

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health and Community Care)

Tobacco (Amendment) Bill 1999

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Tobacco (Amendment) Bill 1999

**A BILL
FOR
An Act to amend the *Tobacco Act 1927* and the
*Tobacco Licensing Act 1984***

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

- 5 **1. Short title**
 This Act may be cited as the *Tobacco (Amendment) Act 1999*.
- 2. Commencement**
- (1)** Sections 1, 2, 3 and 17 commence on the day this Act is notified in
the *Gazette*.
- 10 **(2)** The remaining provisions (other than section 13) commence on a day
fixed by the Minister by notice in the *Gazette*.

(3) If the remaining provisions (other than section 13) have not commenced within 6 months beginning on the day this Act is notified in the *Gazette*, they commence, by force of this subsection, on the first day after that period.

5 (4) Section 13 commences 6 months after the day the provisions referred to in subsection (2) commence.

PART 2—AMENDMENT OF TOBACCO ACT 1927

3. Tobacco Act

This Part amends the *Tobacco Act 1927*¹ (“the Tobacco Act”).

10 **4. Interpretation**

Section 3 of the Tobacco Act is amended—

(a) by omitting the definitions of “public place”, “sell” and “tobacco advertisement” and substituting the following definitions:

15 “ ‘public place’ means a place to which the public ordinarily has access, whether by payment or not;

‘sell’ see section 3C;

‘tobacco advertisement’ see section 3D;” and

(b) by inserting the following definitions:

20 “ ‘authorised officer’ means an authorised officer under section 12G;

‘Deputy Registrar’ means a Deputy Registrar of Tobacco under section 12B;

‘functions’ includes powers and duties;

‘group licence’ means a tobacco licence that is—

25 (a) a group retail tobacconist’s licence under the *Tobacco Licensing Act 1984*; or

(b) a group wholesale tobacco merchant’s licence under the *Tobacco Licensing Act 1984*;

‘identity card’ means—

30 (a) in relation to a Public Health Officer under the *Public Health Act 1997*—the identity card issued to him or her under that Act;

(b) in relation to a police officer—proof of identification of a type approved for general purposes by the Commissioner of Police; or

5

(c) in relation to any other authorised officer—the identity card issued to the officer under section 12H;

‘immediate package’, of a tobacco product, means a package containing the product, other than a package containing a further package or packages of the product;

10

‘occupier’, of premises, means a person having the management or control, or otherwise being in charge, of the premises;

‘package’ does not include a transparent wrapping, unless the wrapping has a tobacco advertisement printed on it;

15

‘point of sale’ means a place where tobacco products are sold within a retail outlet, and includes a vending machine from which tobacco products are sold;

‘point of sale display’ means a display of, or about, a tobacco product (or products) that complies with section 3A;

20

‘premises’ includes a vehicle, vessel or aircraft, and a permanent or temporary structure;

‘product information notice’ see section 3B;

‘Registrar’ means the Registrar of Tobacco under section 12A, and includes a Deputy Registrar;

25

‘retail outlet’ means premises where tobacco products are available for sale;

‘this Act’ includes the regulations;

‘tobacco licence’ means any of the following licences under the *Tobacco Licensing Act 1984*:

30

(a) a retail tobacconist’s licence;

(b) a group retail tobacconist’s licence;

(c) a wholesale tobacco merchant’s licence that authorises the sale of tobacco products from a vending machine;

35

(d) a group wholesale tobacco merchant’s licence that authorises the sale of tobacco products from a vending machine;

'tobacco retailing business' means—

- (a) a business that consists of, or involves, the retailing of tobacco products; or
- 5 (b) a business that consists of, or involves, the management of a retail outlet where tobacco products are available for sale by means of vending machines;

'variety of tobacco product' means a tobacco product bearing a particular trademark or brand name;”.

10 **5. Insertion**

After section 3 of the Tobacco Act the following sections are inserted in Part 1:

“3A. Point of sale displays

15 “(1) A point of sale display may only consist of a single display having an unbroken, outer display surface (whether or not the surface is flat) with an area of not more than 1 square metre.

“(2) A point of sale display may only consist of either or both of the following:

- 20 (a) a single representation of the immediate package of any particular variety of tobacco product usually available for sale at the point of sale, if the representation—
 - (i) is no larger than the actual size of the package, and has the same appearance as the package; and
 - 25 (ii) includes a representation of the health warning with which the product is labelled under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* of the Commonwealth;
- (b) the display of tobacco products available for sale at the point of sale, if the tobacco products are displayed in the form in which they are available for sale.
- 30

“(3) A point of sale display may only be located—

- (a) at a point of sale;
- (b) so that the lowest point of the display is not less than 1 metre above the floor, as measured from the closest point of the customer service area in relation to the point of sale; and
- 35 (c) except in the case of a vending machine—on the seller’s side of the point of sale, not less than 1 metre away from any part of the customer service area in relation to the point of sale.

“(4) A point of sale display—

- 5
- (a) shall not be visible from a public place outside the retail outlet;
 - (b) shall not consist of the display of tobacco products or packages of tobacco products, or representations of such products or packages, so as to constitute a tobacco advertisement itself as distinct from the display of each product, package or representation; and
 - (c) shall comply with any additional requirements prescribed under the regulations.

“3B. Product information notices

10 In this Act—

‘product information notice’ means a notice—

- 15
- (a) located at or adjacent to a point of sale;
 - (b) having an unbroken surface (whether or not the surface is flat) with an area of not more than 1 square metre;
 - (c) listing the different varieties of tobacco product usually available for sale at the point of sale (with or without information about the prices of those varieties);
 - (d) containing only text;
 - (e) in sans serif type no character of which exceeds 72 points in size (that is, 2 centimetres in height and 1.5 centimetres in width); and
 - (f) in black lettering on a white background, or white lettering on a black background, but not both.

“3C. What does ‘sell’ mean?

25 In this Act—

‘sell’ includes—

- 30
- (a) offer for sale;
 - (b) expose for sale;
 - (c) barter (or offer or expose for barter);
 - (d) exchange (or offer or expose for exchange); and
 - (e) supply (or offer or expose for supply), whether or not for value.

“3D. Tobacco advertisements

“(1) In this Act—

35 ‘tobacco advertisement’ is writing means sound or a picture, symbol, light or other visible device, object or sign (or a combination of 2

or more of these) that a reasonable person would consider publicises, or otherwise promotes—

- (a) the purchase or use of a tobacco product; or
- (b) a trademark or brand name, or part of a trademark or brand name, of a tobacco product.

“(2) A ‘tobacco advertisement’ may be constituted by an incidental or accidental accompaniment to any other written, aural, pictorial, symbolic or visible matter.

“3E. Name of tobacco product manufacturer etc

“(1) For the purposes of this Act, the publication of the name of a manufacturer, distributor or retailer of tobacco products—

- (a) is not, of itself, a tobacco advertisement; and
- (b) is not taken, of itself, to publicise or promote—
 - (i) a tobacco product, or the purchase or use of a tobacco product;
 - (ii) a trademark or brand name of a tobacco product; or
 - (iii) the name or interests of a manufacturer or distributor of a tobacco product in association with a tobacco product.

“(2) However, the publication of the name of a manufacturer, distributor or retailer of tobacco products in association with the publication of other material may be a tobacco advertisement, and may be taken to be publicity or promotion as mentioned in subsection (1).”.

6. Substitution

Section 4 of the Tobacco Act is repealed and the following section substituted:

“4. Supply of tobacco to under 18 year olds

“(1) A person shall not sell a tobacco product to a person under 18 years old.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that immediately before the tobacco product was sold, the person to whom it was sold had shown a document of identification to the defendant (or to an employee or agent of the defendant).

“(3) The occupier of premises where there is a vending machine shall not permit a person under 18 years old to obtain a tobacco product from the machine.

Penalty:

- 5 (a) if the offender is a natural person—50 penalty units;
(b) if the offender is a body corporate—250 penalty units.

“(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that immediately before the tobacco product was obtained, the person who obtained it had shown a document of identification to the defendant (or to an employee or agent of the defendant).

“(5) A person shall not use another person’s document of identification, or a forged document of identification, for the purpose of obtaining a tobacco product.

Penalty: 10 penalty units.

15 “(6) A person may refuse to sell a tobacco product to someone else, or to permit someone else to obtain a tobacco product, if—

- (a) the person is not satisfied that the other person is at least 18 years old;
20 (b) the person considers that the product is sought for use by a person under 18 years old; or
(c) the person considers that any identification shown by the other person is not genuine, or has been tampered with.

25 “(7) Subsection (6) does not limit the circumstances in which a person may refuse to sell a tobacco product, or refuse to permit someone else to obtain a tobacco product.

“(8) In this section—

‘document of identification’, of a person, means a document that—

- (a) is—
30 (i) a licence under the *Motor Traffic Act 1936*;
(ii) a proof of age card under the *Liquor Act 1975*;
(iii) a document corresponding to such a licence or proof of age card that has been issued under the law of a State or another Territory; or
(iv) a passport;
35 (b) contains a photograph that could reasonably be taken to be of the person; and
(c) indicates that the person to whom the document was issued is at least 18 years old.”.

7. Purchase of tobacco for under 18 year olds

Section 5 of the Tobacco Act is amended by omitting from the penalty provision "10 penalty units" and substituting "50 penalty units".

8. Vending machines

5 Section 6 of the Tobacco Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

10 "(1) A person shall not, without reasonable excuse, place a vending machine for operation by members of the public on any premises except—

- (a) a bar-room specified in a licence under the *Liquor Act 1975*;
- (b) the casino under the *Casino Control Act 1988*; or
- 15 (c) a place where gaming machines are operated on premises licensed under the *Gaming Machine Act 1987*, if rules have been approved under subsection 31 (2) of that Act prohibiting the entry into the place of anyone under 18 years old.

Penalty:

- 20 (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”;
- and

- (b) by omitting from subsection (2) the penalty provision and substituting the following penalty provision:

25 “Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.”.

9. Non-smoking tobacco

30 Section 7 of the Tobacco Act is amended by omitting the penalty provision and substituting the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”.

10. Substitution

35 Section 8 of the Tobacco Act is repealed and the following section substituted:

“8. Food and toys resembling or promoting tobacco products

“(1) A person shall not sell or import food or a toy if the food or toy resembles—

- (a) a tobacco product; or
- 5 (b) a tobacco product package.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether food or a toy resembles a tobacco product or package—

- (a) it is sufficient to prove that there are reasonable grounds for believing the resemblance to exist; and
- 15 (b) the resemblance may be found to exist irrespective of the actual belief of the defendant.

“(3) A person shall not sell or import food or a toy if the food or toy publicises or otherwise promotes—

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

Penalty:

- 25 (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(4) In a prosecution for an offence against subsection (3), for the purpose of establishing whether food or a toy publicises or otherwise promotes a matter mentioned in that subsection—

- 30 (a) it is sufficient to prove that there are reasonable grounds for believing the matter to be publicised or promoted; and
- (b) the matter may be found to be publicised or promoted irrespective of the actual belief of the defendant.

“(5) A person shall not sell or import food or a toy if it is of a kind declared by the regulations—

- 35 (a) to resemble a tobacco product or a tobacco product package; or
- (b) to be liable to publicise or otherwise promote—
 - (i) a tobacco product, or the use of a tobacco product;

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

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(6) In this section—

- (a) a reference to the resemblance of food or a toy to a tobacco product or a tobacco product package includes a reference to—
 - (i) a resemblance that the food or toy has to a tobacco product or a tobacco product package by virtue of the packaging of the food or toy; and
 - (ii) a resemblance that the package of the food or toy has to a tobacco product or tobacco product package; and
- (b) a reference to the publicising or promoting of a matter by food or a toy includes a reference to—
 - (i) the publicising or promoting of that matter by the food or toy by virtue of its packaging; and
 - (ii) the publicising or promoting of that matter by the package of the food or toy.

“(7) In this section—

‘food’ includes confectionery;

‘import’ means import into the Territory for sale;

‘kind’, of food or a toy, includes a particular trademark, brand or variety of food or toy;

‘tobacco product package’ means a package that—

- (a) is of a type commonly used for tobacco products; or
- (b) includes a symbol, design or words that indicate that the package contains a tobacco product, or a particular variety of tobacco product.”.

11. Sale of cigarettes in quantities fewer than 20

Section 9 of the Tobacco Act is amended by omitting the penalty provision and substituting the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”.

12. Insertion

5 After section 9 of the Tobacco Act the following section is inserted in Part 2:

“9A. Display of tobacco products at points of sale

An occupier of a retail outlet shall not display a tobacco product within, or adjacent to, the outlet except in a point of sale display.

10 Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”.

13. Insertion

15 After section 9A of the Tobacco Act, as inserted by section 12 of this Act, the following section is inserted in Part 2:

“9B. Numbers of points of sale

“(1) An occupier of a retail outlet on unlicensed premises shall not provide more than 1 point of sale at the outlet.

Penalty:

- 20
- (a) if the offender is a natural person—50 penalty units;
 - (b) if the offender is a body corporate—250 penalty units.

“(2) An occupier of a retail outlet on licensed premises shall not provide more than 5 points of sale at the outlet.

Penalty:

- 25
- (a) if the offender is a natural person—50 penalty units;
 - (b) if the offender is a body corporate—250 penalty units.

“(3) In this section—

‘licensed premises’ means premises for which an On Licence, a General Licence or a Club Licence is in force under the *Liquor Act 1975*;

30 ‘unlicensed premises’ means premises other than licensed premises.”.

14. Substitution

The heading to Part 3 of the Tobacco Act is omitted and the following heading substituted:

“PART 3—ADVERTISING, PROMOTION AND SPONSORSHIP”.

15. Prohibited tobacco advertising

Section 10 of the Tobacco Act is amended—

- 5 (a) by omitting subsection (1) and substituting the following subsection:

“(1) A person shall not—

- (a) display or broadcast a tobacco advertisement in a theatre;
10 (b) sell a film or video tape that contains a tobacco advertisement;
(c) distribute to the public any unsolicited document (for example, a leaflet or handbill) that contains a tobacco advertisement; or
15 (d) place, display or broadcast a tobacco advertisement so that the advertisement is visible or audible in or from a public place.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
(b) if the offender is a body corporate—250 penalty units.”;
20 (b) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) a tobacco advertisement in or on a newspaper, magazine or book;”;

- 25 (c) by omitting paragraph (2) (c) and substituting the following paragraphs:

“(c) a tobacco advertisement in a point of sale display;

- (ca) a product information notice at or adjacent to a point of sale, if—
30 (i) where there is a point of sale display at the point of sale—it is the only product information notice at or adjacent to the point of sale, and the notice is not visible from a public place outside the retail outlet;
or
(ii) where there is no point of sale display at the point of sale—it is the only product information notice at or adjacent to the point of sale;

35 (cb) a personal use advertisement;”;

- (d) by adding at the end the following subsection:

“(5) In this section—

‘personal use advertisement’ means the placement, display or broadcast of a tobacco advertisement, or of an object displaying a tobacco advertisement, in the course of the personal use of the advertisement or object, unless the placement, display or broadcast—

- (a) is for a direct or indirect pecuniary benefit; or
- (b) is undertaken in the course of a tobacco retailing business.

Example: The wearing of a T-shirt displaying a tobacco advertisement, unless the wearer is paid for wearing the T-shirt or does so in the course of a tobacco retailing business (eg as an employee or shop manager).”

16. Removal of tobacco advertisements

Section 11 of the Tobacco Act is amended—

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) If an authorised officer believes on reasonable grounds that a person has contravened paragraph 10 (1) (d), the officer may give the person a written notice requiring the relevant tobacco advertisement to be removed, or obscured, in a specified way, within 3 days after the notice is given.

“(1A) A notice shall include the following statements:

- (a) a statement to the effect that the person may be prosecuted for an offence against paragraph 10 (1) (d) (Prohibited tobacco advertising) if the notice is contravened;
- (b) a statement to the effect that the person may also be prosecuted for an offence under subsection (1B) for each day during any part of which the contravention continues.

“(1B) A person commits an offence in relation to each day during any part of which the person contravenes a notice under subsection (1).

“(1C) An offence under subsection (1B) is punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a natural person—5 penalty units; or
- (b) if the offender is a body corporate—25 penalty units.

“(1D) Conviction for an offence under subsection (1B) in relation to a notice about a contravention of paragraph 10 (1) (d) does not prevent conviction for an offence against paragraph 10 (1) (d) in respect of the contravention.”; and

- 5 (b) by omitting subsections (5) and (6).

17. Insertion

After section 11 of the Tobacco Act the following sections are inserted:

“11A. Tobacco product promotions

10 “(1) A person shall not sell or distribute an object or entitlement that promotes—

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

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- 20 (b) if the offender is a body corporate—250 penalty units.

“(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether an object or entitlement promotes a matter mentioned in that subsection—

- (a) it is sufficient to prove—
- 25 (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the object or entitlement would be likely to cause a reasonable person to believe the matter to be promoted, or intended to be promoted, by the object or entitlement; or
- 30 (ii) that there are other reasonable grounds for believing the matter to be promoted, or intended to be promoted, by the object or entitlement; and
- (b) the matter may be found to be promoted by the object or entitlement irrespective of the actual belief of the defendant.

35 “(3) A person shall not sell or distribute an object or entitlement if the sale or distribution is in direct or indirect association with the sale or consumption of a tobacco product, or of tobacco products generally.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

5 “(4) In a prosecution for an offence against subsection (3), for the purpose of establishing whether an object or entitlement is sold or distributed in direct or indirect association with a matter mentioned—

(a) it is sufficient to prove—

- 10 (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the object or entitlement would be likely to cause a reasonable person to believe the sale or distribution to be in such an association, or intended to be in such an association; or
- 15 (ii) that there are other reasonable grounds for believing the sale or distribution to be in such an association, or intended to be in such an association; and

(b) the sale or distribution may be found to be in such an association irrespective of the actual belief of the defendant.

20 “(5) It is a defence to a prosecution for an offence against subsection (3) 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 other than a tobacco product to the same value as the tobacco product.

25 “(6) In applying this section in relation to an object that is a sound recording, a video recording or a computer storage device, a reference to the promotion of a matter is a reference to the promotion of the matter by aural or visible material that the object is reasonably capable of producing, or of causing to be produced, in its normal use.

“(7) In this section—

30 ‘entitlement’ means an entitlement to goods or services, or to a reduced price for goods or services;

‘object’, in relation to the sale of a tobacco product, does not include the immediate package of the product.

“11B. Competitions that promote tobacco products:

“(1) A person shall not conduct a competition that promotes—

- 35 (a) a tobacco product;
- (b) a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or

- (c) the name or interests of a manufacturer or distributor of a tobacco product in association, whether directly or indirectly, with the tobacco product.

Penalty:

- 5 (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether competition promotes a matter mentioned in that subsection—

- 10 (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the competition would be likely to cause a reasonable person to believe the matter to be promoted, or intended to be promoted, by the competition; or
 - 15 (ii) that there are other reasonable grounds for believing the matter to be promoted, or intended to be promoted, by the competition; and
- 20 (b) the matter may be found to be promoted by the competition irrespective of the actual belief of the defendant.

“(3) A person shall not conduct a competition that has a direct or indirect association with the sale or consumption of a tobacco product, or of tobacco products generally.

Penalty:

- 25 (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“(4) In a prosecution for an offence against subsection (3), for the purpose of establishing whether a competition has a direct or indirect association with a matter mentioned—

- 30 (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the competition would be likely to cause a reasonable person to believe the competition to have such an association, or to be intended to have such an association; or
 - 35 (ii) that there are other reasonable grounds for believing the competition to have such an association, or to be intended to have such an association; and
- 40 (b) the competition may be found to have such an association irrespective of the actual belief of the defendant.”

18. Insertion

After section 12 of the Tobacco Act the following Parts are inserted:

“PART 3A—TOBACCO RETAILING: DISCIPLINARY ACTION

5 **“12A. Registrar of Tobacco**

“(1) There shall be a Registrar of Tobacco.

“(2) The Chief Executive shall establish an office in the Government Service the duties of which include performing the functions of the Registrar of Tobacco:

10 “(3) The Registrar shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (2).

“(4) In performing functions under this Act, the Registrar may consider any information received from the Commissioner for Australian Capital Territory Revenue arising out of the administration of the *Tobacco Licensing Act 1984*.

20 “(5) The Registrar may provide any information obtained under this Act, or about any action taken under this Part, to the Commissioner for Australian Capital Territory Revenue for the purposes of the *Tobacco Licensing Act 1984*.

“12B. Deputy Registrars of Tobacco

“(1) There may be 1 or more Deputy Registrars of Tobacco.

“(2) A Deputy Registrar may perform any function of the Registrar, subject to any direction of the Registrar.

25 “(3) The Chief Executive may establish 1 or more offices in the Government Service the duties of which include performing the functions of a Deputy Registrar of Tobacco.

30 “(4) A Deputy Registrar shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).

“12C. Prior notice of proposed disciplinary action

“(1) The Registrar shall not take disciplinary action under subsection 12D (2) in relation to a person without first giving the person written notice inviting the person and any interested person to make representations, within a specified period of at least 14 days after the notice is given, why specified action should not be taken under that subsection.

“(2) The notice shall contain—

- (a) particulars of the facts and circumstances relied on by the Registrar to establish that a ground for taking action exists;
- (b) particulars of the action proposed to be taken; and
- 5 (c) a statement to the effect that the person or any interested person may, within the specified period, give the Registrar written particulars of the facts and circumstances relied on to show that the proposed action should not be taken, or that less severe action should be taken.

10 “(3) In making a decision about disciplinary action under subsection 12D (2) the Registrar shall take into account any representation made in accordance with the invitation under subsection (1).

“(4) In this section—

‘interested person’, in relation to a notice given to another person under subsection (1), means—

- 15 (a) if the notified person holds a group licence—any other person whose name is specified on the licence; or
- (b) any person involved in the direction, management or control of a tobacco retailing business in which the notified person is also involved.

20 **“12D. Disciplinary action**

“(1) This section applies if the Registrar has reasonable grounds for believing—

- 25 (a) that a person who holds a tobacco licence (including a person whose name is specified on a group licence) has contravened this Act, a condition of the licence, or a direction under paragraph (2) (a); or
- (b) that a person who holds a liquor or gaming licence for premises where tobacco products are available for sale by means of a vending machine has contravened this Act.

30 “(2) If the Registrar considers that it is reasonable, the Registrar may, by written notice to the person, take 1 or more of the following actions:

- (a) direct the person not to permit, for a specified period of not longer than 5 years, the operation of a vending machine on specified premises, or on any premises, occupied by the person;
- 35 (b) vary any tobacco licence held by the person with effect for a specified period of not longer than 5 years—
 - (i) to impose more stringent requirements than otherwise apply under this Act in relation to points of sale, point of sale displays, product information notices, vending machines or

tobacco advertising on or adjacent to any (or all) premises specified in the licence;

- 5
- (ii) to impose a condition prohibiting point of sale displays, vending machines, or tobacco advertising on or adjacent to any (or all) premises specified in the licence; or
 - (iii) to impose a condition prohibiting the sale of tobacco products at any (or all) premises specified in the licence;
- 10
- (c) if the person's name is specified on a group licence—vary the group licence to remove the person's name from the licence for a specified period of not longer than 5 years;
 - (d) suspend any tobacco licence held by the person for a specified period of not longer than 3 months;
 - (e) cancel any tobacco licence held by the person with effect from a date specified in the notice;
 - 15 (f) disqualify the person from holding a tobacco licence, or from holding such a licence for particular premises, for a specified period of not longer than 5 years.

20 “(3) The Registrar may only take action under subsection (2) against a person in relation to facts and circumstances specified in a notice under section 12C if the action taken—

- (a) is the action proposed in the notice; or
- (b) would, in the Registrar's opinion based on reasonable grounds, be less severe than the proposed action.

25 “(4) If this section applies to a person because the person has been convicted of an offence against this Act for the second time within 2 years (whether or not the convictions are for offences against the same provision of this Act), the Registrar shall, by written notice to the person—

- 30
- (a) cancel each tobacco licence held by the person;
 - (b) disqualify the person from holding any tobacco licence for 5 years after the notice is given to the person; and
 - (c) direct the person not to permit the operation of a vending machine on any premises occupied by the person for 5 years after the notice is given to the person.

35 “(5) A person shall not contravene a direction under paragraph (2) (a) or (4) (c).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(6) If the Registrar varies a tobacco licence held by a person to whom this section applies, the person shall return the licence to the Registrar for endorsement with the variation within 14 days after the person is given notice of the variation.

5 Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

“(7) Where the Registrar suspends or cancels a tobacco licence held by a person to whom this section applies, the person shall return the licence to the Registrar within 14 days after the person is given notice of the suspension or cancellation.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

15 “(8) In this section—

‘liquor or gaming licence’ means a licence issued under any of the following Acts:

- (a) *Liquor Act 1975*;
- (b) *Casino Control Act 1988*;
- 20 (c) *Gaming Machine Act 1987*.

“12E. Disqualification

“(1) A person disqualified from holding a tobacco licence under section 12D shall not be concerned in the direction, management or control of a tobacco retailing business during the period of disqualification.

25 Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(2) A person disqualified from holding a tobacco licence under section 12D in relation to particular premises shall not be concerned in the direction, management or control of a tobacco retailing business operated at those premises during the period of disqualification.

Penalty:

- 35 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“PART 3B—ENFORCEMENT

“12F. Interpretation

“(1) In this Part—

5 ‘occupier’, of premises, includes a person believed on reasonable grounds to be an occupier of the premises;

‘offence’ means any conduct (whether an act or omission) that constitutes, or is believed on reasonable grounds to constitute, an offence against this Act.

10 “(2) In this Part, a thing (including a document) is connected to an offence if there are reasonable grounds for believing that—

- (a) it is a thing in relation to which the offence has been committed;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for committing an offence.

15 **“12G. Authorised officers**

“(1) There shall be 1 or more authorised officers for the purposes of this Act.

20 “(2) The Chief Executive may establish 1 or more offices in the Government Service the duties of which include performing the functions of an authorised officer.

“(3) The following persons are authorised officers:

- 25 (a) any public servant for the time being performing the duties of a Government Service office of authorised officer referred to in subsection (2);
- (b) the Registrar for Tobacco and any Deputy Registrar;
- (c) a Public Health Officer under the *Public Health Act 1997*;
- (d) a police officer.

“12H. Identity cards

30 “(1) The Chief Executive shall issue to an authorised officer (other than a Public Health Officer or a police officer) an identity card that specifies the officer’s name and office, and contains a recent photograph of the officer.

“(2) Within 7 days after ceasing to be an authorised officer (other than a Public Health Officer or a police officer), a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

35

Penalty for subsection (2): 1 penalty unit.

“12J. Powers of entry

“(1) An authorised officer may, for the purposes of this Act—

- (a) enter any premises (other than residential premises) at any reasonable time;
- 5 (b) enter any premises at any time with the consent of the occupier; or
- (c) enter any premises pursuant to a search warrant under section 12N.

“(2) An authorised officer may enter premises under subsection (1)—

- (a) with such assistance as is necessary and reasonable; and
- 10 (b) when entering pursuant to a search warrant—with such force as is necessary and reasonable.

“(3) An authorised officer who enters premises under subsection (1) is not authorised to remain on the premises if, when asked by the occupier, the officer does not produce his or her identity card.

15 **“12K. Consent to entry**

“(1) Before obtaining the consent of an occupier to enter premises, an authorised officer shall—

- (a) produce his or her identity card; and
- (b) tell the occupier that he or she may refuse to give consent.

20 “(2) If an authorised officer obtains the consent of an occupier to enter premises, the officer shall ask the occupier to sign a written acknowledgment of—

- (a) the fact that the occupier has been told that he or she may refuse to give consent;
- 25 (b) the fact that the occupier has voluntarily given consent; and
- (c) the date and time when the consent was given.

“(3) An entry to premises by an authorised officer in reliance on the occupier’s consent is not lawful unless the consent was voluntary.

“(4) If—

- 30 (a) it is material, in any proceeding, for a court to be satisfied that an occupier’s consent to enter premises was voluntary; and
- (b) an acknowledgment under subsection (2) is not produced in evidence;

35 the court shall assume, unless the contrary is proved, that the consent was not voluntary.

“12L. Powers of authorised officers

“(1) If an authorised officer enters premises under section 12J, the officer may, for the purposes of this Act—

- (a) inspect anything on the premises;
- 5 (b) take copies of any documents on the premises;
- (c) take photographs of anything on the premises;
- (d) open and inspect any package on the premises that the officer has reasonable grounds for believing to contain a thing connected with an offence;
- 10 (e) seize anything on the premises connected with an offence; and
- (f) require any person on the premises to do any or all of the following:
 - (i) make available anything on the premises;
 - (ii) provide information;
 - 15 (iii) answer questions.

“(2) If an authorised officer has reasonable grounds for believing that a person in a public place can provide evidence about the commission of an offence against the following sections, the officer may exercise any power under subsection (1) in relation to the person or anything in the person’s possession:

- section 4 (Supply of tobacco to under 18 year olds)
- section 5 (Purchase of tobacco for under 18 year olds)
- section 7 (Non-smoking tobacco)
- 25 • section 8 (Food and toys resembling or promoting tobacco products)
- section 9 (Sale of cigarettes in quantities fewer than 20)
- section 10 (Prohibited tobacco advertising)
- section 11A (Tobacco product promotions)
- section 11B (Competitions that promote tobacco products)

30 “(3) A person need not comply with a requirement of an authorised officer under subsection (2) if, when asked by the person, the officer does not produce his or her identity card.

“12M. Power to require name and address

35 “(1) An authorised officer may require a person to state the person’s name and address if the officer believes on reasonable grounds that—

- (a) the person is committing, or has committed, an offence; or
- (b) the person can provide evidence of the commission of an offence.

“(2) In exercising a power under subsection (1), an authorised officer shall—

- (a) tell the person of the reasons for the requirement; and
- (b) as soon as practicable afterwards, record the reasons.

5 “(3) A person need not comply with a requirement under subsection (1) if, when asked by the person, the authorised officer does not produce his or her identity card.

“(4) A person shall not, without reasonable excuse, fail to comply with a requirement under subsection (1).

10 Penalty for subsection (4): 5 penalty units.

“12N. **Search warrants**

“(1) This section applies if—

- 15 (a) an information is laid before a magistrate alleging that an authorised officer has reasonable grounds for suspecting that there may be on premises anything of a particular kind connected with a particular offence; and
- (b) the information sets out those grounds.

“(2) If this section applies, the magistrate may issue a search warrant authorising the authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- 20 (a) to enter the premises described in the warrant;
- (b) to search the premises for things referred to in paragraph (1) (a); and
- 25 (c) to exercise any power under subsection 12L (1) in relation to those things.

“(3) A magistrate may issue a search warrant only if—

- 30 (a) the informant or someone else has given the magistrate, either orally or by affidavit, any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

“(4) A search warrant shall—

- 35 (a) state the purpose for which it is issued, including a reference to the nature of the offence in connection with which the entry and search are authorised;
- (b) state that the entry is authorised at any time of the day or night, or specify particular hours when the entry is authorised;

- (c) include a description of the kind of things in relation to which the powers under subsection 12L (1) may be exercised; and
- (d) specify a date (not later than 1 month after the warrant is issued) when the warrant will cease to have effect.

5 **“12P. Obstruction of investigation**

“(1) A person shall not, without reasonable excuse, obstruct or hinder an authorised officer in the exercise of his or her functions under this Act.

Penalty:

- 10 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(2) A person shall not, without reasonable excuse, fail to comply with a requirement under paragraph 12L (1) (f).

Penalty:

- 15 (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

“12Q. Seized items

“(1) A seized item shall be returned to its owner, or compensation shall be paid to the owner by the Territory for the loss of the item, if—

- 20 (a) a prosecution for an offence relating to the item is not instituted within 90 days of the seizure; or
- (b) the court does not find the offence proved in a prosecution for an offence relating to the item.

“(2) A seized item is forfeited to the Territory if—

- 25 (a) a court finds an offence relating to the item proved; and
- (b) the court so orders.

“(3) If paragraph (2) (a) applies, but a court does not make an order under paragraph (2) (b), the seized item shall be returned to its owner, or compensation shall be paid to the owner by the Territory for the loss of the item.

30

“(4) In this section—

‘compensation’ means compensation on just terms;

‘seized item’ means a thing seized by an authorised officer under paragraph 12L (1) (e).

“PART 3C—ADMINISTRATIVE REVIEW

“12R. Review of decisions

Application may be made to the Administrative Appeals Tribunal for review of any of the following decisions of the Registrar:

- 5 (a) to issue a direction under paragraph 12D (2) (a);
- (b) to vary a tobacco licence under paragraph 12D (2) (b);
- (c) to vary a group licence under paragraph 12D (2) (c);
- (d) to suspend a tobacco licence under paragraph 12D (2) (d);
- (e) to cancel a tobacco licence under paragraph 12D (2) (e);
- 10 (f) to disqualify a person from holding a tobacco licence under paragraph 12D (2) (f).

“12S. Notification of decisions

“**(1)** The notice of a decision of the Registrar given to a person under subsection 12D (2) shall be in accordance with the requirements of the Code of Practice in force under section 25B of the *Administrative Appeals Tribunal Act 1989*.

“**(2)** A failure to comply with subsection (1) does not affect the validity of any decision to which the notice relates.”.

**PART 3—AMENDMENT OF TOBACCO LICENSING ACT
1984**

19. Tobacco Licensing Act

This Part amends the *Tobacco Licensing Act 1984*² (“the Tobacco Licensing Act”).

20. Interpretation

Section 3 of the Tobacco Licensing Act is amended by inserting the following definition in subsection (1):

“ ‘Registrar of Tobacco’ means the Registrar of Tobacco under the *Tobacco Act 1927*, and includes a Deputy Registrar of Tobacco under that Act;”.

21. Insertion

After section 3B of the Tobacco Licensing Act the following section is inserted in Part 2:

“4. Exchange of information between Registrar of Tobacco and the Commissioner

“(1) In making a decision about the grant of a tobacco licence, the Commissioner may consider any information received from the Registrar of Tobacco arising out of the administration of the *Tobacco Act 1927*.
5

“(2) The Commissioner may provide any information obtained under this Act, or about any action taken under this Act, to the Registrar of Tobacco for the purposes of the *Tobacco Act 1927*.”.

22. Grant of licence

10 Section 26 of the Tobacco Licensing Act is amended by inserting after subsection (1) the following subsection:

“(1A) The form approved for the purposes of paragraph (1) (a) may include matters related to the administration of the *Tobacco Act 1927*.”.

23. Refusal to grant licence

15 Section 27A of the Tobacco Licensing Act is amended by inserting after subsection (3) the following subsections:

“(3A) Without limiting subsections (1), (2) and (3), the Commissioner shall not grant a tobacco licence to an applicant if—

20 (a) the licence applied for would authorise the sale of tobacco products at premises while the operation of vending machines at those premises has been prohibited pursuant to a direction under paragraph 12D (2) (a) of the *Tobacco Act 1927*;

25 (b) where the applicant holds another tobacco licence—the licence applied for would authorise the sale of tobacco products at premises while, pursuant to a variation of the other licence under paragraph 12D (2) (b) of the *Tobacco Act 1927*—

(i) the sale of tobacco products at the premises has been prohibited; or

30 (ii) the operation of vending machines at the premises has been prohibited;

(c) the applicant holds another tobacco licence that is currently suspended under paragraph 12D (2) (d) of the *Tobacco Act 1927*;

(d) the applicant is disqualified from holding a tobacco licence under section 12D of the *Tobacco Act 1927*;

35 (e) a person who is to be concerned in the direction, management or control of the licensed business is disqualified from holding a tobacco licence under section 12D of the *Tobacco Act 1927*; or

(f) a person who is to be concerned in the direction, management or control of the licensed business at particular premises is

disqualified from holding a tobacco licence for the premises under section 12D of the *Tobacco Act 1927*.

“(3B) In subsection (3A), a reference to an applicant for a tobacco licence includes—

- 5 (a) if the applicant is a body corporate—a reference to any director, secretary or other officer of the body; and
- (b) if the application is made on behalf of a group—
- 10 (i) a reference to each member of the group; and
- (ii) if a member of the group is a body corporate—a reference to any director, secretary or other officer of the body.”.

24. Licence fees

Section 28 of the Tobacco Licensing Act is amended by inserting after subsection (1) the following subsection:

15 “(1AA) The Minister may determine a different amount under section 44A for the purposes of paragraph (1) (c) or (d) for different licences by reference to—

- (a) the number of premises specified in the licence under subsection 26 (4); and
- 20 (b) the number of points of sale (within the meaning of the *Tobacco Act 1927*) at each of the premises.”.

NOTES

Principal Acts

1. *Tobacco Act 1927*. Reprinted as at 31 December 1993. See also Acts No. 70, 1997; No. 54, 1998.
2. *Tobacco Licensing Act 1984*. Reprinted as at 10 July 1998. See also Act No. 5, 1999.

Penalty units

See section 33AA of the *Interpretation Act 1967*.