



Australian
Competition &
Consumer
Commission

Product safety

Children's plastic products with more than 1 per cent diethylhexyl phthalate (DEHP)

A guide to the interim ban



Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

First published by the ACCC 2010

10 9 8 7 6 5 4 3 2 1

© Commonwealth of Australia 2010

This work is copyright. Apart from any use permitted by the *Copyright Act 1968*, no part may be reproduced without prior written permission of the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, ACCC GPO Box 3131, Canberra ACT 2601, or publishing.unit@accg.gov.au.

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

ISBN 978 1 921581 57 1

ACCC 03/2010_41038

www.accc.gov.au



Australian
Competition &
Consumer
Commission

Product safety

Children's plastic products with more than 1 per cent diethylhexyl phthalate (DEHP)

A guide to the interim ban

Contents

Children’s plastic products with more than 1 per cent diethylhexyl phthalate (DEHP)	2
What is this guide about?	2
Who should read this guide?	2
What children’s plastic products are covered by the interim ban?	2
What are the hazards?	3
Interim ban	4
Does this interim ban apply to my business?	4
Where can I go for more information?	4
Requirements of the interim ban	5
Complying with the interim ban	7
Your responsibilities as a supplier	8
Consumer Protection Notice No. 6 (2010)	9
Role of the ACCC	10
Compliance and enforcement activities	10
Product liability	11
Mandatory standards	11
Interim bans	12
Permanent bans	13
Penalties	13
Key terms used in this guide	14
Contacts	15



Children's plastic products with more than 1 per cent diethylhexyl phthalate (DEHP)

What is this guide about?

Under the *Trade Practices Act 1974*, bans are introduced when considered reasonably necessary to prevent or reduce the risk of injury.

This guide provides a summary of the requirements for complying with the interim ban on certain children's plastic products that contain, or have a component that contains, more than 1 per cent by weight diethylhexyl phthalate (DEHP), are intended for use by children up to and including 36 months of age and can readily be sucked and/or chewed.

Who should read this guide?

If you are a manufacturer, distributor, importer, wholesaler or retailer of certain children's plastic products, you should read this guide to familiarise yourself with the requirements for complying with this interim ban.

We also strongly advise you to take the following steps to confirm compliance of the goods you supply:

- read the requirements specified in Consumer Protection Notice No. 6 of 2010, available on page 9 of this guide
- read this guide, including the information under 'Complying with the interim ban' on page 7
- use reports from reliable, independent testing laboratories to verify compliance.

What children's plastic products are covered by the interim ban?

From 2 March 2010, certain children's plastic products that contain, or have a component that contains, more than 1 per cent by weight DEHP, are intended for use by children up to and including 36 months of age and can readily be sucked and/or chewed are banned from supply in Australia.

These include:

- toys
- childcare articles including, but not limited to, dummies, pacifiers, teething rings, teething rails, rattles, bibs, gum soothers and comforting objects
- eating vessels and utensils including, but not limited to, feeding bottles, sip/sucking cups, bowls, plates and cutlery.

These products are banned when:

- they are intended for use by children up to and including 36 months of age, and
- they contain, or have a component that contains, more than 1 per cent by weight of the chemical identified by the unique Chemical Abstract Service (CAS) Number 117-81-7— also known as Diethylhexyl phthalate, DEHP, Di(2-ethylhexyl)phthalate and Bis(2-ethylhexyl) phthalate), and
- they are or have a component containing more than 1 per cent by weight of DEHP, and children up to and including 36 months of age can readily suck and/or chew them.

In this guide these products are referred to as **children's plastic products**.

Excluded items

Products that are excluded from this interim ban include:

- clothing and footwear
- sporting goods
- flotation aids and aquatic toys for the specific purpose of assisting a supervised child to float or swim in water
- second-hand goods.

More details are available on page 6 under 'Products not covered by the ban'.

What are the hazards?

The chemical DEHP is a commonly used plasticiser that is used to make plastics such as polyvinyl chloride (PVC) soft and flexible. The use of DEHP in many applications is appropriate and safe.

Only products or components that are made from soft flexible plastic or foamed plastic will potentially contain DEHP.

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) has conducted a scientific risk assessment of DEHP.

The NICNAS assessment found that a risk of reproductive toxicity exists for young children in certain circumstances. Contact NICNAS at www.nicnas.gov.au for more details.

NICNAS determined that the risk applies to young children up to and including 36 months of age who may extensively chew and suck (mouth) objects on a recurrent basis for substantial periods of time—in excess of 40 minutes per day.

The NICNAS study also found:

- the risk does not apply to older children or adults, who have less substantial mouth contact with plastic materials that contain DEHP
- skin contact with products containing DEHP is not a safety concern for any age group, including infants.

Interim ban

The interim ban prohibits supply of children's plastic products intended for use by children up to and including 36 months of age that contain, or have a component that contains, more than 1 per cent by weight DEHP and can readily be sucked and/or chewed. It applies to the supply of all relevant children's plastic products from 2 March 2010.

Does this interim ban apply to my business?

Under the Trade Practices Act, 'supply' includes selling, exchanging, leasing, hiring or offering for sale through hire purchase.

If you supply relevant children's plastic products intended for use by children up to and including 36 months of age that contain, or have a component that contains, more than 1 per cent by weight DEHP and can readily be sucked and/or chewed, this interim ban applies to you and your business.

Where can I go for more information?

- Consumer Protection Notice No. 6 of 2010, available on page 9 of this guide
- reports from reliable, independent testing laboratories to verify compliance
- 'Complying with the interim ban' on page 7 of this guide.

Requirements of the interim ban

The interim ban applies to children's plastic products intended for use by children up to and including 36 months of age that contain, or have a component that contains, more than 1 per cent by weight DEHP and can readily be sucked and/or chewed.


The following lists contain examples of products possibly covered by the interim ban. These lists are not exhaustive.

Toys made from soft plastic or with a soft plastic component intended for children up to and including 36 months of age that can readily be sucked and/or chewed:

- bath toys
- bats and balls such as imitation, miniature or novelty versions of sporting goods
- dolls, cars, trains, dress-ups and blocks
- PVC squeeze toys such as plastic ducks
- plastic figures
- inflatable toys and balls other than those for the specific purpose of assisting a supervised child to float or swim in water
- infant activity centres and infant gyms
- musical instruments
- developmental and educational toys for infants
- soft books / bath books
- toys or accessories intended to hang from, or attach to, larger toys and childcare articles.

Childcare articles made from soft plastic or with a soft plastic component intended for children up to and including 36 months of age that can readily be sucked and/or chewed:

- dummies
- pacifiers
- teething rings
- teething rails
- rattles
- bibs
- gum soothers
- comforting objects.



Vessels and eating utensils made from soft plastic or with a soft plastic component that are intended for feeding infants up to and including 36 months of age:

- feeding bottles
- sip/sucking cups
- bowls
- plates
- cutlery.

Products not covered by the ban

Vessels and eating utensils for older children and adults.

Single-use (disposable) plastic cutlery. While these products are not specifically excluded from the interim ban, children up to and including 36 months of age are unlikely to readily suck or mouth these items over a sustained period.

Materials such as metal, wood, glass, ceramic, natural fibre fabrics and hard rigid plastics do not contain DEHP.

Large toys such as cubby houses, slides and swings, and childcare articles with restraints to hold the child, such as change tables, prams and car seats, because a child up to and including 36 months of age is unable to suck and/or chew them.

Excluded items on page 3.

Complying with the interim ban

Understand the requirements

To fully understand the requirements of this interim ban, we strongly recommend that you read:

- Consumer Protection Notice No. 6 of 2010, available on page 9 of this guide
- documents listed under 'Check for appropriate age labelling' below.

Check for appropriate age labelling

Under the interim ban, toys that are labelled not suitable for, or intended for use by, children up to and including 36 months, or that carry a label indicating that the goods are not suitable or intended for children under three years of age, are not covered if the age labelling is appropriate for the product.

Guidance for establishing appropriate age grades of toys can be found in:

- Annex B of AS/NZS ISO 8124.1:2002 *Safety of toys*
- United States Consumer Product Safety Commission (CPSC) Age Determination Guidelines: Relating Children's Ages to Toy Characteristics and Play Behaviour, September 2002. This is available free of charge from the CPSC website: www.cpsc.gov.

Check for compliance

There are several means of checking for compliance, including:

- quality assurance programs
- validated manufacturer specifications
- certification from raw material suppliers or upstream suppliers/manufacturers
- end product analytical testing.


Ensure tests and test reports are correct

The concentration limit of 1 per cent of the weight equates to a maximum limit of 10 000 milligrams per kilogram (mg/kg) when expressed in the internationally recognised SI units (see page 14).

In the case of products made from more than one component, the 1 per cent weight concentration limit only applies to each relevant component that may contain DEHP.

Internal components that are inaccessible to mouthing are not readily able to be sucked and/or chewed by children. Therefore such internal components are not included in determining the 1 per cent by weight concentration limit for DEHP.

Suppliers should anticipate the possibility of the ACCC checking compliance at any time.



Where analytical testing is undertaken or relied upon by suppliers, always use a competent analytical laboratory that holds recognised accreditation and adheres to the OECD *Principles of good laboratory practice* either in Australia or overseas.

The National Association of Testing Authorities (NATA) can provide advice on accredited laboratories in Australia or internationally for the testing of products to determine DEHP content. For more details, visit www.nata.asn.au.

Your responsibilities as a supplier

As a supplier, you are legally responsible for ensuring relevant children's plastic products comply with the requirements of this interim ban.

All suppliers are equally responsible for ensuring that products they supply meet the requirements of this interim ban. This includes:

- manufacturers
- importers
- distributors
- retailers.

It is an offence under the Trade Practices Act to supply children's plastic products which do not comply with the requirements of the interim ban. Failure to comply can result in recalls, legal action and/or penalties.

Consumer Protection Notice No. 6 (2010)



Commonwealth
of Australia

Gazette

No. S 19, Tuesday, 2 March 2010
Published by the Commonwealth of Australia

SPECIAL

COMMONWEALTH OF AUSTRALIA

TRADE PRACTICES ACT 1974

Consumer Protection Notice No. 6 of 2010

**DECLARATION THAT CERTAIN GOODS CONTAINING MORE THAN 1%
DIETHYLHEXYL PHTHALATE (DEHP) ARE UNSAFE GOODS**

I, CRAIG EMERSON, Minister for Competition Policy and Consumer Affairs, pursuant to section 65C(5) of the *Trade Practices Act 1974* DECLARE goods of the kind specified below to be unsafe goods:

Particulars of goods:

- a) Toys;
- b) childcare articles including, but not limited to, dummies, pacifiers, teething rings, teething rails, rattles, bibs, gum soothers, and comforting objects; and
- c) eating vessels and utensils including, but not limited to, feeding bottles, sip/sucking cups, bowls, plates, and cutlery

that:

- d) are intended for use by children up to and including 36 months of age;
- e) contain, or that have a component which contains, more than 1% by weight of the chemical identified by the unique Chemical Abstract Service (CAS) Number 117-81-7 (also known as Diethylhexyl phthalate (DEHP), Di(2-ethylhexyl)phthalate and Bis(2-ethylhexyl)phthalate); and
- f) are, or have a component containing more than 1% by weight of the chemical identified by the unique Chemical Abstract Service (CAS) Number 117-81-7 that is, readily able to be sucked and/or chewed by children up to and including 36 months of age;

but excluding

- g) clothing and footwear;
- h) sporting goods;
- i) floatation aids and aquatic toys for the specific purpose of assisting a supervised child to float or swim in water; and
- j) second hand goods.

Dated this 26th day of February 2010

CRAIG EMERSON
Minister for Competition Policy and Consumer Affairs

Cat. No. S1910
ISSN 1032-2345
© Commonwealth of Australia 2010

Role of the ACCC

To minimise the risk of injury associated with consumer products, the ACCC undertakes a variety of compliance and enforcement activities.

Compliance and enforcement activities

- consulting with suppliers and other agencies to identify hazards
- developing mandatory safety and information standards, when necessary
- informing and educating suppliers about emerging hazards and requirements of mandatory standards
- liaising with suppliers to assist them in understanding how to comply with the standards
- promoting benefits of compliance with mandatory safety standards
- assessing overall levels of marketplace compliance with mandatory safety standards
- informing and educating consumers to choose only compliant products, report suppliers of non-compliant goods to the ACCC and always use products safely
- conducting compliance surveys among retail outlets to detect non-complying products
- conducting compliance surveys of wholesalers and importers that have supplied non-compliant goods to retailers
- investigating allegations from consumers and suppliers about supply of non-compliant products
- investigating possible breaches found during compliance surveys
- seeking the immediate withdrawal of non-compliant or unsafe products from sale
- seeking the recall of non-compliant or unsafe products from the market
- taking action against suppliers including:
 - court enforceable undertakings
 - injunctions and various other court orders
 - damages
 - requirements for corrective advertising
 - prosecutions
 - fines and penalties.

Product liability

Part VA of the Trade Practices Act contains provisions on product liability. Under these provisions, consumers can seek compensation or damages for personal injury or other loss caused by a defective product.

Goods will be considered defective if they are not as safe as people generally are entitled to expect. This is an objective measure of expectations of the general public and not of one individual.

Generally, the manufacturers or importers of products are liable under Part VA. But if other suppliers, such as retailers, cannot identify the manufacturer or importer, they may be deemed liable for the damages.

Suppliers may reduce their exposure to product liability action by using these responsible and sensible business practices:

- conducting regular reviews of product designs and production
- implementing and reviewing quality assurance procedures
- testing products regularly to relevant standards, including batch testing
- conducting appropriate marketing
- providing clear and thorough user instructions
- where necessary, conducting a quick voluntary recall of any products that are defective or unsafe.

Mandatory standards

- Babies' dummies
- Baby bath aids
- Baby walkers
- Balloon-blowing kits
- Basketball rings and backboards
- Bean bags
- Bicycle helmets
- Bunk beds
- Care labelling—clothing and textile products
- Child restraints for motor vehicles
- Children's household cots
- Children's nightwear
- Children's nightwear—paper patterns
- Children's portable folding cots

- Cosmetics and toiletries—ingredient labelling
- Disposable cigarette lighters
- Elastic luggage straps
- Exercise cycles
- Fire extinguishers—portable aerosol
- Fire extinguishers—portable non-aerosol
- Flotation and aquatic toys (new standard from 1 April 2010)
- Flotation and swimming aids (new standard from 1 April 2010)
- Hot water bottles
- Jacks—trolley
- Jacks—vehicle
- Motorcycle helmets
- Pedal bicycles
- Portable ramps for motor vehicles
- Prams and strollers
- Reduced fire risk cigarettes
- Sunglasses and fashion spectacles
- Tobacco products—labelling
- Toys containing magnets
- Toys for children—lead and certain elements
- Toys for children under, up to and including 36 months
- Treadmills
- Vehicle support stands

Interim bans

- Sky lanterns
- Toy-like novelty cigarette lighters
- Children's plastic products with more than 1 per cent diethylhexyl phthalate (DEHP)

Permanent bans

- Candles and candle wicks containing greater than 0.06 per cent lead by weight
- Children's dart gun sets
- Fire footbags and other such goods
- Gas masks containing asbestos
- Glucomannan in tablet form
- Jelly cups containing konjac
- Tinted headlight covers
- Tobacco products (smokeless)
- Toothpaste containing more than 0.25 per cent by weight of diethylene glycol

Penalties

In the event that non-compliance is identified, you should withdraw the product from the market immediately.

Further action, such as initiating an immediate product recall, may also be required depending on the particular circumstances and the level of risk.

Supplying products that do not comply with a ban is an offence under the Trade Practices Act. Fines for non-compliance are:

- up to \$1.1 million for companies
- up to \$220 000 for individuals.

Key terms used in this guide

DEHP	Diethylhexyl phthalate, which is identified by the unique Chemical Abstract Service (CAS) Number 117-81-7 and is also known as Diethylhexyl phthalate, Di(2-ethylhexyl)phthalate and Bis(2-ethylhexyl)phthalate.
interim ban	An interim ban under the Trade Practices Act prohibits the supply of particular goods for a period of 18 months, after which the ban may be made permanent.
OECD	Organisation for Economic Co-operation and Development.
SI units	Abbreviated form for the International System of Units (or le Système International d'Unités). It is the modern form of the metric system.
supplier	Anyone who is in the business of selling, exchanging, leasing, hiring or offering for sale through hire purchase.
supply	The term refers to selling, exchanging, leasing, hiring or offering for sale through hire purchase.
<i>Trade Practices Act 1974</i>	The <i>Trade Practices Act 1974</i> deals with almost all aspects of the marketplace: the relationships between suppliers, wholesalers, retailers, competitors and customers. It covers anti-competitive conduct, unfair market practices, industry codes, mergers and acquisitions of companies, product safety, product labelling, price monitoring, and the regulation of industries such as telecommunications, gas, electricity and airports.

Contacts

Australian Competition and Consumer Commission

Product safety

By regularly checking the **Product safety** page on the ACCC website, you can keep informed about mandatory standards, bans, recalls and emerging issues.

Our website also contains our media releases and links to related websites.

For further information, subscribe to the email alerts in the **Notify me** box on the **Product safety** page at www.accc.gov.au.

Infocentre: 1300 302 502

Website: www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service: www.relayservice.com.au.

Voice-only (speak and listen) users—phone **1300 555 727** and ask for **1300 302 502**.

SAI Global

For copies of mandatory Australian / New Zealand standards, contact SAI Global on 131 242 or visit the SAI Global website at www.saiglobal.com/shop.

Addresses

National office

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Tel: (02) 6243 1111
Fax: (02) 6243 1199

New South Wales

Level 7
Angel Place
123 Pitt Street
Sydney NSW 2000

GPO Box 3648
Sydney NSW 2001

Tel: (02) 9230 9133
Fax: (02) 9223 1092

Victoria

Level 35
The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

GPO Box 520
Melbourne Vic 3001

Tel: (03) 9290 1800
Fax: (03) 9663 3699

Queensland

Brisbane
Level 3
500 Queen Street
Brisbane Qld 4000

PO Box 10048
Adelaide Street Post Office
Brisbane Qld 4000

Tel: (07) 3835 4666
Fax: (07) 3832 0372

Townsville
Level 6
Central Plaza
370 Flinders Mall
Townsville Qld 4810

PO Box 2016
Townsville Qld 4810

Tel: (07) 4729 2666
Fax: (07) 4721 1538

Western Australia

Third floor
East Point Plaza
233 Adelaide Terrace
Perth WA 6000

PO Box 6381
East Perth WA 6892

Tel: (08) 9325 0600
Fax: (08) 9325 5976

South Australia

Level 2
19 Grenfell Street
Adelaide SA 5000

GPO Box 922
Adelaide SA 5001

Tel: (08) 8213 3444
Fax: (08) 8410 4155

Northern Territory

Level 8
National Mutual Centre
9–11 Cavenagh St
Darwin NT 0800

GPO Box 3056
Darwin NT 0801

Tel: (08) 8946 9666
Tel: (08) 8946 9610
Fax: (08) 8946 9600

Tasmania

Third floor
AMP Building
86 Collins Street
(Cnr Elizabeth and
Collins streets)
Hobart Tas 7000

GPO Box 1210
Hobart Tas 7001

Tel: (03) 6215 9333
Fax: (03) 6234 7796

Children's plastic products with more than
1 per cent diethylhexyl phthalate (DEHP)