 annexed in the Canada Consumer Product Safety Act 2011 ss. 22, 24 Europe: EU Toy Safety Directive 2009/48/EC USA: Federal Hazardous Substances Act Regulations 16 CFR 1500.14- Regulations requiring special labelling under section 3(b) of the Act. |