

EXPLANATORY STATEMENT

Issued by the Authority of the Assistant Treasurer

Consumer (Tobacco) Amendment (Rotation of Health Warnings) Information Standard 2013

Overview

This Legislative Instrument amends an existing information standard to remove the legal requirement for retailers of most tobacco products to rotate the health warnings on the retail packaging of tobacco products. The obligation for manufacturers and importers of tobacco products remains in place. The existing provisions for the rotation of health warnings prescribed in the *Competition and Consumer (Tobacco) Information Standard 2011* applied to all suppliers and this was determined to be too onerous on retailers, both operationally and financially.

Background

Legislative Power

The *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* together with the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*, amended the *Trade Practices Act 1974* (TPA) to implement a new national consumer law regime known as the Australian Consumer Law (ACL). The TPA was renamed the *Competition and Consumer Act 2010* (CCA) on 1 January 2011. The ACL forms Schedule 2 to the CCA.

Subsection 134(1) of Schedule 2 to the CCA provides that the Commonwealth Minister may, by written notice published on the internet, make an information standard for consumer goods of a particular kind that require the provision of specified information about the goods.

Subsection 136(1) provides that a person must not, in trade or commerce, supply consumer goods of a particular kind if an information standard for consumer goods of that kind is in force and those goods do not comply with the standard.

Commencement

This Instrument commences on the day after it is registered.

Disallowance

This Instrument is subject to disallowance under Part 5 of the *Legislative Instruments Act 2003* (LIA).

Sunset Provisions

Under the CCA, an information standard for the rotation of health warnings on the retail packaging of tobacco products is a legislative instrument for the purposes of the LIA. This Instrument is subject to sunset under Part 6 of the LIA. Unless action is taken to defer or exempt it from sunset, it is expected to sunset on 1 October 2023. This estimate assumes it is registered on or before 30 September 2013. This Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Overview of the Legislative Instrument

This Legislative Instrument amends an information standard concerning the supply of tobacco products in retail packaging displaying health warnings in rotation. It revokes the former responsibility of rotation on retailers and applies this to manufacturers and importers of tobacco products in Australia. To make this obligation on manufacturers and importers clear, the following amendments have been made:

- Subsection 1.3(1) includes the definition of ‘manufacturer’ noting that ‘manufacture’ has a corresponding meaning.
- Section 2.1 has modified clause (3) to clarify the requirements for retailers who place single cigars into retail packaging.
- Subsections 9.5(3), 9.6(2) and 9.7(2) have been repealed as they refer to requirements for the time period 1 January 2012 to 30 November 2012 which are now redundant.
- Subsections 9.5(4), (5), (6) and (7), 9.6(3) and (4) and 9.7(3) and (4) omit the words “on retail packaging supplied” and substitute “on retail packaging of tobacco products manufactured in, or imported into, Australia”.
- Subsection 9.5(8) after “retail packaging” inserts “of tobacco products manufactured in, or imported into, Australia”.
- A subsection 9.7A has been included for the purposes of clarifying the point in which the date of the rotation of health warnings on tobacco products manufactured in Australia and imported into Australia is determined.

Consultation

For the purposes of section 17 of the LIA, consultation has been undertaken concerning the product safety standard.

A draft of the Legislative Instrument was circulated for consideration by interested parties, including manufacturers/importers and retailers of tobacco products, and relevant government agencies. Parties who made submissions were either supportive of the final changes or did not oppose them.

Statement of Compatibility with Human Rights

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

Human Rights Implications

The Legislative Instrument engages the right to health and the rights of the child.

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Convention on the Rights of the Child recognises the right of the child to the enjoyment of the highest attainable standard of health.

The Legislative Instrument promotes these rights by providing specified information about the health effects tobacco products may have on the purchaser.

Conclusion

The Legislative Instrument does not limit human rights and is compatible with human rights because it advances the protection of human rights by providing the purchaser of tobacco products with specified information by way of rotating health warnings displayed on the retail packaging.