**Response to Button Battery Safety Issues Paper, August 2019**

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**Introductory remarks**

Thank you for the opportunity to provide comments on the Issues Paper. There is no doubt that the button battery hazard is a complex problem. However it is relatively straightforward to fix the product side. Introducing a mandatory standard (or ban) would have a positive impact on products purchased new. In the longer term all products that contain batteries would have secure battery compartments, not be prone to breaking to liberate batteries, and replacement batteries will be packaged in child-resistant packs. This would dramatically reduce exposure, leaving much less reliance on consumer vigilance and action.

Young children suffering life-changing injuries should, on its own, justify regulatory intervention. While a [General Safety Provision](https://productsafetysolutions.com.au/generalsafetyprovision/) would have aided in reducing the button battery hazard before now (as advocated by some), it is not a panacea. Compliance with the Code/Guidelines still requires supplier awareness and education activities on a large scale.

For replacement batteries, requirements were not expressly covered in the 2016 products Code, as per the industry working group’s initial brief. I believe this accounts for the limited extent of action taken within the market to ensure labelling and child-resistant packaging for retail batteries.

Suppliers have been confused by the governments’ strategy to date. Implementing a novel way of addressing a product hazard across such a diverse market was perplexing on several levels. The strategy and its relationship to the ‘Code’ is not aligned with past practice: suppliers have been unclear why **regulators** are pursuing compliance with a **voluntary** code, and there has been confusion on both sides on how to treat non-compliant product. For such a severe hazard, I believe regulatory action is essential.

To date, [product liability provisions in the ACL](https://www.productsafety.gov.au/product-safety-laws/legislation/product-liability) do not appear to have assisted in deterring suppliers from selling unsafe products, possibly due to difficulties in many injury cases of identifying the exact source of a swallowed battery. Yet, the risk for suppliers of a product liability action remains and should be a factor in promoting compliance.

I have undertaken analysis of the hazard and risk associated with button battery ingestion and compared it with that of other contemporary product safety issues. In my assessment, button batteries represent a **greater risk** than [Takata airbags](https://www.productsafety.gov.au/recalls/compulsory-takata-airbag-recall/about-the-compulsory-takata-airbag-recall), [toppling TVs and furniture](https://www.productsafety.gov.au/news/toppling-furniture-and-televisions-anchor-them-and-save-a-child-s-life), [Infinity cable](https://www.productsafety.gov.au/news/thousands-of-homes-remain-at-risk-of-house-fires) and [quad bikes](https://www.productsafety.gov.au/products/transport/quad-bikes) (in that order by [risk assessment nomograph](https://foi.accc.gov.au/risk-assessment-nomograph-guidelines)). I have [written in the past](https://productsafetysolutions.com.au/button-batteries-the-most-challenging-product-safety-problem-ever/) that button batteries is the most challenging issue I’ve seen in product safety. Recent injury data shows it is now also the most serious hazard.

It is clear that specific product regulation on both products and replacement batteries is essential now to help address what is a product safety crisis.

**In the interim**, given the long timeframe for potential mandating of a button battery standard, there are several separate, complementary actions that should be implemented as a matter of urgency:

A. Bring in the revised mandatory standard for toys for children under 3. This itself contains measures to improve button battery safety and is long overdue.

B. Provide meaningful guidance for suppliers on this complicated compliance scenario. At present, there is no suppliers page on the PSA website that outlines what suppliers can/should do (comparable to, say, basketball rings which has a consumer safety page and a mandatory standard page for explain requirements to suppliers).

The basketball rings page is available in five languages. The button battery page and the guidelines should be translated for non-English speaking suppliers.  
  
C. Highlight the risk of product liability action for suppliers who sell and have sold products and batteries that do not comply with the Code/Guidelines. Given the known hazard and high levels of community awareness, suppliers would have trouble defending any liability claims. This could be a driver for compliance, pending any action to mandate a standard.

D. Ensure co-operation and co-ordination between regulatory agencies to promote awareness and guide suppliers. For example, there are disconnects between the consumer agencies' position on button batteries, ERAC and ERAC agencies themselves. As part of the national strategy, ACCC and state counterparts should seek from ERAC and its members:

* Placement of the guide on the websites of all electrical regulators and the ERAC website;
* Pointing suppliers to the guide where relevant; and
* An ERAC-issued bulletin for in-scope products with button battery accessories covering any points not addressed in the standards. This would then require certifiers to review such requirements in product certification.

E. Use consumer education activities to also target retailers, importers and other suppliers. A widespread, effective consumer awareness program could be used to expressly help raise supplier awareness, especially small business. For example, add a line to consumer awareness material saying *‘Do you sell, or know someone who sells button batteries or products that use button batteries? Please make sure they are aware of the measures in place/mandatory standard.’*

F. Audit current consumer education programs and review their resourcing mechanisms with a view to facilitating better consumer awareness. I was surprised to learn last year that no ongoing funding exists for consumer awareness of the button battery hazard. Each state Kidsafe office has to seek funding annually from their state government. With young children most at risk, information needs to constantly reach new parents and caregivers. What other funding models are available? Have the battery companies been urged to provide sponsorship beyond the initial Energiser program? What about other corporate or association sponsorship?

G. Work with leading test companies to raise awareness of the new Guidelines, once published (or the mandatory standard). Testers see most products for assessment and often help suppliers identify compliance needs.

H. Explore complementary regulations: Given the diverse range of impacted products, most of which are imported, requiring compliance at point of entry to the country would be a valuable strategy. In planning a mandatory standard, the ACCC could seek parallel regulatory action by Australian Border Force to introduce a Prohibited Import regulation that reflects the mandatory ACL standard.

Such regulation could require a declaration of compliance before goods are accepted. This would raise awareness among importers who are otherwise not made aware of ACL standards. With a prohibited import regulation, the vast network of customs agents will implement awareness and compliance measures for all importers. This would **substantially aid compliance**.

Some precedent exists with ACL bans that are also Prohibited Imports, including novelty cigarette lighters, which requires a statutory declaration to demonstrate compliance.

Liaison with ABF at the outset would help facilitate consideration.

**Issues Paper questions**

*1. What data or information can you provide on the size and value of the Australian market, or for a segment of the market, for button batteries or for products that contain button batteries? What has been the change over time?*

NA

*2. What data or information can you provide on the prevalence of and costings of injuries and fatalities caused by button batteries?*

NA

*3. What information can you provide on the range of products that you supply that contain button batteries?*

NA

*4. Do you think the recommended safety actions in the Industry Code for Consumer Goods that Contain Button Batteries (Code) for products that contain button batteries are adequate to reduce the risk of children accessing button batteries? Please provide the reasons for your response.*  
Yes, compliance with the **mandatory** parts of the Code (and more importantly the new Guidelines) would cover the main risks. Further hazard reduction could be achieved by compliance with the **recommended** actions in the Code/Guidelines.  
  
The Code/Guidelines have been written by people with relevant hazard management, product and industry expertise.

*5. Do you think the recommended safety actions in the Code should be made mandatory? What impact would mandating these requirements have on Australian suppliers?*  
Yes, there is a very clear case to mandate the safety **requirements** in the Code/Guidelines. No comparable product has such a widespread (and growing) market penetration, combined with poor compliance levels and such an egregious hazard.   
  
At present, some members of the supply chain are experiencing resistance from their suppliers to voluntarily comply with the Code. Some product safety practitioners also encounter push-back within their own business. The argument is simply that compliance is not mandatory. Such resistance is evidence of the need for regulatory requirement. Mandating may even provide some savings for businesses by obviating the need to spend time negotiating for voluntary compliance.   
  
Although there would be some short-term costs in terms of product selection, price and availability, I believe that enough product exists that already complies with the Code/Guideline such as to allow importers to source compliant product without undue impost. In the longer term, a mandatory standard would lead to lower-priced products being compliant by design.  
  
Notably, the Code/Guideline allows for compliance with international standards as an alternative to most of its specifications and this will minimise costs for many suppliers.

*6. If you are a supplier, do you supply products that comply with the Code? If no, please explain why. If yes, what actions do you have in place to reflect the Code?*

NA

*7. What other research and development activities are you aware of that are directed toward:*

1. *improving button battery safety*
2. *improving the safety of consumer goods containing button batteries*
3. *improving the medical approach to button battery ingestion or injury?*

NA

*8. Would a mandated safety standard for the security of battery compartments of products containing button batteries be likely to reduce the number of injuries and fatalities caused by button batteries in Australia? Please provide the reasons for your response.*Yes. Products designed to maximise battery security would substantially reduce exposure. This is supported by the data contained in the Issues Paper identifying products and battery packs as the main source of ingested batteries. Compliant product would significantly mitigate exposure from insecure compartments. Labelling requirements would also provide heightened awareness of the need for consumer vigilance and product maintenance.

Compliance by new products would immediately reduce exposure, especially inexpensive, short-life products such as tealights, novelties and some toys.

While some older, long-life products such as kitchen scales would remain in people’s homes, such legacy products have been addressed in the past with consumer education.

In the longer term, if a ban or mandatory standard is introduced, all products that contain batteries will have secure battery compartments, not be prone to breaking to liberate batteries and replacement batteries will be packaged in child-resistant packs. This would dramatically reduce exposure, leaving much less reliance on consumer vigilance and action.

*9. Would a mandated safety standard and/or an information standard for child resistant packaging and labelling be likely to reduce the number of injuries and fatalities caused by button batteries in Australia? Should any such standard require provision of Australian Poisons Information Centre details? Please provide the reasons for your response.*  
Yes. Child-resistant packaging is an essential strategy to limit the risk of children accessing batteries, especially fully-charged new batteries.   
  
Labelling is also vital to help with consumer awareness and education. With young children most at risk, constant alerts and reminders need to reach **new** cohorts of parents and caregivers.   
  
Labelling also allows consumers to select products with alternative power sources or battery types.

As a product hazard, button batteries have widespread penetration throughout the community. Product labelling, marking and other consumer information form part of a suite of measures and, especially with button batteries, remain important even when products are physically compliant. Constant consumer reminders are needed due to the residual risk posed by loose batteries and product damage, which needs to be managed in homes and elsewhere.   
  
Yes. The Australian Poisons contact is essential to provide time-critical advice if someone has swallowed a battery. The PIC is established as the primary source of correct advice, but this is not universally understood, with many consumer sites recommending urgent transport to a hospital. Such action may be counterproductive if the hospital doesn’t have the necessary diagnostic equipment, or if the patient is in a remote location.

*10. If it is your view that child resistant packaging and labelling requirements should be mandated, do you think this should apply to all button batteries regardless of size or chemistry? Please provide the reasons for your response.*Yes. All sizes have the potential to, and have been shown to, cause injury.  
  
While there is some hazard differential between batteries, it is easier for suppliers not to have to differentiate. An unduly complex standard can compromise compliance due to supplier confusion.   
  
Regulators and suppliers can nonetheless discriminate in their remedial actions as necessary (as indicated in the ACCC surveillance guide attached to the Issues Paper).

*11. In your view, should any consumer products containing button batteries be banned from supply in Australia? If yes, please provide details and reasons.*  
No.

*12. If any of these requirements were mandated in Australia, what additional cost would be imposed on Australian suppliers or a relevant supplier segment?*  
As indicated in response to Question 5, there would be some short-term costs in terms of product selection, price and availability. However I believe that enough product exists that already complies with the Code/Guideline such as to allow importers to source compliant product without undue impost. In the longer term, a mandatory standard would lead to lower-priced products being compliant by design.

*13. If you are a supplier, what information can you provide on the actual or likely cost of*

*implementing the safety standard and information standard outlined in section 19.2 for button batteries and for products that you sell?*

NA

*14. Are there any button battery products that you think should be exempted from any mandatory safety or information standards? Please provide reasons why.*  
No.

*15. Please provide any other information you consider may be relevant to the ACCC’s consideration of these issues.*

Capturing all products: In the list of products in Section 4.4, some product categories are left out. Promotional products, and novelties that are supplied as fundraisers, can slip below the radar as they are not sourced as part of the usual consumer market channels. It is important to include such products in the ACCC’s considerations.

Safety v Information standard: Section 19.2 indicates an ACL information standard may be considered **in addition to** a safety standard. As safety standards can include information specifications, it is unclear why a separate standard would be considered.

Interim actions Given that the 2016-2018 strategy has been assessed as less than effective, and that serious injuries continue unabated, the ACL agencies need to take immediate action in addition to considering a mandatory standard (which will unlikely take effect for more than 12 months). I ask that the actions outlined in my Introductory remarks be given due consideration.