

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

SUPPLEMENTARY EXPLANATORY MEMORANDUM

SMOKING PRODUCTS LEGISLATION AMENDMENT Bill 2000

Distributed by the Authority of the Minister for Health and
Community Care

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These provisions amend the Smoking Products Legislation Amendment Bill 2000.

1. Clause 2

Clause 1 omits Clause 2 of the Bill and substitutes a new Clause 2 'Commencement' and provides that:

- all sections, except sections 9 and 10, of the Smoking Products Legislation Amendment Bill 2000 commence on the day it is notified in the Gazette; and
- sections 9 and 10 of the Smoking Products Legislation Amendment Bill 2000 commence immediately after the commencement of section 13 of the *Tobacco (Amendment) Act 1999* being 11 November 2000.

2. Schedule 1, Item 1.28

Clause 2 omits Item 1.28 in Schedule 1 of the Smoking Products Legislation Amendment Bill 2000 and substitutes a new Item 1.28. The new Item 1.28 provides Subsections 24(1B) and (1C) of the *Tobacco Act 1927* are omitted and substitutes a new Subsection 24(1B) into the *Tobacco Act 1927*. The new Subsection 24(1B) provides that a person commits an offence in relation to each day during any part of which the person contravenes a notice under Subsection 24(1) of the *Tobacco Act 1927*.

This will provide an ongoing offence for refusing to remove prohibited advertising at the direction of an authorised officer. The authorised officer must provide this direction in the form of a notice that is set out in accordance with the requirements of section 24.

A person who commits an offence under Subsection 24(1B) of the *Tobacco Act 1927* may be penalised a maximum of 5 penalty units.

3. Schedule 2, Item 2.4

Clause 3 omits Item 2.4 in Schedule 2 of the Smoking Products Legislation Amendment Bill 2000 and substitutes a new Item 2.4. The new Item 2.4 provides that Section 13 of the *Smoke-free Areas (Enclosed Public Places) Act 1994* is omitted and substituted with a new Section 13 'Offences by smokers' and provides that:

- under Subsection 13(1) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, a person must not smoke in an enclosed public place if smoking in the place is prohibited by Subsections 5(1) or (2) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*. A person who does smoke in a prohibited area may be penalised a maximum of 5 penalty units;
- under Subsection 13(2) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, a defence to a prosecution under Subsection 13(1) of the *Smoke-free Areas (Enclosed Public Places) Act 1994* if an ignited substance is held for the purpose of removing it from the smoking prohibited area; and
- under Subsection 13(3) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, a person who is contravening Subsection 13(1) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, s/he must not, without a reasonable excuse, fail to comply with a direction to cease the contravention given by a Smoke-free Areas Inspector, an occupier of the enclosed public place, or an employee or agent of the occupier. A person who fails to comply with a direction under

Subsection 13(3) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, may be penalised a maximum of 5 penalty units.

4. Schedule 2, Proposed Items 2.5A and 2.5B

Clause 4 inserts after Item 2.5 of Schedule 2 to the Smoking Products Legislation Amendment Bill 2000, Items 2.5A and 2.5B. Item 2.5A inserts ‘; or’ at end of Subparagraph 14(2)(b)(ii) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*. Item 2.5B inserts, after Subparagraph 14(2)(b)(ii) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, Paragraph 14(2)(c) that provides an extra defence to prosecution for the occupier if the person who under Subsection 13(1) held or had control of the ignited substance for the purpose only of extinguishing or removing it from the enclosed public place. This defence ensures that the occupier is not prosecuted when a patron is extinguishing an ignited substance in the enclosed public place or removing it from the enclosed public place.