

# Commerce (Imports) Regulations (Amendment) 1997 No. 94

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 94

Issued by the Authority of the Minister for Small Business and Consumer Affairs

*Commerce (Trade Descriptions) Act 1905*

Commerce (Imports) Regulations (Amendment)

Section 7 of the *Commerce (Trade Descriptions) Act 1905* provides that the regulations may prohibit the importation or introduction into Australia of any goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.

Regulation 7 of the Commerce (Imports) Regulations (the Regulations) provides that the importation of goods listed in regulation 7 is prohibited unless there is applied to those goods a trade description in accordance with the Regulations. The goods presently listed in regulation 7 include medicines, plants, jewellery, kitchenware and toys. The remaining provisions of the Regulations set out the requirements of a trade description for the listed goods, which include requirements as to contents and date of packaging of foodstuffs and specifications as to the weight of listed goods.

A review of the Regulations, as well as the Customs (Prohibited Imports) Regulations, was recently undertaken.

The aim of the review was to identify any superfluous legal requirements relating to the importation of goods into Australia in the Regulations. First, some Commonwealth controls on importation are superfluous as there is relevant State and Territory legislation which sufficiently controls the goods domestically. In such cases, the Commonwealth control has been removed. Secondly, other Commonwealth controls on importation are superfluous where there are no comparable domestic controls. Such Commonwealth controls have also been removed so as not to constitute a barrier to trade. Thirdly, cases have been identified where the Commonwealth controls were put in place decades ago, and the relevant circumstances have changed, so that the particular controls were no longer needed.

Based on the above criteria, several of the controls under the Regulations were identified as being superfluous. For example, regulation 16 of the Regulations previously set out trade description requirements in respect of imported jewellery. In the case of gold jewellery, the carat quality or degree of millesimal fineness of the gold had to be set out. Other specific requirements applied to jewellery that was wholly or partly covered by gold, silver jewellery and jewellery that was coloured to represent gold and/or silver. There were no similar requirements applied to domestically produced jewellery and so the specific trade description requirements on these products has been removed as it was considered that this control could constitute a barrier to trade.

Also, regulation 18 previously set out trade description requirements in respect of electric incandescent lamps which provided that imported electric incandescent lamps should contain a trade description indicating the rated voltage and wattage. As State and Territory regulations apply to all electrical products, specific trade description requirements for imported lamps were no longer required.

The Regulations have been amended to remove these and other superfluous controls on the importation of goods into Australia.

The amendments are explained in greater detail in the Attachment.

The Regulations commenced on gazetta.

## **ATTACHMENT**

### **Regulation 1 - Amendment**

Regulation 1 provides that the Commerce (Imports) Regulations (hereinafter referred to as the Regulations) are amended as set out in the proposed Regulations.

### **Regulation 2 - Regulation 5 (Interpretation)**

Regulation 2 amended regulation 5 of the Regulations by omitting the specified definitions. These definitions were previously for the purposes of certain trade descriptions which have been removed. Therefore, these definitions were also omitted.

### **Regulation 3 - Regulation 8 (Trade description - general requirements)**

Subregulation 3.1 amended paragraph 8(c) by omitting the words "subject to subregulations 10(7) and (8)". This is a technical amendment only as a consequence of the removal of the trade description requirements in regulation 10 of the Regulations and the omission of that regulation (regulation 7 below refers).

Subregulation 3.2 amended subparagraph 8(d) by omitting the words "subject to regulation 20B". This is a technical amendment only as a consequence of the removal of the trade description requirements in regulation 20B and the omission of that regulation (regulation 7 below refers).

### **Regulation 4 - Regulation 9 (Trade description - additional requirements in certain cases)**

Subregulation 4.1 amended subregulation 9(1) by omitting the cross reference to regulations "10 and 20" and substituting "11 to 20". This is a technical amendment only as a consequence of the omission of regulation 10 by regulation 7 below,

Subregulation 4.2 amended the Regulations by omitting subregulation 9(2). Subregulation 9(2) contained provisions that applied in respect of the trade descriptions previously set out in regulations 20A to 20P inclusive of the Regulations. As regulations 20A to 20P inclusive have been omitted (see regulation 7 below), subregulation 9(2) has also been omitted as its provisions would otherwise have no continuing effect.

### **Regulation 5 - Second Schedule (Standards)**

Regulation 5 amended the Regulations by omitting the Second Schedule. The Second Schedule previously set out certain goods and trade descriptions for the purposes of regulation 21 of the Regulations. As regulation 21 has been omitted (see regulation 7 below), the Second Schedule has also been omitted.

### **Regulation 6 - Other omissions**

Subregulation 6.1 amended the Regulations by omitting regulations 10, 16, 17 18, 19, 20A to 20Q inclusive and regulation 21.

Regulation 7 of the Regulations provides that the importation of goods listed in regulation 7 is prohibited unless there is applied to those goods a trade description in accordance with the Regulations.

### **Omission of regulation 10**

Paragraph 7(1)(a) imposes this restriction upon articles used for food or drink by man, or from which goods or drink for use by man is manufactured or prepared. The requirements of the trade

description in respect of these goods were set out in regulation 10 of the Regulations. Previously, regulation 10 provided that trade descriptions on food and drink products for man should include information about whether the products contain deleterious or preservative substances. Regulation 10 also provided that there should be certain additional information in trade descriptions, for example year of production, on specific products (namely, dried fruit, infants' food, concentrated, condensed and dried milk, pepper berries and salmon).

All food products, domestic and imported, are required to comply with the requirements of the Australian Food Standards Code (AFSC), which is adopted under State and Territory legislation. This Code now regulates the labelling of products referred to in paragraph 7(1)(a). The trade description requirements under regulation 10 on these products have therefore been removed and, as a consequence, regulation 10 has been omitted. Products referred to in paragraph 7(1)(a) continue to be subject to the trade description requirements set out in regulation 8 of the Regulations.

### **Omission of regulation 16**

Paragraph 7(1)(h) imposes the restriction on importation on jewellery. The requirements of the trade description in respect of jewellery were set out in regulation 16 of the Regulations. In the case of gold jewellery, the carat quality or degree of millesimal fineness of the gold had to be set out. In the case of jewellery that was wholly or partly covered by gold, the words "Rolled Gold", "Gold Cased", "Gold Plated" or "Gilt", as appropriate, needed to be set out. In the case of silver jewellery that was not marked with a British hall mark, the degree of millesimal fineness had to be set out, and in the case of jewellery that is coloured to represent gold and/or silver, the words "Imitation Jewellery" had to be set out.

There are no similar requirements applied to domestically produced jewellery and so the trade description requirements under regulation 16 on these products have been removed as it was considered that this control could constitute a barrier to trade. As a consequence, regulation 16 has been omitted. Products referred to in paragraph 7(1)(h) continue to be subject to the trade description requirements set out in regulation 8 of the Regulations. Also section 52 of the Trade Practices Act 1974 (the Trade Practices Act) prohibits false and misleading claims and it applies to all goods in the market.

### **Omission of regulation 17**

Paragraph 7(1)(i) imposes the restriction on importation on brushware. The requirements of the trade description in respect of brushware were set out in regulation 17 of the Regulations. Regulation 17 provided that imported brushware should contain a trade description indicating the material the brush is made of, for instance, whether it is "Bristle", "Hair", "Bone" or "Fibre".

There is no similar requirement applied to domestically produced brushware and so the trade description requirements in regulation 17 on these products have been removed as it was considered that this control could constitute a barrier to trade. As a consequence, regulation 17 has been omitted. Products referred to in paragraph 7(1)(i) continue to be subject to the trade description requirements set out in regulation 8 of the Regulations. Also section 52 of the Trade Practices Act prohibits false and misleading claims and it applies to all goods in the market.

### **Omission of regulation 18**

Paragraph 7(1)(k) of the Regulations imposes the restriction upon importation on electrical appliances, apparatus and accessories, including electric incandescent lamps. The requirements of the trade description in respect of electric lamps were set out in regulation 18 of the Regulations. Regulation 18 provided that imported electric incandescent lamps should contain a trade description indicating the rated voltage and wattage. No other trade description applies in respect of other goods under paragraph 7(1)(k).

As State and Territory regulations apply to all electrical products, specific trade description requirements for imported lamps were no longer considered to be warranted. Therefore, the

requirements under regulation 18 in respect of these products has been removed. As a consequence, regulation 18 has been omitted. Products referred to in paragraph 7(1)(a) shall continue to be subject to the trade description requirements set out in regulation 8 of the Regulations.

### **Omission of regulation 19**

Paragraph 7(1)(n) of the Regulations imposes the restriction upon importation on cigars, cigarettes, manufactured tobacco, cigarette papers and cigarette tubes. The requirements of the trade descriptions in respect of cigarette papers and cigarette tubes were set out in regulation 19 of the Regulations. Regulation 19 provided that imported cigarette papers and tubes should contain a trade description on their immediate container indicating the approximate number of papers or tubes contained.

Uniform trade measurement provisions under State and Territory law require the number of the contents to be marked on all prepackaged goods. Therefore, the specific trade description requirements under regulation 19 in respect of cigarette papers and cigarette tubes have been removed. As a consequence, regulation 19 has been omitted. Cigarette papers and cigarette tubes continue to be subject to the trade description requirements set out in regulation 8 of the Regulations.

### **Omission of regulations 20A to 20Q**

Paragraph 7(1)(s) of the Regulations imposes the restriction upon importation on goods (other than the specified exceptions) that are imported in the packages in which they are customarily exposed or offered for sale. Regulation 6A of the Regulations defines these goods as pre-packed goods. Regulations 20A to 20Q previously set out the trade description requirements that applied in respect of goods in paragraph 7(1)(s) and, generally, these related to statements of the weight or measure of the article.

Under State and Territory legislation, pre-packed articles are required to carry weight and measures information. The model Trade Measurements Act 1989 and the accompanying Trade Measurement (Pre-packed Articles) Regulations (which together are known as the Uniform Trade Measurements Legislation ("UTML")) were developed by the Trade Measurement Advisory Committee as uniform legislation which has been adopted by six jurisdictions. The two remaining jurisdictions have agreed to adopt the UTML and, in the interim, have retained existing legislation governing weights and measures. The requirements in regulations 20A to 20Q of the Regulations have been superseded by the updated requirements of the UTML.

Therefore the trade description requirements in regulations 20A to 20Q in respect of pre-packed goods referred to in paragraph 7(1)(s) have been removed.

#### *Regulation 20A*

This regulation previously provided that the trade description on pre-packed articles should clearly indicate the weight or measure of the article in Commonwealth legal units of measurement. Regulation 20A set out in quite some detail the precise statements which must appear. Subregulation 10(1) of the UTML replaces this provision and applies to all pre-packed goods in the domestic market.

#### *Regulation 20B - Manner of marking weight or measure*

This regulation previously provided that the trade description on pre-packed products which are packed for sale by weight should indicate that the weight of the product referred to on the trade description is the net weight. Subregulation 14(1) of the UTML now requires the measurement of an article to be expressed as a reference to mass if the article is solid, semi-solid or partly solid and partly liquid.

#### *Regulation 20C - Units of measurement in terms of which statement of weight may be marked*

This regulation previously provided that certain pre-packed products that were packed for sale by weight should contain a statement of the weight expressed in terms such as pound, ounce or kilogramme. Regulation 14 and Schedule 3 to the Regulations of the UTML specify the new permissible units of measurement.

*Regulation 20D - Units of measurement in terms of which statement of volume may be marked*

This regulation previously provided that certain pre-packed products that were packed for sale by volume should contain a statement of the volume expressed in terms such as, gallon, quart, pint, fluid drachm, minim, litre or millilitre. Regulation 14 and Schedule 3 to the Regulations of the UTML specify the new permissible units of measurement.

*Regulation 20E - Decimal submultiples*

This regulation previously set out the requirement for the citation of a weight or measure of a pre-packed product which was marked on the package containing the article by reference to a decimal submultiple. Subregulation 15(2) of the UTML now applies to such matters.

*Regulation 20F - Statement of weight to be in terms of the largest unit of weight or measurement*

This regulation previously provided that the statement of weight or measure on a trade description attached to pre-packed products should be made using the largest possible unit of weight or measurement of the article (for instance the description should state 1 Kilogramme of salami and not 1000 grammes). Regulation 20F allowed for exceptions to this rule, for example where it had become customary to use a measure other than the largest possible measure (for instance, 1 000ml length of timber rather than 1 metre length of timber). Regulation 17 of the UTML replaces this provision and sets out the unit of measurement that must be used.

*Regulation 20G - Sizes of Print*

This regulation previously set out the size of lettering to be used for the statement of weight or measure on trade descriptions of pre-packed products. Regulation 13 of the UTML now covers this requirement.

*Regulation 20H - Manner etc. of stating weight or measure in the case of certain articles*

The effect of this regulation was to provide that the statement of weight or measure on trade descriptions of pre-packed products should be expressed in a manner suitable to the product. (For instance, the trade description on a quantity of liquid would be expressed in terms of a liquid measure). Regulation 14 of the UTML now covers this requirement.

*Regulation 20J - Prohibition of use of certain terms in expressing weight or measure of articles*

This regulation previously prohibited the expression of weight or measure on trade descriptions in terms of two denominations of weight between which the weight or measure of the article fell, or a minimum, approximate or average weight of the measure. Regulation 17 of the UTML now covers this requirement.

*Regulation 20K - Statement of Dimensions of Certain Articles*

This regulation previously provided that the dimensions of a pre-packed article consisting of a tarpaulin, a bed sheet, or other sheets of hemmed fabric material marked on the package containing the article should be expressed in terms of the finished size of the article. Regulation 21 of the UTML now covers this requirement.

*Regulation 20L - Thickness or width to be marked on package in certain cases*

This regulation previously provided that where the width and/or thickness of a product had a bearing on the value of the product, the width and/or thickness of the product should be stated on the trade description. Regulation 23 of the MM now sets out the requirements for labelling articles ordinarily sold by linear or superficial measurement.

*Regulation 20M - Special printing relating to certain articles*

This regulation previously provided that in the case of pre-packed aluminium foil, waxed paper, facial tissues and toilet paper the statement of quantity on the trade description should be expressed in terms of the number of usable sheets. Regulation 19 of the UTML now covers this requirement.

*Regulation 20N - Statement of weight in terms of numbers of bags to the ton in certain cases*

This regulation previously provided that in the case of products that are weighed in terms of the number of bags to the tonne the statement of weight on the trade description should be deemed to be a statement of the weight of the article calculated by dividing one tonne by the number of bags. Regulation 20 of the UTML now covers this requirement.

*Regulation 20P - Provisions applicable where articles contained in inner and outer packages*

This regulation previously provided that when a product was packaged in both inner and outer packaging and could be sold in either inner or outer packaging the statement of weight or measure was to be marked on both the outer and inner package.

Regulations 6 and 7 of the UTML now cover this requirement.

*Regulation 20Q - Restriction on use of certain expressions on packages*

This regulation previously provided that prohibited or restricted expressions should not be used on the trade description of a pre-packed article. Certain exceptions to this were set out in the regulation. A "prohibited expression" meant any expression that directly or indirectly related to or qualified a unit of measurement of a physical quantity and a "restricted expression" was one that directly or indirectly related to the size of the package containing an article and included any of the words listed in subregulation 20Q(3). Such words as "large", "gigantic", "king" and "family" were listed. Section 30 and regulation 31 of the UTML now apply more modern controls on products sold in Australia.

**Omission of regulation 21 - General prohibition of importation**

This regulation provided that the importation of goods listed in the Second Schedule to the Regulations that did not comply with the requirements set down in the Second Schedule was prohibited unless the trade description clearly indicated the manner in which the goods did not comply with the Second Schedule requirements.

The Second Schedule set out standards relating to the composition of certain food products such as cocoa, baking powder, infants' food, black and white pepper and lucerne seed. There was no similar requirement applied to domestically produced food products referred to in the Second Schedule. Therefore, the trade description requirements in regulation 21 on these products have been removed as it was considered that this control could constitute a barrier to trade.