



Australian Capital Territory

# Tobacco (Compliance Testing) Amendment Act 2006

A2006-41

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Australian Capital Territory

# **Tobacco (Compliance Testing) Amendment Act 2006**

**A2006-41**

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An Act to amend the *Tobacco Act 1927*

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

**1 Name of Act**

This Act is the *Tobacco (Compliance Testing) Amendment Act 2006*.

**2 Commencement**

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This Act amends the *Tobacco Act 1927*.

**4 New part 6A**

*insert*

## **Part 6A Tobacco compliance testing**

**42A Definitions—pt 6A**

In this part:

***approved procedures*** means procedures approved under section 42D (1) for carrying out an approved program of compliance testing.

***approved program*** means a program of compliance testing approved under section 42C (1).

***authorised officer*** does not include a police officer.

***conduct***—see the Criminal Code, section 13.

***compliance test***—see section 42B.

***engage in conduct***—see the Criminal Code, section 13.

*purchase assistant*—see section 42B (1) (a).

*young person* means a child who is 15 years old or older.

#### **42B      What is a *compliance test*?**

(1) *A compliance test*—

- (a) involves a young person (a *purchase assistant*), under the supervision of an authorised officer, purchasing, or trying to purchase, tobacco products from tobacco licence-holders; and
- (b) is carried out to obtain evidence that may lead to the prosecution of a person, or other action being taken against a person, for an offence against section 14 (Supply of smoking product to under 18 year olds) in relation to a tobacco product; and

**Example of other action**

disciplinary action under division 7.3 against a tobacco licence-holder

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (c) may involve the purchase assistant and the authorised officer engaging in conduct that would, apart from section 42F (Lawfulness of compliance testing), be an offence against a territory law.

(2) In this section:

*tobacco licence*—see section 43.

*tobacco licence-holder* means someone who holds a tobacco licence.

#### **42C      Approval of compliance testing programs**

- (1) The Minister may approve a program of compliance testing.

- (2) However, the Minister must not approve a program of compliance testing unless—
- (a) the Minister is satisfied that the program is necessary to deter the sale of tobacco products to children in the area where the program will operate; and
  - (b) the program states the area where the program will operate and when the program begins and ends; and
  - (c) the program is not longer than 3 months; and
  - (d) the Minister has approved procedures under section 42D.

**Examples of considerations for par (a)**

- 1 evidence of sales to children in the area where the program will operate
- 2 the success of other enforcement methods
- 3 the results of previous compliance tests in the area where the program will operate
- 4 the period since compliance testing was previously carried out in the area where the program will operate

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**42D Approval of compliance testing procedures**

- (1) The Minister may approve procedures for carrying out approved programs of compliance testing.
- (2) The Minister must not approve procedures under subsection (1) unless satisfied that the procedures—
  - (a) provide that, in carrying out a compliance test, a purchase assistant's welfare is paramount; and
  - (b) appropriately protect a purchase assistant's health and safety; and
  - (c) allow a purchase assistant to stop taking part in a compliance test at any time during the test; and

- (d) ensure that, as far as practicable, a purchase assistant's identity is protected during a compliance test; and
  - (e) require a purchase assistant to be, as far as practicable, indistinguishable from other purchasers and to look like a young person; and
  - (f) require a purchase assistant not to lie to anyone about how old the assistant is during a compliance test; and
  - (g) only allow a compliance test to take place during normal business hours or at any other time when the premises where the test takes place is being used in relation to the seller's normal business; and
  - (h) comply with anything else prescribed by regulation.
- (3) An approval under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

#### **42E Carrying out of compliance testing**

- (1) An authorised officer may carry out a compliance test in accordance with an approved program and the approved procedures.
- (2) An authorised officer may use a young person as a purchase assistant in a compliance test only if the young person, and at least 1 person who has parental responsibility under the *Children and Young People Act 1999* for the young person, have given informed consent to the young person being a purchase assistant.

*Note* If 2 or more people have parental responsibility for a young person, each of the people may act alone in discharging the responsibility (see *Children and Young People Act 1999*, s 19 (2)).

- (3) Each consent under subsection (2) must be in writing.

- (4) In this section:

***informed consent***, by a person, means consent given by the person after the following matters have been explained to the person:

- (a) a purchase assistant's role in a compliance test, including the assistant's role in any prosecution of a person for an offence against section 14 (Supply of smoking product to under 18 year olds);
- (b) the effect of section 42F and section 42G (Indemnification of authorised officers and purchase assistants);
- (c) anything else required by the approved procedures.

#### **42F Lawfulness of compliance testing**

- (1) Despite any other territory law, conduct engaged in honestly by an authorised officer is not unlawful, and is not an offence by the officer, if the conduct is engaged in for the purpose of carrying out a compliance test in accordance with an approved program and the approved procedures.
- (2) Despite any other territory law, conduct engaged in honestly by a purchase assistant is not unlawful, and is not an offence by the assistant, if—
  - (a) the conduct is engaged in for the purpose of carrying out a compliance test; and
  - (b) the assistant acts in accordance, or substantially in accordance, with the instructions (if any) of an authorised officer supervising the compliance test.
- (3) However, this section does not—
  - (a) authorise a purchase assistant to enter or be in a place that it would be otherwise unlawful for the assistant to enter or be in; or



- (b) prevent action being taken against an authorised officer under the *Public Sector Management Act 1994*, part 9 (Discipline) in relation to a failure by the authorised officer or a purchase assistant to comply with approved procedures.

**Example for par (a)**

a gaming area under the *Gaming Machine Act 2004*

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**42G Indemnification of authorised officers and purchase assistants**

- (1) An authorised officer is not civilly liable for conduct engaged in for the purpose of carrying out a compliance test in accordance with an approved program and the approved procedures.
- (2) A purchase assistant is not civilly liable for conduct engaged in for the purpose of carrying out a compliance test if the assistant acts in accordance, or substantially in accordance, with the instructions of an authorised officer for the test.
- (3) However, this section does not prevent action being taken against an authorised officer under the *Public Sector Management Act 1994*, part 9 (Discipline) in relation to a failure of the authorised officer or a purchase assistant to comply with approved procedures.
- (4) Any liability that would, apart from this section, attach to an authorised officer or purchase assistant attaches instead to the Territory.

**42H Annual report about compliance testing**

The chief executive must include the following information in an annual report of the chief executive under the *Annual Reports (Government Agencies) Act 2004*:

- (a) the number of compliance tests carried out during the financial year;
- (b) the number of contraventions of section 14 (Supply of smoking product to under 18 year olds) detected by the tests;
- (c) the action taken in relation to the contraventions.

**5 Dictionary, new definitions**

*insert*

***approved procedures***, for part 6A (Tobacco compliance testing)—see section 42A.

***approved program***, for part 6A (Tobacco compliance testing)—see section 42A.

**6 Dictionary, definition of *authorised officer***

*substitute*

***authorised officer***—

- (a) means an authorised officer under section 32; but
- (b) for part 6A (Tobacco compliance testing)—see section 42A.

**7 Dictionary, new definitions**

*insert*

***compliance test***, for part 6A (Tobacco compliance testing)—see section 42B.

***conduct***, for part 6A (Tobacco compliance testing)—see the Criminal Code, section 13.

*engage in conduct*, for part 6A (Tobacco compliance testing)—see the Criminal Code, section 13.

*purchase assistant*, for part 6A (Tobacco compliance testing)—see section 42B (1) (a).

*young person*, for part 6A (Tobacco compliance testing)—see section 42A.

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## Endnotes

### 1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 August 2006.

### 2 Notification

Notified under the Legislation Act on 24 October 2006.

### 3 Republications of amended laws

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Tobacco (Compliance Testing) Amendment Bill 2006, which was passed by the Legislative Assembly on 17 October 2006.

Clerk of the Legislative Assembly

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