

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 20

Issued by the Authority of the Parliamentary Secretary to the Treasurer

Trade Practices Act 1974

Trade Practices (Consumer Product Information Standards) (Tobacco) Amendment Regulations 2007 (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 mandatory standards established by the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* ('the Principal Regulations') provide a labelling regime for tobacco products, to increase consumer knowledge of health effects relating to smoking, to encourage cessation and to discourage uptake or relapse.

The purpose of these Regulations is make changes to the Principal Regulations, to clarify the application of the law and to ensure that the legislative intent underlying the various provisions is made abundantly clear.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. For the purposes of section 17 of that Act, no consultation was undertaken in relation to the Regulations as they are of a minor or machinery nature and do not substantially alter existing arrangements. A Regulation Impact Statement was not required for these reasons.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

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

Details of the *Trade Practices (Consumer Product Information Standards) (Tobacco) Amendment Regulations 2007 (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 2007 (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 by Schedule 1.

Schedule 1 – Amendments

This schedule provides for four amendments to the Principal Regulations.

Item [1] Regulation 3A This item inserts a purpose clause into the Principal Regulations, to assist industry stakeholders, the legal profession and the courts in their interpretation of the labelling regime established by the information standards.

The object of the tobacco labelling regime is to increase consumer knowledge of health effects relating to smoking, to encourage cessation and to discourage uptake or relapse. The various provisions of the Regulations aim to achieve this goal by providing information to consumers of tobacco products not only at the point-of-sale, but also when the product is used. The constant reminders of the harmful effects of smoking which this regime which this labelling regime provides are designed to encourage smokers to quit smoking and reduce the uptake of smoking by potential consumers.

To achieve the goal of the labelling regime, the messages provided are necessarily continuous in nature and intended to provide an ongoing reminder of the dangers of smoking for the life of the product. This intent is more specifically reflected in the amendments made by items 2, 3 and 4 of these Regulations.

Item [2] Subregulation 6(2) This item substitutes a new subregulation 6(2) for the existing subregulation, to clarify the meaning of a ‘retail package’. Regulation 7 of the Principal Regulations requires ‘retail packages’ to be labelled in accordance with the Regulations, and Regulation 6 determines the scope of the requirements by imparting meaning to this term beyond that which would be discerned by reference to Regulation 5.

This amendment clarifies the scope of the Regulations in circumstances where packaging may be separated after sale, to ensure that the consumers of tobacco products have access to the information provided by the Regulations, consistent with the intent that consumers have

continuing access to information about the dangers of smoking and how to contact the Quitline if they wish to cease smoking.

Item 3 After subregulation 16(2) This item inserts a new subregulation (2A) to clarify what is meant by ‘easily removable’ in paragraph 16(2)(c) of the Regulations.

Regulation 16 permits the use of adhesive labels on retail packages of tobacco products which have been manufactured or imported prior to 1 March 2006. However, consistent with the intent of the Regulations that consumers of tobacco products have continuing access to relevant information about the dangers of tobacco and how to quit smoking, any such labels are not intended to be easily removable. Item 3 will assist persons who interpret the Regulation by making clear the factors which are relevant to determining whether labels are easily removable.

Item 4 After subregulation 30(2) This item inserts a new subregulation (3) to clarify what is meant by ‘easily removable’ in paragraph 30(2)(c) of the Regulations.

Regulation 30 permits the use of adhesive labels on retail packages of tobacco (other than flip-top packs, soft packs or cartons containing cigarettes) which have been manufactured or imported on or after 1 March 2006. However, consistent with the intent of the Regulations that consumers of tobacco products have continuing access to relevant information about the dangers of tobacco and how to quit smoking, any such labels are not intended to be easily removable. Item 4 will assist persons who interpret the Regulation by making clear the factors which are relevant to determining whether labels are easily removable.

Items 3 and 4 reinforce the statutory intent underlying the Regulations. An adhesive label on a durable package, capable of being used for storing or being refilled with tobacco products over a lengthy expected life-span, would need to be more firmly affixed than a similar label on a package with a probable life span measured in days rather than weeks or months.