



Queensland

Fair Trading (Safety Standards) Regulation 2011

Explanatory Notes for SL 2011 No. 264

made under the

Fair Trading Act 1989

General outline

Short title

Fair Trading (Safety Standards) Regulation 2011.

Authorising law

Section 83 of the *Fair Trading Act 1989* (the Act).

Policy objectives and reasons for them

The policy objective of the regulation is to reduce the risk of childhood injury associated with the use of bunk beds in short-term accommodation premises.

Data collected by the Queensland Injury Surveillance Unit shows that the use of bunk beds can pose a significant safety risk, particularly for young children. It is estimated that bunk bed related injuries account for approximately 1% of injuries presented to emergency departments for children aged 14 years and under, with the peak age group for injuries being children aged 5 to 9 years.

A mandatory safety standard has applied to bunk bed manufacturers and suppliers since 2002 under the Act in Queensland and nationally under the *Trade Practices Act 1974* (which has been repealed and replaced by the *Competition and Consumer Act 2010*).

However, the introduction of the mandatory safety standard in 2002 did not require the upgrade or replacement of bunk beds that were already in place, including those in short-term accommodation premises.

Achievement of policy objectives

Section 83 of the Act allows a regulation to be made prescribing a safety standard for a specified kind of services. The regulation achieves the policy objective by prescribing a minimum, mandatory safety standard for short-term accommodation services that supply or offer bunk beds.

Under the regulation, short-term accommodation means accommodation provided in trade or commerce for a period of 60 days or less. Consistent with the policy objective of reducing the risk of injury to children, the prescribed safety standard applies to short-term accommodation that is supplied or offered for supply to a person who is under 16 years of age.

Similar to the mandatory safety standard that applies to bunk bed manufacturers and suppliers under the *Competition and Consumer Act 2010* (Commonwealth), the prescribed safety standard for the short-term accommodation industry is based on particular provisions of the Australian and New Zealand Standard for Bunk Beds (AS/NZS 4220:1994). The regulation prescribes some modifications to the requirements of the standard to allow for bunk beds that are not built by a manufacturer and are 'built-in' to a room. For example, a wall may form a barrier to prevent children from falling out of the side of a bunk bed that is permanently fixed to the wall. Consultation highlighted that these purpose 'built-in' bunk beds are commonly used in some short-term accommodation premises.

The regulation is to commence on 21 October 2013 to provide the short-term accommodation industry with a reasonable opportunity to upgrade or replace any existing bunk beds that do not meet the minimum safety standard prescribed by the regulation.

After 21 October 2013, any short-term accommodation provider that has failed to comply with the regulation may be subject to a penalty of up to \$1,100,000 for a body corporate and \$220,000 for an individual under *section 83* of the Act.

Consistency with policy objectives of authorising law

The regulation is consistent with the objective of the Act which is to improve consumer wellbeing, including through consumer empowerment and protection.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

A possible alternative approach to achieving the policy objective is through information and education strategies that encourage short-term accommodation providers to ensure their bunk beds meet the Australian and New Zealand Standard for Bunk Beds.

As part of its product safety responsibilities, the Office of Fair Trading promotes bunk bed safety through information and education campaigns targeted at consumers, traders and accommodation providers. The Office of Fair Trading has also contributed to the development of a Standards Australia Handbook on 'Bunk beds for the short-term rental accommodation industry'.

Notwithstanding the availability of information and the development of education campaigns, some short-term accommodation providers have continued to provide bunk beds that do not meet the Australian and New Zealand standard as part of their accommodation services. Therefore, a regulation is considered necessary to reduce the risk of injury to children staying in short-term accommodation premises that currently supply or offer unsafe bunk beds.

Benefits and costs of implementation

Reducing the risk of injury to children associated with the provision of unsafe bunk beds in short-term accommodation premises will benefit individuals, families and the community. Not only will the financial costs associated with treating bunk bed related injuries be reduced, the regulation will also assist families in avoiding the traumatic experience of having a child seriously injured from using an unsafe bunk bed while on holiday.

Effective implementation of the regulation may also increase consumer confidence in the short-term accommodation industry. Individuals and families will have more confidence that the bunk beds provided as part of an accommodation service in Queensland are safe for children.

Some short-term accommodation providers, who currently supply their customers with bunk beds that do not meet the prescribed safety standard, will be required to upgrade or replace those unsafe beds. The costs associated with upgrading or replacing the unsafe bunk beds may be significant, depending on the number of bunk beds each accommodation provider will need to replace.

However, the cost that may be associated with the replacement or upgrade of unsafe bunk beds is mitigated by the substantial period of time (almost 2 years) for compliance. The commencement date of 21 October 2013 will assist short-term accommodation providers in managing the upgrade or replacement costs.

The regulation will also impose costs for Government. The Government will be required to inform the community about the requirements of the regulation, and conduct compliance and enforcement activities to ensure short-term accommodation providers are supplying bunk beds that meet the safety standards prescribed by the regulation.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Consultation

The costs and benefits of possible options for improving bunk bed safety in short-term accommodation premises were analysed through a combined regulatory impact statement and public benefit test, which was released for public consultation in November 2009.

A draft version of the regulation was released for public consultation in September 2011.

Consultation revealed divergent views among key stakeholders. In general terms, health and safety advocates supported the regulation of bunk beds in short-term accommodation premises. In some cases, those stakeholders argued that the safety standards in the regulation should be stricter and the coverage of the regulation should be broadened to include long term rental

accommodation, as well as premises exclusively providing accommodation for people over the age of 16. Some health and safety advocates also argued that the proposed, almost 2 year implementation period was too long, and the regulation should take effect either immediately or at least within a substantially shorter period than 2 years.

While supportive of the broad policy intent of improving child safety, peak bodies representing some short-term accommodation providers (including the tourism industry and community based organisations) expressed concern about the potential costs and practical issues associated with upgrading existing bunk beds, particularly where those bunk beds were 'built-in' or otherwise permanently attached to walls. Some of these stakeholders proposed that if the regulation is made, a longer period for implementation (up to 5 years) should be allowed.

More generally, industry stakeholders highlighted the risk that meeting the costs of upgrading or replacing older bunk beds may place some Queensland tourism operators at a disadvantage compared to interstate competitors who are not specifically required to ensure their bunk beds meet prescribed safety standards.

It is considered that the regulation appropriately balances the competing views and expectations of stakeholders about bunk bed safety in short-term accommodation premises. In particular, the regulation:

- addresses the fact that notwithstanding generic health and safety laws, some accommodation providers are continuing to use old bunk beds that do not include basic safety features such as guardrails;
- is largely consistent with the standard currently applying to bunk bed manufacturers and suppliers so that short-term accommodation providers can be confident of being able to obtain replacement bunk beds that are compliant with the new requirements;
- is consistent with the policy goal of improving child safety in short-term accommodation premises, and avoids imposing costs and obligations on tourism operators that exclusively provide accommodation for adults, who are at far less risk of experiencing a bunk bed-related injury (for example, some backpacker hostels); and

- provides a practical period of time for implementation, recognising that some accommodation providers will need to manage significant costs and construction issues to comply with the new requirements, but also acknowledging that short-term accommodation providers have already had significant notice of the Government's intention to introduce this type of regulation (as stipulated in the public benefit test and regulatory impact statement released for public consultation in 2009).

Both health and safety advocates and the short-term accommodation industry expressed some concern about the technical nature of the regulation and highlighted the risk of some accommodation providers finding it difficult to understand their obligations.

The Office of Fair Trading will work with representatives of short-term accommodation providers to ensure information and education resources are made available to support short-term accommodation providers in meeting their obligations under the regulation.

Queensland Government agencies have been consulted.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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