

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Parliamentary Secretary to the Treasurer

*Competition and Consumer Act 2010*

*Permanent ban on children's products containing more than 1 per cent diethylhexyl phthalate (DEHP)*

### **Background**

Prior to 1 January 2011, a notice declaring goods to be unsafe was made pursuant to subsection 65C(5) of the *Trade Practices Act 1974* (TPA) in relation to children's products containing more than 1 per cent DEHP.

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 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.

Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* sets out the transitional matters relating to the commencement of the ACL. Item 2 of Schedule 7 provides that a notice under subsection 65C(5) of the TPA that was in force immediately before the commencement of the ACL takes effect 'as if' it were an interim ban imposed under section 109 of Schedule 2 to the CCA, starting on the day of commencement (1 January 2011). Therefore, an interim ban on children's products containing more than 1 per cent DEHP came into force on 1 January 2011. An interim ban under the ACL exists for a period of 60 days and is able to be extended on two separate occasions by a period of 30 days.

Subsection 114(1) of Schedule 2 to the CCA provides that the 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. A permanent ban on children's products containing more than 1 per cent DEHP is imposed pursuant to subsection 114(1)(a) of Schedule 2 to the CCA.

### **Permanent ban on children's products containing more than 1 per cent DEHP**

Diethylhexyl phthalate is a commonly used chemical plasticiser that is used to make plastics such as PVC soft and flexible. Research by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) into children's products containing more than 1 per cent DEHP shows:

- a risk of reproductive toxicity for children up to and including 36 months of age who may extensively chew and suck (mouth) objects on a recurrent basis for substantial periods of time—in excess of 40 minutes per day

- no risk to older children or to adults because they have less substantial mouth contact with plastic materials that contain DEHP
- no safety concerns for any age group, including infants, if their skin comes into contact with products containing DEHP.

The purpose of the permanent ban on these goods is to ensure ongoing consumer safety by prohibiting the supply of children's products containing more than 1 per cent DEHP. The associated hazard is the risk of reproductive toxicity (for example, infertility, altered sexual behaviour and possible birth defects in offspring) in children up to and including 36 months of age who may extensively chew and suck (mouth) such items.

Under the CCA, a permanent ban on children's products containing more than 1 per cent DEHP is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). For the purposes of section 17 of the LIA, consultation has been undertaken both at the time the notice was made under subsection 65C(5) of the TPA and also in January 2011 when the proposed ban notice was published on the internet in accordance with subsection 132(3) of Part XI to the CCA. There are no known suppliers of these banned goods.

This instrument is subject to sunseting under Part 6 of the LIA. Unless action is taken to defer or exempt it from sunseting, it is expected to sunset on 1 April 2021. This estimate assumes it is registered on or before 31 March 2011.