



Queensland

Tobacco and Other Smoking Products Amendment Act 2004

Act No. 47 of 2004



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Queensland

Tobacco and Other Smoking Products Amendment Act 2004

Act No. 47 of 2004

An Act to amend the *Tobacco and Other Smoking Products Act 1998* and for other purposes

[Assented to 18 November 2004]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Tobacco and Other Smoking Products Amendment Act 2004*.

2 Commencement

- (1) Sections 3, 5(1) and (2), 9, 35, 47(1) and 47(5) commence on assent.
- (2) Sections 33(2), 37, 40 (except to the extent it inserts new part 2C, division 1), 40A, 41 to 43, 45, 47(2), 47(6) and 47(9) commence on 1 January, 2005.
- (3) Sections 4, 5(3), 6 to 8, 10 to 32, 46, 47(3), 47(7), 47(10), 48 and the schedule commence on 31 December, 2005.
- (4) Sections 33(1), 33(3), 34, 36, 38, 39, 40 (to the extent it inserts new part 2C, division 1), 47(4) and 47(8) commence on 1 July, 2006.
- (5) Section 44 commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Tobacco and Other Smoking Products Act 1998*.

4 Amendment of s 9A (Supplier must take prevention measures)

Section 9A(1), penalty, ‘20 penalty units’—
omit, insert—
‘40 penalty units’.

5 Amendment of s 10 (Individual supplier must not supply smoking products to children)

- (1) Section 10, heading, ‘**Individual supplier**’—
omit, insert—
‘Supplier’.
- (2) Section 10(1), other than the penalty—
omit, insert—
- ‘(1) A supplier must not supply a smoking product to a child.’.
- (3) Section 10(1), penalty—
omit, insert—
‘Maximum penalty—
(a) for a first offence—140 penalty units; or
(b) for a second offence—280 penalty units; or
(c) for a third or later offence—420 penalty units.’.

6 Amendment of s 11 (Supplier must ensure employees do not supply smoking products to children)

- Section 11(1), penalty—
omit, insert—
‘Maximum penalty—
(a) for a first offence—140 penalty units; or
(b) for a second offence—280 penalty units; or
(c) for a third or later offence—420 penalty units.’.

7 Amendment of s 12 (When employee of supplier liable)

- Section 12(2), penalty—
omit, insert—
‘Maximum penalty—
(a) for a first offence—20 penalty units; or
(b) for a second or later offence—40 penalty units.’.

8 Replacement of s 13 (Suppliers may be prohibited from selling smoking products)

Section 13—

omit, insert—

‘13 Order prohibiting or restricting sale of smoking products

- ‘(1) This section applies if a supplier is convicted of an offence against section 10 or 11.
- ‘(2) The court sentencing the supplier for the offence may, on its own initiative or the application of the prosecutor, make an order—
 - (a) prohibiting the supply of all or stated smoking products by the supplier; or
 - (b) imposing conditions or restrictions on the supply of smoking products by the supplier.
- ‘(3) The period of the order must not be more than—
 - (a) for a first offence—6 months; or
 - (b) for a second offence—1 year; or
 - (c) for a third or later offence—3 years.
- ‘(4) If, when the offence happened, the supplier supplied smoking products at more than 1 outlet, the order may apply only to an outlet where the offence happened.
- ‘(5) The court may make the order in addition to imposing another penalty to which the supplier is liable because of the conviction.
- ‘(6) A person must not contravene an order under this section.
Maximum penalty—420 penalty units.
- ‘(7) A conviction under subsection (6) for contravening an order does not affect the continuation of the order.’.

9 Insertion of new s 13A

Part 2, division 1, after section 13—

insert—

‘13A Power to require details of retail suppliers

- ‘(1) This section applies if the chief executive reasonably believes a manufacturer or wholesaler of smoking products has supplied smoking products to suppliers for sale at retail outlets.
- ‘(2) The chief executive may, by written notice given to the manufacturer or wholesaler, require the manufacturer or wholesaler to give all or any of the following information (the ***contact information***) to the chief executive for each supplier to which the manufacturer or wholesaler has supplied smoking products—
- (a) the name of the supplier;
 - (b) if a supplier trades under a business name, that business name;
 - (c) the address of the supplier’s retail outlet;
 - (d) the supplier’s postal address;
 - (e) the supplier’s phone number;
 - (f) the supplier’s fax number and email address.
- ‘(3) The notice must state—
- (a) the period before the date of the notice, not exceeding 12 months, for which the contact information is required; and
 - (b) a date, not less than 28 days from the date of the notice, by which the contact information must be given to the chief executive; and
 - (c) the way the contact information must be given to the chief executive.
- Example—*
- The notice may require the contact information to be given by fax or email.
- ‘(4) The manufacturer or wholesaler must comply with the notice, unless the manufacturer or wholesaler has a reasonable excuse.

Maximum penalty—70 penalty units.

- ‘(5) The chief executive may use contact information or disclose contact information to a person only for the following purposes—
- (a) compiling and keeping a list of suppliers so that the suppliers may be advised about matters relating to this Act, including the requirements applying to suppliers;
 - (b) monitoring or enforcing compliance with this Act.’.

10 Amendment of s 15 (Restriction on location of tobacco product vending machines)

- (1) Section 15(2)(a), ‘if’—
omit, insert—
‘if the use of’.
- (2) Section 15(2)(c)—
omit, insert—
‘(c) a gaming machine area, if each tobacco product vending machine in the area—
- (i) can be easily observed by employees of the person in charge of the tobacco product vending machine; and
 - (ii) is not more than 1 m from a gaming machine in the gaming machine area.’.

11 Amendment of s 19 (Supply prohibited)

- Section 19(1), penalty, ‘70 penalty units’—
omit, insert—
‘140 penalty units’.

12 Insertion of new pt 2, div 3B

- After part 2, division 3A—
insert—

‘Division 3B False representation of age

‘19A Person must not falsely represent age

‘A person must not falsely represent himself or herself to have attained 18 years for the purpose of being supplied with a smoking product.

Maximum penalty—20 penalty units.’.

13 Amendment of s 20 (Supplier must display a prohibition sign)

Section 20(1), penalty, ‘10 penalty units’—

omit, insert—

‘20 penalty units’.

14 Amendment of s 21 (Person in charge of tobacco product vending machine must attach or display a prohibition sign)

Section 21, penalty, ‘10 penalty units’—

omit, insert—

‘20 penalty units’.

15 Amendment of s 22 (Cigarettes and herbal cigarettes must be sold in packages)

(1) Section 22(1), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

(2) Section 22(2), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

16 Replacement of ss 23 and 23A

Sections 23 and 23A—

omit, insert—

‘23 Loose tobacco must be sold in packages

‘(1) A supplier must not sell loose tobacco except in a package.

Maximum penalty—140 penalty units.

‘(2) A supplier must not sell loose tobacco in a package containing less than 25 g of loose tobacco.

Maximum penalty—140 penalty units.

‘23A Loose smoking blend must be sold in packages

‘(1) A supplier must not sell loose smoking blend except in a package.

Maximum penalty—140 penalty units.

‘(2) A supplier must not sell loose smoking blend in a package containing less than 15 g of loose smoking blend.

Maximum penalty—140 penalty units.’.

17 Amendment of s 24 (Supply of food or toys resembling tobacco products)

Section 24(1), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

18 Insertion of new pt 2A, div 1AA

Part 2A, before division 1—

insert—

‘Division 1AA Definitions

‘26AA Definitions for pt 2A

‘In this part—

humidified container means a container in which the humidity is controlled to preserve the quality of cigars in the container.

humidified room means a room in which the humidity is controlled to preserve the quality of cigars in the room.

smoking product means a tobacco product, herbal cigarette, loose smoking blend or cigarette papers.’.

19 Replacement of s 26A (Advertising and display to be as provided in this division)

Section 26A—

omit, insert—

‘26A Advertising and display to be as provided in this division

‘(1) A supplier must not advertise or display, or cause to be advertised or displayed, a smoking product other than at a retail outlet.

Maximum penalty—140 penalty units.

‘(2) A supplier must not advertise or display, or cause to be advertised or displayed, a smoking product at a retail outlet in any way other than a way specifically provided for in another section of this division.

Maximum penalty—140 penalty units.’.

20 Amendment of s 26B (Location of display of smoking products)

(1) Section 26B(4)—

omit.

- (2) Section 26B(5)—
renumber as subsection (4).
- (3) Section 26B(6)—
omit.

21 Insertion of new 26CA and 26CB

After section 26C—
insert—

‘26CA One smoking product display only per retail outlet

- ‘(1) Smoking products may be displayed at a retail outlet at 1 place only.
- ‘(2) Smoking products are taken to be displayed at more than 1 place if the display of the smoking products is not continuous.
- ‘(3) Despite subsection (2), cigars may be displayed in a humidified container that is separate from the rest of the display.
- ‘(4) The following are taken not to be a display, or part of a display, of smoking products—
 - (a) cigars in a humidified room if customers are not able to see into the room;
 - (b) a tobacco product vending machine.

‘26CB Size of smoking product display

- ‘(1) The area of the surface of a display of smoking products may be not more than—
 - (a) for a tobacconist—3 m²; or
 - (b) otherwise—1 m².
- ‘(2) The area of the surface of a display of smoking products includes any surface of a humidified container through which a customer can see the contents of the container.

- ‘(3) The area of the surface of a display of smoking products is taken to include the whole of the area within the perimeter of the display.’.

22 Amendment of 26D (Manner of display of immediate package of smoking product)

- (1) Section 26D(1)(b), ‘subsection (2)’—
omit, insert—
‘this section’.
- (2) Section 26D(3)—
renumber as section 26D(5).
- (3) Section 26D—
insert—
- ‘(3) Immediate packages in a stack dispenser may not be arranged as a display panel.
- ‘(4) Immediate packages in a stack dispenser are taken to be arranged as a display panel if—
- (a) the packages are arranged in a way that highlights the immediate packages to a person facing the stack dispenser, including by leaving spaces between the packages; and
- (b) the packages in the stack dispenser visible to a person facing the dispenser are considerably less in number than the packages that could be fitted into the same area of a stack dispenser that is designed to maximise the number of packages in the area visible to a person facing the dispenser.’.

23 Replacement of s 26F (Manner of display of cartons of smoking products)

- Section 26F—
omit, insert—

‘26F Display of health warning on humidified container and humidified room

- ‘(1) A humidified container or humidified room at a retail outlet must, on the container or the door to the room, have the same warning message and explanatory message as the warning message and explanatory message with which a retail package containing cigars is required to be labelled under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* (Cwlth).
- ‘(2) The warning message and explanatory message must be displayed on the container or door in the way prescribed under a regulation.’.

24 Amendment of s 26H (Display of retail prices of smoking product)

Section 26H—

insert—

- ‘(2) A display of smoking products must not include anything else about the price of a smoking product including, for example, a thing that states the price is discounted.’.

25 Insertion of new ss 26HA and 26HB

In part 2A, division 1, after section 26H—

insert—

‘26HA Certain business names allowed

‘A supplier does not advertise or display a smoking product merely by using a business name that includes a reference to a smoking product.

‘26HB Use of ‘tobacconist’ in advertising

‘A supplier who is a tobacconist does not advertise or display a smoking product merely by using the word ‘tobacconist’ in an advertisement or display for the tobacconist’s business.’.

26 Amendment of s 26I (Mandatory quit smoking sign)

Section 26I(1), penalty, ‘10 penalty units’—

omit, insert—

‘20 penalty units’.

27 Amendment of s 26L (Supply of object or entitlement that promotes smoking product etc.)

Section 26L(1), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

28 Amendment of s 26M (Supply of object or entitlement in association with smoking product sale or consumption)

(1) Section 26M(1), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

(2) Section 26M—

insert—

‘(4) However, subsection (3) does not apply if the object or entitlement would have been received by the person only if the person had bought the goods from the defendant or from a supplier nominated by the defendant.’.

29 Amendment of s 26N (Smoking product giveaways)

Section 26N(1), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

30 Amendment of s 26O (Competition that promotes smoking product)

Section 26O(1), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

31 Amendment of s 26P (Conduct of competition in association with smoking product sale or consumption)

Section 26P(1), penalty, ‘70 penalty units’—

omit, insert—

‘140 penalty units’.

32 Insertion of new s 26PA

Part 2A, division 3, after section 26P—

insert—

‘26PA Image of consumption of smoking product

‘(1) A supplier must not, at a retail outlet, display an image that promotes a person or thing consuming, using or being otherwise associated with, a smoking product.

Maximum penalty—140 penalty units.

‘(2) Subsection (1) does not apply to a trademark.’.

33 Amendment of s 26Q (Definitions for pt 2B)

(1) Section 26Q, definitions *bingo, bingo area, bingo session, dining area, enclosed, gaming table area* and *meal—*

omit.

(2) Section 26Q, definitions *occupier, residential premises* and *smoke—*

omit.

- (3) Section 26Q, definition *multi-unit residential accommodation*, after ‘means’—

insert—

‘hotel accommodation.’.

34 Amendment of s 26R (Person must not smoke in enclosed place)

Section 26R(2)(e)—

omit.

35 Insertion of new s 26RA

After section 26R—

insert—

‘26RA Regulation may require areas of licensed premises to be set aside as nonsmoking areas

- ‘(1) Despite section 26R(2)(e), for phasing in the ban on smoking in an enclosed place in licensed premises,¹ a regulation may—
- (a) require the licensee of licensed premises to progressively set aside parts of the licensed premises as parts in which a person must not smoke; and
 - (b) prescribe matters relating to the implementation and enforcement of the ban.
- ‘(2) Without limiting subsection (1), a regulation may do 1 or more of the following—
- (a) state the proportion of the whole of the area of the enclosed places at the licensed premises which must be set aside as an area or areas in which a person must not smoke;
 - (b) state the period for which the proportion of the area must be set aside;

¹ Section 26R(2)(e) is repealed on 1 July, 2006.

- (c) state the proportion of the total number of gaming machines in the licensed premises that must be situated in an area where a person must not smoke;
 - (d) prescribe the no smoking signs the licensee must display and the way they are to be displayed;
 - (e) state that a person must not smoke in an area set aside;
 - (f) state that a licensee must ensure a person does not smoke in an area set aside;
 - (g) impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.
- ‘(3) A regulation under this section must not state a proportion of the licensed premises that is the whole area of all enclosed places at the licensed premises.
- ‘(4) This section expires on 30 June 2006, and any regulation in force under this section also expires on that day.’.

36 Amendment of s 26S (No smoking sign)

- (1) Section 26S, from ‘containing’ to ‘for the area’—
omit, insert—
‘must display a no smoking sign at the entrance to the premises’.
- (2) Section 26S, penalty, ‘10 penalty units’—
omit, insert—
‘20 penalty units’.

37 Omission of s 26T (No right to smoke in enclosed place)

Section 26T—
omit.

38 Amendment of s 26U (Person smoking must stop when directed)

Section 26U—

insert—

- ‘(2) If a person does not comply with a direction to stop the contravention and the person is at a place where food or drink is provided, the occupier of the place must not provide food or drink to the person while the person continues to contravene section 26R.

Maximum penalty—140 penalty units.’.

39 Amendment of s 26V (Offence by occupier)

Section 26V(1), penalty, ‘20 penalty units’—

omit, insert—

‘140 penalty units’.

40 Insertion of new pt 2C

After part 2B—

insert—

‘Part 2C Smoke-free outdoor places

‘Division 1 Outdoor eating or drinking places

‘26W Meaning of outdoor eating or drinking place

- ‘(1) An *outdoor eating or drinking place* is a place, other than an enclosed place, provided by a person conducting a business for the consumption of food or drink provided from the business.
- ‘(2) However, a place mentioned in subsection (1) is an outdoor eating or drinking place only while—
- (a) food or drink is being provided from the business; or

- (b) food or drink provided from the business is being consumed at the place.
- ‘(3) Food or drink is taken to be provided from a business whether it is—
 - (a) served to a person in the outdoor eating or drinking place by or for the person conducting the business; or
 - (b) taken by a person from the business for consumption in the outdoor eating or drinking place.

‘26X Person must not smoke at outdoor eating or drinking place

- ‘(1) A person must not smoke at an outdoor eating or drinking place.
Maximum penalty—20 penalty units.
- ‘(2) Subsection (1) does not apply to a designated outdoor smoking area.

‘26Y Person smoking must stop when directed

- ‘(1) A person contravening section 26X(1) must comply with a direction to stop the contravention by—
 - (a) an authorised person; or
 - (b) an occupier of the outdoor eating or drinking place where the contravention is happening, or an employee or agent of the occupier.Maximum penalty—20 penalty units.
- ‘(2) If a person does not comply with a direction to stop the contravention, the occupier must not provide food or drink to the person while the person continues to contravene section 26X(1).
Maximum penalty—140 penalty units.

‘26Z Offence by occupier

‘(1) If a person contravenes section 26X(1), the occupier of the outdoor eating or drinking place where the contravention happens commits an offence.

Maximum penalty—140 penalty units.

‘(2) However, it is a defence for the occupier to prove—

(a) the occupier was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or

(b) the occupier, or an employee or agent of the occupier—

(i) directed the person to stop smoking; and

(ii) told the person it was an offence not to comply with a direction to stop smoking.

‘26ZA Designating an outdoor smoking area

‘(1) This section applies to the licensee of—

(a) premises to which a general licence or club licence under the *Liquor Act 1992* applies; or

(b) premises, to which a special facility licence under the *Liquor Act 1992* applies, that contain all or part of a casino.

‘(2) The licensee may designate a part of the outdoor area of the premises as an area in which smoking is allowed (a ***designated outdoor smoking area***) by posting a diagram or other notice clearly showing the limits of the area.

‘(3) There may be more than 1 designated outdoor smoking area at the premises.

‘(4) The licensee must not designate a part or parts of the outdoor area of the premises under subsection (2) other than in compliance with this section.

Maximum penalty—140 penalty units.

‘(5) The total area of the designated outdoor smoking area or areas must not be more than 50% of the whole outdoor area of the premises.

- ‘(6) Each designated outdoor smoking area must have buffers on its perimeter wherever it is adjacent to other parts of the outdoor area ordinarily accessed by patrons.
- ‘(7) Each buffer must be—
- (a) a screen, impervious to smoke, at least 2.1 m high; or
 - (b) an area, at least 2 m wide, in which patrons are not permitted to eat, drink or smoke.

Examples—

- a thick screening hedge, 2.1 m high
 - an artificial screen, 2.1 m high
 - a garden or pathway, 2 m wide
- ‘(8) For a buffer mentioned in subsection (7)(b), at least half of its area must be taken from the area that would otherwise form part of the designated outdoor smoking area.

‘26ZB Obligations of licensee of premises with designated outdoor smoking area

- ‘(1) This section applies to the licensee of premises at which there is a designated outdoor smoking area.
- ‘(2) The licensee must ensure that, in the designated outdoor smoking area—
- (a) no food or drink is served; and
 - (b) no food is consumed; and
 - (c) no entertainment is offered; and
 - (d) there are no gaming machines.

Maximum penalty—140 penalty units.

- ‘(3) The licensee must ensure the designated outdoor smoking area and its buffers comply with section 26ZA(5) to (8).

Maximum penalty—140 penalty units.

- ‘(4) The licensee must—
- (a) prepare, and keep up-to-date, a smoking management plan complying with section 26ZC; and

- (b) display a notice in or near the designated outdoor smoking area stating that the smoking management plan is available for perusal by patrons on request; and
- (c) make the plan available for perusal on request by a patron; and
- (d) produce the plan for inspection on request by an authorised officer.

Maximum penalty—70 penalty units.

- ‘(5) The licensee must not allow anyone to smoke in an outdoor area of the premises other than the designated outdoor smoking area.

Maximum penalty—140 penalty units.

‘26ZC Smoking management plans

- ‘(1) A *smoking management plan* is a document, prepared for premises at which there is a designated outdoor smoking area, stating how smoking is managed at the premises with the aim of reducing smoking at the premises.

- ‘(2) A smoking management plan must—

- (a) identify the designated outdoor smoking area; and
- (b) identify the outdoor areas where food is provided; and
- (c) identify the buffers under section 26ZA; and
- (d) state how the licensee will minimise the exposure of staff and patrons to environmental tobacco smoke; and
- (e) describe the training or instruction given to staff to ensure this Act and the plan are complied with; and

Example—

training to ensure patrons do not smoke outside the designated outdoor smoking area or take food into that area

- (f) provide for signage that clearly identifies where smoking is or is not allowed; and
- (g) include any other matters prescribed under a regulation.

‘Division 2 Major sports facilities

‘26ZD Meaning of major sports facility

‘A *major sports facility* is a facility declared to be a major sports facility under the *Major Sports Facilities Act 2001*.

‘26ZE Person must not smoke at major sports facility

- ‘(1) A person must not smoke at a major sports facility.
Maximum penalty—20 penalty units.
- ‘(2) Subsection (1) does not apply to the following areas of a major sports facility—
- (a) a road or carpark;
 - (b) a picnic area or area of parkland.

‘26ZF Person smoking must stop when directed

‘A person contravening section 26ZE(1) must comply with a direction to stop the contravention by—

- (a) an authorised person; or
- (b) an occupier of the major sports facility, or the part of the facility, where the contravention is happening, or an employee or agent of the occupier.

Maximum penalty—20 penalty units.

‘26ZG Offence by occupier

- ‘(1) If a person contravenes section 26ZE(1), the occupier of the major sports facility, or of the part of the facility, where the contravention happened, commits an offence.

Maximum penalty—140 penalty units.

- ‘(2) However, it is a defence for the occupier to prove—
- (a) the occupier was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or

- (b) the occupier, or an employee or agent of the occupier—
 - (i) directed the person to stop smoking; and
 - (ii) told the person it was an offence not to comply with a direction to stop smoking.

‘Division 3 Other outdoor places

‘26ZH Person must not smoke at a patrolled beach

- ‘(1) A person must not smoke in a patrolled beach area of a patrolled beach.

Maximum penalty—20 penalty units.

- ‘(2) In this section—

line means an imaginary line.

patrolled beach is a beach on which red and yellow flags mark the boundaries for safe swimming at the beach.

patrolled beach area, of a patrolled beach, is the area within—

- (a) a line, at right angles to 1 end of a straight line between the flags, extending seawards for 50 m and landwards to the extent of any registered land; and
- (b) another straight line, at right angles to the other end of the line between the flags, extending seawards for 50 m and landwards to the extent of any registered land; and
- (c) a line joining the landward ends of the lines mentioned in paragraphs (a) and (b) that follows the boundary of any registered land; and
- (d) a straight line joining the seaward ends of the lines mentioned in paragraphs (a) and (b).

registered land means—

- (a) freehold land on the freehold land register under the *Land Title Act 1994*; or

- (b) leasehold land, road, reserve, trust land, licence, permit or State Housing lease, recorded on a register under the *Land Act 1994*.

seawards means in the direction of the water to which the flags relate.

‘26ZI Person must not smoke at a prescribed outdoor swimming area

- ‘(1) A person must not smoke at a prescribed outdoor swimming area between sunrise and sunset.

Maximum penalty—20 penalty units.

- ‘(2) In this section—

outdoor swimming area means an area in, or adjacent to, a pool or other body of water used by the public for swimming.

Example—

an artificial beach

prescribed outdoor swimming area means an outdoor swimming area, or part of an outdoor swimming area, prescribed under a regulation.

‘26ZJ Person must not smoke near building entrance

- ‘(1) A person must not smoke within 4 m of any part of the entrance to a building, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(2) Subsection (1) does not apply to an entrance that is an entrance only to—

- (a) residential premises; or
(b) multi-unit residential accommodation; or
(c) premises to which a general licence or club licence under the *Liquor Act 1992* applies; or

- (d) premises, to which a special facility licence under the *Liquor Act 1992* applies, that contain all or part of a casino.
- ‘(3) Subsection (1) does not apply to—
 - (a) a person in a motor vehicle; or
 - (b) a person in an outdoor pedestrian mall prescribed under a regulation.
- ‘(4) It is a reasonable excuse for subsection (1) that the person was not remaining at or near the entrance of the building but was merely passing the entrance.
- ‘(5) Subsection (1) applies only while general access to the building is available by the entrance.

Example—

Subsection (1) applies to the entrance to a shop while the shop is open for business. It does not apply when the shop is closed for business, even if the shop owner or staff have after-hours access by that entrance.

- ‘(6) In this section—

general access, to a building, means either of the following types of access—

 - (a) public access;
 - (b) the access usually available to enable the building to be used in a way it is ordinarily used.

multi-unit residential accommodation means motels, hostels, boarding houses, nursing homes, residential accommodation comprising lots in a community titles scheme and other similar accommodation.

‘26ZK Person must not smoke near children’s playground equipment

- ‘(1) A person must not smoke within 10 m of any part of children’s playground equipment situated at a place that is ordinarily open to the public.

Maximum penalty—20 penalty units.
- ‘(2) Subsection (1) does not apply to—

- (a) a person in a motor vehicle; or
- (b) a person at residential premises or on land on which residential premises are built or may lawfully be built.

‘26ZL Person smoking must stop when directed

‘A person contravening section 26ZH(1), 26ZI(1), 26ZJ(1) or 26ZK(1) must comply with a direction by an authorised person to stop the contravention.

Maximum penalty—20 penalty units.

‘26ZM State and local governments administer this division

- ‘(1) Both the State and local governments have a role in administering this division.
- ‘(2) However, nothing in this division imposes a duty on a local government to enforce this division.

‘26ZN Role of local government

‘In exercising its jurisdiction of local government in enforcing this division, the local government has its executive role—

- (a) to administer and enforce this division in the local government’s area; and
- (b) for a patrolled beach area of a patrolled beach or a prescribed outdoor swimming area—to administer and enforce this division for the patrolled beach area or prescribed outdoor swimming area whether it is adjacent to or within the local government’s area.

‘26ZO State may require report from local government

- ‘(1) This section applies to a matter under this division administered and enforced by local governments.
- ‘(2) The chief executive, by written notice, may ask a local government to give the chief executive information about the

local government's administration and enforcement of the matter.

- '(3) The local government must comply with the request.

'26ZP Fines payable to local government

- '(1) This section applies if—
- (a) a proceeding for an offence is taken for a matter under this division by a local government; and
 - (b) a court imposes a fine for the offence.
- '(2) The fine must be paid to the local government.'

40A Insertion of new pt 2D

Before part 3—

insert—

'Part 2D Cannabis utensils

'26ZQ Production, sale or public display of cannabis utensils

- '(1) A person must not produce, sell or publicly display a cannabis utensil.
- Maximum penalty—140 penalty units.
- '(2) In this section—
- cannabis utensil* means an object for smoking cannabis sativa, colloquially known as a 'bong'.'

41 Replacement of ss 27 to 30

Sections 27 to 30—

omit, insert—

'27 Powers generally

- '(1) An authorised person has the powers given under this Act.

- ‘(2) In exercising the powers an authorised person is subject to the directions of the administering executive.
- ‘(3) If the authorised person is appointed by 2 or more chief executive officers, the authorised person is subject to the directions of the chief executive officer of the local government for the area in which the authorised person is exercising his or her powers under this Act.

‘28 Appointment

- ‘(1) The chief executive may appoint any of the following persons as an authorised person—
 - (a) a public service officer or employee;
 - (b) a health service employee;
 - (c) a person prescribed under a regulation.
- ‘(2) The chief executive officer of a local government may appoint any of the following persons as an authorised person for the local government and its area—
 - (a) an employee of the local government;
 - (b) if another local government consents—an employee of the other local government;
 - (c) another person under contract to the local government.
- ‘(3) The chief executive officers of 2 or more local governments may appoint an employee of, or another person under contract to, one of the local governments to be an authorised person for the local governments’ areas.

‘29 Qualifications for appointment

‘The administering executive may appoint a person as an authorised person only if the administering executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

'30 Appointment conditions and limit on powers

- '(1) An authorised person holds office on the conditions stated in—
- (a) the authorised person's instrument of appointment; or
 - (b) a signed notice given to the authorised person; or
 - (c) a regulation.
- '(2) The instrument of appointment, a signed notice given to an authorised person or a regulation may limit the authorised person's powers under this Act.
- '(3) In this section—
- signed notice* means a notice signed by the administering executive.

'30A Issue of identity card

- '(1) The administering executive must issue an identity card to each authorised person.
- '(2) The identity card must—
- (a) contain a recent photo of the authorised person; and
 - (b) contain a copy of the authorised person's signature; and
 - (c) identify the person as an authorised person under this Act; and
 - (d) state an expiry date for the card.
- '(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

'30B Production or display of identity card

- '(1) In exercising a power under this Act in relation to another person, an authorised person must—
- (a) produce the authorised person's identity card for the other person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.

- ‘(2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person’s inspection at the first reasonable opportunity.
- ‘(3) For subsection (1), an authorised person does not exercise a power in relation to another person only because the authorised person has entered a place as mentioned in section 33(2) or (3).

‘30C When authorised person ceases to hold office

- ‘(1) An authorised person ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the authorised person ceases to hold office;
 - (c) the authorised person’s resignation under section 30D takes effect.
- ‘(2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- ‘(3) In this section—
condition of office means a condition on which the authorised person holds office.

‘30D Resignation

‘An authorised person may resign by signed notice given to the administering executive.

‘30E Return of identity card

- ‘(1) A person who ceases to be an authorised person must return the person’s identity card to the administering executive within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- ‘(2) For subsection (1), for a person appointed under this Act as an authorised person by 2 or more chief executive officers, the identity card must be returned to one of the chief executive officers.’.

42 Replacement of s 48 (Compensation)

Section 48—

omit, insert—

‘48 Compensation

- ‘(1) If a person incurs loss or expense because of the exercise or purported exercise of a power under this part the person may claim compensation—
- (a) for the exercise or purported exercise of a power by or for the State—from the State; or
 - (b) for the exercise or purported exercise of a power by or for a local government—from the local government.
- ‘(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this part.
- ‘(3) Compensation may be claimed and ordered to be paid in a proceeding—
- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against this Act brought against the person claiming compensation.
- ‘(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.’.

43 Insertion of new s 51C

After section 51B—

insert—

‘51C Act does not create or preserve right to smoke

- ‘(1) To remove any doubt, it is declared that this Act does not create or preserve a right for a person to smoke in or at any place.
- ‘(2) Also, nothing in this Act affects the operation of another Act to the extent that the other Act prohibits smoking at any place.’.

44 Omission of s 52 (Review of Act)

Section 52—

omit.

45 Amendment of s 53 (Regulation-making power)

Section 53—

insert—

- ‘(2) A regulation may impose requirements about signs for part 2C.
- ‘(3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.’.

46 Insertion of new pt 5

After part 4—

insert—

‘Part 5 Transitional

‘54 Transitional—court order under s 13

‘Section 13 applies only to an offence committed after the commencement of the *Tobacco and Other Smoking Products Amendment Act 2004*, section 8.

'55 Transitional—amendment of regulation

'The amendment of the *Tobacco and Other Smoking Products Regulation 1998* by the *Tobacco and Other Smoking Products Amendment Act 2004* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.'

47 Amendment of schedule (Dictionary)

- (1) Schedule, definition *consumption*—
omit.
- (2) Schedule, definitions *multi-unit residential accommodation, occupier, residential premises* and *smoke*—
omit.
- (3) Schedule, definitions *duty free shop, package, prepackaged loose smoking blend, prepackaged loose tobacco* and *smoking product*—
omit.
- (4) Schedule, definitions *dining area, enclosed, gaming table area* and *meal*—
omit.
- (5) Schedule—
insert—
'**consumption**, of a smoking product, includes smoking, inhaling or chewing the smoking product.
gaming machine has the meaning given by the *Gaming Machine Act 1991*, schedule.'
- (6) Schedule—
insert—
'**administering executive** means—
 - (a) for a person appointed under this Act as an authorised person by the chief executive—the chief executive; or

- (b) for a person appointed under this Act as an authorised person by a chief executive officer—the chief executive officer; or
- (c) for a person appointed under this Act as an authorised person by 2 or more chief executive officers—the chief executive officers.

chief executive officer means the chief executive officer of a local government.

health service employee means a person appointed under the *Health Services Act 1991*, section 24.

major sports facility, for part 2C, division 2, see section 26ZD.

multi-unit residential accommodation—

- (a) for part 2B, see section 26Q; or
- (b) for part 2C, see section 26ZJ(6).

occupier, of a place or part of a place—

- (a) for part 3, division 2, see section 32; or
- (b) otherwise, means a person having the management or control, or otherwise being in charge, of the place or part.

patrolled beach see section 26ZH(2).

patrolled beach area see section 26ZH(2).

prescribed outdoor swimming area see section 26ZI(2).

residential premises means premises used, or intended to be used, as a place of residence or mainly as a place of residence and does not include multi-unit residential accommodation.

smoke means smoke, hold or otherwise have control over an ignited smoking product.’.

- (7) Schedule—

insert—

‘humidified container, for part 2A, see section 26AA.

humidified room, for part 2A, see section 26AA.

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loose tobacco means a tobacco product for smoking that is cut for retail sale, but does not include a cigarette or a cigar.

Example—

tobacco product commonly called ‘roll your own tobacco’ or ‘pipe tobacco’

package means—

- (a) for cigarettes—a package containing cigarettes packed by the manufacturer, or importer, of the cigarettes; or
- (b) for herbal cigarettes—a package containing herbal cigarettes packed by the manufacturer, or importer, of the herbal cigarettes; or
- (c) for loose tobacco—a package containing loose tobacco packed by the manufacturer, or importer, of the loose tobacco; or
- (d) for loose smoking blend—a package containing loose smoking blend packed by the manufacturer, or importer, of the loose smoking blend.

smoking product—

- (a) for part 2A, see section 26AA; or
- (b) otherwise, means a tobacco product, herbal cigarette or loose smoking blend.

tobacconist means a person who conducts a business selling smoking products by retail if—

- (a) 80% or more of the average gross turnover of the business is derived from the sale of smoking products; and
 - (b) the business is conducted separately from, not in conjunction with, and not within the premises of, any other business.’.
- (8) Schedule—

insert—

‘designated outdoor smoking area see section 26ZA.

enclosed means—

- (a) for a place other than a vehicle or part of a vehicle—having a ceiling or roof and, except for doors and passageways, completely or substantially enclosed, whether permanently or temporarily; or
- (b) for a place that is a vehicle, or part of a vehicle—having a ceiling or roof and, except for doors and exits, completely or substantially enclosed, whether permanently or temporarily.

outdoor area, of premises, means any area at the premises that is not enclosed.

outdoor eating or drinking place, for part 2C, division 1, see section 26W.’.

- (9) Schedule, definition *authorised person*, ‘section 27’—
omit, insert—
‘section 28’.
- (10) Schedule, definition *tobacco product*, ‘prepackaged’—
omit.

48 Amendments—schedule

The schedule amends the regulation mentioned in it.

Schedule Amendment of regulation

section 48

Tobacco and Other Smoking Products Regulation 1998

- 1 Section 6(1), ‘section 26H(a)’—**
omit, insert—
‘section 26H(1)(a)’.

- 2 Section 6(1)(a), ‘100 mm x 80 mm’—**
omit, insert—
‘80 mm x 40 mm’.

- 3 Section 7(1), ‘section 26H(a)’—**
omit, insert—
‘section 26H(1)(a)’.

- 4 Section 7(1)(a), ‘100 mm x 80 mm’—**
omit, insert—
‘80 mm x 40 mm’.

- 5 Section 8, ‘section 26H(a)’—**
omit, insert—
‘section 26H(1)(a)’.

Schedule (continued)

- 6 Section 9(1), ‘section 26H(b)’—**
omit, insert—
‘section 26H(1)(b)’.
- 7 Section 9(1)(a), ‘1 m²’—**
omit, insert—
‘0.5m²’.
- 8 Section 9(1)(b)(i)(B)—**
omit.
- 9 Section 9(1)(b)(i)(D)—**
omit.
- 10 Section 9(1)(b)(i)(C)—**
renumber as section 9(1)(b)(i)(B).
- 11 Section 9(1)(b)(i)(E)—**
renumber as section 9(1)(b)(i)(C).
- 12 Section 9(1)(b)(i)(F)—**
renumber as section 9(1)(b)(i)(D).