

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 199

Tobacco Advertising Prohibition Act 1992

Tobacco Advertising Prohibition Amendment Regulation 2012 (No. 1)

Section 34 of the *Tobacco Advertising Prohibition Act 1992* (the Principal Act) provides the power for the Governor-General to make regulations prescribing matters required or permitted by the Principal Act to be prescribed, or necessary or convenient to be prescribed for the carrying out or giving effect to the Principal Act.

The object of the Principal Act, as set out in section 3, is to improve public health by limiting the exposure of the public to messages and images that may persuade them to start or continue smoking, or to use or continue using tobacco products. Under the Principal Act, with certain limited exceptions it is an offence to publish or broadcast a tobacco advertisement.

The Principal Act is a key part of the Australian Government's comprehensive suite of tobacco control measures. The *Tobacco Advertising Prohibition Amendment Act 2012* (the Amending Act) extends the restriction on tobacco advertising to the internet and other electronic media. The Amending Act also includes an exception provision, which means that internet point-of-sale tobacco advertising is permitted, provided that it complies with State/Territory legislation that expressly deals with internet point-of-sale tobacco advertising or, in the absence of such legislation, Commonwealth regulations.

Subsection 16A(2) of the Amending Act expressly allows regulations to be made to prescribe requirements for internet point-of-sale tobacco advertising relating to: the size, content, format and location of such tobacco advertisements; the inclusion of health warnings and warnings about age restrictions on the sale of tobacco products; information about any fees, taxes and charges payable in relation to tobacco products; and systems to restrict people who are under 18 years of age from accessing the advertisements.

The purpose of the regulation is to specify such content and format requirements to reduce the attractiveness and appeal of internet point-of-sale tobacco advertisements, particularly to young people, by essentially requiring the advertisements to be presented in a plain, text-only format with health warnings and age warnings.

Details of the regulation are set out in the Attachment.

The Act does not specify any conditions to be satisfied before the power to make the regulation may be exercised.

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

The regulation commences on the commencement of the provisions in Schedule 1 to the Amending Act, which is on 6 September 2012.

Consultation

This instrument affects retailers who sell tobacco products via the internet. Consultation on options to address the issue of internet tobacco advertising was undertaken through a Regulation Impact Statement (RIS) process. One of the options canvassed in the RIS process was to amend the legislation to extend the existing restrictions on tobacco advertising to the internet, but to allow internet point-of-sale tobacco advertising under certain conditions.

Consultations were held with State and Territory health departments, internet retailers of tobacco products, the tobacco industry, internet service providers, and peak non-government tobacco control and other public health organisations.

Prior to amendment of the Principal Regulations, further consultation on an exposure draft of the regulation was undertaken with these stakeholders.

Authority: Section 34 of the *Tobacco Advertising Prohibition Act 1992*

Details of the *Tobacco Advertising Prohibition Amendment Regulation 2012 (No. 1)***Section 1 – Name of regulation**

This section provides that the title of the regulation is the *Tobacco Advertising Prohibition Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

Section 2 provides for the regulation to commence on commencement of Schedule 1 to the *Tobacco Advertising Prohibition Amendment Act 2012* (the Amending Act).

On 7 February 2011, the Government agreed to the recommendation from the Senate Standing Committee for the Scrutiny of Bills, that the commencement date for Schedule 1 to the Amending Act be six months after Royal Assent rather than by earlier Proclamation, to give adequate time to alert the public to the new legislative requirements. Accordingly the provisions in Schedule 1 to the Amending Act will commence on 6 September 2012.

Section 3 – Amendment of the *Tobacco Advertising Prohibition Regulations*

This section provides that the *Tobacco Advertising Prohibition Regulations* (the Principal Regulations) are amended as set out in Schedule 1 to the regulation.

Schedule 1 – Amendments**Item [1] – Regulation 1**

Item [1] of Schedule 1 substitutes a new regulation 1, stating that the Principal Regulations are to be cited as the *Tobacco Advertising Prohibition Regulation 1993*.

Items [2] and [3] – Subregulation 3 (1)

Subregulation 3(1) of the Principal Regulations contains definitions of terms used in the Principal Regulations that are not used in the *Tobacco Advertising Prohibition Act 1992* (the Principal Act).

Item [2] provides that ‘corresponding graphic’ for a health warning message, means the graphic that appears in the same item as the health warning message in Schedule 1 to the regulation.

Item [3] provides that ‘health warning message’ means a message set out in column 2 of Schedule 1 to the regulation.

In effect, this means that internet point-of-sale tobacco advertisements will be required to display text and graphic health warnings that are required to be on tobacco product packaging pursuant to the *Tobacco Plain Packaging Act 2011*.

Item [3] provides that ‘pop-up’ means a window that appears automatically when a tobacco advertisement is accessed. This item also provides that ‘purchase facility’ means a facility provided by the advertisement for a person accessing the advertisement to purchase a tobacco product.

Item [4] – Regulations 6, 7 and 8

Regulation 6 of the Principal Regulations contains requirements for point-of-sale advertising generally.

Regulation 7 of the Principal Regulations contains requirements for point-of-sale advertising at shops.

Regulation 8 of the Principal Regulations contains requirements for point-of-sale advertising on vending machines.

Item [4] substitutes revised regulations 6, 7 and 8 to remove outdated or redundant elements, and to improve the clarity of each of these regulations. It also inserts a new regulation 8A into the Principal Regulations, which specifies the content and format requirements for internet point-of-sale tobacco advertisements.

Subregulation 8A(2) requires internet point-of-sale tobacco advertisements (in this case, other than the purchase facility for the advertisement; that is, the part of the web site that provides a mechanism for a person to purchase a tobacco product) to list tobacco products in a standardised black and white, text-only format, using the same font and font size so that no tobacco product is displayed more prominently than any other; and state that product prices include all taxes. (The regulation does, however, provide that hyperlinks to information about tobacco products may change from black to blue text after use).

Subregulation 8A(3) requires that internet point-of-sale tobacco advertisements (in this case, including the purchase facility) must include prominent warnings indicating that it is illegal to sell tobacco products to a person under 18 years of age, and that it is illegal to purchase a tobacco product for use by a person under 18 years of age, and a prescribed health warning message and corresponding graphic, consistent with those required to be shown on tobacco product packaging. Subregulation 8A(3) also provides that if the internet point-of-sale tobacco advertisement is designed to be accessed only from a mobile phone, the age warnings and health warnings are to be displayed using a prominent pop-up. Subregulation 8A(3) also requires the internet point-of-sale advertisement to include a system that limits access to the advertisement, including the purchase facility for the advertisement, to a person who is at least 18 years of age.

Subregulation 8A(4) allows internet point-of-sale tobacco advertisements to indicate each product's country of origin in one sentence that does not otherwise describe the product or the components of the product.

Subregulation 8A(5) specifies that the tobacco advertisements may include certain basic information for each tobacco product being advertised, such as the product name, price (inclusive of all taxes), and certain other basic information, but that the advertisements must not contain any other information not required or permitted under the Principal Act or the regulation.

Subregulation 8(6) prohibits internet point-of-sale tobacco advertisements (in this case, including the purchase facility for the advertisements) from including certain content that could promote the purchase or use of tobacco products.

It prohibits the inclusion of words that make claims about or describe the appeal of the products; words or images that entice or are intended to entice a person to purchase tobacco

products; words that contradict, qualify or modify health warnings; images of tobacco products; more than one price for each tobacco product; and content that promotes another internet site that contains a tobacco advertisement.

The purpose of new regulation 8A is to reduce the attractiveness and appeal of internet point-of-sale tobacco advertisements.

Item [5] – Regulation 10

Regulation 10 of the Principal Regulations permitted the display of tobacco advertising signs prior to 1 December 1995. Item [5] deletes regulation 10, as it is now redundant.

Item [6] – After Regulation 10

Item [6] inserts as Schedule 1 to the regulation, a set of five health warning messages and corresponding graphics. Internet tobacco retailers will need to choose one health warning and its corresponding graphic to display in internet point-of-sale tobacco advertisements pursuant to new regulation 8A.

Statement of Compatibility with Human Rights

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

Tobacco Advertising Prohibition 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 Instrument amends the *Tobacco Advertising Prohibition Regulations* to prescribe content and format requirements for internet point-of-sale tobacco advertisements. The purpose of the Instrument is to reduce the attractiveness and appeal of such advertisements, particularly to young people, by requiring the advertisements to be presented in a plain, text-only format with health warnings and age warnings.

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.

Tanya Plibersek

Minister for Health