



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

No. 119, 2023

An Act to deal with consequential and transitional matters arising from the enactment of the *Public Health (Tobacco and Other Products) Act 2023*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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[Assented to 14 December 2023]

The Parliament of Australia enacts:

No. 119, 2023

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

1

1 Short title

This Act is the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 December 2023
2. Schedules 1 and 2	At the same time as section 3 of the <i>Public Health (Tobacco and Other Products) Act 2023</i> commences. However, the provisions do not commence at all if that section does not commence.	1 April 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

2 *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023* No. 119, 2023

Schedule 1—Repeals and consequential amendments

Part 1—Repeals

Tobacco Advertising Prohibition Act 1992

1 The whole of the Act

Repeal the Act.

Tobacco Plain Packaging Act 2011

2 The whole of the Act

Repeal the Act.

Part 2—Consequential amendments

Broadcasting Services Act 1992

3 Paragraph 7(1)(a) of Schedule 2

Omit “*Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement”, substitute “*Public Health (Tobacco and Other Products) Act 2023*, broadcast a tobacco advertisement or an e-cigarette advertisement”.

4 Paragraph 8(1)(a) of Schedule 2

Omit “*Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement”, substitute “*Public Health (Tobacco and Other Products) Act 2023*, broadcast a tobacco advertisement or an e-cigarette advertisement”.

5 Paragraph 9(1)(a) of Schedule 2

Omit “*Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement”, substitute “*Public Health (Tobacco and Other Products) Act 2023*, broadcast a tobacco advertisement or an e-cigarette advertisement”.

6 Paragraph 10(1)(a) of Schedule 2

Omit “*Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement”, substitute “*Public Health (Tobacco and Other Products) Act 2023*, broadcast a tobacco advertisement or an e-cigarette advertisement”.

7 Paragraph 11(1)(a) of Schedule 2

Omit “*Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement”, substitute “*Public Health (Tobacco and Other Products) Act 2023*, broadcast a tobacco advertisement or an e-cigarette advertisement”.

8 Clause 6 of Schedule 6

Before “For the”, insert “(1)”.

9 Clause 6 of Schedule 6

Omit “(other than the *Tobacco Advertising Prohibition Act 1992*)”.

10 At the end of clause 6 of Schedule 6

Add:

- (2) Nothing in subclause (1) prevents a matter provided on the datacasting service from constituting the publication of a tobacco advertisement or an e-cigarette advertisement for the purposes of the *Public Health (Tobacco and Other Products) Act 2023*.

11 Paragraph 24(1)(b) of Schedule 6

Omit “*Tobacco Advertising Prohibition Act 1992*, transmit a tobacco advertisement”, substitute “*Public Health (Tobacco and Other Products) Act 2023*, transmit a tobacco advertisement or an e-cigarette advertisement”.

Competition and Consumer Act 2010

12 Section 87D (definition of *smoking*)

Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public Health (Tobacco and Other Products) Act 2023*”.

13 Section 87D (definition of *tobacco product*)

Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public Health (Tobacco and Other Products) Act 2023*”.

14 Section 130 (definition of *smoking*)

Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public Health (Tobacco and Other Products) Act 2023*”.

15 Section 130 (definition of *tobacco product*)

Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public Health (Tobacco and Other Products) Act 2023*”.

Criminal Code Act 1995

16 Paragraph 320.2(2)(b) of the Criminal Code

Omit “section 8 of the *Tobacco Advertising Prohibition Act 1992*”, substitute “the *Public Health (Tobacco and Other Products) Act 2023*”.

Social Security (Administration) Act 1999

17 Section 123TC (definition of tobacco product)

Repeal the definition, substitute:

tobacco product means:

- (a) a tobacco product within the meaning of the *Public Health (Tobacco and Other Products) Act 2023*; or
- (b) an e-cigarette product (within the meaning of that Act) that contains tobacco.

Taxation Administration Act 1953

18 Paragraph 308-55(1)(a) in Schedule 1

Omit “Chapter 2 of the *Tobacco Plain Packaging Act 2011*”, substitute “Chapter 3 of the *Public Health (Tobacco and Other Products) Act 2023*”.

19 Paragraph 308-55(1)(b) in Schedule 1

Omit “mentioned in sections 26 and 27 of the *Tobacco Plain Packaging Act 2011*”, substitute “for a tobacco product in Chapter 3 of the *Public Health (Tobacco and Other Products) Act 2023*”.

20 After paragraph 308-55(1)(e) in Schedule 1

Insert:

- (ea) a permanent ban under Chapter 4 of the *Public Health (Tobacco and Other Products) Act 2023* applies to the tobacco;

Trade Marks Act 1995

21 Subsection 231(2) (note)

Omit “*Tobacco Plain Packaging Act 2011*”, substitute “*Public Health (Tobacco and Other Products) Act 2023*”.

22 Section 231A (heading)

Omit “*Tobacco Plain Packaging Act 2011*”, substitute “***Public Health (Tobacco and Other Products) Act 2023***”.

23 Subsection 231A(1)

Omit “*Tobacco Plain Packaging Act 2011*”, substitute “*Public Health (Tobacco and Other Products) Act 2023*”.

24 Subsection 231A(1) (note)

Omit “Section 28 of the *Tobacco Plain Packaging Act 2011*”, substitute “Section 121 of the *Public Health (Tobacco and Other Products) Act 2023*”.

25 Subsection 231A(2)

Omit “*Tobacco Plain Packaging Act 2011*”, substitute “*Public Health (Tobacco and Other Products) Act 2023*”.

Schedule 2—Application, saving and transitional provisions

Part 1—Preliminary

1 Definitions

(1) In this Schedule:

commencement day means the day section 3 of the new Act commences.

main transition period means the period of 12 months beginning on the commencement day.

new Act means the *Public Health (Tobacco and Other Products) Act 2023*.

old TPP Act means the *Tobacco Plain Packaging Act 2011*.

retailer transition period means the period of 3 months beginning immediately after the end of the main transition period.

Tobacco Information Standard means the *Competition and Consumer (Tobacco) Information Standard 2011*.

(2) An expression used in this Schedule that is also used in the new Act has the same meaning in this Schedule as it has in the new Act.

2 Section 7 of the Acts Interpretation Act 1901

This Schedule does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeals and amendments made by this Act.

Part 2—Tobacco and e-cigarette sponsorships

3 Prohibition of tobacco sponsorships—application

Section 38 of the new Act applies in relation to:

- (a) a contribution made; or
- (b) an arrangement, agreement or understanding that is entered into; or
- (c) a promise or undertaking that is given;

on or after the commencement day.

4 Prohibition of e-cigarette sponsorships—application

Section 65 of the new Act applies in relation to:

- (a) a contribution made; or
- (b) an arrangement, agreement or understanding that is entered into; or
- (c) a promise or undertaking that is given;

on or after the commencement day.

Part 3—Tobacco product requirements—transitional arrangements

Division 1—Preliminary

5 Purpose of this Part

This Part makes provision for transitional arrangements in relation to certain tobacco product requirements in Chapter 3 of the new Act during the main transition period.

Note: Division 3 extends these arrangements for retailers by a further 3 months.

Division 2—Main transitional arrangements

6 Plain packaging—physical features

- (1) This item applies if the retail packaging of tobacco products complies with the requirements of section 18 of the old TPP Act, as in force immediately before the commencement day.
- (2) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements of section 74 of the new Act.

7 Plain packaging—colour and finish

- (1) This item applies if the retail packaging of tobacco products complies with the requirements of section 19 of the old TPP Act, as in force immediately before the commencement day.
- (2) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements of subsection 75(1) of the new Act.

8 Plain packaging—marks

- (1) This item applies if the retail packaging of tobacco products complies with the requirements of section 20 of the old TPP Act, as in force immediately before the commencement day.

- (2) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements of section 77 (except insofar as it relates to brand names or variant names) of the new Act.

9 Plain packaging—brand names and variant names

- (1) This item applies if the retail packaging of tobacco products complies with the requirements of section 21 of the old TPP Act, as in force immediately before the commencement day.
- (2) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements of section 77, insofar as it relates to brand names or variant names, of the new Act.

10 Plain packaging—health warnings

- (1) This item applies if, subject to subitem (2), the retail packaging of tobacco products complies with the requirements of the Tobacco Information Standard, as in force immediately before the commencement day.
- (2) If the retail packaging of cigarettes or other smoked tobacco products displays the combinations of health warnings required by:
- (a) Part 3 (first set of health warnings) of the Tobacco Information Standard; or
 - (b) Part 4 (second set of health warnings) of that Standard;
- then, despite section 9.5 of the Standard, for the purposes of subitem (1), the retail packaging is taken to comply with the requirements of the Standard.
- (3) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements of subsection 78(1) of the new Act.

11 Plain packaging—mandatory markings

- (1) This item applies if the retail packaging of tobacco products complies with the requirements of:
- (a) section 20; and
 - (b) subsection 21(4);

of the old TPP Act, as in force immediately before the commencement day.

- (2) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements of section 79 of the new Act.

12 Plain packaging—wrappers

- (1) This item applies if the retail packaging of tobacco products complies with the requirements of section 22 of the old TPP Act, as in force immediately before the commencement day.
- (2) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements of section 80 of the new Act.

13 Plain packaging—inserts and onserts (other than health promotion inserts)

- (1) This item applies if the retail packaging of tobacco products complies with the requirements of section 23 of the old TPP Act, as in force immediately before the commencement day.
- (2) For the purposes of the new Act, during the main transition period, the retail packaging is taken to comply with the requirements (other than in relation to health promotion inserts) of subsections 82(1) and (2) of the new Act.

Note: For application provisions in relation to the health promotion inserts required to be included in retail packaging by paragraph 82(1)(a) of the new Act, see item 20.

14 Tobacco products—appearance and physical features (other than prohibited terms)

- (1) This item applies if a tobacco product complies with the requirements of section 26 of the old TPP Act, as in force immediately before the commencement day.
- (2) For the purposes of the new Act, during the main transition period, the tobacco product is taken to comply with the requirements of subsections 86(2), (3) and (4) of the new Act.

Note 1: For application provisions in relation to the appearance of prohibited terms on tobacco products, see item 22.

Note 2: For application provisions in relation to the dimensions of a cigarette, see item 23.

Note 3: For application provisions in relation to filter tips in tobacco products, see item 24.

Division 3—Extended transitional arrangements for retailers

15 Scope of Division

Application

- (1) This Division applies in relation to a person (a **retailer**) who, on or after the commencement day:
- (a) sells tobacco products by retail sale; or
 - (b) offers such products for retail sale.

Sell-through provisions

- (2) This Division applies in relation to the following provisions (the **sell-through provisions**) of the new Act:
- (a) section 94 (selling or supplying tobacco products in non-compliant retail packaging);
 - (b) section 96 (possessing tobacco products in non-compliant retail packaging);
 - (c) section 108 (selling or supply tobacco products in non-compliant retail packaging to a constitutional corporation);
 - (d) section 110 (possessing tobacco products in non-compliant retail packaging obtained from a constitutional corporation).

16 Extended transitional arrangements for retailers

A retailer who engages in conduct does not contravene a sell-through provision in relation to a tobacco product requirement that applies to a tobacco product under the new Act if:

- (a) the retailer engages in the conduct during the retailer transition period; and
- (b) the tobacco product requirement relates to the retail packaging of tobacco products; and

Schedule 2 Application, saving and transitional provisions

Part 3 Tobacco product requirements—transitional arrangements

- (c) the tobacco product was supplied to the retailer in the retail packaging before the start of the retailer transition period;
and
- (d) at the time of that supply, the retail packaging of the tobacco product was taken to comply with the tobacco product requirement because of the operation of Division 2 of this Part.

Part 4—Tobacco product requirements—application of new measures

Division 1—Preliminary

17 Purpose of this Part

This Part 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.

Division 2—Application of new tobacco product requirements

18 Plain packaging—standardisation

The tobacco product requirement in section 76 of the new Act applies in relation to the retail packaging of tobacco products after the end of the main transition period.

19 Plain packaging—prohibited tobacco product accessories

The tobacco product requirement in section 81 of the new Act applies in relation to the retail packaging of tobacco products after the end of the main transition period.

20 Plain packaging—health promotion inserts

The tobacco product requirement in paragraph 82(1)(a) of the new Act, insofar as it relates to health promotion inserts, applies in relation to the retail packaging of tobacco products after the end of the main transition period.

21 Prohibited terms—brand names and variant names

The tobacco product requirement in section 85 of the new Act applies in relation to brand names and variant names of tobacco products after the end of the main transition period.

22 Tobacco products—appearance of prohibited terms

The tobacco product requirement in subsection 86(1) of the new Act applies in relation to tobacco products after the end of the main transition period.

23 Tobacco products—physical features (dimensions of a cigarette)

The tobacco product requirement in subsection 86(4) of the new Act, insofar as it relates to the dimensions of a cigarette, applies in relation to cigarettes after the end of the main transition period.

Note: Subsection 86(4) of the new Act allows the regulations to prescribe requirements in relation to the physical features of a tobacco product, such as the dimensions of a cigarette.

24 Tobacco products—physical features (filter tips)

The tobacco product requirement in subsection 86(4) of the new Act, insofar as it relates to filter tips, applies in relation to filter tips after the end of the main transition period.

Note: Subsection 86(4) of the new Act allows the regulations to prescribe requirements in relation to the physical features of a tobacco product, such as filter tips.

25 Tobacco products—contents (ingredients)

The tobacco product requirement in section 87 of the new Act applies in relation to tobacco products after the end of the main transition period.

26 Tobacco products—prohibited devices

The tobacco product requirement in section 88 of the new Act applies in relation to tobacco products after the end of the main transition period.

27 Tobacco product accessories—prohibited functions

The tobacco product requirement in section 91 of the new Act applies in relation to tobacco product accessories after the end of the main transition period.

Part 5—Reporting

28 Reporting entities—financial year reports

- (1) This item applies in relation to the obligation of a reporting entity to give a report to the Secretary under the following provisions of the new Act:
 - (a) section 131 (tobacco product ingredients);
 - (b) section 132 (tobacco product volumes);
 - (b) section 133 (marketing and promotional expenditure).
- (2) The obligations of the reporting entity apply in relation to:
 - (a) the 2024-2025 financial year; and
 - (b) each later financial year.

Part 6—Administration

29 Compliance and enforcement

- (1) Parts 6.2 and 6.3 of the new Act and any related provisions apply for the purposes of ensuring compliance with this Schedule.
- (2) For the purposes of subitem (1), Parts 6.2 and 6.3 apply as if references to “this Act” in those Parts included a reference to this Schedule and any rules made under item 33 of this Schedule.

Note: Parts 6.2 and 6.3 of the new Act deal with the appointment and powers of authorised officers, and trigger monitoring and investigation powers under the *Regulatory Powers (Standard Provisions) Act 2014*.

- (3) A reference in Part 6.2 or 6.3 of the new Act, as it applies under this item, to that Part or a provision of that Part is to be read as a reference to that Part or that provision as it applies under this item.

30 Reports under repealed *Tobacco Advertising Prohibition Act 1992*

Despite the repeal of the *Tobacco Advertising Prohibition Act 1992*, section 34A of that Act continues to apply in relation to the financial year ending on 30 June 2024.

31 Reports under old TPP Act

Despite the repeal of the old TPP Act, section 108 of that Act continues to apply in relation to the financial year ending on 30 June 2024.

32 Reports under new Act

Section 184 of the new Act applies in relation to:

- (a) the 2023-2024 financial year; and
- (b) each later financial year.

Part 7—Transitional rules

33 Transitional rules

- (1) 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.
- (2) Without limiting subitem (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the enactment of the new Act.
- (3) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund;
 - (e) directly amend the text of this Act or the new Act.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitem (1).

*[Minister's second reading speech made in—
House of Representatives on 13 September 2023
Senate on 19 October 2023]*

(116/23)

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Amendments and Transitional Provisions) Act 2023*

No. 119, 2023