EXPLANATORY STATEMENT

Nine permanent bans on unsafe goods under the *Trade Practices Act 1974*

This explanatory statement has been prepared with attention to sections 4 and 26 of the *Legislative Instruments Act 2003* (the LIA). It has been prepared by the Australian Competition and Consumer Commission (the ACCC). At the time the instruments to which this explanatory statement applies were made, there was not a requirement to provide an explanatory statement.

Background

The *Trade Practices Act 1974* (the TPA) empowers the administering Minister to take a range of actions to safeguard the Australian community from unsafe goods. Among other things, the Minister:

- may declare goods to be unsafe goods by notice published in the Gazette, and
- may permanently ban unsafe goods 18 months after declaring them to be unsafe if there is no consumer product safety standard in respect of the goods (subsection 65C(7)).

The *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* together with the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*, amends the TPA to implement a new national consumer law regime known as the Australian Consumer Law (ACL).

The TPA will be renamed the *Competition and Consumer Act 2010* (CCA) on 1 January 2011. The ACL will form Schedule 2 to the CCA.

Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* sets out transitional matters relating to the commencement of the ACL. Item 3 of Schedule 7 provides that a notice under subsection 65C(7) of the TPA that was in force immediately before the commencement of the ACL, continues in force after the ACL takes effect 'as if' it were a permanent ban imposed under section 114 of the ACL.

Section 114 of the ACL provides that a Commonwealth Minister may impose a permanent ban on consumer goods of a particular kind if an interim ban exists for those goods, or it appears to the Commonwealth Minister that consumer goods of that kind will or may cause injury to any person or a reasonably foreseeable use (including misuse) of consumer goods will or may cause injury to any person.

Under section 131E of Part XI of the CCA, which will come into effect on 1 January 2011, permanent ban notices, made under section 114 of the ACL are to be made by legislative instrument. Therefore, in order for pre-existing permanent bans to be treated 'as if' they were made under the ACL, they must also become legislative instruments.

A total of nine permanent bans, imposed under the TPA, were in force immediately before 1 January 2011. For details of each instrument see Appendix A.

Consultation

Consultation was undertaken with known suppliers before each ban was made under the TPA. Consultation about the decision to register the bans as legislative instruments was not considered necessary or appropriate, as it does not alter what is banned in any way.

Commencement

These instruments have already commenced in accordance with the TPA but, for the purposes of the LIA, they are taken to have commenced on 1 January 2011 as a consequence of the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*.

Disallowance

These instruments are subject to disallowance under Part 5 of the LIA.

Sunsetting

These instruments are subject to sunsetting under Part 6 of the LIA. Unless action is taken to defer or exempt them from sunsetting, they are expected to sunset on 1 April 2021. This estimate takes into account when they are taken to have commenced (see above) and assumes they are registered on or before 31 March 2011.

APPENDIX A

Detail of bans to which this explanatory statement relates

Banned goods	***Reason for ban***	***History of ban***
'No Holes Tongue Studs' and similar products	'No Holes Tongue Studs' and similar products are tongue studs which attach to the tongue without the need for piercing. They are small beads worn as jewellery on the human tongue and have a small opening on one side only, which acts to create a vacuum when attached to the tongue. If one of these tongue studs detaches from the tongue, it is possible to inhale it into the lungs or airways.	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 1 July 2010 by publication in the Gazette.
'Fire Footbags' and other similar goods	'Fire Footbags' and other similar goods are goods manufactured from fire resistant material which are designed to be doused in flammable liquid and ignited. They are intended to be used for the purpose of amusement by kicking and throwing. 'Fire Footbags' and other similar goods were banned because of the risk that they could ignite other flammable material and/or harm consumers. The permanent ban on 'Fire Footbags' and other similar goods does not apply to goods supplied for use by professional entertainers or for theatrical use where the purchaser can demonstrate such qualifications or intended use.	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 25 January 2010
Toothpaste containing more than 0.25 per cent by weight of diethylene glycol	Diethylene glycol (DEG) is used overseas to replace glycerine in toothpaste. It is a toxic substance and serious illnesses have been reported after its ingestion in pharmaceutical preparations such as cough syrup. Medium to long-term exposure to DEG at significant levels may create unacceptable health risks, particularly to children and to people with kidney and liver disease.	Declared banned by the then Minister for Competition Policy and Consumer Affairs on 12 March 2009 by publication in the Gazette.
Mini jelly cups containing konjac	Mini jelly cups containing konjac are small confectionery products often sold in multi-packs. These mouth-sized jelly cups are no more than 45mm in height and width and if swallowed whole, can lodge in the throat causing choking. Konjac is a binding food additive that comes from the root of the konnyaku plant; when eaten, it does not dissolve easily.	Declared banned by the then Parliamentary Secretary to the Treasurer on 21 April 2004 by publication in the Gazette.

Banned goods	***Reason for ban***	***History of ban***
Tinted motor vehicle headlight covers	A tinted motor vehicle headlight cover is a coloured panel placed in front of a motor vehicle headlight. Tinted headlight covers that restrict more than fifteen percent of a headlight's beams are permanently banned. Tinted headlight covers render a vehicle less visible to pedestrians and other drivers as well as reduce the vehicle driver's road vision.	Declared banned by the then Parliamentary Secretary to the Treasurer on 7 May 2003 by publication in the Gazette.
Candles with lead wicks	The goods were banned because candles containing more than 0.06 per cent of lead, when burned in an enclosed area for a long time, can release high levels of lead into the atmosphere. Emissions from candles containing lead are considered hazardous to the health, particularly for unborn babies, small children and pregnant women who can experience a variety of health problems including impaired growth, reproductive disorders and memory loss.	Declared banned by the then Parliamentary Secretary to the Treasurer on 30 October 2002 by publication in the Gazette.
Gas masks which contain asbestos	Gas masks which contain asbestos were banned because they are hazardous to the user's health. The gas masks are fitted with a metal canister containing an asbestos filter. If the mask is used as a breathing apparatus, the user is exposed to asbestos fibres through the filter. This can lead to the development of mesothelioma, a form of cancer. The ban applies to gas masks for use and collectable gas masks.	Declared banned by the then Minister for Consumer Affairs on 15 September 1993 by publication in the Gazette.
Chewing tobacco and snuffs intended for oral use	Chewing tobacco and snuffs for oral use are absorbed into the user's system through sucking or chewing rather than burning the tobacco, as is the case with cigarettes or cigars. Chewing tobacco and snuffs for oral use can carry levels of nicotine equivalent to or greater than those found in cigarettes. Studies have shown a link between the use of smokeless tobacco products and a variety of diseases/infections such as pancreatic cancer, oral cancer, pharyngeal cancer and local lesions in the mouth.	Declared banned by the then Minister of State for Justice and Consumer Affairs on 4 June 1991 by publication in the Gazette.
Glucomannan in tablet form	Glucomannan is an appetite suppressant that swells in the stomach to create a feeling of fullness. Glucomannan in tablet form was permanently banned due to the hazards associated with the tablet swelling prematurely, causing choking while swallowing. Glucomannan is still widely available in capsule and powder forms, which do not pose a choking hazard to the user.	Declared banned by the then Attorney– General of the Commonwealth of Australia on 22 December 1986 by publication in the Gazette.