



Australian Capital Territory

# Tobacco and Other Smoking Products Amendment Act 2025

A2025-36

## Contents

|   | Page |
|---|------|
| 1 Name of Act   | 2    |
| 2 Commencement  | 2    |
| 3 Legislation amended   | 2    |
| 4 Meaning of <i>prohibited smoking product</i><br>Section 3D (1), definition of <i>prohibited smoking product</i> , new<br>paragraph (aa) | 2    |
| 5 Prohibition on sale of prohibited smoking product<br>New section 22 (2)   | 3    |
| 6 Section 31  | 3    |
| 7 Sections 34 to 42   | 4    |
| 8 Dictionary, definition of <i>identity card</i>  | 21   |
| 9 Dictionary, new definition of <i>warrant</i>  | 21   |

J2025-157

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|                   |  |           |
|-------------------|--|-----------|
| <b>Schedule 1</b> | <b>Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010—Consequential amendment</b> | <b>22</b> |
|-------------------|--|-----------|



Australian Capital Territory

# Tobacco and Other Smoking Products Amendment Act 2025

**A2025-36**

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

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

## **1 Name of Act**

This Act is the *Tobacco and Other Smoking Products Amendment Act 2025*.

## **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 and Other Smoking Products Act 1927*.

*Note* This Act also amends the *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010* (see sch 1).

## **4 Meaning of *prohibited smoking product* Section 3D (1), definition of *prohibited smoking product*, new paragraph (aa)**

*insert*

(aa) a tobacco product that does not comply with—

- (i) a requirement under the *Public Health (Tobacco and Other Products) Act 2023* (Cwlth) relating to the packaging, naming, appearance, physical features or content of a tobacco product; or
- (ii) a requirement under another law of the Commonwealth relating to tobacco products that is prescribed by regulation; or

## 5 Prohibition on sale of prohibited smoking product New section 22 (2)

*insert*

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

## 6 Section 31

*substitute*

### Division 6.1 Preliminary

#### 31 Definitions—pt 6

In this part:

***connected***—an activity or thing is ***connected*** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, or is being used, or is intended to be used, to commit the offence.

***occupier***, of premises, includes—

- (a) a person an authorised officer believes on reasonable grounds is an occupier of the premises; and
- (b) a person apparently in charge of the premises.

***offence*** includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

***warrant*** means a warrant issued under division 6.3.

**7 Sections 34 to 42**

*substitute*

**34 Identity cards**

- (1) The director-general must give an identity card to an authorised officer appointed under section 32 (1).
- (2) The identity card must show—
  - (a) the authorised officer's name or a unique identification number; and
  - (b) a statement that the person is an authorised officer; and
  - (c) a recent photograph of the officer; and
  - (d) the card's date of issue and expiry; and
  - (e) anything else prescribed by regulation.
- (3) A person must return their identity card to the director-general within 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 (3) does not apply to a person if their identity card is—
  - (a) lost or stolen; or
  - (b) destroyed by someone else.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

**35 Requirements before certain powers can be exercised**

- (1) This section applies to the exercise of any of the following powers by an authorised officer:
  - (a) giving a direction under section 36 (1) (Direction to give name and address);
  - (b) entering premises under section 37 (1) (b) or (c) (Powers of authorised officer to enter premises);
  - (c) giving a direction under section 39 (1) (e) (General powers on entry to premises).
- (2) Before exercising the power, the authorised officer must—
  - (a) either—
    - (i) show their identity card to the affected person; or
    - (ii) if the authorised officer intends to exercise the power other than in person—give the affected person other evidence of the authorised officer’s identity; and
  - (b) tell the affected person the reason for exercising the power; and
  - (c) tell the affected person about—
    - (i) for a direction under section 36 (1)—section 36 (3); or
    - (ii) for a direction under section 39 (1) (e)—section 39 (2).

**Example—exercise of powers other than in person**

an authorised officer emails a person asking for consent to enter and search the person’s premises using a remote-controlled surveillance device

- (3) The authorised officer must ensure the matters mentioned in subsection (2) are communicated in a way that the authorised officer believes the affected person is likely to understand.

(4) In this section:

***affected person***, in relation to the exercise of a power under this part, means—

- (a) the individual affected by the exercise of the power; or
- (b) if the person is not an individual—an employee, officer or agent of the person affected by the exercise of the power.

***identity card*** means—

- (a) in relation to an authorised officer appointed under section 32 (1)—the identity card given under section 34 (1); or
- (b) in relation to a public health officer under the *Public Health Act 1997*—the identity card issued to the officer under that Act; or
- (c) in relation to a police officer—evidence that they are a police officer; or
- (d) in relation to an investigator under the *Fair Trading (Australian Consumer Law) Act 1992*—the identity card issued to the investigator under that Act.

## **Division 6.2 Powers to obtain information and enter premises**

### **36 Direction to give name and address**

- (1) An authorised officer may direct a person to state the person's name and home address if the authorised officer believes on reasonable grounds that the person—
  - (a) is involved in the commission of an offence against this Act; or
  - (b) may be able to assist in the investigation of an offence against this Act.



(2) If the authorised officer believes on reasonable grounds that information given in response to a direction under subsection (1) is false or misleading, the authorised officer may direct the person to produce evidence of the correctness of the information within a stated reasonable period.

(3) A person must comply with a direction given to the person under this section.

Maximum penalty: 5 penalty units.

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

(5) Subsection (3) does not apply to a person unless the authorised officer complies with section 35 (Requirements before certain powers can be exercised).

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

## **37 Powers of authorised officer to enter premises**

(1) For this Act, an authorised officer may—

- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
- (b) at any time, enter premises with the occupier's consent; or
- (c) at any reasonable time, enter premises if the authorised officer believes on reasonable grounds that—
  - (i) an offence against this Act is being, or is likely to be, or has just been, committed on the premises; and

- (ii) the risk to a person, the environment or public health resulting from the offence is so serious and urgent that immediate entry to the premises without the authority of a warrant is necessary; or
- (d) enter premises with a warrant.
- (2) However, subsection (1) (a) and (c) do not authorise entry into a part of the premises that is being used only for residential purposes.
- (3) For the purpose of seeking consent to enter a building or other structure on the premises, an authorised officer may, without the occupier's consent, enter any land that forms part of the premises.
- (4) To remove any doubt, an authorised officer may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) An authorised officer may enter the premises with 1 or more people who, in the opinion of the authorised officer, have knowledge or skills that could assist the authorised officer to carry out their functions.
- (6) An authorised officer may enter premises with necessary force, in accordance with a warrant.

### **38 Obtaining consent to entry**

- (1) For section 37 (1) (b), an authorised officer must—
  - (a) before asking the occupier for consent—tell the occupier—
    - (i) the purpose of the proposed entry; and
    - (ii) the reason for, and identity of, any other person accompanying the authorised officer; and
    - (iii) that anything found and seized under this part may be used as evidence in court; and
    - (iv) that consent may be refused; and

- (b) if the occupier consents to the entry—give the occupier a written record confirming—
  - (i) the matters mentioned in paragraph (a); and
  - (ii) that the occupier was told about those matters; and
  - (iii) the time and date when the consent was given.
- (2) A court must find that the occupier did not consent if—
  - (a) a question arises in a proceeding before the court about whether the occupier consented to the authorised officer entering the premises under this part; and
  - (b) a record mentioned in subsection (1) (b) is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

### **39 General powers on entry to premises**

- (1) An authorised officer who enters premises under this part may do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) examine anything;
  - (b) take a measurement or conduct a test;
  - (c) take a sample;
  - (d) take images, make audio or video recordings or any other kind of record;
  - (e) if reasonably required for an authorised officer to exercise a power under this part, direct the occupier or anyone at the premises to do 1 or more of the following:
    - (i) give information, a document or other thing (including information, a document or thing that is not at the premises);

- (ii) produce a document or other thing (including a document or other thing that is not at the premises);
- (iii) answer a question;
- (iv) give the authorised officer reasonable help to exercise a power under this part.

*Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a direction given under subsection (1) (e).

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply in relation to a direction given to a person under subsection (1) (e) unless the authorised officer complies with section 35 (Requirements before certain powers can be exercised).

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

## **Division 6.3 Warrants**

### **40 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant to enter premises and exercise the authorised officer's powers under this part.
- (2) The application must—
  - (a) be sworn; and
  - (b) state the grounds on which the warrant is sought.
- (3) However, if the authorised officer considers it necessary because of urgent or other special circumstances, the authorised officer may—
  - (a) prepare a written application stating the grounds on which the warrant is sought; and

- (b) apply to the magistrate for the warrant other than in person before the written application is sworn.
- (4) The magistrate may refuse to consider an application under this section until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

#### **41 Decision on application for warrant**

- (1) If an application for a warrant is made under section 40, the magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (2) The warrant must include the following information:
  - (a) a statement that an authorised officer may, with any necessary assistance or force, enter the premises and exercise the authorised officer's powers under this part;
  - (b) details of the offence for which the warrant is issued;
  - (c) the things that may be seized under the warrant;
  - (d) the hours when the premises may be entered;
  - (e) the date, within 14 days after the day of the warrant's issue, when the warrant ends.

**41A Warrant issued on remote application**

- (1) A magistrate may issue a warrant on application under section 40 (3) by—
  - (a) if practicable—immediately giving a written copy of the warrant to the authorised officer; or
  - (b) if not practicable—telling the authorised officer the following:
    - (i) the information mentioned in section 41 (2);
    - (ii) the date and time the warrant is issued.
- (2) If the magistrate issues a warrant under subsection (1) (b), the authorised officer must complete a form of warrant (the **warrant form**) stating—
  - (a) the magistrate’s name; and
  - (b) the date and time the magistrate issued the warrant; and
  - (c) the information mentioned in section 41 (2).
- (3) The written copy of the warrant, or the warrant form properly completed by the authorised officer, authorises the entry and exercise of the authorised officer’s powers under this part.
- (4) The authorised officer must, as soon as reasonably practicable—
  - (a) swear the application; and
  - (b) give the magistrate—
    - (i) the sworn application; and
    - (ii) if the authorised officer completed a warrant form—the warrant form.
- (5) On receiving the documents mentioned in subsection (4) (b), the magistrate must attach them to the warrant.

- (6) A court must find that a power exercised by an authorised officer was not authorised by a warrant under this section if—
  - (a) a question arises in a proceeding before the court about whether the exercise of the power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of the power was authorised by a warrant under this section.

**41B      Announcement before entry under warrant**

- (1) Before anyone enters premises under a warrant, an authorised officer must—
  - (a) announce that they are authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier is present at the premises—identify themselves to the occupier.
- (2) The authorised officer is not required to comply with subsection (1) if they believe on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including themselves or any person assisting them); or
  - (b) that the effective execution of the warrant is not frustrated.

**41C      Warrant etc to be given to occupier**

If the occupier of premises is present at the premises while a warrant is being executed, the authorised officer must give the occupier—

- (a) a copy of—
  - (i) the warrant; or
  - (ii) if section 41A (1) (b) applies—the warrant form mentioned in section 41A (2); and
- (b) a document setting out the occupier’s rights and obligations.

**41D      Occupier entitled to watch search etc**

- (1) If the occupier of premises is present at the premises while a warrant is being executed, the occupier is entitled to watch the authorised officer, and any person assisting the officer, conduct any search and exercise any other power authorised by the warrant.
- (2) However, the occupier is not entitled to watch the authorised officer or a person assisting the officer exercise the powers if—
  - (a) to do so would interfere with the powers being exercised; or
  - (b) the occupier is under arrest and allowing them to watch the powers being exercised would interfere with the objective of the warrant.
- (3) This section does not prevent a person from exercising powers under this part in 2 or more areas of the premises at the same time.



## **Division 6.4                      Power to seize things**

### **41E                      Authorised officer may seize things at premises**

- (1) An authorised officer who enters premises under this part—
  - (a) may seize anything at the premises if satisfied on reasonable grounds that—
    - (i) the thing is connected with an offence against this Act; and
    - (ii) the seizure is necessary to prevent the thing from being—
      - (A) concealed, lost or stolen; or
      - (B) used to commit, continue or repeat the offence; and
  - (b) if the premises were entered with the occupier's consent—may also seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent; and
  - (c) if the premises were entered under a warrant—may also seize anything at the premises that the authorised officer is authorised to seize under the warrant.
- (2) Having seized a thing, the authorised officer may—
  - (a) remove the thing from the premises where it was seized to another place; or
  - (b) leave the thing at the premises where it is seized and restrict access to it.

*Note*        If an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized (see s 41H).
- (3) If access to a seized thing is restricted under subsection (2), the authorised officer must secure, in a conspicuous place at the premises, a notice identifying that the thing is seized.

**41F Owner etc may access seized things**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this division may—

- (a) inspect the thing; and
- (b) make a visual recording of the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

**41G Person must not interfere with seized things**

- (1) A person commits an offence if—

- (a) a thing has been seized under this division; and
- (b) the person interferes with the thing or anything containing the thing; and
- (c) the person does not have the approval of an authorised officer to interfere with the thing.

Maximum penalty: 50 penalty units.

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

**41H Authorised officer must give receipt for seized things**

- (1) If an authorised officer seizes a thing under this division, they must—

- (a) as soon as practicable after seizing the thing, give the person from whom the thing was seized a receipt for the thing; or
- (b) if complying with paragraph (a) is not practicable—secure a receipt for the thing in a conspicuous place at the premises where the thing was seized.

- (2) A receipt must include the following information:
  - (a) a description of the thing seized;
  - (b) the reason the thing was seized;
  - (c) the authorised officer's name and how they can be contacted;
  - (d) if the thing is moved from the premises where it was seized—where the thing will be taken.

#### **41I      Return of seized things**

- (1) If a thing is seized under this division—
  - (a) the thing must be returned to its owner; or
  - (b) reasonable compensation must be paid to the owner by the Territory for the loss of the thing.
- (2) However, the thing is not required to be returned and reasonable compensation is not required to be paid if—
  - (a) both of the following apply:
    - (i) a prosecution for an offence connected with the thing (a **relevant offence**) is started against the owner within the 1-year period;
    - (ii) the proceeding (including any appeal) is finalised and the owner is convicted or found guilty of the offence; or
  - (b) an infringement notice for a relevant offence is served on the owner within the 1-year period and—
    - (i) the owner gives notice disputing liability for the offence in accordance with the *Magistrates Court Act 1930*, section 132; and
    - (ii) an information is laid in the Magistrates Court against the owner within 60 days after the day the notice is given; and

- (iii) the proceeding (including any appeal) is finalised and the owner is convicted or found guilty of the offence; or
  - (c) an infringement notice for a relevant offence is served on the owner within the 1-year period and—
    - (i) the infringement notice penalty for the offence is paid; and
    - (ii) the infringement notice is not withdrawn; or
  - (d) possession of the thing by the owner would be an offence; or
  - (e) a court makes an order under a territory law that the thing is forfeited to the Territory or must otherwise be dealt with.
- (3) Also, the thing is not required to be returned and reasonable compensation is not required to be paid if the director-general is satisfied that—
- (a) the owner of the thing cannot be found after making reasonable inquiries (given the thing's apparent value); or
  - (b) the thing cannot be returned to its owner after making reasonable efforts (given the thing's apparent value).
- (4) If subsection (2) (a) to (d) or subsection (3) applies—
- (a) the thing is forfeited to the Territory; and
  - (b) the director-general may direct that the thing be sold, destroyed or otherwise disposed of.
- (5) In this section:
- 1-year period***, in relation to a seized thing, means a period of 12 months beginning on the day after the day the thing was seized.

**41J      Order disallowing seizure**

- (1) If a thing is seized under this division, a person claiming to be entitled to the thing may apply to the Magistrates Court for an order disallowing the seizure.
- (2) The application—
  - (a) must be made not later than 10 days after the day the thing is seized; and
  - (b) must not be heard unless the applicant has served a copy of the application on the director-general.
- (3) The director-general is entitled to appear as a respondent at the hearing of the application.
- (4) The court must make an order disallowing the seizure if satisfied—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (5) The court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (6) If the court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
  - (a) an order directing the director-general to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the disallowed seizure—an order directing the Territory to pay reasonable compensation;
  - (c) an order about costs in relation to the application.

**41K Costs of disposal of forfeited things**

- (1) This section applies if—
  - (a) a person is convicted or found guilty of an offence against this Act in relation to something forfeited to the Territory under this division; and
  - (b) the thing is connected with an offence against this Act; and
  - (c) the person was the owner of the thing immediately before its forfeiture.
- (2) Costs incurred by or on behalf of the Territory in relation to the lawful disposal of the thing (including storage costs) are a debt owing to the Territory by the person.

**Division 6.5 Miscellaneous**

**41L Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised officer must take reasonable steps to ensure that they, and any person assisting them, cause as little inconvenience, detriment or damage as possible.
- (2) If an authorised officer, or a person assisting them, damages anything in the exercise or purported exercise of a function under this part, the authorised officer must give written notice of the details of the damage to the person they believe on reasonable grounds is the owner of the thing.
- (3) If the damage occurs on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place at the premises.

**42 Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
  - (a) an authorised officer; or
  - (b) a person assisting an authorised officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

**8 Dictionary, definition of *identity card***

*omit*

**9 Dictionary, new definition of *warrant***

*insert*

**warrant**, for part 6 (Enforcement)—see section 31.

Schedule 1

Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010—Consequential amendment

(see s 3)

[1.1]

Schedule 1, new item 6A

*insert*

|    |        |    |       |
|----|--------|----|-------|
| 6A | 22 (1) | 50 | 1 600 |
|----|--------|----|-------|



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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 22 October 2025.

**2 Notification**

Notified under the [Legislation Act](#) on 15 December 2025.

**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 and Other Smoking Products Amendment Bill 2025, which was passed by the Legislative Assembly on 3 December 2025.

Clerk of the Legislative Assembly

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