



AUSTRALIAN CAPITAL TERRITORY

Smoking Products Legislation Amendment Act 2000

No 53 of 2000

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FURTHER AMENDMENTS OF THE SMOKE-FREE AREAS
(ENCLOSED PUBLIC PLACES) ACT**



AUSTRALIAN CAPITAL TERRITORY

Smoking Products Legislation Amendment Act 2000

No 53 of 2000

An Act to amend the *Tobacco Act 1927* and the *Smoke-free Areas (Enclosed Public Places) Act 1994*, and for other purposes

[Notified in ACT Gazette No. 40: 5 October 2000]

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

PART 1—PRELIMINARY

1 Name of Act

This Act is the *Smoking Products Legislation Amendment Act 2000*.

Note A note included in this Act is explanatory and is not part of this Act (see *Interpretation Act 1967*, s 12 (1), (4)-(5) for the legislative status of notes).

2 Commencement

(1) This Act (other than sections 9 and 10) commences on the day this Act is notified in the Gazette.

(2) Sections 9 and 10 commence immediately after the commencement of section 13 of the *Tobacco (Amendment) Act 1999*.

Note Section 13 of the *Tobacco (Amendment) Act 1999* commences on 11 November 2000 (see s 2 (4) of that Act and the *Interpretation Act 1967*, s 10E).

PART 2—AMENDMENTS OF TOBACCO ACT

3 Act amended by pt 2 and sch 1

This Part and Schedule 1 amend the *Tobacco Act 1927*.

Note This Part and Schedule 1 amend the *Tobacco Act 1927* as it is amended and renumbered by the *Tobacco Amendment Act 2000*.

4 Title

The title is repealed and the following title substituted:

“An Act about tobacco and smoking products”.

5 Interpretation

Section 2 is amended—

- (a) by omitting the definition *tobacco product* and substituting the following definition:

“*tobacco product* means tobacco, or something containing tobacco, prepared for human consumption (including a cigarette or cigar).”; and

- (b) by omitting the definition of *tobacco advertisement*; and

- (c) by inserting the following definitions:

“*drug* means a substance that is specified in Schedule 1 or 2 to the *Drugs of Dependence Regulations*.

herbal product means a product prepared for smoking that contains a herb or other plant matter but does not contain tobacco or a drug.

smoking advertisement—see section 6.

smoking product means a tobacco product or a herbal product.”.

6 Tobacco advertisements

Section 6 is amended—

- (a) by omitting the heading and substituting the following heading:

“**6 Smoking advertisements**”; and

- (b) by omitting from subsection (1) the definition of *tobacco advertisement*; and

(c) by inserting the following definition:

“smoking 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 smoking product; or
- (b) a trademark or brand name, or part of a trademark or brand name, of a smoking product.”; and

(d) by omitting from subsection (2) “ ‘tobacco advertisement’ ” and substituting “**smoking advertisement**”.

7 Manner of display

Section 10 is amended—

(a) by omitting from subsection (1) “tobacco product” and substituting “smoking product”; and

(b) by omitting subparagraphs (1) (a) (ii) and (2) (a) (ii) and substituting the following subparagraphs:

“(ii) for a tobacco product—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* (Cwlth); and

(iii) for a herbal product—including a health warning prescribed under the regulations;”; and

(c) by omitting from subsection (4) “tobacco products” and substituting “smoking products”; and

(d) by omitting from subsection (4) “tobacco advertisement” and substituting “smoking advertisement”.

8 Sale of cigarettes

Section 19 is amended by inserting “(including cigarettes made from a herbal product)” after “cigarettes”.

9 Numbers of points of sale

Subsections 21 (1) and (2) are amended by omitting the penalty provisions and substituting the following penalty provision:

“Maximum penalty: 50 penalty units.”.

10 Health warnings at point of sale displays

Section 22 is amended—

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

“Maximum penalty: 50 penalty units.”; and

- (b) by omitting from subsection (2) “A health warning notice must—” and substituting “If tobacco products are sold at the point of sale, the health warning notice must—”; and

- (c) by inserting after subsection (2) the following subsection:

“(2A) If only herbal products are sold at the point of sale, the health warning notice must be in accordance with the regulations.”; and

- (d) by inserting after “vending machine” in the definition of *point of sale display* in subsection (4) “from which smoking products are sold”; and

- (e) by omitting from paragraphs (a), (b) and (c) of the definition of *total display surface area* in subsection (4) “tobacco products” and substituting “smoking products”.

11 Renumbering

In the next republication of the *Tobacco Act 1927*, the *Tobacco Act 1927* must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.

PART 3—AMENDMENT OF THE TOBACCO REGULATIONS

12 Statement on vending machines

Regulation 4 of the *Tobacco Regulations* is amended by omitting “tobacco” and substituting “smoking”.

**PART 4—AMENDMENTS OF SMOKE-FREE AREAS
(ENCLOSED PUBLIC PLACES) ACT**

13 Act amended by pt 4 and sch 2

This Part and Schedule 2 amend the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

14 Title

The title is repealed and the following title substituted:

“An Act to prohibit or restrict smoking in enclosed public places, and for other purposes”.

15 Interpretation

Section 3 is amended—

- (a) by omitting the heading and substituting the following heading:

“**2 Definitions**”; and

Note Section 3 is renumbered following the repeal of section 2 by item 2.2 of Schedule 2.

- (b) by omitting “In this Act, unless the contrary intention appears—” and substituting the following:

“In this Act:

“*Note* A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).”; and

- (c) by omitting the definition of *smoke* and substituting the following definition:

“*smoke*—see section 4.”; and

- (d) by omitting the definitions of *tobacco product* and *Tribunal*; and

- (e) by inserting the following definition:

“*drug* means a substance that is specified in Schedule 1 or 2 to the *Drugs of Dependence Regulations*.”.

16 Substitution

Section 4 is repealed and the following sections are substituted:

“3 Object of Act

The object of this Act is to promote public health by reducing exposure to environmental smoke caused by the smoking of tobacco and other substances prepared for human consumption.

“4 Meaning of *smoke*

“(1) In this Act—

smoke includes—

- (a) directly inhale or puff the smoke of an ignited substance prepared for human consumption (including a substance containing a drug or tobacco, a herb or other plant matter); and
- (b) hold or have control over such a substance while it is ignited.

“(2) For paragraph (a) of the definition of *smoke*, a person directly inhales if the smoke is inhaled through a device designed for the inhalation of smoke by a smoker.

Examples

- 1 A cigarette-holder.
- 2 A pipe (including a water pipe or bong).”.

17 Renumbering

In the next republication of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, the provisions of the *Smoke-free Areas (Enclosed Public Places) Act 1994* must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.

PART 5—REPEALS

18 Repeals

(1) Parts 1 and 2 of the *Tobacco (Amendment) Act 1999*, and the *Tobacco Amendment Act 2000*, are repealed on 12 November 2000.

Note This subsection repeals spent legislation. Part 3 of the *Tobacco (Amendment) Act 1999* is repealed by subsection 7 (2) of the *Tobacco Amendment Act 2000*.

(2) The *Tobacco Products (Health Warnings) Act 1986* is repealed.

Note This Act was made redundant by the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* (Cwlth) which provide for nationally agreed health warnings for tobacco product packages.

SCHEDULE 1

(See s 3)

FURTHER AMENDMENTS OF THE TOBACCO ACT

Note This Schedule (and Part 2) amend the *Tobacco Act 1927* as it is amended and renumbered by the *Tobacco Amendment Act 2000*.

[1.1] Section 1—

Repeal, substitute the following section:

“1 Name of Act

This Act is the *Tobacco Act 1927*.”.

[1.2] Section 2 (heading)—

Omit, substitute the following heading:

“2 Definitions”.

[1.3] Section 2—

Omit “In this Act, unless the contrary intention appears—”, substitute the following:

“In this Act:

Note A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).”.

[1.4] Section 2 (definition of *functions*)—

Omit “and duties”.

[1.5] Section 2 (definition of *product line*, paragraph (e))—

Omit “in the case of”, substitute “for”.

[1.6] Section 2 (definition of *vending machine*)—

Omit, substitute the following definition:

“*vending machine* means a machine, or device, operated by a token, money or electronic funds transfer.”.

[1.7] Section 2 (definitions of *newspaper*, *smoking*, *tobacco licence* and *tobacco retailing business*)—

Omit.

SCHEDULE 1—continued

- [1.8] **Sections 3, 4, 5, 6 and 7 (headings)—**
Omit, substitute the following headings:
- “3 **Meaning of *price tickets***
“4 **Meaning of *product information notices***
“5 **Meaning of *sell***
“6 **Meaning of *tobacco advertisement***
“7 **Publication of name of manufacturer etc”.**
- [1.9] **Paragraphs 10 (1) (c) and (2) (c)—**
Omit “means of”.
- [1.10] **Subsection 10 (3)—**
Omit “means of”.
- [1.11] **Paragraph 12 (1) (b)—**
After “vending machine”, insert “from which smoking products are sold”.
- [1.12] **Subparagraph 12 (2) (b) (ii)—**
After “vending machine”, insert “from which smoking products are sold”.
- [1.13] **Part 3 (heading)—**
Omit, substitute the following heading:
- “PART 3—SUPPLY OF SMOKING PRODUCTS”.**
- [1.14] **Subsection 14 (1)—**
- (a) Omit “tobacco product”, substitute “smoking product”.
 - (b) Omit the penalty provision, substitute the following penalty provision:
“Maximum penalty: 50 penalty units.”.
- [1.15] **Subsection 14 (3)—**
- (a) Insert “from which smoking products are sold” after “vending machine”.
 - (b) Omit “tobacco product”, substitute “smoking product”.

SCHEDULE 1—continued

- (c) Omit the penalty provision, substitute the following penalty provision:
“Maximum penalty: 50 penalty units.”.

[1.16] Subsection 14 (5)—

- (a) Omit “tobacco product”, substitute “smoking product”.
- (b) Omit the penalty provision, substitute the following penalty provision:
“Maximum penalty: 10 penalty units.”.

[1.17] Subsection 14 (8) (definition of *document of identification*, paragraph (a))—

Omit the paragraph, substitute the following paragraph:

- (a) is—
 - (i) an Australian driver licence or a licence to drive a motor vehicle (however described) issued under the law of an external Territory or a foreign country; or
 - (ii) a proof of age card under the *Liquor Act 1975* or a corresponding document issued under the law of a State; or
 - (iii) a passport; and”.

[1.18] Section 15—

- (a) Omit the heading, substitute the following heading:
“**15 Purchase of smoking products for under 18 year olds**”.
- (b) Omit “tobacco product”, substitute “smoking product”.
- (c) Omit the penalty provision, substitute the following penalty provision:
“Maximum penalty: 50 penalty units.”.

[1.19] Subsection 16 (1)—

- (a) After “vending machine”, insert “containing smoking products”.
- (b) Omit the penalty provision, substitute the following penalty provision:
“Maximum penalty: 50 penalty units.”.

SCHEDULE 1—continued

[1.20] Subsection 16 (2)—

- (a) After “vending machine”, insert “used for the sale of smoking products”.
- (b) Omit the penalty provision, substitute the following penalty provision:
“Maximum penalty: 10 penalty units.”.

[1.21] Sections 17 and 18 (headings)—

Omit, substitute the following headings:

“17 Tobacco for nonsmoking purposes

“18 Food and toys resembling or promoting smoking products”.

[1.22] Subsection 18 (7) (definition of *tobacco product package*)—

Omit.

[1.23] Subsection 18 (7)—

Insert the following definition:

“*smoking product package* means a package that—

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

[1.24] Sections 20 and 23 (headings)—

Omit, substitute the following headings:

“20 Display of smoking products at points of sale

“23 Prohibited smoking advertising”.

[1.25] Subsection 23 (4)—

Omit all the words after “instrument”.

[1.26] Subsection 23 (5) (definition of *personal use advertisement*)—

- (a) Omit “tobacco advertisement”, substitute “smoking advertisement”.
- (b) Omit paragraph (b) and the example and substitute the following paragraph and examples:

SCHEDULE 1—continued

“(b) is undertaken in the course of a business that involves the sale of smoking products or the management of a retail outlet (including the management of a retail outlet where a vending machine is used for the sale of smoking products).

“Example of personal use

The wearing of a T-shirt displaying a smoking advertisement by a person who is not paid to wear the T-shirt.

“Example of paragraph (b)

An employee or the manager of a shop that sells smoking products wearing a T-shirt displaying a smoking advertisement in the course of tobacco retailing.”.

[1.27] Section 24 (heading)—

Omit, substitute the following heading:

“24 Removal of smoking advertisements”.

[1.28] Subsections 24 (1B) and (1C)—

Omit the subsections, substitute the following subsection:

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

Maximum penalty: 5 penalty units.”.

[1.29] Sections 25, 26 and 27 (headings)—

Omit, substitute the following headings:

“25 Smoking product promotions

“26 Smoking product giveaways

“27 Competitions that promote smoking products”.

[1.30] Subsection 28 (5)—

Omit all the words after “instrument”.

[1.31] Subsections 29 (2) and (3), 30 (3) and (4) and 32 (2) and (3)—

Omit “Government Service”, substitute “public service”.

[1.32] Paragraph 32 (3) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) the registrar;”.

SCHEDULE 1—continued

[1.33] Subsection 34 (2)—

Omit the penalty provision, substitute the following penalty provision:

“Maximum penalty (for subsection (2)): 1 penalty unit.”.

[1.34] Subsection 39 (4)—

Omit the penalty provision, substitute the following penalty provision:

“Maximum penalty (for subsection (4)): 5 penalty units.”.

[1.35] Subsection 41 (1)—

Omit the penalty provision, substitute the following penalty provision:

“Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”.

[1.36] Subsection 41 (2)—

Omit the penalty provision, substitute the following penalty provision:

“Maximum penalty (for subsection (2)): 50 penalty units.”.

[1.37] Heading to div 1 of pt 7—

Omit, substitute the following heading:

“Division 7.1—Interpretation”.

[1.38] Sections 43 and 44—

Omit, substitute the following sections:

“43 Definitions

In this Part:

Note A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).

approved form means a form approved by the registrar.

determined fee means a fee determined under section 67.

licensee means the holder for the time being of a tobacco licence.

retail tobacconist’s licence means a retail tobacconist’s licence granted under section 45.

SCHEDULE 1—continued

tobacco licence means a retail tobacconist’s licence or a wholesale tobacco merchant’s licence.

tobacco retailing—section 43A.

tobacco wholesaling—see section 43B.

wholesale tobacco merchant’s licence means a wholesale tobacco merchant’s licence granted under section 45.

“43A Meaning of tobacco retailing

“(1) In this Part, *tobacco retailing* means the business of selling smoking products by retail.

“(2) For the definition of *tobacco retailing*, each of the following facts or circumstances is immaterial:

- (a) that the smoking products are sold alone or in conjunction with any other merchandise;
- (b) that the business is carried on as part of, or in conjunction with, any other business.

“(3) The occupier of premises on which a vending machine used for the sale of smoking products is located is taken to be carrying on tobacco retailing.

“43B Meaning of tobacco wholesaling

“(1) In this Part, *tobacco wholesaling* means the business of selling smoking products for the purpose of resale or wholesale, and includes any supply of smoking products by way of wholesale to a person or premises within the Territory.

“(2) For the definition of *tobacco wholesaling*, each of the following facts or circumstances is immaterial:

- (a) that the smoking products are sold alone or in conjunction with any other merchandise;
- (b) that the business is carried on as part of, or in conjunction with, any other business;
- (c) that any relevant contract is made outside the Territory or governed by a law other than a law of the Territory;
- (d) that the wholesaler is located or registered, or carries on business (wholly or in part), outside the Territory;

SCHEDULE 1—continued

- (e) that the wholesaler, or another person, has transported the smoking products from outside the Territory.

“43C Liability of employer for acts of employee

In this Part, if an employee of a person (the *employer*)—

- (a) sells smoking products; or
- (b) carries on the business of selling smoking products;

in the course of his or her employment, the employer is taken to sell smoking products or to carry on the business of selling smoking products (as the case may be), but the employee is not liable for an offence under this Part by reason only of having done so.”.

[1.39] Heading to div 2 of pt 7—

Omit, substitute the following heading:

“Division 7.2—Licences”.

[1.40] Subsection 46 (1)—

Omit “particular licence”, substitute “particular tobacco licence”.

[1.41] Paragraph 46 (2) (a)—

Insert “subject to section 21—” before “the” (first occurring).

[1.42] Subsection 47 (1)—

Omit “A licence”, substitute “A tobacco licence”.

[1.43] Section 48 (heading)—

Omit, substitute the following heading:

“48 Refusal to grant or renew a licence”.

[1.44] Subsection 48 (1)—

Omit “grant the licence”, substitute “grant or renew a tobacco licence”.

[1.45] Paragraph 48 (1) (a)—

- (a) Omit “tobacco products”, substitute “smoking products”.
- (b) Omit “the operation of vending machines”, substitute “the use of vending machines for the sale of smoking products”.

SCHEDULE 1—continued

[1.46] Subparagraph 48 (1) (b) (ii)—

Omit “the operation of vending machines”, substitute “the use of vending machines for the sale of smoking products”.

[1.47] Subsections 48 (2) and (5)—

Insert “or renew” after “grant”.

[1.48] Subsection 49 (4)—

Omit.

[1.49] Heading to div 3 of pt 7—

Omit, substitute the following heading:

“Division 7.3—Disciplinary action”.

[1.50] Paragraph 54 (1) (b)—

(a) Omit “tobacco products”, substitute “smoking products”.

(b) Omit “by means of”, substitute “from”.

[1.51] Paragraph 54 (2) (a)—

Omit “the operation of a vending machine”, substitute “the use of a vending machine for the sale of smoking products”.

[1.52] Subparagraph 54 (2) (b) (i)—

Omit “vending machines or tobacco advertising”, substitute “the use of vending machines for the sale of smoking products or smoking advertising”.

[1.53] Subparagraph 54 (2) (b) (ii)—

Omit “vending machines, or tobacco advertising”, substitute “the use of vending machines for the sale of smoking products or smoking advertising”.

[1.54] Paragraph 54 (4) (c)—

Omit “the operation of a vending machine”, substitute “the use of a vending machine for the sale of smoking products”.

SCHEDULE 1—continued

[1.55] Heading to div 4 of pt 7—

Omit, substitute the following heading:

“Division 7.4—Offences”.

[1.56] Section 56 (heading)—

Omit, substitute the following heading:

“56 Permitting the use of a vending machine on premises contrary to direction”.

[1.57] Subsections 57 (1) and (2)—

Omit “to whom this section applies”.

[1.58] Subsection 58 (1)—

After “Division 3”, insert “(Disciplinary action)”.

[1.59] Section 59 (heading)—

Omit, substitute the following heading:

“59 Selling smoking products without, or in contravention of, a tobacco licence”.

[1.60] Subsection 60 (4)—

- (a) Omit “tobacco products”, substitute “smoking products”.
- (b) After “place”, insert “for sale”.

[1.61] Subsection 61 (2)—

Omit “is in operation”, substitute “is used for the sale of smoking products”.

[1.62] Subsection 62 (3)—

Omit “carries on business as a licensee only by means of”, substitute “sells smoking products only from”.

[1.63] Section 64 (heading)—

Omit, substitute the following heading:

“64 Endorsement on wholesale merchant’s invoices”.

SCHEDULE 1—continued

[1.64] Subsection 64 (2)—

Omit, substitute the following subsection:

“(2) A person must not issue an invoice that indicates (expressly or by implication) that the person does hold such a licence.

Maximum penalty: 50 penalty units.”.

[1.65] Section 64A (heading)—

Omit, substitute the following heading:

“64A Retail tobacconist must only obtain smoking products from licensed wholesaler”.

[1.66] Heading to div 5 of pt 7—

Omit, substitute the following heading:

“Division 7.5—Administrative review”.

[1.67] Subsection 66 (2)—

Omit “for the time being”.

[1.68] Heading to div 6 of pt 7—

Omit, substitute the following heading:

“Division 7.6—Miscellaneous”.

[1.69] Subsection 67 (3)—

Omit, substitute the following subsection:

“(3) A determination is a disallowable instrument.”.

[1.70] Section 70 (heading)—

Omit, substitute the following heading:

“70 Regulation-making power”.

[1.71] Subsection 70 (1)—

Omit all the words after “may make”, substitute “regulations for this Act”.

SCHEDULE 1—continued

[1.72] Subsections 70 (2) and (3)—

Omit, substitute the following subsections:

“(2) Without limiting subsection (1), the regulations may prescribe the records a licensee or a person involved in the direction, management or control of a tobacco retailing or wholesaling business must keep in relation to the purchase or sale of smoking products.

“(3) The regulations may apply, adopt or incorporate, entirely or in part and with or without changes, a publication (including an Act or regulation of another jurisdiction), as in force at a stated time or from time to time.”.

[1.73] Insertion—

After section 70 insert the following Part:

“PART 9—TRANSITIONAL

“71 Licences under the Tobacco Licensing Act

Subsections 49 (6) (Renewal of tobacco licence) and 50 (3) (Revival of expired retail tobacconist’s licences) expire on 1 September 2001.

“72 Expiry of Part

This Part expires on 1 September 2001.”.

[1.74] Mentions of “tobacco advertisement”

The following provisions (and note) are amended by omitting “tobacco advertisement” and substituting “smoking advertisement”:

- section 2 (definition of *package*).
- section 7.
- paragraph 8 (b).
- note after section 8.
- subsections 23 (1) and (2).
- section 24.

[1.75] Mentions of “tobacco advertising”

The following provisions (and note) are amended by omitting “tobacco advertising” and substituting “smoking advertising”:

- note after section 8.

SCHEDULE 1—continued

- paragraph 23 (2) (f).
- subsection 23 (3).
- paragraph 24 (1A) (a).

[1.76] Mentions of “tobacco product”

The following provisions (and note) are amended by omitting “tobacco product” and substituting “smoking product”:

- section 2 (definitions of *carton*, *cigar* (paragraph (b)), *display*, *immediate package*, *point of sale display* and *product line*).
- paragraph 7 (1) (b).
- note after section 8.
- subsections 9 (2) and 14 (2), (4), (6) and (7).
- sections 18 and 20.
- subparagraphs 23 (2) (d) (iii) and (iv).
- subsections 25 (1), (3), (5) and (7).
- section 26.
- subsections 27 (1) and (3) and 28 (1).
- paragraph 28 (3) (a).

[1.77] Mentions of “tobacco products”

The following provisions are amended by omitting “tobacco products” and substituting “smoking products”:

- section 2 (definitions of *point of sale*, *retail outlet* and *wholesale outlet*).
- sections 7 and 8.
- subsections 9 (1) and 12 (1).
- subparagraphs 23 (2) (d) (i) and (ii).
- subsections 25 (3) and 27 (3).
- paragraph 35 (1) (a) and 48 (1) (b) and (2) (b).
- subparagraphs 54 (2) (b) (iii) and (iv).
- subsections 59 (1), 60 (2) and (3), 61 (3), 62 (4) and 64 (1).
- section 64A.

SCHEDULE 1—continued

[1.78] Penalty provisions

Omit the penalty provisions from sections 17 to 20, 23 and 25 to 28, substitute the following penalty provision:

“Maximum penalty: 50 penalty units.”

SCHEDULE 2

(See s 13)

**FURTHER AMENDMENTS OF THE SMOKE-FREE AREAS
(ENCLOSED PUBLIC PLACES) ACT**

[2.1] Section 1—

Repeal, substitute the following section:

“1 Name of Act

This Act is the *Smoke-free Areas (Enclosed Public Places) Act 1994*.”.

[2.2] Section 2—

Repeal.

[2.3] Subsection 11 (4)—

Omit the penalty provision, substitute the follow penalty provision:

“Maximum penalty (for subsection (4)): 1 penalty unit.”.

[2.4] Section 13—

Omit the section, substitute the following section:

“13 Offences by smokers

“(1) A person must not smoke in an enclosed public place if smoking in the place is prohibited by subsection 5 (1) or (2).

Maximum penalty: 5 penalty units.

“(2) It is a defence to a prosecution under subsection (1) if the defendant establishes that he or she held or had control of the ignited substance prepared for human consumption for the purpose only of extinguishing or removing it from the enclosed public place (or, if smoking is prohibited in a part of the enclosed public place, removing it from that part of the place).

“(3) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction to cease the contravention given by—

- (a) an inspector; or
- (b) an occupier of the enclosed public place, or the part of such a place, where the contravention is occurring; or
- (c) an employee or agent of such an occupier.

Maximum penalty (for subsection (3)): 5 penalty units.”.

SCHEDULE 2—continued

[2.5] Subsection 14 (1)—

Omit all the words after “by a fine not”, substitute “exceeding 10 penalty units.”.

[2.6] Subparagraph 14 (2) (b) (ii)—

Add at the end “; or”.

[2.7] New paragraph 14 (2) (c)—

After subparagraph 14 (2) (b) (ii), insert the following paragraph:

“(c) the person who contravened subsection 13 (1) held or had control of the ignited substance prepared for human consumption for the purpose only of extinguishing or removing it from the enclosed public place (or, if smoking is prohibited in a part of the enclosed public place, removing it from that part of the place).”.

[2.8] Subsection 14 (3)—

Omit the penalty provision, substitute the follow penalty provision:
“Maximum penalty: 5 penalty units.”.

[2.9] Subsection 14 (4)—

Omit the penalty provision, substitute the follow penalty provision:
“Maximum penalty (for subsection (4)): 10 penalty units.”.

SCHEDULE 2—continued

[2.10]Section 15—

Omit, substitute the following section:

“15 Obstruction of inspectors

“(1) A person must not, without reasonable excuse, fail to comply with a requirement under paragraph 12 (4) (b).

Maximum penalty: 5 penalty units.

“(2) A person must not, without reasonable excuse, hinder or obstruct an inspector in the performance of his or her functions under this Act or the regulations.

Maximum penalty (for subsection (2)): 50 penalty units, imprisonment for 6 months or both.”.

[2.11] Sections 17, 18 and 19—

Omit, substitute the following sections:

“17 Review of decisions

Application may be made to the administrative appeals tribunal for review of a decision of the Minister—

- (a) under subsection 8 (1) to refuse to grant a certificate of exemption; or
- (b) under subsection 10 (1) to revoke a certificate of exemption.

“18 Notice of decisions

“(1) The Minister must—

- (a) for a decision under subsection 8 (1)—give notice in writing of the decision to the applicant; or
- (b) for a decision under subsection 10 (1)—give notice in writing of the decision to the occupier of the premises to which the certificate relates.

“(2) The notice must comply with the code of practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

SCHEDULE 2—continued

[2.12]Section 19A—

Omit, substitute the following section:

“19A Fees

“(1) The Minister may determine fees for the purposes of this Act.

“(2) The determination may provide for a relevant fee to be calculated by reference to a formula having as a component the area of the public place for which the fee is payable.

“(3) The determination is a disallowable instrument.”.

[2.13] Section 20 (heading)—

Omit, substitute the following heading:

“20 Regulation-making power”.

[2.14] Subsection 20 (1)—

Omit all the words after “may make”, substitute “regulations for this Act.”.

Endnotes

Acts amended

- 1 **For pt 2 and sch 1**—Republished as in force on 31 December 1993. See also Acts 1997 No 70; 1998 No 54; 1999 No 57; 2000 No 16.
- 2 **For pt 4 and sch 2**—Republished as in force on 1 March 1999.

[Presentation speech made in Assembly on 11 May 2000]