EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 154

Issued by the authority of the Minister for Resources and Energy on behalf of the Treasurer

Competition and Consumer Act 2010

Trade Practices (Industry Codes – Oilcode) Amendment Regulation 2012 (No. 1)

Section 172 of the Competition and Consumer Act 2010 (the Act) provides, in part, that the Governor-General may make regulations prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 51AE of the Act provides that regulations may prescribe a mandatory industry code for the purposes of the Act. The Trade Practices (Industry Codes – Oilcode) Regulations 2006 (the Principal Regulations) prescribe a mandatory industry code for the retail petroleum industry to regulate the conduct of suppliers, distributors and retailers in the petroleum marketing industry.

The Minister for Resources and Energy released the outcomes of the statutory review of the Principal Regulations (the Oilcode Review) on 24 August 2009. Consultation on the Oilcode Review recommendations occurred with industry, industry associations, Government agencies and other stakeholders to inform the Australian Government’s response. The Australian Government’s response was released in June 2011.

The purpose of this Regulation is to amend the Principal Regulations to implement the recommendations in the review, thereby reflecting the Australian Government’s response to the Oilcode Review. The Regulation:

- requires suppliers to disclose more information to re-sellers to facilitate referee checks and informed decision-making;
- prohibits suppliers from attempting to induce re-sellers to make it a condition of the supplier/re-seller contract that the re-seller’s contact details are not disclosed;
- enhances and clarifies the Oilcode dispute resolution scheme processes; and
- replaces all references to the Act’s former title and applicable sections of the Trade Practices Act 1974 with the Act’s current title and applicable sections.

Details of the Regulation are set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Regulation commences on the day after its registration on the Federal Register of Legislative Instruments.
Details of the Trade Practices (Industry Codes – Oilcode) Amendment Regulation 2012 (No. 1)

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the Trade Practices (Industry Codes – Oilcode) Amendment Regulation 2012 (No. 1).

Section 2 – Commencement

This section provides for the Regulation to commence on the day after its registration on the Federal Register of Legislative Instruments.

Section 3 – Amendment of Trade Practices (Industry Codes – Oilcode) Regulations 2006

This section provides that the Trade Practices (Industry Codes – Oilcode) Regulations 2006 (the Principal Regulations) are amended as set out in the Schedule.

Schedule – Amendments

Item [1] – Regulation 1

This Item changes the title of the Principal Regulations to Competition and Consumer (Industry Codes – Oilcode) Regulation 2006 to reflect the change in the title of the Act that provides the authority for this Regulation and to adopt the singular reference to the Principal Regulations.


This Item adopts the singular reference to the Principal Regulations.


This Item changes the reference to the Trade Practices Act 1974 to the Competition and Consumer Act 2010, to reflect the change in the title of the Act that provides the authority for this Regulation.

Item [4] – Schedule 1, heading

This Item changes the Schedule 1 heading from “Schedule 1 Oilcode (Regulation 3)” to “Schedule 1 Oilcode (section 3)”.  

Item [5] – Schedule 1, section 1, note

This Item omits the note in section 1 of the Principal Regulations.
Item [6] – Schedule 1, section 2, note

This Item omits the note in section 2 of the Principal Regulations.

Item [7] – Schedule 1, subsection 3(2)

As the first statutory review has occurred, this Item changes the subsection to specify the latest date that the Department of Resources, Energy and Tourism will commence the next review of the Oilcode.

Item [8] – Schedule 1, subsection 4(1), definition of Act

This Item changes the reference to the Trade Practices Act 1974 to the Competition and Consumer Act 2010, to reflect the change in the title of the Act that provides the authority for this Regulation.

Item [9] – Schedule 1, section 17

This Item gives effect to Oilcode Review Recommendation 4 which is to “allow re-sellers that receive the Short Form Disclosure Document (see Annexure 2) the right to be provided with the Long Form Disclosure Document (see Annexure 1) on request”.

Item [10] – Schedule 1, after subsection 20(1)

This Item gives effect, through the insertion of subsection 20(1A), to Oilcode Review Recommendation 3 which is to “require that suppliers not attempt to induce a re-seller or past re-seller to make it a condition of their contract that their contract details are not disclosed”.


This Item changes the reference to “trade practices law” to “the Act”. A number of items provide for this change. It is necessary to update the Principal Regulations to take account of the change in title of the Act from the Trade Practices Act 1974 to the Competition and Consumer Act 2010.

Item [12] – Schedule 1, after subsection 43(1)

This Item gives effect, through the insertion of subsection 43(1A), to Oilcode Review Recommendation 9 which is to “adopt a formal dispute definition and notification mechanism consistent with the Franchising Code of Conduct (section 29(1)), specifically that the complainant must tell the respondent in writing:
   (a) the nature of the dispute;
   (b) what outcomes the complainant wants; and
   (c) what action the complainant thinks will settle the dispute”.
Item [13] – Schedule 1, after subsection 44(4)

This Item gives effect, through the insertion of subsection 44(4A), to Oilcode Review Recommendation 7 which is to “provide greater clarity and certainty to the dispute resolution scheme”. This change will ensure that each of the disputing parties is represented in the mediation (or other) process to resolve section 44 matters (disputes other than under section 43) by a person who has full authority to make an agreement that may result from the process.

Item [14] – Schedule 1, after subsection 45(6)

This Item gives effect, through the insertion of subsection 45(7), to Oilcode Review Recommendation 7 which is to “provide greater clarity and certainty to the dispute resolution scheme”. This change allows for the disputing parties to voluntarily submit additional information to the Dispute Resolution Adviser for consideration as part of any non-binding determination process.

Item [15] – Annexure 1, paragraph 1.1(d)

This Item gives effect to Oilcode Review Recommendation 5 which is to “require that suppliers advise potential re-sellers in their disclosure documents of the existence of Australian Competition and Consumer Commission (ACCC) published information on the Oilcode and how it can be sourced”.

Item [16] – Annexure 1, subparagraph 4.1(a)(ii)

This Item changes the reference to “trade practices law” to “the Act”.

Item [17] – Annexure 1, item 6

This Item gives effect to Oilcode Review Recommendations 1 and 2 which are to:

- “require suppliers to disclose the address and contact details of existing re-sellers to prospective re-sellers unless those re-sellers have requested in writing that their details are not to be disclosed”; and
- “require the supplier to disclose the name, address and contact details of re-sellers whose businesses were: transferred; ceased to operate; terminated by supplier; terminated by re-seller; not renewed and bought back by the supplier in the past three years unless those re-sellers request in writing that their details not be disclosed”.

Oilcode Review Recommendations 1 and 2 also provide that “if more than 50 re-sellers are involved, the supplier may instead give only the names, addresses and contact details for those re-sellers in the state, region or metropolitan area in which the re-seller's agreement is to be operated”.

Item [18] – Annexure 2, paragraph 1.1(d)

This Item gives effect to Oilcode Review Recommendation 5 which is to “require that suppliers advise potential re-sellers in their disclosure documents of the existence of ACCC published information on the Oilcode and how it can be sourced”.

Explanatory Statement to F2012L01484
Item [19] – Annexure 2, subparagraph 3.1(a)(ii)

This Item changes the reference to “trade practices law” to “the Act”.

Explanatory Statement to F2012L01484
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

*Trade Practices (Industry Codes – Oilcode) Amendment Regulation 2012 (No. 1)*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Trade Practices (Industry Codes – Oilcode) Amendment Regulation 2012 (No. 1)* is to amend the *Trade Practices (Industry Codes – Oilcode) Regulations 2006* (“the Oilcode”) to implement the recommendations in the review, thereby reflecting the Australian Government’s response to the statutory review of the Oilcode.

The purpose of the Oilcode is to regulate the conduct of suppliers, distributors and retailers in the petroleum marketing industry.

The *Trade Practices (Industry Codes – Oilcode) Amendment Regulation 2012 (No. 1)*:

- requires suppliers to disclose more information to re-sellers;
- prohibits suppliers from attempting to induce re-sellers to make it a condition of the supplier/re-seller contract that the re-seller’s contact details are not disclosed;
- enhances and clarifies the Oilcode dispute resolution scheme processes; and
- replaces all references to the Act’s former title and applicable sections of the *Trade Practices Act 1974* with the Act’s current title and applicable sections.

Human rights implications
This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion
This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.
Consultation


Stakeholders were broadly supportive of the proposed amendments to the Principal Regulations. A stakeholder suggested the addition of a new section 44(4A) to require the specification of the level of relief or contribution (financial or otherwise) sought as the stakeholder considered that the current provision requires a party’s representative to have unlimited authority to make an agreement. In the Government response, the Government noted that implementation of Recommendation 9 (adoption of a formal dispute definition and notification mechanism) will provide sufficient information for the respondent to determine the representative with appropriate delegation to attend the mediation (or other) process.

Some stakeholders sought changes to the dispute resolution model used. However, the Terms of Reference for the Oilcode Review did not seek an assessment of the dispute resolution model or consideration of alternative dispute resolution models. In the Government response, the Government noted that a full review of the Oilcode’s dispute resolution model could be undertaken as part of the next Oilcode Review.

Minister for Resources and Energy for the Treasurer