

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Health and Aged Care

Public Health (Tobacco and Other Products) Act 2023

Public Health (Tobacco and Other Products) Regulations 2024

Authority

This instrument is made under the *Public Health (Tobacco and Other Products) Act 2023* (the Act). Section 185 of that Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The *Public Health (Tobacco and Other Products) Regulations* (the Regulations) prescribe a wide range of the matters for the purposes of the Act.

Conditions

Subsection 185(2) of the Act provides that before regulations are made under, or for the purposes of, a provision covered by subsection 185(3), the Minister must be satisfied that the proposed regulations will advance the objects of the Act in paragraphs 3(1)(a) and 3(1)(b). Paragraphs 3(1)(a) and 3(1)(b) provide that the objects of the Act are, among other things, to improve public health by discouraging smoking and encouraging people to give up smoking, and to give effect to Australia's obligations under the World Health Organisation *Framework Convention on Tobacco Control 2003*. This is the case for the following sections under the Act, section 8 (insofar as the section relates to regulations that define health promotion insert, health warning or mandatory marking), paragraph 17(b), Part 2.2 (prohibition of tobacco advertisements), Chapter 3 (tobacco product requirements) and Chapter 5 (reporting and information disclosure) for these Regulations. In addition, before regulations are made for the purpose of prescribing images on tobacco products under subsection 78(1) of the Act and for the purposes of prescribing health promotion inserts into tobacco products under paragraph 82(1)(a), the Commonwealth Chief Medical Officer must have recommended that the images or combination of images and the health promotion inserts (respectively) be prescribed for the purpose of those subsections. The Minister has received correspondence from the Chief Medical Officer recommending that the images in Schedules 2 to 7 and the health promotion inserts in Schedule 8 of the regulations be prescribed.

Purpose

The purpose of the Regulations is to support the Act by prescribing various details for the purposes of the Act. These include such things as packaging requirements and permitted tobacco and e-cigarette advertising publications. The measures contained in these regulations will give effect to certain obligations that Australia has as a party to the World Health Organization (WHO) Framework Convention on Tobacco Control (2003) (FCTC), an evidence-based treaty. The WHO FCTC is Australian Treaty Series 2005 No. 7 ([2005] ATS 7) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Background

The Act and these Regulations were developed following a thematic review of the *Tobacco Advertising Prohibition Act 1992*, the *Tobacco Plain Packaging Act 2011*, the *Tobacco Advertising Prohibition Regulation 1993* (TAP Regulations) and the *Tobacco Plain Packaging Regulations 2011* (TPP Regulations). The thematic review was prompted by the sunset of the TAP Regulations and the TPP Regulations- which were due to sunset on the 1 April 2022 and following an extension by the then Attorney-General are now due to sunset on 1 April 2024. The Act and these regulations represent a renewed focus on improving the public health of Australians by discouraging smoking and the use of tobacco products and restricting the promotion of e-cigarettes.

Previously Commonwealth tobacco control measures had been contained across a number of instruments, including eight different tobacco-related Acts, legislative instruments and court decisions administered across the Health and Treasury portfolios. The measures have been consolidated, streamlined and modernised to strengthen Australia's regulation of tobacco products and restrict the promotion of e-cigarettes.

Documents incorporated by reference

Subsection 185(6) of the Act provides that despite subsection 14(2) of the *Legislation Act 2003*, these Regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing (a) as in force or existing at a particular time; or (b) as in force or existing from time to time. The Australian Standard AS 48302007, *Determination of the extinction propensity of cigarettes* as existing at the commencement of this instrument, *AS 4830—2007*, is incorporated and in 2024, could be purchased from SAI Global's website (<https://www.saiglobal.com>). The Department of Health and Aged Care (the Department) can make a copy of the standard available for viewing free of charge at one of its offices, subject to licensing conditions. The definitions of *primary* and *secondary packaging track and trace identifier* references Article 6 or 10 of the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017, as existing at the commencement of this instrument which in 2024, can be viewed on the European Union website (<https://europa.eu>).

Consultation

The Regulations have been drafted to support the implementation of the Act, including the product and packaging requirements, and have been the subject of two public consultation processes. An exposure draft of the Regulations was released for a six-week consultation period from 31 May to 14 July 2023. A subsequent consultation period occurred from 11 December 2023 to 8 January 2024 to seek views on the updated graphic health warnings and health promotion inserts.

Submissions (which informed the final drafting of the Regulations) were received from a wide range of industry and retailer representatives, public health stakeholders and academics, members of the public, and other government entities. Submissions received from industry and retailers focussed on the implementation/manufacturing detail of the regulations and illicit tobacco, they did not comment on the content of the health warnings or health promotion inserts. Submissions received from public health, academics and non-government organisations provided broad support for the regulations and primarily focussed on suggestions for graphic health warnings.

Commencement

The Regulations will commence on the later, of the day after this instrument is registered, and immediately after the commencement of section 3 of the *Public Health (Tobacco and Other Products) Act 2023*.

Regulatory Assessment

An Impact Analysis was prepared for the purpose of the 'Review of Tobacco Control Legislative Framework' - Office of Impact Analysis ID number: 02938 and is available at www.oia.pmc.gov.au.

General

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

Details of this instrument are set out in **Attachment B**.

Statement of Compatibility with Human Rights

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

This Disallowable 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 Public Health (Tobacco and Other Products) Regulations

The Public Health (Tobacco and Other Products) Regulations (the Regulations) are made under the *Public Health (Tobacco and Other Products) Act 2023* (the Act). The Act modernises and simplifies existing tobacco control provisions and introduces new measures to support the objective of discouraging smoking and tobacco use. It seeks to address the health risks posed by vaping and e-cigarette products by prohibiting the advertising and promotion of e-cigarettes.

The Regulations support the Act by prescribing various details for the purposes of the Act. Many of the details are relevant to determining whether a person has committed an offence, or is liable to a civil penalty under the Act. The Regulations set out the requirements for tobacco and e-cigarette advertisements that are available on, or accessible using, the internet. The Regulations contain detailed tobacco product requirements for the purposes of Part 3.3 of the Act. The health warnings in Schedules 2 to 7, and the health promotion inserts in Schedule 8, are part of these tobacco product requirements. The Regulations also set out further detail about information that must be included in reports given to the Secretary under the Act.

Human rights implications

The Regulations engage the following rights:

Right to health – Article 12(2)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR);

Right to life- Article 6 of the International Covenant on Civil and Political Rights (ICCPR);

Right to freedom of expression- Article 19(2) of the ICCPR;

Right to a fair trial and fair hearing rights— Article 14(1) of the ICCPR; and

Right to a presumption of innocence— Article 14(2) of the ICCPR.

Right to health

Article 12(2)(c) of the ICESCR requires States Parties to take steps to achieve the full realisation of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including those steps necessary for the prevention, treatment and control of diseases. The Committee on Economic, Social and Cultural Rights considers that this “requires the establishment of prevention and education programmes for behaviour related health-concerns...and the promotion of social determinants of good health”.

The Regulations promote the right to health by aiming, through the achievement of the Act's objectives, and as part of a comprehensive range of tobacco control measures, to contribute to efforts to reduce smoking rates and thereby reduce the significant health, social and economic effects of tobacco use. The Act, supported by the Regulations also seeks to address the health risks posed by vaping and e-cigarette products by restricting advertising and promotion of e-cigarettes.

Right to life

The measures contained in the Act, supported by the Regulations promote the right to life by seeking to reduce the incidence of smoking and vaping.

Tobacco use causes more deaths than any other behavioural risk factor. Up to two thirds of deaths in tobacco smokers can be attributed to smoking, and long term- smokers die an average of 10 years earlier than non-smokers. Exposure to second-hand smoke is also a cause of preventable death and disability in adults and children. Tobacco use and exposure among pregnant people and their babies is one of the most prevalent preventable causes of infant death and illness and of adverse pregnancy outcomes including preterm birth and still-birth.¹

Tobacco smoking by youth and young adults has immediate adverse health consequences and accelerates the development of chronic diseases across the full life course. It can lead to nicotine addiction that causes young people to continue smoking for longer, causing increased physical damage. In addition, quitting smoking at any age reduces the risk of premature death and improves quality of life.

The Act and Regulations are also directed to addressing the public health risks posed by vaping and the use of e-cigarette products. The Regulations promote the right to life by seeking, through the achievement of the Act's objectives and the intended effect of the measures, to deter the uptake of smoking as well as vaping and the use of e-cigarette products, and to encourage people who smoke and vape to quit.

Right to freedom of expression

The Regulations support the Act's prohibitions on the advertising of certain products (Chapter 2 of the Act) and imposes limitations on what can be placed on the packaging of certain products (Chapter 3 of the Act).

The Regulations prescribe requirements for permitted publications. The Act permits the publication of tobacco advertisements and e-cigarette advertisements related to a point of sale in certain circumstances. If there is no applicable State or Territory law, the Act allows the Regulations to prescribe the matters which such advertisements need comply for publication to be permitted. Chapter 2 of the Regulations sets out those matters.

Under Parts 3.4 and 3.5 of the Act, a person may commit an offence, or be liable to a civil penalty, if the person contravenes a tobacco product requirement in certain circumstances. Chapter 3 of the Regulations prescribes the detail of certain tobacco product requirements for the purposes of the Act. The tobacco product requirements are requirements about the retail packaging of tobacco products, as well as tobacco products themselves. The requirements

¹ Dietz P, England L, Shapiro-Mendoza C, Tong V, Farr S and Callaghan W (2010) 'Infant morbidity and mortality attributable to prenatal smoking in the US' 39(1): 45-52, Am J Prev Med.

deal with such matters as the physical features, colour and finish of retail packaging, the standardisation of retail packaging, and the display of health warnings on retail packaging.

The restriction on the appearance of tobacco products and their retail packaging, along with restrictions in relation to advertising and sponsorship, provided for by the Regulations may engage Article 19 of the ICCPR. Article 19(2) of the ICCPR engages the right to freedom of expression, which extends to any medium, including written and oral communications, the media, public protest, broadcasting and artistic works, and may include commercial advertising.

Article 19(3)(b) of the ICCPR states that public health is a basis on which the right to freedom of expression can be limited. This right may be limited as provided for by law and when necessary for respect of the rights or reputations of others, for the protection of national security, public order, or of public health or morals. Limitations must be prescribed by legislation necessary to achieve the desired purpose and proportionate to the need on which the limitation is predicated.

These Regulations engage and may limit the right to freedom of expression, which is protected by Article 19(2) of the ICCPR.

However, these restrictions are directed to the desired purpose of reducing tobacco use and the health risks posed by vaping and supporting those who already smoke to quit. This is a legitimate public health objective and accordingly the restrictions are necessary to achieve the desired purpose and proportionate to the need on which the limitation is predicated.

Legitimate objective: measure is justified under a permitted limitation

The right to freedom of expression is not absolute. It carries with it special responsibilities and may be restricted on several grounds. Article 19(3) of the ICCPR expressly states that the right to freedom of expression may be subject to limitations necessary for the protection of public health. The limitation (if any) of the right to freedom of expression in the Regulations aims to achieve a legitimate objective – the protection of public health – by contributing to efforts to reduce smoking rates and to reduce the associated health risks of smoking and vaping.

The Act, in conjunction with the Regulations, aims to achieve this by, among other things:

- reducing the attractiveness and appeal of tobacco products to consumers, particularly young people;
- providing for health warnings;
- reducing the ability of the retail packaging of tobacco products to mislead consumers about the harms of smoking; and
- prohibiting tobacco and e-cigarette advertising and sponsorships.

It follows that to the extent that the supporting Regulations limit freedom of expression it is for the legitimate objective of the protection of public health.

Reasonable: measure will be effective to achieve the desired ends

Australia's tobacco plain packaging measure (plain packaging and larger graphic health warnings) was ground-breaking, and its impact has been significant in reducing smoking

prevalence and passive smoking in Australia.² It also has a positive impact on reducing the appeal of tobacco products, reducing the potential for tobacco packaging to mislead consumers, and enhancing the effectiveness of graphic health warnings.³

Under the tobacco plain packaging laws, all tobacco products must be packaged in a certain colour, display brand names in certain ways, display the required text and health warnings and not display logos, brand images or promotional text. These laws apply for the sale, offer to sell, supply, packaging or manufacture tobacco products in Australia.

These Regulations are consistent with the updated approach to tobacco control measures. While the laws have been effective and efficient, they have not kept pace with challenges in the evolving operating environment, and the thematic review found they would benefit from updates and amendments.

Since Australia's health warnings were last updated in 2012, new scientific research has emerged on the effects of tobacco use on health. It is important that health warnings are updated to reflect this evidence and inform Australians of the broad range of health consequences of smoking.

Advertising and sponsorship bans are an effective means to reduce the prevalence and initiation of tobacco use.⁴ The proposed reforms include a comprehensive advertising ban in Australia. The ban includes a broad range of media platforms, extending to social media for example, and other forms of advertising, promotion and sponsorship. It is important that the public's exposure to advertising and promotion of tobacco products which pose a risk to population health is limited. The Regulations include provisions relating to advertising permitted publications for online point of sale. The Act permits the publication of tobacco advertisements and e-cigarette advertisements having an online point of sale in certain circumstances. If there is no applicable State or Territory law, the Act allows the Regulations to prescribe the matters with which such advertisements need to comply for publication to be permitted. These Regulations set out those matters.

Proportionate: measure does not impinge on freedom of expression to a greater degree than is necessary

The restrictions are central to achieving the aims and objectives of the plain packaging measure. The Department has conducted market research to ensure the robustness of measures adopted. In addition, the advertising and sponsorship prohibitions are proportionate to the public health risk posed.

² Australian Government Department of Health and Aged Care (2016) *Post-Implementation Review of Tobacco Plain Packaging*, Australian Government Department of Health and Aged Care.

³ Ibid.

⁴ Levy DT, Chaloupka F & Gitchell J. (2004) The effects of tobacco control policies on smoking rates: a tobacco control scorecard. *Journal of Public Health Management & Practice*, 10(4), 338–53. doi:10.1097/00124784-200407000-00011.

The Regulations limit the right to freedom of expression only to the extent necessary to achieve the objectives of the measures, specifically with the intention of discouraging the use of tobacco and e-cigarette products and to protect and improve public health. It follows that the measures are proportionate and do not impinge on freedom of expression to a greater degree than is necessary.

Necessary: no less restrictive means of achieving the desired ends

Tobacco product packaging measures contribute to efforts to reduce smoking rates in Australia. The tobacco product and packaging requirements are not an alternative to other tobacco control measures but are an integral part of the comprehensive suite of measures adopted by the Government to respond to the public health problems caused by tobacco.

Australia's history of progressively more comprehensive and stringent tobacco regulation is consistent with international best practice as well as steps to combat the global health epidemic posed by tobacco smoking through implementation of the WHO FCTC.

The WHO FCTC imposes a comprehensive set of obligations for Parties to implement and manage tobacco control programmes. Article 11 of the WHO FCTC requires Parties to adopt and implement effective measures in respect of the packaging and labelling of tobacco products, including health warnings and other appropriate messages. Further, Article 13(2) obliges each Party "in accordance with its constitution or constitutional principles, [to] undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship." Under the WHO FCTC, tobacco advertising and promotion means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly. It follows that the Regulations in relation to tobacco plain packaging and the prohibition on tobacco advertising are necessary, consistent with Australia's commitment to implementing the WHO FCTC and that there is not less restrictive means of achieving the desired ends.

Similarly, equivalent advertising and sponsorship prohibitions applied to e-cigarettes are proportionate to the public health risk posed by e-cigarettes.

It follows that the measures contained in the Regulations are reasonable given the international precedents, extensive public consultation and evidence base on which they have been developed.

Right to a fair trial and fair hearing rights— Article 14(1) of the ICCPR; and

Right to a presumption of innocence— Article 14(2) of the ICCPR.

Many of the details prescribed by the Regulations are relevant to determining whether a person has committed an offence, or is liable to a civil penalty, under the Act. For example, the Regulations prescribe packaging requirements which can constitute an offence. For this reason, the Regulations engage the right to a fair trial and fair hearing rights along with the right to a presumption of innocence.

The Act triggers the operation of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act). The safeguards of Part 4 of the Regulatory Powers Act apply to ensure that fair process is applied, particularly where there is the potential for both criminal and civil proceedings.

Reversal of the legal burden

In a small number of areas of the Act the legal burden of proof is reversed. Where the legal burden is reversed, it is only in relation to one element of an offence, for example the rebuttable presumption that the product is for retail sale at section 17 reverses the legal burden. This section allows for prescription in the Regulations (see section 10 - Prescribed amounts of tobacco products) of an amount of tobacco product possession. Any amount above this, it will be assumed that the intention is the product is for retail sale.

Only a small number of provisions in limited circumstances adopt the approach of including a reverse onus. This approach is applied for sections 17, 19(9), 20(4), 42(9) and 43(4) of the Act. Beyond the reversal of the evidential burden, in some cases the reversal of the legal burden is justified given that it seeks to balance the critically important objects of the legislation and the effective administration of the legislation in a manner that is proportionate with the need to support the presumption of innocence.

Reversal of the evidential burden

The provisions in Chapter 3 and Chapter 4 of the Act which reverse the evidential burden have been drafted in careful consideration and taking a consistent approach to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (Guide to Framing Commonwealth Offences). In particular, where the evidential burden was reversed consideration was given to the following circumstances:

- o the matter is peculiarly within the knowledge of the defendant; and
- o it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

Each of the provisions that reverses the evidential burden makes this clear on the face of the provision in a legislative note. It is appropriate that the evidential burden for showing each exception rests with the defendant.

In relation to the permitted publications exception in sections 19 and 42 of the Act the approach has been that the matter may be peculiarly within the knowledge of the defendant, although possibly not in all cases, but consideration has been given to the need for accessible provisions and for the effective administration of these provisions taking into account the objects. The exceptions represent a balanced compromise between the needs of effective law enforcement and the presumption of innocence.

Strict liability offences

There are a number of strict liability offences contained in the Act and the some of the detail relevant to those offences is contained in the Regulations. Strict liability offences engage and limit the presumption of innocence as they allow for the imposition of criminal liability without the need to prove fault. However, the defence of mistake of fact is still available to the defendant. This ensures that a person cannot be held liable if he or she had an honest and reasonable belief that they were complying with relevant obligations. All of the civil penalty and offence provisions throughout the Act are also framed as strict liability offences.

Application of strict liability has been set with consideration given to the guidelines regarding the circumstances in which strict liability is appropriate set out in the Guide to Framing Commonwealth Offences. Accordingly, the penalties for the strict liability offences in the Act

do not include imprisonment, and do not exceed 60 penalty units for an individual. The penalty for corporations is 600 penalty units for strict liability offences which is justified based on the need to provide a sufficient level of deterrence for corporations.

To the extent that the regulations engage with the right to a fair trial and fair hearing rights and also the right to a presumption of innocence any limitations on these rights are reasonable, necessary and proportionate. They are reasonable because they seek to balance the need for an effective regulatory regime against the right to a presumption of innocence. They are necessary to facilitate the important objects of the Act. They are proportionate particularly given that they are sparingly applied given the large number of offences in the Act. They seek to only impose reverse burdens where it is considered strictly necessary and in furtherance of the important objects of the Act, which the regulations facilitate.

Conclusion

The Regulations are compatible with human rights. To the extent that they limit any human rights, those impacts are reasonable, necessary and proportionate.

Details of the *Public Health (Tobacco and Other Products) Regulations 2024*

Chapter 1- Introduction

Part 1.1- Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Public Health (Tobacco and Other Products) Regulations 2024* (the Regulations).

Section 2 – Commencement

This section relates to the commencement of the instrument. It provides that each provision of this instrument commences on the later of the day after this instrument is registered; and immediately after the commencement of section 3 of the *Public Health (Tobacco and Other Products) Act 2023*.

Section 3 – Authority

This section provides that the *Public Health (Tobacco and Other Products) Regulations 2024* are made under the *Public Health (Tobacco and Other Products) Act 2023*.

Section 4 – Simplified outline of this instrument

Section 4 sets out a simplified outline of the Regulations.

Section 5 – Definitions

Section 5 provides for the definitions used in the Regulations. A note highlights to the reader that a number of expressions used in the instrument are defined in the Act, including: brand name, cigar, cigarette, regulated tobacco item, retail packaging, tobacco product and variant name.

Act means the *Public Health (Tobacco and Other Products) Act 2023*.

Age restriction warning is relevantly defined for the purpose of tobacco products and e-cigarette products. For an e-cigarette product and tobacco product, it means a warning stating that it is illegal to sell e-cigarette products and tobacco products (respectively) to a person under 18 and it is illegal to purchase an e-cigarette product or tobacco product (respectively) for use by a person under 18.

AQS mark has the same meaning as in the *National Trade Measurement Regulations 2009*.

AS 4830—2007 means Australian Standard AS 4830-2007, *Determination of the extinction propensity of cigarettes* as existing at the commencement of this instrument.

A note provides that *AS 4830—2007* could in 2024 be purchased from SAI Global's website (<https://www.saiglobal.com>). The Department of Health and Aged Care (the Department) can make a copy of the standard available for viewing at one of its offices, subject to licensing conditions.

This material is being incorporated by reference and is to be made publicly and freely available to support appropriate access to law.

Bar code means a mark containing information about a product in the form of a series of numbers and bars of varying thickness designed to be read by an optical scanner.

Bidi means a tobacco product for smoking, not enclosed in paper, commonly known as a bidi.

Calibration mark means a mark used only for the purpose of the automated manufacture of the retail packaging of tobacco products.

Calibration marks include those marks printed on packaging that are recognised by machinery during the manufacture process and which indicate where packaging materials should be printed, cut or folded.

A note provides as an example a mark used for the calibration of printer colours in the manufacture of retail packaging.

Cigarette carton means any container for retail sale that contains smaller containers in which cigarettes are directly placed.

Note 1 provides that an example of a smaller container is a cigarette pack.

Note 2 provides that a cigarette carton is an example of *secondary packaging* of a tobacco product.

Cigarette pack means any container for retail sale in which cigarettes are directly placed. A note provides that a cigarette pack is an example of *primary packaging* of a tobacco product.

Cigar tube means a tube for packaging a single cigar.

Country of origin statement has a meaning contained in subsection 89(2).

Fire risk statement has a meaning contained in subsection 94(1).

Full-length burn has the same meaning as in AS 4830-2007.

Health promotion insert has the meaning in section 105.

Health warning has the meaning in subsection 64(1).

Health warning series has the meaning in subsection 64(2).

Horizontal, in relation to the retail packaging of tobacco products, has the meaning in subsection 7(3).

Inner surface means, in relation to the retail packaging of a tobacco product, a surface of the packaging that is not an outer surface.

Large cylinder means retail packaging of a tobacco product that is a cylindrical container; and at least 41mm in height.

Lowered permeability band means, in relation to a cigarette, a concentric band of paper or other material that is included in, or applied to, cigarette paper in order to inhibit the burning of the cigarette.

The Regulations prescribe a consumer product safety standard for cigarettes. Specifically, those regulations establish requirements in relation to the positioning of lowered permeability bands on cigarettes.

Machine-readable code means an optical code representing data in a form that is readable only with the aid of an optical scanner.

Mandatory marking has the meaning in subsection 87(3).

Measurement mark has the meaning in subsection 91(1).

Online e-cigarette advertisement message is defined to mean the combined image and age restriction warning for e-cigarette products set out in Schedule 9.

Online tobacco advertisement warning means each combined health warning and age restriction warning for tobacco products set out in Schedule 1.

Origin mark has the meaning in subsection 51(1).

Outer surface means, in relation to the retail packaging of a tobacco product, a surface of the packaging described as an outer surface in subsection 72(1).

Pouch means primary packaging of a tobacco product that (a) is made from flexible material; and (b) takes the form of a rectangular pocket with a flap that covers the opening.

Primary packaging of a tobacco product means retail packaging of the tobacco product within the meaning of paragraph (a) of the definition of *retail packaging* in section 71 of the Act.

This definition is provided for ease of reference when referring to categories of retail packaging. A cigarette pack is an example of primary packaging.

Primary packaging track and trace identifier means a unique identifier that (a) appears on the primary packaging of a tobacco product; and (b) is of a kind referred to in Article 6 or 10 of the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017, as existing at the commencement of this instrument.

A note provides that the Regulation could in 2024 be viewed on the European Union website (<https://europa.eu>).

Quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

Secondary packaging of a tobacco product means retail packaging of the tobacco product within the meaning of paragraph (b) of the definition of *retail packaging* in section 71 of the Act.

This definition, as with primary packaging, is provided for ease of reference when referring to categories of retail packaging. A cigarette carton is an example of secondary packaging.

Secondary packaging track and trace identifier means a unique identifier that (a) appears on the secondary packaging of a tobacco product; and (b) is of a kind referred to in Article 6 or 10 of the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017, as existing at the commencement of this instrument.

A note provides the Regulation could in 2024 be viewed on the European Union website (<https://europa.eu>).

Small cylinder means retail packaging of a tobacco product that is (a) a cylindrical container; and (b) less than 41 mm in height.

Square, in relation to the retail packaging of tobacco products, has the meaning in subsection 7(4).

Tear strip means a line of plastic incorporated into a plastic or other wrapper, to enable the wrapper to be opened easily, but does not include any part of the wrapper that is removed with the tear strip when the wrapper is opened.

The second part of the definition is included as section 96 specifies a maximum width for tear strips. This ensures that the tear strip does not include any part of the plastic wrapper that comes away with the tear strip when the wrapper is opened.

Trade description means any trade description that is required to appear on the retail packaging of a tobacco product by regulations made under the *Commerce (Trade Descriptions) Act 1905*. The requirements of a ‘trade description’ are set out in the Commerce (Trade Descriptions) Regulations 2016.

This description is used in the concept of *mandatory marking*, and there are specific provisions about *trade descriptions* on retail packaging of tobacco products in the Regulations.

Vertical, in relation to the retail packaging of tobacco products, has the meaning in subsection 7(2).

Part 1.2- Interpretation

Section 6 – Reference to surfaces of cigarette packs and cigarette cartons

Section 6 relates to references to surfaces of cigarette packs and cigarette cartons.

Subsection 6(1) provides that a reference in the Regulations to an outer surface of a cigarette pack (such as the front outer surface) is a reference to all of that outer surface, including the part of that outer surface that forms part of the flip-top lid.

Subsection 6(2) provides that if a cigarette carton has one or more flaps with surfaces that become visible only when the carton is opened, those surfaces are taken to be inner surfaces of the carton.

This section clarifies the status of the inner and outer faces of cigarette packs and cartons, whether they are open or closed. For example, the clause clarifies that a reference to the front face of a cigarette pack refers to the entire front face, including the part of the front surface that is part of the flip-top lid, whether the flip-top lid is open or closed. Similarly, this clause provides that faces of cartons that are only visible after the carton has been opened are inner surfaces.

Section 7 – References to certain kinds of retail packaging of tobacco products

Section 7 sets out what the references to certain shapes of retail packaging of tobacco products include. These are relevant because there are specific display requirements for health warnings dependent on the shape of the tobacco product.

Subsection 7(1) provides that a reference in the Regulations to a cylinder or a cylindrical container includes a container that is, in one plane, elliptical, rather than circular, in cross-section.

Subsection 7(2) provides that retail packaging of tobacco products is *vertical* if, when the brand name on the front outer surface is read, the longest edge of that outer surface is vertical.

Subsection 7(3) provides that retail packaging of tobacco products is *horizontal* if, when the brand name on the front outer surface is read, the longest edge of that outer surface is horizontal.

Subsection 7(4) provides that retail packaging of tobacco products is *square* if when the brand name on the front outer surface is read, the edges of the outer surface are the same dimensions.

Section 8 – Removability of adhesive labels on retail packaging of tobacco products

Section 8 provides that for the purpose of the Regulations, an adhesive label attached to the retail packaging of tobacco products is easily removable if (a) it is not likely to stay attached during the expected life of the retail packaging; or (b) it can be removed without damaging the label or the retail packaging.

Part 1.3- Prescribed amounts of tobacco products

Section 9 – Purpose of this Part

Section 9 provides for the purpose of this Part.

Part 1.3 prescribes amounts, in relation to tobacco products, for the purposes of paragraphs 17(b), 96(3)(b) and 110(3)(b) of the Act.

Paragraph 17(b) relates to the amount of a tobacco product that is relevant for the purpose of applying the rebuttable presumption of offer for retail sale.

Paragraphs 96(3)(b) and 110(3)(b) relate to the amount of the tobacco product in an individual's possession for the purpose of the exception for possession for individual personal use.

Section 10 – Prescribed amount – rebuttable presumption of offer for retail sale

Section 10 prescribes an amount for the purpose of paragraph 17(b) of the Act. The reversal of the legal burden in section 17 of the Act reflects the need for effective administration of the provisions. Section 17 provides for a rebuttable presumption of an offer of tobacco products for retail sale where the criteria set out in the section are met.

The defendant bears a legal burden in section 17 to prove that tobacco products are not intended to be offered for retail sale. Unless the contrary is proved, a tobacco product is presumed to be offered for retail sale if an amount of the tobacco product is on physical premises from which regulated tobacco items are sold by way of retail sale or supplied to fulfil a retail sale; and the amount exceeds the amount prescribed by the Regulations. The rebuttable presumption facilitates prosecutions in circumstances where it is reasonable to presume that the tobacco products are for retail sale i.e. they are in a shop or wholesale facility that sells or supplies tobacco. This is only one element of the offence and it would continue to be the case that the offence as a whole would need to be proven by the prosecution. The reversal of the legal burden in these circumstances is a proportionate approach that balances the need for effective administration, the advancement of the objects of the Act and consideration of the presumption of innocence.

The prescribed amount is, for cigarettes, 50 cigarettes; and for tobacco products other than cigarettes, 50 grams. These amounts align with those adopted in the Public Health (Tobacco) Regulation 2016 [NSW].

It would be open to the defendant to seek to rebut the presumption, for example, if the amount of cigarettes exceeded the prescribed amount, the defendant could still assert that they were for personal use and provide evidence in support of, for example, being a particularly heavy smoker.

Section 11 – Prescribed amount – exception for possession by individual for personal use

Section 11 prescribes relevant amounts for the purposes of paragraphs 96(3)(b) and 110(3)(b) of the Act. The amount prescribed is, for cigarettes, 500 cigarettes and for tobacco products other than cigarettes, 500 grams.

The prescribed amount is intended to reflect a balance between setting the amount too low which would capture legitimate personal use and setting the amount too high allowing businesses holding small quantities of non-compliant product with the intent of selling those products to the public.

Subsection 96(3) provides that it is an exception to the offence of possessing tobacco products in non-compliant retail packaging where (a) an individual possesses the tobacco product for the individual's personal use and (b) the amount of the tobacco product in the individual's possession does not exceed the amount (if any) prescribed by regulations made for the purposes of this paragraph.

Subsection 110(3) provides for an equivalent exception in the case of the offence where the person obtained possession of the product from a constitutional corporation.

Part 1.4- Temporary exemption under the Trans-Tasman Mutual Recognition Act 1997

Section 12 – Temporary exemption under the Trans-Tasman Mutual Recognition Act 1997

Section 12 provides that for the purposes of subsection 185(8) of the Act, on and from the commencement of the Regulations, the Act is exempt from the operation of the *Trans-Tasman Mutual Recognition Act 1997*. The purpose of that Act is to recognise within Australia regulatory standards adopted in New Zealand regarding goods and occupations. The exemption prevents products that do not comply with the plain packaging requirements from being sold in Australia, whether or not those products are able to be sold in New Zealand.

A note provides that the exemption operates for a period of up to 12 months and refers to subsection 46(4) of the *Trans-Tasman Mutual Recognition Act 1997*.

Chapter 2- Advertisements- permitted publications Part 2.1- Introduction

Part 2.1- Introduction

Section 13 – Simplified outline of this Chapter

Section 13 sets out a simplified outline of this Chapter.

Part 2.2 – Tobacco advertisements- permitted publications for online point of sale

The rules below are only relevant to the extent a State or Territory does not regulate internet advertising of tobacco products- i.e. they are default rules. Where there is no such regulation the default rules have an important role.

Section 14 – Purpose of this Part

Section 14 provides for the purpose of this Part.

The Part prescribes matters in relation to the publication of a tobacco advertisement that is available on, or accessible using, the internet for the purposes of paragraph 32(3)(e) of the Act.

Paragraph 32(3)(e) provides that a person may publish a tobacco advertisement if the publication of the advertisement complies with the regulations (if any) made for the purposes of this paragraph.

Section 15 – Scope of this Part

Section 15 provides the scope of this Part.

It provides that this Part prescribes matters in relation to (a) a webpage on which a tobacco advertisement is displayed; or that provides a facility to purchase regulated tobacco items and (b) the website on which such a webpage appears. The rules are default rules, which will only be relevant to the extent that a State or Territory does not regulate internet advertising of tobacco products.

Section 16 – Online tobacco advertisements- webpage requirements

Section 16 sets out the webpage requirements for an online tobacco advertisement.

Subsection 16(1) provides for the basic requirements that such a webpage must include.

Subsection 16(2) sets out permitted information about tobacco products that the price board may include.

Section 17 – Display of online tobacco advertisement warnings

Section 17 provides the requirements for the display of tobacco advertisement warnings for online tobacco advertisements.

Subsection 17(1) provides the webpage on which a tobacco advertisement is displayed or that provides a facility to purchase regulated tobacco items must also display in a prominent position at the top of the page, the tobacco advertisement warnings for tobacco products.

Subsection 17(2) provides that the display of the images in the health warning series as part of the online tobacco advertisement warnings must be either (a) a static display that clearly displays during each quarter of the year, the warnings required by Schedule 1 for that quarter; or (b) a dynamic display, in which each warning in Schedule 1 is clearly displayed in the sequence appearing in that Schedule for a period between 15 and 30 seconds.

It will be open for a person to move from one display method to another. However, they cannot use both display methods at the same time.

Subsection 17(3) provides that the online tobacco advertisement warnings must be fixed in place so that they are clearly visible at all times to a person accessing the webpage.

Subsection 17(4) provides that the online tobacco advertisement warnings must (a) be legible and undistorted; (b) be scaled to suit the device on which they are viewed and (c) not be collapsible.

Subsection 17(5) provides the online tobacco advertisement warnings must not contain any link that allows access to any other webpage. A note provides that a webpage that provides a facility for the purchase of both regulated tobacco items and e-cigarette products must comply with this section and refers the reader to subsection 25(2).

Section 18 – Online tobacco advertisement warnings – Secretary may approve file containing images

Section 18 provides for practical requirements relating to the Secretary’s approval of images for online tobacco advertisements.

Subsection 18(1) provides that the Secretary may approve one or more electronic files containing images for use in displaying the online tobacco advertisement warnings for the purposes of this Part.

Subsection 18(2) provides that if such a file has been approved, the online tobacco advertisement warnings that are displayed on the webpage must (a) be sourced from the file; (b) use the image aspect ratios in the file for each image; and (c) contain the alternative text in the file for each image.

Subsection 18(3) provides that the Secretary must make a file approved under subsection (1) available to a person on request, free of charge, if the Secretary is reasonably satisfied that the person is involved in the retail sale of regulated tobacco items using the internet.

Section 19 – Online tobacco advertisements- website requirements

Section 19 provides the website requirements for an online tobacco advertisement.

Subsection 19(1) provides that the website must include an age verification system that limits access to the website to a person who is at least 18.

Subsections 19(2) and 19(3) relate to geo-blocking of certain purchasers.

Subsection 19(2) provides that the website must include a facility that prevents the purchase of a tobacco product by a person located in a State or Territory in which the law of that State or Territory prohibits the purchase of tobacco products using the internet.

Subsection 19(3) provides that subsection 19(2) applies regardless of the location of the person who (a) publishes the tobacco advertisement; or (b) hosts the website on which the tobacco advertisement is published.

Section 20 – Online tobacco advertisements- prohibited matters

Section 20 sets out prohibited matters for online tobacco advertisements.

Subsection 20(1) provides that the website must not (a) contain any information about regulated tobacco items that is not required or permitted under the Act or the Regulations; or (b) invite or allow bids or offers for the sale of tobacco products; or (c) include an e-cigarette advertisement on the same webpage on which a tobacco advertisement is displayed.

Subsection 20(2) provides clarification of what a website must not include in paragraphs (a) to (f).

A note provides that for the purposes of paragraph (2)(b) which is ‘words or images that entice, or are intended to entice, a person to purchase a regulated tobacco item’ examples of

words that entice a person to purchase a regulated tobacco item include, but are not limited to, the following: cheap; discount; bulk savings; buy one, get one free; and tax free.

Section 21 – Information to be in English etc.

Section 21 relates to the prescription that information included on websites under this Part must be in English.

Subsection 21(1) provides that all information that is required or permitted by this Part to be included on a website must be legible, in English and in an undistorted form.

Subsection 21(2) provides that nothing in subsection 21(1) prohibits the inclusion of the information in additional languages.

Part 2.3 – E-cigarette advertisements- permitted publication for online point of sale

Part 2.3 prescribes rules for online e-cigarette advertisements which are based on those for online tobacco advertisements. The rules are default rules - they only apply to the extent a State or Territory does not regulate internet advertising of e-cigarette products.

The Act sets out a number of exceptions detailing circumstances that would not be considered e-cigarette advertisements. These include some communications or representations governed by the *Therapeutic Goods Act 1989*, such as the making of material about the use of e-cigarettes for smoking cessation available by a health practitioner to a patient in a clinical setting.

Section 22 – Purpose of this Part

Section 22 provides for the purpose of this Part.

The Part prescribes matters in relation to the publication of an e-cigarette advertisement that is available on, or accessible using, the internet for the purposes of paragraph 58(3)(e) of the Act.

Paragraph 58(3)(e) of the Act provides that a person may publish an e-cigarette advertisement if the publication of the advertisement complies with the regulations (if any) made for the purposes of this paragraph.

Section 23 – Scope of this Part

Section 23 provides the scope of this Part.

It provides that the Part prescribes matters in relation to (a) a webpage on which an e-cigarette advertisement is displayed; and (b) the website on which such a webpage appears.

Section 24 – Online e-cigarette advertisements- webpage requirements

Section 24 sets out the webpage requirements for online e-cigarette advertisements.

Subsection 24(1) provides for the basic requirements that such a webpage must include.

Subsection 24(2) sets out permitted information about e-cigarette products that the price board may include.

Section 25 – Display of online e-cigarette advertisement message

Section 25 sets out the website requirements for online e-cigarette advertisements.

Subsection 25(1) provides that a webpage on which an e-cigarette advertisement is displayed or that provides a facility to purchase e-cigarette products (but not tobacco products) must display the online e-cigarette advertisement message in a prominent position at the top of the webpage.

Subsection 25(2) provides that a webpage that provides a facility to purchase both regulated tobacco items and e-cigarette products must comply with the requirements of section 17.

Subsection 25(3) provides that the online e-cigarette advertisement message must be a static display that is fixed in place so that it is clearly visible at all times to a person accessing the webpage.

Subsection 25(4) provides that the online e-cigarette advertisement message must meet the requirements set out in paragraphs (a) to (c).

Subsection 25(5) provides that the online e-cigarette advertisement message must not contain any link that allows access to any other webpage.

Section 26 – Online e-cigarette advertisement message- Secretary may approve file containing image

Section 26 makes provision in relation to the Secretary’s approval of an online e-cigarette advertisement message.

Subsection 26(1) provides that the Secretary may approve an electronic file containing an image for use in displaying the online e-cigarette advertisement message for the purposes of this Part.

Subsection 26(2) provides that if such a file has been approved, the online e-cigarette advertisement message that is displayed on a webpage must meet the requirements set out in paragraphs (a) to (c).

Subsection 26(3) provides that the Secretary must make a file approved under subsection 26(1) available to a person on request, free of charge, if the Secretary is reasonably satisfied that the person is involved in the retail sale of e-cigarette products using the internet.

The provision of the online e-cigarette advertisement message free of charge to those involved in the online retail sale of e-cigarette products ensures appropriate and free access to products which are needed to support compliance with the law.

Section 27 – Online e-cigarette advertisements- website requirements

Section 27 sets out the website requirements for online e-cigarette advertisements.

Subsection 27(1) provides that the website must include an age verification system that limits access to the website to a person who is at least 18.

Subsections 27(2) and 27(3) relate to geo-blocking of certain purchasers.

Subsection 27(2) provides that the website must include a facility that prevents the purchase of an e-cigarette product by a person located in a State or Territory in which the law of that State or Territory prohibits the purchase of e-cigarette products using the internet.

Subsection 27(3) provides that subsection 27(2) applies regardless of the location of the person who publishes the e-cigarette advertisement or hosts the website on which the e-cigarette advertisement is published.

Section 28 – Online e-cigarette advertisements- prohibited information

Section 28 sets out the prohibited information for websites for online e-cigarette advertisements.

Subsection 28(1) provides that the website must not (a) invite or allow bids or offers for the sale of e-cigarette products; or (b) include a tobacco advertisement on the same webpage on which an e-cigarette advertisement is displayed.

Subsection 28(2) clarifies that the website must not include any of the information set out in paragraphs 28(2)(a) to (d).

A note provides that for paragraph 28(2)(a), examples of words that entice a person to purchase an e-cigarette product include, but are not limited to: cheap; discount; bulk savings; buy one, get one free; and tax free.

Section 29 – Information to be in English etc.

Section 29 relates to the prescription that information included on websites under this Part must be in English.

Subsection 29(1) provides that all information that is required or permitted by this Part to be included on a website must be legible, in English, and in an undistorted form.

Subsection 29(2) provides that nothing in subsection 29(1) prohibits the inclusion of the information in additional languages.

Chapter 3- Tobacco product requirements

Part 3.1- Introduction

Section 30 – Simplified outline of this Chapter

Section 30 sets out a simplified outline of Chapter 3.

Part 3.2- Plain packaging – physical features

Section 31 – Purpose of this Part

Section 31 provides for the purpose of this Part.

This Part prescribes matters in relation to the physical features of the retail packaging of tobacco products for the purposes of section 74 of the Act.

Section 74 of the Act provides that the physical features of the retail packaging of tobacco products must comply with the regulations (if any) prescribed for the purposes of this section.

Section 32 – Physical features of retail packaging - general

Section 32 relates to the physical features of retail packaging.

Subsection 32(1) provides physical feature requirements of retail packaging that all tobacco products must comply with in paragraphs (a) and (b). The outer surfaces and inner surfaces of the packaging must not have any decorative ridges, etching, embossing, debossing, bulges or other irregularities of shape or texture, or any other embellishments, except as permitted by

the Regulations and any glues or other adhesives used in manufacturing the packaging must be transparent and not coloured.

Subsection 32(2) provides that a cigarette pack or cigarette carton must also comply with the requirements set out in paragraphs (a) to (c).

There are additional requirements that apply for cigarette packs set out in subsection 32(3). The requirements for flip-top lids on a cigarette pack are intended to ensure a uniform packaging format for cigarettes and prohibit novel opening mechanisms. The additional requirements also relate to the inside lip of the cigarette pack. The 'inside lip' of a cigarette pack refers to the part of the outer surfaces of the pack that is obscured when the flip-top lid is closed.

A note highlights that there are rules about linings of primary packaging (such as cigarette packs) in sections 35 and 43.

Section 33 – Physical features of cigarette packs- dimensions

Section 33 sets out the dimensions a cigarette pack must be.

The dimensions are based on when the flip-top lid of the cigarette pack is closed. Section 33 provides that the height must be at least 85mm but not more than 90mm; the width must be at least 55mm but not more than 60mm; and a depth of at least 20mm but not more than 24mm.

Section 34 – Physical features of cigarette cartons

Section 34 provides that a cigarette carton may include a perforated strip for opening the carton that leaves serrations on the edge of a surface of the carton when the carton is opened.

Section 35 – Physical features of lining of primary packaging of tobacco products

Section 35 provides for the physical features of lining of primary packaging of tobacco products.

Subsection 35(1) provides that the primary packaging of a tobacco product may contain a lining that complies with this section.

Subsections 35(2) to 35(5) provide for lining requirements.

Subsection 35(5) specifically provides that the lining must not be such that it can be removed from the primary packaging without damaging the lining. A note provides that an effect of this subsection is to prevent the lining comprising a removable 'inner pack' for the tobacco products.

Section 36 – Physical features of cigar tubes

Section 36 prescribes physical features of cigar tubes.

Subsection 36(1) provides that a cigar tube must be cylindrical and rigid; and may have one or both ends tapered or rounded.

Subsection 36(2) provides that the opening to a cigar tube must be at least 15mm in diameter.

Section 37 – Physical features of primary packaging of loose processed tobacco

Section 37 provides that the primary packaging of loose processed tobacco must be a pouch; a small cylinder; or a large cylinder.

Section 38 – Physical features of primary packaging of other tobacco products

Section 38 prescribes the physical features of primary packaging of other tobacco products.

Section 38 provides that the primary packaging of a tobacco product (other than a cigarette pack or cigar tube) must comply with paragraphs (a) and (b) such that the largest dimension of the packaging must be at least 85mm and the second largest dimension of the packaging must be at least 55mm.

Section 39 – Resealing tobacco products

Section 39 relates to resealing tobacco products.

Subsection 39(1) provides that the primary packaging of a tobacco product, other than a cigarette pack, may include means for resealing the packaging.

Examples are included of a tab or press seal.

Subsection 39(2) provides that the means for resealing the packaging must either be the colour known as Pantone 448C or transparent and not coloured; not be marked, textured or embellished in any way; and be no larger than is reasonably necessary for its purpose.

Subsection 39(3) provides that the means for resealing the packaging must not obscure any health warning or mandatory marking.

Section 40 – Windows in packaging prohibited

Section 40 provides that retail packaging of tobacco products, other than a plastic or other wrapper, must not have a cut-out area or window that enables the contents of the packaging to be visible from outside the packaging.

Section 41 – No voids, spacers or fillers etc

Section 41 makes provision in relation to voids, spacers or fillers etc.

Subsection 41(1) provides that the retail packaging of tobacco products must not contain any voids.

Subsection 41(2) provides that the retail packaging of tobacco products must not contain anything within the dimensions of the packaging except those things set out in paragraphs (a) to (c).

A note provides that an effect of this subsection is to prohibit spacers or fillers in the retail packaging that are not otherwise permitted by the Regulations.

Part 3.3- Plain packaging- colour and finish

Section 42 – Purpose of this Part

Section 42 provides that this Part prescribes requirements in relation to the colour and finish of the retail packaging of tobacco products for the purposes of subsection 75(1) of the Act.

Subsection 75(1) of the Act provides that the colour and finish of the retail packaging of tobacco products must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Section 43 – Colour and finish of retail packaging

Section 43 relates to colour and finish of retail packaging.

Subsections 43(1) to 43(4) set out the required finishes and colours of retail packaging.

Subsection 43(1) provides that all outer surfaces and inner surfaces of the primary packaging, and the secondary packaging of tobacco products; and both sides of any lining of a cigarette pack must have a matt finish.

Subsection 43(2) provides that all outer surfaces of primary packaging and secondary packaging must be the colour known as Pantone 448C.

Pantone 448C is a drab dark brown which research commissioned by the Department, when the plain packaging legislation was first developed, found to be optimal in terms of decreasing the appeal and attractiveness of tobacco packaging, decreasing the potential of the pack to mislead consumers about the harms of tobacco use, and increasing the impact of graphic health warnings.

Subsection 43(3) provides that each inner surface of a cigarette pack or cigarette carton must either be colour known as Pantone 448C or white.

Subsection 43(4) provides that each inner surface of primary packaging or secondary packaging, other than a cigarette pack or cigarette carton, must be, for packaging that is made of metal or wood- the natural colour of the metal or wood; or in any other case either the colour known as Pantone 448C or white.

Subsection 43(5) provides that the lining of a cigarette pack must be silver coloured foil with a white paper backing.

There are exceptions to colour requirements set out in subsection 43(6) and subsection 43(7) provides that section 43 does not apply to calibration marks.

Part 3.4- Plain packaging- standardisation

Section 44 – Purpose of this Part

Section 44 provides for the purpose of this Part.

This Part prescribes requirements as to the following for the purposes of subsection 76(1) of the Act: (a) the number of units, mass or volume of a tobacco product included in the retail packaging of that product; (b) the pricing of a tobacco product in retail packaging of that number of units, mass or volume.

The standardisation provisions are intended among other things to reduce product differentiation. Such product differentiation presently allows for the creation of products such as slim-line cigarettes, which are targeted towards particular consumers (such as women) and/or incorrectly reduce perceptions of harm. It can also affect price points to allow for example, smaller packs to be sold at a cheaper price in an effort to appeal to youth.

Section 45 – Standardised retail packaging- cigarettes

Section 45 relates to standardised retail packaging and cigarettes.

Subsection 45(1) provides that a cigarette pack must contain 20 cigarettes. Subsection 45(2) provides that the cigarettes included in the cigarette pack must all be of the same dimensions. A note provides that section 119 prescribes standardised dimensions for cigarettes.

Section 46– Standardised retail packaging- cigarette cartons

Section 46 relates to standardised retail packaging and cigarette cartons.

Subsection 46(1) provides that a cigarette carton must contain 10 cigarette packs.

Subsection 46(2) provides that the retail price of a cigarette carton must be equivalent to the sum of the retail price of the individual cigarette packs contained in the carton.

A note provides that this subsection prevents volume discounting for cigarettes sold in cartons.

Section 47 – Standardised retail packaging- filtered and little cigars

Section 47 relates to standardised retail packaging and filtered and little cigars.

Subsection 47(1) provides that the section applies to the retail packaging of the following cigars: (a) cigars that have a filter tip; (b) cigars that have (i) a diameter no greater than 10mm; and (ii) a mass no greater than 1.4 grams (excluding any mouthpiece).

Subsection 47(2) provides that the retail packaging must contain 20 cigars.

Subsection 47(3) provides that the cigars included in the retail packaging must all be of the same dimensions.

Section 48 – Standardised retail packaging- loose processed tobacco

Section 48 provides that the retail packaging of pipe tobacco and loose processed tobacco must contain 30 grams of tobacco.

Part 3.5- Plain packaging - permitted marks

Section 49 – Purpose of this Part

Section 49 provides for the purpose of this Part.

The Part prescribes (a) marks that are permitted to appear on the retail packaging of tobacco products for the purposes of paragraph 77(3)(d) of the Act; and (b) the requirements for such marks, for the purposes of subsection 77(4) of the Act.

Note 1 provides that this Part deals with requirements for marks other than brand names and variant names. For brand names and variant names, see Part 3.6 of the Regulations.

Note 2 provides that health warnings and mandatory markings must also appear on the retail packaging of tobacco products and refers to Parts 3.7 and 3.8 of the Regulations.

Section 50 – Plain packaging - permitted marks generally

Section 50 relates to permitted marks which can be on primary and secondary packaging of a tobacco product.

Subsection 50(1) provides for permitted marks for primary packaging and secondary packaging. It provides that the marks in paragraphs (a) to (c) are permitted to appear on the primary packaging, and the secondary packaging, of a tobacco product.

Subsection 50(2) provides that in addition to the marks that are permitted to appear under subsection 50(1) a primary packaging track and trace identifier that complies with section 54 may appear on the primary packaging of a tobacco product; and a secondary packaging track

and trace identifier that complies with section 55 may appear on the secondary packaging of a tobacco product.

Subsections 50(3) and 50(4) relate to wrappers and provide that one or more calibration marks that comply with section 53 may appear on a plastic or other wrapper that covers (a) the primary packaging of a tobacco product; (b) the secondary packaging of a tobacco product or (c) a tobacco product that is for retail sale. Subsection 50(4) provides that in addition to subsection 50(3), (a) an origin mark that complies with section 51 may appear on a plastic or other wrapper that covers a tobacco product that is for retail sale; and (b) the following marks may appear on a plastic or other wrapper that covers more than one item of primary packaging of a tobacco product: (i) a bar code that complies with section 93; and (ii) one or more marks to conceal bar codes that comply with section 99.

Subsection 50(5) provides that a mark permitted under this Part must not use or contain any decorative ridges, etching, embossing, debossing, bulges or other irregularities of shape or texture, or any other embellishments, except as permitted by this Part.

Section 51 – Permitted marks- origin marks

Section 51 provides for the requirements for origin marks that can be permitted marks.

Subsection 51(1) provides that an origin mark must be an alphanumeric code or a covert mark that is not visible to the naked eye.

Subsection 51(2) to 51(4) provides the rules applying to all origin marks.

Subsection 51(2) provides that if the origin mark is printed, it may be printed in either white or black.

Subsection 51(3) provides that if the origin mark is printed in black, it may include a white background in the form of a rectangle no larger than 20mm by 5mm.

Subsection 51(4) provides that the origin mark may be applied to the retail packaging by etching or debossing.

Subsections 51(5) to 51(7) relate to alphanumeric codes.

Subsection 51(5) provides that an origin mark that is an alphanumeric code must comply with the requirements set out in paragraphs 51(5)(a) to (c).

Subsection 51(6) provides that if the origin mark is an alphanumeric code that is applied by etching or debossing, it must be the colour known as Pantone 448C.

Subsection 51(7) provide that if the origin mark is an alphanumeric code, it must not form a symbol or design or represent, or be suggestive of, the brand name or variant name (if any) of the tobacco product.

Section 52 – Permitted marks- AQS marks

Section 52 provides that an AQS mark on the retail packaging of a tobacco product must (a) appear only as is necessary to indicate that the product is packaged in accordance with the Average Quantity System requirements under the *National Measurement Act 1960*; and (b) be printed in accordance with subparagraphs 52(b)(i) to (iii).

A note provides that the AQS stands for Average Quantity System.

Section 53 – Permitted marks - calibration marks

Section 53 sets out the requirements for calibration marks on the retail packaging of a tobacco product.

It provides that a calibration mark on the retail packaging of a tobacco product must appear only as is necessary for the automated manufacture of the packaging; and if visible or otherwise detectable on the packaging, must be as inconspicuous as possible, consistent with the calibration mark's function in the manufacturing process.

Section 54 – Permitted marks- primary packaging track and trace identifiers

Section 54 provides for the requirements for primary packaging track and trace identifiers.

Subsection 54(1) relates to cigarette packs. It sets out the requirements in paragraphs 54(1)(a) to (e).

Subsection 54(2) relates to the primary packaging of tobacco products other than cigarette packs. It sets out the requirements in paragraphs 54(2)(a) to (f).

Subsection 54(3) provides for requirements for adhesive labels. An adhesive label mentioned in subparagraph 54(2)(b)(i) must (a) be transparent and not coloured; or (b) be the colour known as Pantone 448C.

Section 55 – Permitted marks- secondary packaging track and trace identifiers

Section 55 provides the requirements for secondary packaging track and trace identifiers.

Subsection 55(1) provides the requirements for a secondary packaging track and trace identifier on a cigarette carton in paragraphs 55(1)(a) to (f).

Subsection 55(2) provides the requirements for a secondary packaging track and trace and identifier on the secondary packaging of a tobacco product other than a cigarette carton in paragraphs 55(2)(a) to 55(2)(a) to (f).

Subsection 55(3) relates to adhesive labels mentioned in subparagraph 55(1)(c)(i) or (2)(b)(i).

Section 56 – Permitted marks- compliance with laws

Section 56 relates to permitted marks where they are in compliance with another law of the Commonwealth.

Subsection 56(1) provides that the retail packaging of tobacco products may display a mark that is required to be displayed on the packaging by another law of the Commonwealth.

Subsection 56(2) provides that the mark must comply with the requirements of that other law.

This provision is included to ensure the Regulations do not interfere with any mandatory markings (such as recyclability requirements) and requirements to display such markings on tobacco products introduced in future legislation.

The marks must comply with the relevant law to have the benefit of the permission under the Regulations. This means that a mark on packaging that purports to, but does not, comply with the other law could contravene both the other law and this legislation.

Part 3.6- Plain packaging- brand names and variant names

Section 57 – Purpose of this Part

Section 57 provides that this Part prescribes requirements for the appearance of brand names or variant names on the retail packaging of tobacco products for the purposes of subsection 77(4) of the Act.

Subsection 77(4) of the Act provides any brand name or variant name or other mark permitted under subsection 77(3)(d) that appears on the retail packaging of tobacco products must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

The intention is to limit the use of brand names and variant names which imply reduced harm. Research indicates that brand and variant names influence perceptions of the smoking experience, harm, appeal and attractiveness; they can also influence interest in trying tobacco products, including among non-smokers and youth. As such, brand and variant names undermine the dissuasive intent of plain packaging and enable tobacco companies to effectively target different segments of smokers.

Since the introduction of plain packaging, variant names have become more descriptive and evocative, there are now more variants per brand, and names are evoking previous pack imagery.

Section 58 – Retail packaging of cigarettes- brand names and variant names

Section 58 relates to the retail packaging of cigarettes and requirements relating to brand names and variant names.

Subsection 58(1) relates to cigarette packs and cigarette cartons. It provides that any brand or variant name that appears on a cigarette pack or cigarette carton must meet the requirements set out in paragraphs 58(1)(a) to (e).

Subsection 58(2) relates to orientation and location requirements for brand name or variant names on cigarette packs and cigarette cartons and sets these out in a table.

Subsection 58(3) provides that this section does not apply to wrappers, being a plastic or other wrapper that covers the retail packaging of a tobacco product or a tobacco product that is for retail sale.

A note refers to Part 3.9 for the requirements for wrappers.

Section 59 – Appearance of names on retail packaging of cigarettes

Section 59 relates to the appearance of names on retail packaging of cigarettes.

Subsection 59(1) provides that any brand name or variant name appearing on a cigarette pack or a cigarette carton must be printed in accordance with the requirements set out in paragraphs 59(1)(a) to (f).

Subsection 59(2) provides that for the purposes of paragraph 59(1)(d), a word consists of 2 or more letters.

Section 60 – Appearance of names on other retail packaging

Section 60 relates to the appearance of names on other retail packaging.

Subsection 60(1) provides that this section applies to the retail packaging of tobacco products other than (a) a cigarette pack or a cigarette carton; or (b) a plastic or other wrapper that covers any of the things in subparagraphs (i) to (iii).

A note provides that the requirements for wrappers are at Part 3.9.

Subsection 60(2) provides that any brand name or variant name appearing on the retail packaging must be printed on the packaging, or on an adhesive label attached to the packaging, in accordance with the requirements set out in paragraphs (a) to (f).

Subsection 60(3) provides that for the purposes of paragraph 60(2)(d), a word consists of 2 or more letters.

Subsection 60(4) provides that an adhesive label attached to the packaging as mentioned in subsection 60(2) must meet all of the requirements set out in paragraphs 60(4)(a) to (c).

Section 61 – Location of names on cigar tubes

Section 61 provides for the location of names on cigar tubes.

Subsection 61(1) provides that for each brand name or variant name appearing on a cigar tube, the name must (a) appear only once on the cigar tube; and (b) appear across one line only.

Subsection 61(2) sets out requirements such that the orientation of the names must appear as set out in paragraphs (a) and (b).

Section 62 – Location of names on other retail packaging

Section 62 provides for the location of names on other retail packaging.

Subsection 62(1) provides that this section applies to the retail packaging of tobacco products other than cigarette packs, cigarette cartons and cigar tubes.

Subsection 62(2) provides for the requirements such that any brand name or variant name appearing on retail packaging must comply with paragraphs (a) to (e).

Part 3.7 – Plain packaging- health warnings

Division 1 – Preliminary

Section 63 – Purpose of this Part

Section 63 provides for the purpose of this Part.

Section 63 provides that the Part prescribes requirements for the display of images and combinations of images on the retail packaging of tobacco products for the purposes of subsection 78(1) of the Act.

Subsection 78(1) of the Act provides that the retail packaging of tobacco products must display the images or combination of images (if any) prescribed by regulations made for the purposes of this subsection.

A note provides that for requirements in relation to the display of mandatory markings, see Part 3.8 of the Regulations.

A national system of text-only warnings was introduced in 1995, after initially being regulated through State and Territory legislation. Following a review of the text-only warnings, from 1 March 2006, most tobacco product packaging manufactured in, or imported into, Australia has been required to be printed with graphic health warnings.

The *Competition and Consumer (Tobacco) Information Standard 2011* provided consumers with updated and more prominent health warnings about the health effects of smoking and incorporated both graphic and text-only health warnings.

The Regulations further update and improve on the previous health warnings.

Section 64 – Key concepts relating to health warnings

Section 64 provides for the key concepts of ‘health warning’ and ‘health warning series.’

Subsection 64(1) provides that each numbered image or combination of images in a clause of Schedule 2 to 7 is a ‘health warning’.

Subsection 64(2) provides that a ‘health warning series’, for a tobacco product, is the series of health warnings specified for that tobacco product in whichever is relevant of Schedules 2 to 7.

Section 65 – Secretary may approve file containing images for health warnings

Section 65 provides that the Secretary may approve a file containing health warnings.

Subsection 65(1) provides that the Secretary may approve one or more electronic files containing images for use in displaying health warnings on the retail packaging of tobacco products for the purposes of this Part.

Subsection 65(2) provides that if such a file has been approved, the health warnings that are displayed on the retail packaging of tobacco products must be sourced from the file and use the same resolution as the file.

Subsection 65(3) provides that the Secretary must make a file approved under subsection 65(1) available to a person on request, free of charge, if the Secretary is reasonably satisfied that the person is involved in packaging tobacco products in retail packaging.

This ensures that a person who needs the file to comply, will have appropriate and easy access to it.

Division 2- Displaying health warnings on retail packaging

Section 66 – Display of health warnings on retail packaging of tobacco products

Section 66 provides that the retail packaging of a tobacco product that is sold or supplied, or offered for sale or supply, must display a health warning from the health warning series for that tobacco product in accordance with this Part.

Section 67 – Health warnings to be displayed equally

Section 67 provides for the equal display of health warnings.

Subsection 67(1) provides that the health warnings in each health warning series are to be displayed on the retail packaging of tobacco products as nearly as possible in equal numbers.

Subsection 67(2) provides that without limiting subsection 67(1), retail packaging of cigarettes is taken to comply with subsection 67(1) if, in any random sample of 4 cigarette cartons, the same health warning appears on no more than 2 cigarette packs in any carton.

Section 46 provides that a carton of cigarettes must contain 10 packs of cigarettes. Where 4 cartons are sampled of the 10 cigarette packets in each carton, if each carton contains the same health warning on no more than 2 packets of cigarettes then the retail packaging of cigarettes is taken to comply with subsection 67(1).

Section 68 – Health warnings not to be obscured etc.

Section 68 provides for health warnings not to be obscured. The provision recognises the importance of health warnings being clearly visible to the consumer.

Subsection 68(1) provides that a health warning displayed on the retail packaging of a tobacco product must not be obscured or obliterated in any way at the time of sale or supply of the tobacco product.

Examples are provided that any wrapper must not obscure or obliterate any part of the health warning and an adhesive label which is permitted to be attached by the Regulations must similarly not obscure or obliterate any part of the health warning.

Subsection 68(2) provides that opening retail packaging is not to be likely to obliterate, remove or render unreadable the health warning displayed on the tobacco product (not including cigarette cartons or cigar tubes).

Subsection 68(3) provides that a tear strip on the retail packaging of a tobacco product that complies with section 100 is taken not to obscure or obliterate a health warning.

Section 69 – Health warnings not to be distorted

Section 69 provides for the presentation of health warnings.

Subsection 69(1) provides that a health warning displayed on the retail packaging of a tobacco product must not be distorted. Similar to the requirement in section 68 it is of key importance that the health warning be clearly visible to the consumer.

Subsection 69(2) provides that a health warning displayed on the retail packaging of a tobacco product may be subject to minor cropping if it is necessary to fit the health warning on to the retail packaging and neither the overall effect, nor the readability of the health warning is affected by the cropping.

Section 70 – How health warnings are to be applied to retail packaging

Section 70 sets out how health warnings are to be applied to retail packaging.

Subsection 70(1) provides that a health warning that is displayed on a cigarette pack or a cigarette carton must be printed on the pack or carton.

Subsections 70(2) and 70(3) relate to the retail packaging of other products.

Subsection 70(2) provides that a health warning that is displayed on the retail packaging of tobacco products other than a cigarette pack or cigarette carton must be printed on the retail packaging; or be printed on an adhesive label that is attached to the retail packaging.

Subsection 70(3) provides for specific requirements relating to the adhesive label.

Section 71 – Transparent wrappers

Section 71 relates to transparent wrappers.

Subsection 71(1) provides that subsection 71(2) applies to retail packaging that is a plastic or other wrapper that covers any retail packaging of a tobacco product.

Subsection 71(2) provides that the requirements in this Part relating to the display of health warnings do not apply to the wrapper if the conditions set out in paragraphs (a) to (c) are met.

A note provides that paragraph (c) permits tobacco products in retail packaging to be arranged in ‘ranks’ or ‘files’.

Subsection 71(3) provides that a single cigar supplied by way of retail sale must be covered by at least one layer of retail packaging that is not a plastic or other wrapper.

Note 1 provides that an example of such packaging is a cigar tube or a cigar bag.

Note 2 provides that the band permitted around the circumference of a cigar under section 115 is not retail packaging.

Subsection 71(4) provides that the requirements in this Part relating to the display of health warnings do not apply to retail packaging that is a plastic or other wrapper that directly covers a single cigar if the wrapper is totally transparent and not coloured.

Subsection 71(5) provides that for the purposes of subsection 71(4), a wrapper is taken to be totally transparent and not coloured even if it contains a tear strip that complies with section 100.

Division 4- Displaying health warnings on outer surfaces

Subdivision A- General rules

Section 72 – Display of health warnings on outer surfaces of retail packaging of tobacco products

Section 72 provides a table that sets out where health warnings must be displayed on retail packaging of tobacco products.

Subsection 72(1) provides that for the retail packaging of tobacco products described in column 1 of an item in the table, the outer surfaces of the retail packaging described in columns 2 and 3 of the item must display the health warnings specified for the product in whichever of Schedules 2 to 7 is applicable to the product.

Subsection 72(2) provides that for images in Schedules 2 to 7 showing the layout for the display of a health warning on an outer surface, the outer edges of the image are the edges of the outer surface, unless the retail packaging is a small cylinder.

Subdivision B- Front outer surfaces

Section 73 – Front outer surface of cigarette packs and general vertical retail packaging

Section 73 relates to the front outer surface of cigarette packs and general vertical retail packaging.

Subsection 73(1) provides that a health warning displayed on the front outer surface of the retail packaging of tobacco products set out in paragraphs (a) to (g) must cover at least 75% of the total surface area.

However, subsection 73(2) provides that if the retail packaging is vertical retail packaging for cigars (other than a cigar tube); and the area of the front outer surface is at least 250cm² the health warning must cover at least 188cm².

Subsection 73(3) provides that the health warning must cover the whole of the flip-top lid (if any).

Subsection 73(4) provides that no part of the health warning is to be obscured when the flip-top lid (if any) is closed.

Section 74 – Front outer surface of general horizontal retail packaging

Section 74 relates to the front outer surface of general horizontal retail packaging.

Subsection 74(1) provides that a health warning displayed on the front outer surface of the retail packaging in paragraphs (a) to (e) must cover at least 75% of the total surface area.

However, subsection 74(2) provides that if the retail packaging is horizontal retail packaging for cigars (other than a cigar tube); and the area of the front outer surface is at least 250cm²; the health warning must cover at least 188cm².

Section 75 – Front outer surface of small cylinders

Section 75 provides that a health warning displayed on the front outer surface of a small cylinder must cover at least 60% of the total surface area.

Section 76 – Front outer surface of cigar tubes

Section 76 provides that a health warning displayed on the front outer surface of a cigar tube must meet the requirements set out in paragraphs 76(a) to (c).

These requirements are that it must cover at least 95% of the total length of the outer surface; be positioned lengthwise along the cigar tube; and extend to at least 60% of the circumference of the outer surface.

Subdivision C- Back outer surfaces

Section 77 – Back outer surface of cigarette packs and cigarette cartons

Section 77 provides that a health warning displayed on the back outer surface of the retail packaging of tobacco products set out in paragraphs 77(a) to (c) must cover at least 90% of the total surface area.

The retail packaging is a cigarette pack, a vertical cigarette carton and a horizontal cigarette carton.

Section 78 – Back outer surface of pouches

Section 78 provides that a health warning displayed on a back outer surface of a pouch must cover at least 75% of the total surface area.

A note provides that both the outside of the flap, and the outer surface of the pouch that is covered by the flap when closed, are back outer surfaces and refers to subsection 72(1).

Section 79 – Back outer surface of large cylinders

Section 79 provides that a health warning displayed on the back outer surface of a large cylinder (other than retail packaging for cigars) must cover at least 75% of the total surface area.

A note refers to section 81 for retail packaging for cigars.

Section 80 – Back outer surface of small cylinders

Section 80 provides that a health warning displayed on the back outer surface of a small cylinder (other than retail packaging for cigars) must cover at least 60% of the total surface area.

As for section 79, a note refers to section 81 for retail packaging for cigars.

Section 81 – Back outer surface of retail packaging for cigars (other than cigar tubes) and other general retail packaging

Section 81 relates to the back outer surface of retail packaging for cigars (other than cigar tubes) and other general retail packaging.

Subsection 81(1) provides that a health warning displayed on the back outer surface of the retail packaging of the tobacco products in paragraphs (a) and (b) must cover at least 75% of the total surface area.

However, subsection 81(2) provides that if the retail packaging is retail packaging for cigars (other than a cigar tube); and the area of the back outer surface is at least 250cm² the health warning must cover at least 188cm² of the back outer surface area.

Subdivision D- Other surfaces

Section 82 – Side outer surface of cigarette packs

Section 82 relates to the side outer surface of cigarette packs.

Subsection 82(1) provides that a health warning displayed on a side outer surface of a cigarette pack must cover the total area of the side outer surface from the base of the pack to a notional line that is parallel to the top edge of the side outer surface; and a continuation of the line of the bottom of the flip-top lid on the front outer surface.

Subsection 82(2) provides that the health warning must be displayed on at least one side outer surface.

Section 83 – Side outer surface of cigarette cartons

Section 83 relates to the side outer surface of cigarette cartons.

Subsection 83(1) provides that a health warning displayed on a side outer surface of a cigarette carton must cover at least 25% of the total surface area.

Subsection 83(2) provides that the health warning must be displayed on at least one side outer surface.

Section 84 – Side outer surface of other retail packaging

Section 84 relates to the side outer surface of other retail packaging.

Subsection 84(1) provides that a health warning displayed on a side outer surface of retail packaging of tobacco products not dealt with in another section of this Subdivision must cover at least 50% of the total surface area.

Subsection 84(2) provides that the health warning must be displayed on at least one side outer surface.

Section 85 – Hidden flap of pouches

Section 85 provides that a health warning displayed on the hidden flap of a pouch must be printed within a rectangle measuring at least 80mm by 25mm that is positioned in the centre of the surface of the hidden flap.

Section 86 – Base of large cylinder

Section 86 provides that a health warning displayed on the base of a large cylinder must cover at least 50% of the total surface area.

Part 3.8 – Plain packaging- mandatory markings

Section 87 – Purpose of this Part

Section 87 provides for the purpose of this Part.

Subsection 87(1) provides that the purpose of this Part is to prescribe the markings that must appear on the retail packaging of tobacco products for the purposes of subsection 79(1) of the Act. Subsection 79(1) of the Act provides that the regulations may prescribe markings that must appear on the retail packaging of tobacco products.

Subsection 87(2) provides that the markings set out in paragraphs (a) to (i) are prescribed.

A note refers to Part 3.7 for the requirements in relation to the display of health warnings on retail packaging.

Subsection 87(3) provides that each of the markings mentioned in subsection (2) is a *mandatory marking*.

Section 88 – Scope- exception for certain retail packaging of single cigars

Section 88 relates to the scope of the application of these provisions.

It provides that the Part does not apply to the retail packaging of a tobacco product if the tobacco product is a single cigar, and the cigar is packaged by a person who is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia.

Section 89 – Mandatory marking- country of origin statement

Section 89 provides the mandatory marking requirements for country of origin statements.

Subsection 89(1) provides that the primary packaging of a tobacco product must state the product's country of origin using the format 'made in...'. The example of 'Made in Cuba' is provided.

Subsection 89(2) provides that a statement mentioned in subsection 89(1) is a country of origin statement.

Subsection 89(3) provides that the secondary packaging of a tobacco product may include a country of origin statement.

Subsection 89(4) provides that the retail packaging of a tobacco product must not otherwise describe the origin of the tobacco product or the components of the product. Examples are provided to make it clear that statements such as ‘Product of Cuba’ or ‘Made in Cuba from premium tobacco’ are not permitted.

Subsection 89(5) sets specific requirements for the country of origin statement as it appears on retail packaging of a tobacco product in paragraphs (a) to (c).

Section 90 – Mandatory marking- manufacturer’s date mark

Section 90 provides the mandatory marking requirements for a manufacturer’s date mark.

Subsection 90(1) provides that the primary packaging of a tobacco product must display the date, being the ‘manufacturer’s date mark’, on which the product was packaged.

Subsection 90(2) sets out the requirements for the manufacturer’s date mark in paragraphs 90(2)(a) to (c).

Subsection 90(3) prescribes the alphanumeric code that must be used to represent the manufacturer’s date mark and includes an example that ‘April 2025 is represented by D5’.

Section 91 – Mandatory marking- measurement marks

Section 91 provides the mandatory marking requirements for measurement marks.

Subsection 91(1) provides that the primary packaging, and the secondary packaging, of a tobacco product must be marked with a statement, being the ‘measurement mark’, of the measurement of the product.

Subsections 91(2) and 91(3) set out the requirements for the measurement marks.

Subsection 91(4) relates to measurement marks on wrappers. It provides that a measurement mark on a plastic or other wrapper that covers more than one item of primary packaging of a tobacco product must be printed in white and on a black rectangular background.

Subsection 91(5) relates to measurement marks on cigarette packs or cigarette cartons. It provides that a measurement mark on a cigarette pack or a cigarette carton must appear once on the front outer surface of the pack or carton and may appear once on either the top or the bottom outer surfaces of the pack or carton.

Subsection 91(6) relates to measurement marks on retail packaging of other tobacco products. It provides that a measurement mark on the retail packaging of tobacco products other than a cigarette pack or cigarette carton must appear once on an outer surface of the packaging and may appear on no more than 2 outer surfaces.

Subsection 91(7) provides that the requirements of this section apply only to the extent that Division 4.4 of the *National Trade Measurement Regulations 2009* does not require the primary packaging, or the secondary packaging, of a tobacco product to be marked with a statement of measurement. If a tobacco product contains a measurement mark, as required under those regulations then section 91 will not apply.

Section 92 – Mandatory marking- trade description

Section 92 provides the mandatory marking requirements for trade descriptions.

Subsection 92(1) provides that the primary packaging and secondary packaging of a tobacco product must be marked with a trade description.

Subsection 92(2) sets out the requirements for trade descriptions in paragraphs 92(2)(a) to (d).

Subsection 92(3) relates to trade descriptions on wrappers and subsection 92(4) relates to trade descriptions on cigarette packs or cigarette cartons.

Subsection 92(5) relates to trade descriptions on the retail packaging of other tobacco products.

Section 93 – Mandatory marking- bar code

Section 93 provides the mandatory marking requirements for bar codes.

Subsection 93(1) provides that the primary packaging of a tobacco product must display a bar code and subsection 93(2) provides that secondary packaging of a tobacco product may display a bar code.

Subsections 93(3) and 93(4) set out the requirements for bar codes. Bar codes are limited to appearing only once on the packaging, and for cigarette packs and cigarette cartons may only appear on the side outer surface of the pack or carton without a health warning. The regulation specifies permitted colours for bar codes, requires bar codes to be rectangular in shape and prohibits barcodes from representing, or being suggestive of, the brand name or variant name (if any) of the tobacco product.

Subsection 93(5) relates to bar codes on wrappers.

Section 94 – Mandatory marking- fire risk statement

Section 94 provides the mandatory marking requirements for fire risk statements.

Subsection 94(1) prescribes the content of a fire risk statement which must be displayed on each cigarette pack and cigarette carton. The statement is “AUSTRALIAN FIRE RISK STANDARD COMPLIANT. USE CARE IN DISPOSAL.”

Subsections 94(2), 94(3) and 94(4) set out the requirements for a fire risk statement.

Subsections 94(5) and 94(6) relate to fire risk statements on wrappers around cigarette packs.

Subsections 94(7) provides that the fire risk statement may be printed on an adhesive label that is attached to the retail packaging of a tobacco product if the requirements in paragraphs 94(7)(a) and 94(7)(b) are met.

Subsection 94(8) provides that an adhesive label mention in subsection 94(7) must be attached firmly to the retail packaging so as not to be easily removable.

The requirements for the fire risk statement are included here because of the consolidation of tobacco legislation. The fire risk statement had previously been included in the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*.

Section 95 – Mandatory marking- name and address

Section 95 provides the mandatory marking requirements for name and address of the entity who packaged the product, or on whose behalf it was packaged.

Subsection 95(1) provides that the primary packaging, and the secondary packaging, of a tobacco product must display the name and address of the entity in Australia either who packaged the product, or on whose behalf it was packaged.

Subsections 95(2), 95(3) and 95(4) relate to the requirements for name and address of the Australian entity.

Subsections 95(5) and 95(6) relate to the interaction with the *National Trade Measurement Regulations 2009*. Subsection 95(5) provides that the requirements of this section apply in addition to any requirements to mark a name and address on the primary packaging, or secondary packaging, of a tobacco product under regulation 4.7 of the *National Trade Measurement Regulations 2009*. Subsection 95(6) provides that any such marking under that regulation must be printed in the colour known as Pantone Cool Gray 2C.

Subsection 95(7) provides that to avoid doubt, nothing in this section requires a name and address to be displayed more than once on the retail packaging of a tobacco product.

Section 96 – Mandatory marking- consumer contact telephone number

Section 96 provides the mandatory marking requirements for consumer contact telephone number.

Subsection 96(1) provides that the primary packaging of a tobacco product must display a consumer contact telephone number for the entity in Australia who either packaged the product or on whose behalf it was packaged. Subsection 96(2) provides that the secondary packaging of the tobacco product may display a consumer contact telephone number for the entity in Australia.

Subsection 96(3) relates to the requirements for consumer contact telephone numbers. The consumer contact telephone number must be an Australian telephone number that is in service (i.e. the number cannot be for a false or disconnected service) and must be printed in the specified typeface, size, font and colour. It is only permitted to appear once on the packaging, can appear only as numerals or as a combination of numerals, hyphens and brackets and must be prefaced either by 'Phone:' or 'Ph:'. For a cigarette pack it must appear on the side outer surface of the pack on which a health warning is not displayed and for other retail packaging that is marked with a name and address that complies with section 95 must appear on the same surface as that name and address.

The telephone number must not form a symbol or design or represent, or be suggestive of, the brand name or variant name (if any) of the tobacco product.

Part 3.9 – Plain packaging- wrappers

Section 97 – Purpose of this Part

Section 97 provides for the purpose of this Part.

The purpose of Part 3.9 is to prescribe requirements in relation to plastic or other wrappers that form part of the retail packaging of tobacco products for the purposes of section 80 of the Act.

Section 80 of the Act provides that a plastic or other wrapper that forms part of the retail packaging of tobacco products must comply with the regulations (if any) made for the purposes of this section.

A note refers to section 71 of the Regulations for rules relating to the display of health warnings on wrappers.

Section 98 – Basic requirements for wrappers

Section 98 provides for the basic requirements for wrappers.

Subsection 98(1) provides for the scope of the section i.e. which wrappers it covers. It provides that it applies to a plastic or other wrapper that covers the primary packaging of a tobacco product, the secondary packaging of a tobacco product or a tobacco product that is for retail sale.

Subsection 98(2) provides that the wrapper must be transparent and not be coloured, marked, textured or embellished in any way, other than as permitted by the Regulations.

Section 99 – Mark on wrapper to conceal bar codes

Section 99 provides that a plastic or other wrapper covering more than one item of primary packaging of a tobacco product may be marked with a solid black rectangle to conceal the bar code on each item of primary packaging covered by the wrapper.

This regulation allows the bundle wrapper to be marked with a solid black rectangle to cover the bar codes of the cigarette packs underneath, a technique that is currently used by some cigarette companies. This prevents the individual pack barcodes from accidentally being scanned at the point of sale.

Section 100 – Tear strips on wrappers

Section 100 relates to tear strips on wrappers.

Subsection 100(1) provides that a plastic or other wrapper that covers the primary packaging of a tobacco product, the secondary packaging of a tobacco product or a tobacco product that is for retail sale may include one tear strip.

Subsections 100(2) and 100(3) provide the requirements for tear strips generally.

Subsections 100(4) and 100(5) provide the requirements for tears strips on cigarette packs and cigarette cartons.

Part 3.10- Plain packaging- inserts (other than health promotion inserts) and onserts

Division 1- Preliminary

Section 101 – Purpose of this Part

Section 101 provides for the purpose of this Part.

The purpose of Part 3.10 is to prescribe inserts and onserts that may be included in or on the retail packaging of tobacco products for the purposes of subsection 82(2) of the Act.

Subsection 82(2) of the Act provides that despite subsection 82(1) the retail packaging of tobacco products mentioned in that subsection may include any inserts or onserts permitted by regulations (if any) made for the purposes of this subsection.

Note 1 refers to Part 3.11 for health promotion inserts. Note 2 provides that the lining of a cigarette pack is not an insert and refers to sections 35 and 43 for the requirements in relation to linings.

Division 2- Permitted inserts and onserts

Section 102 – Inserts to avoid damage to tobacco products

Section 102 relates to inserts used to avoid damage to tobacco products.

Subsection 102(1) provides that inserts to avoid damage to the tobacco product during transport or storage may be included in the retail packaging of a tobacco product, other than a cigarette pack or a cigarette carton.

Subsection 102(2) provides that the insert must either be Pantone 448C or transparent and not coloured.

Subsection 102(3) provides that the insert must not display any mark.

Section 103 – Adhesive labels

Subsection 103 provides that the retail packaging of a tobacco product may include the adhesive labels set out in paragraphs 103(a) to (d) if permitted by the Regulations.

Part 3.11- Plain packaging- health promotion inserts

Division 1- Preliminary

Section 104 – Purpose of this Part

Section 104 provides for the purpose of this Part.

The purpose of this Part is to prescribe requirements for the health promotion inserts that must be included in the retail packaging of tobacco products for the purposes of paragraph 82(1)(a) of the Act.

Health promotion inserts are information cards inserted in tobacco products which are intended to encourage and support tobacco cessation.

Paragraph 82(1)(a) of the Act provides that the retail packaging of tobacco products must include the health promotion inserts, and any other inserts or onserts prescribed by regulations (if any) made for the purposes of this subsection. Importantly, retail packaging of tobacco products is not to include any other inserts or onserts other than health promotion inserts and those prescribed in the regulations.

A note refers to Part 3.10 for requirements in relation to other inserts in retail packaging.

Section 105 – Definition of *health promotion insert*

Section 105 provides that each numbered combination of images in a clause of Schedule 8 is a *health promotion insert*.

Section 106 – Secretary may approve file containing images for health promotion inserts

Section 106 relates to the Secretary approving file/s containing images for health promotion inserts.

Subsection 106(1) provides that the Secretary may approve one or more electronic files containing images for use in printing health promotion inserts for inclusion in the retail packaging of tobacco products for the purposes of this Part.

Subsection 106(2) provides that if such a file has been approved, the health promotion inserts that are included in the retail packaging of tobacco products must be sourced from the file and use the same resolution as the file.

Subsection 106(3) provides that the Secretary must make a file approved under subsection 106(1) available to a person on request, free of charge, if the Secretary is reasonably satisfied that the person is involved in packaging tobacco products in retail packaging.

Division 2- Including health promotion inserts in retail packaging

Section 107 – Including health promotion inserts in retail packaging of tobacco products

Section 107 relates to the inclusion of health promotion inserts in retail packaging of tobacco products.

Subsection 107(1) provides the scope of this Part. It applies to the primary packaging of cigarettes, pipe tobacco and loose processed tobacco other than pipe tobacco.

Subsection 107(2) makes clear that this Part does not apply to the retail packaging of cigars or shisha tobacco products.

Subsection 107(3) provides for the inclusion of health promotion inserts. It provides that the primary packaging of a tobacco product sold or supplied, or offered for sale or supply, must include one health promotion insert in accordance with this Part.

Section 108 – Health promotion inserts to be included equally

Section 108 provides the requirements for health promotion inserts being included equally.

Subsection 108(1) provides that the health promotion inserts are to be included in the retail packaging of tobacco products as nearly as possible in equal numbers.

Subsection 108(2) provides that without limiting subsection 108(1), retail packaging of cigarettes is taken to comply with subsection 108(1) if, in any random sample of 4 cigarette cartons, the same health promotion insert is included in no more than 2 cigarette packs in any carton. Subsection 108(2) reflects that compliance would be considered to be present where in an inspection of 4 cartons there were in each of those cartons at least 8 different health promotion inserts. It could also be the case that there were 9 or 10 different health promotion inserts in any given carton.

Section 109 – Health promotion inserts not to be obscured, folded etc.

Section 109 provides for health promotion inserts not to be obscured, folded etc.

Subsection 109(1) provides that a health promotion insert in the retail packaging of a tobacco product must not be obscured or obliterated in any way at the time of the sale or supply of the tobacco product.

Subsection 109(2) provides that a health promotion insert must be easily removable from the retail packaging without damaging the insert, the packaging or the tobacco product when the retail packaging is opened in the normal way.

Subsections 109(3) and 109(4) relate to the folding of health promotion inserts. Health promotion inserts in cigarette packs and pouches containing pipe tobacco or other loose processed tobacco must not be folded. Health promotion inserts in other retail packaging may be folded once if the dimensions of the packaging are such that the insert cannot otherwise be included in the packaging. An example is included that a health promotion insert may be folded once for inclusion in a small cylinder of loose processed tobacco.

Section 110 – Images on health promotion inserts

Section 110 relates to the requirements for images on health promotion inserts which are set out in paragraphs (a) to (c).

They provide that the image on a health promotion insert must appear only in portrait orientation, fill the surface area of the insert and not be distorted in any way.

Section 111 – Placement of health promotion inserts

Section 111 relates to the placement of health promotion inserts specific to cigarette packs and the retail packaging of pipe tobacco or other loose processed tobacco. These requirements are intended to ensure that the health promotion insert will be clearly visible to the consumer.

Subsection 111(1) provides the placement requirements for health promotion inserts in a cigarette pack.

Subsection 111(2) provides the placement requirements for health promotion inserts in the retail packaging of pipe tobacco or other loose processed tobacco must comply with either subsection 111(3) or (4).

Subsection 111(3) provides that the health promotion insert complies with this subsection if it is inserted inside the packaging, located in front or on top of the tobacco product; visible on opening and easily removable so as to permit reading of both sides of the insert.

Subsection 111(4) provides that the health promotion insert complies with this subsection if it is fixed with soft adhesive as set out in subparagraphs 111(4)(a)(i) to (ii); and easily removable so as to permit reading of both sides of the insert.

Section 112 – Technical requirements for health promotion inserts

Section 112 relates to technical requirements for health promotion inserts.

Subsections 112(1) and 112(2) relate to the paper requirements for health promotion inserts. A health promotion insert must be printed on recycled paper and the weight of the paper must be at least 150 grams per square metre but not more than 200 grams per square metre.

Subsections 112(3), 112(4) and 112(5) relate to the dimensions of a health promotion insert and provide the requirements that the dimensions of a health promotion insert must comply with.

Subsections 112(6), 112(7) and 112(8) relate to the format and finish of a health promotion insert.

Part 3.12 - Tobacco products- appearance, physical features and contents

Division 1- Appearance and physical features requirements

Section 113 – Purpose of this Division

Section 113 provides the purpose of this Division.

The purpose of Division 1 is to prescribe requirements in relation to the appearance and physical features of tobacco products for the purposes of subsection 86(2) (about other marks that may, or are required to, appear on tobacco products); subsection 86(3) (about the appearance of tobacco products); and subsection 86(4) (about the physical features of tobacco products) of the Act.

Subsection 86(2) of the Act provides that no other mark may appear anywhere on a tobacco product, other than as permitted or required by regulations (if any) made for the purposes of this subsection.

Subsection 86(3) of the Act provides that the appearance of a tobacco product must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Subsection 86(4) of the Act provides that the physical features of a tobacco product must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Section 114 – Alphanumeric code on cigarettes

Section 114 provides the requirements for alphanumeric codes appearing on cigarettes.

Subsection 114(1) provides that a cigarette may be marked with an alphanumeric code. It sets out the requirements in subsection 114(2) that alphanumeric codes must comply with. The alphanumeric code must appear only once on the cigarette and must be printed consistent with the requirements in paragraphs 114(2)(a) to (v). Subsection 114(3) provides for the restrictions on alphanumeric codes that they must not form a symbol or design or represent, or be suggestive of, the brand name or variant name (if any) of the cigarette.

Alphanumeric codes are permitted to appear on cigarettes as it is understood that they function as a unique identifier during the manufacturing, handling and packing processes on the factory floor.

Section 115 – Appearance of cigars

Section 115 provides for the appearance of cigars.

Subsection 115(1) provides that a single band may appear around the circumference of a cigar if it meets the requirements in paragraphs 115(1)(a) to (c).

A note provides that the band permitted under this subsection is not retail packaging of the cigar.

Subsections 115(2) to 115(6) relate to permitted marks on the band of cigars. Subsection 115(2) provides for the marks that may appear on the band, and subsection 115(3) provides that the band may also contain an origin mark that is a covert mark that is not visible to the naked eye. Subsection 115(4) provides that the marks mentioned in subsection 115(2) must appear only once on the band and be printed according to the requirements set out in subparagraphs 115(4)(b)(i) to (iv).

Subsection 115(5) provides that the brand and variant name (if any) must be placed horizontally along the length of the band so that they run around the circumference of the cigar.

Subsection 115(6) provides that a mark that is an alphanumeric code must not form a symbol or design; or represent, or be suggestive of, the brand name or variant name (if any) of the cigar.

Section 116 – Appearance of bidis

Section 116 provides for the appearance of bidis. It provides that a bidi may include a single black thread around the circumference of the bidi.

Section 117 – Paper casing for cigarettes

Section 117 provides that the paper casing of cigarettes must meet the requirements in paragraphs (a) to (d).

The paper casing of the cigarette must be white; if the cigarette contains a filter contain an imitation cork tip; have a matt finish; and be free from any mark (other than a mark that is permitted under this Part).

Section 118 – Lowered permeability bands

Section 118 relates to lowered permeability bands.

Subsection 118(1) provides that a lowered permeability band (if any) on a cigarette must be white.

A note refers to section 5 for the meaning of lowered permeability band.

Subsection 118(2) provides that cigarettes that use lowered permeability bands must have at least 2 identical bands surrounding the tobacco column.

Subsection 118(3) provides requirements for permeability bands on cigarettes with filter tips.

Subsection 118(4) provides requirements for permeability bands on cigarettes without filter tips.

Section 119 – Standardised cigarette dimensions

Section 119 provides that the dimensions of a cigarette must comply with the diameter and length requirements set out in paragraphs 119(a) and (b).

Section 120 – Filter tips

Section 120 relates to filter tips.

Subsection 120(1) provides that subject to subsection (2), the filter tip of a processed tobacco product must, on the outside, be covered by imitation cork and, on the inside, be coloured white.

Subsection 120(2) provides that if the processed tobacco product is a cigar that has a filter tip, the filter tip may on either or both of the outside or inside, be the colour known as Pantone 448C or coloured drab dark brown.

Subsection 120(3) provides that a filter tip that is a tobacco product accessory must be coloured white on both the outside and the inside.

Subsection 120(4) provides that a filter tip mentioned in this section must be solid and smooth without any recessing, hollowing, raised features, embossing, decorative designs, ridges, bulges or other irregularities.

Division 2- Content requirements

Section 121 – Tobacco products- prohibited ingredients

Section 121 provides a table of ingredients, which includes 16 items, that outline ingredients or categories of ingredients a tobacco product must not contain, for the purposes of subsection 87(1) of the Act.

Subsection 87(1) of the Act provides that a tobacco product must not contain an ingredient that is prohibited by regulations made for the purposes of this subsection.

For example, item 13 ‘sugars or sweeteners (except starch) that have been added to the product’ would include, among other things: glucose, molasses, honey and sorbitol. The prohibition on certain ingredients do not apply to shisha products because by definition shisha includes molasses.

The list provided for in section 121 reflects international precedent.

This approach is consistent with seeking to reduce the palatability of tobacco products, by prohibiting ingredients which seek to make tobacco products more palatable, as set out in the Impact Analysis.

The terms used in these provisions take their plain meaning. The term ‘ingredients’, as used in these provisions, connotes the meaning of separate elements that are mixed together to create the tobacco product- this is distinct from compounds naturally present in tobacco leaf. The focus is therefore on ingredients added to the product throughout the manufacturing process rather than, for example, on constituents that occurred naturally in the tobacco.

Section 122 – Tobacco products- permitted ingredients

Section 122 provides a table of permitted ingredients for the purposes of subsection 87(3) of the Act, which includes 18 items, that a tobacco product may contain.

The list provided for in section 122 reflects international precedent.

Subsection 87(3) of the Act provides that a tobacco product may contain an ingredient that is permitted by regulations made for the purposes of this subsection.

A tobacco product may contain ingredients other than those expressly permitted by the regulations, but these ingredients cannot be prohibited ingredients.

Section 123 – Tobacco products- prohibited devices

Section 123 provides that, for the purposes of section 88 of the Act, a tobacco product must not contain any device that is capable of altering the flavour, smell or intensity of the product, including any card, capsule, bead or mouthpiece. An example provides that a ‘crush ball’ or ‘flavour bead’ in a cigarette that is designed or intended to impart a flavour when crushed is not permitted.

Section 88 of the Act provides that a tobacco product must not contain any device prohibited by regulations made for the purposes of this section.

Part 3.13- Tobacco products- standards

Section 124 – Purpose of this Part

Section 124 provides that the purpose of this Part is to prescribe the performance requirements for the purposes of section 89 of the Act and the testing requirements for the purposes of section 90 of the Act.

Section 89 of the Act provides that a tobacco product must comply with the performance requirements (if any) prescribed by regulations made for the purposes of this section.

Section 90 of the Act provides that a tobacco product must comply with the testing requirements (if any) prescribed by regulations made for the purposes of this section.

Section 125 – Cigarettes- performance requirements

Section 125 provides that at least 75% of the cigarettes that are tested in a test trial described in section 126 must fail to achieve full-length burns.

Section 126 – Cigarettes- testing requirements

Section 126 relates to testing requirements for cigarettes.

Subsection 126(1) provides that cigarettes must be tested as part of a test trial in accordance with AS 4830-2007.

Subsection 126(2) provides that each test of a cigarette in a test trial must be conducted on 10 layers of filter paper.

Subsection 126(3) provides that each test trial must consist of 40 replicated tests.

Subsection 126(4) provides that each different kind of cigarette must be tested in a separate test trial.

A note provides that cigarettes that use lowered permeability bands must also comply with the requirements in section 118 (lowered permeability bands).

Chapter 4- Reporting and information disclosure

Part 4.1- Introduction

Section 127 – Simplified outline of this Chapter

Section 127 sets out a simplified outline of this Chapter.

Part 4.2- Information to be included in reports

Section 128 – Purpose of this Part

Section 128 provides for the purpose of this Part.

This Part prescribes details about the information to be included in reports under Chapter 5 of the Act for the purposes of paragraph 144(a) of the Act and matters to which the Minister must have regard for the purposes of subsection 145(2) of the Act.

Paragraph 144(a) of the Act provides that the regulations may prescribe details about the information to be included in a report under Chapter 5 of the Act.

Subsection 145(2) of the Act relates to matters which the Minister must have regard in deciding whether to not publish a report, or part of a report.

Section 129 – Tobacco product volumes report- scope

Section 129 provides that a tobacco product volumes report required under section 132 of the Act must separately identify the information in the report by reference to each of the tobacco products set out in paragraphs (a) to (e). These are cigarettes, cigars, loose processed tobacco (including pipe tobacco), shisha tobacco products and other tobacco products.

Section 130 – Tobacco product volumes report- product information

Section 130 provides that a tobacco product volumes report required under section 132 of the Act must include the information for each kind of tobacco product set out in paragraphs (a) to (g). The identified product information will ensure that the relevant information about volumes will have sufficient context and detail.

Section 131 – Tobacco product volumes report- distribution information

Section 131 provides that a tobacco product volumes report required under section 132 of the Act must include the information in paragraphs 131(a) and (b) for each kind of tobacco product.

Section 132 – Publication of reports- matters to which Minister must have regard

Section 132 provides that the Minister, in making a decision under subsection 145(2) of the Act about publication of a report, or part of a report, must have regard to the matters set out in paragraphs (a) to (d).

These are (a) whether the Minister considers that publication would advance the objects of the Act; (b) whether publication would involve the publication of personal information (within the meaning of the *Privacy Act 1988*); (c) whether publication would involve the publication of a document that is an exempt document, or a conditionally exempt document, within the meaning of the *Freedom of Information Act 1982*; and (d) whether the Minister considers information in the report to be false, misleading or deceptive.

These considerations are relevant factors for the Minister's decision making under subsection 145(2) of the Act, which permits the Minister to decide not to publish a report in prescribed circumstances. These considerations seek to ensure that the publication of reports supports the objects of the Act and appropriately takes account of relevant considerations around privacy. The Minister appropriately has the discretion not to publish reports where the information in the report is considered to be false, misleading or deceptive.

Schedule 1- Online tobacco advertisement warnings

A note refers to section 17. Section 17 provides for the display requirements for online tobacco advertisement warnings. Schedule 1 includes the warnings which must be displayed on webpages which display online tobacco advertisements in the relevant quarters.

Schedule 2- Health warning series- cigarettes and tobacco products other than cigars, pipe tobacco, shisha tobacco and bidis

A note refers to Part 3.7. Part 3.7 prescribes the requirements for the display of images and combinations of images on the retail packaging of tobacco products for the purposes of subsection 78(1) of the Act.

The approach adopted presents the warnings that should be displayed on the relevant outer surface of retail packaging in a single image which includes all components, for example the image and the warning text, such that, unlike for Part 2.2 of the *Competition and Consumer*

(Tobacco) Information Standard 2011, each component that makes up the health warning is not individually prescribed because the image itself contains all of the components.

Part 2.1- Vertical retail packaging

Part 2.1 provides the health warnings for vertical retail packaging of cigarettes and tobacco products other than cigars, pipe tobacco, shisha tobacco and bidis.

Part 2.2 – Horizontal retail packaging

Part 2.2 provides the health warnings for horizontal retail packaging of cigarettes and tobacco products other than cigars, pipe tobacco, shisha tobacco and bidis.

Part 2.3- Square retail packaging, and square images used on other retail packaging

Part 2.3 provides the health warnings for square retail packaging of cigarettes and tobacco products other than cigars, pipe tobacco, shisha tobacco and bidis.

There is no express requirement for any particular retail packaging to use square images. Square images may need to be used in certain situations, for example, on the surface of a tobacco tin of a certain size or shape which precludes the display of a rectangular image. The regulations make no express mention of the situation.

Schedule 3- Health warning series- cigars packaged in cigar tubes

Schedule 3 contains the health warning series for cigars packaged in cigar tubes.

A note refers to Part 3.7. Part 3.7 prescribes the requirements for the display of images and combinations of images on the retail packaging of tobacco products for the purposes of subsection 78(1) of the Act. The health warning series in Schedule 3 provides the images for cigars packaged in cigar tubes.

Schedule 4- Health warning series- cigars other than those packaged in cigar tubes

Schedule 4 contains the health warning series for cigars other than those packaged in cigar tubes.

A note refers to Part 3.7. Part 3.7 prescribes the requirements for the display of images and combinations of images on the retail packaging of tobacco products for the purposes of subsection 78(1) of the Act. The health warning series in Schedule 4 provides the images for cigars other than those packaged in cigar tubes.

Part 4.1 – Vertical retail packaging

Part 4.1 provides the health warning series for vertical retail packaging of cigars other than those packed in cigar tubes.

Part 4.2 – Horizontal retail packaging

Part 4.2 provides the health warning series for horizontal retail packaging of cigars other than those packed in cigar tubes.

Part 4.3 – Square retail packaging, and square images used on other retail packaging

Part 4.3 provides the health warning series for square retail packaging, and square images used on other retail packaging of cigars other than those packed in cigar tubes.

Schedule 5- Health warning series- pipe tobacco

Schedule 5 contains the health warning series for pipe tobacco.

A note refers to Part 3.7. Part 3.7 prescribes the requirements for the display of images and combination of images on the retail packaging of tobacco products for the purposes of subsection 78(1) of the Act. The health warning series in Schedule 5 provides the images for pipe tobacco.

Part 5.1 – Vertical retail packaging

Part 5.1 provides the health warning series for vertical retail packaging of pipe tobacco.

Part 5.2 – Horizontal retail packaging

Part 5.2 provides the health warning series for horizontal retail packaging of pipe tobacco.

Part 5.3 – Square retail packaging, and square images used on other retail packaging

Part 5.3 provides the health warning series for square retail packaging, and square images used on other retail packaging of pipe tobacco.

Schedule 6- Health warning series- shisha tobacco

Schedule 6 contains the health warning series for shisha tobacco.

A note refers to Part 3.7. Part 3.7 prescribes the requirements for the display of images and combination of images on the retail packaging of tobacco products for the purposes of subsection 78(1) of the Act. The health warning series in Schedule 6 provides the images for shisha tobacco.

Part 6.1 – Vertical retail packaging

Part 6.1 provides the health warning series for vertical retail packaging of shisha tobacco.

Part 6.2 – Horizontal retail packaging

Part 6.2 provides the health warning series for horizontal retail packaging of shisha tobacco.

Part 6.3 – Square retail packaging, and square images used on other retail packaging

Part 6.3 provides the health warning series for square retail packaging, and square images used on other retail packaging of shisha tobacco.

Schedule 7- Health warning series- bidis

Schedule 7 contains the health warning series for bidis.

A note refers to Part 3.7. Part 3.7 prescribes the requirements for the display of images and combination of images on the retail packaging of tobacco products for the purposes of subsection 78(1) of the Act. The health warning series in Schedule 7 provides the images for bidis.

Part 7.1 – Vertical retail packaging

Part 7.1 provides the health warning series for vertical retail packaging of bidis.

Part 7.2 – Horizontal retail packaging

Part 7.2 provides the health warning series for horizontal retail packaging of bidis.

Part 7.3 – Square retail packaging, and square images used on other retail packaging

Part 7.3 provides the health warning series for square retail packaging, and square images used on other retail packaging of bidis.

Schedule 8- Health promotion inserts- cigarettes and loose tobacco products

Schedule 8 contains the images for health promotion inserts for cigarettes and loose tobacco products.

A note refers to Part 3.11. Part 3.11 prescribes the requirements for the health promotion inserts that must be included in the retail packaging of tobacco products for the purposes of paragraph 82(1)(a) of the Act.

Schedule 9- Online e-cigarette advertisement message

Schedule 9 contains the online e-cigarette advertisement message.

A note refers to section 25. Section 25 sets out the website requirements for online e-cigarette advertisements, including requirements for display of the online e-cigarette advertisement message. The ‘online e-cigarette advertisement message’ means the combined image and age restriction warning for e-cigarette products set out in Schedule 9.