

CHILDREN'S TOYS

A GUIDE TO COMPLYING WITH THE PRODUCT SAFETY STANDARD

PRODUCT SAFETY STANDARD: CHILDREN'S TOYS

Most children under the age of 36 months do not have a developed coughing reflex. This Product Safety Standard aims to reduce the risk of injury or death to young children by ensuring that toys intended for their use are not so small, or do not have parts so small, that they could be swallowed or ingested causing choking.

It is mandatory under the Product Safety Standards (Toys) Regulations 2005 for toys intended for use by children up to the age of 36 months, which are supplied in New Zealand, to comply with specific parts of the Standard AS/NZS ISO 8124.1:2002 *Safety of toys - Part 1: Safety aspects related to mechanical and physical properties*. It is illegal to supply a toy that does not comply with this Standard and the Regulations.

The Regulations set out what types of toys are covered, and what parts of the Standard apply in New Zealand.

The Standard sets out the specifications a toy must meet and the tests which have to be carried out to determine that a toy meets those specifications.

The Regulations are issued under the Fair Trading Act 1986.



WHO DO THESE REGULATIONS APPLY TO?

Any person in trade supplying, offering to supply or advertising to supply new or second-hand toys will have to comply with the Regulations. The Regulations do not apply to private sellers of second-hand toys.

The Regulations cover the sale of toys as well as 'give-aways' such as prizes at side-show stalls, toys which are gifts when buying other goods, and toys given away in breakfast cereal packets. Any person supplying new toys through internet retail or auction sites, or any person in trade supplying second-hand toys through internet retail or auction sites, must also comply with the Regulations.

WHAT TOYS ARE COVERED BY THE REGULATIONS?

The Regulations apply to all toys manufactured, designed, labelled or marketed for use by children up to and including 36 months of age. This applies whether or not the toys are also manufactured, designed, labelled or marketed for use by children over that age.

This is not a complete list, but these types of toys are likely to come under the Regulations:

- rattles, dummies, teething toys, squeeze toys;
- toys that come attached to a crib, stroller, play-pen or baby carriage;
- push and pull toys, pounding toys, blocks and stacking toys, toys for use in baths, wading pools and sand;
- rocking, spring and stick horses or other figures;
- musical chime toys, jacks-in-the-box, stuffed, plush or flocked animals and other figures;
- games and puzzles;
- dolls; and
- toy cars and trucks.

Any person in trade supplying, offering to supply or advertising to supply new or second-hand toys will have to comply with the Regulations.

WHAT TOYS ARE NOT COVERED BY THE REGULATIONS?

The Regulations do not apply to these goods:

- balloons;
- bicycles with a wheel base smaller than 640 mm;
- books and other items made of paper;
- cassette tapes, compact discs, DVDs and records;
- dummies and pacifiers (other than toy dummies and toy pacifiers);
- paints, paint brushes and other painting tools;
- flotation aid toys for use in water;
- marbles;
- modelling materials including clay, plasticine and playdough;
- playground equipment for parks, schools and domestic use, eg, swings, seesaws, slides, sand pits, sliding poles and ladders;
- toys made solely from porous material such as cheesecloth; and
- writing materials including crayons, chalk, pencils and pens.

The Regulations also do not apply to unassembled toys that when put together by an adult who follows the supplied written instructions will meet the requirements set out in the Standard.

HOW CAN I TELL IF THE TOY IS DESIGNED FOR USE BY CHILDREN UP TO AND INCLUDING 36 MONTHS OF AGE?

Determining whether the toy comes within the Standard has to be decided on a toy-by-toy basis using common sense. Ask yourself “Does the toy have characteristics that will appeal to a child up to 36 months of age?”

For a general guide, if a child is:

- physically capable of using the toy as it is intended to be used; and
- intellectually capable of using the toy as it is intended to be used; and
- interested in playing with the toy;

then the toy is for children up to 36 months of age.

If you are still unsure, seek independent advice.

HOW DO I ENSURE A TOY FOR A CHILD UP TO AND INCLUDING 36 MONTHS OF AGE IS SAFE?

Follow the guidance in the Regulations and in the Standard. The Standard states toys should not:

- be of a size that creates a hazard if swallowed or inhaled;
- have small parts designed to be removed from the toy that will create a hazard if swallowed or inhaled;
- have pieces that can break off during normal use or during reasonably foreseeable abuse and that create a hazard if swallowed or inhaled.

The Standard contains more details and requirements, some of which are very technical in their nature. You should read both the Regulations and the Standard to make sure you understand all the requirements and testing.

HOW IS NORMAL USE OR FORESEEABLE ABUSE OF A TOY TESTED?

The Standard provides guidance on testing the likely use or abuse a child will place on toys. This is to check that no part of the toy will come off that may be a potentially dangerous choking hazard.

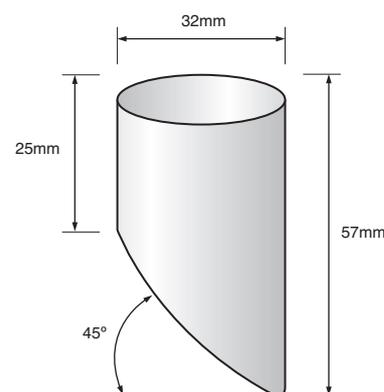
The tests are designed to simulate normal playing with a toy that:

- fits with the toy’s instructions for use; or
- has been established for that type of toy by tradition or custom; or
- is evident from the toy’s appearance.

The ‘foreseeable abuse’ tests are designed to simulate conditions where abuse conditions could occur. For example, a child drops a toy because they are not yet able to grip and hold onto it.

WHAT SIZE OF TOY, OR PIECE OF TOY, CAN CREATE A CHOKING HAZARD?

The Standard provides information and dimensions for a cylinder to measure whether toys or toy parts are too small. If a toy, or a part of a toy, can fit completely into the cylinder without compressing it, then it is too small and does not meet the Standard.



Generally, any toy or part of a toy that is smaller than a 35mm film canister or ping-pong ball will not meet the Standard.

CAN I PUT A ‘NOT SUITABLE FOR UNDER CHILDREN UNDER 36 MONTHS OF AGE’ LABEL ON A TOY?

You cannot use labels to avoid complying with the Standard and the Regulations for toys that are intended for use by children up to 36 months of age. For example, if you place a label on a baby’s rattle stating ‘Not for children under 36 months of age’, the rattle must still comply with the Standard as it is the type of toy intended to be used by an infant.

WHO IS RESPONSIBLE FOR MAKING SURE THE TOYS I SUPPLY ARE SAFE?

It is your responsibility to ensure the toys you supply are safe. You cannot rely on the toy being safe simply because it has been offered for sale to you by a manufacturer or wholesaler.

The best way to ensure that a toy complies with the Standard is to check with your supplier that the toy has passed the tests set out in the Standard or have the toy tested yourself.

WHAT HAPPENS IF I SUPPLY A TOY THAT DOESN'T COMPLY?

Selling a non-compliant toy could place a child at risk of injury or death from a choking hazard.

You will also have breached the Regulations. It is an offence under section 30 of the Fair Trading Act to supply, offer to supply or advertise to supply toys for children up to 36 months of age that do not comply with the Standard or the Regulations.

The Commerce Commission, which enforces the Fair Trading Act, may take a prosecution against you in Court. Companies can be fined up to \$200,000 for each breach of the Act. Individuals can be fined up to \$60,000. For more information on the range of enforcement actions, from warnings through to prosecutions, see the Commission's website at www.comcom.govt.nz

In addition to any action taken by the Commerce Commission, you may have to conduct a recall of any toys that you have supplied which do not comply with the Standard and the Regulations. Information on carrying out a product recall is available from www.consumeraffairs.govt.nz/productsafety

WHERE CAN I GET MORE INFORMATION ON THE STANDARD AND THE REGULATIONS?

The Standard AS/NZS ISO 8124.1:2002 Safety of toys - Part 1: *Safety aspects related to mechanical and physical properties* is available for purchase from Standards New Zealand by calling 0800 782 632 or via its website www.Standards.co.nz (enter keyword '8124.1').

You can access the Regulations and the Fair Trading Act online at the government's legislation website www.legislation.govt.nz The information on this website is free.

You can buy a copy of the Regulations and the Fair Trading Act from selected bookshops.

WHAT OTHER GOODS ARE COVERED BY PRODUCT SAFETY STANDARDS?

There are five other Product Safety Standards covering:

- children's nightwear;
- pedal bicycles;
- cigarette lighters;
- cots; and
- baby walkers.

Factsheets for all these Product Safety Standards are available on the Commission's website at www.comcom.govt.nz

For further information on the Fair Trading Act you can visit the Commission's website at www.comcom.govt.nz

EXAMPLES

SALE OF UNSAFE WOODEN PUZZLES

A toy manufacturer was prosecuted for supplying wooden puzzles for children up to 36 months of age which had pieces that were an ingestion or inhalation hazard. About 2,500 toys were supplied, and although a product recall resulting in the return of about 1,000 puzzles was undertaken, the manufacturer was convicted and fined.

BABY RATTLE - TRADER RELYING ON SUPPLIER THAT TOY WAS SAFE

A supermarket sold a baby rattle that did not meet the toy safety standard. The company said it relied on its supplier to ensure the toys met the Standard and said this was a common practice in the industry. This was rejected by the court. The company was convicted and fined.

SALE OF WOODEN BABY MOBILES AND RATTLES - SECOND BREACH OF REGULATIONS

A shop sold wooden 'baby mobiles' and rattles with labels claiming they were suitable for infants aged 0 – 2 years. However, testing found that small parts of the toys were easily broken off, presenting a choking hazard. Although the store carried out a voluntary recall and approximately 20 toys in total were returned with customers receiving refunds, the store was convicted and fined for breaching the Regulations.

The company had previously entered into a settlement with the Commerce Commission in relation to an unsafe toy. The Commission expects all companies to comply with Product Safety Regulations. It will prosecute companies that have been previously warned or that have previously admitted breaching the Regulations.

USEFUL TERMS

- Breach – to break the law or not comply with an Act or Regulations
- Comply – to meet obligations and rules
- Consumer – a person who buys from a retailer, an end-user
- In trade – a person who runs a business selling goods or services such as a retailer, manufacturer or importer
- Mandatory – compulsory, a set of rules or guidelines that must be followed
- Regulations – legislation made under an Act, in this case under the Fair Trading Act
- Supply – supply by gifting, sale (including online sales), exchange, lease, hire or hire purchase.

To check for updates to this fact sheet visit:
www.comcom.govt.nz/publications

This fact sheet is part of a series looking at the Fair Trading Act. Other fact sheets can be downloaded from
www.comcom.govt.nz/publications

CONTACT

Contact the Commerce Commission with information about false or misleading trading practices.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

To us at Contact Centre,
PO Box 2351, Wellington 6140

EMAIL

Us at contact@comcom.govt.nz

This fact sheet is a guideline only, and reflects the Commerce Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

The purpose of the Commerce Commission is to promote dynamic and responsive markets so that New Zealanders benefit from competitive prices, better quality and greater choice. The Commission does this by enforcing legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.

Only the courts can make an authoritative ruling on breaches of the Fair Trading Act. Courts may fine companies found guilty of breaching provisions of the Fair Trading Act up to \$200,000 and individuals up to \$60,000.