

EXPLANATORY STATEMENT

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

Competition and Consumer Act 2010

Consumer Protection Notice No. 7 of 2013

Second extension to the interim ban on certain consumer goods containing synthetic drug substances

Background

Subsection 109(1)(a)(ii) of Schedule 2, the Australian Consumer Law (the ACL), to the *Competition and Consumer Act 2010* (CCA) provides that a responsible Minister (Commonwealth, State and Territory Consumer Ministers) may impose an interim ban on consumer goods of a particular kind, if it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of those goods will or may cause injury to any person.

The Commonwealth Minister (Assistant Treasurer the Hon. David Bradbury) imposed an interim ban on certain consumer goods containing synthetic drug substances on 18 June 2013. Subsection 111(1) of the ACL provides that an interim ban remains in force for a period of 60 days. The interim ban was registered on the Federal Register of Legislative Instruments (FRLI) on 18 June 2013 and was in force for 60 days until the end of 16 August 2013.

On 16 August 2013, the Commonwealth Minister extended the interim ban for 30 days from 16 August until 14 September 2013, under subsection 111(2) of the ACL. Consumer Protection Notice No. 5 of 2013, which extended the interim ban for 30 days, was registered on the Federal Register of Legislative Instruments on 16 August 2013 and it commenced on the day of registration.

Subsection 111(6) of the ACL provides for the Commonwealth Minister to further extend the ban period by an additional 30 days provided the extended ban period has not ended.

Further extension of the interim ban on certain consumer goods containing synthetic drug substances from 14 September 2013 until 13 October 2013.

The Commonwealth Minister is extending the interim ban on certain consumer goods containing synthetic drug substances by a further 30 days for the period **from 14 September 2013 until 13 October 2013**. The interim ban applies to the supply of certain consumer goods containing psychoactive substances (generally referred to as synthetic drugs) that are a form of synthetic cannabinomimetic, NBOMe type substance, or synthetic cocaine type substance that are proscribed by Schedule 9 of the Poisons Standard 2012 as well as other named products believed to be synthetic drugs. The taking of unapproved psychoactive substances is hazardous to consumers' health and may result in death, serious illness or serious injury.

The interim ban was initially imposed following the imposition of similar interim bans in both New South Wales and South Australia. The Assistant Treasurer decided that the imminent risk of death, serious illness or serious injury in relation to the use of these drugs warranted a national interim ban on their supply. The national interim ban was imposed without delay

(as provided for under section 132J of the CCA) and overrode the state interim bans where they applied to the same goods.

The control of the supply of synthetic drug type substances is generally given effect through State and Territory drug laws. The national interim ban was imposed because the New South Wales and Northern Territory governments did not, at that time, have drug laws that prohibited or regulated the supply of consumer goods containing certain synthetic drug substances. The imposition of the interim ban meant that the supply of these goods was prohibited while both the New South Wales and Northern Territory governments took steps to update laws to include coverage of all substances that are proscribed by Schedule 9 of the *Poisons Standard 2012*.

The interim ban was imposed via Consumer Protection Notice No. 3 of 2013 and is available on the ComLaw website - <http://www.comlaw.gov.au/Details/F2013L01053>.

The interim ban was due to lapse on 16 August 2013 but was extended by the Assistant Treasurer by 30 days. While the Northern Territory government had updated its drug laws to prohibit the supply of substances proscribed by Schedule 9 of the *Poisons Standard 2012*, the New South Wales government required additional time to put in place legislation to address these hazards and protect consumers.

The Notice to extend the interim ban is Consumer Protection Notice No. 5 of 2013 and is available on the ComLaw website - <http://www.comlaw.gov.au/Details/F2013L01584>.

The New South Wales government requires additional time to finalise relevant legislation to protect consumers and therefore the Assistant Treasurer has decided to further extend the ban period for the interim ban by an additional 30 days.

Consultation

Subsection 131E(1)(d) of the CCA provides that a notice made under section 111 of the ACL is a legislative instrument. Section 17 of the *Legislative Instruments Act 2003* (LIA) states that the rule maker should consult prior to making a legislative instrument. Section 18 of the LIA outlines the circumstances where consultation may be unnecessary or inappropriate. An instrument which is of a minor or machinery nature and that does not substantially alter existing arrangements is an example where consultation is unnecessary or inappropriate (subsection 18(2)(a) of the LIA).

The Legislative Instrument extending the extended ban period for the interim ban for a further 30 days is of a minor nature and does not significantly alter existing arrangements; therefore consultation has not been undertaken.

When the interim ban was imposed, the Assistant Treasurer decided that the banned substances created an imminent risk of death, serious illness or serious injury. The Assistant Treasurer decided and gave notice that the interim ban should be made without delay, as provided for under section 132J of the CCA. As a result, consultation did not take place prior to imposing the interim ban. However, after the interim ban was imposed, the Assistant Treasurer invited any person who supplied or proposed to supply goods which were captured under the interim ban to request a conference with the Australian Competition and Consumer Commission. A conference was not requested.

Commencement

The Legislative Instrument commences on 14 September 2013.

Disallowance

This instrument is subject to disallowance under Part 5 of the LIA.

Period of Effect

This (second) extension to the interim ban is effective for a period of 30 days unless the interim ban is revoked beforehand

There is no provision for a further (third) extension to an interim ban under the CCA.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Human Rights Implications

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Legislative Instrument engages the right to health and the rights of the child.

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Convention on the Rights of the Child recognises the right of the child to the enjoyment of the highest attainable standard of health.

The Legislative Instrument promotes these rights by ensuring the on-going ban on the supply of consumer goods which may cause death, serious illness or serious injury.

Conclusion

The Legislative Instrument does not limit human rights and is compatible with human rights because it advances the protection of human rights by ensuring the on-going ban on the supply of consumer goods containing unapproved and hazardous synthetic drug substances.