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Ref: FTMIN12/1698

Mr Dominic Perrottet MP  
Committee Chair  
Legal Affairs Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000



Dear Mr Perrottet

I refer to the Legal Affairs Committee Inquiry into Law Reform Issues Regarding Synthetic Drugs. As requested by the Committee, I am providing information regarding the product safety provisions of the Australian Consumer Law (ACL).

The ACL is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cwlth)* and is enacted in NSW under the *Fair Trading Act 1987*. The ACL has nationwide coverage and aims to protect consumers and ensure fair trading throughout Australia.

Sections 109-119 of the ACL allow Commonwealth, State and Territory Ministers to impose bans on consumer goods or product related services in certain circumstances. Consumer goods are defined as "goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household consumption". There are two types of bans which can be imposed:

- an interim ban which can be imposed by a State or Territory Minister and lasts for sixty days and can be extended by thirty additional days; and
- a permanent ban which can only be imposed by the Commonwealth Minister.

An interim or permanent ban can be imposed if it appears, to the responsible Minister, that:

- consumer goods of that kind will or may cause injury to any person; or
- a reasonably foreseeable use (including misuse) of consumer goods of that kind will or may cause injury to any person.

Once an interim or permanent ban has been made, a person must not in trade or commerce, supply, offer for supply, manufacture, possess or have control of consumer goods of that particular kind. A person who fails to comply with an interim or permanent ban may be found guilty of a criminal offence. The maximum fine is \$220,000 for an individual and \$1.1 million for a corporation.

An interim ban will end when the sixty or ninety day period has expired or if the Commonwealth Minister extends the interim ban by a further 30 days, imposes a national interim ban or imposes a permanent ban. A permanent ban can be revoked by the Commonwealth Minister by written notice or on a day specified in the ban notice.

A recent example of a consumer product which was permanently banned by the Commonwealth Minister is a toy-like novelty lighter, which was banned in February 2011. These lighters were sold across Australia and were considered hazardous because children may have mistaken them for toys and suffer serious burns as a result. This instance is informative, as rather than banning a brand or specific product name, the ban was achieved through a description of the goods, allowing anything similar to also be covered by the ban. I have enclosed a copy of the ban for the Committee's information.

The ACL also places an obligation on suppliers to notify the Commonwealth Minister within 48 hours of becoming aware that a person has suffered serious injury or death associated with a consumer good or product related service. This applies even if the consumer goods were misused and such a misuse could be foreseen. A person who fails to notify the Commonwealth Minister within 48 hours of becoming aware of such an incident may be guilty of an offence. The maximum fine is \$3,330 for an individual and \$1,650 for a corporation.

I trust this information is of assistance to the Committee in their Inquiry into Law Reform Issues Regarding Synthetic Drugs.

If you require further information, Ms Diana Holy of Fair Trading can be contacted

Yours sincerely

Rod Stowe  
**Commissioner**

Encl.

**COMMONWEALTH OF AUSTRALIA**

*COMPETITION AND CONSUMER ACT 2010*

Consumer Protection Notice No. 18 of 2011

**PERMANENT BAN ON TOY-LIKE NOVELTY CIGARETTE LIGHTERS**

I, DAVID BRADBURY, Parliamentary Secretary to the Treasurer, pursuant to subsection 114(1)(a) of Schedule 2 to the *Competition and Consumer Act 2010*, **IMPOSE** a permanent ban on the goods specified below.

**Particulars of Goods**

Toy-like novelty cigarette lighters, being devices which are intended to produce a flame to set alight cigarettes, or other combustible material and are likely to be appealing to children under 5 years of age by appearing to be a toy taking into account the totality of the design which may depict stylised animals, cartoon characters or be of colour(s), or of a scale typical of toys.

**Note:** Goods subject to this Notice and which fail to comply may be subject to compulsory recall.

Dated this 1<sup>st</sup> day of February 2011.

DAVID BRADBURY  
Parliamentary Secretary to the Treasurer