

The Fair Trading Act

# Product safety standards - Children's toys



This product safety standard helps prevent young children injuring themselves by choking while playing with a toy, or swallowing batteries from battery operated toys. Children under the age of 36 months are less able to cough up anything they swallow and may choke if they inhale a part of a toy when they are playing with it; and batteries pose the risk of serious injury or fatality if swallowed.

## The product safety standard regulations set the official safety standard for children's toys.

The Product Safety Standards (Children's Toys) Regulations 2005 (**Regulations**) set safety standard AS/NZS ISO 8124.1:2002 *Safety of toys – Part 1: Safety aspects related to mechanical and physical properties* with amendments as the official product safety standard that suppliers of children's toys must comply with.

We use the term 'product safety standard' in this fact sheet to refer to the official product safety standard AS/NZS ISO 8124.1:2002 (as amended) that is identified by the Regulations.

Failure to comply with the product safety standard is a breach of the Fair Trading Act and is illegal.

If you comply with the product safety standard, you will meet your legal obligations.

Standards NZ revise standards periodically. However, your legal obligations do not change until the Regulations are amended to refer to the revised standard. This may not happen at the same time. When the Regulations are amended, we will update our fact sheet. Even if the Regulations do not require you to comply with the most recent standard, we encourage you to look at the revised standard and adopt any additional or higher product safety protections, even if they are not required by law.

## Who must comply with the product safety standard?

Any person who supplies, offers to supply or advertises the supply of children's toys covered by the product safety standard (**toys**) must comply. This includes:

- manufacturers, importers and distributors who supply toys to retailers
- retailers who sell toys instore or online to customers
- persons in trade who offer second-hand toys for sale at markets or on internet auction sites. Private sellers of second-hand toys are not required to comply with the product safety standard.

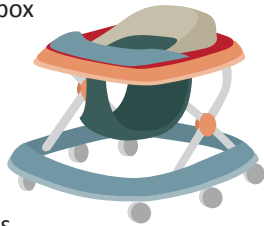
Offering toys as 'giveaways' such as prizes at side-show stalls, when buying other goods, or giving away in breakfast cereal packets is also considered an 'offer to supply'.



## What types of toys are covered by the product safety standard?

A toy is defined in the Regulations as any object manufactured, designed, labelled, or marketed as a plaything for use in learning or play by a child; and includes:

- 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 similar articles
- games and puzzles
- dolls
- toy cars, trucks and other vehicles.



The product safety standard applies 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.

## How can I tell if the toy is for use by children up to and including 36 months of age?

This has to be decided on a toy-by-toy basis. The test is whether, viewed through the eyes of a reasonable person it can be said the toy in question was either manufactured, designed, labelled or marketing as a plaything for use by children up to three years?

Ask yourself “does this toy have characteristics that make it appealing for a child up to 36 months to play with?”

For a general guide, if a child up to 36 months:

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

then the toy is likely to be within the scope of the product safety standard.

## What types of toys are excluded?

The Regulations exclude the following types of toys:

- 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
- writing materials including crayons, chalk, pencils, and pens.

Unassembled toys, that when put together by an adult following the supplied written instructions will meet the requirements of the product safety standard are also excluded.

There are published guidelines that assist with determining the appropriate age at which children begin playing with certain types of toys, including:

- Standards New Zealand: Technical Report on Safety of Toys, SA/NZ TR ISO 8124:82016, Part 8: Age Determination Guidelines, Published 7 November 2016.
- Age Determination Guidelines: Relating Children’s ages to toy characteristics and play behaviour 2002: produced by the US Consumer Product Safety Commission.



## What are the safety requirements?

The product safety standard specifies the acceptable criteria for the structural characteristics of toys, and that any batteries in a toy are not easily accessible. It sets out the tests to be carried out to determine whether a toy meets those requirements.

Toys must not:

- be of a size and shape that creates a hazard if swallowed, inhaled or placed in the mouth
- have small parts designed to be removed from the toy that will create a hazard if swallowed, inhaled or placed in the mouth
- have pieces that can break off during normal use or during reasonably foreseeable abuse and that create a hazard if swallowed or inhaled.
- allow batteries to be accessible without the use of a tool, or two independent movements that are carried out simultaneously to open the battery compartment
- allow the battery compartment to become accessible if the toy is dropped.

The product safety standard contains more detailed requirements, some of which are very technical in nature. You should read the product safety standard to make sure you understand all the requirements.

## How is normal use or foreseeable abuse of a toy tested?

The product safety 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
- has been established for that type of toy by tradition or custom
- 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 when playing.

## What size of toy, or piece of toy, can create a choking hazard?

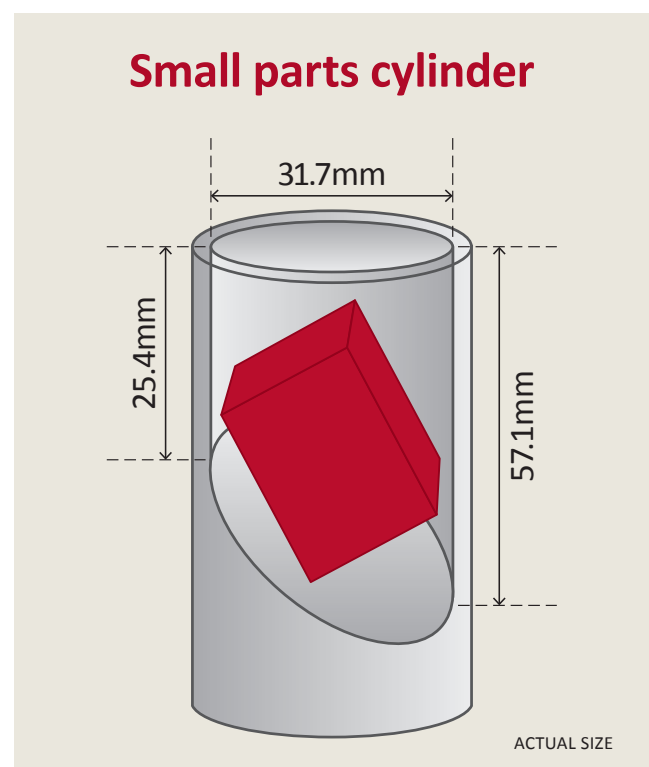
The product safety standard provides information and dimensions to measure whether toys or toy parts are too small. If a toy, or a part of a toy, is smaller than these dimensions, then it is too small and does not meet the product safety standard.

Generally, any toy or part of a toy which fits entirely in the 'small parts cylinder' will not meet the requirements of the product safety standard (see diagram below).

There are also minimum size and shape requirements set out in the product safety standard, for specific types of toys including:

- squeeze toys, rattles, teething toys
- legs of baby gyms (including removable parts)
- small balls
- pompoms
- preschool figures
- toy pacifiers.

You should check the product safety standard for the specific requirements for these types of toys.



## Can I label a toy “Not suitable for children under 36 months of age” to avoid having to comply?

No, if a toy has characteristics that appeal to a child up to 36 months, you cannot use a warning label to avoid complying with the product safety standard. For example, a baby’s rattle labelled ‘Not for children under 36 months of age’ must comply as it is designed for use by an infant.

### EXAMPLE

#### Unsafe Baby Buggies and Baby Rattles

An importer was fined \$65,000 for selling 1200 units of a toy baby buggy and baby rattle that did not comply with the product safety standard. The toys failed to comply with the standard and were unsafe as during testing small plastic fragments broke free from the buggy and rattle, creating a choking hazard for children up to 36 months of age.

## Who is responsible for making sure the toys I supply are safe?

Although the manufacturer may carry out the required tests, distributors and retailers are also responsible for making sure the toys being offered for sale are safe.



You should not assume that toys comply with the product safety standard simply because a supplier has offered to supply them to you. If you have any concern about the safety of toys you have for sale, do not sell them. Confirm first with

your supplier that the toys comply with the product safety standard. The best way to prove this is for your supplier to provide you with a copy of independent test results. You can also arrange your own testing.

### EXAMPLE

#### Unsafe Baby Rattle

An importer was fined \$20,000 for selling 271 baby rattles that did not comply with the product safety standard. When tested slivers of plastic broke from the rattle. Those slivers fitted inside the small parts cylinder, and they therefore created a choking hazard for children up to 36 months of age.

## What can happen if I sell a toy that does not comply with the product safety standard?

It is an offence under section 30 of the Fair Trading Act to supply, offer to supply or advertise for supply a toy that does not comply with the product safety standard. The Commerce Commission, who enforces the Fair Trading Act, may take a prosecution against you in court.

There can be serious consequences for businesses that a court finds to have broken the law. Companies can be fined up to **\$600,000** for each breach and an individual up to **\$200,000**. Where a company is a repeat offender, directors and those involved in the management of the company can be banned from involvement in the management of any company for a period of up to 10 years.

In addition to any action taken by the Commerce Commission, you may have to conduct a recall of any toys you have supplied which do not comply. Information on carrying out a product recall is available from Trading Standards at the Ministry of Business, Innovation and Employment. [www.consumerprotection.govt.nz](http://www.consumerprotection.govt.nz)



## Are there any other relevant safety requirements for toys?

There are two “Unsafe Goods Notices” in force which relate directly to toys. These are:

- Unsafe Goods (Lead in Children’s Toys) Indefinite Prohibition Notice 2009 – This declares children’s toys which contain more than a certain amount of lead in them to be unsafe.
- Unsafe Goods (Small High Powered Magnets) Indefinite Prohibition Notice 2014 – This declares separable or loose magnets, which fit into the small parts cylinder (as above) and have a magnetic strength over a certain amount, to be unsafe.

It is an offence under the Fair Trading Act 1986 to supply, or offer to supply, or advertise to supply goods which have been declared to be unsafe. More information about these and other Unsafe Goods Notices can be found at [www.standards.co.nz](http://www.standards.co.nz).

### EXAMPLE

#### 123 Mart Limited

A low cost retailer was fined for selling approximately 9,000 units of seven types of toys that did not comply with the product safety standard. The toys failed to comply with the standard and were unsafe as they had small parts that presented choking hazards for young children, or parts which might break off during reasonably foreseeable handling and become a choking hazard. The 123 Mart also sold 1,200 items of children’s sleeping pants, which did not have the required fire danger labels and 11,000 items of clothing, which failed to comply with consumer information labelling requirements for care, origin and content. In total the company was fined \$337,000.

## Where can I get more information about the product safety standard?

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 733 656, or via its website: [www.standards.co.nz](http://www.standards.co.nz)

You can access the Regulations and the Fair Trading Act online at the government’s legislation website [www.legislation.govt.nz](http://www.legislation.govt.nz). The information on this website is free.

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