

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Home Affairs and Parliamentary Secretary to the
Minister for Home Affairs

Commerce (Trade Descriptions) Act 1905

*Commerce (Trade Descriptions) Amendment (Incorporation of Information Standards)
Regulations 2018*

The *Commerce (Trade Descriptions) Act 1905* (the CTD Act) concerns trade descriptions applied to certain imported and exported goods, and includes a head of power whereby regulations may prohibit the importation and exportation of goods unless a trade description is applied to them.

Subsection 17(1) of the CTD Act provides, in part, that the Governor-General may make regulations not inconsistent with this Act prescribing all matters and things required or permitted by this Act to be prescribed or which are necessary and convenient to be prescribed for carrying out or giving effect to this Act.

Subsection 7(3A) of the CTD Act provides that despite subsection 14(2) of the *Legislation Act 2003* (the Legislation Act), regulations made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an information standard as in force or existing from time to time.

Subsection 7(3B) of the CTD Act specifies that for the purposes of subsection (3A), an information standard is an information standard made under section 134, or declared under section 135, of Schedule 2 to the *Competition and Consumer Act 2010* (the Competition Act).

The *Commerce (Trade Descriptions) Regulation 2016* (the CTD Regulation) prescribes the goods whose importation into Australia is prohibited unless a trade description is applied to those goods. The CTD Regulation includes, in relation to imported food, requirements contained in Division 2 of the Country of Origin Food Labelling Information Standard 2016 (the Information Standard) so that they form part of the trade description requirements. The Information Standard is made under the above sections of the Competition Act.

The purpose of the *Commerce (Trade Descriptions) Amendment (Incorporation of Information Standards) Regulations 2018* (the Regulations) is to amend the CTD Regulation to remove references to the Information Standard as in force at the time the CTD Regulation commenced, and instead incorporate the Information Standard as in force or existing from time to time.

The CTD Regulation requires that a trade description relating to food imported in packages contain a statement of the country of origin of the food determined in accordance with the Information Standard, as in force at the time the CTD Regulation commenced. This is due to the fact that the Information Standard is a non-disallowable legislative instrument and, in accordance with subsection 14(2) of the Legislation Act, such an instrument cannot be incorporated as in force from time to time.

The Information Standard is regularly updated, requiring consequential amendment of the CTD Regulation to incorporate each new change.

To address this limitation, the *Commerce (Trade Descriptions) Amendment Act 2018* inserted new subsections 7(3A) and 7(3B) into the CTD Act which provide that, despite subsection 14(2) of the Legislation Act, regulations made for the purposes of this section may make provisions in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an information standard as in force or existing from time to time. These amendments enable information standards made or declared under Schedule 2 of the Competition Act, and that are in force or as existing from time to time, to be incorporated by reference in the CTD Regulation.

The Regulations amend the CTD Regulation to provide for the Information Standard to be incorporated, from time to time, eliminating the need to amend the CTD Regulation each time the Information Standard is changed.

Details of the Regulations are set out in **Attachment A**.

No consultation was undertaken in relation to the Regulations as the changes are minor and machinery in nature and do not substantially alter existing arrangements.

A Statement of Compatibility with Human Rights (the Statement) has been prepared and completed for the Regulations in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's overall assessment is that the Regulations are compatible with human rights because to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate. A copy of the Statement is at **Attachment B**.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations are to commence on the day after the end of the period of three months beginning on the day this instrument is registered, in accordance with subsection 7(4) of the CTD Act.

OPC63681 - A

Attachment A**Details of the Commerce (Trade Descriptions) Amendment (Incorporation of Information Standards) Regulations 2018****Section 1 – Name**

This section provides that the title of the Regulations is the *Commerce (Trade Descriptions) Amendment (Incorporation of Information Standards) Regulations 2018*.

Section 2 – Commencement

Table item 1 of section 2 of the Regulations provides for the whole instrument to commence on the day after the end of the period of three months beginning on the day the instrument is registered.

Section 3 – Authority

This section sets out the authority under which the *Commerce (Trade Descriptions) Amendment (Incorporation of Information Standards) Regulations 2018* (the Regulations) are made, which is the *Commerce (Trade Descriptions) Act 1905*.

Section 4 – Schedules

This section is the formal enabling provision for the Schedule to the Regulations, and provides that, each instrument that is specified in a Schedule to the Regulations, is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.

The instrument being amended is the *Commerce (Trade Descriptions) Regulation 2016*.

Schedule 1 – Amendments*Commerce (Trade Descriptions) Regulation 2016*

Schedule 2 to the *Commerce (Trade Descriptions) Amendment Act 2018* inserted new subsections 7(3A) and 7(3B) into the CTD Act.

New subsection 7(3A) of the CTD Act provides that despite subsection 14(2) of the *Legislation Act 2003* (the Legislation Act), regulations made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an information standard as in force or existing from time to time.

New subsection 7(3B) of the CTD Act specifies that for the purposes of subsection 7(3A), an information standard is an information standard made under section 134, or declared under section 135, of Schedule 2 to the *Competition and Consumer Act 2010* (the Competition Act).

Schedule 1 of the Regulations amends the CTD Regulation to remove references to the Country of Origin Food Labelling Information Standard 2016 (the Information Standard) as in force at the time this instrument commenced, and incorporate the Information Standard as in force or existing from time to time.

The Information Standard is publicly available and can be accessed on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2017C00920>.

Item 1 – Section 5 (definition of priority food)

Section 5 of the CTD Regulation sets out definitions to assist in the interpretation of expressions used throughout the CTD Regulation.

The term “priority food” is defined in section 5 of the CTD Regulation as food other than non-priority food within the meaning of the *Country of Origin Food Labelling Information Standard 2016* as in force when this instrument commenced. The definition of priority food also specifies that for this purpose, we must assume that the Standard then defined “food” as having the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

Item 1 of the Regulations amends the definition of priority food to omit the wording “when this instrument commenced. For this purpose, assume that the Standard then defined “food” as having the same meaning as in the *Food Standards Australia New Zealand Act 1991*”, and substitute this with the words “or existing from time to time”.

This wording was inserted into the definition of priority food to ensure the intended definition of food, as defined in the *Food Standards Australia New Zealand Act 1991*, was captured in the CTD Regulation. The definition of food is separately provided for in section 5 of the CTD Regulation and as such, this wording is no longer required and has been removed by the Regulations.

Item 1 inserts the wording “or existing from time to time” into the definition of priority food to incorporate the Information Standard as in force or existing from time to time.

By removing the reference to the Information Standard as in force at the time it commenced and replacing this with a reference to the Information Standard as in force or existing from time to time, this will allow for changes to the Information Standard to be incorporated into the CTD Regulation without the need to amend the CTD Regulation. This amendment ensures any changes to the Information Standard are directly reflected in labelling requirements at the border in respect of the contents of trade descriptions applied to imported food.

Item 2 - Paragraph 16(1)(b)

Section 16 of the CTD Regulation sets out requirements for the content of trade descriptions, specifically the requirements relating to the source country of imported goods.

This section specifies in part, that trade descriptions applied to imported goods must include in prominent and legible characters the name of the country in which the goods were made or produced, or alternatively a statement of the country of origin of the food (determined in accordance with the *Country of Origin Food Labelling Information Standard 2016*, as in force when this instrument commenced, and assuming that the Standard defined “food” as having the same meaning as it has in the *Food Standards Australia New Zealand Act 1991*).

Item 2 of the Regulations amends paragraph 16(1)(b) of the CTD Regulation to omit the wording “when this instrument commenced. For this purpose, assume that the Standard then defined “food” as having the same meaning as in the *Food Standards Australia New Zealand Act 1991*”, and substitute this with the words “or existing from time to time”.

This item amends the CTD Regulation so that the reference to the Information Standard at a fixed point in time is removed and replaced with a reference to the Information Standard as in force or existing from time to time, allowing for any changes to the Information Standard to be incorporated without the need for consequential amendments to the CTD Regulation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Commerce (Trade Descriptions) Amendment (Incorporation of Information Standards) Regulations 2018

This 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*.

Overview of the Legislative Instrument

The *Commerce (Trade Descriptions) Regulation 2016* (the CTD Regulation) prescribes the goods and classes of goods whose importation into Australia are prohibited unless a trade description is applied to those goods, and related matters. The CTD Regulation includes, in relation to food imported in packages, requirements contained in Division 2 of the Country of Origin Food Labelling Information Standard 2016 (the Information Standard) so that they form part of the trade description requirements. The Information Standard is made under the above sections of the Competition Act.

This Legislative Instrument amends the *Commerce (Trade Descriptions) Regulation 2016* (the CTD Regulation) to remove references to the Information Standard as in force at the time the CTD Regulation commenced, and instead incorporate the Information Standard as in force or existing from time to time.

The CTD Regulation requires that a trade description relating to food imported in packages contain a statement of the country of origin of the food determined in accordance with the Information Standard, as in force at the time the CTD Regulation commenced. This is due to the fact that the Information Standard is a non-disallowable legislative instrument and, in accordance with subsection 14(2) of the Legislation Act, such an instrument cannot be incorporated as in force from time to time.

The Information Standard is regularly updated, requiring consequential amendment of the CTD Regulation to incorporate each new change.

To address this limitation, the *Commerce (Trade Descriptions) Amendment Act 2018* inserted new subsections 7(3A) and 7(3B) into the CTD Act which provide that, despite subsection 14(2) of the Legislation Act, regulations made for the purposes of this section may make provisions in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an information standard as in force or existing from time to time. These amendments enable information standards made or declared under Schedule 2 of the Competition Act, and that are in force or as existing from time to time, to be incorporated by reference in the CTD Regulation.

The Legislative Instrument amends the CTD Regulation to provide for the Information Standard to be incorporated, from time to time, eliminating the need to amend the CTD Regulation each time the Information Standard is changed.

Human rights implications

The Legislative Instrument does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The Legislative Instrument is compatible with human rights.

Senator Linda Reynolds CSC
Assistant Minister for Home Affairs