



AUSTRALIAN CAPITAL TERRITORY

Tobacco (Amendment) Act 1999

No. 57 of 1999

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AUSTRALIAN CAPITAL TERRITORY

Tobacco (Amendment) Act 1999

No. 57 of 1999

An Act to amend the *Tobacco Act 1927* and the *Tobacco Licensing Act 1984*

[Notified in ACT Gazette No 45: 10 November 1999]

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

PART 1—PRELIMINARY

1. Short title

This Act may be cited as the *Tobacco (Amendment) Act 1999*.

2. Commencement

(1) Sections 1, 2, 3 and 17 commence on the day this Act is notified in the *Gazette*.

- (2) The remaining provisions (other than section 13) commence on a day fixed by the Minister by notice in the *Gazette*.
- (3) If the remaining provisions (other than section 13) have not commenced within 6 months beginning on the day this Act is notified in the *Gazette*, they commence, by force of this subsection, on the first day after that period.
- (4) Section 13 commences 6 months after the day the provisions referred to in subsection (2) commence.

PART 2—AMENDMENT OF TOBACCO ACT 1927

3. Tobacco Act

This Part amends the *Tobacco Act 1927*¹ (“the Tobacco Act”).

4. Interpretation

Section 3 of the Tobacco Act is amended—

- (a) by omitting the definitions of “public place”, “sell” and “tobacco advertisement” and substituting the following definitions:
- “ ‘public place’ means a place to which the public ordinarily has access, whether by payment or not;
- ‘sell’ see section 3C;
- ‘tobacco advertisement’ see section 3D;” and
- (b) by inserting the following definitions:
- “ ‘authorised officer’ means an authorised officer under section 12G;
- ‘carton’ means a package containing packages of a tobacco product, or a package designed to contain packages of a tobacco product, but does not include a package containing individually-wrapped cigars (unless the package contains a further package or packages of the cigars);
- ‘cigar’—
- (a) means a roll of cut tobacco for smoking that is enclosed in tobacco leaf or the leaf of another plant; and

- (b) includes any other tobacco product prescribed as a cigar under the regulations;

‘Deputy Registrar’ means a Deputy Registrar of Tobacco under section 12B;

‘display’, of a tobacco product at a point of sale display at a retail or wholesale outlet, means display to customers of the retail or wholesale outlet;

‘functions’ includes powers and duties;

‘group licence’ means a tobacco licence that is—

- (a) a group retail tobacconist’s licence under the *Tobacco Licensing Act 1984*; or
- (b) a group wholesale tobacco merchant’s licence under the *Tobacco Licensing Act 1984*;

‘identity card’ means—

- (a) in relation to a Public Health Officer under the *Public Health Act 1997*—the identity card issued to him or her under that Act;
- (b) in relation to a police officer—proof of identification of a type approved for general purposes by the Commissioner of Police; or
- (c) in relation to any other authorised officer—the identity card issued to the officer under section 12J;

‘immediate package’, of a tobacco product, means a package containing the product—

- (a) in the case of a tobacco product other than cigars—not including a package containing a further package or packages of the product; and
- (b) in the case of cigars—
 - (i) including a package constituted by the individual wrapping of a cigar, and a package containing individually-wrapped or unwrapped cigars; but
 - (ii) not including any other package containing a further package or packages of cigars (whether wrapped or unwrapped);

‘occupier’, of premises, means a person having the management or control, or otherwise being in charge, of the premises;

‘package’ does not include a transparent wrapping, unless the wrapping has a tobacco advertisement printed on it;

‘point of sale’ means a place where tobacco products are sold within a retail or wholesale `outlet, and includes a vending machine from which tobacco products are sold;

‘point of sale display’ means a display of, or about, a tobacco product (or products) that complies with Part 1A;

‘premises’ includes a vehicle, vessel or aircraft, and a permanent or temporary structure;

‘price ticket’ see section 3A;

‘product information notice’ see section 3B;

‘product line’ means a kind of tobacco product distinguishable from other kinds by 1 or more of the following characteristics:

- (a) brand;
- (b) flavour (including menthol flavour);
- (c) nicotine or tar content;
- (d) the number of items in the immediate package in which it is sold;
- (e) in the case of cigars—by the fact that the cigars of the type in question are sold individually (whether or not cigars of the same type are also sold, packaged in multiples, in a different product line);

‘Registrar’ means the Registrar of Tobacco under section 12A, and includes a Deputy Registrar;

‘retail outlet’ means premises where tobacco products are available for sale by retail;

‘this Act’ includes the regulations;

‘tobacco licence’ means any of the following licences under the *Tobacco Licensing Act 1984*:

- (a) a retail tobacconist’s licence;
- (b) a group retail tobacconist’s licence;

- (c) a wholesale tobacco merchant's licence that authorises the sale of tobacco products from a vending machine;
- (d) a group wholesale tobacco merchant's licence that authorises the sale of tobacco products from a vending machine;

'tobacco retailing business' means—

- (a) a business that consists of, or involves, the retailing of tobacco products; or
- (b) a business that consists of, or involves, the management of a retail outlet where tobacco products are available for sale by means of vending machines;

'wholesale outlet' means premises where tobacco products are available for sale exclusively by wholesale;".

5. Insertion

After section 3 of the Tobacco Act the following sections and Part are inserted:

"3A. Price tickets

In this Act—

'price ticket', for a product line, means a label that—

- (a) includes no information other than any or all of the following:
 - (i) the name of the product line;
 - (ii) a bar code or similar identifying code;
 - (iii) the price of an item of the product line;
 - (iv) the price of a carton of the product line;
 - (v) a symbol indicating the country of origin of the product line;
- (b) consists of lettering and any graphics in a single colour (including black or white) on another single-coloured (including black or white) background;
- (c) is no larger than 35 square centimetres; and

- (d) otherwise complies with the regulations, and is displayed in accordance with the regulations.

“3B. Product information notices

In this Act—

‘product information notice’ means a notice—

- (a) located at or adjacent to a point of sale;
- (b) having an unbroken surface (whether or not the surface is flat) with an area of not more than 1 square metre;
- (c) with nothing attached to it (unless necessary for its support);
- (d) listing the product lines usually available for sale at the point of sale (with or without information about the prices of items or cartons of the product lines, or boxes of cigars);
- (e) containing only text;
- (f) in sans serif type no character of which exceeds 72 points in size (that is, 2 centimetres in height and 1.5 centimetres in width); and
- (g) in black lettering on a white background, or white lettering on a black background, but not both.

“3C. What does ‘sell’ mean?

In this Act—

‘sell’ includes—

- (a) offer for sale;
- (b) expose for sale;
- (c) barter (or offer or expose for barter);
- (d) exchange (or offer or expose for exchange);
- (e) supply for value (or offer or expose for supply for value); and
- (f) supply for free (or offer or expose for supply for free), to gain or maintain custom, or otherwise for commercial gain.

“3D. Tobacco advertisements

“(1) In this Act—

‘tobacco advertisement’ means writing, sound or a picture, symbol, light or other visible device, object or sign (or a combination of 2 or more of these) that a reasonable person would consider publicises, or otherwise promotes—

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

“(2) A ‘tobacco advertisement’ may be constituted by an incidental or accidental accompaniment to any other written, aural, pictorial, symbolic or visible matter.

“3E. Name of tobacco product manufacturer etc

“(1) For the purposes of this Act, the publication of the name of a manufacturer, distributor or retailer of tobacco products—

- (a) is not, of itself, a tobacco advertisement; and
- (b) is not taken, of itself, to publicise or promote—
 - (i) a tobacco product, or the purchase or use of a tobacco product;
 - (ii) a trademark or brand name of a tobacco product; or
 - (iii) the name or interests of a manufacturer or distributor of a tobacco product in association with a tobacco product.

“(2) However, the publication of the name of a manufacturer, distributor or retailer of tobacco products in association with the publication of other material may be a tobacco advertisement, and may be taken to be publicity or promotion as mentioned in subsection (1).

“PART 1A—POINT OF SALE DISPLAYS

“3F. Restrictions on point of sale displays

At a point of sale display of tobacco products—

- (a) the products may only be advertised or displayed in accordance with this Part; and

- (b) no tobacco advertisement for the products may be displayed (or broadcast) other than as permitted by this Part.

Note: Paragraph (b) is inserted to emphasise the effect of the prohibition of tobacco advertising under s 10 other than at a point of sale. A display of a tobacco product in a shop is likely to be a ‘tobacco advertisement’ within the meaning of the definition in s 3D. This is due to the text and graphics on the package of the product, or on cartons of the product.

“3G. Availability for sale of displayed products

“(1) At a point of sale display, the only tobacco products that may be displayed are those available for sale, or usually available for sale, at the point of sale.

“(2) If immediate packages of a tobacco product are not available for sale at a point of sale, subsection (1) does not prevent the display of an immediate package of a product line if a carton of the product line is available for sale (or usually available for sale) at the point of sale.

“3H. Manner of display

“(1) A point of sale display of a product line of a tobacco product (other than cigars) at a retail outlet may consist of the advertisement or display of the product line at the point of sale in 1 only of the following ways:

- (a) by a single representation of an immediate package of the product line in the form in which the package is available, or usually available, for sale (including the representation of an immediate package if only cartons are available for sale)—
 - (i) no larger than the actual size of the package, with the same appearance as the package; and
 - (ii) including a representation of the health warning (if any) with which the package is required to be labelled under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* of the Commonwealth;
- (b) by the display of a single immediate package of the product line in the form in which the package is available, or usually available, for sale (including the display of an immediate package if only cartons are available for sale);
- (c) by means of a stack dispenser for immediate packages of the product line that complies with subsection (3).

“(2) A point of sale display of a product line of cigars at a retail outlet may consist of the advertisement or display of the product line at the point of sale in 1 only of the following ways:

- (a) by a single representation of an immediate package of the cigars in the form in which the package is available, or usually available, for sale (including the representation of an immediate package if only cartons are available for sale)—
 - (i) no larger than the actual size of the package, with the same appearance as the package; and
 - (ii) including a representation of the health warning (if any) with which the package is required to be labelled under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* of the Commonwealth;
- (b) by the display of a single immediate package of the cigars in the form in which the package is available, or usually available, for sale (including the display of an immediate package if only cartons are available for sale);
- (c) by means of a stack dispenser for immediate packages of the cigars that complies with subsection (3);
- (d) by a single representation of 1 of the cigars in the form in which the cigar is available, or usually available, for sale (including the representation of a cigar if only packages of the cigars are available for sale), no larger than the actual size of the cigar, with the same appearance as the cigar;
- (e) by the display of either or both of the following:
 - (i) up to 13 of the cigars in an open box, or in any other manner;
 - (ii) a single closed box full of the cigars in the form in which the box is available for sale.

“(3) The display of a product line by means of a stack dispenser for immediate packages of the product line is permitted at a point of sale if—

- (a) in the case of packages stacked directly behind each other (from the point of view of the customer’s side of the customer service area) (‘an

angled stack’)—the most that is displayed at the front of the stack is the face, or any part, of a single package;

(b) in the case of an angled stack—only the following parts (if any) of the other packages in the stack are displayed:

- (i) the tops;
- (ii) the sides;
- (iii) the bottoms; and

(c) in the case of packages stacked on top of each other—no part of more than a single package in the stack is displayed.

“(4) A point of sale display of tobacco products may not consist of the display of the products, packages of the products, or representations of the products or packages, so as to constitute a tobacco advertisement itself as distinct from the display of each product, package or representation.

“3J. Display of cartons

“(1) At a retail outlet, a point of sale display of a product line may not include the display of a carton of the product line, or any part of the carton.

“(2) At a wholesale outlet, a point of sale display of a product line—

- (a) may include the display of 1 or more cartons of the product line, but with only the smallest (or 1 of the smallest) sides of the carton (or cartons) facing the customer service area; and
- (b) must otherwise comply with this Part.

“3K. Location of display

“(1) A point of sale display of tobacco products (other than cigars) may only be located—

- (a) at a point of sale; and
- (b) except in the case of a vending machine—on the seller’s side of the point of sale, not less than 1 metre away from any part of the customer service area in relation to the point of sale.

“(2) A point of sale display of cigars may only be located—

- (a) for a display of cigars mentioned in paragraph 3H (2) (e)—within a customer service counter at the point of sale, if the cigars or boxes may

only be viewed by customers looking down through the (transparent or semi-transparent) top of the counter (and may not otherwise be viewed from the customer's side of the counter); or

- (b) for a display of cigars mentioned in paragraph 3H (2) (e), or for any other display of cigars mentioned in subsection 3H (2)—
 - (i) at a point of sale; and
 - (ii) except in the case of a vending machine—on the seller's side of the point of sale, not less than 1 metre away from any part of the customer service area in relation to the point of sale.

“3L. Other display requirements by regulation

A point of sale display must comply with any requirements prescribed under the regulations additional to those imposed by this Part.”.

6. Substitution

Section 4 of the Tobacco Act is repealed and the following section substituted:

“4. Supply of tobacco to under 18 year olds

“(1) A person shall not sell a tobacco product to a person under 18 years old.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that immediately before the tobacco product was sold, the person to whom it was sold had shown a document of identification to the defendant (or to an employee or agent of the defendant).

“(3) The occupier of premises where there is a vending machine shall not permit a person under 18 years old to obtain a tobacco product from the machine.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that immediately before the tobacco product was obtained, the person who obtained it had shown a document of identification to the defendant (or to an employee or agent of the defendant).

“(5) A person shall not use another person’s document of identification, or a forged document of identification, for the purpose of obtaining a tobacco product.

Penalty: 10 penalty units.

“(6) A person may refuse to sell a tobacco product to someone else, or to permit someone else to obtain a tobacco product, if—

- (a) the person is not satisfied that the other person is at least 18 years old;
- (b) the person considers that the product is sought for use by a person under 18 years old; or
- (c) the person considers that any identification shown by the other person is not genuine, or has been tampered with.

“(7) Subsection (6) does not limit the circumstances in which a person may refuse to sell a tobacco product, or refuse to permit someone else to obtain a tobacco product.

“(8) In this section—

‘document of identification’, of a person, means a document that—

- (a) is—
 - (i) a licence under the *Motor Traffic Act 1936*;
 - (ii) a proof of age card under the *Liquor Act 1975*;
 - (iii) a document corresponding to such a licence or proof of age card that has been issued under the law of a State or another Territory; or
 - (iv) a passport;
- (b) contains a photograph that could reasonably be taken to be of the person; and
- (c) indicates that the person to whom the document was issued is at least 18 years old.”.

7. Purchase of tobacco for under 18 year olds

Section 5 of the Tobacco Act is amended by omitting from the penalty provision “10 penalty units” and substituting “50 penalty units”.

8. Vending machines

Section 6 of the Tobacco Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) A person shall not, without reasonable excuse, place a vending machine for operation by members of the public on any premises except—

- (a) a bar-room specified in a licence under the *Liquor Act 1975*;
- (b) the casino under the *Casino Control Act 1988*; or
- (c) a place where gaming machines are operated on premises licensed under the *Gaming Machine Act 1987*, if rules have been approved under subsection 31 (2) of that Act prohibiting the entry into the place of anyone under 18 years old.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”;

and

- (b) by omitting from subsection (2) the penalty provision and substituting the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.”.

9. Non-smoking tobacco

Section 7 of the Tobacco Act is amended by omitting the penalty provision and substituting the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—50 penalty units;

- (b) if the offender is a body corporate—250 penalty units.”.

10. Substitution

Section 8 of the Tobacco Act is repealed and the following section substituted:

“8. Food and toys resembling or promoting tobacco products

“(1) A person shall not sell or import food or a toy if the food or toy resembles—

- (a) a tobacco product; or
- (b) a tobacco product package.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether food or a toy resembles a tobacco product or package—

- (a) it is sufficient to prove that there are reasonable grounds for believing the resemblance to exist; and
- (b) the resemblance may be found to exist irrespective of the actual belief of the defendant.

“(3) A person shall not sell or import food or a toy if the food or toy publicises or otherwise promotes—

- (a) a tobacco product, or the use of 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 the tobacco product.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(4) In a prosecution for an offence against subsection (3), for the purpose of establishing whether food or a toy publicises or otherwise promotes a matter mentioned in that subsection—

- (a) it is sufficient to prove that there are reasonable grounds for believing the matter to be publicised or promoted; and
- (b) the matter may be found to be publicised or promoted irrespective of the actual belief of the defendant.

“(5) A person shall not sell or import food or a toy if it is of a kind declared by the regulations—

- (a) to resemble a tobacco product or a tobacco product package; or
- (b) to be liable to publicise or otherwise promote—
 - (i) a tobacco product, or the use of a tobacco product;
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
 - (iii) the name or interests of a manufacturer or distributor of a tobacco product in association, whether directly or indirectly, with the tobacco product.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(6) In this section—

- (a) a reference to the resemblance of food or a toy to a tobacco product or a tobacco product package includes a reference to—
 - (i) a resemblance that the food or toy has to a tobacco product or a tobacco product package by virtue of the packaging of the food or toy; and
 - (ii) a resemblance that the package of the food or toy has to a tobacco product or tobacco product package; and
- (b) a reference to the publicising or promoting of a matter by food or a toy includes a reference to—
 - (i) the publicising or promoting of that matter by the food or toy by virtue of its packaging; and

- (ii) the publicising or promoting of that matter by the package of the food or toy.

“(7) In this section—

‘food’ includes confectionery;

‘import’ means import into the Territory for sale;

‘kind’, of food or a toy, includes a particular trademark, brand or variety of food or toy;

‘tobacco product package’ means a package that—

- (a) is of a type commonly used for tobacco products; or
- (b) includes a symbol, design or words that indicate that the package contains a tobacco product, or a particular product line of a tobacco product.”.

11. Sale of cigarettes in quantities fewer than 20

Section 9 of the Tobacco Act is amended by omitting the penalty provision and substituting the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”.

12. Insertion

After section 9 of the Tobacco Act the following section is inserted in Part 2:

“9A. Display of tobacco products at points of sale

An occupier of a retail outlet or wholesale outlet shall not display a tobacco product within, or adjacent to, the outlet except in a point of sale display.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

13. Insertion

After section 9A of the Tobacco Act, as inserted by section 12 of this Act, the following sections are inserted in Part 2:

“9B. Numbers of points of sale

“(1) An occupier of a retail outlet on unlicensed premises shall not provide more than 1 point of sale at the outlet.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) An occupier of a retail outlet on licensed premises shall not provide more than 5 points of sale at the outlet.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(3) In this section—

‘licensed premises’ means premises for which an On Licence, a General Licence or a Club Licence is in force under the *Liquor Act 1975*;

‘unlicensed premises’ means premises other than licensed premises.

“9C. Health warnings at point of sale displays

“(1) An occupier of a retail outlet or a wholesale outlet must display a health warning notice that complies with this section at or adjacent to each point of sale display at the outlet—

- (a) so as to be clearly visible from the customer service area in relation to the point of sale; and
- (b) so that the lowest point of the notice is at least 1 metre above the floor, as measured from the highest point on the seller’s side of the point of sale.

Penalty:

- (a) for an individual—50 penalty units;
- (b) for a body corporate—250 penalty units.

“(2) A health warning notice must—

- (a) have an unbroken flat surface, coloured white, with an area of at least—
 - (i) 10% of the total display surface area of the point of sale display, or 1 square metre, whichever is smaller; or
 - (ii) if regulations are made prescribing a different minimum area—the area prescribed under the regulations;
- (b) display 1 of the following health warnings in Helvetica Medium capitals, in black letters in a single line:
 - (i) ‘SMOKING KILLS’;
 - (ii) ‘SMOKING IS ADDICTIVE’;
 - (iii) any other text prescribed under the regulations;
- (c) display immediately beneath the health warning the following words in Helvetica Medium lower case type, with initial capitals, in black letters of at most half the height of the letters of the health warning, in a single line:

‘Government Health Warning’;
- (d) display no other text or graphics unless required or permitted under the regulations; and
- (e) have nothing attached to it (unless necessary for its support).

“(3) The area of the smallest rectangle that can be drawn around the text (and any graphics) in the notice must represent at least 80% of the total area of the notice.

“(4) In this section—

‘point of sale display’ does not include a vending machine;

‘total display surface area’, of a point of sale display, means the total surface area of all the following elements of the display (not including any intermediate areas within the point of sale):

- (a) representations of immediate packages of tobacco products;
- (b) the displayed faces of immediate packages of tobacco products;

- (c) the transparent top (or front, if the cabinet is mounted vertically) of each display cabinet or humidor of tobacco products at the point of sale display;
- (d) the area of the lid of each open and closed cigar box on display, unless contained within a display cabinet or humidor;
- (e) for a wholesale outlet—the area of the displayed side of each carton of a product line on display.”.

14. Substitution

The heading to Part 3 of the Tobacco Act is omitted and the following heading substituted:

“PART 3—ADVERTISING, PROMOTION AND SPONSORSHIP”.

15. Prohibited tobacco advertising

Section 10 of the Tobacco Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) A person shall not—

- (a) display or broadcast a tobacco advertisement in a theatre;
- (b) sell a film or video tape that contains a tobacco advertisement;
- (c) distribute to the public any unsolicited document (for example, a leaflet or handbill) that contains a tobacco advertisement; or
- (d) place, display or broadcast a tobacco advertisement so that the advertisement is visible or audible in or from a public place.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”;

- (b) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) a tobacco advertisement in or on a newspaper, magazine or book;”;

- (c) by omitting paragraph (2) (c) and substituting the following paragraphs:

- “(c) a tobacco advertisement in a point of sale display;
 - (ca) a single product information notice at or adjacent to a point of sale;
 - (cb) a single price ticket at a point of sale display for each product line on sale (or usually available for sale) at the point of sale;
 - (cc) a personal use advertisement;”;
- (d) by adding at the end the following subsection:

“(5) In this section—

‘personal use advertisement’ means the placement, display or broadcast of a tobacco advertisement, or of an object displaying a tobacco advertisement, in the course of the personal use of the advertisement or object, unless the placement, display or broadcast—

- (a) is for a direct or indirect pecuniary benefit; or
- (b) is undertaken in the course of a tobacco retailing business.

Example: The wearing of a T-shirt displaying a tobacco advertisement, unless the wearer is paid for wearing the T-shirt or does so in the course of a tobacco retailing business (eg as an employee or shop manager).”.

16. Removal of tobacco advertisements

Section 11 of the Tobacco Act is amended—

- (a) by omitting subsection (1) and substituting the following subsections:
- “(1) If an authorised officer believes on reasonable grounds that a person has contravened paragraph 10 (1) (d), the officer may give the person a written notice requiring the relevant tobacco advertisement to be removed, or obscured, in a specified way, within 3 days after the notice is given.
- “(1A) A notice shall include the following statements:
- (a) a statement to the effect that the person may be prosecuted for an offence against paragraph 10 (1) (d) (Prohibited tobacco advertising) if the notice is contravened;

- (b) a statement to the effect that the person may also be prosecuted for an offence under subsection (1B) for each day during any part of which the contravention continues.

“(1B) A person commits an offence in relation to each day during any part of which the person contravenes a notice under subsection (1).

“(1C) An offence under subsection (1B) is punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a natural person—5 penalty units; or
- (b) if the offender is a body corporate—25 penalty units.

“(1D) Conviction for an offence under subsection (1B) in relation to a notice about a contravention of paragraph 10 (1) (d) does not prevent conviction for an offence against paragraph 10 (1) (d) in respect of the contravention.”; and

- (b) by omitting subsections (5) and (6).

17. Insertion

After section 11 of the Tobacco Act the following sections are inserted:

“11A. Tobacco product promotions

“(1) A person shall not sell or distribute an object or entitlement that promotes—

- (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 the tobacco product.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether an object or entitlement promotes a matter mentioned in that subsection—

- (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the object or entitlement would be likely to cause a reasonable person to believe the matter to be promoted, or intended to be promoted, by the object or entitlement; or
 - (ii) that there are other reasonable grounds for believing the matter to be promoted, or intended to be promoted, by the object or entitlement; and
- (b) the matter may be found to be promoted by the object or entitlement irrespective of the actual belief of the defendant.

“(3) A person shall not sell or distribute an object or entitlement if the sale or distribution is in direct or indirect association with the sale or consumption of a tobacco product, or of tobacco products generally.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(4) In a prosecution for an offence against subsection (3), for the purpose of establishing whether an object or entitlement is sold or distributed in direct or indirect association with a matter mentioned—

- (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the object or entitlement would be likely to cause a reasonable person to believe the sale or distribution to be in such an association, or intended to be in such an association; or
 - (ii) that there are other reasonable grounds for believing the sale or distribution to be in such an association, or intended to be in such an association; and

- (b) the sale or distribution may be found to be in such an association irrespective of the actual belief of the defendant.

“(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the person receiving the object or entitlement would have received the same object or entitlement if the person had bought goods other than a tobacco product to the same value as the tobacco product.

“(6) In applying this section in relation to an object that is a sound recording, a video recording or a computer storage device, a reference to the promotion of a matter is a reference to the promotion of the matter by aural or visible material that the object is reasonably capable of producing, or of causing to be produced, in its normal use.

“(7) In this section—

‘entitlement’ means an entitlement to goods or services, or to a reduced price for goods or services;

‘object’ does not include a tobacco product.

“11B. Tobacco product giveaways

“(1) A person must not supply a tobacco product for free if the supply promotes the sale of any tobacco product for value.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether the supply of a tobacco product for free promotes the sale of any tobacco product for value—

- (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the supply would be likely to cause a reasonable person to believe the sale of any tobacco product for value to be promoted, or intended to be promoted, by the supply; or

(ii) that there are other reasonable grounds for believing the sale of any tobacco product for value to be promoted, or intended to be promoted, by the supply; and

(b) the sale of any tobacco product for value may be found to be promoted by the supply irrespective of the actual belief of the defendant.

“(3) In this section—

‘promotion’, of the sale of a tobacco product for value, includes the inducement of the sale of the product for value;

‘supply’, of a tobacco product for free, includes the offer or exposure of the product for supply for free.

“11C. Competitions that promote tobacco products

“(1) A person shall not conduct a competition that promotes—

- (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 the tobacco product.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether competition promotes a matter mentioned in that subsection—

- (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the competition would be likely to cause a reasonable person to believe the matter to be promoted, or intended to be promoted, by the competition; or

- (ii) that there are other reasonable grounds for believing the matter to be promoted, or intended to be promoted, by the competition; and

- (b) the matter may be found to be promoted by the competition irrespective of the actual belief of the defendant.

“(3) A person shall not conduct a competition that has a direct or indirect association with the sale or consumption of a tobacco product, or of tobacco products generally.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(4) In a prosecution for an offence against subsection (3), for the purpose of establishing whether a competition has a direct or indirect association with a matter mentioned—

- (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the competition would be likely to cause a reasonable person to believe the competition to have such an association, or to be intended to have such an association; or
 - (ii) that there are other reasonable grounds for believing the competition to have such an association, or to be intended to have such an association; and
- (b) the competition may be found to have such an association irrespective of the actual belief of the defendant.”.

18. Insertion

After section 12 of the Tobacco Act the following Parts are inserted:

“PART 3A—TOBACCO RETAILING: DISCIPLINARY ACTION

“12A. Registrar of Tobacco

“(1) There shall be a Registrar of Tobacco.

“(2) The Chief Executive shall establish an office in the Government Service the duties of which include performing the functions of the Registrar of Tobacco.

“(3) The Registrar shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (2).

“(4) In performing functions under this Act, the Registrar may consider any information received from the Commissioner for Australian Capital Territory Revenue arising out of the administration of the *Tobacco Licensing Act 1984*.

“(5) The Registrar may provide any information obtained under this Act, or about any action taken under this Part, to the Commissioner for Australian Capital Territory Revenue for the purposes of the *Tobacco Licensing Act 1984*.

“12B. Deputy Registrars of Tobacco

“(1) There may be 1 or more Deputy Registrars of Tobacco.

“(2) A Deputy Registrar may perform any function of the Registrar, subject to any direction of the Registrar.

“(3) The Chief Executive may establish 1 or more offices in the Government Service the duties of which include performing the functions of a Deputy Registrar of Tobacco.

“(4) A Deputy Registrar shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).

“12C. Prior notice of proposed disciplinary action

“(1) The Registrar shall not take disciplinary action under subsection 12D (2) in relation to a person without first giving the person written notice inviting the person and any interested person to make representations, within a specified period of at least 14 days after the notice is given, why specified action should not be taken under that subsection.

“(2) The notice shall contain—

- (a) particulars of the facts and circumstances relied on by the Registrar to establish that a ground for taking action exists;
- (b) particulars of the action proposed to be taken; and
- (c) a statement to the effect that the person or any interested person may, within the specified period, give the Registrar written particulars

of the facts and circumstances relied on to show that the proposed action should not be taken, or that less severe action should be taken.

“(3) In making a decision about disciplinary action under subsection 12D (2) the Registrar shall take into account any representation made in accordance with the invitation under subsection (1).

“(4) In this section—

‘interested person’, in relation to a notice given to another person under subsection (1), means—

- (a) if the notified person holds a group licence—any other person whose name is specified on the licence; or
- (b) any person involved in the direction, management or control of a tobacco retailing business in which the notified person is also involved.

“12D. Disciplinary action

“(1) This section applies if the Registrar has reasonable grounds for believing—

- (a) that a person who holds a tobacco licence (including a person whose name is specified on a group licence) has contravened this Act, a condition of the licence, or a direction under paragraph (2) (a); or
- (b) that a person who holds a liquor or gaming licence for premises where tobacco products are available for sale by means of a vending machine has contravened this Act.

“(2) If the Registrar considers that it is reasonable, the Registrar may, by written notice to the person, take 1 or more of the following actions:

- (a) direct the person not to permit, for a specified period of not longer than 5 years, the operation of a vending machine on specified premises, or on any premises, occupied by the person;
- (b) vary any tobacco licence held by the person with effect for a specified period of not longer than 5 years—
 - (i) to impose more stringent requirements than otherwise apply under this Act in relation to points of sale, point of sale displays, product information notices, price tickets, vending machines or

tobacco advertising on or adjacent to any (or all) premises specified in the licence;

- (ii) to impose a condition prohibiting point of sale displays, vending machines, or tobacco advertising on or adjacent to any (or all) premises specified in the licence;
 - (iii) to impose conditions relating to the sale of tobacco products to under 18 year olds; or
 - (iv) to impose a condition prohibiting the sale of tobacco products at any (or all) premises specified in the licence;
- (c) if the person's name is specified on a group licence—vary the group licence to remove the person's name from the licence for a specified period of not longer than 5 years;
- (d) suspend any tobacco licence held by the person for a specified period of not longer than 3 months;
- (e) cancel any tobacco licence held by the person with effect from a date specified in the notice;
- (f) disqualify the person from holding a tobacco licence, or from holding such a licence for particular premises, for a specified period of not longer than 5 years.

“(3) The Registrar may only take action under subsection (2) against a person in relation to facts and circumstances specified in a notice under section 12C if the action taken—

- (a) is the action proposed in the notice; or
- (b) would, in the Registrar's opinion based on reasonable grounds, be less severe than the proposed action.

“(4) If this section applies to a person because the person has been convicted of an offence against this Act for the second time within 2 years (whether or not the convictions are for offences against the same provision of this Act), the Registrar shall, by written notice to the person—

- (a) cancel each tobacco licence held by the person;
- (b) disqualify the person from holding any tobacco licence for 5 years after the notice is given to the person; and

- (c) direct the person not to permit the operation of a vending machine on any premises occupied by the person for 5 years after the notice is given to the person.

“(5) A person shall not contravene a direction under paragraph (2) (a) or (4) (c).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(6) If the Registrar varies a tobacco licence held by a person to whom this section applies, the person shall return the licence to the Registrar for endorsement with the variation within 14 days after the person is given notice of the variation.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

“(7) Where the Registrar suspends or cancels a tobacco licence held by a person to whom this section applies, the person shall return the licence to the Registrar within 14 days after the person is given notice of the suspension or cancellation.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

“(8) In this section—

‘liquor or gaming licence’ means a licence issued under any of the following Acts:

- (a) *Liquor Act 1975*;
- (b) *Casino Control Act 1988*;
- (c) *Gaming Machine Act 1987*.

“12E. Disqualification

“(1) A person disqualified from holding a tobacco licence under section 12D shall not be concerned in the direction, management or control of a tobacco retailing business during the period of disqualification.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(2) A person disqualified from holding a tobacco licence under section 12D in relation to particular premises shall not be concerned in the direction, management or control of a tobacco retailing business operated at those premises during the period of disqualification.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“PART 3B—ENFORCEMENT

“12F. Interpretation

“(1) In this Part—

‘occupier’, of premises, includes a person believed on reasonable grounds to be an occupier of the premises;

‘offence’ means any conduct (whether an act or omission) that constitutes, or is believed on reasonable grounds to constitute, an offence against this Act.

“(2) In this Part, a thing (including a document) is connected to an offence if there are reasonable grounds for believing that—

- (a) it is a thing in relation to which the offence has been committed;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for committing an offence.

“12G. Authorised officers

“(1) There shall be 1 or more authorised officers for the purposes of this Act.

“(2) The Chief Executive may establish 1 or more offices in the Government Service the duties of which include performing the functions of an authorised officer.

“(3) The following persons are authorised officers:

- (a) any public servant for the time being performing the duties of a Government Service office of authorised officer referred to in subsection (2);
- (b) the Registrar for Tobacco and any Deputy Registrar;
- (c) a Public Health Officer under the *Public Health Act 1997*;
- (d) a police officer.

“12H. Exercise of powers by authorised officers who are police officers

The powers conferred by this Part on an authorised officer who is a police officer are additional to the powers the officer may exercise in his or her capacity as a police officer.

“12J. Identity cards

“(1) The Chief Executive shall issue to an authorised officer (other than a Public Health Officer or a police officer) an identity card that specifies the officer’s name and office, and contains a recent photograph of the officer.

“(2) Within 7 days after ceasing to be an authorised officer (other than a Public Health Officer or a police officer), a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty for subsection (2): 1 penalty unit.

“12K. Powers of entry

“(1) An authorised officer may, for the purposes of this Act—

- (a) enter the premises of any retail outlet or wholesale outlet at any time at which tobacco products are available for sale at the outlet;
- (b) enter any premises at any time with the consent of the occupier; or
- (c) enter any premises pursuant to a search warrant under section 12Q.

“(2) An authorised officer may enter premises under subsection (1)—

- (a) with such assistance as is necessary and reasonable; and
- (b) when entering pursuant to a search warrant—with such force as is necessary and reasonable.

“(3) An authorised officer who enters premises under subsection (1) is not authorised to remain on the premises if, when asked by the occupier, the officer does not produce his or her identity card.

“12L. Consent to entry

“(1) Before obtaining the consent of an occupier to enter premises, an authorised officer shall—

- (a) produce his or her identity card; and
- (b) tell the occupier that he or she may refuse to give consent.

“(2) If an authorised officer obtains the consent of an occupier to enter premises, the officer shall ask the occupier to sign a written acknowledgment of—

- (a) the fact that the occupier has been told that he or she may refuse to give consent;
- (b) the fact that the occupier has voluntarily given consent; and
- (c) the date and time when the consent was given.

“(3) In proceedings for the purposes of this Act, evidence obtained as a result of the entry onto any premises by an authorised officer under paragraph 12K (1) (b) is inadmissible unless an acknowledgment under subsection (2) is produced in evidence.

“(4) An entry to premises by an authorised officer in reliance on the occupier’s consent is not lawful unless the consent was voluntary.

“(5) If—

- (a) it is material, in any proceeding, for a court to be satisfied that an occupier’s consent to enter premises was voluntary; and
- (b) an acknowledgment under subsection (2) is not produced in evidence;

the court shall assume, unless the contrary is proved, that the consent was not voluntary.

“12M. Powers of authorised officers

If an authorised officer enters premises under section 12K, the officer may, for the purposes of this Act—

- (a) inspect anything on the premises;
- (b) take copies of any documents on the premises;
- (c) take photographs of anything on the premises;
- (d) open and inspect any package on the premises that the officer has reasonable grounds for believing to contain a thing connected with an offence;
- (e) seize anything on the premises connected with an offence; and
- (f) require the occupier of the premises, or any person whom the officer has reasonable grounds for believing to be an employee or agent of the occupier (if present in his or her capacity as employee or agent), or otherwise to be concerned in the occupier’s business at the premises, to do any or all of the following:
 - (i) make available anything on the premises;
 - (ii) provide information;
 - (iii) answer questions.

“12N. Provision of information under s 12M (f)—claim of privilege

“(1) This section applies if an authorised officer requires a person to provide information, or to answer questions, under subparagraph 12M (f) (ii) or (iii).

“(2) The person need not comply with the requirement in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege, or privilege against selfincrimination.

“(3) Before the person provides the information, or answers the questions, the officer must—

- (a) produce his or her identity card; and
- (b) tell the person that he or she need not comply with the requirement in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege, or privilege against selfincrimination.

- “(4) The officer must ask the person to sign a written acknowledgment of—
- (a) the fact that the person has been told that he or she need not comply with the requirement in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege or privilege against selfincrimination; and
 - (b) the fact that the person has, or has not, claimed legal professional privilege, or privilege against selfincrimination, in relation to information specified in the acknowledgment; and
 - (c) the date and time when the requirement was made.
- “(5) In proceedings for the purposes of this Act, evidence obtained as a result of the requirement is inadmissible unless an acknowledgment under subsection (4) is produced in evidence.

“12P. Power to require name and address

- “(1) An authorised officer may require a person to state the person’s name and address if the officer believes on reasonable grounds that—
- (a) the person is committing, or has committed, an offence; or
 - (b) the person can provide evidence of the commission of an offence.
- “(2) In exercising a power under subsection (1), an authorised officer shall—
- (a) tell the person of the reasons for the requirement; and
 - (b) as soon as practicable afterwards, record the reasons.
- “(3) A person need not comply with a requirement under subsection (1) if, when asked by the person, the authorised officer does not produce his or her identity card.
- “(4) A person shall not, without reasonable excuse, fail to comply with a requirement under subsection (1).

Penalty for subsection (4): 5 penalty units.

“12Q. Search warrants

- “(1) This section applies if—
- (a) an information is laid before a magistrate by a police officer alleging that an authorised officer has reasonable grounds for suspecting that

there may be on premises anything of a particular kind connected with a particular offence; and

(b) the information sets out those grounds.

“(2) If this section applies, the magistrate may issue a search warrant authorising the authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

(a) to enter the premises described in the warrant;

(b) to search the premises for things referred to in paragraph (1) (a); and

(c) to exercise any power under section 12M in relation to those things.

“(3) A magistrate may issue a search warrant only if—

(a) the informant or someone else has given the magistrate, either orally or by affidavit, any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

“(4) A search warrant shall—

(a) state the purpose for which it is issued, including a reference to the nature of the offence in connection with which the entry and search are authorised;

(b) state that the entry is authorised at any time of the day or night, or specify particular hours when the entry is authorised;

(c) include a description of the kind of things in relation to which the powers under section 12M may be exercised; and

(d) specify a date (not later than 1 month after the warrant is issued) when the warrant will cease to have effect.

“12R. Obstruction of investigation

“(1) A person shall not, without reasonable excuse, obstruct or hinder an authorised officer in the exercise of his or her functions under this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(2) A person shall not, without reasonable excuse, fail to comply with a requirement under paragraph 12M (f).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“12S. Seized items

“(1) A seized item shall be returned to its owner, or compensation shall be paid to the owner by the Territory for the loss of the item, if—

- (a) a prosecution for an offence relating to the item is not instituted within 90 days of the seizure; or
- (b) the court does not find the offence proved in a prosecution for an offence relating to the item.

“(2) A seized item is forfeited to the Territory if—

- (a) a court finds an offence relating to the item proved; and
- (b) the court so orders.

“(3) If paragraph (2) (a) applies, but a court does not make an order under paragraph (2) (b), the seized item shall be returned to its owner, or compensation shall be paid to the owner by the Territory for the loss of the item.

“(4) In this section—

‘compensation’ means compensation on just terms;

‘seized item’ means a thing seized by an authorised officer under paragraph 12M (e).

“PART 3C—ADMINISTRATIVE REVIEW

“12T. Review of decisions

Application may be made to the Administrative Appeals Tribunal for review of any of the following decisions of the Registrar:

- (a) to issue a direction under paragraph 12D (2) (a);
- (b) to vary a tobacco licence under paragraph 12D (2) (b);
- (c) to vary a group licence under paragraph 12D (2) (c);
- (d) to suspend a tobacco licence under paragraph 12D (2) (d);
- (e) to cancel a tobacco licence under paragraph 12D (2) (e);
- (f) to disqualify a person from holding a tobacco licence under paragraph 12D (2) (f).

“12U. Notification of decisions

“(1) The notice of a decision of the Registrar given to a person under subsection 12D (2) shall be in accordance with the requirements of the Code of Practice in force under section 25B of the *Administrative Appeals Tribunal Act 1989*.

“(2) A failure to comply with subsection (1) does not affect the validity of any decision to which the notice relates.”.

PART 3—AMENDMENT OF TOBACCO LICENSING ACT 1984

19. Tobacco Licensing Act

This Part amends the *Tobacco Licensing Act 1984*² (“the Tobacco Licensing Act”).

20. Interpretation

Section 3 of the Tobacco Licensing Act is amended by inserting the following definition in subsection (1):

“ ‘Registrar of Tobacco’ means the Registrar of Tobacco under the *Tobacco Act 1927*, and includes a Deputy Registrar of Tobacco under that Act;”.

21. Insertion

After section 3B of the Tobacco Licensing Act the following section is inserted in Part 2:

“4. Exchange of information between Registrar of Tobacco and the Commissioner

“(1) In making a decision about the grant of a tobacco licence, the Commissioner may consider any information received from the Registrar of Tobacco arising out of the administration of the *Tobacco Act 1927*.

“(2) The Commissioner may provide any information obtained under this Act, or about any action taken under this Act, to the Registrar of Tobacco for the purposes of the *Tobacco Act 1927*.”.

22. Grant of licence

Section 26 of the Tobacco Licensing Act is amended by inserting after subsection (1) the following subsection:

“(1A) The form approved for the purposes of paragraph (1) (a) may include matters related to the administration of the *Tobacco Act 1927*.”.

23. Refusal to grant licence

Section 27A of the Tobacco Licensing Act is amended by inserting after subsection (3) the following subsections:

“(3A) Without limiting subsections (1), (2) and (3), the Commissioner shall not grant a tobacco licence to an applicant if—

- (a) the licence applied for would authorise the sale of tobacco products at premises while the operation of vending machines at those premises has been prohibited pursuant to a direction under paragraph 12D (2) (a) of the *Tobacco Act 1927*;
- (b) where the applicant holds another tobacco licence—the licence applied for would authorise the sale of tobacco products at premises while, pursuant to a variation of the other licence under paragraph 12D (2) (b) of the *Tobacco Act 1927*—
 - (i) the sale of tobacco products at the premises has been prohibited; or
 - (ii) the operation of vending machines at the premises has been prohibited;

- (c) the applicant holds another tobacco licence that is currently suspended under paragraph 12D (2) (d) of the *Tobacco Act 1927*;
- (d) the applicant is disqualified from holding a tobacco licence under section 12D of the *Tobacco Act 1927*;
- (e) a person who is to be concerned in the direction, management or control of the licensed business is disqualified from holding a tobacco licence under section 12D of the *Tobacco Act 1927*; or
- (f) a person who is to be concerned in the direction, management or control of the licensed business at particular premises is disqualified from holding a tobacco licence for the premises under section 12D of the *Tobacco Act 1927*.

“(3B) In subsection (3A), a reference to an applicant for a tobacco licence includes—

- (a) if the applicant is a body corporate—a reference to any director, secretary or other officer of the body; and
- (b) if the application is made on behalf of a group—
 - (i) a reference to each member of the group; and
 - (ii) if a member of the group is a body corporate—a reference to any director, secretary or other officer of the body.”.

24. Licence fees

Section 28 of the Tobacco Licensing Act is amended by inserting after subsection (1) the following subsection:

“(1AA) The Minister may determine a different amount under section 44A for the purposes of paragraph (1) (c) or (d) for different licences by reference to—

- (a) the number of premises specified in the licence under subsection 26 (4); and
- (b) the number of points of sale (within the meaning of the *Tobacco Act 1927*) at each of the premises.”.

NOTES

Principal Acts

1. *Tobacco Act 1927*. Reprinted as at 31 December 1993. See also Acts No. 70, 1997; No. 54, 1998.
2. *Tobacco Licensing Act 1984*. Reprinted as at 10 July 1998. See also Act No. 5, 1999.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 25 March 1999]