

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Tobacco Amendment Bill 2008

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(As presented)

(Minister for Health)

Tobacco Amendment Bill 2008

A Bill for

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

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

1 **1 Name of Act**

2 This Act is the *Tobacco Amendment Act 2008*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written
5 notice.

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

8 *Note 2* A single day or time may be fixed, or different days or times may be
9 fixed, for the commencement of different provisions (see Legislation
10 Act, s 77 (1)).

11 *Note 3* If a provision has not commenced within 6 months beginning on the
12 notification day, it automatically commences on the first day after that
13 period (see Legislation Act, s 79).

14 **3 Legislation amended**

15 This Act amends the *Tobacco Act 1927*.

16 *Note* This Act also repeals the *Tobacco Regulation 1991* (see s 32).

17 **4 Dictionary**
18 **Section 2, notes**

19 *substitute*

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

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

25 *Note 2* A definition in the dictionary (including a signpost definition) applies to
26 the entire Act unless the definition, or another provision of the Act,
27 provides otherwise or the contrary intention otherwise appears (see
28 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

1 (d) is in Times New Roman type, no character of which is more
2 than 12 points in size; and

3 (e) otherwise complies with this Act.

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

7 (2) In this section:

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

9 **7 Publication of name of manufacturer etc**
10 **Section 7 (2)**

11 *substitute*

12 (2) However, the publication of the name of a manufacturer, distributor
13 or retailer of smoking products in association with the publication of
14 other material may be either or both of the following:

15 (a) a smoking advertisement;

16 (b) taken to be publicity or promotion as mentioned in
17 subsection (1) (b).

18 **8 Part 2**

19 *substitute*

20 **Part 2 Points of sale**

21 **8 Numbers of points of sale**

22 (1) An occupier of a retail outlet on unlicensed premises commits an
23 offence if the occupier provides more than 1 point of sale at the
24 outlet.

25 Maximum penalty: 50 penalty units.

1 (2) An occupier of a retail outlet on licensed premises commits an
2 offence if the occupier provides more than 5 points of sale at the
3 outlet.

4 Maximum penalty: 50 penalty units.

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

6 (4) In this section:

7 *licensed premises* means premises for which an on licence, a
8 general licence or a club licence is in force under the
9 *Liquor Act 1975*.

10 *unlicensed premises* means premises other than licensed premises.

11 **9 Location of smoking products**

12 (1) A smoking product for sale at a retail or wholesale outlet must be
13 located—

14 (a) at a point of sale for the outlet; and

15 (b) on the seller's side of the point of sale, not less than 1m away
16 from any part of the customer service area in relation to the
17 point of sale.

18 (2) A price ticket for a product line for sale (or usually available for
19 sale) at a point of sale at a retail or wholesale outlet must be located
20 not less than 1m away from any part of the customer service area in
21 relation to the point of sale.

22 (3) An occupier of a retail or wholesale outlet commits an offence if the
23 occupier contravenes subsection (1) or (2).

24 Maximum penalty: 50 penalty units.

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

1 **10 Storage of smoking products at points of sale**

2 (1) A smoking product at a point of sale for a retail or wholesale outlet
3 must be stored out of view of the outlet's customers.

4 (2) An occupier of a retail or wholesale outlet commits an offence if the
5 occupier contravenes subsection (1).

6 Maximum penalty: 50 penalty units.

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

8 **11 Other location and storage requirements by regulation**

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

12 **9 Supply of smoking product to under 18 year olds**
13 **Section 14 (1) and (2)**

14 *substitute*

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

16 (a) sells a smoking product to a person who is under 18 years old;
17 and

18 (b) is reckless about whether the person to whom the smoking
19 product is sold is under 18 years old.

20 Maximum penalty: 200 penalty units.

21 (2) It is a defence to a prosecution for an offence against subsection (1)
22 if the defendant proves that—

23 (a) immediately before the smoking product was sold to the
24 person, the defendant (or an employee or agent of the
25 defendant) (the *seller*) asked the person to show the seller a
26 document of identification; and

27 (b) the person showed the seller a document of identification; and

- 1 (c) the seller had no reasonable grounds for believing that the
2 document was not a genuine document of identification of the
3 person.

4 **10 Sections 19 to 22**

5 *substitute*

6 **19 Sale of cigarettes**

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

9 Maximum penalty: 50 penalty units.

- 10 (2) A person commits an offence if the person sells cigarettes (including
11 cigarettes made from a herbal product) in a package designed—

12 (a) to hold less than 20 cigarettes; or

13 (b) to be, or be readily able to be, divided into portions each of
14 which contains less than 20 cigarettes.

15 Maximum penalty: 50 penalty units.

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

17 **20 Display of smoking products**

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

21 Maximum penalty: 50 penalty units.

22 **21 Prohibited smoking products**

- 23 (1) The Minister may declare that a smoking product is prohibited
24 (a *prohibited smoking product*).

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

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

9 **22 Prohibition on sale of prohibited smoking product**

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

12 Maximum penalty: 50 penalty units.

- 13 (2) In this section:

14 *prohibited smoking product*—see section 21 (1).

15 **11 Section 23**

16 *substitute*

17 **23 Prohibited smoking advertising**

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

19 (a) sells a film, videotape, DVD or other video recording, or an
20 audio recording, that contains a smoking advertisement; and

21 (b) is reckless about whether the film, videotape, DVD or other
22 video recording, or audio recording, contains a smoking
23 advertisement.

24 Maximum penalty: 50 penalty units.

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

6 Maximum penalty: 50 penalty units.

7 **Examples—unsolicited documents—par (a)**

- 8 1 leaflet
9 2 handbill

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

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

19 Maximum penalty: 50 penalty units.

- 20 (4) This section does not apply in relation to—
21 (a) a smoking advertisement that is an accidental or incidental
22 accompaniment to a film, videotape, DVD or other video
23 recording, or an audio recording; or
24 (b) a single price ticket at a point of sale for each product line for
25 sale (or usually available for sale) at the point of sale; or
26 (c) a personal use advertisement; or

- 1 (d) a smoking advertisement that is displayed at a point of sale if
2 the advertisement—
- 3 (i) is to the effect that smoking products are offered for sale
4 to people who are 18 years old or older; and
- 5 (ii) is the only smoking advertisement (other than a price
6 ticket mentioned in paragraph (b)) displayed at the point
7 of sale; and
- 8 (iii) does not contain a trademark or brand name, or part of a
9 trademark or brand name, of a smoking product; and
- 10 (iv) does not contain the name of a manufacturer or
11 distributor of a smoking product; and
- 12 (v) is not larger than A5 paper size (148mm x 210mm); or
- 13 (e) a document ordinarily used in the course of business.

14 (5) In this section:

15 ***personal use advertisement*** means the placement, display or
16 broadcast of a smoking advertisement, or of an object displaying a
17 smoking advertisement, in the course of the personal use of the
18 advertisement or object, unless the placement, display or
19 broadcast—

- 20 (a) is for a direct or indirect financial benefit; or
- 21 (b) is undertaken in the course of a business that involves the sale
22 of smoking products or the management of a retail outlet.

23 **Example—personal use**

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

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

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

3 (a) by payment, membership of a body or otherwise; or

4 (b) by entitlement or permission.

5 **Examples—public places**

- 6 1 business premises, including professional, trade and commercial premises
7 and wholesale outlets
- 8 2 a cinema or theatre
- 9 3 a club, hotel or motel
- 10 4 a community centre, hall or public library
- 11 5 government premises
- 12 6 a hostel or nursing home
- 13 7 a place of worship
- 14 8 a public transportation vehicle (including, a bus, taxi or boat)
- 15 9 a restaurant or cafeteria
- 16 10 a school, college or university
- 17 11 a shopping centre, mall or plaza
- 18 12 sporting or recreational premises.

19 **12 Removal of smoking advertisements**
20 **Section 24**

21 *omit*

22 section 23 (1) (d)

23 *substitute*

24 section 23 (3)

1 **13 Section 25**

2 *substitute*

3 **25 Smoking product promotions**

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

15 Maximum penalty: 50 penalty units.

- 16 (2) For subsection (1), an object or entitlement sold or distributed by a
- 17 person promotes a thing mentioned in subsection (1)(b) if a
- 18 reasonable person would believe that the object or entitlement
- 19 promotes, or is likely to promote, the thing.
- 20 (3) In applying this section in relation to an object that is a sound
- 21 recording, a video recording or a computer storage device, a
- 22 reference to the promotion of a thing is a reference to the promotion
- 23 of the thing by aural or visible material that the object is reasonably
- 24 capable of producing, or of causing to be produced, in its normal
- 25 use.

- 1 (4) In this section:
2 *entitlement* means an entitlement to goods or services, or to a
3 reduced price for goods or services.
4 *object* does not include a smoking product.
- 5 **25A Prohibition of smoking product sales contributing to**
6 **customer reward scheme**
- 7 (1) A person commits an offence, if in direct or indirect association
8 with the sale of a smoking product, the person provides, or offers to
9 provide, any of the following benefits:
10 (a) a prize, gift or discount;
11 (b) a voucher, ticket or other thing that allows a person access to a
12 prize, gift or discount;
13 (c) points or credit in a customer reward scheme that allows a
14 person to qualify for a thing mentioned in paragraph (a) or (b)
15 by accumulating a number of points, or credit, in association
16 with purchases.
- 17 Maximum penalty: 50 penalty units.
- 18 **Example—par (b)**
19 discount petrol vouchers offered by a supermarket chain
- 20 **Example—par (c)**
21 a shopping rewards program offered by a group of participating businesses,
22 members of which accumulate points by making purchases at those businesses,
23 and redeem the points for rewards
- 24 *Note* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 Legislation Act, s 126 and s 132).
- 27 (2) It is a defence to a prosecution for an offence against subsection (1)
28 if the defendant proves that it was not reasonably practicable to
29 identify that the sale of the smoking product was associated with the
30 provision of, or offer to provide, the benefit.

1 **14 Section 28**

2 *substitute*

3 **28 Prohibition of sponsorships**

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

17 Maximum penalty: 50 penalty units.

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

24 Maximum penalty: 50 penalty units.

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

- 1 (4) In this section:
2 *family member*, of a person, means—
3 (a) the person’s domestic partner; or
4 (b) a parent, step-parent or grandparent of the person; or
5 (c) a child, stepchild or grandchild of the person; or
6 (d) a brother, sister, stepbrother or stepsister of the person.

7 **15 Conditions of tobacco licence**
8 **Section 48 (2) (a)**

- 9 *omit*
10 section 21
11 *substitute*
12 section 8 (Numbers of points of sale)

13 **16 Duration of tobacco licence**
14 **Section 49 (2)**

- 15 *omit*
16 or revived

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

- 19 *omit*
20 , renew or revive
21 *substitute*
22 or renew

1 **18 Revival of expired retail tobacconist's licences**
2 **Section 52**

3 *omit*

4 **19 Disciplinary action—general**
5 **Section 56 (2) (a) (i) and (ii)**

6 *substitute*

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

11 (ii) to impose a condition prohibiting smoking advertising on
12 or adjacent to all or any of the premises specified in the
13 licence; or

14 **20 Regulation-making power**
15 **New section 73 (2A)**

16 *insert*

17 (2A) A regulation may prescribe requirements that must be complied with
18 in relation to the location or storage of smoking products.

19 **21 Section 73 (4)**

20 *omit*

21 10 penalty units

22 *substitute*

23 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 2007; 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 31 August 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 31 August 2008.

23 Dictionary, note 2, new dot points

insert

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

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

omit

- 1 **25 Dictionary, definition of *herbal product***
- 2 *substitute*
- 3 *herbal product* means a product prepared for smoking that contains
- 4 a herb or other plant matter but does not contain tobacco or a
- 5 controlled drug within the meaning of the Criminal Code, chapter 6
- 6 (Serious drug offences).
- 7 **26 Dictionary, definitions of *package* and *point of sale***
- 8 ***display***
- 9 *omit*
- 10 **27 Dictionary, definition of *price ticket***
- 11 *substitute*
- 12 *price ticket*—see section 4.
- 13 **28 Dictionary, definition of *product information notice***
- 14 *omit*
- 15 **29 Dictionary, definition of *public place***
- 16 *omit*
- 17 **30 Dictionary, definition of *theatre***
- 18 *omit*

1 **31 Dictionary, definition of *vending machine***

2 *substitute*

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

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

7 **Example—other objects—par (b)**

- 8 1 credit card
9 2 debit card
10 3 key

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

14 **32 Repeal of Tobacco Regulation 1991**

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

- 1 **Schedule 1 Criminal Code harmonisation**
2 (see s 3)
- 3 **[1.1] Section 14 (3)**
4 *substitute*
- 5 (3) A person commits an offence if the person uses someone else's
6 document of identification, or a forged document of identification,
7 for the purpose of obtaining a smoking product.
- 8 Maximum penalty: 10 penalty units.
- 9 **[1.2] Section 15**
10 *substitute*
- 11 **15 Purchase of smoking products for use by under 18 year
12 olds**
- 13 A person commits an offence if the person purchases a smoking
14 product for use by a person under 18 years old.
- 15 Maximum penalty: 50 penalty units.
- 16 **[1.3] Sections 17 and 18**
17 *substitute*
- 18 **17 Tobacco for non-smoking purposes**
- 19 A person commits an offence if the person manufactures or sells a
20 tobacco product that is not a product prepared for smoking.
- 21 Maximum penalty: 50 penalty units.

-
- 1 **18 Food and toys resembling or promoting smoking**
2 **products**
- 3 (1) A person commits an offence if the person—
- 4 (a) sells or imports food or a toy; and
- 5 (b) the food or toy, or its package or packaging, resembles—
- 6 (i) a smoking product; or
- 7 (ii) a smoking product package.
- 8 Maximum penalty: 50 penalty units.
- 9 (2) For subsection (1), food or a toy resembles a smoking product or a
10 smoking product package if a reasonable person would believe that
11 the resemblance exists, or is likely to exist.
- 12 (3) A person commits an offence if the person—
- 13 (a) sells or imports food or a toy; and
- 14 (b) the food or toy, or its package or packaging, publicises or
15 otherwise promotes 1 or more of the following things:
- 16 (i) a smoking product, or the purchase or use of a smoking
17 product;
- 18 (ii) a trademark or brand name, or part of a trademark or
19 brand name, of a smoking product;
- 20 (iii) the name or interests of a manufacturer or distributor of a
21 smoking product in association, directly or indirectly,
22 with the smoking product.
- 23 Maximum penalty: 50 penalty units.
- 24 (4) For subsection (3), food or a toy, or its package or packaging,
25 publicises or otherwise promotes a thing mentioned in
26 subsection (3) (b) if a reasonable person would believe that the food,
27 toy, package or packaging publicises or promotes, or is likely to
28 publicise or promote, the thing.

- 1 **[1.4] New sections 18A and 18B**
- 2 *insert*
- 3 **18A Declared smoking products**
- 4 (1) The Minister may declare that food or a toy, or its package or
5 packaging, is a *declared smoking product*.
- 6 (2) The Minister must not make a declaration under subsection (1)
7 unless satisfied that the food or toy, or its package or packaging—
- 8 (a) resembles a smoking product; or
- 9 (b) resembles a smoking product package; or
- 10 (c) may publicise or otherwise promote—
- 11 (i) a smoking product, or the purchase or use of a smoking
12 product; or
- 13 (ii) a trademark or brand name, or part of a trademark or
14 brand name, of a smoking product; or
- 15 (iii) the name or interests of a manufacturer or distributor of a
16 smoking product in association, directly or indirectly,
17 with the smoking product.
- 18 (3) A declaration is a notifiable instrument.
- 19 *Note* A notifiable instrument must be notified under the Legislation Act.
- 20 **18B Prohibition on sale or import of declared smoking**
21 **product**
- 22 (1) A person commits an offence if the person sells or imports a
23 declared smoking product.
- 24 Maximum penalty: 50 penalty units.
- 25 (2) In this section:
- 26 *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

- 1 (b) the competition promotes 1 or more of the following things:
- 2 (i) a smoking product, or the purchase or use of a smoking
- 3 product;
- 4 (ii) a trademark or brand name, or part of a trademark or
- 5 brand name, of a smoking product;
- 6 (iii) the name or interests of a manufacturer or distributor of a
- 7 smoking product in association, directly or indirectly,
- 8 with the smoking product.
- 9 Maximum penalty: 50 penalty units.
- 10 (2) For subsection (1), a competition conducted by a person promotes a
- 11 thing mentioned in subsection (1) (b) if a reasonable person would
- 12 believe that the competition promotes, or is likely to promote, the
- 13 thing.
- 14 (3) A person commits an offence if the person—
- 15 (a) conducts a competition; and
- 16 (b) the competition has a direct or indirect association with the sale
- 17 or consumption of a smoking product, or of smoking products
- 18 generally.
- 19 Maximum penalty: 50 penalty units.
- 20 (4) For subsection (3), a competition conducted by a person has a direct
- 21 or indirect association with a thing mentioned in subsection (3) (b) if
- 22 a reasonable person would believe that the competition has, or
- 23 would have, a direct or indirect association with the thing.

- 1 **[1.7] Section 34**
2 *substitute*
- 3 **34 Identity cards**
- 4 (1) The chief executive must give an authorised officer (other than a
5 public health officer or police officer) an identity card stating the
6 person's name and position.
- 7 (2) The identity card must show—
- 8 (a) a recent photograph of the person; and
9 (b) the card's date of issue and expiry; and
10 (c) anything else prescribed by regulation.
- 11 (3) A person commits an offence if the person—
- 12 (a) stops being an authorised officer; and
13 (b) does not return the person's identity card to the chief executive
14 not later than 7 days after the day the person stops being an
15 authorised officer.
- 16 Maximum penalty: 1 penalty unit.
- 17 (4) An offence against this section is a strict liability offence.
- 18 (5) Subsection (2) applies only in relation to a card given by the chief
19 executive after the commencement of this section.
- 20 (6) Subsection (5) is a law to which the Legislation Act, section 88
21 (Repeal does not end effect of transitional laws etc) applies.
- 22 (7) Subsections (5) and (6) and this subsection expire on the day they
23 commence.

1 **[1.8] New section 37 (2) and (3)**

2 *insert*

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

6 Maximum penalty: 50 penalty units.

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

8 **[1.9] Section 39**

9 *substitute*

10 **39 Power to require name and address**

- 11 (1) An authorised officer may require a person to state the person's
12 name and home address if the officer believes on reasonable
13 grounds that the person—

14 (a) is committing or has committed an offence against this Act; or

15 (b) can provide evidence of the commission of an offence against
16 this Act.

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

- 20 (2) The authorised officer must tell the person the reason for the
21 requirement and, as soon as practicable, record the reason.

- 22 (3) The authorised officer must also produce his or her identity card for
23 inspection by the person.

- 24 (4) A person must comply with a requirement made of the person under
25 subsection (1) if the authorised officer—

26 (a) told the person the reason for the requirement; and

- 1 (b) produced his or her identity card for inspection by the person.
2 Maximum penalty: 10 penalty units.
- 3 (5) An offence against this section is a strict liability offence.
4 (6) In this section:
5 *home address*, of a person, means the address of the place where the
6 person usually lives.

7 **[1.10] Section 41**

8 *omit*

9 **[1.11] Division 7.4**

10 *substitute*

11 **Division 7.4 Offences**

12 **59 Failure to return tobacco licence**

- 13 (1) A licensee commits an offence if—
14 (a) the registrar varies the licensee's licence; and
15 (b) the registrar gives the licensee notice of the variation; and
16 (c) the licensee does not return the licence to the registrar within
17 14 days after the day the licensee is given the notice.

18 Maximum penalty: 5 penalty units.

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

1 (c) the licensee does not return the licence to the registrar within
2 14 days after the day the licensee is given the notice.

3 Maximum penalty: 5 penalty units.

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

5 **60 Disqualification**

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

7 (a) is disqualified under division 7.3 (Disciplinary action) from
8 holding a tobacco licence for a stated period; and

9 (b) is involved in the direction, management or control of a
10 tobacco retailing business during the period.

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

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

14 (a) is disqualified under division 7.3 from holding a tobacco
15 licence for particular premises for a stated period; and

16 (b) is involved in the direction, management or control of a
17 tobacco retailing business at the premises during the period.

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

20 **61 Selling smoking products without, or in contravention of,
21 tobacco licence**

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

23 (a) is not a licensee; and

24 (b) sells a smoking product.

25 Maximum penalty: 50 penalty units.

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

3 Maximum penalty: 50 penalty units.

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

5 **62 Tobacco wholesaling—offences**

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

7 (a) carries on tobacco wholesaling; and

8 (b) is not the holder of a wholesale tobacco merchant's licence.

9 Maximum penalty: 100 penalty units.

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

11 (a) carries on tobacco wholesaling; and

12 (b) sells smoking products to someone who is not a licensee.

13 Maximum penalty: 100 penalty units.

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

16 (a) under the contract of sale, the smoking products were to be
17 delivered by the seller to the buyer outside the ACT, and that
18 no part of the smoking products has been delivered by the
19 seller to the buyer in the ACT; or

20 (b) if the contract did not state that the smoking products were to
21 be delivered outside the ACT, the parties intended the smoking
22 products to be delivered outside the ACT, and that no part of
23 the smoking products has been delivered by the seller to the
24 buyer in the ACT; or

25 (c) the defendant believed on reasonable grounds that the person
26 to whom the smoking product was sold was a licensee.

- 1 (4) A person commits an offence if the person—
2 (a) is not the holder of a wholesale tobacco merchant’s licence;
3 and
4 (b) sells a smoking product to someone else for sale in a vending
5 machine.
6 Maximum penalty: 100 penalty units.

7 **63 Tobacco retailing—offences**

- 8 (1) A person commits an offence if the person—
9 (a) carries on tobacco retailing; and
10 (b) is not the holder of a retail tobacconist’s licence.
11 Maximum penalty: 50 penalty units.
12 (2) The holder of a retail tobacconist’s licence commits an offence if—
13 (a) the holder carries on the business of selling smoking products
14 at premises; and
15 (b) the premises are not stated in the licence as premises that are to
16 be used in relation to the business.
17 Maximum penalty: 50 penalty units.
18 (3) An offence against subsection (2) is a strict liability offence.

19 **64 Display of licence details**

- 20 (1) The holder of a wholesale tobacco merchant’s licence commits an
21 offence if the holder fails to display a licence details notice in a
22 prominent place at each premises at which the holder carries on
23 business as the holder of the licence.
24 Maximum penalty: 5 penalty units.

- 1 (2) The holder of a retail tobacconist's licence commits an offence if the
2 holder—
- 3 (a) carries on business as the holder of the licence at premises; and
- 4 (b) fails to display a licence details notice at or in close proximity
5 to the point of sale (or, if there is more than 1 point of sale, 1 of
6 the points of sale) at the premises.
- 7 Maximum penalty: 5 penalty units.
- 8 (3) An offence against this section is a strict liability offence.
- 9 (4) In this section:
- 10 *licence details notice*, in relation to the holder of a licence, means a
11 notice stating—
- 12 (a) the holder's name; and
- 13 (b) the licence number; and
- 14 (c) any conditions that apply to the licence.

15 **65 Licensee stops carrying on business**

- 16 (1) A licensee commits an offence if the licensee—
- 17 (a) stops carrying on business under the licence; and
- 18 (b) fails to tell the registrar, in writing, that the licensee has
19 stopped carrying on business under the licence as soon as
20 practicable, but not later than 7 days, after the day the person
21 stops carrying on business.
- 22 Maximum penalty: 5 penalty units.
- 23 (2) An offence against this section is a strict liability offence.

- 1 **66 Endorsement on wholesale tobacco merchant’s invoices**
- 2 (1) The holder of a wholesale tobacco merchant’s licence commits an offence if—
- 3
- 4 (a) the holder issues an invoice in relation to the sale of a smoking product; and
- 5
- 6 (b) the invoice does not state, in upper case letters, ‘SOLD BY LICENSED ACT WHOLESALER’.
- 7
- 8 Maximum penalty: 5 penalty units.
- 9 (2) An offence against subsection (1) is a strict liability offence.
- 10 (3) A person commits an offence if the person—
- 11 (a) is not the holder of a wholesale tobacco merchant’s licence; and
- 12 and
- 13 (b) issues an invoice in relation to the sale of a smoking product that indicates (expressly or impliedly) that the person holds the licence.
- 14
- 15 Maximum penalty: 50 penalty units.
- 16
- 17 **67 Retail tobacconist must obtain smoking products from licensed wholesaler**
- 18
- 19 (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.
- 20
- 21 Maximum penalty: 50 penalty units.
- 22
- 23 (2) An offence against this section is a strict liability offence.
- 24 (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.
- 25
- 26

1 **[1.12] Dictionary, note 2, new dot points**

2 *insert*

- 3 • police officer
4 • public health officer

5 **[1.13] Dictionary, new definitions**

6 *insert*

7 *food* includes confectionery.

8 *import* means import into the ACT for sale.

9 *smoking product package* means a package that—

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

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

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