



Tobacco and Other Smoking Products Act 1998

Reprinted as in force on 31 December 2005

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

Also see endnotes for information about—

- **when provisions commenced**
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Queensland

Tobacco and Other Smoking Products Act 1998

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Tobacco and Other Smoking Products Act 1998

[as amended by all amendments that commenced on or before 31 December 2005]

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

Part 1 Preliminary

1 Short title

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

4 Definitions

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

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—

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).

9A Supplier must take prevention measures

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

Maximum penalty—40 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.

10 Supplier must not supply smoking products to children

- (1) A supplier must not supply a smoking product to a child.

Maximum penalty—

- (a) for a first offence—140 penalty units; or
- (b) for a second offence—280 penalty units; or
- (c) for a third or later offence—420 penalty units.

- (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—

- (a) for a first offence—140 penalty units; or
- (b) for a second offence—280 penalty units; or
- (c) for a third or later offence—420 penalty units.

- (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 course of the employee's employment, supply a smoking product to a child.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

13 Order prohibiting or restricting sale of smoking products

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

13A Power to require details of retail suppliers

- (1) This section applies if the chief executive reasonably believes a manufacturer or wholesaler of smoking products has supplied smoking products to suppliers for sale at retail outlets.

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- (2) The chief executive may, by written notice given to the manufacturer or wholesaler, require the manufacturer or wholesaler to give all or any of the following information (the ***contact information***) to the chief executive for each supplier to which the manufacturer or wholesaler has supplied smoking products—
- (a) the name of the supplier;
 - (b) if a supplier trades under a business name, that business name;
 - (c) the address of the supplier's retail outlet;
 - (d) the supplier's postal address;
 - (e) the supplier's phone number;
 - (f) the supplier's fax number and email address.
- (3) The notice must state—
- (a) the period before the date of the notice, not exceeding 12 months, for which the contact information is required; and
 - (b) a date, not less than 28 days from the date of the notice, by which the contact information must be given to the chief executive; and
 - (c) the way the contact information must be given to the chief executive.

Example—

The notice may require the contact information to be given by fax or email.

- (4) The manufacturer or wholesaler must comply with the notice, unless the manufacturer or wholesaler has a reasonable excuse.

Maximum penalty—70 penalty units.

- (5) The chief executive may use contact information or disclose contact information to a person only for the following purposes—

- (a) compiling and keeping a list of suppliers so that the suppliers may be advised about matters relating to this Act, including the requirements applying to suppliers;
- (b) monitoring or enforcing compliance with this Act.

Division 2 Tobacco product vending machines

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 5m 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*, schedule.¹

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

prevention measures, by a person in charge of a tobacco product vending machine, means, for the person's employees—

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

15 Restriction on location of tobacco product vending machines

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

Maximum penalty—70 penalty units.

- (2) Subsection (1) does not apply to—
 - (a) a bar area of licensed premises if the use of each tobacco product vending machine in the area can be easily observed by persons working behind the bar; or
 - (b) a casino; or

¹ *Gaming Machine Act 1991*, schedule (Dictionary)—

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

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

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—70 penalty units; and
- (b) for a second or later offence—140 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
 - (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)—200 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—70 penalty units; and
- (b) for a second or later offence—140 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 course of the employees' employment; or
- (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—140 penalty units.

- (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 3B False representation of age

19A Person must not falsely represent age

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

Maximum penalty—20 penalty units.

Division 4 Signage

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—20 penalty units.

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

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—20 penalty units.

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—140 penalty units.

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

Maximum penalty—140 penalty units.

23 Loose tobacco must be sold in packages

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

Maximum penalty—140 penalty units.

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

Maximum penalty—140 penalty units.

23A Loose smoking blend must be sold in packages

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

Maximum penalty—140 penalty units.

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

Maximum penalty—140 penalty units.

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—140 penalty units.

- (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 Defence to charges for offences if age material

26 Defence to charge if age material

- (1) This section applies to a charge for an offence against section 10, 11, 12 or 16² in which the age of a person (the *relevant person*) is material to the charge.

2 Section 10 (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)

- (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 2A Advertising, display and promotion of smoking products

Division 1AA Definitions

26AA Definitions for pt 2A

In this part—

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

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

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

Division 1 Retail advertising and display

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

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

Maximum penalty—140 penalty units.

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

Maximum penalty—140 penalty units.

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

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.

26CA One smoking product display only per retail outlet

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

26CB Size of smoking product display

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

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;

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- (b) by a stack dispenser for immediate packages of the product line that complies with this section;
 - (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) Immediate packages in a stack dispenser may not be arranged as a display panel.
- (4) Immediate packages in a stack dispenser are taken to be arranged as a display panel if—
- (a) the packages are arranged in a way that highlights the immediate packages to a person facing the stack dispenser, including by leaving spaces between the packages; and
 - (b) the packages in the stack dispenser visible to a person facing the dispenser are considerably less in number than the packages that could be fitted into the same area

of a stack dispenser that is designed to maximise the number of packages in the area visible to a person facing the dispenser.

(5) 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 Display of health warning on humidified container and humidified room

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

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

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

26HA Certain business names allowed

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

26HB Use of ‘tobacconist’ in advertising

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

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—20 penalty units.

- (2) In this section—

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

Division 3 Promotions of smoking products

26J Definitions for div 3

In this division—

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

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

26K When division does not apply

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

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

- (1) A person must not supply an object or entitlement that promotes—
- (a) a smoking product; or
 - (b) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (c) the name or interests of a manufacturer or distributor of a smoking product in association, whether directly or indirectly, with the smoking product.

Maximum penalty—140 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—140 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.

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

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—140 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—140 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—140 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.

26PA Image of consumption of smoking product

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

Maximum penalty—140 penalty units.

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

Part 2B Smoke-free enclosed places**26Q Definitions for pt 2B**

In this part—

bingo has the meaning given by the *Charitable and Non-Profit Gaming Act 1999*, section 8.³

bingo area means an area where bingo is conducted.

bingo session has the meaning given by the *Charitable and Non-Profit Gaming Act 1999*, schedule 2.⁴

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.

3 *Charitable and Non-Profit Gaming Act 1999*—

8 Meaning of bingo

Bingo is a game known as bingo, housie or housie-housie, or a similar game, whatever called, in which—

- (a) each player is given a ticket with numbers, letters or symbols printed on it; and
- (b) the winner is decided by the player matching randomly selected numbers, letters or symbols to the numbers, letters or symbols on the player's ticket.

4 *Charitable and Non-Profit Gaming Act 1999*, schedule 2—

bingo session means the period in which the number of bingo games for the session, decided by the person conducting the session, are played.

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 11.⁵

dining area means an area where meals may be consumed.

enclosed means—

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

exempt vehicle means a vehicle being used—

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

gaming table area, for a casino, means an area within 2.4m 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.

5 *Body Corporate and Community Management Act 1997*, section 10 (Meaning of *community titles scheme*)

Section 11 was renumbered as section 10 under the *Body Corporate and Community Management Act 1997*, section 269A.

lot has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 4.⁶

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.

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.

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;

⁶ *Body Corporate and Community Management Act 1997*, schedule 6 (Dictionary) Schedule 4 was renumbered as schedule 6 under the *Body Corporate and Community Management Act 1997*, section 269A.

- (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) bingo areas during, and 30 minutes immediately before, a bingo session;
 - (iii) 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.

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

- (1) Despite section 26R(2)(e), for phasing in the ban on smoking in an enclosed place in licensed premises,⁷ a regulation may—
- (a) require the licensee of licensed premises to progressively set aside parts of the licensed premises as parts in which a person must not smoke; and
 - (b) prescribe matters relating to the implementation and enforcement of the ban.
- (2) Without limiting subsection (1), a regulation may do 1 or more of the following—
- (a) state the proportion of the whole of the area of the enclosed places at the licensed premises which must be set aside as an area or areas in which a person must not smoke;
 - (b) state the period for which the proportion of the area must be set aside;

⁷ Section 26R(2)(e) is repealed on 1 July 2006.

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

26S No smoking sign

A licensee of licensed premises containing a dining area, bingo 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.

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;⁸ 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.

⁸ See section 40A (Power to direct person to stop smoking).

26V Offence by occupier

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

Maximum penalty—20 penalty units.

- (2) However, it is a defence for the occupier to prove—
- (a) the occupier was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
 - (b) the occupier, or an employee or agent of the occupier—
 - (i) directed the person to stop smoking; and
 - (ii) told the person it was an offence not to comply with a direction to stop smoking.

Part 2C Smoke-free outdoor places**Division 2 Major sports facilities****26ZD Meaning of major sports facility**

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

26ZE Person must not smoke at major sports facility

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

26ZF Person smoking must stop when directed

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

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

Maximum penalty—20 penalty units.

26ZG Offence by occupier

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

Maximum penalty—140 penalty units.

- (2) However, it is a defence for the occupier to prove—
 - (a) the occupier was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
 - (b) the occupier, or an employee or agent of the occupier—
 - (i) directed the person to stop smoking; and
 - (ii) told the person it was an offence not to comply with a direction to stop smoking.

Division 3 Other outdoor places**26ZH Person must not smoke at a patrolled beach**

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

Maximum penalty—20 penalty units.

- (2) In this section—

line means an imaginary line.

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

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

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

registered land means—

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

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

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

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

Maximum penalty—20 penalty units.

- (2) In this section—

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

Example—

an artificial beach

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

26ZJ Person must not smoke near building entrance

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

Maximum penalty—20 penalty units.

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

Example—

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

- (6) In this section—

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

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

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

26ZK Person must not smoke near children's playground equipment

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

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to—
 - (a) a person in a motor vehicle; or
 - (b) a person at residential premises or on land on which residential premises are built or may lawfully be built.

26ZL Person smoking must stop when directed

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

Maximum penalty—20 penalty units.

26ZM State and local governments administer this division

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

26ZN Role of local government

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

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

26ZO State may require report from local government

- (1) This section applies to a matter under this division administered and enforced by local governments.
- (2) The chief executive, by written notice, may ask a local government to give the chief executive information about the local government's administration and enforcement of the matter.
- (3) The local government must comply with the request.

26ZP Fines payable to local government

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

Part 2D Cannabis utensils**26ZQ Production, sale or public display of cannabis utensils**

- (1) A person must not produce, sell or publicly display a cannabis utensil.
Maximum penalty—140 penalty units.
- (2) In this section—

cannabis utensil means an object for smoking cannabis sativa, colloquially known as a ‘bong’.

Part 3 Monitoring and enforcement

Division 1 Appointment of authorised persons and other matters

27 Powers generally

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

28 Appointment

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

- (3) The chief executive officers of 2 or more local governments may appoint an employee of, or another person under contract to, one of the local governments to be an authorised person for the local governments' areas.

29 Qualifications for appointment

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

30 Appointment conditions and limit on powers

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

signed notice means a notice signed by the administering executive.

30A Issue of identity card

- (1) The administering executive must issue an identity card to each authorised person.
- (2) The identity card must—
 - (a) contain a recent photo of the authorised person; and
 - (b) contain a copy of the authorised person's signature; and
 - (c) identify the person as an authorised person under this Act; and
 - (d) state an expiry date for the card.

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

30B Production or display of identity card

- (1) In exercising a power under this Act in relation to another person, an authorised person must—
- (a) produce the authorised person's identity card for the other person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to another person only because the authorised person has entered a place as mentioned in section 33(2) or (3).

30C When authorised person ceases to hold office

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

30D Resignation

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

30E Return of identity card

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

Maximum penalty—10 penalty units.

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

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—
 - (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.
- (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.

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.⁹
- (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—

⁹ This section does not apply if entry is authorised by section 33(1)(b) or (2).

- (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—
- (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.

36A Special warrants

- (1) An authorised person may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—
- (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised person—
- (a) the magistrate must tell the authorised person—

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- (i) what the terms of the warrant are; and
 - (ii) the date and time the warrant was issued; and
- (b) the authorised person must complete a form of warrant (a *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the terms of the warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) If—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
 - (b) the warrant is not produced in evidence;

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

36B Warrants—procedure before entry

- (1) This section applies if an authorised person named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the authorised person's identity card or a copy of another document evidencing the authorised person's appointment;
 - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 36A(6), a copy of the facsimile warrant or warrant form;
 - (c) tell the person the authorised person is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

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 at the place; or
 - (c) take a thing, or a sample of or from a thing, at the place for analysis; or
 - (d) take an extract from, or copy, a document at 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 at the place, to give the authorised person reasonable help to exercise the authorised person's powers mentioned in paragraphs (a) to (e); or
 - (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) 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.

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.

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—50 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) either—
 - (i) observes the person being supplied a smoking product; or
 - (ii) reasonably believes the person has just been supplied a smoking product; and
 - (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—5 penalty units.
- (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 either—

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

40A Power to direct person to stop smoking

- (1) This section applies if an authorised person finds a person contravening section 26R.¹⁰
- (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.

Division 4 Seizure of evidence

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

¹⁰ Section 26R (Person must not smoke in enclosed place)

authorised person reasonably believes the thing is evidence of an offence against this Act.

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

- (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 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.

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.

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.

Division 5 Other enforcement matters**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.

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—50 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—50 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.
- (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) If a person incurs loss or expense because of the exercise or purported exercise of a power under this part the person may claim compensation—
 - (a) for the exercise or purported exercise of a power by or for the State—from the State; or
 - (b) for the exercise or purported exercise of a power by or for a local government—from the local government.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this part.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

49 Impersonation of authorised person

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

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.

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.

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.

51C Act does not create or preserve right to smoke

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

53 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose requirements about signs for part 2C.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

Part 5 **Transitional**

54 **Transitional—court order under s 13**

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

55 **Transitional—amendment of regulation**

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

Schedule Dictionary

section 4

acceptable evidence of age see section 6.

acknowledgment certification requirement see section 44D(5).

acknowledgment production requirement see section 44D(6).

administering executive means—

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

advertise includes cause, permit or authorise to be advertised.

authorised person means a person appointed, or holding office, under section 28 as an authorised person.

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.

Schedule (continued)

casino has the meaning given by the *Casino Control Act 1982*, schedule.¹¹

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

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.

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

consent acknowledgment see section 34.

consumption, of a smoking product, includes smoking, inhaling or chewing the smoking 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.

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

display includes cause, permit or authorise to be displayed.

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.

employee, for part 2, division 2, see section 14.

enclosed, for part 2B, see section 26Q.

11 *Casino Control Act 1982*, schedule (Dictionary)—

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.

Schedule (continued)

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.

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 has the meaning given by the *Gaming Machine Act 1991*, schedule.

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

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

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

herbal cigarette means a preparation for smoking that—

- (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.

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

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

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.

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

licensee, for part 2B, see section 26Q.

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

Schedule (continued)

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

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.

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

Example—

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

lot, for part 2B, see section 26Q.

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

meal, for part 2B, see section 26Q.

multi-unit residential accommodation—

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

obstruct includes hinder, resist and attempt to obstruct.

occupier, of a place or part of a place—

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

package means—

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

Schedule (continued)

- (d) for loose smoking blend—a package containing loose smoking blend packed by the manufacturer, or importer, of the loose smoking blend.

patrolled beach see section 26ZH(2).

patrolled beach area see section 26ZH(2).

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 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.

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

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.

Schedule (continued)

prohibition sign means a sign about the supply of smoking 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).

publish includes cause, permit or authorise to be published.

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.

responsible adult see section 5.

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

smoking product—

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

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.

supply includes—

- (a) distribute, give or sell; and

Schedule (continued)

- (b) offer or agree to supply; and
- (c) expose for supply; and
- (d) attempt to supply; and
- (e) cause or permit to be supplied.

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

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

tobacco product means tobacco prepared for consumption or something containing tobacco for consumption, and includes a cigarette, cigar and 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 31 December 2005. Future amendments of the Tobacco and Other Smoking Products Act 1998 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	31 May 1998	1 June 1998
1A	1999 Act No. 42	1 December 1999	1 December 1999
1B	1999 Act No. 61	20 February 2000	22 February 2000
1C	2000 Act No. 5	1 July 2000	14 July 2000
1D	2001 Act No. 20	31 May 2001	14 June 2001
2	2001 Act No. 20 2002 Act No. 22	31 May 2002	7 June 2002

Reprint No.	Amendments included	Effective	Notes
2A	2002 Act No. 43	1 October 2002	
2B	2003 Act No. 9	28 March 2003	
2C	2004 Act No. 47	18 November 2004	
2D	2004 Act No. 47	1 January 2005	
2E	2004 Act No. 47	31 December 2005	

5 List of legislation

Tobacco and Other Smoking Products Act 1998 No. 1 (prev Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998; 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)

amending legislation—

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 (this Act is amended, see amending legislation below)

date of assent 11 May 2001
 ss 1–3, 29, 48 commenced on date of assent (see s 2(1))
 remaining provisions commenced 31 May 2002 (see s 2(2))
 amending legislation—

Tobacco Legislation Amendment Act 2002 No. 22 (amends 2001 No. 20 above)

date of assent 17 May 2002
 commenced on date of assent

Health Legislation Amendment Act 2001 No. 78 ss 1–2, 237 sch 4

date of assent 15 November 2001
 ss 1–2, 237 commenced on date of assent
 remaining provisions commenced 31 May 2002 (2002 SL No. 97)

Gambling Legislation Amendment Act 2002 No. 43 ss 1–2, 112 sch 2

date of assent 12 September 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 October 2002 (2002 SL No. 263)

Health and Other Legislation Amendment Act 2003 No. 9 ss 1, 67 sch

date of assent 28 March 2003
 commenced on date of assent

Tobacco and Other Smoking Products Amendment Act 2004 No. 47 ss 1–47

date of assent 18 November 2004
 ss 1–2 commenced on date of assent
 ss 4, 5(3), 6–8, 10–32, 46, 47(3), 47(7), 47(10) commenced 31 December 2005 (see s 2(3))
 ss 33(2), 37, 40 (except to the extent it ins new pt 2C, div 1), 40A, 41–43, 45, 47(2), 47(6), 47(9) commenced 1 January 2005 (see s 2(2))
 ss 33(1), 33(3), 34, 36, 38–39, 40 (to the extent it ins new pt 2C, div 1), 47(4), 47(8) commence 1 July 2006 (see s 2(4))
 s 44 commenced 1 January 2005 (2004 SL No. 271)
 remaining provisions commenced on date of assent

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

Object of Act

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

Supplier must take prevention measures

s 9A ins 2001 No. 20 s 7
 amd 2004 No. 47 s 4

Supplier must not supply smoking products to children

prov hdg amd 1999 No. 61 s 21(1); 2004 No. 47 s 5(1)
s 10 amd 1999 No. 61 s 21(2)–(3); 2001 No. 20 s 8; 2004 No. 47 s 5(2)–(3)

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; 2004 No. 47 s 6

When employee of supplier liable

s 12 amd 1999 No. 61 s 23; 2001 No. 20 s 10; 2004 No. 47 s 7

Order prohibiting or restricting sale of smoking products

prov hdg amd 1999 No. 61 s 24(1)
s 13 amd 1999 No. 61 s 24; 2001 No. 20 s 11
 sub 2004 No. 47 s 8

Power to require details of retail suppliers

s 13A ins 2004 No. 47 s 9

Definitions for div 2

s 14 sub 2001 No. 20 s 12
 def “gaming machine area” amd 2002 No. 43 s 112 sch 2

Restriction on location of tobacco product vending machines

s 15 sub 2001 No. 20 s 12
 amd 2004 No. 47 s 10

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 machine to supply herbal cigarettes and loose smoking blendss 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 3As 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; 2004 No. 47 s 11

Division 3B—False representation of age

div 3B (s 19A) ins 2004 No. 47 s 12

Supplier must display a prohibition signprov hdg amd 1999 No. 61 s 27(1)
s 20 amd 1999 No. 61 s 27(2)
 sub 2001 No. 20 s 18
 amd 2004 No. 47 s 13**Person in charge of tobacco product vending machine must attach or display a prohibition sign**s 21 sub 2001 No. 20 s 19
 amd 2004 No. 47 s 14**Division 5—Minimum saleable quantities of smoking products**

div hdg sub 1999 No. 61 s 28

Cigarettes and herbal cigarettes must be sold in packagesprov hdg amd 1999 No. 61 s 29(1)
s 22 amd 1999 No. 61 s 29(2)–(3); 2001 No. 20 s 20; 2004 No. 47 s 15**Loose tobacco must be sold in packages**s 23 amd 1999 No. 61 s 30; 2001 No. 20 s 21
 sub 2004 No. 47 s 16**Loose smoking blend must be sold in packages**s 23A ins 1999 No. 61 s 31
 amd 2001 No. 20 s 22
 sub 2004 No. 47 s 16

Supply of food or toys resembling tobacco products

s 24 amd 2001 No. 20 s 23; 2004 No. 47 s 17

Division 7—Defence to charges for offences if age material

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Liability of person for conduct of representativess 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 1AA—Definitions

div 1AA (s 26AA) ins 2004 No. 47 s 18

Division 1—Retail advertising and display

div hdg ins 2001 No. 20 s 26

Advertising and display to be as provided in this divisions 26A ins 2001 No. 20 s 26
 sub 2004 No. 47 s 19**Location of display of smoking products**s 26B ins 2001 No. 20 s 26
 amd 2004 No. 47 s 20**Availability for sale of displayed products**

s 26C ins 2001 No. 20 s 26

One smoking product display only per retail outlet

s 26CA ins 2004 No. 47 s 21

Size of smoking product display

s 26CB ins 2004 No. 47 s 21

Manner of display of immediate package of smoking products 26D ins 2001 No. 20 s 26
 amd 2004 No. 47 s 22**Manner of display of individual cigars**

s 26E ins 2001 No. 20 s 26

Display of health warning on humidified container and humidified rooms 26F ins 2001 No. 20 s 26
 sub 2004 No. 47 s 23**When display must not constitute advertisement**

s 26G ins 2001 No. 20 s 26

Display of retail prices of smoking products 26H ins 2001 No. 20 s 26
 amd 2003 No. 9 s 67 sch; 2004 No. 47 s 24**Certain business names allowed**

s 26HA ins 2004 No. 47 s 25

Use of ‘tobacconist’ in advertising

s 26HB ins 2004 No. 47 s 25

Division 2—Quit smoking signs

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Mandatory quit smoking signs 26I ins 2001 No. 20 s 26
amd 2004 No. 47 s 26**Division 3—Promotions of smoking products**

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Definitions for div 3

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When division does not apply

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Supply of object or entitlement that promotes smoking product etc.s 26L ins 2001 No. 20 s 26
amd 2004 No. 47 s 27**Supply of object or entitlement in association with smoking product sale or consumption**s 26M ins 2001 No. 20 s 26
amd 2004 No. 47 s 28**Smoking product giveaways**s 26N ins 2001 No. 20 s 26
amd 2004 No. 47 s 29**Competition that promotes smoking product**s 26O ins 2001 No. 20 s 26
amd 2004 No. 47 s 30**Conduct of competition in association with smoking product sale or consumption**s 26P ins 2001 No. 20 s 26
amd 2004 No. 47 s 31**Image of consumption of smoking product**

s 26PA ins 2004 No. 47 s 32

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Definitions for pt 2Bs 26Q ins 2001 No. 20 s 26 (amd 2002 No. 22 s 3(1))
def “**occupier**” om 2004 No. 47 s 33(2)
def “**residential premises**” om 2004 No. 47 s 33(2)
def “**smoke**” om 2004 No. 47 s 33(2)**Person must not smoke in enclosed place**

s 26R ins 2001 No. 20 s 26 (amd 2002 No. 22 s 3(2)–(3))

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

s 26RA ins 2004 No. 47 s 35
exp 30 June 2006 (see s 26RA(4))

No smoking sign

s 26S ins 2001 No. 20 s 26 (amd 2002 No. 22 s 3(4))

No right to smoke in enclosed place

s 26T ins 2001 No. 20 s 26
om 2004 No. 47 s 37

Person smoking must stop when directed

s 26U ins 2001 No. 20 s 26

Offence by occupier

s 26V ins 2001 No. 20 s 26

PART 2C—SMOKE-FREE OUTDOOR PLACES

pt hdg ins 2004 No. 47 s 40

Division 2—Major sports facilities

div 2 (ss 26ZD–26ZG) ins 2004 No. 47 s 40

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sub 2004 No. 47 s 41

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Issue of identity card

s 30A ins 2004 No. 47 s 41

Production or display of identity card

s 30B ins 2004 No. 47 s 41

When authorised person ceases to hold office

s 30C ins 2004 No. 47 s 41

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s 30D ins 2004 No. 47 s 41

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s 30E ins 2004 No. 47 s 41

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

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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

s 38 amd 2001 No. 20 s 34

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

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

prov hdg amd 1999 No. 61 s 35

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

Power to direct person to stop smoking

s 40A ins 2001 No. 20 s 37

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

s 40B ins 2001 No. 20 s 38

Seizing evidence at a place that may only be entered with consent or a warrant

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s 42 sub 2001 No. 20 s 40

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s 42A ins 2001 No. 20 s 40

Powers to support seizure

s 42B ins 2001 No. 20 s 40

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s 42D ins 2001 No. 20 s 40

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s 44A ins 2001 No. 20 s 41

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s 44F ins 2001 No. 20 s 42

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s 44G ins 2001 No. 20 s 42

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s 45 amd 2001 No. 20 s 43

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s 46 amd 2001 No. 20 s 44

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s 51B ins 2001 No. 20 s 47

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s 51C ins 2004 No. 47 s 43

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def “**acknowledgment production requirement**” ins 2001 No. 20 s 49(2)

def “**administering executive**” ins 2004 No. 47 s 47(6)

def “**advertise**” ins 2001 No. 20 s 49(2)

def “**authorised person**” amd 2004 No. 47 s 47(9)

def “**bar**” ins 2001 No. 20 s 49(2)

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def “**carton**” ins 2001 No. 20 s 49(2)

def “**casino**” ins 2001 No. 20 s 49(2)

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def “**chief executive officer**” ins 2004 No. 47 s 47(6)

def “**common area**” ins 2001 No. 20 s 49(2)

def “**consumption**” sub 2004 No. 47 s 47(1), (5)

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)

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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**” ins 2004 No. 47 s 47(5)

def “**gaming machine area**” ins 2001 No. 20 s 49(2)

def “**gaming table area**” ins 2001 No. 20 s 49(2)

def “**health service employee**” ins 2004 No. 47 s 47(6)

def “**herbal cigarette**” ins 1999 No. 61 s 37(2)

def “**humidified container**” ins 2004 No. 47 s 47(7)

def “**humidified room**” ins 2004 No. 47 s 47(7)

def “**immediate package**” ins 2001 No. 20 s 49(2)

def “**licensed premises**”, for part 2B, ins 2001 No. 20 s 49(2)

def “**licensee**”, for part 2B, 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)

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def “**lot**” ins 2001 No. 20 s 49(2)

def “**major sports facility**” ins 2004 No. 47 s 47(6)

def “**meal**” ins 2001 No. 20 s 49(2)

- def “**multi-unit residential accommodation**” ins 2001 No. 20 s 49(2)
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- def “**occupier**” ins 2001 No. 20 s 49(2)
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- def “**package**” sub 1999 No. 61 s 37; 2004 No. 47 s 47(3), (7)
- def “**patrolled beach**” ins 2004 No. 47 s 47(6)
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- def “**place**” sub 2001 No. 20 s 49
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- def “**prescribed outdoor swimming area**” ins 2004 No. 47 s 47(6)
- def “**prevention measures**” ins 2001 No. 20 s 49(2)
- def “**product line**” ins 2001 No. 20 s 49(2)
- def “**prohibition sign**” amd 2001 No. 78 s 237 sch 4
- def “**publish**” ins 2001 No. 20 s 49(2)
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- def “**supplier**” ins 1999 No. 61 s 37(2)
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- def “**tobacco product**” amd 2004 No. 47 s 47(10)
- def “**tobacco product supplier**” om 1999 No. 61 s 37(1)