

2021

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ADVERTISING PROHIBITIONS BILL 2021

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon. Senator later_slater1407_)

General outline and financial impact

Prohibition of certain advertisements

The Act as a whole facilitates the prohibition of certain advertisements. It utilises the Australian Competition and Consumer Commission (ACCC) in order to enforce these prohibitions by various means, and this Act supplies the legal jurisdiction and offences related to the contravention of the prohibitions.

Part 1 is for preliminary matters. This includes the short title, commencement, simplified outline of the Act, definitions utilised throughout the Act and the extension of the Act in a similar manner to the *Competition and Consumer Act 2010*. It also repeals the *Alcohol Advertising Prohibition Act 2020*, as its provisions shall be superseded by this Act, in order to strengthen its enforcement.

Part 2 is for the general administration of the Act. The general administration is done by the ACCC, but the enforcement of laws relating to the advertising prohibitions is handled by the courts of the Commonwealth, including Federal Circuit Courts and certain State and Territory Courts. Part 2 has the following Divisions:

- Division 1 is a simplified outline of the Part as a whole;
- Division 2 is the application of the Advertising Prohibitions as a law of the Commonwealth, which ensures that it can go through proper legal procedure if any contravention of the Prohibitions were to occur;
- Division 3 is the introduction of a mechanism, to allow for the Minister administering this Act to facilitate an interim prohibition on the advertising of a certain product or service;
- Division 4 concerns jurisdictional matters, including the conferring of jurisdiction and transfer of matters to certain courts.
- Division 5 has miscellaneous matters in order to achieve effective administration of this Act.

Part 3 is the actual advertising prohibitions. Division 1 concerns the definitions utilised in that part and that part only, in order to supplement the prohibitions. Division 2 has the provisions for the actual prohibitions. These set out the rules that companies are, in general, supposed to follow,

in order to abide by the advertising prohibitions. This can be expanded later on by parliament, but currently contains provisions for:

- alcoholic beverage advertisements;
- unhealthy food advertisements;
- gambling service advertisements; and
- pleasurable service advertisements.

Division 3 of Part 3 concerns the offences that are associated with the provisions in Division 2. Subdivision B, C, D and E concerns offences for the violation of prohibitions under Division 2. Subdivision Y allows for certain defences in relation to any offences incurred in Division 3 that is allowed in the court. Subdivision Z concerns miscellaneous provisions relating to offences.

Date of effect: This Bill shall come into effect 3 months after it receives the Presidential Assent, in order to ensure that the measures can take full effect in a manner that does not cripple businesses in an immediate manner.

Financial impact: This measure is estimated to have no financial impact on the Commonwealth.

Human rights implications: This Bill does not raise any human rights issues. See *Statement of Compatibility with Human Rights*.

Statement of Compatibility with Human Rights

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

Advertising Prohibitions Bill 2021

This Bill 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

This Bill prohibits the advertisement of certain products as set out by the Bill, and causes the administration and punishment of any contravention of the prohibitions on advertising certain goods or services. It is designed to increase the safety of the people of Australia, as to ensure that they are not lured in to buy products that may be unhealthy or not beneficial to their well-being.

Human rights implications

This Bill engages the following rights:

- right to the highest attainable standard of physical and mental health – Article 12 of the International Covenant on Economic, Social and Cultural Rights.
- right to equality before the courts – Article 14 of the International Covenant on Civil and Political Rights.

right to the highest attainable standard of physical and mental health

This Bill engages with this right by state intervention into the advertisement of products that can fundamentally harm a person's physical and mental health, and ensures that the prohibition of advertisements is enforced with harsh penalties on bodies corporate and individuals. This Bill therefore positively engages with this right.

right to equality before the courts

This Bill engages with this right through its provisions relating to the Defences one can apply for offences, as well as the equality presented in Division 4 of Part 2, concerning jurisdictional matters. This Bill ensures

that everyone is represented in a fair manner before courts, so this Bill positively engages with this right.

Conclusion

This Bill is compatible with human rights as it does not limit any applicable human rights or freedoms.