

EXPLANATORY STATEMENT

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Amendment (On-Product Health Messages) Rules 2024

Purpose and operation

The *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Amendment (On-Product Health Messages) Rules 2024* (the amendment rules) provide transitional rules for the transition to a new tobacco product requirement. The amendment rules amend the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024* (the main transitional rules). The rules are made under the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023* (Consequential and Transitional Act). The new tobacco product requirement is the prescription of on-product health messages on cigarettes that contain a filter.

Background

The *Public Health (Tobacco and Other Products) Act 2023* (the new Act) regulates the advertising and presentation of tobacco and other products in order to discourage the use of such products, and for related purposes. Relevantly, the new Act provides for requirements in relation to tobacco products and tobacco product accessories. Some of these requirements were consolidated from pre-existing legislation and other instruments, while other requirements are new in the Australian context.

The Consequential and Transitional Act deals with consequential and transitional matters arising from the enactment of the new Act. It provides in Schedule 2 to the Consequential and Transitional Act for application, saving and transitional provisions. Part 3 of Schedule 2 makes provision for transitional arrangements in relation to certain tobacco product requirements in Chapter 3 of the new Act during the main transition period. The ‘main transition period’ is a 12-month period from 1 April 2024 to 31 March 2025, where tobacco products can be compliant with either the requirements of the *Tobacco Plain Packaging Act 2011* (TPP Act) or the new Act. Division 3 provides retailers a further 3-month period, i.e. totalling 15-months from 1 April 2024 to 30 June 2025, to allow sufficient time for the sale or return of TPP Act compliant old stock, and to adjust stock ordering ahead of commencement.

Part 4 of Schedule 2 of the Consequential and Transitional Act makes provision for the application of certain tobacco product requirements in Chapter 3 of the new Act after the end of the main transition period. The tobacco product requirements in Division 2 of Part 4 relevantly relate to new requirements. The main transitional rules define a ‘new measure transition period’ and provide for the application of the new tobacco product requirements in Division 2 of Part 4 of Schedule 2 of the Consequential and Transitional Act where the

regulated tobacco item has been supplied to a retailer before the start of the new measure transition period.

The Public Health (Tobacco and Other Products) Amendment (On-Product Health Messages and Other Measures) Regulations 2024 amended the Principal Regulations to provide for on-product health messages to be included on cigarettes that contain a filter to implement a dissuasive measure on tobacco products. Accordingly, this reflects a new tobacco product requirement. The Regulations prescribe eight on-product health messages that must appear on cigarettes that contain a filter. A single message is required to be printed on the tipping or filter paper of individual cigarettes that contain a filter and be duplicated on directly opposite sides of the cigarette.

These amendment rules amend the main transitional rules to similarly provide transition arrangements following the new tobacco product requirement for on-product health messages. This means that retailers can sell stock supplied to them before the end of the main transitional period that either does or does not include an on-product health message subject to their meeting of other legislative requirements.

Authority

Item 33, Part 7, Schedule 2 to the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023* provides in subsection (1) that the Minister may, by legislative instrument, make rules prescribing matters (a) required or permitted by this Act to be prescribed by the rules; or (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act. These transitional rules are made under that authority.

Commencement

This instrument commences the later of the day after this instrument is registered and the day the *Public Health (Tobacco and Other Products) Amendment (On-Product Health Messages and Other Measures) Regulations 2024* commences. The instrument does not commence at all if the amendment Regulations do not commence.

Consultation

No consultation was required on this instrument- the content of the instrument is consistent with the policy intention expressed in the extensive consultation process that was conducted for the *Public Health (Tobacco and Other Products) Act 2023* and the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023*. An exposure draft of the Public Health (Tobacco and Other Products) Amendment (On-Product Health Messages and Other Measures) Regulations 2024 was consulted on in a public consultation process from 30 October 2024 to 8 November 2024. The consultation paper issued along with the exposure draft considered timing for the transition to the new requirement. Submissions to the consultation provided varied feedback on timeframes. Public health stakeholders were supportive of the proposed timeframes. Tobacco companies provided a range of commercial in confidence information regarding estimated timeframes required for implementation.

General

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Amendment (On-Product Health Messages) Rules 2024*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Amendment (On-Product Health Messages) Rules 2024*.

Section 2 – Commencement

Section 2 provides that the instrument commences the later of the day after this instrument is registered and the day the *Public Health (Tobacco and Other Products) Amendment (On-Product Health Messages and Other Measures) Regulations 2024* commences. The instrument does not commence at all if the amendment Regulations do not commence.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1- Amendments

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024

1-Subsection 4(1)

Item 1 inserts new definitions in subsection 4(1). These are definitions for “new regulations” and “on-product health message”.

2 Subsection 5(2) (notes)

Item 2 repeals the notes in subsection 5(2) and substitutes a new note which provides that from the end of the main transition period, and subject to section 6 of this instrument, the retail packaging must include the health promotion inserts (see paragraph 82(1)(a) of the new Act).

Section 6 relates to the application of new measures to pre-supplied regulated tobacco items.

This repeal and substitution clarify the operation of the rules.

3 After section 5

Item 3 inserts new section 5A which relates to the display of on-product health messages on cigarettes during the main transition period.

It is the case that on-product health messages may be displayed despite compliance with section 26 of the old TPP Act. This reflects the circumstance where the product is not yet in compliance with new Act requirements but the on-product health message has been included.

Subsection 5A(1) provides that, despite section 26 of the old TPP Act, a cigarette may, during the main transition period, display an on-product health message as prescribed by section 114A of the new regulations.

A note provides that from the end of the main transition period, and subject to section 6 of this instrument, certain cigarettes must display on-product health messages (see subsection 114A(1) of the new regulations).

Subsection 5A(2) provides that during the main transition period, for the purposes of subitem 14(2) of Schedule 2 to the transitional Act, a cigarette is taken to continue to comply with the requirements of section 26 of the old TPP Act if the criteria in paragraphs 5A(2)(a) and (b) are met. These are that the cigarette displays an on-product health message in accordance with subsection (1) of this section and the appearance of the cigarette otherwise complies with the requirements of section 26 of the old TPP Act, as in force immediately before the commencement day of the new Act.

Subsection 5A(3) provides that during the main transition period, a cigarette containing a filter is taken to comply with subsections 86(2), (3) and (4) of the new Act if the appearance and physical features of the cigarette comply with those subsections other than the requirement to display an on-product health message. This makes clear that on-product health messages are not required despite compliance with the new Act

Subsection 5A(4) provides for a transitional provision in relation to the equal display of on-product health messages as required in section 114C of the new regulations. Section 114C of the new regulations provides that for each brand name and variant name of cigarettes containing a filter, each on-product health message must be displayed as nearly as possible in equal numbers on the cigarettes manufactured in the calendar year beginning on 1 January 2025 and each subsequent calendar year.

Subsection 5A(4) provides that if a cigarette containing a filter is manufactured during the main transition period and the cigarette does not display an on-product health message, the cigarette is not included in determining, for the purposes of section 114C of the new regulations, whether each on-product health message is displayed as nearly as possible in equal numbers on cigarettes manufactured in the calendar year beginning on 1 January 2025.

4 Subsection 6(2)

Item 3 omits “Division 2 of Part 4 of Schedule 2 to the transitional Act” from subsection 6(2) and substitutes “subsection (4)” consequential to the amendment made by item 6.

5 Subsection 6(2) (note)

Item 4 repeals the note to subsection 6(2) consequential to the amendment made by item 6.

6 At the end of section 6

Item 5 adds new subsection (4) at the end of section 6 which relates to relevant tobacco product requirements.

New subsection 6(4) provides that for the purposes of subsection (2), the tobacco product requirements are any of the those sated in paragraphs (a) and (b). These are a tobacco product requirement mentioned in Division 2 of Part 4 of Schedule 2 to the transitional Act (which deals with the application of certain new tobacco product requirements in Chapter 3 of the new Act) and a tobacco product requirement prescribed by subsection 114A(1) of the new regulations.

Statement of Compatibility with Human Rights

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

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Amendment (On-Product Health Messages) Rules 2024

This Disallowable 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*.

Overview of the Disallowable Legislative Instrument

The *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Amendment (On-Product Health Messages) Rules 2024* (the amendment rules) are made for the purpose of the application provisions in the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023* (Consequential and Transitional Act). The Consequential and Transitional Act deals with consequential and transitional matters arising from the enactment of the *Public Health (Tobacco and Other Products) Act 2023* (the new Act). The Consequential and Transitional Act is intended to ensure a smooth transition to the new requirements. These amendment rules amend the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024*.

The amendment rules relate to the new tobacco product requirement for on-product health messages on cigarettes that contain a filter.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Mark Butler MP
Minister for Health and Aged Care