



Review of the mandatory safety standard for swimming and flotation 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 swimming and flotation aids.

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1. Introduction

The ACCC is reviewing the mandatory safety standard for swimming and flotation aids because:

- we believe that the messages in the consumer warning label should be improved to more clearly warn of the hazards associated with using a swimming or flotation aid.
- we are considering international standards as acceptable ways for suppliers to demonstrate compliance in a global marketplace.

The ACCC seeks information and comment from stakeholders to assist in this 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:

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|----------|--|
| Option 1 | Keep the current mandatory safety standard (status quo) |
| Option 2 | Adopt the updated voluntary Australian standard |
| Option 3 | Allow compliance with the updated voluntary Australian standard or the European standard |
| Option 4 | Revoke the mandatory safety standard. |

3. Background

Swimming and flotation aids come in various shapes, colours and sizes, and vary in use and quality. They are almost exclusively manufactured overseas and are widely available in a variety of large and small retail outlets throughout Australia as well as specialist pool supply stores and online retail stores.

The products help keep children afloat and gain confidence as they become familiar with swimming. Children can wear, attach to their bodies or sit in the various types of swimming and floating aids. They include but are not limited to armbands and swimming vests.

Coroners' reports from 2000 to 2013 indicate that flotation aids or similar devices were not involved in any drowning death of a child in that period. We believe that the mandatory safety standard has been effective in preventing injuries and deaths associated with the use of swimming and flotation aids.

The mandatory safety standard

The mandatory safety standard for swimming and flotation aids started in 1986 to address drowning hazards for children using the products. The purpose of the mandatory safety standard is that these products are supplied safe and fit for purpose, and that parents and

carers of children are alerted to the hazards of not adequately supervising children in the water.

The safety standard is set out in *Consumer Protection Notice No. 3 of 2009*, and is based on certain requirements of the voluntary Australian standard *AS 1900-2002 - Flotation aids for water familiarization and swimming tuition*. The main requirement is for a specific safety warning label, in addition to design, construction and performance requirements.

There are two sets of warning label requirements – one for flotation aids and one for swimming aid vests. The words in each warning label must be:

- in block capitals
- not less than 6 mm in height when the aid is deflated
- in a colour contrasting with the background.

Flotation aids must be legibly marked with the following warning notice:

WARNING USE ONLY UNDER COMPETENT SUPERVISION.

Swimming aid vests must be marked with the following warning notice:

**WARNING USE ONLY UNDER COMPETENT SUPERVISION.
NOT FOR USE IN BOATING**

The voluntary Australian standard

Standards Australia published an updated version of the voluntary Australian standard *AS/NZS 1900* in 2014, which includes changes to the safety warning label. The improved warning label alerts parents and carers to the hazards of relying on flotation aids as safety devices, by specifically adding the warning message that the flotation device will not protect the user against drowning. This message is not captured in the current mandatory warning label.

4. Adopting international standards

The main international standard covering swimming and flotation aids is the European standard *EN 13138.1:2014 - Buoyant aids for swimming instruction - Safety requirements and test methods for buoyant aids to be worn*.

The ACCC uses the following criteria when assessing whether international standards are appropriate for use in product safety standards in Australia:¹

- 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?

¹ACCC, International standards for the safety of consumer products - criteria for acceptance, ACCC policy principles, 22 July 2015, www.productsafety.gov.au/content/index.phtml/itemId/1014180

European standard

The European Committee for Standardization (CEN) developed the European standard. CEN develops standards for use in Europe. Europe has similar economic and regulatory processes to Australia. The European standard has similar design, construction and performance requirements to the voluntary Australian standard.

The European and voluntary Australian standards also prescribe similar warning label and marking requirements, and both require the following warning messages:

- Will not protect against drowning
- Use only under supervision.

The European standard also requires an additional warning message that should be acceptable in Australia:

- Fully inflate.

The European standard allows safety symbol pictograms in place of these warnings (in accordance with European standard *EN 15649-2 2009 + A2 2013 Floating leisure articles for use on and in the water - Part 2: Consumer information*). We support the use of safety symbol pictograms in addition to text safety warnings in English but do not consider safety symbol pictograms a suitable replacement for text safety warnings in the Australian context.

The European standard could only be acceptable in Australia if we specify that the warnings must be in English text, even if there are also safety symbol pictograms.

Warning label resistance to UV light

The most significant difference between the European and the voluntary Australian standard is that the Australian standard requires warning labels and markings to be resistant to heat, chlorine and ultraviolet (UV) light. The European standard requires resistance to saliva and perspiration only but requires the products (rather than the warning labels specifically) to be resistant to chlorinated or salt water – not required by the Australian standard. These differences may reflect differences between Europe and Australia, particularly in levels of exposure to UV light.

The warning label is an important measure to alert parents and carers to the hazards of inadequate supervision, and the risk of drowning. Resistance to UV light, heat and chlorine ensures the label is clear and legible throughout the life of the product in the Australian context where these elements commonly occur during use.

As part of the last review of the voluntary Australian standard, the Standards Australia technical committee considered whether the latest version should fully align with the European standard. Standards Australia decided that the voluntary Australian standard was working well under current arrangements and did not align with the European standard.

We need to resolve the different warning label resistance requirements of the European standard, particularly to UV light, before we can determine whether the European standard is suitable for Australia. We seek information from stakeholders on this issue.

5. Detailed description of policy options

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

Description

This option would maintain the current mandatory safety standard.

Benefits

This would result in no changes to the regulation and no new regulatory costs for suppliers. Suppliers would need to continue to comply with the current mandatory safety standard.

Limitations

Maintaining the status quo would mean the mandatory safety standard continues to reference an outdated voluntary Australian standard. Some suppliers have advised the ACCC that complying with this outdated standard is difficult.

Suppliers would be free to include the improved safety warning in the updated voluntary Australian standard that the flotation device or swimming vest 'WILL NOT PROTECT AGAINST DROWNING' but this would not be mandatory.

Option 2 – Adopt the updated voluntary Australian standard

Description

This option would amend the mandatory safety standard to adopt the updated Australian voluntary standard. A transition period would allow suppliers to sell existing stock and source products that meet the new requirements. Under this option, the following warning label would be required for flotation aids:

WARNING
WILL NOT PROTECT AGAINST DROWNING
USE ONLY UNDER COMPETENT SUPERVISION

The following warning label would be required for swimming aid vests:

WARNING
WILL NOT PROTECT AGAINST DROWNING
USE ONLY UNDER COMPETENT SUPERVISION.
NOT FOR USE IN BOATING

Benefits

Adopting the updated voluntary Australian standard would mandate the improved safety warning about the risk of drowning.

This would also make compliance easier for suppliers who find it confusing to comply with an outdated voluntary standard.

Limitations

Amending the mandatory safety standard may impose additional regulatory and labelling costs on suppliers as they transition to the new requirements. However, a suitable transition period would mean these costs would be small.

Option 3 - Allow compliance with the updated voluntary Australian standard or the European standard

Description

This option would amend the mandatory safety standard to allow compliance with either the updated voluntary Australian standard or the European standard. A transition period would allow suppliers to sell existing stock and source products that meet the new requirements.

In accepting the European standard, pictorials or symbols would not be permitted to replace text warning labels – they could only be used in addition to worded labels. The wording must always be in English.

Benefits

Allowing compliance with either the updated voluntary Australian or European standards would mandate the improved safety warning about the risk of drowning. This would also make compliance easier for suppliers who find it confusing to comply with an outdated voluntary Australian standard. Allowing compliance with the European standard could increase the choice of products available to suppliers, with reduced testing costs, and to consumers, at potentially reduced prices.

Limitations

Amending the mandatory safety standard may impose additional regulatory and labelling costs on suppliers as they transition to the new requirements. However, a suitable transition period would mean these costs would be small.

Before we allow compliance with the European standard, we need to understand whether its warning label resistance requirements, particularly to UV light, are suitable for Australia.

Option 4 - Revoke the mandatory safety standard

Description

This option would revoke the mandatory safety standard, and would rely only on market forces and general provisions in the Australian Consumer Law to ensure safe products were sold in Australia.

Benefits

Revoking the mandatory safety standard may decrease the regulatory burden on suppliers, and increase the range of products available and sold in the Australian market as products would not have to meet the requirements of the mandatory safety standard.

Suppliers would be free to include safety warnings on their products, including those specified in the updated voluntary Australian and European standards, that the flotation device or swimming vest 'WILL NOT PROTECT AGAINST DROWNING' but this would not be mandatory.

Limitations

This option is not recommended as flotation aids are products designed for vulnerable users (infants), and the revocation of the mandatory safety standard could result in consumer misuse and possibly lead to child drownings associated with the product. This could reduce consumer and retailer confidence in the industry and in the safety of these products.

6. Preliminary position

The ACCC's preliminary position is that Options 2 or 3 provide the greatest benefit for consumers, suppliers and regulators.

Adopting the updated voluntary Australian standard would mandate an improved warning label that alerts parents and care givers to the risk of drowning, and make compliance easier for suppliers.

If the question about the durability of the warnings on products that comply with the European standard can be resolved, Option 3 could improve on Option 2, reduce costs to business, and improve consumer choice. However, if this cannot be resolved, Option 2 would be the best option.

Stakeholder submissions to this consultation will assist in testing this position.

The Office of Best Practice Regulation has informed the ACCC that a regulation impact statement is not required for this review.

7. Consultation questions

1. Which policy option do you support?
2. Do you agree with our assessments of the updated voluntary Australian standard and the European standard?
3. Are the labelling durability requirements of the European standard adequate for Australia?
4. Are there any other policy options that the ACCC should consider?

8. Have your say

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

Consultation is open from 12 October 2016 to 25 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 www.business.gov.au/.

Alternatively, email submissions to productsafety.regulation@acc.gov.au or via post:

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Glossary

Term	Definition
Flotation aids & Swimming aid vests	<p>Items that children can wear, have attached to their bodies or sit in to stay afloat.</p> <p>Specifically excluding:</p> <ul style="list-style-type: none"> • inflatable novelty shapes • unattached rings – complete or partial • kickboards • items for therapeutic use by people with a disability • life jackets or other personal flotation devices.
European standard	<p>EN 13138.1:2014 - <i>Buoyant aids for swimming instruction. Safety requirements and test methods for buoyant aids to be worn.</i></p>
Mandatory safety standard	<p>Consumer Protection Notice No. 3 of 2009</p>
Outdated voluntary Australian standard	<p>AS/NZS 1900:2002 <i>Flotation aids for water familiarization and swimming tuition.</i></p>
Updated voluntary Australian standard	<p>AS/NZS 1900:2014 <i>Flotation aids for water familiarization and swimming tuition.</i></p>