

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (31/05/2023)

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

No. , 2023

(Health and Aged Care)

**A Bill for an Act to deal with consequential and
transitional matters arising from the enactment of
the *Public Health (Tobacco and Other Products) Act
2023*, and for related purposes**

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1 **A Bill for an Act to deal with consequential and**
2 **transitional matters arising from the enactment of**
3 **the *Public Health (Tobacco and Other Products) Act***
4 **2023, and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Public Health (Tobacco and Other Products)*
8 *(Consequential Amendments and Transitional Provisions) Act*
9 *2023*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	At the same time as section 3 of the <i>Public Health (Tobacco and Other Products) Act 2023</i> commences. However, the provisions do not commence at all if that section does not commence.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Repeals and consequential amendments **Schedule 1**
Repeals **Part 1**

1 **Schedule 1—Repeals and consequential**
2 **amendments**

3 **Part 1—Repeals**

4 *Tobacco Advertising Prohibition Act 1992*

5 **1 The whole of the Act**

6 Repeal the Act.

7 *Tobacco Plain Packaging Act 2011*

8 **2 The whole of the Act**

9 Repeal the Act.

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Schedule 1 Repeals and consequential amendments

Part 2 Consequential amendments

1 **Part 2—Consequential amendments**

2 *Broadcasting Services Act 1992*

3 **3 Paragraph 7(1)(a) of Part 3 of Schedule 2**

4 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
5 *Health (Tobacco and Other Products) Act 2023*”.

6 **4 Paragraph 8(1)(a) of Part 4 of Schedule 2**

7 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
8 *Health (Tobacco and Other Products) Act 2023*”.

9 **5 Paragraph 9(1)(a) of Part 5 of Schedule 2**

10 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
11 *Health (Tobacco and Other Products) Act 2023*”.

12 **6 Paragraph 10(1)(a) of Part 6 of Schedule 2**

13 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
14 *Health (Tobacco and Other Products) Act 2023*”.

15 **7 Paragraph 11(1)(a) of Part 7 of Schedule 2**

16 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
17 *Health (Tobacco and Other Products) Act 2023*”.

18 **8 Clause 6 of Part 1 of Schedule 6**

19 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
20 *Health (Tobacco and Other Products) Act 2023*”.

21 **9 Paragraph 24(1)(b) of Part 3 of Schedule 6**

22 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
23 *Health (Tobacco and Other Products) Act 2023*”.

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Repeals and consequential amendments **Schedule 1**
Consequential amendments **Part 2**

1 ***Competition and Consumer Act 2010***

2 **10 Section 87D (definition of *smoking*)**

3 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
4 *Health (Tobacco and Other Products) Act 2023*”.

5 **11 Section 87D (definition of *tobacco product*)**

6 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
7 *Health (Tobacco and Other Products) Act 2023*”.

8 **12 Section 130 (definition of *smoking*)**

9 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
10 *Health (Tobacco and Other Products) Act 2023*”.

11 **13 Section 130 (definition of *tobacco product*)**

12 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
13 *Health (Tobacco and Other Products) Act 2023*”.

14 ***Criminal Code Act 1995***

15 **18 Paragraph 320.2(2)(b) of the Criminal Code**

16 Omit “section 8 of the *Tobacco Advertising Prohibition Act 1992*”,
17 substitute “the *Public Health (Tobacco and Other Products) Act 2023*”.

18 ***Social Security (Administration) Act 1999***

19 **20 Section 123TC (definition of *tobacco product*)**

20 Omit “*Tobacco Advertising Prohibition Act 1992*”, substitute “*Public*
21 *Health (Tobacco and Other Products) Act 2023*”.

22 ***Taxation Administration Act 1953***

23 **21 Paragraph 308-55(1)(a) in Schedule 1**

24 Omit “Chapter 2 of the *Tobacco Plain Packaging Act 2011*”, substitute
25 “Chapter 3 of the *Public Health (Tobacco and Other Products) Act*
26 *2023*”.

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Schedule 1 Repeals and consequential amendments

Part 2 Consequential amendments

1 **22 Paragraph 308-55(1)(b) in Schedule 1**

2 Omit “mentioned in sections 26 and 27 of the *Tobacco Plain Packaging*
3 *Act 2011*”, substitute “for a tobacco product in Chapter 3 of the *Public*
4 *Health (Tobacco and Other Products) Act 2023*”.

5 **23 After paragraph 308-55(1)(e) in Schedule 1**

6 Insert:

7 (ea) a permanent ban under Chapter 4 of the *Public Health*
8 *(Tobacco and Other Products) Act 2023* applies to the
9 tobacco;

10 ***Trade Marks Act 1995***

11 **24 Subsection 231(2) (note)**

12 Omit “*Tobacco Plain Packaging Act 2011*”, substitute “*Public Health*
13 *(Tobacco and Other Products) Act 2023*”.

14 **25 Section 231A (heading)**

15 Omit “**Tobacco Plain Packaging Act 2011**”, substitute “**Public Health**
16 **(Tobacco and Other Products) Act 2023**”.

17 **26 Subsection 231A(1)**

18 Omit “*Tobacco Plain Packaging Act 2011*”, substitute “*Public Health*
19 *(Tobacco and Other Products) Act 2023*”.

20 **27 Subsection 231A(1) (note)**

21 Omit “Section 28 of the *Tobacco Plain Packaging Act 2011*”, substitute
22 “Section 121 of the *Public Health (Tobacco and Other Products) Act*
23 *2023*”.

24 **28 Subsection 231A(2)**

25 Omit “*Tobacco Plain Packaging Act 2011*”, substitute “*Public Health*
26 *(Tobacco and Other Products) Act 2023*”.

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Repeals and consequential amendments **Schedule 1**
Consequential amendments **Part 2**

1 *Trans-Tasman Mutual Recognition Act 1997*

2 **29 Clause 3 of Part 2 of Schedule 2 (table item headed**
3 **“Tobacco”)**

4 Repeal the item, substitute:

Tobacco

Public Health (Tobacco and Other Products) Act 2023

No. , 2023

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

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Schedule 2 Application, saving and transitional provisions

Part 1 Preliminary

1 **Schedule 2—Application, saving and**
2 **transitional provisions**

3 **Part 1—Preliminary**

4 **1 Definitions**

5 (1) In this Schedule:

6 *commencement day* means the day section 3 of the new Act
7 commences.

8 *main transition period* means the period of 12 months beginning on the
9 commencement day.

10 *new Act* means the *Public Health (Tobacco and Other Products) Act*
11 *2023*.

12 *old Tobacco Information Standard* means the *Competition and*
13 *Consumer (Tobacco) Information Standard 2011*.

14 *old TPP Act* means the *Tobacco Plain Packaging Act 2011*.

15 *retailer transition period* means the period of 3 months beginning
16 immediately after the end of the main transition period.

17 (2) An expression used in this Schedule that is also used in the new Act has
18 the same meaning in this Schedule as it has in the new Act.

19 **2 Section 7 of the Acts Interpretation Act 1901**

20 This Schedule does not limit the effect of section 7 of the *Acts*
21 *Interpretation Act 1901* as it applies in relation to the repeals and
22 amendments made by this Act.

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Application, saving and transitional provisions **Schedule 2**
Tobacco and e-cigarette sponsorships **Part 2**

1 **Part 2—Tobacco and e-cigarette sponsorships**

2 **3 Application of section 37 of new Act—prohibition on**
3 **entering into tobacco sponsorships**

4 Section 37 of the new Act applies in relation to:

5 (a) an arrangement, agreement or understanding that is entered
6 into; or

7 (b) a promise or undertaking that is given;

8 on or after the commencement day.

9 **4 Application of section 64 of new Act—prohibition on**
10 **entering into e-cigarette sponsorships**

11 Section 64 of the new Act applies in relation to:

12 (a) an arrangement, agreement or understanding that is entered
13 into; or

14 (b) a promise or undertaking that is given;

15 on or after the commencement day.

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Schedule 2 Application, saving and transitional provisions

Part 3 Tobacco product requirements—transitional arrangements

1 **Part 3—Tobacco product requirements—transitional**
2 **arrangements**

3 **Division 1—Preliminary**

4 **5 Purpose of this Part**

5 This Part makes provision for transitional arrangements in relation to
6 certain tobacco product requirements in Chapter 3 of the new Act
7 during the main transition period.

8 Note: Division 3 extends these arrangements for retailers by a further 3 months.

9 **Division 2—Main transitional arrangements**

10 **6 Plain packaging—physical features**

11 (1) This item applies if the retail packaging of tobacco products complies
12 with the requirements of section 18 of the old TPP Act, as in force
13 immediately before the commencement day.

14 (2) For the purposes of the new Act, during the main transition period, the
15 retail packaging is taken to comply with the requirements of section 73
16 of the new Act.

17 **7 Plain packaging—colour and finish**

18 (1) This item applies if the retail packaging of tobacco products complies
19 with the requirements of section 19 of the old TPP Act, as in force
20 immediately before the commencement day.

21 (2) For the purposes of the new Act, during the main transition period, the
22 retail packaging is taken to comply with the requirements of
23 subsection 74(1) of the new Act.

24 **8 Plain packaging—trade marks and other marks**

25 (1) This item applies if the retail packaging of tobacco products complies
26 with the requirements of section 20 of the old TPP Act, as in force
27 immediately before the commencement day.

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Application, saving and transitional provisions **Schedule 2**
Tobacco product requirements—transitional arrangements **Part 3**

- 1 (2) For the purposes of the new Act, during the main transition period, the
2 retail packaging is taken to comply with the requirements of section 76
3 (other than subsection (4)) of the new Act.

4 **9 Plain packaging—brand names and variant names**

- 5 (1) This item applies if the retail packaging of tobacco products complies
6 with the requirements of section 21 of the old TPP Act, as in force
7 immediately before the commencement day.
- 8 (2) For the purposes of the new Act, during the main transition period, the
9 retail packaging is taken to comply with the requirements of
10 subsection 76(4) of the new Act.

11 **10 Plain packaging—health warnings**

- 12 (1) This item applies if the retail packaging of tobacco products complies
13 with the requirements of the old Tobacco Information Standard, as in
14 force immediately before the commencement day.
- 15 (2) For the purposes of the new Act, during the main transition period, the
16 retail packaging is taken to comply with the requirements of
17 subsection 77(1) of the new Act.

18 **11 Plain packaging—mandatory markings**

- 19 (1) This item applies if the retail packaging of tobacco products complies
20 with the requirements of:
21 (a) section 20; and
22 (b) subsection 21(4);
23 of the old TPP Act, as in force immediately before the commencement
24 day.
- 25 (2) For the purposes of the new Act, during the main transition period, the
26 retail packaging is taken to comply with the requirements of section 78
27 of the new Act.

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Schedule 2 Application, saving and transitional provisions

Part 3 Tobacco product requirements—transitional arrangements

1 **12 Plain packaging—wrappers**

- 2 (1) This item applies if the retail packaging of tobacco products complies
3 with the requirements of section 22 of the old TPP Act, as in force
4 immediately before the commencement day.
- 5 (2) For the purposes of the new Act, during the main transition period, the
6 retail packaging is taken to comply with the requirements of section 79
7 of the new Act.

8 **13 Plain packaging—inserts and onserts (other than health
9 promotion inserts)**

- 10 (1) This item applies if the retail packaging of tobacco products complies
11 with the requirements of section 23 of the old TPP Act, as in force
12 immediately before the commencement day.
- 13 (2) For the purposes of the new Act, during the main transition period, the
14 retail packaging is taken to comply with the requirements (other than in
15 relation to health promotion inserts) of subsections 81(1) and (2) of the
16 new Act.

17 Note: For application provisions in relation to the health promotion inserts required to be
18 included in retail packaging by paragraph 81(1)(a) of the new Act, see item 20.

19 **14 Tobacco products—appearance and physical features
20 (other than prohibited terms)**

- 21 (1) This item applies if a tobacco product complies with the requirements
22 of section 26 of the old TPP Act, as in force immediately before the
23 commencement day.
- 24 (2) For the purposes of the new Act, during the main transition period, the
25 tobacco product is taken to comply with the requirements of
26 subsections 85(2), (3) and (4) of the new Act.

27 Note 1: For application provisions in relation to the appearance of prohibited terms on tobacco
28 products, see item 22.

29 Note 2: For application provisions in relation to dimensions of tobacco products, see item 23.

30 Note 3: For application provisions in relation to filter tips in cigarettes, see item 24.

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Application, saving and transitional provisions **Schedule 2**
Tobacco product requirements—transitional arrangements **Part 3**

1 **Division 3—Extended transitional arrangements for**
2 **retailers**

3 **15 Scope of Division**

4 *Application*

5 (1) This Division applies in relation to a person (a *retailer*) who, on or after
6 the commencement day:

- 7 (a) sells tobacco products by retail sale; or
8 (b) offers such products for retail sale.

9 *Sell-through provisions*

10 (2) This Division applies in relation to the following provisions (the
11 *sell-through provisions*) of the new Act:

- 12 (a) section 94 (selling or supplying tobacco products in
13 non-compliant retail packaging);
14 (b) section 96 (possessing tobacco products in non-compliant
15 retail packaging);
16 (c) section 108 (selling or supply tobacco products in
17 non-compliant retail packaging to a constitutional
18 corporation);
19 (d) section 110 (possessing tobacco products in non-compliant
20 retail packaging obtained from a constitutional corporation).

21 **16 Extended transitional arrangements for retailers**

22 A retailer who engages in conduct does not contravene a sell-through
23 provision in relation to a tobacco product requirement that applies to a
24 tobacco product under the new Act if:

- 25 (a) the retailer engages in the conduct during the retailer
26 transition period; and
27 (b) the tobacco product requirement relates to the retail
28 packaging of tobacco products; and
29 (c) the tobacco product was supplied to the retailer in the retail
30 packaging before the start of the retailer transition period;
31 and

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Schedule 2 Application, saving and transitional provisions

Part 3 Tobacco product requirements—transitional arrangements

1 (d) at the time of that supply, the retail packaging of the tobacco
2 product was taken to comply with the tobacco product
3 requirement because of the operation of Division 2 of this
4 Part.

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Application, saving and transitional provisions **Schedule 2**
Tobacco product requirements—application of new measures **Part 4**

1 **Part 4—Tobacco product requirements—application**
2 **of new measures**

3 **Division 1—Preliminary**

4 **17 Purpose of this Part**

5 This Part makes provision for the application of certain tobacco product
6 requirements in Chapter 3 of the new Act after the end of the main
7 transition period.

8 **Division 2—Application of new tobacco product**
9 **requirements**

10 **18 Plain packaging—standardisation**

11 The tobacco product requirement in subsection 75(1) of the new Act
12 applies in relation to the retail packaging of tobacco products after the
13 end of the main transition period.

14 **19 Plain packaging—prohibited tobacco product accessories**

15 The tobacco product requirement in section 80 of the new Act applies in
16 relation to the retail packaging of tobacco products after the end of the
17 main transition period.

18 **20 Plain packaging—health promotion inserts**

19 The tobacco product requirement in paragraph 81(1)(a) of the new Act,
20 insofar as it relates to health promotion inserts, applies in relation to the
21 retail packaging of tobacco products after the end of the main transition
22 period.

23 **21 Prohibited terms—brand names and variant names**

24 The tobacco product requirement in section 84 of the new Act applies in
25 relation to brand names and variant names of tobacco products after the
26 end of the main transition period.

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Schedule 2 Application, saving and transitional provisions

Part 4 Tobacco product requirements—application of new measures

1 **22 Tobacco products—appearance of prohibited terms**

2 The tobacco product requirement in subsection 85(1) of the new Act
3 applies in relation to tobacco products after the end of the main
4 transition period.

5 **23 Tobacco products—physical features (dimensions of a
6 cigarette)**

7 The tobacco product requirement in subsection 85(4) of the new Act,
8 insofar as it relates to the dimensions of a cigarette, applies in relation
9 to cigarettes after the end of the main transition period.

10 **24 Tobacco products—physical features (filter tips)**

11 The tobacco product requirement in subsection 85(4) of the new Act,
12 insofar as it relates to filter tips, applies in relation to filter tips after the
13 end of the main transition period.

14 **25 Tobacco products—contents (ingredients)**

15 The tobacco product requirement in section 86 of the new Act applies in
16 relation to tobacco products after the end of the main transition period.

17 **26 Tobacco products—prohibited devices**

18 The tobacco product requirement in section 87 of the new Act applies in
19 relation to tobacco products after the end of the main transition period.

20 **27 Tobacco product accessories—appearance of prohibited
21 terms**

22 The tobacco product requirement in section 90 of the new Act applies in
23 relation to tobacco product accessories, and the wrapping of such
24 accessories, after the end of the main transition period.

25 **28 Tobacco product accessories—prohibited functions**

26 The tobacco product requirement in section 91 of the new Act applies in
27 relation to tobacco product accessories after the end of the main
28 transition period.

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Application, saving and transitional provisions **Schedule 2**
Reporting and information disclosure **Part 5**

1 **Part 5—Reporting and information disclosure**

2 **29 Reporting entities—financial year reports**

3 (1) This item applies in relation to the obligation of a reporting entity to
4 give a report to the Secretary under the following provisions of the new
5 Act:

- 6 (a) section 130 (tobacco product ingredients);
7 (b) section 132 (marketing and promotional expenditure);
8 (c) section 133 (tobacco product research and development—
9 manufacturers).

10 (2) Subject to subitem (3), the obligations of the reporting entity apply in
11 relation to:

- 12 (a) the 2023-2024 financial year; and
13 (b) each later financial year.

14 (3) If the reporting entity is not, on or after the commencement date, a
15 manufacturer of tobacco products that are sold or supplied, or offered
16 for sale or supply, in Australia, the obligation of the reporting entity to
17 give a report under section 130 of the new Act applies in relation to:

- 18 (a) the 2024-2025 financial year; and
19 (b) each later financial year;

20 Note: An effect of subitem (3) is that, for reporting entities who are importers of tobacco
21 products, the reporting obligation commences from the 2024-2025 financial year.

22 **30 Reporting entities—quarterly reports**

23 The obligation of a reporting entity to give a report to the Secretary
24 under section 131 of the Act (tobacco product volumes) applies in
25 relation to:

- 26 (a) the 3 month period ending on 30 June 2024; and
27 (b) each later 3 month period.

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Schedule 2 Application, saving and transitional provisions

Part 6 Administration

1 **Part 6—Administration**

2 **31 Compliance and enforcement**

3 (1) Parts 6.2 and 6.3 of the new Act and any related provisions apply for
4 the purposes of ensuring compliance with this Schedule.

5 (2) For the purposes of subitem (1), Parts 6.2 and 6.3 apply as if references
6 to “this Act” in those Parts included a reference to this Schedule and
7 any rules made under item 35 of this Schedule.

8 Note: Parts 6.2 and 6.3 of the new Act deal with the appointment and powers of authorised
9 officers, and trigger monitoring and investigation powers under the *Regulatory Powers*
10 *(Standard Provisions) Act 2014*.

11 (3) A reference in Part 6.2 or 6.3 of the new Act, as it applies under this
12 item, to that Part or a provision of that Part is to be read as a reference
13 to that Part or that provision as it applies under this item.

14 **32 Reports under repealed Tobacco Advertising Prohibition**
15 **Act**

16 Despite the repeal of the *Tobacco Advertising Prohibition Act 1992*,
17 section 34A of that Act continues to apply in relation to the financial
18 year ending on 30 June 2024.

19 **33 Reports under old TPP Act**

20 Despite the repeal of the old TPP Act, section 108 of that Act continues
21 to apply in relation to the financial year ending on 30 June 2024.

22 **34 Reports under new Act**

23 Section 185 of the new Act applies in relation to:

- 24 (a) the 2023-2024 financial year; and
25 (b) each later financial year.

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Application, saving and transitional provisions **Schedule 2**
Transitional rules **Part 7**

1 **Part 7—Transitional rules**

2 **35 Transitional rules**

- 3 (1) The Minister may, by legislative instrument, make rules prescribing
4 matters:
- 5 (a) required or permitted by this Act to be prescribed by the
6 rules; or
 - 7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.
- 9 (2) Without limiting subitem (1), the rules may prescribe matters of a
10 transitional nature (including prescribing any saving or application
11 provisions) relating to:
- 12 (a) the amendments or repeals made by this Act; or
 - 13 (b) the enactment of the new Act.
- 14 (3) To avoid doubt, the rules may not do the following:
- 15 (a) create an offence or civil penalty;
 - 16 (b) provide powers of:
 - 17 (i) arrest or detention; or
 - 18 (ii) entry, search or seizure;
 - 19 (c) impose a tax;
 - 20 (d) set an amount to be appropriated from the Consolidated
21 Revenue Fund;
 - 22 (e) directly amend the text of this Act or the new Act.
- 23 (4) This Schedule (other than subitem (3)) does not limit the rules that may
24 be made for the purposes of subitem (1).