

2025

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

# Tobacco and Other Smoking Products Amendment Bill 2025

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FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

# **Tobacco and Other Smoking Products Amendment Bill 2025**

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## **A Bill for**

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**

2 This Act is the *Tobacco and Other Smoking Products Amendment Act*  
3 2025.

2 Commencement

5 This Act commences on the day after its notification day.

### 3 Legislation amended

9 This Act amends the *Tobacco and Other Smoking Products Act 1927*.

10 Note This Act also amends the *Magistrates Court (Tobacco and Other*  
11 *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)**

15 *insert*

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

17 (i) a requirement under the *Public Health (Tobacco and*  
18 *Other Products) Act 2023* (Cwlth) relating to the  
19 packaging, naming, appearance, physical features or  
20 content of a tobacco product; or

21 (ii) a requirement under another law of the Commonwealth  
22 relating to tobacco products that is prescribed by  
23 regulation; or

1                   **5                   Prohibition on sale of prohibited smoking product**  
2                   **New section 22 (2)**

3                   *insert*

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

5                   **6                   Section 31**

6                   *substitute*

7                   **Division 6.1                   Preliminary**

8                   **31                   Definitions—pt 6**

9                   In this part:

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

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

15                   *occupier*, of premises, includes—

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

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

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

1                   **7                   Sections 34 to 42**

2                   *substitute*

3                   **34                   Identity cards**

4                   (1) The director-general must give an identity card to an authorised  
5                   officer appointed under section 32 (1).

6                   (2) The identity card must show—

7                   (a) the authorised officer's name or a unique identification number;  
8                   and

9                   (b) a statement that the person is an authorised officer; and

10                   (c) a recent photograph of the officer; and

11                   (d) the card's date of issue and expiry; and

12                   (e) anything else prescribed by regulation.

13                   (3) A person must return their identity card to the director-general within  
14                   7 days after the day the person stops being an authorised officer.

15                   Maximum penalty: 1 penalty unit.

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

17                   (5) Subsection (3) does not apply to a person if their identity card is—

18                   (a) lost or stolen; or

19                   (b) destroyed by someone else.

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

1                   **35 Requirements before certain powers can be exercised**

2                   (1) This section applies to the exercise of any of the following powers by  
3                   an authorised officer:

4                   (a) giving a direction under section 36 (1) (Direction to give name  
5                   and address);

6                   (b) entering premises under section 37 (1) (b) or (c) (Powers of  
7                   authorised officer to enter premises);

8                   (c) giving a direction under section 39 (1) (e) (General powers on  
9                   entry to premises).

10                   (2) Before exercising the power, the authorised officer must—

11                   (a) either—

12                   (i) show their identity card to the affected person; or

13                   (ii) if the authorised officer intends to exercise the power other  
14                   than in person—give the affected person other evidence of  
15                   the authorised officer's identity; and

16                   (b) tell the affected person the reason for exercising the power; and

17                   (c) tell the affected person about—

18                   (i) for a direction under section 36 (1)—section 36 (3); or

19                   (ii) for a direction under section 39 (1) (e)—section 39 (2).

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

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

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

1 (4) In this section:

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

4 (a) the individual affected by the exercise of the power; or

7 *identity card* means—

10 (b) in relation to a public health officer under the *Public Health*  
11 *Act 1997*—the identity card issued to the officer under that Act;  
12 or

13 (c) in relation to a police officer—evidence that they are a police  
14 officer; or

15 (d) in relation to an investigator under the *Fair Trading (Australian*  
16 *Consumer Law) Act 1992*—the identity card issued to the  
17 investigator under that Act.

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

20 36 Direction to give name and address

21 (1) An authorised officer may direct a person to state the person's name  
22 and home address if the authorised officer believes on reasonable  
23 grounds that the person—

24 (a) is involved in the commission of an offence against this Act; or  
25 (b) may be able to assist in the investigation of an offence against  
26 this Act.

## 15 37 Powers of authorised officer to enter premises

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

17 (a) at any reasonable time, enter premises that the public is entitled  
18 to use or that are open to the public (whether or not on payment  
19 of money); or

20 (b) at any time, enter premises with the occupier’s consent; or

21 (c) at any reasonable time, enter premises if the authorised officer  
22 believes on reasonable grounds that—

23 (i) an offence against this Act is being, or is likely to be, or  
24 has just been, committed on the premises; and

## 18 38 Obtaining consent to entry

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

## 13 39 General powers on entry to premises

14 (1) An authorised officer who enters premises under this part may do 1 or  
15 more of the following in relation to the premises or anything at the  
16 premises:

17 (a) examine anything;  
18 (b) take a measurement or conduct a test;  
19 (c) take a sample;  
20 (d) take images, make audio or video recordings or any other kind  
21 of record;  
22 (e) if reasonably required for an authorised officer to exercise a  
23 power under this part, direct the occupier or anyone at the  
24 premises to do 1 or more of the following:

25 (i) give information, a document or other thing (including  
26 information, a document or thing that is not at the  
27 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

## 7 41 Decision on application for warrant

8 (1) If an application for a warrant is made under section 40, the  
9 magistrate may issue the warrant only if satisfied there are reasonable  
10 grounds for suspecting—  
11 (a) there is a particular thing or activity connected with an offence  
12 against this Act; and  
13 (b) the thing or activity—  
14 (i) is, or is being engaged in, at the premises; or  
15 (ii) may be, or may be engaged in, at the premises within the  
16 next 14 days.

17 (2) The warrant must include the following information:  
18 (a) a statement that an authorised officer may, with any necessary  
19 assistance or force, enter the premises and exercise the  
20 authorised officer's powers under this part;  
21 (b) details of the offence for which the warrant is issued;  
22 (c) the things that may be seized under the warrant;  
23 (d) the hours when the premises may be entered;  
24 (e) the date, within 14 days after the day of the warrant's issue,  
25 when the warrant ends.

1        **41A        Warrant issued on remote application**

2            (1) A magistrate may issue a warrant on application under section 40 (3)  
3            by—  
4                (a) if practicable—immediately giving a written copy of the warrant  
5                to the authorised officer; or  
6                (b) if not practicable—telling the authorised officer the following:  
7                    (i) the information mentioned in section 41 (2);  
8                    (ii) the date and time the warrant is issued.  
9            (2) If the magistrate issues a warrant under subsection (1) (b), the  
10            authorised officer must complete a form of warrant (the *warrant*  
11            *form*) stating—  
12                (a) the magistrate's name; and  
13                (b) the date and time the magistrate issued the warrant; and  
14                (c) the information mentioned in section 41 (2).  
15            (3) The written copy of the warrant, or the warrant form properly  
16            completed by the authorised officer, authorises the entry and exercise  
17            of the authorised officer's powers under this part.  
18            (4) The authorised officer must, as soon as reasonably practicable—  
19                (a) swear the application; and  
20                (b) give the magistrate—  
21                    (i) the sworn application; and  
22                    (ii) if the authorised officer completed a warrant form—  
23                    the warrant form.  
24            (5) On receiving the documents mentioned in subsection (4) (b), the  
25            magistrate must attach them to the warrant.

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

8 **41B** **Announcement before entry under warrant**

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

1      **41C      Warrant etc to be given to occupier**

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

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

9      **41D      Occupier entitled to watch search etc**

10     (1) If the occupier of premises is present at the premises while a warrant  
11      is being executed, the occupier is entitled to watch the authorised  
12      officer, and any person assisting the officer, conduct any search and  
13      exercise any other power authorised by the warrant.

14     (2) However, the occupier is not entitled to watch the authorised officer  
15      or a person assisting the officer exercise the powers if—  
16              (a) to do so would interfere with the powers being exercised; or  
17              (b) the occupier is under arrest and allowing them to watch the  
18              powers being exercised would interfere with the objective of the  
19              warrant.

20     (3) This section does not prevent a person from exercising powers under  
21      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.

1      **41F      Owner etc may access seized things**

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

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

8      **41G      Person must not interfere with seized things**

9            (1) A person commits an offence if—  
10            (a) a thing has been seized under this division; and  
11            (b) the person interferes with the thing or anything containing the  
12            thing; and  
13            (c) the person does not have the approval of an authorised officer to  
14            interfere with the thing.

15            Maximum penalty: 50 penalty units.

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

17      **41H      Authorised officer must give receipt for seized things**

18            (1) If an authorised officer seizes a thing under this division, they must—  
19            (a) as soon as practicable after seizing the thing, give the person  
20            from whom the thing was seized a receipt for the thing; or  
21            (b) if complying with paragraph (a) is not practicable—secure a  
22            receipt for the thing in a conspicuous place at the premises where  
23            the thing was seized.

## 7 41I Return of seized things

8 (1) If a thing is seized under this division—

9 (a) the thing must be returned to its owner; or

10 (b) reasonable compensation must be paid to the owner by the

11 Territory for the loss of the thing.

12 (2) However, the thing is not required to be returned and reasonable

13 compensation is not required to be paid if—

14 (a) both of the following apply:

15 (i) a prosecution for an offence connected with the thing

16 (a **relevant offence**) is started against the owner within the

17 1-year period;

18 (ii) the proceeding (including any appeal) is finalised and the

19 owner is convicted or found guilty of the offence; or

20 (b) an infringement notice for a relevant offence is served on the

21 owner within the 1-year period and—

22 (i) the owner gives notice disputing liability for the offence in

23 accordance with the *Magistrates Court Act 1930*,

24 section 132; and

25 (ii) an information is laid in the Magistrates Court against the

26 owner within 60 days after the day the notice is given; and



1        **41J           Order disallowing seizure**

2            (1) If a thing is seized under this division, a person claiming to be entitled  
3            to the thing may apply to the Magistrates Court for an order  
4            disallowing the seizure.

5            (2) The application—  
6              (a) must be made not later than 10 days after the day the thing is  
7              seized; and  
8              (b) must not be heard unless the applicant has served a copy of the  
9              application on the director-general.

10           (3) The director-general is entitled to appear as a respondent at the  
11           hearing of the application.

12           (4) The court must make an order disallowing the seizure if satisfied—  
13              (a) the applicant would, apart from the seizure, be entitled to the  
14              return of the seized thing; and  
15              (b) the thing is not connected with an offence against this Act; and  
16              (c) possession of the thing by the person would not be an offence.

17           (5) The court may also make an order disallowing the seizure if satisfied  
18           there are exceptional circumstances justifying the making of the  
19           order.

20           (6) If the court makes an order disallowing the seizure, the court may  
21           make 1 or more of the following ancillary orders:  
22              (a) an order directing the director-general to return the thing to the  
23              applicant or to someone else who appears to be entitled to it;  
24              (b) if the thing cannot be returned or has depreciated in value  
25              because of the disallowed seizure—an order directing the  
26              Territory to pay reasonable compensation;  
27              (c) an order about costs in relation to the application.

## 41K Costs of disposal of forfeited things

2 (1) This section applies if—

3 (a) a person is convicted or found guilty of an offence against this

4 Act in relation to something forfeited to the Territory under this

5 division; and

6 (b) the thing is connected with an offence against this Act; and

7 (c) the person was the owner of the thing immediately before its

8 forfeiture.

9 (2) Costs incurred by or on behalf of the Territory in relation to the lawful

10 disposal of the thing (including storage costs) are a debt owing to the

11 Territory by the person.

12 Division 6.5 Miscellaneous

## 13 41L Damage etc to be minimised

14 (1) In the exercise, or purported exercise, of a function under this part, an  
15 authorised officer must take reasonable steps to ensure that they, and  
16 any person assisting them, cause as little inconvenience, detriment or  
17 damage as possible.

18 (2) If an authorised officer, or a person assisting them, damages anything  
19 in the exercise or purported exercise of a function under this part, the  
20 authorised officer must give written notice of the details of the  
21 damage to the person they believe on reasonable grounds is the owner  
22 of the thing.

23 (3) If the damage occurs on premises entered under this part in the  
24 absence of the occupier, the notice may be given by securing it in a  
25 conspicuous place at the premises.

1      **42           Compensation for exercise of enforcement powers**

2      (1) A person may claim compensation from the Territory if the person  
3      suffers loss or expense because of the exercise, or purported exercise,  
4      of a function under this part by—  
5              (a) an authorised officer; or  
6              (b) a person assisting an authorised officer.

7      (2) Compensation may be claimed and ordered in a proceeding for—  
8              (a) compensation brought in a court of competent jurisdiction; or  
9              (b) an offence against this Act brought against the person making  
10       the claim for compensation.

11     (3) A court may order the payment of reasonable compensation for the  
12       loss or expense only if satisfied it is just to make the order in the  
13       circumstances of the particular case.

14     (4) A regulation may prescribe matters that may, must or must not be  
15       taken into account by the court in considering whether it is just to  
16       make the order.

17      **8           Dictionary, definition of *identity card***

18       *omit*

19      **9           Dictionary, new definition of *warrant***

20       *insert*

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

Amendment [1.1]

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1 **Schedule 1** **Magistrates Court (Tobacco**  
2 **and Other Smoking Products**  
3 **Infringement Notices)**  
4 **Regulation 2010—**  
5 **Consequential amendment**  
6 (see s 3)

7 **[1.1] Schedule 1, new item 6A**

8 *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 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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