

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 195**

Issued by the Authority of the Minister for Competition Policy and Consumer Affairs

*Trade Practices Act 1974*

*Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes)  
Regulations 2008*

Subsection 172(1) of the *Trade Practices Act 1974* (the Act) provides, in part, 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.

Paragraph 65C(1)(a) of the Act provides that a corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, if there is a consumer product safety standard for those goods and they do not comply with that standard.

Subsection 65C(2) of the Act provides that a regulation may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as are reasonably necessary to prevent or reduce risk of injury to any person. These requirements may relate to, among other things, performance, design, or construction of the goods; testing of the goods; and the markings, warnings or instructions to accompany them.

The purpose of the Regulations is to set out a safety standard for manufactured cigarettes to reduce the risk of death or injury caused by fires which result when smouldering cigarettes inadvertently come into contact with flammable materials.

The Regulations require cigarettes to be manufactured in a manner which would result in a reduction in their propensity to burn for their full length without going out. The proposed Regulations would require a minimum of 75% of cigarettes to fail to achieve full-length burns when tested in accordance with Australian Standard AS 4830 –2007 ~ *Determination of extinction propensity of cigarettes*.

Details of the Regulations are at Attachment A.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. For the purposes of section 17 of that Act, consultation undertaken in relation to the Regulations is detailed in the Regulation Impact Statement which is at Attachment B.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments, and apply to all cigarettes manufactured in or imported into Australia on or after 18 months from that date.

**Details of the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008***

**Part 1 Preliminary**

**Regulation 1 – Name of Regulations**

This regulation provides that the name of the Regulations is the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*.

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on the day after they are registered.

**Regulation 3 – Purpose**

This regulation provides that the Regulations set out the safety standard for reduced fire risk cigarettes.

**Regulation 4 – Application**

This regulation provides that the Regulations apply to cigarettes manufactured in or imported into Australia 18 months after the commencement of the Regulations. The regulation also provides that 30 months after the commencement of the Regulations, all cigarettes will need to comply with the safety standard, irrespective of when they were manufactured or imported. This will allow suppliers of cigarettes 12 months to dispose of non-complying stocks and will ensure that there is no incentive to stockpile non-complying stock, as its supply will become illegal thereafter. Manufacturers and importers will be encouraged to comply with the safety standard before they are legally required to do so.

**Regulation 5 – Interpretation**

This regulation defines the various terms used in the Regulations and explains other terminology used in the Regulations. The standard will only apply to manufactured cigarettes, notwithstanding the broad definition of a ‘cigarette’. This is because the material purchased by consumers to construct their own cigarettes will not *per se* fall within the definition.

**Regulation 6 – Different kinds of cigarettes**

This regulation describes what will constitute a different type of cigarette for the purposes of determining whether a test trial needs to be conducted, as required by subregulation 12(4). Cigarettes which purport to have different characteristics to other cigarettes may also burn differently and will therefore need to be tested to ensure that they comply with the requirements of regulation 10.

**Regulation 7 – Retail package**

This regulation explains what is meant by a retail package, when used in regulation 14.

## **Part 2 Safety standard for cigarettes**

### ***Division 1 Safety standard***

#### Regulation 8 – Safety standard

This regulation provides that a safety standard for cigarettes is prescribed by Part 2 of the Regulations, comprising performance requirements, testing requirements and packaging and marking requirements.

#### Regulation 9 – Compliance with safety standard

This regulation requires that cigarettes comply with the performance requirement set out in regulation 10 and that their compliance be demonstrated by testing in accordance with regulations 11 and 12. The regulation also requires that cigarettes must be packaged in accordance with the packaging and marking requirements in Division 4, which require retail packages of cigarettes which comply with the standard to be marked accordingly, in the terms specified in regulation 14.

### ***Division 2 Performance requirements***

#### Regulation 10 – Performance requirements

This regulation specifies the requirement that at least 75% of the cigarettes tested in a test trial must fail to achieve full length burns. The increased propensity of cigarettes to self-extinguish without burning to their full length, which will result from compliance with this requirement, will reduce the likelihood of fires being inadvertently lit when smouldering cigarettes are discarded carelessly or left in proximity to combustible materials.

### ***Division 3 Testing requirements***

#### Regulation 11 – Testing Standard

This regulation provides that compliance with regulation 10 is to be assessed for each kind of cigarette by testing them in accordance with Australian Standard 4830-2007: *Determination of extinction propensity of cigarettes*. The requirements of the testing regime are specified in regulations 12 and 13.

#### Regulation 12 – Testing requirements

This regulation specifies the requirements that must be met when testing whether or not each kind of cigarette complies with regulation 10.

#### Regulation 13 – Lowered permeability bands

This regulation specifies additional requirements for cigarettes that use lowered permeability bands to achieve compliance with regulation 10. A 'lowered permeability band', which is defined in regulation 5, is a concentric band of paper or other material which is included in, or applied to, cigarette paper in order to inhibit the burning of the cigarette. Subregulations (2), (3) and (4) of this regulation establish minimum requirements relation to the positioning of lowered permeability bands, demonstrated by the use of the wording 'not less than' and 'at least'. In that sense, they are not prescriptive of where banding on a cigarette is to be located.

The manufacturing process for cigarettes can work in two ways: cigarettes may be made so that the banding is in the same place on every cigarette (ie, it becomes part of the cigarette design). In other cases, where the banding forms part of and is incorporated in the paper stock which is used in the manufacturing process (eg as when the paper is manufactured with banding at every centimetre), the placement of the band on the cigarette may be random in nature (and in consequence different cigarettes may have their reduced permeability bands in different positions, even within one pack). The intent of subregulations (2), (3) and (4) is to ensure that manufacturers of cigarettes do not attempt to comply with the standard by using only one permeability band at the filter end of the cigarette. In such a case, a cigarette might not extinguish until after it had smouldered through most of the cigarette but still not technically achieve a full length burn. Such cigarettes would be less likely to achieve the goal of reducing fires.

#### ***Division 4 Packaging and marking requirements***

##### **Regulation 14 – Packaging and marking requirements**

This regulation provides for the packaging requirements that apply in relation to cigarettes which comply with the regulatory requirements. After the relevant application dates specified in regulation 4, retail packages of cigarettes must not contain cigarettes which do not comply with the performance standard in regulation 10. The retail packages must also bear a statement which is in the terms specified and complies with the other requirements of the regulation.