



Queensland

Tobacco and Other Smoking Products Amendment Regulation (No. 1) 2004

Subordinate Legislation 2004 No. 272

made under the

Gold Coast Motor Racing Events Act 1990

Police Powers and Responsibilities Act 2000

State Penalties Enforcement Act 1999

Tobacco and Other Smoking Products Act 1998

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Regulation (No. 1) 2004*

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Tobacco and Other Smoking Products Amendment Regulation (No. 1) 2004*.

2 Commencement

Parts 2, 3 and 5 commence on 1 January 2005.

Part 2 Amendment of Tobacco and Other Smoking Products Regulation 1998

3 Regulation amended in pt 2

This part amends the *Tobacco and Other Smoking Products Regulation 1998*.

4 Insertion of new s 2A

Part 1, after section 2—

insert—

‘2A Notes in text

‘A note in the text of this regulation is part of this regulation.’.

5 Insertion of new pts 5 and 6

After part 4—

insert—

‘Part 5 Phase-in of smoking ban in licensed premises

‘15 Application of pt 5

‘This part prescribes matters, under section 26RA¹ of the Act, for phasing in the ban on smoking in an enclosed place in licensed premises.

‘16 Progressive setting aside of nonsmoking areas

- ‘(1) The licensee of licensed premises must set aside at least $\frac{1}{3}$ of the total enclosed area of the premises as nonsmoking areas.

Maximum penalty—20 penalty units.

- ‘(2) By 30 September 2005, the licensee of licensed premises must set aside at least $\frac{2}{3}$ of the total enclosed area of the premises as nonsmoking areas.

Maximum penalty—20 penalty units.

- ‘(3) A reference in this section to setting aside a place as a nonsmoking area is a reference to implementing measures to ensure persons are aware they must not smoke at the place.

Example of implementing measures—

displaying ‘no smoking’ signs at or near the place

- ‘(4) The nonsmoking areas include—

- (a) the place occupied by a nonsmoking machine; and
- (b) the place, immediately in front of a nonsmoking machine, that would ordinarily be occupied by a person playing the machine.

- ‘(5) In this section—

nonsmoking machine means a gaming machine set aside as a nonsmoking machine under section 17.

¹ Section 26RA (Regulation may require areas of licensed premises to be set aside as nonsmoking areas) of the Act

private hotel accommodation means hotel accommodation other than the common areas of the accommodation.

total enclosed area, of licensed premises, means the total area of all enclosed places at the premises other than enclosed places used for private hotel accommodation.

‘17 Progressive setting aside of nonsmoking gaming machines

- ‘(1) The licensee of licensed premises must set aside at least $\frac{1}{3}$ of the gaming machines in the premises as nonsmoking machines.

Maximum penalty—20 penalty units.

- ‘(2) By 30 September 2005, the licensee of licensed premises must set aside at least $\frac{2}{3}$ of the gaming machines in the premises as nonsmoking machines.

Maximum penalty—20 penalty units.

- ‘(3) A reference in this section to setting aside a gaming machine as a nonsmoking machine is a reference to implementing measures to ensure persons at the machine are aware they must not smoke at the machine.

Example of implementing measures—

displaying a ‘no smoking’ sign on, or immediately above, the machine

‘18 Person must not smoke in a nonsmoking area

- ‘(1) A person must not smoke in a nonsmoking area.

Maximum penalty—20 penalty units.

- ‘(2) In this section—

nonsmoking area means a place set aside as a nonsmoking area under section 16, including a place mentioned in section 16(4)(a) or (b).

‘19 Person smoking must stop when directed

‘A person contravening section 18 must comply with a direction to stop the contravention by—

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

Maximum penalty—20 penalty units.

‘20 Offence by occupier

- ‘(1) If a person contravenes section 18, the occupier of the 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.

Note—

This section follows the form of section 26V of the Act.² It is consistent with the law imposing the ban that is being phased in.

‘21 Expiry

‘This part expires on 30 June 2006.

² Section 26V (Offence by occupier) of the Act

‘Part 6 Smoke-free outdoor places

‘22 Prescribed outdoor swimming areas—Act, s 26ZI

‘Each of the areas described in schedule 1 is a prescribed outdoor swimming area.

‘23 Outdoor pedestrian malls where smoking near a building entrance is not prohibited—Act, s 26ZJ(3)(b)

‘Each of the outdoor pedestrian malls described in schedule 2 is prescribed for section 26ZJ(3)(b) of the Act.’.

6 Insertion of schs 1 and 2

After part 6—

insert—

‘Schedule 1 Prescribed outdoor swimming areas

section 22

Airlie Beach Lagoon

- the body of water used by the public for swimming, known as the Airlie Beach Lagoon, situated off Broadwater Ave, Airlie Beach
- the area of sand adjoining the body of water

Esplanade Lagoon (Cairns)

- the body of water used by the public for swimming, known as the Esplanade Lagoon, situated at the Esplanade, Cairns
- the area of sand adjoining the body of water

Rockpool (Townsville)

- the body of water used by the public for swimming, known as the Rockpool, situated at the Strand, Townsville
- the area of sand adjoining the body of water

Settlement Cove Lagoon (Redcliffe)

- the body of water used by the public for swimming, known as Settlement Cove Lagoon, situated at Charlish Park, corner of Anzac Ave and Redcliffe Pde, Redcliffe
- the area of sand adjoining the body of water

Streets Beach—South Bank (Brisbane)

- the body of water used by the public for swimming, in the area known as Streets Beach, situated at South Bank Parklands, Brisbane
- the area of sand adjoining the body of water

‘Schedule 2 Prescribed outdoor pedestrian malls

section 23

Brisbane

- the mall in Queen St, Brisbane, between Edward St and George St
- the mall in Albert St, Brisbane, between Burnett Lane and Elizabeth St
- the mall in Duncan St, Fortitude Valley, between Wickham St and Ann St

- the mall in Brunswick St, Fortitude Valley, between Wickham St and Ann St

Cairns

- the mall in Lake St, Cairns, between the vehicular turnaround points
- the mall in Shields St, Cairns, between the vehicular turnaround points

Gold Coast

- the mall in Cavill Ave, Surfers Paradise, between the Esplanade and Orchid Ave
- the mall in Victoria Ave, Broadbeach, between Old Burleigh Rd and the vehicular access point to the underground carparking area

Ipswich

- the mall in Nicholas St, Ipswich, between Limestone St and Brisbane St
- the mall in Nicholas St, Ipswich, between Brisbane St and the north end of Nicholas St
- the mall in Union St

Toowoomba

- the mall in Bell Street, Toowoomba, between Ruthven St and Neil St

Townsville

- the mall in Flinders St, Townsville, between Stanley St and Denham St'.

Part 3 Amendment of Gold Coast Motor Racing Events Regulation 2003

7 Regulation amended in pt 3

This part amends the *Gold Coast Motor Racing Events Regulation 2003*.

8 Amendment of s 2 (No smoking area)

- (1) Section 2(2), ‘1998’ and the footnote—
omit, insert—
‘1998, section 26S’.
- (2) Section 2(4), definition *smoke*, ‘section 26Q.’—
omit, insert—
‘schedule.³’.

Part 4 Amendment of Police Powers and Responsibilities Regulation 2000

9 Regulation amended in pt 4

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

3 Under the *Tobacco and Other Smoking Products Act 1998*, schedule—
smoke means smoke, hold or otherwise have control over an ignited smoking product.
smoking product means a tobacco product, herbal cigarette or loose smoking blend.
[Note the terms *tobacco product*, *herbal cigarette* and *loose smoking blend* are also defined in the schedule.]

10 Amendment of sch 3 (Acts for which name and address may be required)

Schedule 3, '*Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*'—

omit, insert—

'Tobacco and Other Smoking Products Act 1998'.

Part 5 Amendment of State Penalties Enforcement Regulation 2000

11 Regulation amended in pt 5

This part amends the *State Penalties Enforcement Regulation 2000*.

12 Amendment of s 5 (Administering authority for particular nominated laws)

- (1) Section 5(2), definition *nominated law*, paragraphs (f) and (g)—

renumber as paragraphs (g) and (h).

- (2) Section 5(2), definition *nominated law*—

insert—

'(f) the Tobacco and Other Smoking Products Act 1998;'.

13 Insertion of new s 5A

After section 5—

insert—

'5A References to Acts

'A reference in this part to an Act mentioned in section 5(2), definition *nominated law*, paragraphs (a) to (h), includes a

nominated law that is a statutory instrument in force under the Act.’.

14 Insertion of new s 8AA

After section 8—

insert—

‘8AA Administering authority for Tobacco and Other Smoking Products Act 1998

‘The administering authority for an infringement notice offence that is an offence against a provision of the *Tobacco and Other Smoking Products Act 1998*, or an infringement notice about the offence, is—

- (a) for an infringement notice served by an authorised officer appointed under section 28(2) of that Act, the relevant local government; or
- (b) otherwise, the department in which the provision is administered.’.

15 Insertion of new s 31

After section 30—

insert—

‘31 Expiry of entry in sch 5

‘The entry in schedule 5 for the *Tobacco and Other Smoking Products Regulation 1998* expires on 30 June 2006.’.

16 Amendment of sch 5 (Other legislation)

Schedule 5, entry for *Tobacco and Other Smoking Products Act 1998*—

omit, insert—

‘Tobacco and Other Smoking Products Act 1998

Column 1 Infringement notice offence	Column 2 Infringement notice fine (penalty units)
s 9A(1)	2
s 15(1)	2
s 15A	2
s 20(1)	1
s 21	1
s 22(1)	2
s 22(2)	2
s 23	2
s 23A	2
s 26A	2
s 26I(1)	1
s 26R(1)	2
s 26S	1
s 26U	2
s 26ZE(1)	2
s 26ZF	2
s 26ZH(1)	2
s 26ZI(1)	2
s 26ZJ(1)	2
s 26ZK(1)	2
s 26ZL	2
s 26ZQ(1)	4
s 44E(1)	2
s 44F	2

Authorised person for service of infringement notices—

- (a) for an offence against section 26ZH(1), 26ZI(1), 26ZJ(1), 26ZK(1) or 26ZL—an authorised person appointed under the *Tobacco and Other Smoking Products Act 1998*, section 28; or

(b) for an offence against another provision—an authorised person appointed under the *Tobacco and Other Smoking Products Act 1998*, section 28(1)

‘Tobacco and Other Smoking Products Regulation 1998

Column 1 Infringement notice offence	Column 2 Infringement notice fine (penalty units)
s 18.....	2
s 19.....	2

Authorised person for service of infringement notices—an authorised person appointed under the *Tobacco and Other Smoking Products Act 1998*, section 28(1)’.

ENDNOTES

- 1 Made by the Governor in Council on 9 December 2004.
- 2 Notified in the gazette on 10 December 2004.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Health.