

EXPLANATORY STATEMENT

Issued by the Authority of the Parliamentary Secretary to the Treasurer

Competition and Consumer Act 2010

Revocation of existing permanent ban on miniature motorbikes (monkey bikes) with unsafe design features and imposition of new permanent ban on miniature motorbikes (monkey bikes) with unsafe design features

Background

In July 2010 a temporary ban on miniature motorbikes (monkey bikes) with unsafe design features was made under subsection 65C(5) of the *Trade Practices Act 1974* (TPA). The temporary ban was made following the harmonisation of State, Territory and Commonwealth product safety bans in preparation for significant changes to consumer law in Australia.

On 1 January 2011, amendments to the TPA established a new national consumer law regime known as the Australian Consumer Law (ACL) and changed the name of the TPA to the *Competition and Consumer Act 2010* (CCA). When the ACL took effect, the temporary ban on miniature motorbikes (monkey bikes) with unsafe design features became an interim ban under the CCA.

Subsection 114(1) of Schedule 2 to the CCA provides that the Commonwealth Minister may impose a permanent ban on consumer goods of a particular kind if an interim ban exists for those goods, or it appears to the Commonwealth Minister that consumer goods of that kind will or may cause injury to any person or a reasonably foreseeable use (including misuse) of consumer goods will or may cause injury to any person. The interim ban on miniature motorbikes (monkey bikes) with unsafe design features was made a permanent ban on 11 February 2011.

The permanent ban on miniature motorbikes (monkey bikes) with unsafe design features

Miniature motorbikes are replicas of popular motorcycles scaled down to about half the size. Powerful miniature motorbikes have internal combustion engines and can reach speeds up to 80 kilometres per hour. To improve safety, powerful miniature motorbikes should have safety features such as:

- a self-closing throttle
- effective brakes
- adequate footpegs
- effective steering
- supplemental engine stop.

The Australian Competition and Consumer Commission (ACCC) conducted a review of the scope of the permanent ban. The ACCC found that the permanent ban unintentionally captured miniature motorbikes with low powered electric motors as well as those with high powered internal combustion engines. Following a risk assessment, it was concluded that there was no justification for the ban to apply to electric powered miniature motorbikes.

The permanent ban has been revoked under subsection 117(a) of Schedule 2 to the CCA and re-imposed under subsection 114(1) of Schedule 2 to the CCA. The new permanent ban applies to miniature motorbikes powered by internal combustion engine only.

Consultation

Under the CCA, a permanent ban is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). Section 17 of the LIA requires that the rule maker should consult prior to making a legislative instrument. Prior to revoking and re-imposing the permanent ban a proposed ban notice, inviting suppliers to request a conference with the ACCC was published on the internet as required under subsection 132(3)(b) of Part XI of the CCA. Known suppliers of miniature motorbikes were provided with a copy of the proposed ban notice in accordance with section 132K of Part XI of the CCA. Suppliers did not request a conference with the ACCC.

Commencement

This instrument commences the day after it is registered on the Federal Register of Legislative Instruments.

Disallowance

This instrument is subject to disallowance under Part 5 of the LIA.

Sunsetting

This instrument is subject to sunseting under Part 6 of the LIA. Unless action is taken to defer or exempt it from sunseting, it is expected to sunset on 1 October 2021. This assumes it is registered on or before 30 September 2011.