

Queensland



# **TOBACCO AND OTHER SMOKING PRODUCTS (PREVENTION OF SUPPLY TO CHILDREN) ACT 1998**

**Reprinted as in force on 14 June 2001  
(includes amendments up to Act No. 20 of 2001)**

**Warning—see last endnote for uncommenced amendments**

**Replacement Reprint No. 1D**

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# Information about this reprint

This Act is reprinted as at 14 June 2001. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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**TOBACCO AND OTHER SMOKING  
PRODUCTS (PREVENTION OF SUPPLY  
TO CHILDREN) ACT 1998**

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# **TOBACCO AND OTHER SMOKING PRODUCTS (PREVENTION OF SUPPLY TO CHILDREN) ACT 1998**

[as amended by all amendments that commenced on or before 14 June 2001]

**An Act to restrict the supply of tobacco and other smoking products to  
children, and for other purposes**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*.

### **2 Commencement**

(1) This Act (other than section 15) commences on a day to be fixed by proclamation.

(2) Section 15 commences 6 months after the day fixed under subsection (1).

### **3 Main object of Act and its achievement**

(1) The main object of this Act is to reduce the number of children who take up smoking.

(2) This is to be achieved mainly by restricting the availability of smoking products to children.

### **4 Definitions**

The dictionary in the schedule defines particular words used in this Act.

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## **5 Who is a “responsible adult”**

A “responsible adult”, for a child, is an adult who—

- (a) is the child’s parent, step-parent or guardian; or
- (b) has parental rights and responsibilities for the child.

*Example of responsible adult under paragraph (b)—*

An adult who is an aunt or uncle of a child, living with the child.

## **6 Acceptable evidence of age**

For this Act, acceptable evidence of the age of a person is a document that—

- (a) is a driver licence, proof of age card or an Australian or foreign passport; and
- (b) bears a photograph of the person; and
- (c) indicates by reference to the person’s date of birth or otherwise that the person has attained a particular age.

## **7 Act binds all persons**

This Act binds all persons.

# **PART 2—SUPPLY OF SMOKING PRODUCTS**

## *Division 1—Suppliers and employees*

## **8 Application of div 1**

This division does not apply to the supply of smoking products from coin-operated vending machines.

## **9 Meaning of “prevention measures” for div 1**

In this division—

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**“prevention measures”**, by a supplier in relation to an employee of the supplier, means—

- (a) instructing the employee—
  - (i) not to supply smoking products to children in any circumstances, even if the supply is for, or claimed to be for, an adult; and
  - (ii) to sight acceptable evidence of age for a person before supplying a smoking product to the person, unless satisfied the person is an adult; and
- (b) warning the employee that if the employee supplies smoking products to children in disregard of the instructions mentioned in paragraph (a), the employee commits an offence against this Act; and
- (c) obtaining written acknowledgment by the employee that the employee received the instructions and warning mentioned in paragraphs (a) and (b).

### **10 Individual supplier must not supply smoking products to children**

(1) A supplier who is an individual must not supply a smoking product to a child.

Maximum penalty—

- (a) for a first offence—13 penalty units; and
- (b) for a second or later offence—26 penalty units.

(2) However, this section does not apply if the supply is by an employee of the supplier.

### **11 Supplier must ensure employees do not supply smoking products to children**

(1) A supplier must ensure an employee of the supplier does not supply a smoking product to a child.

Maximum penalty—26 penalty units.

(2) However, a supplier does not commit an offence against subsection (1) if, before the supply, the supplier took the prevention measures in relation to the employee.

## **12 When employee of supplier liable**

(1) This section applies if a supplier has, in relation to an employee of the supplier, taken the prevention measures.

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

Maximum penalty—

- (a) for a first offence—1 penalty unit; and
- (b) for a second or later offence—2 penalty units.

## **13 Suppliers may be prohibited from selling smoking products**

(1) This section applies if—

- (a) a smoking product supplier is convicted of an offence against section 10 or 11; and
- (b) within 2 years after the conviction, the supplier is again convicted of an offence against either section (the “**subsequent offence**”).

(2) The court sentencing the supplier for the subsequent offence may, on its own initiative or the application of the prosecutor, make an order against the supplier under subsection (3).

(3) The court may make an order applying for a stated period, of at least 2 months but not longer than 1 year—

- (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.

(4) However, if the supplier supplies smoking products at more than 1 outlet, the order may apply only to the outlets where the offences happened.

(5) A person must not contravene an order under subsection (3).

Maximum penalty for subsection (5)—75 penalty units.

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***Division 2—Tobacco product vending machines***

**14 Definitions for div 2**

In this division—

**“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.

**“prevention measures”**, by a person in charge of a tobacco product vending machine in licensed premises, means—

- (a) for the vending machine—locating the vending machine in the premises so that its use can be observed by the person’s employees; and
- (b) for the person’s employees—
  - (i) instructing the employees to—
    - (A) 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
    - (B) 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
  - (ii) obtaining written acknowledgment by each employee that the employee received the instructions mentioned in subparagraph (i).

**15 Restriction on location of tobacco product vending machines**

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

Maximum penalty—13 penalty units.

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(2) 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.

(3) 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.

## **16 Supply of tobacco products from vending machines**

(1) A person in charge of a tobacco product vending machine in licensed premises must not allow a child to obtain a tobacco product from the vending machine.

Maximum penalty—

- (a) for a first offence—13 penalty units; and
- (b) for a second or later offence—26 penalty units.

(2) However, the person does not commit an offence against subsection (1) if, before the child obtained the tobacco product, the person had taken the prevention measures.

## **17 Persons in charge of tobacco product vending machines may be prohibited from possessing tobacco product vending machines**

(1) This section applies if—

- (a) a person in charge of a tobacco product vending machine is convicted of an offence against section 16; and
- (b) within 2 years after the conviction, the person is again convicted of an offence against the section (the “**subsequent offence**”).

(2) The court sentencing the person for the subsequent offence may, on its own initiative or the application of the prosecutor, make an order against the person under subsection (3).

(3) The court may make an order applying for a stated period, of at least 2 months but not longer than 1 year—

- (a) prohibiting the person from possessing tobacco product vending machines; or

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(b) imposing conditions or restrictions on the possession or use of tobacco product vending machines by the person.

(4) However, if the person is in charge of a tobacco product vending machine at more than 1 licensed premises, the order may apply only to the licensed premises where the offences happened.

(5) A person must not contravene an order under subsection (3).

Maximum penalty for subsection (5)—75 penalty units.

***Division 3—Supply of herbal cigarettes and loose smoking blends from  
coin-operated vending machines***

**18 Prohibition on use of vending machine to supply herbal cigarettes and loose smoking blends**

(1) A person in possession of a coin-operated vending machine must not use the machine to supply herbal cigarettes or a loose smoking blend to another person.

Maximum penalty—

- (a) for a first offence—13 penalty units; and
- (b) for a second or later offence—26 penalty units.

(2) In this section—

“**possession**”, of a coin-operated vending machine, includes having control of the machine.

***Division 3A—Supply of smoking products by adults to children***

**18A Application of div 3A**

This division does not apply to—

- (a) the supply of smoking products by—
  - (i) suppliers; or
  - (ii) employees of suppliers in the ordinary course of their employment; or

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- (b) the supply of smoking products from coin-operated vending machines.

## **19 Supply prohibited**

(1) An adult must not supply a smoking product to a child (the “**relevant person**”).

Maximum penalty—1 penalty unit.

(2) However, a responsible adult for a child does not commit an offence by supplying a smoking product to the child.

(3) It is a defence to a charge under subsection (1) for the defendant to prove that at the time of the offence the defendant honestly and reasonably believed that the relevant person was an adult.

### *Division 4—Signage*

## **20 Supplier of tobacco products must display prohibition signs**

(1) A supplier must display prohibition signs, at each place at which the supplier supplies tobacco products, in the way prescribed under a regulation.

Maximum penalty—1 penalty unit.

(2) However, this section does not apply if the supply is from a tobacco product vending machine.

## **21 Persons in charge of tobacco product vending machines must attach or display prohibition signs**

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

Maximum penalty—1 penalty unit.

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***Division 5—Minimum saleable quantities of smoking products***

**22 Cigarettes and herbal cigarettes must be sold in packages**

(1) A supplier must sell cigarettes or herbal cigarettes only in a package.  
Maximum penalty—1 penalty unit.

(2) A supplier must not sell cigarettes or herbal cigarettes in a package containing less than 20 cigarettes.

Maximum penalty—1 penalty unit.

**23 Prepackaged loose tobacco must not be sold under certain quantity**

A supplier must not sell prepackaged loose tobacco in quantities of less than 25 g.

Maximum penalty—1 penalty unit.

**23A Prepackaged loose smoking blend must not be sold under certain quantity**

A supplier must not sell prepackaged loose smoking blend in quantities of less than 15 g.

Maximum penalty—1 penalty unit.

***Division 6—Supply of things resembling tobacco products***

**24 Supply of food or toys resembling tobacco products**

(1) A person must not, as part of a business activity, supply to a person—

(a) food that is not a tobacco product but resembles a tobacco product; or

(b) a toy that resembles a tobacco product.

Maximum penalty—1 penalty unit.

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(2) For subsection (1), food or a toy resembles a tobacco product if the food or toy—

- (a) has an appearance that is likely to cause a reasonable person to consider the food or toy resembles a tobacco product or tobacco product package; or
- (b) is contained in a package that is likely to cause a reasonable person to consider the package resembles a tobacco product package; or
- (c) is declared under a regulation to resemble a tobacco product or tobacco product package.

*Division 7—Liability for certain offences against part*

**25 Liability of person for conduct of representatives**

(1) This section applies to a proceeding against a person (the “defendant”) for an offence against section 22, 23, 23A or 24.

(2) Conduct engaged in by a representative of the defendant within the scope of the representative’s actual or apparent authority is taken to have been also engaged in by the defendant, unless the defendant proves that the defendant took reasonable steps to prevent the conduct.

(3) If it is relevant to prove the defendant’s state of mind about particular conduct, it is enough to show—

- (a) the conduct was engaged in by a representative of the defendant within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

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## **26 Defence to charge if age material**

(1) This section applies to a charge for an offence against section 10, 11, 12 or 16<sup>1</sup> in which the age of a person (the “**relevant person**”) is material to the charge.

(2) It is a defence to the charge for the defendant to prove that at the time of the offence the defendant or the defendant’s employee honestly and reasonably believed the relevant person was an adult.

(3) Proof that the defendant or the defendant’s employee did not ask the relevant person to produce acceptable evidence of age is evidence that any belief that the relevant person was an adult was not reasonable.

## **PART 3—MONITORING AND ENFORCEMENT**

### *Division 1—Appointment of authorised persons and other matters*

## **27 Who are authorised persons**

(1) The chief executive may appoint any of the following persons as authorised persons—

- (a) public service employees;
- (b) health service employees within the meaning of the *Health Services Act 1991*;
- (c) other persons prescribed under a regulation.

(2) The chief executive may appoint a person as an authorised person only if the chief executive considers the person has the necessary expertise or experience to be an authorised person.

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<sup>1</sup> Section 10 (Individual supplier must not supply smoking products to children), 11 (Supplier must ensure employees do not supply smoking products to children), 12 (When employee of supplier liable) or 16 (Supply of tobacco products from vending machines)

## **28 Terms of appointment**

(1) An authorised person (other than a police officer) holds office on the conditions stated in the instrument of appointment.

(2) If the instrument provides for a term of appointment, the authorised person ceases to hold office at the end of the term.

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

## **29 Authorised person's identity card**

(1) The chief executive must give an identity card to each authorised person.

(2) The identity card must—

- (a) contain a recent photograph of the person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised person for this Act; and
- (d) include an expiry date.

(3) A person who ceases to be an authorised person must return the person's identity card to the chief executive as soon as practicable (but within 3 weeks) after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—5 penalty units.

(4) This section does not prevent the issue of a single identity card to a person for this Act and other Acts.

## **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.

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(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).

### **31 Protection from liability**

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) an authorised person; or
- (b) a person acting under the direction of an authorised person.

### *Division 2—Powers of authorised persons*

### **32 Meaning of “occupier” for div 2**

In this division—

“occupier”, of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

### **33 Entry of places by authorised persons**

(1) An authorised person may enter a place if—

- (a) the occupier consents to the entry; or
- (b) the entry is authorised by a warrant.

(2) Also, an authorised person may, without the occupier's consent or a warrant, enter—

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- (a) a public place when the place is open to the public; or
- (b) an outlet of a supplier or licensed premises when it is open for carrying on business; or
- (c) the land around premises to ask its occupier for consent to enter the premises.

### 34 Consent to entry

(1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place.<sup>2</sup>

(2) Before asking for consent, the authorised person must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent (a “**consent acknowledgment**”).

(4) The consent acknowledgment must state—

- (a) the occupier was told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised person consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the consent acknowledgment, the authorised person must promptly give a copy to the occupier.

### 35 Evidence of consent

(1) Subsection (2) applies if—

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<sup>2</sup> This section does not apply if entry is authorised by section 33(1)(b) or (2).

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- (a) an issue arises in a court proceeding whether the occupier of a place consented to an authorised person entering the place under this part; and
  - (b) a consent acknowledgment is not produced in evidence for the entry; and
  - (c) it is not proved the occupier consented to the entry.
- (2) The court may presume the occupier did not consent.

### **36 Warrants**

(1) An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this part; and
- (b) the offence for which the warrant is issued; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when entry may be made; and
- (e) the day, within 7 days after the warrant’s issue, when the warrant ends.

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### **37 General powers after entering places**

(1) This section applies to an authorised person who enters a place under section 33.

(2) However, if an authorised person enters a place to get the occupier's consent to enter premises, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the authorised person may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything in the place; or
- (c) take a thing, or a sample of or from a thing, in the place for analysis; or
- (d) copy a document in the place; or
- (e) take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this part; or
- (f) require the occupier of the place, or a person in the place, to give the authorised person reasonable help to exercise the authorised person's powers mentioned in paragraphs (a) to (e).

(4) A person must comply with a requirement under subsection (3)(f), unless the person has a reasonable excuse for not complying.

Maximum penalty—5 penalty units.

(5) If the requirement is to be complied with by the person giving information or producing a document, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might incriminate the person.

(6) A person does not commit an offence under subsection (4) for failing to comply with a requirement unless the authorised person has first warned the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

***Division 3—Other enforcement powers of authorised persons***

**38 Power to require name and address**

(1) This section applies if—

- (a) an authorised person finds a person committing an offence against this Act; or
- (b) an authorised person finds a person in circumstances that lead, or has information that leads, the authorised person to reasonably suspect the person or the person’s employer has just committed an offence against this Act.

(2) The authorised person may require the person to state the person’s name and residential address.

(3) When making the requirement under subsection (2), the authorised person must warn the person it is an offence to fail to state the person’s name or residential address, unless the person has a reasonable excuse.

(4) The authorised person may require the person to give evidence of the correctness of the person’s stated name or residential address if the authorised person reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—5 penalty units.

(6) The person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person’s name and address by an authorised person who suspected the person or the person’s employer had committed an offence against this Act; and
- (b) the person or the person’s employer is not proved to have committed the offence.

**39 Power to require evidence of age, name and address of person observed being supplied a smoking product**

(1) An authorised person may require a person to show acceptable evidence of age of the person if the authorised person—

- (a) observes the person being supplied a smoking product; and

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(b) suspects on reasonable grounds the person is a child.

(2) The authorised person may require the person to state the person's name and residential address if—

- (a) the person refuses, or is unable, to comply with a requirement made under subsection (1); or
- (b) the acceptable evidence of age of the person shown under subsection (1) shows the person is a child.

(3) When making the requirement under subsection (2), the authorised person must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The authorised person may require the person to give evidence of the correctness of the person's stated name or residential address if the authorised person reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—1 penalty unit.

(6) The person does not commit an offence against subsection (5) if no one is proved to have committed an offence against this Act in relation to the supply of the smoking product.

#### **40 Power to seize smoking product**

(1) This section applies if—

- (a) an authorised person observes a person being supplied a smoking product; and
- (b) the authorised person suspects on reasonable grounds the person is a child; and
- (c) the person—
  - (i) refuses, or is unable, to comply with a requirement made by the authorised person under section 39(1); or
  - (ii) shows acceptable evidence of age of the person under section 39(1) showing the person is a child; and

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- (d) the authorised person reasonably believes the smoking product is evidence of an offence against this Act.
- (2) The authorised person may seize the smoking product.

*Division 4—Seizure of evidence*

**41 Power to seize evidence**

(1) An authorised person who enters a place with the occupier's consent may seize a thing in the place if—

- (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An authorised person who enters a place with a warrant may seize the evidence for which the warrant was issued.

(3) The authorised person may also seize anything else in the place if the person reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed, or used to continue or repeat the offence.

(4) Also, the authorised person may seize a thing in the place if the person reasonably believes that it has just been used in committing an offence against this Act.

**42 Procedure after thing seized**

(1) As soon as practicable after a thing is seized by an authorised person under section 40 or 41, the authorised person must give a receipt for it to the person from whom it was seized.

(2) The authorised person must allow a person who would be entitled to the seized thing if it were not in the authorised person's possession—

- (a) to inspect it; or
- (b) if it is a document—to copy it.

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(3) The authorised person must return the seized thing to the person at the end of—

- (a) 1 year; or
- (b) if a proceeding for an offence involving it is started within 1 year—the proceeding and any appeal from the proceeding.

(4) Despite subsection (3), the authorised person must return the seized thing to the person if the authorised person is satisfied—

- (a) its retention as evidence is no longer necessary; and
- (b) its return is not likely to result in its use in repeating the offence.

#### **43 Forfeiture on conviction**

(1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

(2) The court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized—whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

#### **44 Dealing with forfeited things etc.**

(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy the thing.

### ***Division 5—Other enforcement matters***

#### **45 False or misleading information**

(1) A person must not state anything to an authorised person the person knows is false or misleading in a material particular.

Maximum penalty—5 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person's knowledge.

#### **46 False, misleading or incomplete documents**

(1) A person must not give to an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—5 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) informs the authorised person, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false, misleading or incomplete to the person's knowledge.

#### **47 Notice of damage**

(1) This section applies if—

- (a) an authorised person damages something when exercising or purporting to exercise a power under this part; or
- (b) a person (the **“other person”**) acting under the direction of an authorised person damages something when exercising or purporting to exercise a power under this part.

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(2) The authorised person must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the authorised person believes the damage was caused by a latent defect in the thing or circumstances beyond the authorised person's or other person's control, the authorised person may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised person reasonably believes is trivial.

(6) In this section—

“owner”, of a thing, includes the person in possession or control of it.

## 48 Compensation

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(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 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 satisfied it is just to make the order in the circumstances of the particular case.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court in considering whether it is just to make the order.

#### **49 Impersonation of authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—20 penalty units.

#### **50 Obstruction of authorised persons**

A person must not obstruct an authorised person in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—5 penalty units.

### **PART 4—MISCELLANEOUS**

#### **51 Evidence of thing labelled as smoking product**

(1) Evidence that a thing is labelled as a tobacco product, or labelled in a way a reasonable person would take to be labelled as a tobacco product, is evidence the thing is or contains a tobacco product.

(2) Evidence that a thing is labelled as a herbal cigarette, or labelled in a way a reasonable person would take to be labelled as a herbal cigarette, is evidence the thing is or contains a herbal cigarette.

(3) Evidence that a thing is labelled as a loose smoking blend, or labelled in a way a reasonable person would take to be labelled as a loose smoking blend, is evidence the thing is or contains a loose smoking blend.

#### **52 Review of Act**

(1) The Minister must ensure the operation of this Act is reviewed.

(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.

#### **53 Regulation-making power**

The Governor in Council may make regulations under this Act.

## SCHEDULE

### DICTIONARY

section 4

**“acceptable evidence of age”** see section 6.

**“authorised person”** means a person appointed, or holding office, under section 27 as an authorised person.

**“child”** means an individual who is under 18.

**“cigar”** includes tobacco leaf rolled into a cylinder with a conical end for smoking.

**“cigarette”** means a roll of cut tobacco for smoking enclosed in paper, bark, leaf or something else, whether or not the tobacco is mixed with another substance, but does not include a cigar.

**“coin-operated vending machine”** means a machine or device operated by money, token, debit card or credit card.

**“consent acknowledgment”** see section 34.

**“consumption”**, of tobacco product, includes smoking, inhaling or chewing the tobacco product.

**“conviction”** means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

**“driver licence”** includes a licence, permit or other authority issued under a law of the State or another State that authorises a person to drive or ride a motor vehicle on public roads.

**“engage in conduct”** includes fail to engage in conduct.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“herbal cigarette”** means a preparation for smoking that—

SCHEDULE (continued)

- (a) is made from a herb or other plant, or a blend of herbs or other plants, whether or not the herb, plant or blend is mixed with another substance; and
- (b) is enclosed in paper, bark, leaf or something else; and
- (c) does not contain tobacco.

**“licensed premises”** has the meaning given by the *Liquor Act 1992*, section 4.

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

**“loose smoking blend”** means a preparation for smoking that does not contain tobacco and is made from a herb or other plant, or a blend of herbs or other plants, and is prepared for retail sale, but does not include a herbal cigarette.

**“obstruct”** includes hinder, resist and attempt to obstruct.

**“package”** means—

- (a) for cigarettes—a package containing cigarettes packed by the manufacturer, or importer, of the cigarettes; and
- (b) for herbal cigarettes—a package containing herbal cigarettes packed by the manufacturer, or importer, of the herbal cigarettes.

**“person in charge”**, of a tobacco product vending machine, means the licensee of licensed premises in which the vending machine is located.

**“place”** includes premises, vacant land and a vehicle.

**“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.

**“prepackaged loose smoking blend”** means a loose smoking blend that is packaged for retail sale.

**“prepackaged loose tobacco”** means tobacco product for smoking that is cut and packaged for retail sale, but does not include a cigarette or cigar.

SCHEDULE (continued)

*Example—*

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

**“prohibition sign”** means a sign about the supply of tobacco products to children complying with the requirements prescribed under a regulation.

**“proof of age card”** means a proof of age card mentioned in the *Liquor Act 1992*, section 6(a)(i).

**“public place”** means a place that the public is entitled to use, is open to the public or is used by the public (whether or not on payment of money).

**“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.

**“responsible adult”** see section 5.

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

- (a) offer or agree to sell; and
- (b) invite to treat or expose to sale; and
- (c) cause or permit to be sold; and
- (d) attempt to sell or do an act mentioned in paragraphs (a) to (c).

**“smoking product”** means a tobacco product, herbal cigarette or loose smoking blend.

**“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.

**“supplier”** means a person who, as part of a business activity, supplies smoking products to the public, but does not include a person who supplies smoking products to the public as an employee of another person.

SCHEDULE (continued)

**“supply”** includes—

- (a) distribute, give or sell; and
- (b) offer or agree to distribute or give; and
- (c) cause or permit to be distributed or given; and
- (d) attempt to supply or do an act mentioned in paragraphs (a) to (c).

**“tobacco product”** means tobacco prepared for consumption or something containing tobacco for consumption, and includes a cigarette, cigar and prepackaged loose tobacco.

**“tobacco product package”** means a package—

- (a) of a type commonly used for tobacco products; and
- (b) depicting a symbol, design or words that show the package contains a tobacco product.

**“tobacco product vending machine”** means a coin-operated vending machine used, or intended for use, for selling tobacco products, whether or not it is also used, or intended for use, for selling other products.

**“vehicle”** includes an aircraft, boat and train.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 June 2001. Future amendments of the Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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### 3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

### 4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 June 1998
1A	to Act No. 42 of 1999	1 December 1999
1B	to Act No. 61 of 1999	22 February 2000
1C	to Act No. 5 of 2000	14 July 2000

### 5 List of legislation

**Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998**

**No. 1 (prev Tobacco Products (Prevention of Supply to Children) Act 1998)**

date of assent 12 March 1998

ss 1–2 commenced on date of assent

s 15 commenced 30 November 1998 (see s 2(2))

remaining provisions commenced 31 May 1998 (1998 SL No. 91)

as amended by—

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**Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

**Health Legislation Amendment Act 1999 No. 61 ss 1, 2(2) pt 4**

date of assent 29 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 20 February 2000 (2000 SL No. 25)

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3**

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**Tobacco and Other Smoking Products (Prevention of Supply to Children)  
Amendment Act 2001 No. 20 pts 1–2**

date of assent 11 May 2001

ss 1–2, 29 commenced on date of assent

ss 3, 48 commenced 31 May 2001 (see s 2(1))

remaining provisions commence 31 May 2002 (see s 2(2))**6 List of annotations**

**Title**            amd 1999 No. 61 s 14  
                    sub 2001 No. 20 s 4

**Short title**  
**s 1**                amd 1999 No. 61 s 15  
                    sub 2001 No. 20 s 5

**Main object of Act and its achievement**  
**s 3**                amd 1999 No. 61 s 16  
                    sub 2001 No. 20 s 6

**How object is to be achieved**  
**s 3A**            ins 2001 No. 20 s 6

**Acceptable evidence of age**  
**s 6**                amd 1999 No. 42 s 54(3) sch pt 3

**PART 2—SUPPLY OF SMOKING PRODUCTS**  
**pt hdg**          sub 1999 No. 61 s 17

**Division 1—Suppliers and employees**  
**div hdg**        sub 1999 No. 61 s 18

**Application of div 1**  
**s 8**                sub 1999 No. 61 s 19

**Meaning of “prevention measures” for div 1**  
**s 9**                amd 1999 No. 61 s 20

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**Supplier must take prevention measures**

s 9A ins 2001 No. 20 s 7

**Individual supplier must not supply smoking products to children**

prov hdg amd 1999 No. 61 s 21(1)

s 10 amd 1999 No. 61 s 21(2)–(3); 2001 No. 20 s 8

**Supplier must ensure employees do not supply smoking products to children**

prov hdg amd 1999 No. 61 s 22(1)

s 11 amd 1999 No. 61 s 22(2)–(3); 2001 No. 20 s 9

**When employee of supplier liable**

s 12 amd 1999 No. 61 s 23; 2001 No. 20 s 10

**Suppliers may be prohibited from selling smoking products**

prov hdg amd 1999 No. 61 s 24(1)

s 13 amd 1999 No. 61 s 24; 2001 No. 20 s 11

**Definitions for div 2**

s 14 sub 2001 No. 20 s 12

**Restriction on location of tobacco product vending machines**

s 15 sub 2001 No. 20 s 12

**Person in charge of tobacco product vending machine in bar area or gaming machine area must instruct employees**

s 15A ins 2001 No. 20 s 12

**Supply of tobacco products from vending machines**

s 16 amd 2001 No. 20 s 13

**Persons in charge of tobacco product vending machines may be prohibited from possessing tobacco product vending machines**

s 17 amd 2001 No. 20 s 14

**Division 3—Supply of herbal cigarettes and loose smoking blends from coin-operated vending machines**

div hdg sub 1999 No. 61 s 25

**Prohibition on use of vending machines to supply herbal cigarettes and loose smoking blends**

s 18 sub 1999 No. 61 s 25

amd 2001 No. 20 s 15

**Division 3A—Supply of smoking products by adults to children**

div hdg ins 1999 No. 61 s 25

**Application of div 3A**

s 18A ins 1999 No. 61 s 25

amd 2001 No. 20 s 16

**Supply prohibited**

s 19 amd 1999 No. 61 s 26; 2001 No. 20 s 17

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**Supplier of tobacco products must display prohibition signs**

**prov hdg** amd 1999 No. 61 s 27(1)  
**s 20** amd 1999 No. 61 s 27(2)  
           sub 2001 No. 20 s 18

**Persons in charge of tobacco product vending machines must attach or display prohibition signs**

**s 21**           sub 2001 No. 20 s 19

**Division 5—Minimum saleable quantities of smoking products**

**div hdg**   sub 1999 No. 61 s 28

**Cigarettes and herbal cigarettes must be sold in packages**

**prov hdg** amd 1999 No. 61 s 29(1)  
**s 22**       amd 1999 No. 61 s 29(2)–(3); 2001 No. 20 s 20

**Prepackaged loose tobacco must not be sold under certain quantity**

**s 23**       amd 1999 No. 61 s 30; 2001 No. 20 s 21

**Prepackaged loose smoking blend must not be sold under certain quantity**

**s 23A**     ins 1999 No. 61 s 31; 2001 No. 20 s 22

**Supply of food or toys resembling tobacco products**

**s 24**       amd 2001 No. 20 s 23

**Division 7—Liability for certain offences against part**

**div hdg**   sub 2001 No. 20 s 24

**Liability of person for conduct of representatives**

**s 25**       amd 1999 No. 61 s 32  
           om 2001 No. 20 s 25

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

**pt hdg**     ins 2001 No. 20 s 26

**Division 1—Retail advertising and display**

**div hdg**   ins 2001 No. 20 s 26

**Advertising and display to be as provided in this division**

**s 26A**     ins 2001 No. 20 s 26

**Location of display of smoking products**

**s 26B**     ins 2001 No. 20 s 26

**Availability for sale of displayed products**

**s 26C**     ins 2001 No. 20 s 26

**Manner of display of immediate package of smoking product**

**s 26D**     ins 2001 No. 20 s 26

**Manner of display of individual cigars**

**s 26E**     ins 2001 No. 20 s 26

**Manner of display of cartons of smoking products**

**s 26F**     ins 2001 No. 20 s 26

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**When display must not constitute advertisement**

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**Display of retail prices of smoking product**

s 26H [ins 2001 No. 20 s 26](#)

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div hdg [ins 2001 No. 20 s 26](#)

**Definitions for div 3**

s 26J [ins 2001 No. 20 s 26](#)

**When division does not apply**

s 26K [ins 2001 No. 20 s 26](#)

**Supply of object or entitlement that promotes smoking product etc.**

s 26L [ins 2001 No. 20 s 26](#)

**Supply of object or entitlement in association with smoking product sale or  
consumption**

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**Smoking product giveaways**

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**Competition that promotes smoking product**

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**Conduct of competition in association with smoking product sale or consumption**

s 26P [ins 2001 No. 20 s 26](#)

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**Definitions for pt 2B**

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s 26R [ins 2001 No. 20 s 26](#)

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s 26S [ins 2001 No. 20 s 26](#)

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**Offence by occupier**

s 26V [ins 2001 No. 20 s 26](#)

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**Who are authorised persons**

s 27      amd 2000 No. 5 s 461 sch 3

**Terms of appointment**

s 28      sub 2001 No. 20 s 27

**Authorised person's identity card**

s 29      amd 2000 No. 5 s 461 sch 3; 2001 No. 20 s 28

**Production or display of authorised person's identity card**

s 30      amd 2000 No. 5 s 461 sch 3  
            sub 2001 No. 20 s 29

**Entry of places by authorised persons**

s 33      amd 1999 No. 61 s 33; 2001 No. 20 s 30

**Special warrants**

36A      ins 2001 No. 20 s 31

**Warrants—procedure before entry**

s 36B     ins 2001 No. 20 s 31

**General powers after entering places**

s 37      amd 2001 No. 20 s 32

**Failure to help authorised person**

s 37A     ins 2001 No. 20 s 33

**Failure to give information**

s 37B     ins 2001 No. 20 s 33

**Power to require name and address**

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**Power to require evidence of age, name and address of person observed being  
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prov hdg      amd 1999 No. 61 s 34

s 39      amd 1999 No. 61 s 34; 2001 No. 20 s 35

**Power to seize smoking product**

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s 40      amd 1999 No. 61 s 35; 2001 No. 20 s 36

**Power to direct person to stop smoking**

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s 42      sub 2001 No. 20 s 40

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**False, misleading or incomplete documents**

s 46 [amd 2001 No. 20 s 44](#)

**Impersonation of authorised person**

s 49 [amd 2001 No. 20 s 45](#)

**Obstruction of authorised persons**

s 50 [sub 2001 No. 20 s 46](#)

**Evidence of thing labelled as smoking product**

s 51 [sub 1999 No. 61 s 36](#)

**Responsibility for acts or omissions of representatives**

s 51A [ins 2001 No. 20 s 47](#)

**Executive officers must ensure corporation complies with Act**

s 51B [ins 2001 No. 20 s 47](#)

**Review of Act**

s 52 [amd 2001 No. 20 s 48](#)

**PART 5—REPEAL AND TRANSITIONAL**

pt 5 (ss 54–56) exp 30 November 1998 (see s 56)

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**SCHEDULE—DICTIONARY**

- def “**acknowledgment certification requirement**” ins 2001 No. 20 s 49(2)  
 def “**acknowledgment production requirement**” ins 2001 No. 20 s 49(2)  
 def “**advertise**” ins 2001 No. 20 s 49(2)  
 def “**bar**” ins 2001 No. 20 s 49(2)  
 def “**bar area**” ins 2001 No. 20 s 49(2)  
 def “**carton**” ins 2001 No. 20 s 49(2)  
 def “**casino**” ins 2001 No. 20 s 49(2)  
 def “**common area**” ins 2001 No. 20 s 49(2)  
 def “**dining area**” ins 2001 No. 20 s 49(2)  
 def “**display**” ins 2001 No. 20 s 49(2)  
 def “**driver licence**” amd 1999 No. 42 s 54(3) sch pt 3  
 def “**duty free shop**” ins 2001 No. 20 s 49(2)  
 def “**employee**” ins 2001 No. 20 s 49(2)  
 def “**enclosed**” ins 2001 No. 20 s 49(2)  
 def “**engage in conduct**” om 2001 No. 20 s 49(1)  
 def “**exempt vehicle**” ins 2001 No. 20 s 49(2)  
 def “**face**” ins 2001 No. 20 s 49(2)  
 def “**gaming machine area**” ins 2001 No. 20 s 49(2)  
 def “**gaming table area**” ins 2001 No. 20 s 49(2)  
 def “**herbal cigarette**” ins 1999 No. 61 s 37(2)  
 def “**immediate package**” ins 2001 No. 20 s 49(2)  
 def “**licensed premises**” ins 2001 No. 20 s 49(2)  
 def “**licensee**” ins 2001 No. 20 s 49(2)  
 def “**liquor**” ins 2001 No. 20 s 49(2)  
 def “**loose smoking blend**” ins 1999 No. 61 s 37(2)  
 def “**lot**” ins 2001 No. 20 s 49(2)  
 def “**meal**” ins 2001 No. 20 s 49(2)  
 def “**multi-unit residential accommodation**” ins 2001 No. 20 s 49(2)  
 def “**occupier**” ins 2001 No. 20 s 49(2)  
 def “**package**” sub 1999 No. 61 s 37  
 def “**place**” sub 2001 No. 20 s 49  
 def “**point of sale**” ins 2001 No. 20 s 49(2)  
 def “**premises**” sub 2001 No. 20 s 49  
 def “**premium gaming room**” ins 2001 No. 20 s 49(2)  
 def “**prepackaged loose smoking blend**” ins 1999 No. 61 s 37(2)  
 def “**prevention measures**” ins 2001 No. 20 s 49(2)  
 def “**product line**” ins 2001 No. 20 s 49(2)  
 def “**publish**” ins 2001 No. 20 s 49(2)  
 def “**representative**” om 2001 No. 20 s 49(1)  
 def “**residential premises**” ins 2001 No. 20 s 49(2)  
 def “**retail outlet**” ins 2001 No. 20 s 49(2)  
 def “**sell**” sub 2001 No. 20 s 49  
 def “**smoke**” ins 2001 No. 20 s 49(2)  
 def “**smoking product**” ins 1999 No. 61 s 37(2)  
 def “**state of mind**” om 2001 No. 20 s 49(1)  
 def “**supplier**” ins 1999 No. 61 s 37(2)  
 def “**supply**” sub 2001 No. 20 s 49  
 def “**tobacco product supplier**” om 1999 No. 61 s 37(1)

## **7 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001 No. 20 pt 2 (other than ss 3, 29 and 48) reads as follows—**

### **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.<sup>3</sup>

**“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,

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<sup>3</sup> *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.

- 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.

‘(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

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Supply to Children) Act 1998*

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- (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.<sup>4</sup>

**“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.

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<sup>4</sup> *Body Corporate and Community Management Act 1997*, section 11 (Meaning of **“community titles scheme”**)

**“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*.

**“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.<sup>5</sup>

**“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.

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<sup>5</sup> *Body Corporate and Community Management Act 1997*, schedule 4 (Dictionary)

**“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 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—

- (a) an authorised person;<sup>6</sup> 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

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<sup>6</sup> See section 40A (Power to direct person to stop smoking).

- (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.

‘(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.’.

## **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—
  - (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; and’.

(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; and’.

### **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.<sup>7</sup>

‘(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—*

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<sup>7</sup> 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—*

**‘40B 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.’.

#### **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.

**“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.<sup>8</sup>

“**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.

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

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<sup>8</sup> *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.

**“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.’.