

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Small Business

Competition and Consumer Act 2010

Further extension of the ban period for the interim ban on certain decorative alcohol fuelled devices

Background

The Minister for Small Business imposed an interim ban on certain decorative alcohol fuelled devices. The interim ban commenced on 17 March 2017 for a period of 60 days.

The notice to impose an interim ban on certain decorative alcohol fuelled devices is available on the Federal Register of Legislation website at <https://www.legislation.gov.au/Details/F2017L00236>.

The interim ban applies to devices designed for domestic use producing a flame using alcohol as fuel, primarily for decorative purposes, but excludes each of the following:

- those with a power output more than 4.5 kilowatts;
- those that require installation in a fixed position;
- those designed for food warming;
- those with a dry weigh of at least 8 kilograms and a footprint of at least 900 square centimetres and that satisfy one or more of the following:
 - (a) the device has a fuel tank that must be removed from the device for refuelling and the device displays a permanent, prominent legible warning with the following test:

WARNING

Filling an alcohol fuelled device while lit has caused severe burns.

You must remove the fuel tank from the device before refilling.

When refilling first check the flame is extinguished and that the device is cool.

or

- (b) the device is supplied with a fuel container that incorporates a flame arrestor and the device displays a permanent, prominent legible warning with the following text:

WARNING

Filling an alcohol fuelled device while lit has caused severe burns.

When refilling only use containers with a flame arrestor.

When refilling first check the flame is extinguished and that the device is cool.

On 8 May 2017 the Minister for Small Business extended the interim ban period for 30 days so that the extended ban period ended on 14 June 2017.

The notice to extend the ban period for the interim ban is available on the Federal Register of Legislation website at <https://www.legislation.gov.au/Details/F2017L00518>.

Further extension of the ban period for the interim ban on certain decorative alcohol fuelled devices

The Minister for Small Business has further extended the interim ban period for 30 days to 14 July 2017 to allow the ACCC to finalise its consideration of what, if any, longer term options for the regulation of certain decorative alcohol fuelled devices are appropriate to minimise the risk of injury to persons.

Consultation

Section 131E of the *Competition and Consumer Act 2010* (CCA) provides that an interim ban made under section 109 of the Australian Consumer Law which is Schedule 2 to the CCA is a legislative instrument for the purposes of the *Legislation Act 2003*. Section 17 of the *Legislation Act 2003* provides that before a legislative instrument is made, the rule maker must be satisfied that any consultation that is considered to be appropriate, and reasonably practicable to undertake has been completed.

No consultation has been undertaken before making the legislative instrument to further extend the period for the interim ban for 30 days. This is because extending the ban period is of a minor nature and does not alter existing arrangements. Therefore, consultation was not considered necessary in this particular case.

Commencement

The instrument commences on the day after it is registered on the Federal Register of Legislation.

Disallowance

This legislative instrument is subject to disallowance under Chapter 3, Part 2 of the *Legislation Act 2003*.

Period of effect

This further extension of the ban period for the interim ban on certain decorative alcohol fuelled devices is effective for a period of 30 days starting on 15 June 2017, unless revoked.

Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

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 further extends the interim ban period on certain decorative alcohol fuelled devices. These devices, or the reasonably foreseeable use (including a misuse) of these devices, may cause injury to persons, due to uncontrolled fire while refuelling the device or while lighting the device or while being in close proximity to the device.

Human Rights Implications

The legislative instrument engages the right to health contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The legislative instrument promotes these rights by removing from sale consumer goods, which may cause injury.

Conclusion

The legislative instrument does not limit human rights and is compatible with human rights. It advances the protection of human rights by removing from supply certain decorative alcohol fuelled devices, minimising the risk of injury to persons.