

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 229**

Issued by the Authority of the Parliamentary Secretary to the Treasurer

*Trade Practices Act 1974*

*Trade Practices (Consumer Product Information Standards) (Tobacco) Amendment Regulations 2005 (No. 1)*

Subsection 172(1) of the *Trade Practices Act 1974* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 65D(1) of the Act provides that a corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, if the goods are of a kind in respect of which there is a consumer product information standard, and they do not comply with that standard.

Subsection 65D(2) of the Act provides that a regulation may, in respect of goods of a particular kind, prescribe a consumer product information standard consisting of such requirements as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods. These requirements may relate to: the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and the form and manner in which that information is to be disclosed on or with the goods.

The purpose of the Regulations is make changes to the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* ('the Principal Regulations'), to facilitate the implementation of the new mandatory labelling regime provided for in Part 4 of those Regulations. The Regulations are not expected to have any significant impact on industry stakeholders, but will ensure that the Principal Regulations operate as intended.

Details of the Regulations are in the [Attachment](#).

As the amendments are of a minor or technical nature, no Regulation Impact Statement is required. However, the draft Regulations have been the subject of an extensive consultation process with industry stakeholders.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Details of the Trade Practices (Consumer Product Information Standards) (Tobacco) Amendment Regulations 2005 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the name of the Regulations is the *Trade Practices (Consumer Product Information Standards) (Tobacco) Amendment Regulations 2005 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on the day after they are registered.

**Regulation 3 – Amendment of Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004**

This regulation provides that the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments**

**Item [1] – Regulation 5, after definition of retail package**

This item inserts a definition of **seal** into the Principal Regulations, to recognise that this term is used in two different ways in the Regulations and to reduce any scope for confusion. The seal referred to in the new item 102A in Schedule 2 of the Principal Regulations, for example, is a decorative label on the surface of a cigarette soft pack, affixed in the position where ‘tax stamps’ were traditionally placed on such packets. The seal referred to in Back layouts 4 and 5 (in Division 2.3.3 of Schedule 2), on the other hand, is the adhesive bond which joins the packaging together.

**Item [2] – Subregulation 7(2)**

Subregulation 7(2) of the Principal Regulations provides that retail packages manufactured in or imported into Australia on or after 1 March 2006 must be labelled in accordance with Part 4 of the Regulations. The additional words inserted by this item provide an exception to this requirement in relation to larger packages that comply with the new Regulation 7A.

**Item [3] – After regulation 7**

This item inserts a new Regulation 7A into the Principal Regulations to obviate the need for further labelling when a number of small retail packages are bundled together for retail sale inside a larger totally transparent package, in a manner permitting the mandatory labelling on the smaller containers to be seen. Subregulation 7A(2) will ensure that larger transparent packages are not required to be labelled merely because they are not ‘totally’ transparent by reason of certain markings or labelling which would not be expected to obscure the labelling on the smaller packages contained within.

#### **Item [4] – Regulation 14**

Regulations 14 and 28 of the Principal Regulations establish orientation requirements for the text warnings which are required to be carried on retail packages by virtue of Parts 3 and 4 of the Principal Regulations respectively. The orientation requirements established by these Regulations are considered to unnecessarily complicate the mandatory labelling regime, as the positioning of labelling on retail packages is comprehensively dealt with elsewhere in the regulations and the orientation requirements serve only to unduly fetter the flexibility of tobacco manufacturers and importers to adopt innovative printing presentation of their products.

#### **Item [5] – Subparagraphs 26(1)(b)(iv) and (v)**

Subregulation 26(1) of the Principal Regulations provides for the formatting of warning and explanatory messages required on the front face of retail packages after 1 March 2006. Subparagraph (iv) stipulates the weight of the printing to be used. The new subparagraphs 26(1)(b)(iv) and (v) will provide greater flexibility by allowing printing to be bolded in certain circumstances. This will permit warning messages to be given greater emphasis than is currently permitted.

#### **Item [6] – Subparagraph 26(2)(b)(iv)**

Subregulation 26(2) of the Principal Regulations provides for the formatting of warning and explanatory messages required on the back face of retail packages after 1 March 2006. Subparagraph (iv) stipulates the weight of the printing to be used. The new subparagraph 26(2)(b)(iv) will provide greater flexibility by allowing printing to be bolded. This will permit warning messages to be given greater emphasis than is currently permitted.

#### **Item [7] – Regulation 28**

Regulation 28 of the Principal Regulations replicates for Part 4 the orientation requirements for the text warnings which are required to be carried on retail packages by virtue of Part 3. Item [7] removes the requirement of labelling required by Part 4 of the Regulations, in the same manner and for the same reasons as Item [4] does for the orientation requirements of Part 3.

#### **Item [8] – Regulation 31**

Regulation 31 of the Principal Regulations provides that the graphics required to be printed on retail packages must not be distorted. Item [8] makes this prohibition subject to regulation 32, which allows limited changes to the graphics prescribed by the Regulations.

#### **Item [9] – Regulation 32**

Regulation 32 of the Principal Regulations provides for very limited cropping of graphics. Item [9] provides for a greater range of circumstances in which the graphics prescribed by the Regulations may be varied. The integrity of the graphics is protected, however, by the proviso that the overall effect of the graphic must not be affected by the variation.

### **Item [10] – Regulation 36**

Regulation 36 of the Principal Regulations makes provision for the phase-in, and alternation and rotation of messages on relevant retail packages. In consequence of some concerns about the relative responsibilities of manufacturers and importers of tobacco products as opposed to those who merely on-supply pre-packaged products, item [10] inserts new sections 35A and 36 into the Regulations, to clarify these respective responsibilities. The intent of these provisions is to make it clear that retail suppliers will not be liable for selling stock which bears the labelling which was required to be printed on a retail package during a period other than that in which the product is being supplied.

### **Item [11] – Regulation 39**

Regulation 39 of the Principal Regulations is an interpretative provision to clarify what is meant by tobaccos 'of a different kind'. The change made by item [11] is merely a consequential change to the amendment to Regulation 36 made by item [10]

### **Item [12] – Schedule 2, item 102, heading**

Item 102 of Schedule 2 of the Principal Regulations stipulates the labelling requirements for soft packs of cigarettes. As a consequence of item [13] in these Regulations, provision is now being made for two types of soft packs, having different labelling requirements depending on the type of seal they carry. The change to the heading of item 102 makes it clear that the requirements of item 102 are applicable only to soft packs with a seal that is not clear.

### **Item [13] – Schedule 2, after item 102**

Item [13] inserts item 102A into Schedule 2 of the Principal Regulations, to prescribe labelling requirements for soft packs of cigarettes with a clear seal. This new category caters for recent developments in packaging technology which have been or are proposed to be adopted by certain manufacturers and importers of tobacco products.

### **Item [14] – Schedule 2, items 103 and 104**

Items 103 and 104 of the Principal Regulations provide the labelling requirements for the traditional cardboard cartons of cigarettes. Certain manufacturers and importers of tobacco products are now adopting other forms of packaging instead of cardboard cartons, such as poly-wrap and paper wrapping. Totally transparent poly-wrap packages are covered by Regulation 7A, inserted by item [3] of these Regulations. The new items 103 and 104 of Schedule 2 establish the labelling requirements for other 'cartons' containing multiple cigarette packs, whether they be the traditional cardboard carton or whether they comprise a paper or poly-wrap wrapping which binds a number of cigarette packs together for sale.

### **Item [15] – Schedule 2, item 109**

Item 109 of Schedule 2 of the Principal Regulations provides the labelling requirements for pouches of loose or pipe tobacco. The change to the labelling specifications made by Item [15] of these Regulations removes the orientation

requirement currently included in the Principal Regulations, consistent with the repeal of Regulations 14 and 28 which are made by items [4] and [7] of these Regulations.

**Item [16] – Item [20]**

These items make minor corrections to the Principal Regulations, to rectify typographical or proofing errors not identified when the Principal Regulations were being made.

**Item [21]**

Item [14] of these Regulations determines the labelling specifications and layouts for semi-transparent and non-transparent cartons and makes provision for paper and polywrap ‘cartons’ which comprise a wrapping joined together by an adhesive bond seal. As the seal on these cartons can potentially cause printing problems, the new layouts provided by item [21] enable the warnings and graphics required by the Regulations to be presented in a manner which avoids the risk of the graphics or messages being distorted.

The various layouts prescribed the Regulations are intended to ensure that the information required by the Regulations is presented in a manner which will have the optimal impact on consumers. The layouts, which have the purpose of determining the relative positioning of the elements of the warnings, have been developed to achieve this end.