

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 66

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)
Amendment Regulations 2009 (No. 1)*

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 *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008* were made last year and 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 standard requires that cigarettes are manufactured so that they will ordinarily self-extinguish when they are not being smoked rather than proceeding to a full-length burn, and applies to all cigarettes manufactured in or imported into Australia after 23 March 2010. After that date, cigarette retailers have 12 months to on-sell non-compliant stock to the ultimate consumer.

The purpose of these Regulations is to amend the safety standard, to reduce the period during which suppliers of non-complying cigarettes can dispose of their stock from 12 months to 6 months so that after 23 September 2010 (ie before the beginning of the 2010 – 11 bushfire season, rather than after), all cigarettes sold in Australia will need to comply with the mandatory standard, irrespective of their date of manufacture or importation.

Details of the Regulations are in the [Attachment](#).

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 was undertaken with Imperial Tobacco, British American Tobacco Australia and Philip Morris, which between them account for nearly 98% of the cigarettes manufactured in

or imported into Australia. While these companies are well placed to represent cigarette suppliers at all levels of the supply chain, the National Independent Retailers Association was also consulted.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Details of the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Amendment Regulations 2009 (No. 1)*

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) Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

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

Regulation 3 – Amendment of *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*

This regulation provides that the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008* (the Principal Regulations) are amended by Schedule 1.

Schedule 1 – Amendment

This schedule provides for an amendment to subregulation 4(2) of the Principal Regulations.

Item [1] Subregulation 4(2) This item substitutes a 24 month period for the period of 30 months provided by the Principal Regulations. The Principal Regulations require cigarettes manufactured or imported on or after 23 March 2010 to comply with a mandatory performance standard. In essence, the standard requires that cigarettes are manufactured so that they will ordinarily self-extinguish when they are not being smoked rather than proceeding to a full-length burn. After 23 March 2010, cigarette retailers have 12 months to on-sell non-compliant stock to the ultimate consumer. This amendment of the Regulations will reduce this ‘sell-through’ period to 6 months.