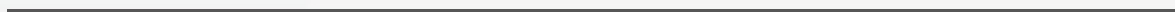




# **Product Safety – Foam-filled furniture: reducing harm from fire**

**Discussion Document  
September-October 2018**



## Information for submitters

The Ministry of Business, Innovation and Employment (MBIE) invites you to submit your thoughts in writing on the proposals outlined in this document.

Your submission may respond to any or all of the questions in the associated questionnaire Microsoft Word (.doc) document or [online submission form](#). Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Use the [online submission form here](#) or send your submission to MBIE:

- by email (either as a Microsoft Word (.doc) or Acrobat (.pdf) document) at: [tradingstandards@mbie.govt.nz](mailto:tradingstandards@mbie.govt.nz)
- by post at: **Foam-filled furniture submissions**, Trading Standards, Ministry of Business, Innovation and Employment, PO Box 1473, Wellington 6140
- by courier at: **Foam-filled furniture submissions**, Trading Standards, Ministry of Business, Innovation and Employment, 15 Stout Street, Wellington 6011.

The closing date for submissions is **11.00pm, 31 October 2018**.

### Use of information

The information provided in submissions will be used to inform MBIE's policy development process. We may contact submitters directly if we require clarification of any matters in submissions.

### Release of information

Submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. Other than submissions that may be defamatory, MBIE may publish submissions on its website. Please set out clearly if you have any objection to the release of any information in your submission, and in particular, which part(s) you consider should be withheld and the grounds (e.g. commercial confidentiality) under the Official Information Act for doing so.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text.

### Privacy

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting the development of policy advice in relation to this review.

### Disclaimer

Views expressed in this document are the views of MBIE and do not reflect government policy. Readers are advised to seek specific advice from an appropriately qualified professional before undertaking any action in reliance on the contents of this document. While every effort has been taken to ensure the information contained in this document is accurate, the Ministry does not accept any responsibility whether in contract, tort (including negligence), equity or otherwise any action taken, or reliance placed on, any part, or all, of the information in this document; or for any error, inadequacy, flaw in, or omission from, this document.

## Purpose

The Ministry of Business, Innovation and Employment (MBIE) Trading Standards<sup>1</sup> is considering ways to reduce the number of injuries and deaths suffered by people every year, involving foam-filled furniture in a fire. MBIE Trading Standards wants to know whether the proposed Product Safety Policy Statement could make the regulatory system more effective in reducing the risk of consumer harm from fire, when foam-filled furniture is involved.

The purpose of this document is to get your feedback on the proposed Product Safety Policy Statement, at page 6.

This document sets out:

- Next steps following this consultation
- Why fire happens and when foam-filled furniture poses a risk from fire
- What a Product Safety Policy Statement is
- The proposed Product Safety Policy Statement, to reduce the risk of consumer harm from fire when foam-filled furniture is involved
- Questions we would like you to answer (you may answer some or all of the questions, and you are welcome to provide other relevant comments)

In developing the proposed Product Safety Policy Statement MBIE considered alternative options to drive safety improvements around the fire safety of foam-filled furniture:

- The option for MBIE to provide information and education but otherwise not intervene in the market, that is maintain the status quo, was discounted because this would be unlikely to provide the impetus for the furniture industry to drive a significant improvement in the fire safety of foam-filled furniture.
- The option to establish mandatory regulatory requirements e.g. under s30 Fair Trading Act, was deferred because it would be a significant intervention in the market, that might not be necessary if the furniture industry self-regulates successfully
- The preferred option was to provide the furniture industry with the opportunity and impetus to self-regulate in response to the fire safety issues of foam-filled furniture, and the guidance provided by the proposed Product Safety Policy Statement.

## Next Steps following this consultation

After consultation has closed, submissions will be reviewed and used to inform advice to the Minister of Commerce and Consumer Affairs on the proposed Product Safety Policy Statement.

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<sup>1</sup> MBIE's Trading Standards is the government's regulator that oversees product safety in New Zealand under the Fair Trading Act 1986. Trading Standards supports the Minister of Commerce and Consumer Affairs to reduce the risks and hazards that products may pose to New Zealand consumers.

## Why fire happens and when foam-filled furniture poses a risk from fire

Fire happens only when all of the following three elements are present:

- Heat (such as a lighter, match or candle flame, gas burner, or a lit cigarette)
- Oxidizing agent (such as oxygen in the air)
- Fuel (such as foam-filled furniture)

Foam-filled furniture, in particular large furniture such as couches, is a significant source of fuel for fire in New Zealand homes. It is widely available in the New Zealand market and includes, but is not limited to, couches, seats, or mattresses. Foam-filled furniture can catch fire easily at relatively low temperatures, and burn quickly and intensely giving off very large quantities of highly poisonous smoke which can suffocate consumers, reduce visibility which makes safe escape harder, and give off a large amount of heat very quickly causing the rapid spread a fire in buildings and injuries and deaths.

*an average 3-piece suite made with flexible polyurethane foam has the combustible potential of 10 litres of petrol and is a high risk for harm or death through burns and/or smoke inhalation (suffocation)  
[source – Fire and Emergency New Zealand ]*

These factors reduce the amount of time consumers have to get away from the fire. Consumers are more at risk in places where they live than in a commercial property, because they do not have to have automatic fire suppression systems (e.g. sprinklers), fire extinguishers, fire escapes, or be smoke-free.

*Fire and Emergency New Zealand (FENZ) believes that if foam-filled furniture were less likely to ignite and burn, then people would have more time to escape (particularly when they were alerted by a smoke alarm). Providing additional time for fire and emergency services to respond to a fire before it takes hold, is critical to their ability to assist trapped consumers and control the fire.*

Coroner's reports show that more people die of smoke inhalation than of burns from the flames. From 2006–2016, the total number of deaths during residential structure fires was 177 and from 2012–2017, there were 1227 fire related injuries.

## **What a Product Safety Policy Statement is**

The Minister of Commerce and Consumer Affairs can make a Product Safety Policy Statement under section 30A of the Fair Trading Act 1986, where there is a safety concern relating to a product or a class of products.

The proposed Product Safety Policy Statement would support and enable the furniture industry to respond to the product safety concerns identified, by providing a consistent set of guidelines to support the management of foam-filled furniture safety that:

- Set out the risks of foam-filled furniture
- Established a benchmark against which to assess the fire resistance of foam-filled furniture
- Set clear expectations about consumers being provided with information they need to make informed decisions on the safety of foam-filled furniture

A Product Safety Policy Statement does not require businesses to follow the guidance, or penalise businesses that do not. However, if the safety of new locally-made and imported foam-filled furniture does not improve over time, then further regulatory action, such as a product safety standard may be required.

## **The proposed Product Safety Policy Statement to reduce the risk of consumer harm from fire when foam-filled furniture is involved**

Businesses involved in the manufacture, importing, or retail of foam-filled furniture are aware that they have the most opportunity and are best placed to make furniture safer. A Product Safety Policy Statement will help businesses to self-regulate and make changes that improve the safety of foam-filled furniture, without placing restrictions on how this could be done.

Unlike mandatory regulation, a Product Safety Policy Statement does not set performance-based standards that businesses must comply with. Instead, a Product Safety Policy Statement is clear about what level of product safety government expects, and enables businesses to decide how to achieve this e.g through innovation or new, safer product solutions such as, inter-liners and fire-retardants.

The benefits of this are that businesses can manage the change in a way that keeps their business viable, and they can avoid unintended outcomes such as replacing one hazard with another due to for example, chemicals that release poisons into the home or are not environmentally friendly when disposed of.

A Product Safety Policy Statement would help businesses improve the fire-resistance of foam-filled furniture through guidance that sets out:

- Why fire happens and why foam-filled furniture poses a risk of harm from fire
- A benchmark fire-resistance rating of foam-filled furniture
- How consumers could be informed on the safety of foam-filled furniture and factor this in purchase decisions
- Monitoring the impact of the Product Safety Policy Statement on the product safety regulatory regime

# ***DRAFT PROPOSED* Product Safety Policy Statement –**

## **Foam-filled furniture: reducing harm from fire**

### **Introduction**

This Product Safety Policy Statement is made by the Minister of Consumer Affairs under section 30A of the Fair Trading Act 1986, with the expectation that manufacturers, importers, and retailers will lead the change to ensure their foam-filled furniture products are safer for consumers to have in their homes and other places where they stay, such as, houses, apartments, sleep-outs, bachs, caravans, campervans, and recreational boats.

This Product Safety Policy Statement highlights the risks associated with foam-filled furniture as a class of goods, and provides guidance for manufacturers, importers, and retailers on reducing the risk of harm to consumers from fire, when foam-filled furniture is involved.

### **Foam-filled furniture**

Foams used in furniture are made from:

- Rubber-based biological material such as natural latex derived from the sap of the rubber tree; or
- Petroleum-based chemicals such as polyurethane and synthetic latex; or
- Petroleum-based chemicals combined with biological material such as rubber or soy.

### **Foam-filled furniture included in this Product Safety Policy Statement**

For the purpose of this Product Safety Policy Statement, foam-filled furniture upholstery components and composites include but are not limited to residential furniture that has been designed for personal use in homes and other spaces where consumers stay, such as houses, apartments, sleep-outs and bachs, caravans and campervans, and recreational boats. This includes but is not limited to couches and seats, and mattresses regardless of the foam type used in the furniture.

### **Foam-filled furniture not included in this Product Safety Policy Statement**

For the purpose of this Product Safety Policy Statement, foam-filled furniture does not include commercial furniture that has been designed and tested for use in commercial or institutional settings, such as hospitals.

### **Manufacturer, Importer, and Retailer responsibility**

Under the Consumer Guarantees Act 1993, goods supplied to a consumer must be of acceptable quality. This includes a requirement that they must be safe. Under the Fair Trading Act 1986, goods may be considered unsafe if with reasonably foreseeable use (including misuse), the goods will, or might, cause injury to any person. The Fair Trading Act requires suppliers to take appropriate action to mitigate the risks if goods they have supplied will, or may, cause injury.

This Product Safety Policy Statement provides guidance and establishes a product safety benchmark for the goods that are the subject of the statement. This enables manufacturers, importers, and retailers in the foam-filled furniture industry to self-regulate to improve consumer safety. The intention is that the Product Safety Policy Statement will address product safety risks with those goods, without more formal regulatory intervention being required.

Product Safety Policy Statements are a part of the product safety regulatory regime in New Zealand. The success of the Product Safety Policy Statement will depend on its adoption in the furniture industry and the engagement of manufacturers, importers, and retailers in the development and implementation of guidance, and the monitoring of its impact.

## Guidance

The guidance sets out:

- Why fire happens and why foam-filled furniture poses a risk of harm from fire
- A benchmark fire-resistance rating of foam-filled furniture
- How consumers could be informed on the safety of foam-filled furniture
- Monitoring the impact of the Product Safety Policy Statement on the fire-resistance of foam-filled furniture available in New Zealand

### **Why fire happens and why foam-filled furniture poses a risk from fire**

#### **Why fire happens**

Fire happens only when all of the following three elements are present:

- Heat (such as a naked flame, for example an open fire, cigarette or barbeque lighter, or lit candle, cigarette, gas burner, or match)
- Oxidizing agent (such as oxygen in the air)
- Fuel (such as the foam in foam-filled furniture)

#### **Why foam-filled furniture poses a risk from fire**

Foam-filled furniture is a significant source of fuel for fire, and the furniture is widely available in the New Zealand market, including but not limited to, couches/sofas, seats, and mattresses.

*an average 3-piece suite made with flexible polyurethane foam has the combustible potential of 10 litres of petrol and is a high risk for harm or death through burns and/or smoke inhalation (suffocation)*  
[source – Fire and Emergency New Zealand ]

Consumers need time to get away from fire but petroleum-based foam (such as flexible polyurethane (FPU)) contains chemicals that increase the combustibility and ignitability, and danger from furniture due to the:

- Ease with which foam can ignite
- Speed with which foam burns and can spread fire

- Heat energy the foam gives off when it burns
- Large volumes of poisonous smoke and gases, such as carbon monoxide and hydrogen cyanide, foam can produce when burnt

*If petroleum-based foam-filled furniture catches fire, then so much smoke can be released that the fire cannot burn it all off. This leads to superheated flammable and poisonous smoke spreading throughout the building until it reaches areas of fresh air. This then ignites, and causes the fire to extend into rooms that were previously untouched by the original source of the fire.*

These factors reduce the amount of time consumers have to safely get away from the fire. Consumers are more at risk in places where they live than in a commercial property, because with the exception of apartment buildings, homes are not required have to have fire suppression systems (such as sprinklers), fire-resistant escape routes, or be smoke-free.

### **A benchmark, fire-resistance rating of foam-filled furniture**

Fire and Emergency New Zealand (FENZ) recommends fire-resistant foam-filled furniture should give consumers significantly more time to escape from fire. Foam-filled furniture currently in the market can develop into a serious fire within 2 to 3 minutes after ignition, i.e. when flaming combustion begins.

FENZ says it could take just five minutes for fire and poisonous smoke to consume a house. Whilst it is not the only fuel, the fire-resistance of foam-filled furniture directly impacts on the ability for consumers to escape, from the time their furniture ignites.

#### **Manufacturers and Importers role**

Manufacturers and importers should be aware of the fire-resistance of foam-filled furniture, that is, the time it takes for the foam in the furniture to ignite (i.e. the point at which flaming combustion begins)

Manufacturers and importers should ensure foam-filled furniture complies with an international standard on the flammability of furniture for each of the following:

- Open flame test (sometimes referred to as a match test), and
- Smouldering resistance test (sometimes referred to as a cigarette test) of upholstery composites, and
- Radiant heat test of fabric covering foam-filled furniture

At least one of the tests referenced by Trading Standards should be used, for example:

- United Kingdom: Upholstered Furniture (Fire) (Safety) regulations (HMSO, 1988)<sup>2</sup> <http://www.legislation.gov.uk/ukxi/1988/1324/contents/made>
- California: Technical Bulletin 116<sup>3</sup> <http://www.bearhfti.ca.gov/industry/116.pdf>

#### **Retailers' role**

Retailers should inform consumers about the fire-resistance of all foam-filled furniture, as set out in the following section.

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/1988/1324/contents/made>

<sup>3</sup> <http://www.bearhfti.ca.gov/industry/116.pdf>



## **How consumers can be informed on the safety of foam-filled furniture**

Foam-filled furniture, specifically that which meets or exceeds the safety benchmark established in this Product Safety Policy Statement should be advertised and displayed and supplied with information that enables consumers to include fire safety in their purchase decisions. This information should be provided through:

- Signs on websites
- Signs on furniture
- Being told by the sales assistant
- Permanent labels on the furniture which includes the test methodology used to determine if the product meets safety thresholds established in the Product Safety Policy Statements.

Foam-filled furniture that meets or exceeds the benchmarked fire-resistance rating could be identified as such by using the Trading Standard's 'safety triangle' sign that will be developed.

## **Monitoring the impact of the Product Safety Policy Statement on the fire-resistance of foam-filled furniture**

MBIE Trading Standards is aware it would take time for manufacturers and importers to change their foam-filled furniture products, and for retailers to introduce signage and staff training, and to sell existing stock. Voluntary compliance with the Product Safety Policy Statement would be monitored closely over the next two years, and feedback on its effectiveness would be sought from manufacturers, importers, retailers, and consumers. The engagement of manufacturers, importers, and retailers with Trading Standards is required to monitor how well the product safety regulatory regime works and keep it fit-for-purpose. In particular, early engagement should be made by manufacturers, importers, and retailers with Trading Standards, on risks and issues that stop or impede the supply of furniture that meets or exceeds the benchmark, or the informing of consumers about the fire-resistance of furniture, and what could mitigate the risks and overcome the issues.

A satisfactory improvement in the market place over the next two years on the fire-resistance rating of foam-filled furniture, and in the information provided to consumers on this, may avoid the need for mandatory regulatory action. A satisfactory improvement would be:

- A residential market of foam-filled furniture that increasingly year-on-year meets or exceeds the benchmark, including:
  - o an increase in new supplies to the residential market of foam-filled furniture that meets or exceeds the benchmark
  - o with a corresponding decrease in new supplies to the residential market of foam-filled furniture that does not meet or exceed the benchmark
- The introduction of consumer information as follows (*to be advised after consultation submissions have been considered*)

In addition, the Product Safety Policy Statement would be reviewed at least every 5 years.