



24 April 2020

Director, Button Battery Taskforce
Consumer Product Safety Branch
Australian Competition & Consumer Commission
via email: nationalprojects@acc.gov.au

Dear ACCC,

RE: Assessment of regulatory options for button battery safety

A mandatory standard is the only way to reduce the serious risk associated with button batteries in Australia. CHOICE strongly supports Option 3 presented in the consultation paper, including exemptions for hearing aid devices and associated zinc air batteries. This is the preferred option since the standard presented is rigorous through its inclusion of secure battery compartment, child-resistant packaging and warning and safety information requirements. The ACCC and the Assistant Treasurer must act quickly to introduce this robust mandatory standard.

CHOICE, along with 28,000 members of the community, have campaigned for stronger regulatory measures for button batteries since 2016. The tragic stories of Summer Steer¹ and Isabella Rees² are evidence enough that button batteries pose a serious and irreversible risk to young children and that maintaining the status quo of no regulatory measures is not an option.

The case is clear: the social and economic harm of button batteries is undeniable. The Federal Government must now introduce a mandatory standard for button batteries and products containing them. This is the only way to eliminate market failure, significantly reduce community harm and meet community expectations of product safety.

¹ CHOICE 2019, 'These things are like loaded guns and they're everywhere', <https://www.choice.com.au/babies-and-kids/children-and-safety/avoiding-common-dangers/articles/mum-targets-button-batteries-after-death-of-daughter>

² CHOICE 2019, 'It's too late for Bella, but it's not too late for everyone else', <https://www.choice.com.au/babies-and-kids/children-and-safety/avoiding-common-dangers/articles/allison-rees-calls-for-government-to-take-action-on-button-batteries>

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Key recommendations:

1. That the Federal Government make the mandatory standard proposed in Option 3, which includes:
 - a. requirements for secure battery compartments in consumer goods that use button batteries
 - b. requirements for all button batteries available for sale or supplied with consumer goods to be supplied in child-resistant packaging
 - c. requirements for warnings and information to be provided on the packaging and instructions of all button batteries available for sale; on the product, packaging and instructions of consumer goods that use button batteries; and at the point of sale
 - d. exemptions for hearing aid devices and associated zinc air batteries, designed for use in such devices.
2. That the mandatory safety standard is not subject to the full Regulatory Impact Statement process due to the urgency and severity of the issues.
3. That the Federal Government releases a draft proposed General Safety Provision for consultation as soon as possible.

Regulatory intervention in the form of a mandatory safety standard for button batteries is necessary to stop further deaths and injuries of young children. This mandatory standard can only achieve its intended outcome if rigorous enforcement by the regulator underpins them. We encourage the ACCC to allocate appropriate resources to achieve this purpose. In addition, penalties for non-compliance should be severe to reflect the nature of harm posed to the community when dangerous products are available in the market.

Features of the mandatory standard

The mandatory safety standard should be horizontal, covering all items containing button batteries, unless exempt (see below). The standard must include that:

- all button batteries available for sale or provided with consumer goods are required to be supplied in child-resistant packaging and include warnings and information on packaging and instructions.
- consumer goods that use button batteries are required:
 - to have a battery compartment that is secured by screw or similar fasteners so batteries can only be accessed by using a tool, where batteries are intended to be replaced.
 - to fully secure batteries inside the product by the use of soldering, fasteners such as rivets, or similar, where batteries are not intended for removal or replacement.

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- to meet compliance tests focused on the security and durability of the product when subjected to normal use and foreseeable abuse, including any battery compartment and fasteners.
- to include warnings and information on the product, packaging and instructions.

CHOICE supports Option 3's multi-pronged approach as this is the best way to reduce the risk of harm associated with button batteries at each point of exposure. Specifically, child-resistant packaging, compliant product design and clear warning labels will work together to produce physical barriers to children and alert adults to associated risks of button batteries at point of sale and at first use of the product.

Clear warning and safety labelling should apply to all button batteries regardless of size or chemistry. This will remove barriers to seeking medical attention in the case of ingestion. Additionally, provision of the Australian Poisons Information Centre contact details on packaging would signal to people the inherent danger of button batteries and encourage them to seek appropriate help in the case of ingestion.

Exemptions

CHOICE supports the ACCC's proposed exemptions relating to hearing aid devices and associated zinc air batteries. CHOICE is satisfied that an exemption on hearing aid devices in relation to the secure battery compartment requirement and an exemption from child-resistant packaging requirements for zinc air batteries intended for hearing aid devices is appropriate.

In line with the ACCC's view, CHOICE encourages industry measures to move towards increased adoption of hearing aids that include a fully enclosed rechargeable battery. Such measures will further reduce the risk posed through ingestion of button batteries.

General Safety Provision

Strongly enforced mandatory standards will provide an effective control in preventing unsafe button battery products from entering the Australian market. However, they are an incomplete solution to a wider problem. Australia lacks a General Safety Provision that would require companies to ensure the products they sell are safe before bringing them to market. Since companies are not legally required to assess whether products are safe, many simply don't take proactive steps to ensure the safety of their products. The absence of this requirement represents a large gap in the protections offered under the consumer law and leaves consumers vulnerable to harm from unsafe products.

Post-market controls such as bans and recalls are reactionary and allocate the onus of proving harm to the consumer rather than the trader. This model is outdated in comparison to overseas product safety frameworks. A General Safety Provision provides a coverall pre-market control on

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unsafe products entering the market, thereby reducing the significant risk of consumer harm that can be caused by unsafe products.

For further information please contact CHOICE on apereira@choice.com.au

Yours sincerely,



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Product Safety Campaigner