



Queensland

Trans-Tasman Mutual Recognition (Endorsement) Notice (No. 1) 2013

Explanatory Notes for SL 2013 No. 131

made under the

Trans-Tasman Mutual Recognition (Queensland) Act 2003

General outline

Short title

Trans-Tasman Mutual Recognition (Endorsement) Notice (No. 1) 2013.

Authorising law

Trans-Tasman Mutual Recognition (Queensland) Act 2003, section 7.

Policy objectives and the reasons for them

The policy objective of the notice is to endorse proposed Commonwealth regulations to be made by the Governor-General under the *Trans-Tasman Mutual Recognition Act 1997* ("the Commonwealth Act"), pursuant to section 43(1) of the Commonwealth Act.

The Commonwealth Act provides for the recognition within Australia of regulatory standards adopted in New Zealand regarding certain goods and occupations. The *Trans-Tasman Mutual Recognition (Queensland) Act 2003* ("the Queensland Act") has adopted the Commonwealth Act as a law of Queensland.

The Commonwealth Act provides that goods that may lawfully be sold in New Zealand may lawfully be sold in an Australian jurisdiction without the necessity for compliance with further requirements imposed under Australian legislation.

The *Tobacco Plain Packaging Act 2011* (Cth) and regulations made under that Act ("the TPP Laws") are currently exempt from the application of the Commonwealth Act due to a temporary exemption in place under the Commonwealth Act. The TPP Laws regulate the packaging of tobacco products sold in Australia, including plain packaging and health warning requirements. The temporary exemption will expire on 30 September 2013 and 30 November 2013.

The effect of the temporary exemption is that tobacco products that may lawfully be sold in New Zealand must comply with the requirements of the TPP Laws to be lawfully sold in Australia. If the exemption expires, tobacco products that may be lawfully sold in New Zealand may be lawfully sold in Australia without needing to comply with the TPP Laws.

In order to maintain the exemption for the TPP Laws from the operation of the Commonwealth Act, the Commonwealth has requested that Queensland endorse the following:

- (a) a Commonwealth regulation to be made by the Governor-General amending the Commonwealth Act to permanently exempting the TPP Laws from the application of the Commonwealth Act; and
- (b) a Commonwealth regulation to be made by the Governor-General continuing the existing temporary exemption for the TPP Laws from the application of the Commonwealth Act for a further 12 months.

While the permanent exemption is the preferred option, the Commonwealth Act requires all of the participating jurisdictions to endorse the regulation for the permanent exemption to be effective. As the Commonwealth Act only requires two-thirds of the participating jurisdictions to endorse a temporary exemption, the temporary exemption has been proposed as a "fall-back" measure in case all of the participating jurisdictions cannot endorse the permanent exemption before the temporary exemption expires.

Temporary Exemption

Section 47 of the Commonwealth Act creates a mechanism to extend existing temporary exemptions for an additional period. Under section 47(3) of the Commonwealth Act, laws are exempt if the laws are declared

by regulations under the Commonwealth Act to be exempt from the operation of the Act. The Governor-General may make regulations for the purposes of section 47.

The Governor-General may not make the regulation unless at least two-thirds of the then participating jurisdictions have endorsed the regulation. Section 43 of the Commonwealth Act provides that a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made.

Permanent Exemption

Section 45(1) of the Commonwealth Act provides that laws listed in Schedule 2 are permanently exempt from the operation of the Commonwealth Act. Section 45(3) of the Commonwealth Act provides that the Governor-General may make regulations amending Schedule 2. However, under section 45(4) of the Commonwealth Act, no such regulation may be made unless all of the then participating jurisdictions have endorsed the regulation.

Section 43 of the Commonwealth Act provides that a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made.

Endorsement by Queensland

In order to endorse the proposed Commonwealth regulations, the designated person for Queensland must make a gazette notice, setting out and endorsing the terms of the proposed Commonwealth regulations. For Queensland, the Governor is the designated person under section 7(1) of the Queensland Act. Section 7(2) of the Queensland Act provides that the gazette notice is subordinate legislation and the gazette notice has therefore been prepared by the Office of the Queensland Parliamentary Counsel.

Achievement of policy objectives

The policy objectives are achieved by the notice setting out and endorsing the proposed Commonwealth regulations, as required under section 7 of the Queensland Act and section 43(1) of the Commonwealth Act.

Consistency with policy objectives of authorising law

The notice is consistent with the main objectives of the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

Inconsistency with policy objectives of other legislation

The notice is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Not applicable.

Consistency with fundamental legislative principles

The notice would not conflict with fundamental legislative principles.

Consultation

As the notice has no impact on business and individuals in Queensland, no consultation has been carried out on the notice.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is Queensland Treasury and Trade.

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