



AUSTRALIAN CAPITAL TERRITORY

## **Tobacco (Amendment) Act 1990**

**No. 39 of 1990**

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### **An Act to amend the *Tobacco Act 1927***

*[Notified in ACT Gazette S 76: 7 November 1990]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

- 1.** This Act may be cited as the *Tobacco (Amendment) Act 1990*.

#### **Commencement**

- 2. (1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- (2)** The remaining provisions commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **Principal Act**

3. In this Act, “Principal Act” means the *Tobacco Act 1927*.<sup>1</sup>

### **Insertion of heading**

4. Before section 1 of the Principal Act, the following heading is inserted:

#### **“PART I—PRELIMINARY”.**

### **Substitution**

5. Section 10 of the Principal Act is repealed and the following sections and Parts substituted:

### **Crown**

“2. (1) This Act binds the Crown.

“(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

### **Interpretation**

“3. In this Act, unless the contrary intention appears—

‘newspaper’ has the same meaning as in the *Printing and Newspapers Act 1961*;

‘public place’ means a place to which the public ordinarily has access, whether by payment or not, but does not include a part of a place to which the public has access by reason only of the carrying on of a trade, business or profession on or in that place;

‘sell’ includes—

- (a) barter or exchange;
- (b) offer or expose for sale, barter or exchange;
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and

- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

‘smoking’ means inhaling or puffing the smoke of a cigarette or cigar of any composition, or tobacco in any form;

‘theatre’ means a place where any live entertainment or film is presented, performed or exhibited to which admission is or may be procured by payment or by ticket or by any other means, token or consideration;

‘tobacco advertisement’ means writing or a picture, symbol, light or other visible device, object or sign, or a combination of 2 or more of the foregoing, that gives publicity to or otherwise promotes—

- (a) the purchase or use of a tobacco product; or
- (b) a trademark or brand name, or part of a trade mark or brand name, of a tobacco product;

‘tobacco product’ means tobacco, a cigarette or cigar or any other product the main ingredient of which is tobacco and which is designed for human consumption;

‘vending machine’ means a machine, device or contrivance that is constructed to contain tobacco products that may be obtained from it by an operation that involves the insertion of money or a token or similar object.

## **“PART II—SUPPLY OF TOBACCO PRODUCTS**

### **Supply of tobacco products to persons under 18 years**

“4. (1) A person shall not sell, or cause or permit to be sold, a tobacco product to a person under the age of 18 years.

Penalty: \$1,000.

“(2) The occupier of premises on which a vending machine is situated shall not permit a person under the age of 18 years to obtain a tobacco product from that machine.

Penalty: \$1,000.

“(3) It is a defence to a prosecution under this section if it is established that the defendant—

- (a) had reasonable cause to believe that the person purchasing or obtaining the tobacco product had attained the age of 18 years; or
- (b) had taken all reasonable precautions to ensure that the tobacco product was not sold or supplied to a person under the age of 18 years.

### **Purchase of tobacco products for persons under 18 years**

“5. A person shall not purchase a tobacco product for use by a person under the age of 18 years.

Penalty: \$1,000.

### **Vending machines**

“6. (1) A person shall not, without reasonable excuse, place, or cause, permit or authorise to be placed, a vending machine for operation by members of the public on any premises except licensed premises within the meaning of the *Liquor Act 1975*.

Penalty: \$1,000.

“(2) A person who owns or possesses a vending machine shall take reasonable precautions to ensure that there is kept conspicuously displayed on the front of that machine a statement in the prescribed form.

Penalty: \$500.

### **Smokeless tobacco**

“7. A person shall not manufacture or sell a tobacco product other than a product prepared for smoking.

Penalty: \$1,000.

### **Confectionery or toys resembling tobacco products**

“8. (1) A person shall not sell, or import into the Territory for sale, confectionery, or a toy, that is designed to resemble a tobacco product.

“(2) A person shall not sell, or import into the Territory for sale, confectionery, or a toy, contained in packaging that is designed to resemble a tobacco product or the packaging of a tobacco product.

Penalty: \$1,000.

### **Sale of cigarettes**

“9. A person shall not sell cigarettes in a quantity of fewer than 20.

Penalty: \$1,000.

## **“PART III—ADVERTISING AND SPONSORSHIP**

### **Certain advertising prohibited**

“10. (1) A person shall not for any direct or indirect pecuniary benefit—

- (a) display, or cause, permit or authorise to be displayed, a tobacco advertisement in a theatre;
- (b) sell, or cause, permit or authorise to be sold, a film or video tape that contains a tobacco advertisement;
- (c) distribute, or cause, permit or authorise to be distributed, to the public any unsolicited leaflet, handbill or other document that is or that contains a tobacco advertisement;
- (d) place or display, or cause, permit or authorise to be placed or displayed, a tobacco advertisement so that it is visible in or from a public place; or
- (e) sell, or cause or permit or authorise to be sold, an object that is or that contains a tobacco advertisement.

Penalty: \$5,000.

“(2) This section does not apply in relation to—

- (a) a tobacco advertisement in or on—
  - (i) a newspaper or magazine;
  - (ii) a book; or
  - (iii) a package containing a tobacco product;

- (b) a tobacco advertisement that is an accidental or incidental accompaniment to a film or video tape;
- (c) a tobacco advertisement which is displayed inside a shop or warehouse adjacent to a place where tobacco products are offered for sale;
- (d) a tobacco advertisement which is—
  - (i) displayed outside the entrance to a place where tobacco products are offered for sale; and
  - (ii) to the effect that tobacco products are offered for sale in that place;where the advertisement—
  - (iii) does not contain a trademark or brand name, nor part of a trademark or brand name, of a tobacco product; and
  - (iv) does not contain the name of a manufacturer or distributor of a tobacco product;
- (e) a document ordinarily used in the course of business; or
- (f) tobacco advertising specified in a notice under subsection (3).

“(3) The Minister may, by notice published in the *Gazette*, exempt specified tobacco advertising from the operation of subsection (1).

“(4) A notice under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Removal of tobacco advertisements**

“11. (1) If an authorised officer believes on reasonable grounds that a person has contravened paragraph 10 (1) (d), the officer shall give the person a written notice stating that unless the relevant tobacco advertisement is removed, or obscured, in the specified manner within the period of 30 days after the notice is given, proceedings may be commenced against the person for an offence against that paragraph.

“(2) Proceedings against a person for an offence against paragraph 10 (1) (d)—

- (a) shall not be commenced unless a notice is given to the person under subsection (1);

- (b) shall not be commenced until after the period of 30 days after that notice is given; and
- (c) shall not be commenced if the relevant tobacco advertisement is removed or obscured in accordance with that notice.

“(3) If a person is convicted of an offence against paragraph 10 (1) (d), the Court, in addition to imposing any other penalty, may order that the relevant tobacco advertisement be removed, or obscured, by the Territory.

“(4) If a tobacco advertisement is removed, or obscured, in accordance with an order under subsection (3), the person convicted of the relevant offence shall pay the Territory the reasonable costs incurred in removing or obscuring the advertisement.

“(5) In this section—

‘authorised officer’ means a person who is—

- (a) an Inspector; or
- (b) authorised;

for the purposes of the *Public Health Act 1928*.

### **Prohibition of sponsorships**

“12. (1) A person shall not, under a contract, agreement, undertaking or understanding, whether or not legally binding, promote or agree to promote—

- (a) a tobacco product;
- (b) a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
- (c) the name or interests of a manufacturer or distributor of a tobacco product in association, whether directly or indirectly, with that tobacco product;

in exchange for a sponsorship, gift, prize, scholarship or like benefit given or agreed to be given by another person.

Penalty: \$5,000.

“(2) A person shall not, under a contract, agreement, undertaking or understanding, whether or not legally binding, give or agree to give any sponsorship, gift, prize, scholarship or like benefit in exchange for a promotion, or an agreement to promote, referred to in paragraph (1) (a), (b) or (c).

Penalty: \$5,000.

“(3) This section does not apply in relation to—

- (a) a scholarship given, or agreed to be given, by a manufacturer or distributor of a tobacco product to an employee, or a member of the family of an employee, of the manufacturer or distributor; or
- (b) a contract, agreement, undertaking or understanding specified in a notice under subsection (4).

“(4) The Minister may, by notice published in the *Gazette*, exempt a specified contract, agreement undertaking or understanding from the operation of subsection (1) or (2).

“(5) A notice under subsection (4) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

#### “PART IV—MISCELLANEOUS

##### **Conduct of directors, servants and agents**

“13. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

“(2) A reference in subsection (1) to the state of mind of a body or person is to be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body’s or person’s reasons for the intention, opinion, belief or purpose.



“(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

“(4) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

“(5) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

### **Corporations—penalties**

“14. Where a body corporate is convicted of an offence against this Act, the penalty that the Court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for that offence.

### **Regulations**

“15. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.”.

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### **NOTE**

1. Ordinance No. 14, 1927 as amended by No. 5, 1930; No. 10, 1936; Nos. 19 and 27, 1937; No. 10, 1957; No. 14, 1966; No. 21, 1989.

*[Presentation speech made in Assembly on 6 June 1990.]*