



Australian
Competition &
Consumer
Commission

Review of safety standard for children's nightwear and limited daywear.

Consultation paper

September 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 Children's nightwear and limited daywear.

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1. Introduction

The ACCC is reviewing the safety standard for children’s nightwear and seeks comment from stakeholders and interested parties on possible changes and on how we should implement any changes.

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 four policy options:

- Option 1 Retain the current safety standard (status quo)
- Option 2 Adopt the updated voluntary Australian standard
- Option 3 Adopt international standards
- Option 4 Revoke the safety standard.

We currently believe the most effective option is to update the safety standard to adopt improvements in the 2014 version of the voluntary Australian standard (Option 2). This would improve safety, simplify the requirements and reduce costs for suppliers.

We do not recommend revoking (Option 4) or maintaining the regulation in its current form (Option 1). We have also examined the relevant international standards for children’s nightwear and conclude that available international standards (Option 3) are not suitable for Australia.

We seek comment from stakeholders on the proposal, particularly about:

- updating the safety standard to follow changes in the 2014 voluntary Australian standard
- the impact of introducing the “molten fabric” test
- transition arrangements.

3. Background

3.1 Children’s nightwear and limited daywear in Australia

The supply of children’s nightwear has been regulated since 1977 to address uncommon but severe childhood burns by removing dangerously flammable products from the market and to provide safety related warnings to consumers at the point of sale. The safety standard was last updated on 1 March 2008 and is based on the voluntary standard *AS/NZS 1249:2003 Children’s nightwear and limited daywear having reduced fire hazard*. The voluntary standard was updated in 2014 but the changes did not update the safety standard.

The existing safety standard classifies nightwear for children (and some daywear) into categories according to garment or fabric type. According to category, they can carry a white label reading “LOW FIRE DANGER” or a red label with a fire warning symbol and the text:

“**WARNING HIGH FIRE DANGER KEEP AWAY FROM FIRE**”. Some garments are so flammable they cannot meet any of the four categories and must not be sold.

3.2 Injuries and deaths involving children’s nightwear

NSW burns injury data from July 2009 to July 2013 show 62 children sustaining burns involving clothing but only four involved nightwear. Although they can be severe, burns associated with children’s nightwear are uncommon. Injury concerns did not drive the review of the voluntary standard.

Burns injury data does not consistently record the type of clothing involved, so it is difficult to correlate types of burns with particular types of clothing over time. However, a recent study of historical Australian burns data indicated a substantial reduction in child nightwear burn injuries over time that was almost three times bigger than the fall in burns related to other children’s clothing¹. Earlier research indicates a similar experience in NZ². The safety standard is likely to have contributed to this reduction in child nightwear burns.

Open fires and kerosene heaters are less popular now than in the past and reduced exposure to naked flames has probably contributed to lower injury rates. The increased popularity of ethanol burners and decorative/scented candles may increase exposure to the risk of naked flames but there is no clear data on this.

3.3 Why the safety standard is being reviewed

We periodically review safety standards to verify they are up to date, relevant, and the most effective way to manage safety.

In the past five years, the ACCC has been significantly involved in research, stakeholder discussion and enforcement action associated with children’s nightwear. This includes:

- hosting an industry consultation workshop in 2010 to resolve uncertainty in interpretation and compliance
- compliance action in 2010 that resulted in Woolworths contributing \$200 000 for research to support a review of the Australian Standard as part of an enforceable undertaking
- substantial research on the technical aspects of flammability and on consumer understanding of warning labels in general and on those for children’s nightwear specifically
- a request to Standards Australia to review the voluntary standard in the light of the consultation with stakeholders, which ran from 2011-2014.

The current review of the safety standard for children’s nightwear is occurring because:

- the voluntary standard AS/NZS 1249 that informs the safety standard has been substantially simplified using extensive research and consultation
- suppliers have expressed concern about problems with interpretation, compliance and the application of the standard
- the market has changed since the previous review and products continue to change
- we need to consider acceptable alternative ways to maintain safety, including standards used in other jurisdictions.

¹ Harvey LA, Connolley S, Harvey JG *Clothing related burns in New South Wales, Australia: Impact of legislation on a continuing problem*. Burns, 2015 Feb 41(1); 58-64.

² Laing JL, Bryant V. *Prevention of burn injuries to children involving nightwear*. NZ Med J. 1991 Aug 28; 104(918): 363-5.

3.4 Update to the voluntary Australian standard

Stakeholders indicate that they generally accept the updated AS/NZS 1249:2014 as a major improvement. The ACCC encouraged Standards Australia to consult more widely than normal and industry response was extensive and positive.

Key changes in AS/NZS 1249:2014 include:

- extensive editing to make it easier to read and understand
- testers and suppliers report that it is one-third less complex than the old standard
- clearer, more comprehensive lists of exclusions and inclusions, addressing a major industry concern identified in the 2010 ACCC workshop
- predominately knitted all-in-one garments with no nap or pile are excluded on the basis of the research
- substantially fewer requirements for trims on the basis of flammability tests
- simpler test requirements for quilted, acetate and acrylic fabrics
- simplified flame spread tests
- paper patterns are excluded and no longer require a warning message on the outer envelope under the heading “Fire Warning”
- a new white ‘low fire danger’ label carries the fire symbol and different text. Research showed that many consumers did not understand the old label and consumer comprehension tests support the new label - the text of the red ‘high fire danger’ label has been amended for consistency³



a new test identifies ‘high fire danger’ garments that burn slowly but that drip molten or flaming fabric. Some products currently classified ‘low fire danger’ would become ‘high fire danger’ under the new standard.

3.5 New Zealand requirements

New Zealand (NZ) introduced a safety standard in 2003 based on the voluntary standard AS/NZS 1249:2003. In 2008, reacting to a fatality and several serious injuries, it included a

³ The ‘low fire danger’ label was altered because the research undertaken in the review indicated many consumers did not understand it: 39% of those surveyed thought the label indicated the garment was treated to resist fire; 29% thought the garment was fire resistant; 26% thought the garment would burn slowly; and 17% thought a wearer could sit close to a fire with little risk. The revised wording was tested for comprehension and was well understood.

third type of warning label because of indications that consumers were confused about the meaning of the “low fire danger” label.

Following the publication of the revised AS/NZS 1249:2014, NZ mandated that standard, including the system of two warning labels. NZ is in a period of transition between the superseded and the current safety standards. From April 2017, all nightwear sold in NZ will need to meet the requirements of the 2014 standard.

Under the Trans-Tasman Mutual Recognition Arrangement (TTMRA), products that are legal to sell in NZ can be supplied into Australia after being imported to NZ. The difference between the existing safety standard and the revised regulation in NZ is modest in safety terms but (because of the different labels) creates compliance problems for suppliers.

If Australia adopts the updated voluntary standard, AS/NZS 1249:2014, the regulations in the two countries would align.

3.6 Compliance with the safety standard

In the eight years to June 2016 there have been 45 children’s nightwear product recalls.

Between June 2014 and June 2016, the ACCC received 110 reports or enquiries about the application of the safety standard and about particular products.

The 2010 consultation workshop, discussions with suppliers and the review of AS/NZS 1249 identified that stakeholders experienced problems with the safety standard. The problems included difficulties interpreting the scope and definitions in the standard, particularly for new products. They also found it hard to apply the standard to trims, overlay and applique.

Suppliers report that they sometimes find it difficult to understand how to comply with the safety standard. It appears that a safety standard with simpler requirements would make compliance easier.

4 International standards

The international standards considered in this paper are:

- European standard: EN 14878
- British standard: BS 5722
- US standards 16 CFR 1615 (0-6) and 1616 (7-14).

There is no current International Standards Organisation (ISO) standard for clothing flammability however AS/NZS 1249 references standards for surface burn (ISO 10047) and flame spread (ISO 6941).

The ACCC uses the following criteria when assessing international standards:⁴

- 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?

⁴ ACCC, International standards for the safety of consumer products - criteria for acceptance, ACCC policy principles, 22 July 2015, www.productsafety.gov.au/content/index.php?id=1014180

The European standard

The European Committee for Standardisation (CEN) developed the European standard. CEN is reputable and develops standards for use in Europe. CEN covers a jurisdiction with economic and regulatory processes that are comparable to Australia.

EN 14878:2007 *Textiles - Burning behaviour of children's nightwear - Specification* specifies flammability and test requirements for garments and fabrics. The standard supports the European General Product Safety Directive. CEN last reviewed this standard in 2007.

The approach to safety and warnings differs from the approach in Australia:

- Both standards cover children's nightwear but the specific types of products covered by each standard differ and the product-category schemes also differ.
- Performance requirements are less than those in AS/NZS 1249 and offer a lower level of safety in some areas.
- The European standard sets flammability requirements but has limited design rules which only cover pyjamas.
- Some products that can be supplied in Australia with a 'high fire danger' label are not allowed under the European standard.
- The European warning label is optional if the garment passes flammability tests. If the supplier uses the labelling, it must be in the prescribed form.
- The warning text is clear: For child safety, garment should fit snugly. This garment is not *flame resistant. Loose fitting garment is more likely to catch fire* (black text on yellow).
- There is no "high fire danger" alert for more flammable fabrics.
- There are no graphic warning symbols. Consumer tested graphic warning symbols are specified in AS/NZS 1249:2014.
- The fabrics do not need to be washed before testing under the European standard.
- Some garments that pass the European flame spread test could fail the AS/NZS test – or vice versa – since the test methods differ.

The differences between the products covered, product-category schemes and warning label requirements could confuse suppliers and consumers if both the European and AS/NZS standards were allowed in Australia.

The British standard

The British Standards Institute (BSI) published a British version of the European standard as BS EN 14878. The BSI is a reputable standards development body and operates in a jurisdiction with economic and regulatory processes that are comparable to Australia.

The United Kingdom (UK) has a long-standing nightwear regulation with requirements that are more onerous than parts of the European standard. The UK last reviewed the regulation in 1984. However, some parts of the British standard are more onerous than the regulation and UK suppliers must consider both the regulation and the British standard.

The British standard approach to safety and warnings differs from the approach in Australia. For example, the British standard has a Low Fire Danger label that references another BSI standard: 'Low Flammability to BS 5722'.

The differences between the products covered, product-category schemes and warning label requirements could confuse suppliers and consumers if both the British and AS/NZS standards were allowed in Australia.

The US standards

The US Government Consumer Product Safety Commission (CPSC) has established regulation that covers children's nightwear- see 16 CFR 1615 (0-6) and 16 CFR 1616 (7-14). The CPSC is a reputable standards development body operating in a jurisdiction with economic and regulatory processes that are comparable to Australia. The CPSC last reviewed the requirements for flammability of children's nightwear in 2001.

The US standards use a different approach to safety and warnings than that currently used in Australia:

- Clothing textiles are classified according to 3 classes: normal, intermediate with raised surfaces, and rapid and intense; which cannot be used.
- Tight fitting garments are exempt from flammability testing but must be labelled.
- Fabrics and garments that meet flammability requirements do not require a label.
- The labels are the same as for the European standard.
- The US standards use a different approach to warning labels and only some garments require labels.

The differences between the products covered, product-category schemes and warning label requirements could confuse suppliers and consumers if both the US and AS/NZS standards were allowed in Australia.

Overview of international standards

AS/NZS 1249:2014 is the most up-to-date nightwear standard. Europe, the US and the UK last reviewed their standards 9, 15 and 32 years ago respectively. The research and consultation during the development of the latest voluntary Australian standard support the validity of its requirements. To our knowledge, none of the other standards has had the benefit of extensive consumer comprehension testing of warning labels.

The definitions of products covered by each of the standards vary. Suppliers emphasised clarity about the scope of the standard as a significant issue in the ACCC workshop in 2010. The use of multiple standards could result in uncertainty about whether the regulation captured some products. Some garments would be subject to different requirements depending on which standard the supplier chose to use.

The ACCC concludes that the European, British and US standards are unsuitable for Australia. The use of multiple standards would lead to inconsistent results, confusion for suppliers, and ineffective and inconsistent labelling. This would confuse consumers and reduce safety.

5. Detailed description of policy options

Option 1 – Retain the current safety standard (status quo)

Description

The safety standard would continue to reference the voluntary standard AS/NZS 1249:2003.

Benefits

Suppliers and consumers would face no changes.

Limitations

Keeping the safety standard unchanged would lose the potential to benefit from the research and consultation that underlie the changes to AS/NZS 1249:2014. Some suppliers and safety groups are impatient for the adoption of the updated voluntary standard and eager for us to align our regulation with New Zealand.

Option 2 – Adopt the updated voluntary Australian standard

Description

Mandate the changes in the voluntary standard AS/NZS 1249:2014.

Benefits

The updated voluntary Australian standard has simpler requirements that are likely to reduce costs for suppliers and to improve safety for consumers. Once implemented the change would align the Australian and New Zealand requirements.

Limitations

Australia would continue to have a standard that differs from Europe and the USA.

The change could increase costs for suppliers if they cannot sell existing stock. However, after the transition, this option should not result in increased costs to industry and is likely to reduce the costs of testing, the range of garments requiring testing and the cost of red labels.

The update would include the new test for melt and dripping fabric so a small number of 'low fire danger' garments would need to change to a 'high fire danger' warning label. We seek comments on the impact of this test on suppliers.

Option 3 – Adopt international standards

Description

Adopt one or more of the European, British or US standards as well as the updated voluntary Australian standard.

Benefits

The updated voluntary Australian standard has simpler requirements that are likely to reduce costs for suppliers and to improve safety for consumers. Adopting international standards would reduce trade barriers for children's nightwear and this could reduce compliance costs for business and increase competition and choice for consumers.

Limitations

The ACCC considers that the European, British and US standards are unsuitable for Australia. The use of these quite different standards could lead to ineffective and inconsistent labelling. This could confuse consumers and reduce safety.

Option 4 – Revoke the safety standard

Description

Most consumer goods in Australia are not regulated by mandatory safety standards. Revoking the 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 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. The ACCC would still be able to take safety action if needed – for example, through recalls.

Benefits

There would be no direct compliance costs for industry under this option. Any international trade restrictions resulting from the current safety standard would be removed, making it easier for businesses to import products to Australia. Increased competition may result in a wider range of products becoming available to Australian consumers and in lower priced goods.

Limitations

Without the safety standard, the general ACL provisions may be insufficient and some manufacturers could stop safety activities to reduce costs. Suppliers adhering to voluntary standards could potentially lose market share. To the extent there is a reduction in compliance with safety standards this could lead to an increase in death and injury.

Consumers may also need to assess the safety of these products in more detail. This could reduce consumer and retailer confidence in the children's clothing sector and in the safety of children's nightwear.

This option could lead to the use of multiple voluntary standards for these products in Australia. This would lead to inconsistent results, confusion for suppliers, and ineffective and inconsistent labelling and is therefore likely to confuse consumers and reduce safety.

6. Preliminary position

The ACCC is currently of the view that Option 2 (adopt the updated voluntary Australian standard) is likely to provide the greatest net benefit for consumers, suppliers and regulators. Stakeholder submissions to this consultation will help us recommend the most appropriate option the Minister.

The Office of Best Practice Regulation has agreed that the proposed change is 'minor and machinery' and does not require a Regulation Impact Statement.

7. Consultation questions

1. Do you support the proposed change to the safety standard?

Do you support adoption of the updated voluntary Australian standard AS/NZS 1249:2014 into the safety standard?

Do you have a view on inclusion of the new molten fabric drip test?

Do you have views about the products now excluded, such as paper patterns?

2. What transition arrangements should be used?

Do you have any comment on appropriate transition arrangements in any update to the safety standard?

How much time should be allowed for the sale of products complying with the current safety standard?

3. Do you have any other comments?

The ACCC welcomes comment on the proposed change and on the analysis of options, the information and the assumptions included in the paper.

8. Have your say

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

Consultation is open from 28 September to 4 November 2016.

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 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.

Glossary

Term	Definition
British standard	BS EN 14878:2007 Textiles - Burning behaviour of children's nightwear – Specification and Nightwear (Safety) Regulations 1985 (UK)
European standard	EN 14878:2007 Textiles - Burning behaviour of children's nightwear – Specification
Safety standard	Trade Practices (Consumer Product Safety Standards) (Children's Nightwear and Paper Patterns for Children's Nightwear) Regulations 2007 www.legislation.gov.au/Details/F2007L00215/Html/Text
Updated voluntary Australian standard	AS/NZS 1249:2014 Children's nightwear and limited daywear having reduced fire hazard
US standards	Code of Federal Regulations Part 1615 - Standard for the flammability of children's sleepwear: Sizes 0 through 6X Part 1616 - Standard for the flammability of children's sleepwear: Sizes 7 through 14