

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

TOBACCO PRODUCTS (HEALTH WARNINGS) (AMENDMENT) ORDINANCE, 1987

Ordinance No. 22 of 1987

The Tobacco Products (Health Warnings) (Amendment) Ordinance, 1987 (the amending Ordinance) amends the Tobacco Products (Health Warnings) Ordinance, 1986 (the principal Ordinance) to ensure there is uniformity in approach between the Australian Capital Territory, the States and the Northern Territory to requirements that tobacco products be labelled with health warnings. The principal Ordinance was in compliance with recommendations of the Australian Health Minister's Sub-Committee on Tobacco Products Health Warnings issued on 30 October 1985. The Sub-Committee had agreed that similar legislation in each State and Territory should commence on 1 September, 1986. The principal Ordinance was not commenced on 1 September 1986 because each of the States had deferred the commencement of their legislation and some, such as New South Wales, had legislation which was at variance with the recommendations of the Sub-Committee. As a consequence of the departure of the States from the recommendations of the Sub-Committee, on 2nd October 1986, the Australian Health Minister's Advisory Council reached agreement that legislation for new health warnings would be prepared to conform with the New South Wales legislation effective from 1 July, 1987.

Uniformity of health warnings between the States and Territories is considered to be important because of the considerable inter-state and international trade of tobacco products. As a consequence under the Cigarette Containers (Labelling)

Ordinance 1972, and equivalent State legislation, the statement "WARNING - SMOKING IS A HEALTH HAZARD" has been required everywhere in Australia for over 15 years.

The amending Ordinance is substantially the same in substance to the equivalent New South Wales legislation. It varies from New South Wales only in that it will provide a fixed transition period of 2 months for retailers to dispose of old stock, (the same as Victoria). The amending Ordinance also contains a requirement that tobacco products handed out free for promotional purposes be placed in a container bearing a health warning, (this requirement has been part of A.C.T. law since 1982 and is not contained in the New South Wales legislation). This variation has no ramifications for cross-border trade and there is no case for the A.C.T. to be uniform with New South Wales.

Section 1 contains the short title to the proposed Ordinance.

Section 2 provides that the Tobacco Products (Health Warnings) Ordinance, 1986 is to be referred to as the Principal Ordinance.

Section 3 repeals section 2 of the principal Ordinance which provides that the Ordinance shall come into operation on a date fixed by the Minister for Territories by notice in the Gazette. The proposed Ordinance substitutes a new provision specifying that the provision applying to importers and packers of tobacco products in the A.C.T. shall apply from 1 July, 1987. The new section specifies that retailers are required to comply with the proposed Ordinance until 1 September 1987. This allows time for retailers to dispose of stock packed in containers which have out-dated warnings.

Section 4 amends section 3 of the principal Ordinance by clarifying the definition of "brand name" and revises the definition of "tobacco product" to

mean cigarettes containing tobacco, roll-your-own tobacco and pipe tobacco. The principal Ordinance also included cigars but they have been removed from the scope of the legislation to ensure there is compliance with the agreement that there be uniformity with equivalent legislation in New South Wales.

Section 5 alters section 4 of the principal Ordinance by removing "SMOKING IS ADDICTIVE" and replacing it with "SMOKING REDUCES YOUR FITNESS" as a health warning required to be placed on tobacco product containers. The other health warnings, "SMOKING CAUSES LUNG CANCER", "SMOKING CAUSES HEART DISEASE" and "SMOKING DAMAGES YOUR LUNGS" continue to be requirements of the legislation. The revision of Section 4 of the principal Ordinance also involves changes to the references to the print style and size but these do not substantially change the print from the requirements previously under the principal Ordinance. It ensures uniformity with New South Wales. Of more significance is the deletion of sub-sections 4(2) and (4) of the principal Ordinance which require that the warnings be printed within a bordered panel comprising 15% of the area of the tobacco product container. Again this deletion results from the decision to ensure there is uniformity between the various States and Territories.

Section 6 makes a number of minor changes to section 5 of the principal Ordinance which together with sub-section 3(2) of the principal Ordinance ensures that non-transparent wrappings of individual containers or cartons have health warnings placed on them.

Section 7 repeals section 6 of the principal Ordinance and replaces it with a new provision which has substantially the same substance. Section 6 of the principal Ordinance provides for the equal rotation of the health warnings over a 12 month period. The new provision has a different formulation which requires the warnings to appear as far as practicable with equal frequency over 12 months rather than

on 25% of containers over 12 months. The new formulation should be less open to technical breaches of the legislation. The penalties remain the same, a fine of \$2,500 for a body corporate and \$500 for a natural person.

Section 8 re-structures section 7 of the principal Ordinance to ensure that the transitional arrangements can work. As parts of the offence in section 7 of the principal Ordinance concerning packers and importers of tobacco products will need to commence on 1 July 1987 and the remaining requirements applying to the sellers of tobacco products on 1 September 1987, the provision has been re-drafted to divide the offence to ensure each part can commence separately. The offence still prohibits the sale or giving away of tobacco products for promotional purposes if they are not placed in a container marked with one of the four health warnings. It specifically prohibits the importation and packing of tobacco products which are not placed in a container marked with a health warning. The principal Ordinance incorporated that prohibition in section 6. The re-structured section 7 provides that the failure to ensure a label is attached is a separate offence from the requirement to rotate the warnings. The penalties remain the same, \$2,500 in the case of a body corporate and \$500 in the case of a natural person.

Section 8 also deletes sub-section 7(2) of the principal Ordinance.

Section 9 replaces sub-section 7(2) of the principal Ordinance with Section 7A which has the same substance in that it continues to prohibit the sale, exposure for sale or giving away of tobacco products, (for advertising purposes) where the container has a label which is inconsistent with the health warnings required by the legislation. Additionally, it extends these requirements to the packers and importers of the tobacco products. The penalties remain the same, \$5,000 in the case of a body corporate, and \$1000 in the case of a natural person.

Section 10 repeals section 9 of the principal Ordinance which is the transitional provision. As the principal Ordinance was never commenced and the legislation is now to commence on the specific dates outlined in the changes proposed for Section 2, Section 9 had no further use.

Section 11 is a transitional provision for the amending Ordinance. It enables the new health warnings to be used by those who sell or give away tobacco products from 1 July 1987 although it is not mandatory until 1 September 1987 and the Cigarette Containers (Labelling) Ordinance, 1972 will be in force for that period. The Cigarette Containers (Labelling) Ordinance 1972 requires the use of the health warning, "SMOKING IS A HEALTH HAZARD", and remains in force because the principal Ordinance has not been commenced. Once the whole of the Ordinance is operational on 1 September 1987, the Cigarette Containers (Labelling) Ordinance, 1972 will be repealed.

Section 11 also provides that the provisions applying to the packers and importers of tobacco products do not apply until 1 September 1987 where the tobacco products are manufactured outside Australia. This is in accordance with the approach adopted elsewhere in Australia.

