

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) (Consequential Amendments) Regulations 2024

Authority

The instrument is made under subsection 34(1) of the *Tobacco Advertising Prohibition Act 1992*, subsection 109(1) of the *Tobacco Plain Packaging Act 2011* and subsection 270(1) of the *Customs Act 1901*.

The *Tobacco Advertising Prohibition Act 1992* provides, with limited exceptions, for a prohibition on tobacco advertising, the *Tobacco Plain Packaging Act 2011* regulates the retail packaging and the appearance of tobacco products, and the *Customs Act 1901* concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia.

Subsection 34(1) of the *Tobacco Advertising Prohibition Act 1992* and subsection 109(1) of the *Tobacco Plain Packaging Act 2011* provide that the Governor-General may make regulations prescribing matters required or permitted by each Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 270(1) of the *Customs Act 1901* provides the Governor-General may make regulations prescribing all matters required or permitted to be prescribed and, in particular, subsection 50(1) provides that the Governor-General may, by regulation, prohibit the importation of goods into Australia.

Purpose

The primary purpose of the *Public Health (Tobacco and Other Products) (Consequential Amendments) Regulations 2024* (the Regulations) is to repeal the *Tobacco Advertising Prohibition Regulations 1992* and the *Tobacco Plain Packaging Regulations 2011*. The Regulations also make consequential changes to the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations). The consequential amendments to the Prohibited Imports Regulations have the support of the Minister for Home Affairs.

Background

The *Public Health (Tobacco and Other Products) Act 2023* consolidated a number of Commonwealth tobacco control measures into one streamlined Act.

Previously the 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 in line with international best practice. This included the consolidation of the *Tobacco Advertising Prohibition Act 1992*, *Tobacco Advertising Prohibition Regulation 1993*, *Tobacco Plain Packaging Act 2011*, *Tobacco Plain Packaging Regulations 2012*, *Competition and Consumer (Tobacco) Information Standard 2011*, *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*, and the *Trade Practices Act 1974—Consumer Protection Notice No. 10 of 1991—Permanent Ban on Goods*.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

The Regulations 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 consult on the updated graphic health warnings and health promotion inserts. The Regulations were available for public consideration in both consultation processes.

Commencement

The proposed Regulations in sections 1 to 4 will commence the day after this instrument is registered; and Schedules 1 and 2 will commence at the same time as 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) (Consequential Amendments) Regulations 2024

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 consolidates tobacco control measures in to one streamlined Act. This included, among other instruments, the consolidation of the *Tobacco Advertising Prohibition Act 1992*, *Tobacco Advertising Prohibition Regulations 1993*, *Tobacco Plain Packaging Act 2011* and the *Tobacco Plain Packaging Regulations 2011* along with the *Competition and Consumer (Tobacco) Information Standard 2011* (the Tobacco Information Standard), *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*, and the *Trade Practices Act 1974—Consumer Protection Notice No. 10 of 1991—Permanent Ban on Goods*.

The primary purpose of the Regulations is to repeal the *Tobacco Advertising Prohibition Regulations 1992* and the *Tobacco Plain Packaging Regulations 2011*. The measures contained in these instruments have been consolidated into the Act and primary Regulations. The Regulations also make consequential changes to the *Customs (Prohibited Imports) Regulations 1956*.

Human rights implications

The instrument does not engage any human rights.

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

Notes on clauses

Section 1 Name

This section provides that the name of the Regulations is the *Public Health (Tobacco and Other Products)(Consequential Amendments) Regulations 2023*.

Section 2 Commencement

This section provides a table that sets out when the provisions in the Regulations commence. It provides that sections 1 to 4 and anything not covered elsewhere in the table commence the day after this instrument is registered.

Schedules 1 and 2 commence at the same time as section 3 of the *Public Health (Tobacco and Other Products) Act 2023* commences.

Section 3 Authority

This section provides that the *Public Health (Tobacco and Other Products) (Consequential Amendments) Regulations 2024* are made under (a) the *Tobacco Advertising Prohibition Act 1992*; (b) the *Tobacco Plain Packaging Act 2011*; and (c) the *Customs Act 1901*.

Section 4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Schedule 1- Repeals

Tobacco Advertising Prohibition Regulation 1993
Tobacco Plain Packaging Regulations 2011

Items 1 and 2 of Schedule 1 repeal the *Tobacco Advertising Prohibition Regulation 1993* and the *Tobacco Plain Packaging Regulations 2011*.

Schedule 2- Consequential amendments

Chapter 4 of the *Public Health (Tobacco and Other Products) Act 2023* provides for permanent bans on certain regulated tobacco items. The chapter imposes a permanent ban on chewing tobacco and snuffs intended for oral use. Under the Act it is an offence to be dealing in permanently banned regulated tobacco items. Chapter 4 is broadly consistent with the current permanent ban on oral tobacco contained in the *Trade Practices Act 1974- Consumer Protection Notice No 10 of 1991* (the Notice) but reflects a consolidation of the provisions into one regulatory regime which intersects with regulation 4U of the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations).

The following amendments give effect to the reforms, specifically to change which regulation controls the import of chewing tobacco and snuffs intended for oral use in a quantity of 1.5 kilograms or less as a consequence of the provision no longer being under the *Competition and Consumer Act 2010*.

Customs (Prohibited Imports) Regulations 1956

Item 1 repeals the note to sub-regulation 4DA(2) (note 2) and substitutes a new note 2 that provides that sub-regulation 4(2) prohibits the importation of chewing tobacco and snuffs intended for oral use unless certain conditions and restrictions are complied with. It refers the reader to Schedule 3.

This is consequential to the below amendments as it reflects the change to the relevant provisions consequential to the relocation of the item from Schedule 12 to Schedule 3.

Item 2 adds a new item to the table in Schedule 3. This is consequential to the item being repealed from Schedule 12 by item 3. The item specifies that for goods which are chewing tobacco or snuffs intended for oral use, the goods must not be imported unless the quantity imported is no greater than 1.5 kilograms. This continues the current import approach for these goods. The intention is that the ban on the commercial importation of these goods, which has been in place since 1991 when the Notice was signed, remains.

Item 3 repeals table item 5 in Schedule 12. The item is removed from this Schedule as the Australian Competition and Consumer Commission is no longer responsible for this good. Schedule 12 relates to goods the importation of which is prohibited without permission under regulation 4U (Importation of goods the subject of a permanent ban under the *Competition and Consumer Act 2010*).