

EXPLANATORY STATEMENT

1989 No. 336

Trade Practices Act 1974

Trade Practices (Consumer Product Safety Standards) Regulations (Amendment)

The regulations amend the Trade Practices (Consumer Product Safety Standards) Regulations in two ways : A general warning provision and certain specific consumer product safety standards are updated to reflect amendments to the Act, and a form of warrant under section 65Q of the Act is prescribed.

Product Safety Standards (Clauses 2-6)

Existing regulations 5, 7, 8, 9 and 10 refer to section 62 of the Act. That section was repealed by the Trade Practices Revision Act 1986 (the revision Act) and replaced by a new section 65C. By section 31 of the revision Act, regulations made under section 62 continue in force as if they had been made under section 65C; in consequence there has been no pressing need to update the regulations. However, the regulations will be easier to understand if they refer to s.65C rather than to a repealed provision, and accordingly clauses 2-6 replace references to Section 62 in the regulations with a reference to section 65C.

Form of Warrant (Clause 7)

Part V, Division 1A of the Act enacts provisions relating to product safety and product information. Under section 65Q, an authorised officer may enter premises for the purpose of inspecting allegedly unsafe goods (ie. goods which will or may cause injury to a person). Generally, the authorised officer can only exercise this power in accordance with a warrant issued by a judge of the Federal Court or of a State or Territory Supreme Court (the one exception being where the

exercise of the power is required without delay in order to protect life or public safety). Section 65Q(6) provides that the judge, before issuing a warrant, must be satisfied that there are reasonable grounds for issuing the warrant. Section 65Q(7) provides that the warrant must specify the purpose for which it is issued, the time restrictions (if any) on when entry is authorised, the description of the kind of goods authorised to be inspected or sampled, and a day (not later than 7 days from the day on which the warrant is issued) on which the warrant ceases to have effect.

No form of warrant under section 65Q is specified in the Act. The Rules Committee of the Federal Court of Australia has suggested a form the warrant might take, and that the form be prescribed by the regulations to the Act (instead of by Rules of Court). The regulation gives effect to the Committee's suggestions.

Authority

Section 172 of the Trade Practices Act 1974 (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, 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.