

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TOBACCO (AMENDMENT) BILL 1999

EXPLANATORY MEMORANDUM

**Circulated by the Authority of the Minister for Health and
Community Care**

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TOBACCO ACT 1927

1. Commencement

Clause 2 : provides for different provisions of the amending legislation to take effect at different times, as follows:

- (a) The formal provisions commence on gazettal.
- (b) Section 13 (number of points of sale) to commence in 6 months after gazettal.
- (c) The remaining provisions to commence by ministerial notice within 6 months after gazettal, or automatically after 6 months.

2. Definition of 'public place'

Clause 4: removes the exemption for places that are for the carrying on of a trade, business or profession from the definition of a 'public place'. The definition now covers all places where the public ordinarily has access.

3. Definition of 'sell'

Clause 4: removes the definition of 'sell' from section 3, a new definition of 'sell' will be inserted in section 3C .

4. Definition of 'tobacco advertisement'

Clause 4: removes the definition of 'tobacco advertisement' from section 3, a new definition of 'tobacco advertisement' will be inserted in section 3D .

5. Definition of 'authorised officer'

Clause 4: inserts a reference to section 12G which contains the definition of an officer authorised for the purposes of the Act.

6. Definition of 'Deputy Registrar'

Clause 4: inserts a reference to section 12B which contains the requirements for a Deputy Registrar of Tobacco.

7. Definition of 'functions'

Clause 4: inserts a definition of 'functions' which encompasses in its meaning both powers and duties.

8. Definition of 'group licence'

Clause 4: defines the meaning of a group licence (wholesale or retail) as the same as the meaning set out in the *Tobacco Licensing Act 1984*.

9. Definition of 'identity card'

Clause 4: describes the meaning of 'identity card' to which the Act refers. An identity card can be issued under section 12H of the Act, issued to a Public Health Officer under the *Public Health Act 1997* or issued to a Police Officer by the Commissioner of Police.

10. Definition of 'immediate package'

Clause 4: inserts the meaning of an 'immediate package', that is a package containing tobacco product. This definition specifies that cartons of tobacco products are not 'immediate packages'.

11. Definition of 'occupier'

Clause 4: inserts a definition for 'occupier' of a particular premises, which is generally defined as the person in control of the premises.

12. Definition of 'package'

Clause 4: inserts a provision which exempts the transparent wrapping of a tobacco product from the advertising provisions of the Act, except if the wrapper has a tobacco advertisement printed on it.

13. Definition of 'point of sale'

Clause 4: inserts a provision which defines the 'point of sale' as the place where tobacco products are sold and includes sales from vending machines.

14. Definition of 'point of sale display'

Clause 4: inserts a provision which defines 'point of sale display' as a display of tobacco products which complies with section 3A.

15. Definition of 'product notice'

Clause 4: inserts a provision which informs the reader that the meaning of 'product notice' can be found in section 3B of the Act.

16. Definition of 'premises'

Clause 4: inserts a provision which defines the meaning of 'premises'. 'Premises' includes vehicles, vessels, aircraft, permanent or temporary structures.

17. Definition of 'Registrar'

Clause 4: inserts a provision which defines 'Registrar' as the Registrar or Deputy Registrar of Tobacco authorised under section 12A of the Act.

18. Definition of 'retail outlet'

Clause 4: inserts a provision which defines 'retail outlet' as a premises where tobacco products are available for sale.

19. Regulations included as part of the Act.

Clause 4: inserts a provision which ensures that any reference made to the Act included any regulations made under the Act.

20. Definition of 'tobacco licence'

Clause 4: inserts a provision that defines a 'tobacco licence' as any retail or group retail tobacconist's licence or any wholesale or group wholesale tobacco merchant's licence issued under the *Tobacco Licensing Act 1984*.

21. Definition of 'tobacco retailing business'

Clause 4: inserts a provision that defines a 'tobacco retailing business' as a business that involves tobacco product retailing or the management of a retail outlet which retails tobacco products by means of vending machines.

22. Definition of 'variety of tobacco product'

Clause 4: inserts a provision which defines 'variety of tobacco product' as a product with a particular trademark or brand name on it.

23. Requirements for 'Point of sale displays'

Clause 5: inserts a provision, section 3A, which outlines the requirements for a point of sale display. A 'point of sale display' for the purposes of the Act is a place where tobacco products are displayed for sale within a retail outlet (except in the case of a vending machine).

This provision is added in order to standardise the number, size, type and positioning of point of sale tobacco product displays. The effect of the provision is to limit the area of tobacco product display to 1 square metre. The area (1 square metre) relates to a two dimensional plane, located 1 metre from the customer area in any direction and 1 metre from the floor of

the customer area. The space does not include the area taken up by a 'product information notice' which is permitted to be displayed adjacent to the point of sale display.

The provision prohibits the display of cartons of tobacco products as well as advertising materials which are not representations of the product packages or the packages themselves.

In the case of vending machines, a point of sale display means a place within a retail outlet where the display of tobacco products (or tobacco advertisements) is at least 1 metre above the floor.

In the case of both vending machines and other points of sale, a point of sale display is a place where the display of tobacco products and tobacco advertisements complies with any regulations made pursuant to the Act.

The effect of these provisions is to clarify exactly where tobacco products may be displayed. The requirement that tobacco products be displayed 1 metre or higher from the floor, will help ensure that these products are not positioned so that they are most visible to young children. The requirement that the products also be displayed at least 1 metre from the customer area will also reduce the product visibility to young children.

24. 'Product Information Notices' - defined

Clause 5: inserts a provision, section 3B, which outlines a standard method of product information display through the use of a 'product information notice'. A 'product information notice' is a black on white or white on black notice with a standard 72 point sans serif type (2 centimetres by 1.5 centimetres type) which contains text only and provides information on the tobacco products available for purchase. The size of the notice must not exceed 1 square metre in total area.

The effect of this provision is to restrict tobacco product information to a generic outlay in order to prevent product advertising being integrated into the product information. The provision provides that product information notices may only be displayed at or adjacent to a point of sale display.

25. 'Sell' - defined

Clause 5: inserts a provision, section 3C, which expands the meaning of 'sell' for the purposes of covering the full complement of tobacco product, foods and toys resembling tobacco products means of distribution. The term 'sell' covers all varieties of distribution regardless of benefit. In the case of tobacco products the term covers the distribution to persons under the age of 18 regardless of benefit.

26. 'Tobacco advertisements' - defined

Clause 5: inserts a provision (section 3D) which outlines the numerous forms of advertising which will be prohibited by the Act. Generally anything which promotes the use or brand name of tobacco products will constitute an advertisement under the definition. There is a qualification of this definition (section 3E) in order to allow companies who manufacture and / or retail tobacco products to use their company name in the course of normal business dealings, so long as the use does not promote the purchase or use of a tobacco product.

27. Supply of tobacco to persons under the age of 18

Clause 6: inserts a provision which provides a defence to the offence of selling tobacco products to persons under the age of 18 years. This provision protects the retailer (or employee of a retailer) from prosecution if a false form of identification is offered as proof of age. This provision also outlines the approved forms of identification; a drivers licence, a proof of age card, a passport or other documents issued by another State or Territory which are equivalent to those issued by the ACT. If a person, under the age of 18, offers an identification document which is forged or not their own in order to obtain a tobacco product then they will have committed a minor offence under subsection 4(5).

28. Purchase of tobacco products for under-18 year olds.

Clause 7: inserts a provision which increases the penalty for supplying tobacco products to persons under the age of 18 years from 10 penalty units to 50 penalty units.

29. Vending machines

Clause 8: inserts a provision which further restricts the placement of vending machines to within age restricted areas of age restricted premises. To more effectively prohibit young people from having access to these machines. Vending machines for public use will be located only in: (a) a bar-room specified in a licence under the *Liquor Act*; (b) the casino; or (c) a gaming area to which persons under the age of 18 are not allowed entry.

The provision also increases the penalty for permitting persons under the age of 18 years to obtain tobacco products from a vending machine from 10 penalty units to 50 penalty units and inserts a new penalty of 250 penalty units for an offence by a body corporate.

30. Non-smoking tobacco

Clause 9: inserts a provision which increases the penalty for selling or manufacturing non-smoking tobacco products from \$1000 to 10 penalty units and to 50 penalty units for a body corporate.

31. Food and toys resembling tobacco products

Clause 10: repeals the existing section 8 of the principal Act and inserts provisions which prohibit the sale of goods (or the packaging of goods) resembling tobacco products. This provision also restricts the sale of food and toys which promote a tobacco product, its use, a tobacco product brand name or trade mark. The food or toy (or its packaging) need only reasonably resemble a tobacco product, regardless of the producers intention or belief in making the products. This provision also applies to the importers or retailers of such products.

Regulations may be made under the Act which declare a particular good (food or toy) to resemble a tobacco product and hence prohibit the importation, sale or supply of that good in the Territory.

32. Sale of cigarettes in quantities fewer than 20

Clause 11: inserts a provision which increases the penalty for selling cigarettes in quantities fewer than 20, from \$1000 to 50 penalty units and to 250 penalty units for a body corporate.

33. Display of tobacco products at points of sale

Clause 12: inserts a provision, section 9A, that prohibits tobacco products from being displayed in or around a retail outlet and restricts their display to a point of sale. This means that tobacco products cannot be displayed anywhere else in the retail outlet except at a point of sale.

34. Number of points of sale

Clause 13: inserts a provision, section 9B, which restricts the number of points of sale which are permissible in a retail outlet. Section 9B(1) limits the number of points of sale in an unlicensed premises to one point of sale within the outlet and section 9B(2) limits the number of points of sale to five points of sale within a licensed premises. Five points of sale are permitted in a licensed premises to allow for the positioning of supervised vending machines in age restricted areas of larger licensed premises.

35. Promotion

Clause 14: inserts the words 'PART3 - ADVERTISING, PROMOTION AND SPONSORSHIP' in place of the words 'PART III - ADVERTISING AND SPONSORSHIP'. These words are inserted to reflect more accurately the content of this part of the Act.

36. Prohibited tobacco advertising

Clause 15: inserts provisions which prohibit certain advertising, regardless of whether there is a direct or indirect pecuniary benefit accruing to a person in relation to the display or broadcast of the advertising (this wording is omitted as a result of the provision). In the past, this stipulation has resulted in tobacco advertising being publicly displayed and distributed because enforcement authorities were unable to prove that a person received a pecuniary benefit.

The new provisions include the notion of 'broadcast' in reference to a tobacco advertisement to reflect the proposed amendment of the definition of 'tobacco advertisement' in s.3D to include audible as well as visual material. The prohibition on selling an object that is or that contains a tobacco advertisement is omitted because this matter is now included in other provisions.

The section 10(1)(d) makes it an offence for a tobacco advertisement to be placed, displayed or broadcast so that the advertisement is visible or audible from a public place.

Section 10(2) includes some changes for reasons of clarity and consistency. Other existing provisions are not affected, including the allowance for the display of a notice outside a shop to the effect that tobacco products are offered for sale in that place.

Section 10(1)(d) makes specific allowance for tobacco advertisements as long as they are included in a point of sale display as defined in section 3A.

Subsection 10(2)(ca) permits tobacco advertising, in the form of a product information notice, which must be adjacent to a point of sale display. The subsection, however, only permits tobacco advertising in the form of a single product information notice. This provision allows tobacco advertising, in the form of a product information notice, to be visible from a public place only when there is no point of sale display installed in the retail outlet. The product information notice must be located directly adjacent to the point of sale regardless of whether there is a point of sale display in the retail outlet or not.

Subsection 10(2)(cb) makes specific allowance for the personal use of things that would otherwise be considered to be tobacco advertisements as long as there is no direct or indirect pecuniary benefit involved. For example, the wearing of clothing bearing the name or logo of a tobacco product would not be prohibited unless the person benefited financially, directly or indirectly, from doing so. If the afore mentioned clothing was worn by persons conducting or employed to conduct a tobacco retailing business this would constitute an offence under this subsection, even if there is no financial benefit involved.

37. Removal of tobacco advertisements.

Clause 16: inserts a provision which makes it an offence to fail to comply with a notice given under section 11(1) of the Act.

Subsection 11(6) is omitted because it is no longer necessary to make special provision for the appointment of authorised officers for this section, in view of the new arrangements in section 12G.

Subsection 11(5) is replaced by a new section 11(1B) which installs a daily penalty regime for failure to comply with a notice issued under subsection 11(1). This penalty is only applicable after the designated period to comply with the notice expires. The notice is also required to inform the offending retailer that a daily penalty regime is applicable at the expiration of the designated period to comply, the required period is three days. A continuing offence will attract a daily penalty of 50 penalty units (250 penalty units for a body corporate) until the notice is complied with.

38. Promotions

Clause 17: inserts new provisions which clearly explain the types of tobacco promotion which are prohibited. The new section 11A prohibits the practice of offering items such as caps,

CD's, diaries, sporting goods and commemorative items which are attractive to young people and serve as an inducement to purchase tobacco products.

Subsection 11A(1) prohibits the sale of any object or entitlement which promotes a tobacco product, the trade mark or brand name of a tobacco product, or the name interests of a tobacco manufacture or distributor, whether directly or indirectly. There is a provision which strictly prohibits the sale of an object or promotional entitlement which is directly or indirectly related to the sale or consumption of tobacco products, this relates to objects such as lighters, cigarette cases and tobacco pouches.

Subsection 11A(2) explains that, in a prosecution for an offence against subsection 11A(1)(a), what a 'reasonable person' would believe to be a promotion will be considered to be the basis on which an object or promotional entitlement is considered to breach the Act.

Subsection 11A(3) prohibits the sale or distribution of objects or entitlements in association with the sale or consumption of tobacco products. Examples of such objects and entitlements could include lighters, tobacco pouches, cigarette cases, movie tickets, tickets to sporting events or diaries.

Subsection 11A(4) states that the prohibition in subsection 11A(3) is not intended to apply to objects or entitlements that would have been provided if non-tobacco goods were purchased. Examples of this would be 'Shop-a-Docket' discount coupons and 'Fly Buy' points, which are not issued specifically in relation to tobacco purchases.

Subsection 11A(5) will ensure that audio and video recording, and computer discs, may not be employed as mediums for promotions prohibited by s.11A(1).

Subsection 11A(6) explains that, for this section, a prohibited 'object' does not include the immediate package of the tobacco product, and a 'promotional entitlement' means an entitlement to food or services, or to a reduced price for goods or services.

Subsection 11A(7) defines 'entitlement' as a right to any benefit, good or service, and, distinguishes the immediate package of a tobacco product from the definition 'object', in order to exclude any offences under this section being construed through the normal sale of a tobacco product.

39. Promotional competitions

Clause 17: inserts a new provision, section 11B, which contains a specific prohibition on competitions that promote a tobacco product, the trademark or brand name of a tobacco product, or the name or interests of a tobacco manufacturer or distributor, whether directly or indirectly, with a tobacco product. This section also prohibits competitions which are conducted in direct or indirect association with the sale or consumption of a tobacco product, or of tobacco products generally. A promotion means any actions which a reasonable person would consider a promotion for the purposes of this Act.

40. Part 3A - Tobacco Retailing: Disciplinary Action

Clause 18: inserts a heading 'Part 3A - Tobacco Retailing: Disciplinary Action' for a new part of the Act which has been included to make provision for alternatives to prosecutions for offences by licensees, and for related purposes. It establishes a legislative link between compliance with the *Tobacco Act 1927* and the holding of a tobacco licence under the provisions of the *Tobacco Licensing Act 1984*.

41. Registrar of Tobacco

Clause 18: inserts a provision, section 12A, which establishes a new public service position of the Registrar of Tobacco. This position can be held by an existing public servant within the Department of Health and Community Care. The Registrar of Tobacco is empowered by the Act to commence disciplinary action for any contraventions of its provisions. The Registrar of Tobacco is empowered to consider any information provided by the Commissioner for

Australian Capital Territory Revenue relating to the Commissioner's administration of the *Tobacco Licensing Act 1984*, just as the Commissioner is empowered to consider any information provided by the Registrar of Tobacco relating to the administration of the *Tobacco Act 1927*.

42. Deputy Registrars of Tobacco

Clause 18: inserts a provision, section 12B, which allows for the establishment of one or more public service positions of Deputy Registrar of Tobacco. These positions can be held by existing public servants within the Department of Health and Community Care. The Deputy Registrar(s) of Tobacco are empowered to undertake all the duties of the Registrar of Tobacco, but must do so under the direction of the Registrar of Tobacco.

43. Prior notice of proposed disciplinary action

Clause 18: inserts a provision, section 12C, which restricts the Registrar of Tobacco from taking any disciplinary action under the Act until a notice has been issued to the person to which the disciplinary action will be directed. The notice must inform the person to whom the disciplinary action is to be directed of the circumstances or grounds being relied upon by the Registrar of Tobacco for the proposed action, the proposed disciplinary action to be taken and information on how to contest proposed disciplinary action. The notice is also required to give the person to which the proposed disciplinary action is to be directed at least 14 days in which to provide information in contest of the proposed disciplinary action. The provision requires the Registrar of Tobacco to take into account the information provided by a person in accordance with the notice when taking any disciplinary action under the Act.

44. Disciplinary action

Clause 18: inserts a provision, section 12D, which allows the Registrar of Tobacco to take disciplinary action against a person who has contravened a provision of the Act or a condition of their tobacco retailers or wholesalers licence. Actions such as prohibiting the operation of tobacco product vending machines by a person or on a premises for a period not exceeding five years, varying the tobacco licence conditions for a period not exceeding five years, prohibiting point of sale displays, prohibiting the sale of tobacco from one or more outlets specified on the tobacco licence, suspending a tobacco licence for a period not exceeding 3 months, cancelling a tobacco licence or disqualifying a person from holding a tobacco licence for a period not exceeding 5 years. In all cases disciplinary action may only be taken once a notice has been issued under section 12C and the time which is given to show cause (not less than 14 days) has expired.

Subsection 12D(4) provides for a person convicted of two offences under the Act within a two year period to have their tobacco licence cancelled, to be disqualified from holding a tobacco licence for a period not exceeding five years or to be prohibited from operating a tobacco product vending machine on any premises occupied by the twice convicted person.

Subsection 12D(5) outlines the penalty for contravening a disciplinary direction from the Registrar, or a Deputy Registrar, of Tobacco. The penalty is 50 penalty units or 6 months imprisonment or both for a natural person and 250 penalty units for a body corporate.

Subsections 12D(6) and (7) provide an offence for failure to return a tobacco licence within 14 days of the issuance of a licence cancellation, suspension or variation as a result of disciplinary action.

45. Disqualification

Clause 18: inserts a provision, section 12E, which prohibits a person disqualified from holding a tobacco licence from controlling a tobacco retailing business or a premises upon which a tobacco business is operated or being concerned with such businesses.

46. PART 3B - ENFORCEMENT

Clause 18: inserts interpretation provisions, section 12F, which defines 'offence' as any conduct which may, on reasonable grounds, be interpreted as an offence against this Act. The

provision also defines 'document or thing' connected to an offence under the Act as any document or thing which provides evidence to the commission of an offence, forms part of an offence or was used or was intended to be used in the commission of an offence.

Subsection 12F(3) provide an authorised officer the power to identify the occupier of a premises as a person who the officer reasonably believes is in control of the premises, if the occupier cannot be identified.

47. Authorised officers

Clause 18: inserts a provision, section 12G, which creates the position(s) of authorised officer(s) under the Act. An 'authorised officer' is a public servant delegated the power of an authorised officer under the Act by the Chief Executive, a Registrar or Deputy Registrar of Tobacco, a Public Health Officer authorised under the *Public Health Act 1997* and a police officer.

48. Identity cards

Clause 18: inserts a provision, section 12H, which requires an authorised officer delegated power under this legislation to be issued with a photo identity card. This provision does not apply to Public Health Officers or Police Officers, it only applies to public servants delegated power under the Act by the Chief Executive and the Registrar or Deputy Registrar(s) of Tobacco. The provision also requires the return of the identity cards issued under this section at the cessation of office.

49. Powers of entry

Clause 18: inserts a provision, section 12J, which grants an authorised officer the power to enter a non-residential premises at any reasonable time, enter any premises at any time with the consent of the person in charge or a person who appears to be in charge of the premises, or enter a premises under the conditions layed down in a search warrant issued under section 12J of the Act. The entry may be achieved with any reasonable assistance considered necessary by the authorised officer, however, force may only used to gain entry if a search warrant has been obtained. An authorised officer cannot remain on a premises if an occupier requests to see the officer's identity card and it is not produced at that time.

50. Consent to entry

Clause 18: inserts a provision, section 12K, which sets the procedure required by the Act in order to obtain a consent of entry under subsection 12J(1)(b), that is an authorised officer may enter a premises at any time with consent of the occupier. The authorised officer is required to get written consent from the occupier and before doing this the authorised officer must inform the occupier that they are entitled to refuse entry. The date and time that written consent is given must be recorded on the written consent form. If the consent is not obtained in accordance with this provision then entry to the premises by the authorised officer will be considered unlawful, as consent will not have been granted under the Act.

51. Powers of authorised officers

Clause 18: inserts a provision, subsection 12L(1), which outlines the powers authorised officers are granted under the Act. The powers of authorised officers are granted for the purposes of the Act and may only be used in respect of investigating offences against the Act or enforcing the Act. The powers include; the power to inspect any document or thing on the premises, take any document, take photographs of any thing on the premises, open and inspect any thing on the premises which is believed to contain a document or thing related to an offence under the Act, seize any document or thing connected with an offence under the Act and require any person on the premises to answer any question in relation to an offence, provide any information in relation to an offence or make available any document or thing on the premises.

Subsection 12L(2) empowers an authorised officer to apply the powers of subsection 12L(1) to any person found in a public place in order to obtain evidence of the commission of an offence under sections 4, 5, 7, 8, 9, 10, 11A, or 11B of the Act. The authorised officer must have

reason to believe that the person to whom the powers are to be applied have information relating to the commission of an offence or was involved in the commission of an offence. If the authorised officer does not produce his or her identity card at the request of the person, then the person is not required to comply with the requirements.

52. Power to require name and address

Clause 18: inserts a provision, section 12M, which empowers an authorised officer to require the name and address of a person whom he or she believes has information in relation to the commission of an offence under the Act. If a person requests the authorised officer to produce an identity card and he or she is unable to produce the card, then the person is not required to give a name and address. The authorised officer must inform the person from whom the name and address is required; the purpose of the need for that persons name and address and record those reasons in writing as soon as possible after giving them.

53. Search warrants

Clause 18: inserts a provision, section 12N, which allows authorised officers to apply to a magistrate for a search warrant in order to obtain evidence or information in relation to the commission of an offence under the Act. The magistrate must be satisfied that the authorised officer has reasonable grounds for believing that evidence may be obtained in relation to the commission of a offence before granting the warrant. If a warrant is granted it must contain; the name of the authorised officer authorised to execute the warrant, a description of the premises, the purpose for which the warrant was issued - including the nature of the alleged offence, state the time and day on which the entry is authorised or state that entry is authorised at any time of the day or night, include a description of the kind of documents or things which the powers of the authorised officer may apply and specify a date upon which the warrant will no longer have effect - that period being no longer than 1 month.

54. Obstruction of investigation

Clause 18: inserts a provision, section 12P, which makes it an offence for a person to obstruct an authorised officer while exercising powers under the Act. It is an offence to obstruct or hinder, without reasonable excuse, an authorised officer in the performance of his or her powers under this Act. It is also an offence to fail to comply, without reasonable excuse, with a requirement of an authorised officer to make a document or thing available, to furnish information, or to answer questions in relation to an investigation by an authorised officer.

55. Seized Items

Clause 18: inserts a provision, section 12Q, which provides for the return of any seized items or for compensation, on just terms, to be paid for the loss of the item if it is not returned. That is, items which are seized under powers provided to authorised officers by subsection 12L(1)(e) of the Act. The return of, or compensation for, the item will occur if a prosecution relating to the item is not instituted within 90 days of the seizure, or if the court does not find the offence proved. The seized item is forfeited to the Territory if it relates to an offence which is proved in court, and if the court so orders. If an offence is proved but the court does not order the return of the item, either the item will be returned or compensation will be paid to the owner.

56. Review of decisions

Clause 18: inserts a provision, section 12R, which provides that application may be made to the Administrative Appeals Tribunal to review decisions made by the Registrar under section 12D of the Act.

57. Notification of decisions

Clause 18: inserts a provision, section 12S, which requires the Registrar of Tobacco to inform a person to whom a decision of disciplinary action decision has been directed, of the disciplinary action to be taken, in the manner prescribed under the Code of Practice in force under section 25B of the *Administrative Appeals Tribunal Act 1989*.

TOBACCO LICENSING ACT 1984

58. Tobacco Licensing Act

Clause 19: is a provision which defines the 'Tobacco Licensing Act' as the *Tobacco Licensing Act 1984*.

59. Interpretation

Clause 20: inserts a provision into section 3, which defines 'Registrar of Tobacco' and 'Deputy Registrar of Tobacco' as having the same meaning as found in the *Tobacco Act 1927*.

60. Insertion

Clause 21: inserts a provision, section 4, which allows the Commissioner to take into account any information provided by the Registrar of Tobacco obtained in the administration of the *Tobacco Act 1927* when considering an application to grant a tobacco licence. The provision also allows the Commissioner to provide information obtained in the administration of the Act to the Registrar of Tobacco.

61. Grant of licence : tobacco

Clause 22: inserts a provision, subsection 26(1A), which allows for the application form for a Tobacco Licence to include information about the *Tobacco Act 1927*. The intention is to emphasise to prospective licensees that the right to sell tobacco products is linked to compliance with health legislation.

62. Refusal to grant licence

Clause 23: inserts a provision, subsections 27A(3A) and 27A(3B), which prohibit the Commissioner from granting a tobacco licence;

1. if a premises upon which vending machines are to operate is included in a proposed licence and the premises is prohibited from having vending machines upon it under the *Tobacco Act 1927* ;
2. if the issue of a tobacco licence would allow the holder of another tobacco licence to circumvent the held tobacco licence conditions or a suspension;
3. if the applicant is disqualified from holding a tobacco licence under the *Tobacco Act 1927* ;
4. if a person who is disqualified from holding a tobacco licence will be concerned with the proposed tobacco licence business;
5. if the premises concerned with the licence application is disqualified from carrying on a tobacco business under the *Tobacco Act 1927* .

The provision also requires that the names of each member of a group, if the application is a group application, be included in an application for a tobacco licence. If the applicant is a body corporate then the application must reference any director, secretary or officer of the body. This provision is to ensure that all people associated with the tobacco licence application are identified, so that any persons disqualified can be identified and not issued a tobacco licence.

63. Fee: tobacco licences

Clause 24: inserts a provision, subsection 28(1AA), which allows retail licence fees to be adjusted according to the number of points of sale, that is, the number of points of sale permitted by a tobacco licence will appear on the licence and the fee for the licence can be linked to the number of points of sale. The Minister is empowered to determine the fee for each point of sale appearing on the licence.