

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY MEMORANDUM

SMOKING PRODUCTS LEGISLATION
AMENDMENT BILL 2000

Circulated by the authority of the
Minister for Health and Community Care
Michael Moore MLA

PART 1 – PRELIMINARY

1. Name of Act

Clause 1 provides that this amending legislation be named the *Smoking Products Legislation Amendment Act 2000*.

2. Commencement

The amendments to the *Tobacco Act 1927* commence in 2 stages. First, the amendments (other than those made by clauses 9 and 10 of the Bill) will commence immediately after the commencement of the *Tobacco Amendment Act 2000* on 1 July 2000. That Act inserted provisions relating to the licensing of tobacco products into the *Tobacco Act 1927*. Second, the provisions of *Tobacco Act 1927* amended by clauses 9 and 10 of the Bill do not commence until 11 November 2000 and the commencement of these provisions is delayed until then.

The amendments to the *Smoke-free Areas (Enclosed Public Places) Act 1994* will commence on the notification of this Act in the Gazette.

PART 2 – AMENDMENT TO TOBACCO ACT

3. Act amendment by pt 2 and sch 1

Clause 3 provides that this Part of the Act and Schedule 1 of the Act will amend the *Tobacco Act 1927*.

The amendments to the *Tobacco Act 1927* will commence after it has been amended by the *Tobacco Amendment Act 2000*. That Act renumbers the Tobacco Act. Accordingly, this Bill amends the Tobacco Act as it is renumbered by the *Tobacco Amendment Act 2000*.

The renumbering tables in Schedules 1 and 2 of the *Tobacco Amendment Act 2000* provide for a comparison of the Tobacco Act as it is presently numbered with the references to the renumbered sections and Parts used in this Bill.

4. Title

Clause 4 substitutes the present long title of the *Tobacco Act 1927* with a new long title that reflects the inclusion of herbal and other smoking products in the amending provisions of this Act. The previous title only referred to tobacco products.

5. Interpretation

Clause 5(a) amends section 2 of the Tobacco Act 1927 by removing the present definition of *tobacco product* and replacing it with a new definition. The new definition of *tobacco product* expands the definition to include tobacco and those products that contain tobacco rather than just products that are tobacco or whose main ingredient is tobacco.

Clause 5(b) removes the present definition of *tobacco advertisement*. A new expanded definition (*smoking advertisement*) is inserted by clause 6(b) of this Act.

Clause 5(c) inserts a number of new definitions required for the extension of the Act to include herbal products, other than herbal products that contain tobacco or an illegal drug:

drug
herbal product
smoking product

6. Tobacco advertisements

Clause 6(a) amends section 6 of the *Tobacco Act 1927* by replacing the heading 'Tobacco advertisements' with the heading 'Smoking advertisements'. This change reflects the wider scope of the provision which arises as a result of the inclusion of herbal and other smoking products, rather than only tobacco products.

Clause 6(b) replaces the definition of *tobacco advertisement* with a definition of *smoking advertisement*. This change reflects the wider scope of the provision which arises as a result of the inclusion of herbal and other smoking products, rather than only tobacco products.

Clause 6(c) replaces the term *tobacco advertisement* with the term *smoking advertisement*. This change reflects the wider scope of the provision which arises as a result of the inclusion of herbal and other smoking products, rather than only tobacco products.

7. Manner of display

Clause 7(a) replaces the term *tobacco product* with the term *smoking product*. This change has the effect of including herbal and other smoking products in the display requirements of the *Tobacco Act 1927*. This will restrict the display of herbal and other smoking products to a single representation of an immediate package of each product line.

Clause 7(b) replaces subparagraphs 10(1)(a)(ii) and 10(2)(a)(ii) of the *Tobacco Act 1927* with new subparagraphs that require tobacco and herbal smoking products to have a health warning to be displayed on each package or package representation that is displayed. Herbal products will only require a health warning to be displayed if there is a warning is prescribed by regulation.

Clause 7(c) and (d) replaces the terms *tobacco product* and *tobacco advertisement* with the terms *smoking product* and *smoking advertisement* respectively. This change has the effect of prohibiting herbal and other smoking product packages (including tobacco products) from being displayed in such a manner as to constitute a smoking advertisement.

8. Sale of cigarettes

Clause 8 inserts an amendment to section 19 of the *Tobacco Act 1927* that has the effect of prohibiting the sale of cigarettes (both tobacco and herbal) in quantities of fewer than 20.

9. Numbers of points of sale

Clause 9 amends subsections 21(1) and (2) of the *Tobacco Act 1927* to align the penalty provisions with current drafting practice.

10. Health warnings at point of sale displays

Clause 10 amends section 22 of the *Tobacco Act 1927* to require health warning notices to be displayed at a point of sale. A health warning notice must be displayed in the manner outlined in the section. A health warning notice for herbal and other smoking products may be required to be displayed if there is a warning notice prescribed by regulation. A health warning notice will be required to be displayed if tobacco products are sold. If only herbal smoking products are sold from a particular outlet and there is no health warning notice prescribed then no health warning notice will be required to be displayed.

11. Renumbering

Clause 11 provides for the renumbering of the *Tobacco Act 1927* once all of the amendments contained in this Act have been made and before the legislation is reprinted.

PART 3 – AMENDMENT OF THE TOBACCO REGULATIONS

12. Statement on vending machines

Clause 12 replaces the term *tobacco* with the term *smoking* in regulation 4 of the *Tobacco Regulations*. This amendment changes the wording of the statement required to be displayed on the front of vending machines. The prescribed statement will now read:

“The sale or supply of cigarettes and other smoking products to persons under the age of 18 years is prohibited.”

PART 4 – AMENDMENT OF THE SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES) ACT

13. Act amended by pt 4 and sch 2

Clause 13 provides that this Part of the Act and Schedule 2 of the Act will amend the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

14. Title

Clause 14 substitutes the present long title of the *Smoke-free Areas (Enclosed Public Places) Act 1994* with a new long title that reflects the inclusion of herbal and other smoking products in the amending provisions of this Act. The previous long title only referred to tobacco products.

15. Interpretation

Clause 15 amends section 3 of the *Smoke-free Areas (Enclosed Public Places) Act 1994* by replacing the heading *Interpretation* with the heading *Definitions*. The clause also makes a number of formatting changes to the section and inserts a new definition of the term *smoke*. A definition of the term *drug* is also inserted by this clause.

The terms *tobacco product* and *Tribunal* are removed from section 3 of the *Smoke-free Areas (Enclosed Public Places) Act 1994* by this clause. The term *tobacco product* is made obsolete by the newer definition of *smoke*. The amendments in schedule 2 to the Acts review provisions remove the need to define Tribunal.

16. Substitution

Clause 16 repeals section 4 of the *Smoke-free Areas (Enclosed Public Places) Act 1994* and replaces it with an expanded objective that encompasses the addition of herbal and other smoking products to the area of application of the Act.

The clause also inserts a new definition for the term *smoke* that encompasses the addition of herbal and other smoking products in the scope of the Act.

17. Renumbering

Clause 17 provides for the renumbering of the *Smoke-free Areas (Enclosed Public Places) Act 1994* once all of the amendments contained in this Act have been made and before the legislation is reprinted.

PART 5 – REPEALS

18. Repeals

Clause 18(1) repeals the Parts 1 and 2 *Tobacco (Amendment) Act 1999* and the *Tobacco Amendment Act 2000* on 12 November 2000. These Acts are repealed because their operation will have expired.

Clause 18(2) repeals the *Tobacco (Health Warnings) Act 1986*. This Act is repealed as it was made redundant by the *Commonwealth Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* that duplicates this Act.

SCHEDULE 1 – FURTHER AMENDMENTS OF THE TOBACCO ACT

Schedule 1 provides a number of technical and formal drafting amendments to the *Tobacco Act 1927*. These technical amendments are made primarily to give effect to the broadening of the *Tobacco Act 1927* to include herbal and other smoking products in its scope of operation. The formal drafting amendments have been made to reflect modern drafting practice.

SCHEDULE 2 – FURTHER AMENDMENTS OF THE SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES) ACT

Schedule 2 provides a number of technical and formal drafting amendments to the *Smoke-free Areas (Enclosed Public Places) Act 1994*. These technical amendments are made primarily to give effect to the broadening of the *Smoke-free Areas (Enclosed Public Places) Act 1994* to include herbal and other smoking products in its scope of operation. The formal drafting amendments have been made to reflect modern drafting practice.