

Queensland



**TOBACCO AND OTHER
SMOKING PRODUCTS
(PREVENTION OF SUPPLY
TO CHILDREN) AMENDMENT
ACT 2001**

Act No. 20 of 2001

Queensland



TOBACCO AND OTHER SMOKING PRODUCTS (PREVENTION OF SUPPLY TO CHILDREN) AMENDMENT ACT 2001

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Queensland



**Tobacco and Other Smoking Products
(Prevention of Supply to Children)
Amendment Act 2001**

Act No. 20 of 2001

An Act to amend the Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998, and for other purposes

[Assented to 11 May 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001*.

2 Commencement

(1) If this section has not commenced by 31 May 2001, sections 3 and 48 are taken to have commenced on 31 May 2001.

(2) Part 2 (other than sections 3, 29 and 48), part 3 and sections 53(1), 54(1), (3) and (4) commence on 31 May 2002.

PART 2—AMENDMENT OF TOBACCO AND OTHER SMOKING PRODUCTS (PREVENTION OF SUPPLY TO CHILDREN) ACT 1998

3 Act amended in pt 2

This part amends the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*.

4 Replacement of title

Title—

omit, insert—

‘An Act to restrict the supply of tobacco and other smoking products to children, to restrict advertising and promotion of tobacco and other smoking products, to prohibit smoking in certain places, and for other purposes’.

5 Replacement of s 1 (Short title)

Section 1—

omit, insert—

‘1 Short title

‘This Act may be cited as the *Tobacco and Other Smoking Products Act 1998*.’.

6 Replacement of s 3 (Main object of Act and its achievement)

Section 3—

omit, insert—

‘3 Object of Act

‘The object of this Act is to improve the health of members of the public by reducing their exposure to tobacco and other smoking products.

‘3A How object is to be achieved

‘The object is to be achieved mainly by—

- (a) restricting the supply of tobacco and other smoking products to children; and
- (b) restricting the advertising and promotion of tobacco and other smoking products; and
- (c) reducing public exposure to smoke from tobacco and other smoking products; and
- (d) establishing a framework for monitoring, investigative and enforcement activities.’.

7 Insertion of new s 9A

After section 9—

insert—

9A Supplier must take prevention measures

‘(1) A supplier must take prevention measures in relation to employees of the supplier.

Maximum penalty—20 penalty units.

‘(2) In this section—

“**employee**”, of a supplier, means a person who supplies, or may supply, smoking products in the course of the person’s employment.’.

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

Section 10(1), penalty—

omit, insert—

‘Maximum penalty—

- (a) for a first offence—70 penalty units; and
- (b) for a second or later offence—140 penalty units.’.

9 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—70 penalty units; and
- (b) for a second or later offence—140 penalty units.’.

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

Section 12(2)—

omit, insert—

‘(2) After the prevention measures have been taken, the employee of the supplier must not, in the course of the employee’s employment, supply a smoking product to a child.

Maximum penalty—

- (a) for a first offence—10 penalty units; and
- (b) for a second offence—20 penalty units.’.

11 Amendment of s 13 (Suppliers may be prohibited from selling smoking products)

Section 13(5), penalty—

omit, insert—

‘Maximum penalty for subsection (5)—200 penalty units.’.

12 Replacement of ss 14 and 15

Sections 14 and 15—

omit, insert—

‘14 Definitions for div 2

‘In this division—

“bar” means a place in licensed premises that—

- (a) is stocked with liquor of various types; and
- (b) is used solely or mainly for the supply of liquor to customers; and
- (c) has a counter—
 - (i) across which liquor is supplied directly to customers; and
 - (ii) at which, or in the immediate vicinity of which, customers may immediately consume the liquor supplied.

“bar area”, of licensed premises, means the area—

- (a) in the immediate vicinity of a bar; and
- (b) not more than 5 m from the outer edge of the counter of the bar.

“employee”, of a person in charge of a tobacco product vending machine, means an employee of the person—

- (a) whose employment requires the employee to work near the vending machine; and
- (b) who, in performing the employee’s duties, can observe the use of the vending machine.

“**gaming machine area**” has the meaning given by the *Gaming Machine Act 1991*, section 2.¹

“**liquor**” has the meaning given by the *Liquor Act 1992*, section 4B.

“**prevention measures**”, by a person in charge of a tobacco product vending machine, means, for the person’s employees—

- (a) instructing the employees to—
 - (i) take reasonable steps to ensure that a child does not obtain a tobacco product from the vending machine, even if the product is for, or claimed to be for, an adult; and
 - (ii) sight acceptable evidence of age for a person before allowing the person to obtain a tobacco product from the vending machine, unless satisfied the person is an adult; and
- (b) obtaining written acknowledgment by each employee that the employee received the instructions mentioned in paragraph (a).

‘15 Restriction on location of tobacco product vending machines

‘(1) An occupier of premises must not have a tobacco product vending machine in the premises.

Maximum penalty—70 penalty units.

‘(2) Subsection (1) does not apply to—

- (a) a bar area of licensed premises if each tobacco product vending machine in the area can be easily observed by persons working behind the bar; or
- (b) a casino; or
- (c) a gaming machine area, if each tobacco product vending machine in the area can be easily observed by employees of the person in charge of the tobacco product vending machine.

¹ *Gaming Machine Act 1991*, section 2—

“**gaming machine area**” means any location on licensed premises where a licensee is permitted to install a gaming machine.

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‘(3) Also, subsection (1) does not apply to a tobacco product vending machine while it is not being used by anyone to supply tobacco products.

Example—

Subsection (1) does not apply to a tobacco product vending machine while it is being stored, transported or repaired.

‘(4) In a prosecution for an offence against subsection (1), proof that a tobacco product vending machine was capable of being used to supply tobacco products is evidence that the vending machine was being used to supply tobacco products at the relevant time.

‘15A Person in charge of tobacco product vending machine in bar area or gaming machine area must instruct employees

‘A person in charge of a tobacco product vending machine in a bar area or gaming machine area must take prevention measures in relation to the person’s employees.

Maximum penalty—20 penalty units.’

13 Amendment of s 16 (Supply of tobacco products from vending machines)

Section 16(1), penalty—

omit, insert—

‘Maximum penalty—

- (a) for a first offence—70 penalty units; and
- (b) for a second or later offence—140 penalty units.’

14 Amendment of s 17 (Persons in charge of tobacco product vending machines may be prohibited from possessing tobacco product vending machines)

Section 17(5), penalty—

omit, insert—

‘Maximum penalty for subsection (5)—200 penalty units.’

15 Amendment of s 18 (Prohibition on use of vending machine to supply herbal cigarettes and loose smoking blends)

Section 18(1), penalty—

omit, insert—

‘Maximum penalty—

- (a) for a first offence—70 penalty units; and
- (b) for a second or later offence—140 penalty units.’.

16 Amendment of s 18A (Application of div 3A)

Section 18A(a)(ii)—

omit, insert—

- ‘(ii) employees of suppliers in the course of the employees’ employment; or’.

17 Amendment of s 19 (Supply prohibited)

Section 19(1), penalty—

omit, insert—

‘Maximum penalty—70 penalty units.’.

18 Replacement of s 20 (Supplier of tobacco products must display prohibition signs)

Section 20—

omit, insert—

‘20 Supplier must display a prohibition sign

‘(1) A supplier must display a prohibition sign for the supplier’s point of sale as prescribed under a regulation.

Maximum penalty—10 penalty units.

‘(2) However, this section does not apply if the point of sale is a tobacco product vending machine.’.

19 Replacement of s 21 (Persons in charge of tobacco product vending machines must attach or display prohibition signs)

Section 21—

omit, insert—

‘21 Person in charge of tobacco product vending machine must attach or display a prohibition sign

‘A person in charge of a tobacco product vending machine must attach a prohibition sign to, or display a prohibition sign near, the vending machine, as prescribed under a regulation.

Maximum penalty—10 penalty units.’.

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

(1) Section 22(1), penalty—

omit, insert—

‘Maximum penalty—70 penalty units.’.

(2) Section 22(2), penalty—

omit, insert—

‘Maximum penalty—70 penalty units.’.

21 Amendment of s 23 (Prepackaged loose tobacco must not be sold under certain quantity)

Section 23, penalty—

omit, insert—

‘Maximum penalty—70 penalty units.’.

22 Amendment of s 23A (Prepackaged loose smoking blend must not be sold under certain quantity)

Section 23A, penalty—

omit, insert—

‘Maximum penalty—70 penalty units.’.

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

Section 24(1), penalty—

omit, insert—

‘Maximum penalty—70 penalty units.’.

24 Replacement of pt 2, div 7, heading

Part 2, division 7, heading—

omit, insert—

‘Division 7—Defence to charges for offences if age material’.

25 Omission of s 25 (Liability of person for conduct of representatives)

Section 25—

omit.

26 Insertion of new pts 2A and 2B

After section 26—

insert—

‘PART 2A—ADVERTISING, DISPLAY AND PROMOTION OF SMOKING PRODUCTS

‘Division 1—Retail advertising and display

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

‘A supplier must not advertise or display, or cause to be advertised or displayed, a smoking product other than—

- (a) at a retail outlet; and
- (b) as provided under this division.

Maximum penalty—70 penalty units.

‘26B Location of display of smoking products

‘(1) A display of smoking products may only be located—

- (a) at a point of sale; and
- (b) either—
 - (i) on the seller’s side of the point of sale; or
 - (ii) above or below a counter where customers are served, in a way that the smoking products can not be accessed by customers without the help of the supplier or an employee of the supplier.

‘(2) Smoking products must not be located on a counter where customers are served at a point of sale.

‘(3) However, a display of cigars may be located other than at a point of sale if the cigars—

- (a) are in a humidified container that can be accessed only by a supplier or an employee of the supplier; or
- (b) are kept in a humidified room where the cigars can be accessed by a customer but only if, while the customer is in the room, the customer is accompanied by the supplier or employee.

‘(4) Also, a duty free shop may display a smoking product anywhere in the shop.

‘(5) This section does not apply to a tobacco product vending machine.

‘(6) In this section—

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

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

‘26C Availability for sale of displayed products

‘The only smoking products that may be displayed at a retail outlet are the smoking products available for sale, or usually available for sale, at the retail outlet.

‘26D Manner of display of immediate package of smoking product

‘(1) A display of a product line of an immediate package of a smoking product may consist of the display of the product line in 1 only of the following ways—

- (a) by the display of a single immediate package of the product line in the form in which the package is available, or usually available, for sale;
- (b) by a stack dispenser for immediate packages of the product line that complies with subsection (2);
- (c) by a single representation of the immediate package of the product line in the form in which the package is available, or usually available, for sale that—
 - (i) is no larger than the actual size of the package, with the same appearance as the package; and
 - (ii) includes a representation of the health warning with which the package is required to be labelled under the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations (Cwlth).

‘(2) The display of a product line of a smoking product by a stack dispenser for immediate packages of the product line is permitted in 1 only of the following ways—

- (a) by stacking immediate packages directly behind each other, whether horizontally, or on an angle to the horizontal, in a way that the most that is displayed is—
 - (i) a face and the top, sides and bottom of a single immediate package at the front of the stack (from the point of view of the customer); and
 - (ii) the tops, sides and bottoms of the other immediate packages in the stack;
- (b) by stacking immediate packages on top of each other so that only 1 package in the stack, and no part of any other package in the stack, is displayed.

‘(3) In this section—

“**stack dispenser**” means the following, from which smoking products may be taken by a supplier, or an employee of a supplier, for sale to a person, but does not include a tobacco product vending machine—

- (a) a device containing smoking products;
- (b) a stack or other arrangement of smoking products not contained in a device.

‘26E Manner of display of individual cigars

‘A display of a product line of cigars consisting of individual cigars may only consist of a maximum of 13 cigars.

‘26F Manner of display of cartons of smoking products

‘(1) A display of a product line of a carton of a smoking product may only consist of the display of a single carton of the product line in the form in which the carton is available, or usually available, for sale.

‘(2) However, a duty free shop may display more than 1 carton of a product line of a smoking product.

‘26G When display must not constitute advertisement

‘(1) A display of smoking products must not consist of a display of the products, or representations of the products, that constitute a tobacco advertisement itself as distinct from the display or representation allowed under this division.

‘(2) Packages of smoking products must not be arranged in a way that creates a composite picture or other meaningful visual image whose component parts are printed on individual packages.

‘26H Display of retail prices of smoking product

‘A display of smoking products may include the retail price of the products only if the price is displayed in 1 or both of the following ways—

- (a) by a price ticket, or other indicator of price for each product line, as prescribed under a regulation;
- (b) by a single price board for product lines prescribed under a regulation.

‘Division 2—Quit smoking signs

‘26I Mandatory quit smoking sign

‘(1) A supplier must display a quit smoking sign for the supplier’s point of sale as prescribed under a regulation.

Maximum penalty—10 penalty units.

‘(2) In this section—

“quit smoking sign” means a sign designed to encourage a person who smokes, to stop smoking.

‘Division 3—Promotions of smoking products

‘26J Definitions for div 3

‘In this division—

“entitlement” means an entitlement to goods or services, or to a reduced price for goods or services.

“object” includes a document and does not include a smoking product.

‘26K When division does not apply

‘This division does not prevent a promotion of a smoking product by a manufacturer or distributor if the promotion is only to a supplier.

‘26L Supply of object or entitlement that promotes smoking product etc.

‘(1) A person must not supply an object or entitlement that promotes—

- (a) a smoking product; or
- (b) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
- (c) the name or interests of a manufacturer or distributor of a smoking product in association, whether directly or indirectly, with the smoking product.

Maximum penalty—70 penalty units.

‘(2) In a prosecution for an offence against subsection (1), to establish whether an object or entitlement promotes a matter—

(a) it is enough to prove—

- (i) that material published by the defendant relating to the object or entitlement would be likely to cause a reasonable person to believe the object or entitlement promoted, or was intended to promote, the matter; or
- (ii) that there are other reasonable grounds for believing the object or entitlement promoted, or was intended to promote, the matter; and

(b) the matter may be found to be promoted by the object or entitlement irrespective of the actual belief of the defendant.

‘(3) In this section—

“**promotes**”, in relation to the promotion of a matter by an object that is a sound recording, video recording or a computer storage device, includes the promotion of the matter by aural or visible material that the object is reasonably capable of producing, or causing to be produced, in its normal use.

‘26M Supply of object or entitlement in association with smoking product sale or consumption

‘(1) A person must not supply an object or entitlement if the supply is in direct or indirect association with the sale or consumption of a smoking product, or of smoking products generally.

Maximum penalty—70 penalty units.

‘(2) In a prosecution for an offence against subsection (1), to establish whether an object or entitlement is supplied in direct or indirect association with a matter—

(a) it is enough to prove—

- (i) that material published by the defendant relating to the object or entitlement would be likely to cause a reasonable person to believe the supply to be in that association, or intended to be in that association; or
- (ii) that there are other reasonable grounds for believing the supply to be in that association, or intended to be in that association; and

- (b) the supply may be found to be in that association irrespective of the actual belief of the defendant.

‘(3) It is a defence to a prosecution for an offence against subsection (1), if the defendant proves that the person receiving the object or entitlement would have received the same object or entitlement if the person had bought goods of whatever kind other than a smoking product to the same value as the smoking product.

‘26N Smoking product giveaways

‘(1) A person must not supply a smoking product for free if the supply promotes the sale of a smoking product.

Maximum penalty—70 penalty units.

‘(2) In a prosecution for an offence against subsection (1), to establish whether the supply of a smoking product for free promotes the sale of a smoking product—

- (a) it is enough to prove—
- (i) that material published by the defendant relating to the supply would be likely to cause a reasonable person to believe the supply promoted, or was intended to promote, the sale; or
 - (ii) that there are other reasonable grounds for believing the supply promoted, or was intended to promote, the sale; and
- (b) the sale may be found to be promoted by the supply irrespective of the actual belief of the defendant.

‘26O Competition that promotes smoking product

‘(1) A person must not conduct a competition that promotes—

- (a) a smoking product; or
- (b) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
- (c) the name or interests of a manufacturer or distributor of a smoking product in association, whether directly or indirectly, with the smoking product.

Maximum penalty—70 penalty units.

‘(2) In a prosecution for an offence against subsection (1), to establish whether a competition promotes a matter—

- (a) it is enough to prove—
 - (i) that material published by the defendant relating to the competition would be likely to cause a reasonable person to believe the competition promoted, or was intended to promote, the matter; or
 - (ii) that there are other reasonable grounds for believing the competition promoted, or was intended to promote, the matter; and
- (b) the matter may be found to be promoted by the competition irrespective of the actual belief of the defendant.

‘26P Conduct of competition in association with smoking product sale or consumption

‘(1) A person must not conduct a competition that has a direct or indirect association with the sale or consumption of a smoking product, or of smoking products generally.

Maximum penalty—70 penalty units.

‘(2) In a prosecution for an offence against subsection (1), to establish whether a competition has a direct or indirect association with a matter—

- (a) it is enough to prove—
 - (i) that material published by the defendant relating to the competition would be likely to cause a reasonable person to believe the competition to have that association, or to be intended to have that association; or
 - (ii) that there are other reasonable grounds for believing the competition to have that association, or to be intended to have that association; and
- (b) the competition may be found to have that association irrespective of the actual belief of the defendant.

‘PART 2B—SMOKE-FREE ENCLOSED PLACES

‘26Q Definitions for pt 2B

‘In this part—

“common area”, of multi-unit residential accommodation, means an area accessible to all, or a specified class of, residents of, or persons employed at, the accommodation.

Example—

A TV room or cooking facilities shared by all, or a specified class of, residents.

“community titles scheme” has the meaning given by the *Body Corporate and Community Management Act 1997*, section 11.²

“dining area” means an area where meals may be consumed.

“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.

“exempt vehicle” means a vehicle being used—

- (a) for private use; or
- (b) for business use, if only 1 person is in the vehicle.

“gaming table area”, for a casino, means an area within 2.4 m of a gaming table at the casino.

“licensed premises” means—

- (a) licensed premises under the *Liquor Act 1992*; or
- (b) a place with a permit under the *Liquor Act 1992*, section 97; or
- (c) licensed premises under the *Wine Industry Act 1994*; or
- (d) a place with a permit under the *Wine Industry Act 1994*.

² *Body Corporate and Community Management Act 1997*, section 11 (Meaning of **“community titles scheme”**)

“**licensee**” means a person who holds a licence or permit for licensed premises.

“**lot**” has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 4.³

“**meal**” means food that—

- (a) is eaten by a person sitting at a table, or fixed structure used as a table, with cutlery provided for the purpose of eating the food; and
- (b) is of adequate substance as to be ordinarily accepted as a meal.

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

“**occupier**”, of an enclosed place or part of an enclosed place, means a person having the management or control, or otherwise being in charge, of the place or part.

“**premium gaming room**” means a room of a casino where—

- (a) minimum or maximum bets are generally higher than elsewhere in the casino; and
- (b) food or drink are generally provided free to casino patrons.

“**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.

‘26R Person must not smoke in enclosed place

‘(1) A person must not smoke in an enclosed place.

Maximum penalty—20 penalty units.

‘(2) Subsection (1) does not apply to the following—

- (a) residential premises, other than a part of residential premises being used for carrying on a business while 1 or more persons

3 *Body Corporate and Community Management Act 1997*, schedule 4 (Dictionary)

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who do not reside at the premises are present in the part of the premises;

Example of a person who does not reside at the premises—

A person employed in the business.

- (b) multi-unit residential accommodation, other than the common areas of the accommodation;
- (c) an exempt vehicle;
- (d) a premium gaming room;
- (e) licensed premises other than the following areas of the premises—
 - (i) dining areas while meals are available for consumption or being consumed;
 - (ii) gaming table areas of a casino;
- (f) a secure facility under the *Corrective Services Act 2000*.

‘(3) A person who performs in a theatre or other enclosed place does not commit an offence under this section by smoking during the performance if smoking is part of the performance.

‘26S No smoking sign

‘A licensee of licensed premises containing a dining area or gaming table area mentioned in section 26R(2)(e) must display a no smoking sign for the area, as prescribed under a regulation.

Maximum penalty—10 penalty units.

‘26T No right to smoke in enclosed place

‘(1) To remove any doubt, it is declared that this part does not create or preserve a right for a person to smoke in an enclosed place.

‘(2) Also, nothing in this part affects the operation of another Act to the extent that the other Act prohibits smoking at any place.

‘26U Person smoking must stop when directed

‘A person contravening section 26R must comply with a direction to stop the contravention by—

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- (a) an authorised person;⁴ or
- (b) an occupier of an enclosed place where the contravention is happening, or an employee or agent of the occupier.

Maximum penalty—20 penalty units.

‘26V Offence by occupier

‘(1) If a person contravenes section 26R, an occupier of the enclosed place where the contravention happens commits an offence.

Maximum penalty—20 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.’.

27 Replacement of s 28 (Terms of appointment)

Section 28—

omit, insert—

‘28 Appointment conditions

‘(1) An authorised person holds office on the conditions stated in the instrument of appointment.

‘(2) An authorised person ceases holding office—

- (a) if the appointment provides for a term of appointment—at the end of the term; or
- (b) if the conditions of appointment provide—on ceasing to hold another office (the “**main office**”) stated in the appointment conditions.

4 See section 40A (Power to direct person to stop smoking).

‘(3) An authorised person may resign by signed notice of resignation given to the chief executive.

‘(4) However, an authorised person who is a health service employee or public service employee may not resign from the office of authorised person (the “**secondary office**”) if a condition of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.’.

28 Amendment of s 29 (Authorised person’s identity card)

Section 29(3), penalty—

omit, insert—

‘Maximum penalty—10 penalty units.’.

29 Replacement of s 30 (Production or display of authorised person’s identity card)

Section 30—

omit, insert—

‘30 Production or display of authorised person’s identity card

‘(1) An authorised person may exercise a power in relation to someone else (the “**other person**”) only if the authorised person—

- (a) first produces the authorised person’s identity card for the other person’s inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

‘(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person must, at the first reasonable opportunity produce the identity card for the other person’s inspection.

‘(3) To remove any doubt, it is declared, for this section, that an authorised person does not exercise a power in relation to someone only because the authorised person has entered a place under section 33(2) or (3).’.

30 Amendment of s 33 (Entry of places by authorised persons)

(1) Section 33(2)(c)—

omit.

(2) Section 33—

insert—

‘(3) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier’s consent or a warrant—

- (a) enter land around premises at the place to an extent that is necessary to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.’.

31 Insertion of new ss 36A and 36B

After section 36—

insert—

‘36A Special warrants

‘(1) An authorised person may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised person’s remote location.

‘(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

‘(3) The authorised person may apply for the warrant before the application is sworn.

‘(4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.

‘(5) If it is not reasonably practicable to fax a copy to the authorised person—

- (a) the magistrate must tell the authorised person—

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- (i) what the terms of the warrant are; and
- (ii) the date and time the warrant was issued; and
- (b) the authorised person must complete a form of warrant (a “**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the terms of the warrant.

‘(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

‘(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised person completed a warrant form—the completed warrant form.

‘(8) On receiving the documents, the magistrate must attach them to the warrant.

‘(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

‘36B Warrants—procedure before entry

‘(1) This section applies if an authorised person named in a warrant issued under this division for a place is intending to enter the place under the warrant.

‘(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the authorised person’s

identity card or a copy of another document evidencing the authorised person's appointment;

- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 36A(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised person is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.

‘(3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.’.

32 Amendment of s 37 (General powers after entering places)

(1) Section 37(3)(b), (c) and (f), ‘in the place’—

omit, insert—

‘at the place’.

(2) Section 37(3)(d)—

omit, insert—

‘(d) take an extract from, or copy, a document at the place; or’.

(3) Section 37(3)—

insert—

‘(g) require the occupier of the place, or a person at the place, to give the authorised person information to help the authorised person ascertain whether this Act is being complied with.’.

(4) Section 37(4) to (6)—

omit, insert—

‘(4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.’.

33 Insertion of new ss 37A and 37B

After section 37—

insert—

‘37A Failure to help authorised person

‘(1) A person required to give reasonable help under section 37(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) If an individual is required under section 37(3)(f) to give information, or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

‘37B Failure to give information

‘(1) A person of whom a requirement is made under section 37(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.’.

34 Amendment of s 38 (Power to require name and address)

Section 38(5), penalty—

omit, insert—

‘Maximum penalty—50 penalty units.’.

35 Amendment of s 39 (Power to require evidence of age, name and address of person observed being supplied a smoking product)

(1) Section 39(1)(a)—

omit, insert—

‘(a) either—

- (i) observes the person being supplied a smoking product; or
- (ii) reasonably believes the person has just been supplied a smoking product; and⁵.

(2) Section 39(5), penalty—

omit, insert—

‘Maximum penalty—5 penalty units.’.

36 Amendment of s 40 (Power to seize smoking product)

Section 40(1)(a)—

omit, insert—

‘(a) an authorised person either—

- (i) observes a person being supplied a smoking product; or
- (ii) reasonably believes a person has just been supplied a smoking product; and⁵.

37 Insertion of new s 40A

Part 3, division 3—

insert—

‘40A Power to direct person to stop smoking

‘(1) This section applies if an authorised person finds a person contravening section 26R.⁵

‘(2) The authorised person may direct the person to stop smoking.

‘(3) When directing the person to stop smoking, the authorised person must tell the person it is an offence not to comply with the direction.’.

38 Insertion of new s 40B

Part 3, division 4, before section 41—

insert—

⁵ Section 26R (Person must not smoke in enclosed place)

‘40B Seizing evidence at a place that may be entered without consent or a warrant

‘An authorised person who enters a place that may be entered under this part without the consent of the occupier and without a warrant, may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act.’.

39 Amendment of s 41 (Power to seize evidence)

Section 41, heading—

omit, insert—

‘41 Seizing evidence at a place that may only be entered with consent or a warrant’.

40 Replacement of s 42 (Procedure after thing seized)

Section 42—

omit, insert—

‘42 Securing seized thing

‘Having seized a thing, an authorised person may do 1 or more of the following—

- (a) move the thing from the place where it was seized (the “**place of seizure**”);
- (b) leave the thing at the place of seizure but take reasonable steps to restrict access to it;
- (c) if the thing is equipment—make it inoperable.

Example of restricting access to a thing—

Sealing a thing and marking it to show access to it is restricted.

Example of making equipment inoperable—

Removing a component of equipment without which the equipment is not capable of being used.

‘42A Tampering with seized thing

‘(1) If an authorised person restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an authorised person’s approval.

Maximum penalty—50 penalty units.

‘(2) If an authorised person makes seized equipment inoperable, a person must not tamper with the equipment, without an authorised person’s approval.

Maximum penalty—50 penalty units.

‘(3) In this section—

“**tamper**” includes attempt to tamper.

‘42B Powers to support seizure

‘(1) To enable a thing to be seized, an authorised person may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

‘(2) The requirement—

- (a) must be made by written notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

‘(3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

‘(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

‘42C Receipt for seized thing

‘(1) As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

‘(3) The receipt must describe generally each thing seized and its condition.

‘(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt (given the thing’s nature, condition and value).

‘42D Forfeiture of seized things

‘(1) A seized thing is forfeited to the State if the authorised person who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts.

‘(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.’.

41 Insertion of new ss 44A and 44B

Part 3, division 4—

insert—

‘44A Return of seized things

‘(1) If a seized thing is not forfeited, the authorised person must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

‘(2) Despite subsection (1), unless the thing is forfeited, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

‘44B Access to seized things

‘(1) Until a seized thing is forfeited or returned, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.

‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.’.

42 Insertion of new ss 44C–44G

Part 3, division 5, before section 45—

insert—

‘44C Improvement notices

‘(1) This section applies if an authorised person reasonably believes a person—

- (a) is contravening a provision of this Act; or
- (b) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated.

‘(2) The authorised person may, by written notice (an “**improvement notice**”) given to the person, require the person to remedy—

- (a) the contravention or likely contravention; or
- (b) the things or operations causing the contravention or likely contravention.

‘(3) The improvement notice must state—

- (a) that the authorised person believes the person—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) the provision the authorised person believes is being, or has been, contravened; and
- (c) briefly, how the provision is being, or has been, contravened; and
- (d) the reasonable steps the person must take to remedy the contravention or likely contravention; and
- (e) that the person must take the steps within a stated reasonable period.

‘(4) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

‘44D Power to require production of written acknowledgment

‘(1) An authorised person may require a supplier or a person in charge of a tobacco product vending machine to make available for inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person, a written acknowledgment obtained by the supplier or person.

‘(2) The authorised person may keep the acknowledgment to copy it.

‘(3) If the authorised person copies an acknowledgment, the authorised person may require the person responsible for keeping the acknowledgment to certify the copy as a true copy of the acknowledgment.

‘(4) The authorised person must return the acknowledgment to the person as soon as practicable after copying it.

‘(5) However, if a requirement (an **“acknowledgment certification requirement”**) is made of a person under subsection (3), the authorised person may keep the acknowledgment until the person complies with the requirement.

‘(6) A requirement under subsection (1) is called an **“acknowledgment production requirement”**.

‘(7) In this section—

“**written acknowledgment**” means a written acknowledgment obtained by a supplier or person in charge of a tobacco product vending machine from an employee of the supplier or person in taking prevention measures mentioned in part 2.

‘44E Failure to produce acknowledgment

‘(1) A person of whom an acknowledgment production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) It is not a reasonable excuse for a person not to comply with an acknowledgment production requirement that complying with the requirement might tend to incriminate the person.

‘44F Failure to certify copy of acknowledgment

‘A person of whom an acknowledgment certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘44G Power to require information

‘(1) This section applies if an authorised person reasonably believes—

- (a) an offence against this Act has been committed; and
- (b) a person may be able to give information about the offence.

‘(2) The authorised person may, by written notice given to the person, require the person to give information about the offence to the authorised person at a stated reasonable time and place.

‘(3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.’

43 Amendment of s 45 (False or misleading information)

Section 45(1), penalty—

omit, insert—

‘Maximum penalty—50 penalty units.’.

44 Amendment of s 46 (False, misleading or incomplete documents)

Section 46(1), penalty—

omit, insert—

‘Maximum penalty—50 penalty units.’.

45 Amendment of s 49 (Impersonation of authorised person)

Section 49, penalty—

omit, insert—

‘Maximum penalty—50 penalty units.’.

46 Replacement of s 50 (Obstruction of authorised persons)

(1) Section 50,—

omit, insert—

‘50 Obstructing authorised persons

‘(1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

- (a) it is an offence to obstruct the authorised person, unless the person has a reasonable excuse; and
- (b) the authorised person considers the person’s conduct is an obstruction.’.

47 Insertion of new ss 51A and 51B

After section 51—

insert—

‘51A Responsibility for acts or omissions of representatives

‘(1) This section applies in a proceeding for an offence against this Act.

‘(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

‘(4) In this section—

“representative” means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

“state of mind”, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

‘51B Executive officers must ensure corporation complies with Act

‘(1) The executive officers of a corporation must ensure the corporation complies with this Act.

‘(2) If a corporation commits an offence against a provision of this Act, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

‘(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

‘(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.’.

48 Amendment of s 52 (Review of Act)

Section 52(2) and (3)—

omit, insert—

‘(2) The review must start by 31 May 2004.

‘(3) The Minister must prepare, and table in the Legislative Assembly, a report on the outcome of the review by 31 May 2005.’.

49 Amendment of schedule (Dictionary)

(1) Schedule, definitions “engage in conduct”, “place”, “premises”, “representative”, “sell”, “state of mind” and “supply”—

omit.

(2) Schedule—

insert—

‘**“acknowledgment certification requirement”** see section 44D(5).

“acknowledgment production requirement” see section 44D(6).

“advertise” includes cause, permit or authorise to be advertised.

“bar”, for part 2, division 2, see section 14.

“bar area”, for part 2, division 2, see section 14.

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“**carton**” means a package containing immediate packages of a smoking product, or a package designed to contain immediate packages of a smoking product, but does not include a package containing individually-wrapped cigars unless the package contains a further package or packages of the cigars.

“**casino**” has the meaning given by the *Casino Control Act 1982*, section 4.⁶

“**common area**”, for part 2B, see section 26Q.

“**dining area**”, for part 2B, see section 26Q.

“**display**” includes cause, permit or authorise to be displayed.

“**duty free shop**” means—

- (a) an outwards duty free shop licensed under the *Customs Act 1901* (Cwth); or
- (b) an inwards duty free shop licensed under the *Customs Act 1901* (Cwth).

“**employee**”, for part 2, division 2, see section 14.

“**enclosed**”, for part 2B, see section 26Q.

“**exempt vehicle**”, for part 2B, see section 26Q.

“**face**”, for an immediate package, means the surface (or if 2 surfaces have the same area, either of the surfaces) of the package whose area is greater than the area of each of its other surfaces.

“**gaming machine area**”, for part 2, division 2, see section 14.

“**gaming table area**”, for part 2B, see section 26Q.

“**immediate package**”, for a smoking product, means a package containing the product but does not include a package containing a further package or packages of the product.

“**licensed premises**”, for part 2B, see section 26Q.

“**licensee**”, for part 2B, see section 26Q.

6 *Casino Control Act 1982*, section 4—

“**casino**” means the areas of a hotel-casino complex identified in the casino licence as the areas of the casino, and includes, for example, if identified in the licence, not only the areas for the conduct and playing of games but also areas for money counting, surveillance, accounting, storage and other activities related to the operation and functioning of the casino.

“liquor”, for part 2, division 2, see section 14.

“lot”, for part 2B, see section 26Q.

“meal”, for part 2B, see section 26Q.

“multi-unit residential accommodation”, for part 2B, see section 26Q.

“occupier”—

- (a) for part 2B, see section 26Q;
- (b) for part 3, division 2, see section 32.

“place” includes premises and vacant land.

“point of sale” means a place where there is a counter or similar fixture where smoking products are sold within a retail outlet, and includes a tobacco product vending machine.

“premises” includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated; and
- (d) a vehicle.

“premium gaming room”, for part 2B, see section 26Q.

“prevention measures”—

- (a) for part 2, division 1, see section 9; and
- (b) for part 2, division 2, see section 14.

“product line” means a kind of smoking product distinguishable from other kinds by 1 or more of the following characteristics—

- (a) trademark;
- (b) brand name;
- (c) nicotine or tar content;
- (d) flavour;
- (e) the number of items in the immediate package in which it is sold.

“publish” includes cause, permit or authorise to be published.

“residential premises”, for part 2B, see section 26Q.

“**retail outlet**” means premises where smoking products are available for sale by retail.

“**sell**” means sell by retail, wholesale or auction, and includes—

- (a) offer or agree to sell; and
- (b) invite to treat or expose for sale; and
- (c) attempt to sell; and
- (d) cause or permit to be sold.

“**smoke**”, for part 2B, see section 26Q.

“**supply**” includes—

- (a) distribute, give or sell; and
- (b) offer or agree to supply; and
- (c) expose for supply; and
- (d) attempt to supply; and
- (e) cause or permit to be supplied.’.

PART 3—AMENDMENT OF HEALTH SERVICES ACT 1991

50 Act amended in pt 3

This part amends the *Health Services Act 1991*.

51 Amendment of s 51 (Prohibition of smoking)

(1) Section 51(3), penalty, ‘for subsection (3)’—
omit.

(2) Section 51—
insert—

‘(4) The chief executive must not designate an enclosed place as a smoking area.

‘(5) In this section—

“**enclosed place**” means a place in which a person must not smoke under the *Tobacco and Other Smoking Products Act 1998*.’

PART 4—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

52 Act amended in pt 4

This part amends the *Police Powers and Responsibilities Act 2000*.

53 Amendment of s 32 (Person may be required to state name and address)

(1) Section 32(4)(a) ‘*Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*’—

omit, insert—

‘*Tobacco and Other Smoking Products Act 1998*’.

(2) Section 32(4)(a), ‘tobacco product’—

omit, insert—

‘smoking product’.

54 Amendment of s 35 (Unlawful supply of smoking products to children)

(1) Section 35(1)(a)—

omit, insert—

‘(a) either—

- (i) observes a person being supplied a thing that the police officer reasonably suspects is a smoking product; or
- (ii) reasonably suspects a person has just been supplied a smoking product; and’.

(2) Section 35(3)(b), ‘tobacco product’—

omit, insert—

‘smoking product’.

(3) Section 35(3)(b), ‘*Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*’—

omit, insert—

‘*Tobacco and Other Smoking Products Act 1998*’.

(4) Section 35(4), ‘*Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*’—

omit, insert—

‘*Tobacco and Other Smoking Products Act 1998*’.