EXPLANATORY STATEMENT

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023

Public Health (Tobacco and Other Products)(Consequential Amendments and Transitional Provisions) Rules 2024

Purpose and operation

The *Public Health (Tobacco and Other Products)(Consequential Amendments and Transitional Provisions) Rules 2024* provide transitional rules, made under the *Public Health (Tobacco and Other Products)(Consequential Amendments and Transitional Provisions) Act 2023* (Consequential and Transitional Act) for the application of new measures to pre-supplied regulated tobacco items and the permitted insertion of health promotion inserts in retail packaging during the main transition period.

Background

The *Public Health (Tobacco and Other Products) Act 2023* (the new Act) regulates the advertising and presentation of tobacco and other products in order to discourage the use of such products, and for related purposes. Relevantly, the new Act provides for requirements in relation to tobacco products and tobacco product accessories. Some of these requirements were consolidated from pre-existing legislation and other measures, while other requirements are new in the Australian context.

The Consequential and Transitional Act deals with consequential and transitional matters arising from the enactment of the new Act. It provides in Schedule 2 to the Consequential and Transitional Act for application, saving and transitional provisions. Part 3 of Schedule 2 makes provision for transitional arrangements in relation to certain tobacco product requirements in Chapter 3 of the new Act during the main transition period. The 'main transition period' is a 12-month period from 1 April 2024 to 31 March 2025, where tobacco products that are wholly compliant with either the requirements of the *Tobacco Plain Packaging Act 2011* or the new Act will be considered compliant. Division 3 provides retailers a further 3-month period, i.e. totalling 15-months from 1 April 2024 to 30 June 2025, to allow sufficient time for the sale or return of *Tobacco Plain Packaging Act 2011* compliant old stock, and to adjust stock ordering ahead of commencement. From 1 July 2025, all tobacco products retailers possess and sell must comply with the requirements in the new Act.

Part 4 of the Consequential and Transitional Act makes provision for the application of certain tobacco product requirements in Chapter 3 of the new Act after the end of the main transition period. The tobacco product requirements in Division 2 relate to new requirements such as the requirements for health promotion inserts to be included in retail packaging of tobacco products and in relation to tobacco product contents.

These transitional rules define a 'new measure transition period' and provide for the application of the new tobacco product requirements in Division 2 where the regulated tobacco item has been supplied to a retailer before the start of the new measure transition period. The effect of these rules is that, where a regulated tobacco item has been supplied to a

retailer before the end of the new measure transition period, and that item is compliant with either the *Tobacco Plain Packaging Act 2011* or the new Act, it will be considered compliant and the retailer will still be able to sell that item. The intention here is that retailers have additional time at the end of the main transition period to sell old stock, while all new stock manufactured or supplied to retailers during the new measure transition period should be fully compliant.

The transitional rules also provide that health promotion inserts may be inserted in retail packaging during the main transition period. This ensures that it is possible to commence including health promotion inserts in packaging that is compliant with the *Tobacco Plain Packaging Act 2011* or the new Act before this requirement becomes mandatory at the end of the main transition period.

Authority

Item 33, Part 7, Schedule 2 to the *Public Health (Tobacco and Other Products)(Consequential Amendments and Transitional Provisions) Act 2023* provides in subsection (1) that the Minister may, by legislative instrument, make rules prescribing matters (a) required or permitted by this Act to be prescribed by the rules; or (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act. These transitional rules are made under that authority.

Commencement

This instrument commences the day after this instrument is registered.

Consultation

No consultation was required on this Instrument- the content of the instrument is consistent with the policy intention expressed in the extensive consultation process that was conducted for the *Public Health (Tobacco and Other Products) Act 2023* and the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023*.

General

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

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

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 B**.

ATTACHMENT A

Details of the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024.*

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after this instrument is registered.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023*.

Section 4 – Definitions

A note provides that a number of expressions used in this instrument are defined in Schedule 2 to the Consequential and Transitional Act, including 'commencement day', 'main transition period' and 'old TPP Act.'

Subsection 4(1) provides definitions for the instrument. It provides that 'new Act' means the *Public Health (Tobacco and Other Products) Act 2023*, 'new measure transition period' means the period starting on 1 April 2025 and ending on 30 June 2025 and 'transitional Act' means the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Act 2023*.

Subsection 4(2) provides that expressions used in this instrument that are defined for the purposes of the new Act, and are used in relation to that Act, have the same meaning as in that Act.

Section 5 – Health promotion inserts may be inserted in retail packaging during main transition period

Subsection 5(1) provides for the scope of section 5. It provides that the section applies in relation to the retail packaging of tobacco products (within the meaning of any of paragraphs (a) to (d) of the definition of retail packaging in section 71 of the new Act) during the main transition period.

Subsection 5(2) permits the inclusion of health promotion inserts in the retail packaging of tobacco products. It provides that the retail packaging of tobacco products may include the health promotion inserts prescribed by regulations made for the purposes of paragraph 82(1)(a) of the new Act. A note provides that from the end of the main transition period, the retail packaging of tobacco products must include the health promotion inserts and refers the reader to paragraph 82(1)(a) of the new Act.

Subsection 5(3) provides that if during the main transition period the retail packaging of tobacco products includes a health promotion insert in accordance with subsection 5(2) and the retail packaging of the tobacco products otherwise complies with the requirements of section 23 of the 'old TPP Act' (meaning the *Tobacco Plain Packaging Act 2011*), as in force immediately before the new Act commencement day, then the retail packaging of the tobacco products, for the purposes of subitem 13(2) of Schedule 2 to the transitional Act, is deemed to comply with requirements of section 23 of the old TPP Act. The purpose of these transitional rules is to allow early compliance with the insertion of health promotion inserts in retail packaging to support the transition to this requirement.

Section 6 – Application of new measures to pre-supplied regulated tobacco items

Subsection 6(1) provides for the scope of section 6. It provides that the section applies in relation to a person, being the retailer, who during the new measure transition period sells regulated tobacco items by retail sale or offers such items for retail sale.

Subsection 6(2) sets out the extended transitional period for retailers in relation to new measures. It will be the case that the retailer does not contravene a provision of the new Act mentioned in subsection 6(3) by reason only that a regulated tobacco item does not comply with a tobacco product requirement mentioned in Division 2 of Part 4 of Schedule 2 to the transitional Act if the conditions set out in paragraphs 6(2)(a) to (c) are satisfied. Those conditions are (a) the item was supplied to the retailer in retail packaging before the start of the new measure transition period; (b) the retailer possesses, sells or supplies the item in that retail packaging; and (c) the retailer does not contravene a provision of the new Act mentioned in subitem 15(2) of Schedule 2 to the Consequential and Transitional Act in relation to the retail packaging of the item because of item 16 of that Schedule.

A note provides that Division 2 of Part 4 of Schedule 2 to the transitional Act deals with the application of certain new tobacco product requirements in Chapter 3 of the new Act.

Subsection 6(3) sets out the relevant provisions of the new Act which are subject to an extended transitional period. These are the provisions that a retailer will not contravene by reason only that a regulated tobacco item does not comply with a tobacco product requirement mentioned in Division 2 of Part 4 of Schedule 2 to the transitional Act when the conditions in subsection 6(2)(a) to (c) are satisfied. The sections are 94, 96, 102, 104,108, 110, 116 and 118.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024

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 Disallowable Legislative Instrument

The *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Rules 2024* (the transitional rules) are made for the purpose of the application provisions in the *Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions Act) 2023* (Consequential and Transitional Act). The Consequential and Transitional Act deals with consequential and transitional matters arising from the enactment of the *Public Health (Tobacco and Other Products) Act 2023* (the new Act). The Consequential and Transitional Act is intended to ensure a smooth transition to the new requirements.

The transitional rules relate to the application of new measures- specifically tobacco product requirements introduced by the new Act. The effect of the transitional rules in combination with the Consequential and Transitional Act is that retailers have an extended transitional period in which they can sell stock compliant with the old laws supplied to them before the end of the main transition period. This will be the case even if the stock does not yet comply with the new tobacco product requirements. In addition, the transitional rules also provide that health promotion inserts may be inserted in tobacco product packaging before it becomes a requirement at the end of the main transitional period.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Mark Butler MP
Minister for Health and Aged Care