

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Small Business

Competition and Consumer Act 2010

Imposition of interim ban on Certain Decorative Alcohol Fuelled Devices

The Minister for Small Business has imposed an interim ban, which prohibits the supply of certain decorative alcohol fuelled devices throughout Australia.

The interim ban applies to the supply of devices designed for domestic use producing a flame using alcohol as fuel, primarily for decorative purpose, but excludes each of the following:

1. those with a power output more than 4.5 kilowatts;
2. those that require installation in a fixed position;
3. those designed for food warming;
4. those with a dry weight of at least 8 kilograms and a footprint of at least 900 square centimetres and that satisfy one or more of the following:
 - a) the device has a fuel tank that must be removed from the device for refuelling and the device displays a permanent, prominent legible warning with the following text:

WARNING

Filling an alcohol fuelled device while lit has caused severe burns.

You must remove the fuel tank from the device before refilling.

When refilling first check the flame is extinguished and that the device is cool.

or

- b) the device is supplied with a fuel container that incorporates a flame arrestor and the device displays a permanent, prominent legible warning with the following text:

WARNING

Filling an alcohol fuelled device while lit has caused severe burns.

When refilling only use containers with a flame arrestor.

When refilling first check the flame is extinguished and that the device is cool.

Commencement

The interim ban commences on the day following its registration on the Federal Register of Legislation and will remain in force for a period of 60 days and may be extended to up to two 30 day periods. The effect of the Commonwealth interim ban is that the State and Territory interim bans cease to have effect.

Risk of death or serious injury from certain decorative alcohol fuelled devices

In Australia, there have been at least 113 reported incidents since 2010 involving decorative alcohol fuelled devices. These incidents are associated with 105 injuries and 36 house fires.

The injuries suffered have included second and third degree burns requiring intensive care, skin grafts, operations and lengthy stays in hospital.

The type of decorative alcohol fuelled device involved can be identified for 58 of the 113 incidents. Of these 58 incidents, 40 are associated with table top devices, nine with free standing or portable devices and nine with fixed devices.

In 22 of the 40 incidents involving tabletop devices, the devices were being refuelled or had just been refilled. An ethanol flame can sometimes be invisible and in many of these incidents, it appears the user refuelled the device while it was still lit.

Based on the evidence, it appears that decorative alcohol fuelled devices, or the reasonably foreseeable use (including misuse) of decorative alcohol fuelled devices, may cause injury to persons, due to uncontrolled fire while refuelling the device or while lighting the device or while being in close proximity to the device.

Interim ban process

In October 2016, a 28-year-old Perth woman suffered serious burns to her face and upper body after a decorative alcohol fuelled device reportedly exploded in the backyard. Soon after the Perth incident, two people were injured on Queensland's Sunshine Coast in an incident involving a decorative alcohol fuelled device.

On 20 December 2016, the Hon. Michael Mischin MLC, Western Australia Minister for Commerce imposed an interim ban by written notice published on the internet on certain decorative alcohol fuelled devices pursuant to section 109(1)(a) of the Australian Consumer Law (WA) because it appeared to him that these goods, or a reasonably foreseeable use of these goods, may cause injury to any person. The interim ban came into effect on 21 December 2016 for a period of 60 days and was extended for a further period of 30 days.

Following the imposition of the interim ban in Western Australia, interim bans on the same terms were imposed by each other State and Territory.

In addition, on 21 December 2016, the Commonwealth Minister for Small Business published a proposed interim ban notice, in the same terms, in accordance with section 132 of the CCA.

Consultation

This proposed ban notice invited suppliers of decorative alcohol fuelled devices to request a conference be held by the Australian Competition and Consumer Commission (ACCC).

Eight suppliers requested a conference with the ACCC and a conference was held on 2 February 2017. Following the conference six suppliers made written submissions on the documents provided to them at the conference, as well as providing further information.

At the conference and in their submissions suppliers expressed concern, with the scope of the proposed interim ban, in particular, the exclusion of devices with a power output greater than 4.5 kilowatts. This was because the scope of the ban meant it applied not only to tabletop devices but also to some devices that are freestanding and portable but with a power output less than 4.5 kilowatts.

The exclusion for devices with a power output of greater than 4.5 kilowatts has been retained to ensure that the scope of the national interim ban does not inadvertently broaden beyond the scope of the State and Territory interim bans. The additional exemptions for freestanding devices, that exceed specified dry weight and device footprint thresholds, and also meet

additional safety measures, will better target the scope of the ban and address supplier concerns.

Suppliers also submitted that some industry participants have already taken steps to improve the safety of their products, and in particular reduce the risk of incorrect refuelling of their devices. These steps have included designing the devices so that the fuel tank must be removed before it can be refilled, or supplying a fuel container, that incorporates a flame arrestor, when supplying the device.

ACCC Recommendation

Section 132D(1) of the CCA requires the ACCC to provide the Minister, as soon as practicable after a supplier conference is held, with a recommendation that the Minister impose the ban in the same or modified terms, or not impose the interim ban.

Having regard to supplier submissions (both at the conference and subsequently) and the incident data obtained by the ACCC which indicates that refuelling a device while still lit is a significant cause of injury, the ACCC has recommended to the Minister that the proposed interim ban be modified to include an additional exclusion which will have the effect of allowing the supply of freestanding devices provided they are:

- at least 8 kilograms dry weight and a footprint of at least 900 square centimetres; and
- designed to reduce the risk that they will be refuelled when lit by having a fuel tank that must be removed from the device for refuelling and the device includes a permanent warning about refuelling risks; or
- supplied with a fuel container that incorporates a flame arrestor to protect the user if they attempt to refuel the device while it is still lit and the device includes a permanent warning about refuelling risks.

The ACCC considers this modification strikes an appropriate balance between banning the supply of devices (in particular, tabletop devices) which may cause serious injury, while permitting the supply of larger freestanding devices, provided they incorporate additional safety measures.

Decision

The Minister has accepted the ACCC's recommendation to impose an interim ban on terms that have been varied from the terms of the proposed interim ban notice.

Disallowance

This legislative instrument is subject to disallowance under Chapter 3, Part 2 of the *Legislation Act 2003*.

Sunsetting

Legislative instruments are subject to sunseting under Part 4 of the *Legislation Act 2003*. Ordinarily, legislative instruments such as this would sunset in 10 years. However, under the CCA, interim bans are in force for an initial period of 60 days and can be extended for a maximum of two periods of 30 days each, after which time the ban will lapse.

Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The legislative instrument is an interim ban on the supply of certain decorative alcohol fuelled devices. These devices, or the reasonably foreseeable use (including a misuse) of these devices, may cause injury to persons, due to uncontrolled fire while refuelling the device, while lighting the device or while being in close proximity to the device.

The interim ban was imposed following the imposition of an interim ban in Western Australia.

In accordance with section 112 of the ACL, the State and Territory interim bans, to the extent their bans include the devices captured by this interim ban, cease to be in force immediately before this interim ban comes into force.

Human Rights Implications

The legislative instrument engages the right to health contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The legislative instrument promotes these rights by removing from sale, consumer goods which may cause serious injury.

Conclusion

The legislative instrument does not limit human rights and is compatible with human rights. It advances the protection of human rights by removing from supply, certain decorative alcohol fuelled devices, minimising the risk of injury to users.