



Australian Capital Territory

Tobacco Amendment Act 2008

A2008-50

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Australian Capital Territory

Tobacco Amendment Act 2008

A2008-50

An Act to amend the *Tobacco Act 1927*, and for other purposes

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

1 Name of Act

This Act is the *Tobacco Amendment Act 2008*.

2 Commencement

- (1) The following provisions commence on the day after this Act's notification day:

- sections 16 to 18
- section 22.

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

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Tobacco Act 1927*.

Note This Act also repeals the *Tobacco Regulation 1991* (see s 33).

4 Dictionary Section 2, notes

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*price ticket*—see section 4.' means that the term 'price ticket' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

5 Section 2B

substitute

3 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Sections 3 and 4

substitute

4 Meaning of *price ticket*

(1) 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; and
- (b) is not larger than 15cm²; and
- (c) contains only text; and
- (d) is in Times New Roman type, no character of which is more than 12 points in size; and
- (e) otherwise complies with this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) In this section:

text includes a code mentioned in subsection (1) (a) (ii).

**7 Publication of name of manufacturer etc
Section 7 (2)**

substitute

- (2) However, the publication of the name of a manufacturer, distributor or retailer of smoking products in association with the publication of other material may be either or both of the following:
- (a) a smoking advertisement;
 - (b) taken to be publicity or promotion as mentioned in subsection (1) (b).

8 Part 2

substitute

Part 2 Points of sale

8 Numbers of points of sale

- (1) An occupier of a retail outlet on unlicensed premises commits an offence if the occupier provides more than 1 point of sale at the outlet.
- Maximum penalty: 50 penalty units.
- (2) An occupier of a retail outlet on licensed premises commits an offence if the occupier provides more than 5 points of sale at the outlet.
- Maximum penalty: 50 penalty units.
- (3) An offence against this section is a strict liability offence.
- (4) 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.

9 Location of smoking products

- (1) A smoking product for sale at a retail or wholesale outlet must be located—
 - (a) at a point of sale for the outlet; and
 - (b) on the seller's side of the point of sale, not less than 1m away from any part of the customer service area in relation to the point of sale.
- (2) A price ticket for a product line for sale (or usually available for sale) at a point of sale at a retail or wholesale outlet must be located not less than 1m away from any part of the customer service area in relation to the point of sale.
- (3) An occupier of a retail or wholesale outlet commits an offence if the occupier contravenes subsection (1) or (2).

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

10 Storage of smoking products at points of sale

- (1) A smoking product at a point of sale for a retail or wholesale outlet must be stored out of view of the outlet's customers.
- (2) An occupier of a retail or wholesale outlet commits an offence if the occupier contravenes subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

11 Other location and storage requirements by regulation

An occupier of a retail or wholesale outlet must comply with any additional requirements in relation to the location or storage of smoking products that are prescribed by regulation.

**9 Supply of smoking product to under 18 year olds
Section 14 (1) and (2)**

substitute

- (1) A person commits an offence if the person—
- (a) sells a smoking product to a person who is under 18 years old; and
 - (b) is reckless about whether the person to whom the smoking product is sold is under 18 years old.

Maximum penalty: 200 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
- (a) immediately before the smoking product was sold to the person, the defendant (or an employee or agent of the defendant) (the *seller*) asked the person to show the seller a document of identification; and
 - (b) the person showed the seller a document of identification; and
 - (c) the seller had no reasonable grounds for believing that the document was not a genuine document of identification of the person.

10 Sections 19 to 22

substitute

19 Sale of cigarettes

- (1) A person commits an offence if the person sells cigarettes (including cigarettes made from a herbal product) in a quantity of less than 20.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person sells cigarettes (including cigarettes made from a herbal product) in a package designed—
- (a) to hold less than 20 cigarettes; or
 - (b) to be, or be readily able to be, divided into portions each of which contains less than 20 cigarettes.
- Maximum penalty: 50 penalty units.
- (3) An offence against this section is a strict liability offence.

20 Display of smoking products

An occupier of a retail or wholesale outlet commits an offence if the occupier displays to customers at the outlet a smoking product within, or adjacent to, the outlet.

Maximum penalty: 50 penalty units.

21 Prohibited smoking products

- (1) The Minister may declare that a smoking product is prohibited (a *prohibited smoking product*).
- (2) The Minister must not make a declaration under subsection (1) unless satisfied that—
- (a) the smoking product, or the smoke of the product, has a distinctive fruity, sweet or confectionary-like character; and
 - (b) the nature of the product, or the product's package or packaging, may be attractive to children.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

22 Prohibition on sale of prohibited smoking product

- (1) A person commits an offence if the person sells a prohibited smoking product.

Maximum penalty: 50 penalty units.

- (2) In this section:

prohibited smoking product—see section 21 (1).

11 Section 23

substitute

23 Prohibited smoking advertising

- (1) A person commits an offence if the person—
- (a) sells a film, videotape, DVD or other video recording, or an audio recording, that contains a smoking advertisement; and
 - (b) is reckless about whether the film, videotape, DVD or other video recording, or audio recording, contains a smoking advertisement.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person—
- (a) distributes to the public any unsolicited document that contains a smoking advertisement; and
 - (b) is reckless about whether the document contains a smoking advertisement.

Maximum penalty: 50 penalty units.

Examples—unsolicited documents—par (a)

- 1 leaflet
- 2 handbill

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).

- (3) A person commits an offence if the person—
- (a) places, displays or broadcasts a smoking advertisement (including a smoking advertisement for a tobacco product at or on a place where tobacco products are for sale); and
 - (b) is reckless about whether the advertisement is visible or audible in or from a public place.

Maximum penalty: 50 penalty units.

- (4) This section does not apply in relation to—
- (a) a smoking advertisement that is an accidental or incidental accompaniment to a film, videotape, DVD or other video recording, or an audio recording; or
 - (b) a single price ticket at a point of sale for each product line for sale (or usually available for sale) at the point of sale; or
 - (c) a personal use advertisement; or
 - (d) a smoking advertisement that is displayed at a point of sale if the advertisement—
 - (i) is to the effect that smoking products are offered for sale to people who are 18 years old or older; and
 - (ii) is the only smoking advertisement (other than a price ticket mentioned in paragraph (b)) displayed at the point of sale; and
 - (iii) does not contain a trademark or brand name, or part of a trademark or brand name, of a smoking product; and
 - (iv) does not contain the name of a manufacturer or distributor of a smoking product; and
 - (v) is not larger than A5 paper size (148mm x 210mm); or

(e) a document ordinarily used in the course of business.

(5) In this section:

personal use advertisement means the placement, display or broadcast of a smoking advertisement, or of an object displaying a smoking 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 financial benefit; or
- (b) is undertaken in the course of a business that involves the sale of smoking products or the management of a retail outlet.

Example—personal use

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

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).

public place means a place to which the public or a section of the public has access, whether—

- (a) by payment, membership of a body or otherwise; or
- (b) by entitlement or permission.

Examples—public places

- 1 business premises, including professional, trade and commercial premises and wholesale outlets
- 2 a cinema or theatre
- 3 a club, hotel or motel
- 4 a community centre, hall or public library
- 5 government premises
- 6 a hostel or nursing home
- 7 a place of worship
- 8 a public transportation vehicle (including, a bus, taxi or boat)
- 9 a restaurant or cafeteria

- 10 a school, college or university
- 11 a shopping centre, mall or plaza
- 12 sporting or recreational premises.

12 Removal of smoking advertisements

Section 24

omit

section 23 (1) (d)

substitute

section 23 (3)

13 Section 25

substitute

25 Smoking product promotions

- (1) A person commits an offence if—
 - (a) the person sells or distributes an object or entitlement; and
 - (b) the object or entitlement promotes 1 or more of the following things:
 - (i) a smoking product, or the purchase or use of a smoking product;
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product;
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), an object or entitlement sold or distributed by a person promotes a thing mentioned in subsection (1) (b) if a reasonable person would believe that the object or entitlement promotes, or is likely to promote, the thing.
- (3) 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 thing is a reference to the promotion of the thing by aural or visible material that the object is reasonably capable of producing, or of causing to be produced, in its normal use.
- (4) 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 smoking product.

25A Prohibition of smoking product sales contributing to customer reward scheme

- (1) A person commits an offence, if in direct or indirect association with the sale of a smoking product, the person provides, or offers to provide, any of the following benefits:
 - (a) a prize, gift or discount;
 - (b) a voucher, ticket or other thing that allows a person access to a prize, gift or discount;
 - (c) points or credit in a customer reward scheme that allows a person to qualify for a thing mentioned in paragraph (a) or (b) by accumulating a number of points, or credit, in association with purchases.

Maximum penalty: 50 penalty units.

Example—par (b)

discount petrol vouchers offered by a supermarket chain

Example—par (c)

a shopping rewards program offered by a group of participating businesses, members of which accumulate points by making purchases at those businesses, and redeem the points for rewards

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).

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that it was not reasonably practicable to identify that the sale of the smoking product was associated with the provision of, or offer to provide, the benefit.

14 Section 28

substitute

28 Prohibition of sponsorships

- (1) A person commits an offence if—
- (a) the person promotes or agrees to promote, under a contract, agreement, undertaking or understanding, whether or not legally binding—
 - (i) a smoking product, or the use of a smoking product; or
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product; and
 - (b) the person does so in exchange for a sponsorship, gift, prize, scholarship or similar benefit given or agreed to be given by someone else.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person gives or agrees to give, under a contract, agreement, undertaking or understanding, whether or not legally binding, a sponsorship, gift, prize, scholarship or similar benefit; and
 - (b) the person does so in exchange for the promotion of, or an agreement to promote, a thing mentioned in subsection (1) (a).

Maximum penalty: 50 penalty units.

- (3) This section does not apply in relation to a scholarship given, or agreed to be given, by a manufacturer or distributor of a smoking product to an employee, or a family member of an employee, of the manufacturer or distributor.

- (4) In this section:

family member, of a person, means—

- (a) the person's domestic partner; or
- (b) a parent, step-parent or grandparent of the person; or
- (c) a child, stepchild or grandchild of the person; or
- (d) a brother, sister, stepbrother or stepsister of the person.

15 **Conditions of tobacco licence**
Section 48 (2) (a)

omit

section 21

substitute

section 8 (Numbers of points of sale)

**16 Duration of tobacco licence
Section 49 (2)**

omit

or revived

**17 No vending machines authorised
Section 49A**

omit

, renew or revive

substitute

or renew

**18 Revival of expired retail tobacconist's licences
Section 52**

omit

**19 Disciplinary action—general
Section 56 (2) (a) (i) and (ii)**

substitute

- (i) to impose more stringent requirements than otherwise apply under this Act in relation to a point of sale, a price ticket or smoking advertising on or adjacent to all or any of the premises specified in the licence; or
- (ii) to impose a condition prohibiting smoking advertising on or adjacent to all or any of the premises specified in the licence; or

**20 Regulation-making power
New section 73 (2A)**

insert

- (2A) A regulation may prescribe requirements that must be complied with in relation to the location or storage of smoking products.

21 Section 73 (4)

omit

10 penalty units

substitute

20 penalty units

22 New section 100

insert

100 Transitional—repeal of s 52

- (1) This section applies if—
- (a) a person carried on business as a retail tobacconist on the day this section commences; and
 - (b) the person was the holder of a retail tobacconist's licence that expired on 31 August 2008; and
 - (c) section 52 (Revival of expired retail tobacconist's licences) (repealed) applied to the person on the day this section commences.
- (2) Section 52 (repealed) applies to the person, as if it had not been repealed, until 30 November 2008.
- (3) Also, section 49 (Duration of tobacco licence) and section 49A (No vending machines authorised), as in force immediately before the day this section commences, apply in relation to the person.

- (4) In this section:
retail tobacconist's licence—see section 43.
- (5) This section expires on 30 November 2008.

23 **New section 101**

insert

101 **Transitional—application of new point of sale display provisions to tobacconists**

- (1) The new point of sale display provisions do not apply until 1 January 2010 in relation to a person (a *standard tobacconist*) who—
 - (a) holds a retail tobacconist's licence or wholesale tobacco merchant's licence in relation to premises; and
 - (b) carries on business as a retail tobacconist or wholesale tobacconist at the premises; and
 - (c) is not a specialist tobacconist.
- (2) The new point of sale display provisions do not apply until 1 January 2011 in relation to a person (a *specialist tobacconist*) who—
 - (a) holds a retail tobacconist's licence in relation to premises that are not part of premises used by the person for other retail purposes; and
 - (b) carries on business at the premises the main purpose of which is selling smoking products by retail.
- (3) Until the new point of sale display provisions apply in relation to a standard tobacconist or specialist tobacconist, the old point of sale display provisions continue to apply in relation to the tobacconist.

(4) In this section:

new point of sale display provisions means the following provisions of this Act, as in force after this section commences:

- (a) part 2 (Points of sale), other than section 8 (Numbers of points of sale);
- (b) section 20 (Display of smoking products);
- (c) section 23 (Prohibited smoking advertising);
- (d) section 24 (Removal of smoking advertisements);
- (e) section 56 (Disciplinary action—general).

old point of sale display provisions means the *Tobacco Regulation 1991* and the following provisions of this Act, as in force immediately before this section commences:

- (a) part 2 (Point of sale displays);
- (b) section 20 (Display of smoking products at points of sale);
- (c) section 22 (Health warnings at point of sale displays);
- (d) section 23 (Prohibited smoking advertising);
- (e) section 24 (Removal of smoking advertisements);
- (f) section 56 (Disciplinary action—general).

retail tobacconist's licence—see section 43.

wholesale tobacco merchant's licence—see section 43.

(5) This section expires on 1 January 2011.

24 Dictionary, note 2, new dot points

insert

- child
- domestic partner (see s 169 (1))

25 Dictionary, definitions of *display* and *drug*

omit

26 Dictionary, definition of *herbal product*

substitute

herbal product means a product prepared for smoking that contains a herb or other plant matter but does not contain tobacco or a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

27 Dictionary, definitions of *package* and *point of sale display*

omit

28 Dictionary, definition of *price ticket*

substitute

price ticket—see section 4.

29 Dictionary, definition of *product information notice*

omit

30 Dictionary, definition of *public place*

omit

31 Dictionary, definition of *theatre*

omit

32 Dictionary, definition of *vending machine*

substitute

vending machine means a machine or device from which smoking products can be obtained, including by 1 or more of the following:

- (a) electronic funds transfer;
- (b) inserting money, a token or another object.

Example—other objects—par (b)

- 1 credit card
- 2 debit card
- 3 key

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).

33 Repeal of Tobacco Regulation 1991

The *Tobacco Regulation 1991* (SL1991-11) is repealed.

Schedule 1 Criminal Code harmonisation

(see s 3)

[1.1] Section 14 (3)

substitute

- (3) A person commits an offence if the person uses someone else's document of identification, or a forged document of identification, for the purpose of obtaining a smoking product.

Maximum penalty: 10 penalty units.

[1.2] Section 15

substitute

15 Purchase of smoking products for use by under 18 year olds

A person commits an offence if the person purchases a smoking product for use by a person under 18 years old.

Maximum penalty: 50 penalty units.

[1.3] Sections 17 and 18

substitute

17 Tobacco for non-smoking purposes

A person commits an offence if the person manufactures or sells a tobacco product that is not a product prepared for smoking.

Maximum penalty: 50 penalty units.

18 Food and toys resembling or promoting smoking products

- (1) A person commits an offence if the person—
- (a) sells or imports food or a toy; and
 - (b) the food or toy, or its package or packaging, resembles—
 - (i) a smoking product; or
 - (ii) a smoking product package.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), food or a toy resembles a smoking product or a smoking product package if a reasonable person would believe that the resemblance exists, or is likely to exist.
- (3) A person commits an offence if the person—
- (a) sells or imports food or a toy; and
 - (b) the food or toy, or its package or packaging, publicises or otherwise promotes 1 or more of the following things:
 - (i) a smoking product, or the purchase or use of a smoking product;
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product;
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product.

Maximum penalty: 50 penalty units.

- (4) For subsection (3), food or a toy, or its package or packaging, publicises or otherwise promotes a thing mentioned in subsection (3) (b) if a reasonable person would believe that the food, toy, package or packaging publicises or promotes, or is likely to publicise or promote, the thing.

[1.4] New sections 18A and 18B

insert

18A Declared smoking products

- (1) The Minister may declare that food or a toy, or its package or packaging, is a *declared smoking product*.
- (2) The Minister must not make a declaration under subsection (1) unless satisfied that the food or toy, or its package or packaging—
 - (a) resembles a smoking product; or
 - (b) resembles a smoking product package; or
 - (c) may publicise or otherwise promote—
 - (i) a smoking product, or the purchase or use of a smoking product; or
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

18B Prohibition on sale or import of declared smoking product

- (1) A person commits an offence if the person sells or imports a declared smoking product.

Maximum penalty: 50 penalty units.

- (2) In this section:
declared smoking product—see section 18A (1).

[1.5] Section 24 (3)

substitute

- (3) A person commits an offence if the person contravenes a notice under subsection (1).

Maximum penalty (for each day): 5 penalty units.

Note See the Legislation Act, s 193 (Continuing offences).

[1.6] Sections 26 and 27

substitute

26 Smoking product giveaways

- (1) A person commits an offence if—
- (a) the person supplies a smoking product for free; and
 - (b) the supply promotes the sale of any smoking product for value.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), the supply by a person of a smoking product for free promotes the sale of a smoking product for value if a reasonable person would believe that the supply promotes, or is likely to promote, the sale.
- (3) In this section:

promote includes induce.

supply includes offer or expose.

27 Competitions that promote smoking products etc

- (1) A person commits an offence if the person—
- (a) conducts a competition; and

- (b) the competition promotes 1 or more of the following things:
 - (i) a smoking product, or the purchase or use of a smoking product;
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product;
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), a competition conducted by a person promotes a thing mentioned in subsection (1) (b) if a reasonable person would believe that the competition promotes, or is likely to promote, the thing.
- (3) A person commits an offence if the person—
 - (a) conducts a competition; and
 - (b) the competition has a direct or indirect association with the sale or consumption of a smoking product, or of smoking products generally.

Maximum penalty: 50 penalty units.

- (4) For subsection (3), a competition conducted by a person has a direct or indirect association with a thing mentioned in subsection (3) (b) if a reasonable person would believe that the competition has, or would have, a direct or indirect association with the thing.

[1.7] Section 34*substitute***34 Identity cards**

- (1) The chief executive must give an authorised officer (other than a public health officer or police officer) an identity card stating the person's name and position.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if the person—
 - (a) stops being an authorised officer; and
 - (b) does not return the person's identity card to the chief executive not later than 7 days after the day the person stops being an authorised officer.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (2) applies only in relation to a card given by the chief executive after the commencement of this section.
- (6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on the day they commence.

[1.8] New section 37 (2) and (3)

insert

- (2) A person commits an offence if the person fails to take reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

[1.9] Section 39

substitute

39 Power to require name and address

- (1) An authorised officer may require a person to state the person's name and home address if the officer believes on reasonable grounds that the person—
- (a) is committing or has committed an offence against this Act; or
 - (b) can provide evidence of the commission of an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised officer must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The authorised officer must also produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised officer—
- (a) told the person the reason for the requirement; and

(b) produced his or her identity card for inspection by the person.

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

(6) In this section:

home address, of a person, means the address of the place where the person usually lives.

[1.10] Section 41

omit

[1.11] Division 7.4

substitute

Division 7.4 Offences

59 Failure to return tobacco licence

- (1) A licensee commits an offence if—
- (a) the registrar varies the licensee's licence; and
 - (b) the registrar gives the licensee notice of the variation; and
 - (c) the licensee does not return the licence to the registrar within 14 days after the day the licensee is given the notice.

Maximum penalty: 5 penalty units.

- (2) A licensee commits an offence if—
- (a) the registrar suspends or cancels the licensee's licence; and
 - (b) the registrar gives the licensee notice of the suspension or cancellation; and

- (c) the licensee does not return the licence to the registrar within 14 days after the day the licensee is given the notice.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.

60 Disqualification

- (1) A person commits an offence if the person—
 - (a) is disqualified under division 7.3 (Disciplinary action) from holding a tobacco licence for a stated period; and
 - (b) is involved in the direction, management or control of a tobacco retailing business during the period.

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

- (2) A person commits an offence if the person—
 - (a) is disqualified under division 7.3 from holding a tobacco licence for particular premises for a stated period; and
 - (b) is involved in the direction, management or control of a tobacco retailing business at the premises during the period.

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

61 Selling smoking products without, or in contravention of, tobacco licence

- (1) A person commits an offence if the person—
 - (a) is not a licensee; and
 - (b) sells a smoking product.

Maximum penalty: 50 penalty units.

- (2) A licensee commits an offence if the licensee contravenes a condition of the licensee's licence.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

62 Tobacco wholesaling—offences

- (1) A person commits an offence if the person—

- (a) carries on tobacco wholesaling; and
- (b) is not the holder of a wholesale tobacco merchant's licence.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if the person—

- (a) carries on tobacco wholesaling; and
- (b) sells smoking products to someone who is not a licensee.

Maximum penalty: 100 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—

- (a) under the contract of sale, the smoking products were to be delivered by the seller to the buyer outside the ACT, and that no part of the smoking products has been delivered by the seller to the buyer in the ACT; or
- (b) if the contract did not state that the smoking products were to be delivered outside the ACT, the parties intended the smoking products to be delivered outside the ACT, and that no part of the smoking products has been delivered by the seller to the buyer in the ACT; or
- (c) the defendant believed on reasonable grounds that the person to whom the smoking product was sold was a licensee.

- (4) A person commits an offence if the person—
- (a) is not the holder of a wholesale tobacco merchant's licence; and
 - (b) sells a smoking product to someone else for sale in a vending machine.

Maximum penalty: 100 penalty units.

63 Tobacco retailing—offences

- (1) A person commits an offence if the person—
- (a) carries on tobacco retailing; and
 - (b) is not the holder of a retail tobacconist's licence.

Maximum penalty: 50 penalty units.

- (2) The holder of a retail tobacconist's licence commits an offence if—
- (a) the holder carries on the business of selling smoking products at premises; and
 - (b) the premises are not stated in the licence as premises that are to be used in relation to the business.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

64 Display of licence details

- (1) The holder of a wholesale tobacco merchant's licence commits an offence if the holder fails to display a licence details notice in a prominent place at each premises at which the holder carries on business as the holder of the licence.

Maximum penalty: 5 penalty units.

- (2) The holder of a retail tobacconist's licence commits an offence if the holder—
- (a) carries on business as the holder of the licence at premises; and
 - (b) fails to display a licence details notice at or in close proximity to the point of sale (or, if there is more than 1 point of sale, 1 of the points of sale) at the premises.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

licence details notice, in relation to the holder of a licence, means a notice stating—

- (a) the holder's name; and
- (b) the licence number; and
- (c) any conditions that apply to the licence.

65 Licensee stops carrying on business

- (1) A licensee commits an offence if the licensee—
- (a) stops carrying on business under the licence; and
 - (b) fails to tell the registrar, in writing, that the licensee has stopped carrying on business under the licence as soon as practicable, but not later than 7 days, after the day the person stops carrying on business.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

66 Endorsement on wholesale tobacco merchant's invoices

- (1) The holder of a wholesale tobacco merchant's licence commits an offence if—
- (a) the holder issues an invoice in relation to the sale of a smoking product; and
 - (b) the invoice does not state, in upper case letters, 'SOLD BY LICENSED ACT WHOLESALER'.

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person commits an offence if the person—
- (a) is not the holder of a wholesale tobacco merchant's licence; and
 - (b) issues an invoice in relation to the sale of a smoking product that indicates (expressly or impliedly) that the person holds the licence.

Maximum penalty: 50 penalty units.

67 Retail tobacconist must obtain smoking products from licensed wholesaler

- (1) The holder of a retail tobacconist's licence commits an offence if the holder obtains a smoking product from someone who is not the holder of a wholesale tobacco merchant's licence.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant obtained the smoking product for a purpose other than retail sale.

[1.12] Dictionary, note 2, new dot points

insert

- police officer
- public health officer

[1.13] Dictionary, new definitions

insert

food includes confectionery.

import means import into the ACT for sale.

smoking product package means a package that—

- (a) is of a kind 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.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 6 March 2008.

2 Notification

Notified under the Legislation Act on 15 September 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Tobacco Amendment Bill 2008, which was passed by the Legislative Assembly on 27 August 2008.

Clerk of the Legislative Assembly

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