



Australian Capital Territory

Tobacco Act 1927

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Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Tobacco Act 1927* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 2 February 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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Editorial changes

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This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Tobacco Act 1927

An Act about tobacco and smoking products

Part 1 Preliminary

1 Name of Act

This Act is the *Tobacco Act 1927*.

U 2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*price ticket*—see section 3.' means that the expression 'price ticket' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

U 2B Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to an offence committed by a person against s 16 (Prohibition on sale of smoking products by vending machine) of this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

U 3 Meaning of *price tickets*

In this Act:

price ticket, for a product line, means a label that—

- (a) includes no information other than any or all of the following:
 - (i) the name of the product line;
 - (ii) a bar code or similar identifying code;
 - (iii) the price of an item of the product line;
 - (iv) the price of a carton of the product line;
 - (v) a symbol indicating the country of origin of the product line; and
- (b) consists of lettering and any graphics in a single colour (including black or white) on another single-coloured (including black or white) background; and
- (c) is no larger than 35cm²; and

- (d) otherwise complies with the regulations, and is displayed in accordance with the regulations.

U 4 **Meaning of *product information notices***

In this Act:

product information notice means a notice—

- (a) located at or adjacent to a point of sale; and
- (b) having an unbroken surface (whether or not the surface is flat) with an area of not more than 1m²; and
- (c) with nothing attached to it (unless necessary for its support); and
- (d) listing the product lines usually available for sale at the point of sale (with or without information about the prices of items or cartons of the product lines, or boxes of cigars); and
- (e) containing only text; and
- (f) in sans serif type no character of which exceeds 72 points in size (that is, 2cm in height and 1.5cm in width); and
- (g) in black lettering on a white background, or white lettering on a black background, but not both.

5 **Meaning of *sell***

In this Act:

sell includes—

- (a) offer for sale; and
- (b) expose for sale; and
- (c) barter (or offer or expose for barter); and
- (d) exchange (or offer or expose for exchange); and

- (e) supply for value (or offer or expose for supply for value); and
- (f) supply for free (or offer or expose for supply for free), to gain or maintain custom, or otherwise for commercial gain.

6 Meaning of *smoking advertisement*

- (1) In this Act:

smoking advertisement means writing, 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 smoking product; or
 - (b) a trademark or brand name, or part of a trademark or brand name, of a smoking product.
- (2) A *smoking advertisement* may be constituted by an incidental or accidental accompaniment to any other written, aural, pictorial, symbolic or visible matter.

U 7 Publication of name of manufacturer etc

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

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

U Part 2 Point of sale displays

U 8 Restrictions on point of sale displays

At a point of sale display of smoking products—

- (a) the products may only be advertised or displayed in accordance with this part; and
- (b) no smoking advertisement for the products may be displayed (or broadcast) other than as permitted by this part.

Note Par (b) is inserted to emphasise the effect of the prohibition of smoking advertising under s 23 other than at a point of sale. A display of a smoking product in a shop is likely to be a *smoking advertisement* within the meaning of the definition in s 6. This is due to the text and graphics on the package of the product, or on cartons of the product.

U 9 Availability for sale of displayed products

- (1) At a point of sale display, the only smoking products that may be displayed are those available for sale, or usually available for sale, at the point of sale.
- (2) If immediate packages of a smoking product are not available for sale at a point of sale, subsection (1) does not prevent the display of an immediate package of a product line if a carton of the product line is available for sale (or usually available for sale) at the point of sale.

U 10 Manner of display

- (1) A point of sale display of a product line of a smoking product (other than cigars) at a retail outlet may consist of the advertisement or display of the product line at the point of sale in 1 only of the following ways:

- (a) by a single representation of an immediate package of the product line in the form in which the package is available, or usually available, for sale (including the representation of an immediate package if only cartons are available for sale)—
 - (i) no larger than the actual size of the package, with the same appearance as the package; and
 - (ii) for a tobacco product—including a representation of the health warning (if any) with which the package is required to be labelled under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 1994* (Cwlth); and
 - (iii) for a herbal product—including a health warning prescribed under the regulations;
 - (b) 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 (including the display of an immediate package if only cartons are available for sale);
 - (c) by a stack dispenser for immediate packages of the product line that complies with subsection (3).
- (2) A point of sale display of a product line of cigars at a retail outlet may consist of the advertisement or display of the product line at the point of sale in 1 only of the following ways:
- (a) by a single representation of an immediate package of the cigars in the form in which the package is available, or usually available, for sale (including the representation of an immediate package if only cartons are available for sale)—
 - (i) no larger than the actual size of the package, with the same appearance as the package; and
 - (ii) for a tobacco product—including a representation of the health warning (if any) with which the package is required to be labelled under the *Trade Practices*

(Consumer Product Information Standards) (Tobacco) Regulations 1994 (Cwlth); and

- (iii) for a herbal product—including a health warning prescribed under the regulations;
 - (b) by the display of a single immediate package of the cigars in the form in which the package is available, or usually available, for sale (including the display of an immediate package if only cartons are available for sale);
 - (c) by a stack dispenser for immediate packages of the cigars that complies with subsection (3);
 - (d) by a single representation of 1 of the cigars in the form in which the cigar is available, or usually available, for sale (including the representation of a cigar if only packages of the cigars are available for sale), no larger than the actual size of the cigar, with the same appearance as the cigar;
 - (e) by the display of either or both of the following:
 - (i) up to 13 of the cigars in an open box, or in any other manner;
 - (ii) a single closed box full of the cigars in the form in which the box is available for sale.
- (3) The display of a product line by a stack dispenser for immediate packages of the product line is permitted at a point of sale if—
- (a) in the case of packages stacked directly behind each other (from the point of view of the customer's side of the customer service area) (an *angled stack*)—the most that is displayed at the front of the stack is the face, or any part, of a single package; and
 - (b) in the case of an angled stack—only the following parts (if any) of the other packages in the stack are displayed:
 - (i) the tops;

- (ii) the sides;
 - (iii) the bottoms; and
 - (c) in the case of packages stacked on top of each other—no part of more than a single package in the stack is displayed.
- (4) A point of sale display of smoking products may not consist of the display of the products, packages of the products, or representations of the products or packages, so as to constitute a smoking advertisement itself as distinct from the display of each product, package or representation.

U 11 Display of cartons

- (1) At a retail outlet, a point of sale display of a product line may not include the display of a carton of the product line, or any part of the carton.
- (2) At a wholesale outlet, a point of sale display of a product line—
 - (a) may include the display of 1 or more cartons of the product line, but with only the smallest (or 1 of the smallest) sides of the carton (or cartons) facing the customer service area; and
 - (b) must otherwise comply with this part.

U 12 Location of display

- (1) A point of sale display of smoking products (other than cigars) may only be located—
 - (a) at a point of sale; and
 - (b) on the seller's side of the point of sale, not less than 1m away from any part of the customer service area in relation to the point of sale.

- (2) A point of sale display of cigars may only be located—
- (a) for a display of cigars mentioned in section 10 (2) (e)—within a customer service counter at the point of sale, if the cigars or boxes may only be viewed by customers looking down through the (transparent or semitransparent) top of the counter (and may not otherwise be viewed from the customer’s side of the counter); or
 - (b) for a display of cigars mentioned in section 10 (2) (e), or for any other display of cigars mentioned in section 10 (2)—
 - (i) at a point of sale; and
 - (ii) on the seller’s side of the point of sale, not less than 1m away from any part of the customer service area in relation to the point of sale.

U 13 Other display requirements by regulation

A point of sale display must comply with any requirements prescribed under the regulations additional to those imposed by this part.

Part 3 Supply of smoking products

U 14 Supply of smoking product to under 18 year olds

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

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that immediately before the smoking 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) A person shall not use another person's document of identification, or a forged document of identification, for the purpose of obtaining a smoking product.

Maximum penalty: 10 penalty units.

- (4) A person may refuse to sell a smoking product to someone else, or to permit someone else to obtain a smoking product, if—

- (a) the person is not satisfied that the other person is at least 18 years old; or
- (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.

- (5) Subsection (4) does not limit the circumstances in which a person may refuse to sell a smoking product, or refuse to permit someone else to obtain a smoking product.

(6) In this section:

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

- (a) is—
 - (i) an Australian driver licence or a licence to drive a motor vehicle (however described) issued under the law of an external Territory or a foreign country; or
 - (ii) a proof of age card under the *Liquor Act 1975* or a corresponding document issued under the law of a State; or
 - (iii) a passport; and
- (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.

U 15 Purchase of smoking products for under 18 year olds

A person shall not purchase a smoking product for use by a person under the age of 18 years.

Maximum penalty: 50 penalty units.

16 Prohibition on sale of smoking products by vending machine

- (1) A person commits an offence if—
 - (a) the person places a vending machine on premises; and
 - (b) the vending machine is used, or is available for use, by members of the public.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person occupies premises where there is a vending machine; and
 - (b) the vending machine is used, or is available for use, by members of the public.

Maximum penalty: 50 penalty units.

U 17 Tobacco for nonsmoking purposes

A person shall not manufacture or sell a tobacco product other than a product prepared for smoking.

Maximum penalty: 50 penalty units.

U 18 Food and toys resembling or promoting smoking products

- (1) A person shall not sell or import food or a toy if the food or toy resembles—
- (a) a smoking product; or
 - (b) a smoking product package.

Maximum penalty: 50 penalty units.

- (2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether food or a toy resembles a smoking product or package—
- (a) it is sufficient to prove that there are reasonable grounds for believing the resemblance to exist; and
 - (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 smoking product, or the use of 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: 50 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—
 - (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—
 - (a) to resemble a smoking product or a smoking product package; or
 - (b) to be liable to publicise or otherwise promote—
 - (i) a smoking product, or the use of a smoking product; or
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (iii) 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: 50 penalty units.

- (6) In this section—
- (a) a reference to the resemblance of food or a toy to a smoking product or a smoking product package includes a reference to—
 - (i) a resemblance that the food or toy has to a smoking product or a smoking 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 smoking product or smoking 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.

smoking product package means a package that—

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

U 18A Declared smoking products**U 18B Prohibition on sale or import of declared smoking product****U 19 Sale of cigarettes**

A person shall not sell cigarettes (including cigarettes made from a herbal product) in a quantity of fewer than 20.

Maximum penalty: 50 penalty units.

U 20 Display of smoking products at points of sale

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

Maximum penalty: 50 penalty units.

U 21 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.

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 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*.

unlicensed premises means premises other than licensed premises.

U 22 Health warnings at point of sale displays

An occupier of a retail outlet or a wholesale outlet must display a health warning notice prescribed under the regulations at or adjacent to each point of sale display at the outlet.

Maximum penalty: 50 penalty units.

Part 4 Advertising, promotion and sponsorship

U 23 Prohibited smoking advertising

- (1) A person shall not—
- (a) display or broadcast a smoking advertisement in a theatre; or
 - (b) sell a film or videotape that contains a smoking advertisement; or
 - (c) distribute to the public any unsolicited document (for example, a leaflet or handbill) that contains a smoking advertisement; or
 - (d) place, display or broadcast a smoking advertisement so that the advertisement is visible or audible in or from a public place.

Maximum penalty: 50 penalty units.

- (2) This section does not apply in relation to—
- (a) a smoking advertisement in or on a newspaper, magazine or book; or
 - (b) a smoking advertisement that is an accidental or incidental accompaniment to a film or videotape; or
 - (c) a smoking advertisement in a point of sale display; or
 - (d) a single product information notice at or adjacent to a point of sale; or
 - (e) a single price ticket at a point of sale display for each product line on sale (or usually available for sale) at the point of sale; or
 - (f) a personal use advertisement; or

- (g) a smoking advertisement which is—
 - (i) displayed outside the entrance to a place where smoking products are offered for sale; and
 - (ii) to the effect that smoking products are offered for sale in that place;where the advertisement—
 - (iii) does not contain a trademark or brand name, nor part of a trademark or brand name, of a smoking product; and
 - (iv) does not contain the name of a manufacturer or distributor of a smoking product; or
 - (h) a document ordinarily used in the course of business; or
 - (i) smoking advertising specified in, and according with the conditions (if any) specified in, a notice under subsection (3).
- (3) The Minister may, in writing, exempt specified smoking advertising from the operation of subsection (1).
- (4) An exemption may include conditions to which the exemption is subject.
- (5) An exemption is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (6) In this section:
- personal use advertisement*** means the placement, display or broadcast of a smoking advertisement, or of an object displaying a smoking 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 business that involves the sale of smoking products or the management of a retail outlet.

Example of *personal use*

The wearing of a T-shirt displaying a smoking advertisement by a person who is not paid to wear the T-shirt.

Example of par (b)

An employee or the manager of a shop that sells smoking products wearing a T-shirt displaying a smoking advertisement in the course of tobacco retailing.

U 24

Removal of smoking advertisements

- (1) If an authorised officer believes on reasonable grounds that a person has contravened section 23 (1) (d), the officer may give the person a written notice requiring the relevant smoking advertisement to be removed, or obscured, in a specified way, within 3 days after the notice is given.
- (2) A notice shall include the following statements:
 - (a) a statement to the effect that the person may be prosecuted for an offence against section 23 (1) (d) (Prohibited smoking advertising) if the notice is contravened;
 - (b) a statement to the effect that the person may also be prosecuted for an offence under subsection (3) for each day during any part of which the contravention continues.
- (3) A person commits an offence in relation to each day during any part of which the person contravenes a notice under subsection (1).

Maximum penalty: 5 penalty units.

- (4) Conviction for an offence against subsection (3) in relation to a notice about a contravention of section 23 (1) (d) does not prevent conviction for an offence against section 23 (1) (d) in respect of the contravention.

- (5) Proceedings against a person for an offence against section 23 (1) (d)—
 - (a) shall not be commenced unless a notice is given to the person under subsection (1); and
 - (b) shall not be commenced until after the period specified in the notice; and
 - (c) shall not be commenced if the relevant smoking advertisement is removed or obscured in accordance with that notice.
- (6) If a person is convicted of an offence against section 23 (1) (d), the court, in addition to imposing any other penalty, may order that the relevant smoking advertisement be removed, or obscured, by the Territory.
- (7) If a smoking advertisement is removed, or obscured, in accordance with an order under subsection (6), the person convicted of the relevant offence shall pay the Territory the reasonable costs incurred in removing or obscuring the advertisement.

U 25 Smoking product promotions

- (1) A person shall not sell or distribute 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: 50 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—
- (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
 - (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.
- (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 smoking product, or of smoking products generally.

Maximum penalty: 50 penalty units.

- (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—
- (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

- (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.
- (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 smoking product to the same value as the smoking product.
- (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:
 - entitlement* means an entitlement to goods or services, or to a reduced price for goods or services.
 - object* does not include a smoking product.

U 25A Prohibition of smoking product sales contributing to customer reward scheme

U 26 Smoking product giveaways

- (1) A person must not supply a smoking product for free if the supply promotes the sale of any smoking product for value.
Maximum penalty: 50 penalty units.
- (2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether the supply of a smoking product for free promotes the sale of any smoking product for value—

- (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 supply would be likely to cause a reasonable person to believe the sale of any smoking product for value to be promoted, or intended to be promoted, by the supply; or
 - (ii) that there are other reasonable grounds for believing the sale of any smoking product for value to be promoted, or intended to be promoted, by the supply; and
- (b) the sale of any smoking product for value may be found to be promoted by the supply irrespective of the actual belief of the defendant.
- (3) In this section:

promotion, of the sale of a smoking product for value, includes the inducement of the sale of the product for value.

supply, of a smoking product for free, includes the offer or exposure of the product for supply for free.

U 27

Competitions that promote smoking products

- (1) A person shall 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: 50 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—
- (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
- (ii) that there are other reasonable grounds for believing the matter to be promoted, or intended to be promoted, by the competition; and
- (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 smoking product, or of smoking products generally.

Maximum penalty: 50 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—
- (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

- (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
- (b) the competition may be found to have such an association irrespective of the actual belief of the defendant.

U 28 **Prohibition of sponsorships**

- (1) A person shall not, under a contract, agreement, undertaking or understanding, whether or not legally binding, promote or agree to promote—
- (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 that smoking product;

in exchange for a sponsorship, gift, prize, scholarship or like benefit given or agreed to be given by another person.

Maximum penalty: 50 penalty units.

- (2) A person shall not, under a contract, agreement, undertaking or understanding, whether or not legally binding, give or agree to give any sponsorship, gift, prize, scholarship or like benefit in exchange for a promotion, or an agreement to promote, referred to in subsection (1) (a), (b) or (c).

Maximum penalty: 50 penalty units.

- (3) This section does not apply in relation to—
- (a) a scholarship given, or agreed to be given, by a manufacturer or distributor of a smoking product to an employee, or a member of the family of an employee, of the manufacturer or distributor; or

- (b) a contract, agreement, undertaking or understanding specified in, and according with the conditions (if any) specified in, a notice under subsection (4).
- (4) The Minister may, in writing, exempt a specified contract, agreement undertaking or understanding from the operation of subsection (1) or (2).
- (5) An exemption may include conditions to which the exemption is subject.
- (6) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Part 5 Registrar and deputy registrars

29 Registrar of tobacco

The chief executive must appoint a public servant as the Registrar of Tobacco.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

30 Deputy registrars of tobacco

- (1) The chief executive may appoint a public servant as a Deputy Registrar of Tobacco.
- (2) A deputy registrar may perform any function of the registrar, subject to any direction of the registrar.

Part 6 Enforcement

31 Interpretation for pt 6

- (1) In this part:

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.

- (2) For 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.

32 Authorised officers

- (1) The chief executive may appoint a public servant as an authorised officer.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) The following are also authorised officers:
- (a) the registrar;
 - (b) a public health officer under the *Public Health Act 1997*;
 - (c) a police officer.

33 Exercise of powers by authorised officers who are police officers

The powers conferred by this part on an authorised officer who is a police officer are additional to the powers the officer may exercise in his or her capacity as a police officer.

U 34 Identity cards

- (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.

Maximum penalty (for subsection (2)): 1 penalty unit.

35 Powers of entry

- (1) An authorised officer may, for this Act—
 - (a) enter the premises of any retail outlet or wholesale outlet at any time at which smoking products are available for sale at the outlet; or
 - (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 40.
- (2) An authorised officer may enter premises under subsection (1)—
 - (a) with such assistance as is necessary and reasonable; and
 - (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.

36 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.
- (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; and
 - (b) the fact that the occupier has voluntarily given consent; and
 - (c) the date and time when the consent was given.
- (3) In proceedings for this Act, evidence obtained as a result of the entry onto any premises by an authorised officer under section 35 (1) (b) is inadmissible unless an acknowledgment under subsection (2) is produced in evidence.
- (4) An entry to premises by an authorised officer in reliance on the occupier's consent is not lawful unless the consent was voluntary.
- (5) If—
- (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;

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

U 37 Powers of authorised officers

If an authorised officer enters premises under section 35, the officer may, for this Act—

- (a) inspect anything on the premises; and
- (b) take copies of any documents on the premises; and
- (c) take photographs of anything on the premises; and
- (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; and
- (e) seize anything on the premises connected with an offence; and
- (f) require the occupier of the premises, or any person whom the officer has reasonable grounds for believing to be an employee or agent of the occupier (if present in his or her capacity as employee or agent), or otherwise to be concerned in the occupier's business at the premises, to do any or all of the following:
 - (i) make available anything on the premises;
 - (ii) provide information;
 - (iii) answer questions.

38 Provision of information under s 37 (f)—claim of privilege

- (1) This section applies if an authorised officer requires a person to provide information, or to answer questions, under section 37 (f) (ii) or (iii).
- (2) Before the person provides the information, or answers the questions, the officer must—
 - (a) produce his or her identity card; and

- (b) tell the person that he or she need not comply with the requirement in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege, or privilege against selfincrimination.

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (3) The officer must ask the person to sign a written acknowledgment of—
 - (a) the fact that the person has been told that he or she need not comply with the requirement in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege or privilege against selfincrimination; and
 - (b) the fact that the person has, or has not, claimed legal professional privilege, or privilege against selfincrimination, in relation to information specified in the acknowledgment; and
 - (c) the date and time when the requirement was made.
- (4) In proceedings for this Act, evidence obtained as a result of the requirement is inadmissible unless an acknowledgment under subsection (3) is produced in evidence.

U 39 Power to require name and address

- (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.
- (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).

Maximum penalty (for subsection (4)): 5 penalty units.

40 Search warrants

- (1) This section applies if—
- (a) an information is laid before a magistrate by a police officer 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—
- (a) to enter the premises described in the warrant; and
 - (b) to search the premises for things referred to in paragraph (1) (a); and
 - (c) to exercise any power under section 37 in relation to those things.
- (3) A magistrate may issue a search warrant only if—
- (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—
 - (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; and
 - (b) state that the entry is authorised at any time of the day or night, or specify particular hours when the entry is authorised; and
 - (c) include a description of the kind of things in relation to which the powers under section 37 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.

U 41 Failing to comply with requirement of authorised officer

A person shall not, without reasonable excuse, fail to comply with a requirement under section 37 (f).

Maximum penalty: 50 penalty units.

42 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—
 - (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—
 - (a) a court finds an offence relating to the item proved; and
 - (b) the court so orders.

(3) If subsection (2) (a) applies, but a court does not make an order under subsection (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.

(4) In this section:

compensation means compensation on just terms.

seized item means a thing seized by an authorised officer under section 37 (e).

Part 6A Tobacco compliance testing

42A Definitions—pt 6A

In this part:

approved procedures means procedures approved under section 42D (1) for carrying out an approved program of compliance testing.

approved program means a program of compliance testing approved under section 42C (1).

authorised officer does not include a police officer.

conduct—see the Criminal Code, section 13.

compliance test—see section 42B.

engage in conduct—see the Criminal Code, section 13.

purchase assistant—see section 42B (1) (a).

young person means a child who is 15 years old or older.

42B What is a *compliance test*?

- (1) A *compliance test*—
 - (a) involves a young person (a *purchase assistant*), under the supervision of an authorised officer, purchasing, or trying to purchase, tobacco products from tobacco licence-holders; and

- (b) is carried out to obtain evidence that may lead to the prosecution of a person, or other action being taken against a person, for an offence against section 14 (Supply of smoking product to under 18 year olds) in relation to a tobacco product; and

Example of other action

disciplinary action under division 7.3 against a tobacco licence-holder

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (c) may involve the purchase assistant and the authorised officer engaging in conduct that would, apart from section 42F (Lawfulness of compliance testing), be an offence against a territory law.

- (2) In this section:

tobacco licence—see section 43.

tobacco licence-holder means someone who holds a tobacco licence.

42C Approval of compliance testing programs

- (1) The Minister may approve a program of compliance testing.
- (2) However, the Minister must not approve a program of compliance testing unless—
- (a) the Minister is satisfied that the program is necessary to deter the sale of tobacco products to children in the area where the program will operate; and
 - (b) the program states the area where the program will operate and when the program begins and ends; and
 - (c) the program is not longer than 3 months; and

(d) the Minister has approved procedures under section 42D.

Examples of considerations for par (a)

- 1 evidence of sales to children in the area where the program will operate
- 2 the success of other enforcement methods
- 3 the results of previous compliance tests in the area where the program will operate
- 4 the period since compliance testing was previously carried out in the area where the program will operate

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

42D Approval of compliance testing procedures

- (1) The Minister may approve procedures for carrying out approved programs of compliance testing.
- (2) The Minister must not approve procedures under subsection (1) unless satisfied that the procedures—
 - (a) provide that, in carrying out a compliance test, a purchase assistant's welfare is paramount; and
 - (b) appropriately protect a purchase assistant's health and safety; and
 - (c) allow a purchase assistant to stop taking part in a compliance test at any time during the test; and
 - (d) ensure that, as far as practicable, a purchase assistant's identity is protected during a compliance test; and
 - (e) require a purchase assistant to be, as far as practicable, indistinguishable from other purchasers and to look like a young person; and
 - (f) require a purchase assistant not to lie to anyone about how old the assistant is during a compliance test; and

- (g) only allow a compliance test to take place during normal business hours or at any other time when the premises where the test takes place is being used in relation to the seller's normal business; and
 - (h) comply with anything else prescribed by regulation.
- (3) An approval under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

42E Carrying out of compliance testing

- (1) An authorised officer may carry out a compliance test in accordance with an approved program and the approved procedures.
- (2) An authorised officer may use a young person as a purchase assistant in a compliance test only if the young person, and at least 1 person who has parental responsibility under the *Children and Young People Act 2008*, division 1.3.2 for the young person, have given informed consent to the young person being a purchase assistant.

Note If 2 or more people share parental responsibility for a child or young person, any of them may discharge the responsibility (see *Children and Young People Act 2008*, s 18 (2)).

- (3) Each consent under subsection (2) must be in writing.
- (4) In this section:

informed consent, by a person, means consent given by the person after the following matters have been explained to the person:

- (a) a purchase assistant's role in a compliance test, including the assistant's role in any prosecution of a person for an offence against section 14 (Supply of smoking product to under 18 year olds);
- (b) the effect of section 42F and section 42G (Indemnification of authorised officers and purchase assistants);

- (c) anything else required by the approved procedures.

42F Lawfulness of compliance testing

- (1) Despite any other territory law, conduct engaged in honestly by an authorised officer is not unlawful, and is not an offence by the officer, if the conduct is engaged in for the purpose of carrying out a compliance test in accordance with an approved program and the approved procedures.
- (2) Despite any other territory law, conduct engaged in honestly by a purchase assistant is not unlawful, and is not an offence by the assistant, if—
 - (a) the conduct is engaged in for the purpose of carrying out a compliance test; and
 - (b) the assistant acts in accordance, or substantially in accordance, with the instructions (if any) of an authorised officer supervising the compliance test.
- (3) However, this section does not—
 - (a) authorise a purchase assistant to enter or be in a place that it would be otherwise unlawful for the assistant to enter or be in; or
 - (b) prevent action being taken against an authorised officer under the *Public Sector Management Act 1994*, part 9 (Discipline) in relation to a failure by the authorised officer or a purchase assistant to comply with approved procedures.

Example for par (a)

a gaming area under the *Gaming Machine Act 2004*

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

42G Indemnification of authorised officers and purchase assistants

- (1) An authorised officer is not civilly liable for conduct engaged in for the purpose of carrying out a compliance test in accordance with an approved program and the approved procedures.
- (2) A purchase assistant is not civilly liable for conduct engaged in for the purpose of carrying out a compliance test if the assistant acts in accordance, or substantially in accordance, with the instructions of an authorised officer for the test.
- (3) However, this section does not prevent action being taken against an authorised officer under the *Public Sector Management Act 1994*, part 9 (Discipline) in relation to a failure of the authorised officer or a purchase assistant to comply with approved procedures.
- (4) Any liability that would, apart from this section, attach to an authorised officer or purchase assistant attaches instead to the Territory.

42H Annual report about compliance testing

The chief executive must include the following information in an annual report of the chief executive under the *Annual Reports (Government Agencies) Act 2004*:

- (a) the number of compliance tests carried out during the financial year;
- (b) the number of contraventions of section 14 (Supply of smoking product to under 18 year olds) detected by the tests;
- (c) the action taken in relation to the contraventions.

Part 7 Licences

Division 7.1 Interpretation

43 Definitions for pt 7

In this part:

licensee means the holder for the time being of a tobacco licence.

retail tobacconist's licence means a retail tobacconist's licence granted under section 47.

tobacco licence means a retail tobacconist's licence or a wholesale tobacco merchant's licence.

tobacco retailing—see section 44.

tobacco wholesaling—see section 45.

wholesale tobacco merchant's licence means a wholesale tobacco merchant's licence granted under section 47.

44 Meaning of *tobacco retailing*

(1) In this part:

tobacco retailing means the business of selling smoking products by retail.

(2) For the definition of *tobacco retailing*, each of the following facts or circumstances is immaterial:

- (a) that the smoking products are sold alone or in conjunction with any other merchandise;
- (b) that the business is carried on as part of, or in conjunction with, any other business.

45 *Meaning of tobacco wholesaling*

(1) In this part:

tobacco wholesaling means the business of selling smoking products for the purpose of resale or wholesale, and includes any supply of smoking products by way of wholesale to a person or premises within the Territory.

(2) For the definition of *tobacco wholesaling*, each of the following facts or circumstances is immaterial:

- (a) that the smoking products are sold alone or in conjunction with any other merchandise;
- (b) that the business is carried on as part of, or in conjunction with, any other business;
- (c) that any relevant contract is made outside the Territory or governed by a law other than a law of the Territory;
- (d) that the wholesaler is located or registered, or carries on business (wholly or in part), outside the Territory;
- (e) that the wholesaler, or another person, has transported the smoking products from outside the Territory.

46 *Liability of employer for acts of employee*

In this part, if an employee of a person (the *employer*)—

- (a) sells smoking products; or
- (b) carries on the business of selling smoking products;

in the course of his or her employment, the employer is taken to sell smoking products or to carry on the business of selling smoking products (as the case may be), but the employee is not liable for an offence under this part by reason only of having done so.

Division 7.2 Licences

47 Application for, and grant of, tobacco licence

- (1) A person may apply to the registrar for a wholesale tobacco merchant's licence or a retail tobacconist's licence.

Note 1 A fee may be determined under s 70 (Determination of fees) for this section.

Note 2 If a form is approved under s 72A (Approved forms) for an application, the form must be used.

- (2) The applicant must give the registrar any additional information or documents that the registrar, in writing, requires the applicant to give to decide the application or for the administration of this Act.
- (3) Subject to section 50, the registrar must, if the applicant has complied with this Act, grant to the applicant the licence applied for.
- (4) A licence must state the premises that are to be used in relation to the business in relation to which the licence is granted.

Note If a form is approved under s 72A (Approved forms) for a licence, the form must be used.

- (5) A licence operates as follows:
- (a) a wholesale tobacco merchant's licence authorises the licensee to carry on tobacco wholesaling at the premises, or each of the premises, specified in the licence;
 - (b) a retail tobacconist's licence authorises the licensee to carry on tobacco retailing at the premises, or each of the premises, specified in the licence.

- (6) If the holder or any of the holders of a tobacco licence asks the registrar in writing to amend the details of the premises stated in the licence, the registrar must amend the details.

Note 1 A fee may be determined under s 70 (Determination of fees) for this section.

Note 2 If a form is approved under s 72A (Approved forms) for this section, the form must be used.

- (7) A licence cannot be transferred.

U 48 **Conditions of tobacco licence**

- (1) The registrar may specify, in a particular tobacco licence, any conditions to which the licence is subject.
- (2) In particular, the conditions may include, for a retail tobacconist's licence in respect of premises—
- (a) subject to section 21, the maximum number of points of sale permitted on the premises; and
 - (b) the permissible locations, on those premises, of the points of sale.
- (3) If section 50 (2) (b) applies in respect of an applicant, the registrar may, instead of refusing under that paragraph to grant a tobacco licence to the applicant, issue the licence subject to the condition that the applicant must undertake, within the specified time, a specified approved training program in relation to the obligations under this Act of a licensee.
- (4) The registrar may, by notice in writing served on a licensee—
- (a) specify conditions or further conditions to which the licence is subject; or
 - (b) vary or cancel any conditions specified in the licence.

49 Duration of tobacco licence

- (1) A tobacco licence commences on the date specified in the licence as its commencement date.
- (2) Subject to this Act, a tobacco licence (including a renewed licence) remains in force until the end of 31 August next following the grant of the licence.

49A No vending machines authorised

The registrar must not grant or renew a tobacco licence that would authorise the use of a vending machine for the sale of tobacco products.

50 Refusal to grant or renew tobacco licence

- (1) The registrar must not grant or renew a tobacco licence if the registrar is satisfied, on reasonable grounds, that—
 - (a) if the applicant holds another licence—the licence applied for would authorise the sale of smoking products at premises while, under a variation of the other licence under section 58 (2) (a), the sale of smoking products at the premises has been prohibited.
 - (b) the applicant holds another licence that is currently suspended under section 58 (2) (b); or
 - (c) the applicant is disqualified under section 58 from holding a tobacco licence (other than a disqualification relating to particular premises); or
 - (d) the licence would be a licence for particular premises and the applicant is disqualified under section 58 from holding a licence for those premises.
- (2) The registrar may refuse to grant or renew a tobacco licence to an applicant if the registrar is satisfied, on reasonable grounds, that—

- (a) the applicant does not sufficiently understand the obligations under this Act of a licensee; or
 - (b) within the period of 2 years immediately preceding the date when the application is made, 2 offences relating to the sale or supply of smoking products to a person under the age of 18 have been found proved, in the Territory or elsewhere, in respect of the applicant; or
 - (c) the ACAT would have grounds, if the applicant already held a licence, for cancelling the licence.
- (3) For subsection (2) (b), it is immaterial that a conviction was not recorded against the applicant in respect of any offence mentioned in the paragraph.
- (4) In subsections (1), (2) and (3), a reference to an applicant for a licence includes—
- (a) if the applicant is a corporation—a reference to any director, secretary or other officer of the corporation; and
 - (b) in any case—a reference to any person who would be concerned in the direction, management or control of the business that would use, or operate under, the licence.
- (5) If the registrar refuses to grant or renew a tobacco licence under this section, the registrar must refund to the applicant any fee paid in relation to the application.

51 Renewal of tobacco licence

- (1) Subject to section 50 and this section, the registrar must renew a current tobacco licence on the application of the licensee.

Note 1 A fee may be determined under s 70 (Determination of fees) for this section.

Note 2 If a form is approved under s 72A (Approved forms) for the request, the form must be used.

- (2) The licensee must give the registrar any additional information or documents that the registrar, in writing, requires the licensee to give to decide the application or for the administration of this Act.
- (3) The licensee must give the application, and any additional information or documents, to the registrar at least 7 days before the licence is to expire.
- (4) If the registrar refuses to renew a tobacco licence, the registrar must refund any fee paid for a renewal.

53 Register of tobacco licences

- (1) The registrar must keep a register containing particulars of—
 - (a) the name of each licensee; and
 - (b) the number allotted to each licence; and
 - (c) the prescribed particulars (if any).
- (2) The registrar must make the register available for public inspection at the office of the registrar during the times when the office is open to the public.

54 Surrender and termination of tobacco licence

- (1) A holder of a tobacco licence may, at any time, by notice in writing to the registrar, surrender his or her licence, and the licence then ceases to be in force.
- (2) A licence ceases to be in force if the amount of a fee for the grant or renewal of the licence that is due and payable remains unpaid.

Division 7.3 Occupational discipline—licensees

55 Meaning of *licensee*—div 7.3

In this division:

licensee means—

- (a) a licensee; or
- (b) a person who was, but is no longer, a licensee.

56 Grounds for occupational discipline

Each of the following is a *ground for occupational discipline* in relation to a licensee:

- (a) the licensee has contravened or is contravening this Act;
- (b) the licensee has contravened or is contravening a condition of a tobacco licence held by the licensee;
- (c) a tobacco licence was granted to the person in error;
- (d) a tobacco licence was granted to the person in consequence of a false statement made, or misleading information given, by or on behalf of the person;
- (e) the person who holds a tobacco licence has been convicted of an offence under this part;
- (f) if the licensee is an individual—
 - (i) the licensee is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
 - (ii) the licensee is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or

- (iii) the licensee becomes bankrupt or executes a personal insolvency agreement;
- (g) if the licensee is a corporation—the licensee is being wound up.

57 Application to ACAT for occupational discipline

If the registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the registrar may apply to the ACAT for an occupational discipline order in relation to the licensee.

U 58 Orders for occupational discipline

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may make 1 or more of the following orders for occupational discipline in relation to the licensee:
 - (a) direct the registrar to vary a tobacco licence held by the person with effect for a stated period of not longer than 5 years—
 - (i) to impose more stringent requirements than otherwise apply under this Act in relation to point of sale, a point of sale display, product information notice, price ticket or smoking advertising on or adjacent to all or any of the premises stated in the licence; or
 - (ii) to impose a condition prohibiting point of sale display or smoking advertising on or adjacent to all or any of the premises stated in the licence; or
 - (iii) to impose conditions relating to the sale of smoking products to people under 18 years old; or

- (iv) to impose a condition prohibiting the sale of smoking products at all or any of the premises stated in the licence;
- (b) if the ACAT suspends a licensee's licence—suspend any other tobacco licence held by the licensee for a stated period of not longer than 3 months;
- (c) if the ACAT cancels a licensee's licence—disqualify the person from holding a tobacco licence, or from holding a tobacco licence for stated premises, for a stated period of not longer than 5 years.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

- (3) If the only ground for occupational discipline in relation to a licensee is the ground under section 56 (c) (which is about a licence granted to a person in error), the ACAT must only cancel the licence to which the section relates.
- (4) If a person is convicted of an offence against this Act for the 2nd time within 2 years (whether or not the convictions are for offences against the same provision of this Act), the ACAT must—
 - (a) cancel each tobacco licence held by the person; and
 - (b) disqualify the person from holding a tobacco licence for 5 years after notice of the cancellation is given to the person.

U Division 7.4 **Offences**

U 59 **Failure to return tobacco licence after variation, suspension or cancellation**

- (1) If the registrar varies a tobacco licence held by a person, the person must return the licence to the registrar for endorsement with the variation within 14 days after the person is given notice of the variation.

Maximum penalty: 5 penalty units.

- (2) If the registrar suspends or cancels a tobacco licence held by a person, the person must return the licence to the registrar within 14 days after the person is given notice of the suspension or cancellation.

Maximum penalty: 5 penalty units.

U 60 Disqualification

- (1) A person disqualified under division 7.3 (Disciplinary action) from holding a tobacco licence must not be concerned in the direction, management or control of a tobacco retailing business during the period of disqualification.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person disqualified under division 7.3 from holding a tobacco licence in relation to particular premises must not be concerned in the direction, management or control of a tobacco retailing business operated at those premises during the period of disqualification.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

U 61 Selling smoking products without, or in contravention of, tobacco licence

- (1) A person must not sell smoking products unless the person is a licensee.

Maximum penalty: 50 penalty units.

- (2) A licensee who contravenes a condition to which the tobacco licence is subject commits an offence.

Maximum penalty: 50 penalty units.

U 62 Tobacco wholesaling—offences

- (1) A person other than the holder of a wholesale tobacco merchant's licence who carries on tobacco wholesaling commits an offence.

Maximum penalty: 100 penalty units.

- (2) A person who, by way of tobacco wholesaling, or in the course of tobacco wholesaling, sells smoking products to a person who is not a licensee commits an offence.

Maximum penalty: 100 penalty units.

- (3) On a prosecution for an offence against subsection (2), it is a defence to show that—

- (a) under the contract of sale, the smoking products were to be delivered by the seller to the purchaser outside the Territory and that no part of the smoking products has been delivered by the seller to the purchaser within the Territory; or
- (b) if the contract did not specify that matter—the parties intended the smoking products to be so delivered and that no part of the smoking products has been delivered by the seller to the purchaser within the Territory; or
- (c) the defendant reasonably believed that the person to whom the smoking products were sold was a licensee.

- (4) A person other than the holder of a wholesale tobacco merchant's licence who sells smoking products to another person for the other person to place for sale in a vending machine commits an offence.

Maximum penalty: 100 penalty units.

U 63 Tobacco retailing—offences

- (1) A person other than the holder of a retail tobacconist's licence who carries on tobacco retailing commits an offence.

Maximum penalty: 50 penalty units.

- (2) A licensee who carries on the business of selling smoking products on premises that are not specified in the licence as premises to be used for that business commits an offence.

Maximum penalty: 50 penalty units.

U 64 Licence particulars to be displayed

- (1) A licensee must at all times display in a prominent place, at each premises at which the licensee carries on business as a licensee, a notice specifying—
- (a) the licensee's name; and
 - (b) the licence number; and
 - (c) any conditions applying for the time being in respect of the licence.

Maximum penalty: 5 penalty units.

- (2) For subsection (1), if the licensee carries on business at premises under a retail tobacconist's licence, the notice must be displayed at or in close proximity to the point of sale (or, if there is more than 1 point of sale, 1 of the points of sale) on the premises.

U 65 Licence cancelled or licensee ceasing to carry on business

- (1) If a tobacco licence is cancelled the licensee must not fail, without reasonable excuse, to return the licence promptly to the registrar.

Maximum penalty: 5 penalty units.

- (2) If a licensee ceases to carry on business under the licence, the licensee must, within 7 days, give the registrar written notice that the licensee has ceased to carry on business under the licence.

Maximum penalty: 5 penalty units.

U 66 Endorsement on wholesale merchant's invoices

- (1) A holder of a wholesale tobacco merchant's licence must endorse or cause to be endorsed on every invoice issued by the licensee in relation to the sale of smoking products the statement, in upper case letters, 'SOLD BY LICENSED ACT WHOLESALER'.

Maximum penalty: 5 penalty units.

- (2) A person must not issue an invoice that indicates (expressly or by implication) that the person does hold such a licence.

Maximum penalty: 50 penalty units.

U 67 Retail tobacconist must only obtain smoking products from licensed wholesaler

- (1) A holder of a retail tobacconist's licence must not purchase, or otherwise obtain, smoking products from a person who is not the holder of a wholesale tobacco merchant's licence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to show that the defendant purchased, or otherwise obtained, the smoking products for a purpose other than sale by retail.

Division 7.5 Notification and review of decisions

68 Meaning of *reviewable decision*—div 7.5

In this division:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

69 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

69A Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Division 7.6 Miscellaneous

70 Determination of fees

- (1) The Minister must determine—
 - (a) the fee payable annually for the grant or renewal of a wholesale tobacco merchant's licence; and
 - (b) the fee payable annually for the grant or renewal of a retail tobacconist's licence.
- (2) The Minister may, in writing, determine fees for this Act (including this part).

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (3) The Minister may determine the fee payable for a retail tobacconist's licence by reference to the number of premises, or points of sale, specified in the licence.
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

71 Recovery of unpaid fees from unlicensed persons

- (1) If a person was required by this part to hold a tobacco licence in respect of any period, but did not do so, the person is liable to pay to the registrar an amount equal to the fee that would have been payable for the licence had he or she applied for or held the licence.
- (2) The registrar may assess the amount of the fee as if the person had applied for the licence, notwithstanding that the registrar may have made or purported to have made such an assessment.
- (3) Notice of the assessment under this section must be served by the registrar on the person.
- (4) Any amount assessed under this section that is unpaid is a debt due to the Territory.
- (5) Proceedings may not be commenced for the purpose of recovering an amount assessed under this section until the expiration of 1 month after service of notice of the assessment under subsection (3).
- (6) A certificate purporting to be signed by the registrar and stating that a specified amount is the amount assessed under this section in respect of a specified person is evidence of the matters so certified.

Part 8 Miscellaneous

72 Acts and omissions of representatives

- (1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

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.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made 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.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.

- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

72A Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

U 73 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe the records a licensee or a person involved in the direction, management or control of a tobacco retailing or wholesaling business must keep in relation to the purchase or sale of smoking products.
- (3) The regulations may apply, adopt or incorporate, entirely or in part and with or without changes, a publication (including an Act or regulation of another jurisdiction), as in force at a stated time or from time to time.
- (4) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

U 101 **Transitional—application of new point of sale display provisions to tobacconists**

Schedule 1 Reviewable decisions

(see div 7.5)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	48 (1)	state conditions to which licence is subject	licensee
2	50	refuse to grant or renew licence	applicant for licence or renewal
3	51	refuse to renew licence	applicant for renewal

U Dictionary

(see s 2)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- ACAT
- contravene
- exercise
- function
- occupational discipline order
- reviewable decision notice.

approved procedures, for part 6A (Tobacco compliance testing)—see section 42A.

approved program, for part 6A (Tobacco compliance testing)—see section 42A.

authorised officer—

- (a) means an authorised officer under section 32; but
- (b) for part 6A (Tobacco compliance testing)—see section 42A.

carton means a package containing packages of a smoking product, or a package designed to contain 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).

cigar—

- (a) means a roll of cut tobacco for smoking that is enclosed in tobacco leaf or the leaf of another plant; and
- (b) includes any other smoking product prescribed as a cigar under the regulations.

compliance test, for part 6A (Tobacco compliance testing)—see section 42B.

conduct, for part 6A (Tobacco compliance testing)—see the Criminal Code, section 13.

connected, for part 6 (Enforcement)—see section 31.

deputy registrar means a deputy Registrar of Tobacco under section 30.

display, of a smoking product at a point of sale display at a retail or wholesale outlet, means display to customers of the retail or wholesale outlet.

drug means a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

engage in conduct, for part 6A (Tobacco compliance testing)—see the Criminal Code, section 13.

ground for occupational discipline, for division 7.3—see section 56.

herbal product means a product prepared for smoking that contains a herb or other plant matter but does not contain tobacco or a drug.

identity card means—

- (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 chief police officer; or
- (c) in relation to any other authorised officer—the identity card issued to the officer under section 34.

immediate package, of a smoking product, means a package containing the product—

- (a) in the case of a smoking product other than cigars—not including a package containing a further package or packages of the product; and
- (b) in the case of cigars—
 - (i) including a package constituted by the individual wrapping of a cigar, and a package containing individually-wrapped or unwrapped cigars; but
 - (ii) not including any other package containing a further package or packages of cigars (whether wrapped or unwrapped).

licensee—

- (a) for part 7 (Licences)—see section 43; and
- (b) for division 7.3 (Occupational discipline—licensees)—see section 55.

occupier, of premises—

- (a) for this Act generally—means a person having the management or control, or otherwise being in charge, of the premises; and
- (b) for part 6 (Enforcement)—see section 31.

offence for part 6 (Enforcement)—see section 31.

package does not include a transparent wrapping, unless the wrapping has a smoking advertisement printed on it.

point of sale means a place, identified in accordance with the regulations (if any), where smoking products are sold within a retail outlet or wholesale outlet.

point of sale display means a display of, or about, a smoking product (or products) that complies with part 2.

premises includes a vehicle, vessel or aircraft, and a permanent or temporary structure.

price ticket—see section 3.

product information notice—see section 4.

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

- (a) brand;
- (b) flavour (including menthol flavour);
- (c) nicotine or tar content;
- (d) the number of items in the immediate package in which it is sold;
- (e) for cigars—by the fact that the cigars of the type in question are sold individually (whether or not cigars of the same type are also sold, packaged in multiples, in a different product line).

public place means a place to which the public ordinarily has access, whether by payment or not.

purchase assistant, for part 6A (Tobacco compliance testing)—see section 42B (1) (a).

registrar means the Registrar of Tobacco under section 29, and includes a deputy registrar.

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

retail tobacconist's licence, for part 7 (Licences)—see section 43.

reviewable decision, for division 7.5 (Notification and review of decisions)—see section 68.

sell—see section 5.

smoking advertisement—see section 6.

smoking product means a tobacco product or a herbal product.

theatre means a place where any live entertainment or film is presented, performed or exhibited to which admission is or may be procured by payment or by ticket or by any other means, token or consideration.

tobacco licence, for part 7 (Licences)—see section 43.

tobacco product means tobacco, or something containing tobacco, prepared for human consumption (including a cigarette or cigar).

tobacco retailing, for part 7 (Licences)—see section 44.

tobacco wholesaling, for part 7 (Licences)—see section 45.

vending machine means a machine or mechanical device used or able to be used for the purpose of selling smoking products without the personal manipulation or attention of the seller, or the seller's employee or agent, at the time of the sale.

wholesale outlet means premises where smoking products are available for sale exclusively by wholesale.

wholesale tobacco merchant's licence, for part 7 (Licences)—see section 43.

young person, for part 6A (Tobacco compliance testing)—see section 42A.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Tobacco Ordinance 1927* No 14 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

Legislation before becoming Territory enactment

Tobacco Act 1927 No 14

notified 23 June 1927

commenced 23 June 1927

as amended by

Tobacco Ordinance 1936 No 10

notified 2 April 1936

commenced 2 April 1936

Tobacco Ordinance 1937 No 19

notified 16 December 1937

commenced 16 December 1937

Ordinances Revision Ordinance 1937 No 27

notified 23 December 1937

commenced 23 December 1937

Tobacco Ordinance 1957 No 10

notified 31 October 1957
commenced 31 October 1957

Ordinances Revision (Decimal Currency) Ordinance 1966 No 19

notified 23 December 1966
commenced 23 December 1966

Legislation after becoming Territory enactment**Tobacco (Amendment) Act 1990 No 39**

notified 7 November 1990 (Gaz 1990 No S76)
s 1, s 2 commenced 7 November 1990 (s 2 (1))
s 5 (in pt) commenced 1 March 1991 (s 2 (2) and Gaz 1991 No S10)
remainder commenced 1 January 1991 (s 2 (2) and Gaz 1990 No S94)

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

notified 27 August 1993 (Gaz 1993 No S165)
commenced 27 August 1993 (s 2)

Tobacco (Amendment) Act 1993 No 98

notified 24 December 1993 (Gaz 1993 No S267)
commenced 24 December 1993 (s 2)

Public Health (Miscellaneous Provisions) Act 1997 No 70 sch 1

notified 9 October 1997 (Gaz 1997 No S300)
ss 1-3 commenced 9 October 1997 (s 2 (1))
sch 1 commenced 13 August 1998 (s 2 (2), s 43 (1) and Gaz 1998 No S185)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Tobacco (Amendment) Act 1999 No 57

notified 10 November 1999 (Gaz 1999 No 45)
ss 1-3 and s 17 commenced 10 November 1999 (s 2 (1))
s 13 commenced 10 November 2000 (s 2 (4))
remainder commenced 10 May 2000 (s 2 (3) and IA s 10E)

Endnotes

3 Legislation history

Tobacco Amendment Act 2000 No 16

notified 20 April 2000 (Gaz 2000 No 16)
s 1, s 2 commenced 20 April 2000 (s 2 (1))
s 7 commenced 1 September 2000 (s 2 (2))
remainder commenced 1 July 2000 (s 2 (3))

Smoking Products Legislation Amendment Act 2000 No 53 pt 2 and sch 1

notified 5 October 2000 (Gaz 2000 No 40)
s 9, s 10 commenced 11 November 2000 (s 2 (2))
pt 2 remainder and sch 1 commenced 5 October 2000 (s 2 (1))

Legislation (Consequential Amendments) Act 2001 No 44 pt 383

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 383 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Tobacco Amendment Act 2001 No 68

notified 10 September 2001 (Gaz 2001 No S66)
s 1, s 2 commenced 10 September 2001 (IA s 10B)
remainder commenced 17 September 2001 (s 2)

Legislation Amendment Act 2002 No 11 pt 2.47

notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
pt 2.47 commenced 28 May 2002 (s 2 (1))

Statute Law Amendment Act 2002 No 30 pt 3.82

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
amdt 3.906 taken to have commenced 5 October 2000 (s 2 (2))
pt 3.82 remainder commenced 17 September 2002 (s 2 (1))

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.36, sch 2 pt 2.90

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 1 pt 1.36, sch 2 pt 2.90 commenced 9 April 2004 (s 2 (1))

Tobacco (Vending Machine Ban) Amendment Act 2004 A2004-49 pt 2

notified LR 16 August 2004

s 1, s 2 commenced 16 August 2004 (LA s 75 (1))

s 14 commenced 17 August 2004 (s 2 (1))

pt 2 remainder commenced 1 September 2006 (s 2 (2))

Justice and Community Safety Legislation Amendment Act 2005 A2005-5 pt 15

notified LR 23 February 2005

s 1, s 2 commenced 23 February 2005 (LA s 75 (1))

pt 15 commenced 6 March 2005 (s 2 (1) and see Criminal Code (Serious Drug Offences) Amendment Act 2004 A2004-56, s 2 and LA s 79)

Casino Control Act 2006 A2006-2 sch 1 pt 1.6

notified LR 22 February 2006

s 1, s 2 commenced 22 February 2006 (LA s 75 (1))

sch 1 pt 1.6 commenced 1 May 2006 (s 2 and CN2006-6)

Tobacco (Compliance Testing) Amendment Act 2006 A2006-41

notified LR 24 October 2006

s 1, s 2 commenced 24 October 2006 (LA s 75 (1))

remainder commenced 25 October 2006 (s 2)

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.99

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.99 commenced 12 April 2007 (s 2 (1))

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 3 pt 3.20

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 3 pt 3.20 commenced 27 October 2008 (s 2 (4) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

Endnotes

4 Amendment history

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.50

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.50 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.98

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.98 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Tobacco Amendment Act 2008 A2008-50

notified LR 15 September 2008
s 1, s 2 commenced 15 September 2008 (LA s 75 (1))
s 3 commenced 16 September 2008 (LA s 75AA)
ss 16-18, s 22 commenced 16 September 2008 (s 2 (1))
remainder commences 28 February 2009 (s 2 (2) and CN2009-1)

4 Amendment history

Title

title sub 2000 No 53 s 4

Preliminary

pt 1 hdg (prev pt I) ins 1990 No 39
renum 2000 No 16 s 6 sch 2

Name of Act

s 1 sub 2000 No 53 amdt 1.1

Dictionary

s 2 hdg sub 2000 No 53 amdt 1.2
s 2 orig s 2 om 1957 No 10 s 2
ins 1990 No 39 s 5
om 1993 No 44 sch 2
(prev s 3) om 1957 No 10 s 2
ins 1990 No 39 s 5
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.3; 2001 No 44 amdt 1.4023
defs reloc to dict 2002 No 30 amdt 3.904
sub 2002 No 30 amdt 3.905

- am A2008-50 s 4
 def **functions** ins 1999 No 57 s 4
 am 2000 No 53 amdt 1.4
 om 2002 No 30 amdt 3.903
 def **group licence** ins 1999 No 57 s 4
 om 2000 No 16 sch 3
 def **licence** om 1957 No 10 s 2
 def **newspaper** ins 1990 No 39 s 5
 om 2000 No 53 amdt 1.7
 def **shop** ins 1936 No 10 s 2
 om 1957 No 10 s 2
 def **shopkeeper** ins 1937 No 19 s 2
 om 1957 No 10 s 2
 def **smoking** ins 1990 No 39 s 5
 om 2000 No 53 amdt 1.7
 def **the commission** om 1957 No 10 s 2
 def **the schedule** om 1957 No 10 s 2
 def **this Act** ins 1999 No 57 s 4
 om 2001 No 44 amdt 1.4024
 def **tobacco advertisement** ins 1990 No 39 s 5
 sub 1999 No 57 s 4
 am 2000 No 16 sch 3
 om 2000 No 53 s 5
 def **tobacco licence** ins 1999 No 57 s 4
 sub 2000 No 16 sch 3
 om 2000 No 53 amdt 1.7
 def **tobacco retailing business** ins 1999 No 57 s 4
 om 2000 No 53 amdt 1.7

Notes

s 2A ins 2002 No 30 amdt 3.905

Offences against Act—application of Criminal Code etc

s 2B ins A2004-49 s 5
 om A2008-50 s 5

Offences against Act—application of Criminal Code etc

s 3 hdg sub 2000 No 53 amdt 1.8
 s 3 (prev s 3A) ins 1999 No 57 s 5
 renum 2000 No 16 s 6 sch 1
 om A2008-50 s 6
 ins A2008-50 s 5

Meaning of price ticket

s 4 hdg sub 2000 No 53 amdt 1.8
 s 4 (prev s 3B) ins 1999 No 57 s 5
 renum 2000 No 16 s 6 sch 1
 sub A2008-50 s 6

Endnotes

4 Amendment history

Meaning of *sell*

s 5 hdg sub 2000 No 53 amdt 1.8
s 5 (prev s 3C) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1

Meaning of *smoking advertisement*

s 6 hdg sub 2000 No 53 s 6, amdt 1.8
s 6 (prev s 3D) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1
am 2000 No 53 s 6

Publications of name of manufacturer etc

s 7 hdg sub 2000 No 53 amdt 1.8
s 7 (prev s 3E) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.74, amdt 1.76, amdt 1.77; A2008-50
s 7

Points of sale

pt 2 hdg (prev pt 1A hdg) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 2
sub A2008-50 s 8

Numbers of points of sale

s 8 (prev s 3F) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdts 1.74-1.77
sub A2008-50 s 8

Location of smoking products

s 9 (prev s 3G) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.76, amdt 1.77
sub A2008-50 s 8

Storage of smoking products at points of sale

s 10 (prev s 3H) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1
am 2000 No 53 s 7, amdt 1.9, amdt 1.10
sub A2008-50 s 8

Other location and storage requirements by regulation

s 11 (prev s 3J) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1
sub A2008-50 s 8

Location of display

s 12 (prev s 3K) ins 1999 No 57 s 5
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.11, amdt 1.12, amdt 1.77; A2004-49
s 6
om A2008-50 s 8

Sale of tobacco etc by shopkeeper

s 12A ins 1937 No 19
om 1957 No 10

Prior notice of proposed disciplinary action

s 12C ins 1999 No 57 s 18
om 2000 No 16 s 8 sch 3

Disciplinary action

s 12D ins 1999 No 57 s 18
om 2000 No 16 s 8 sch 3

Disqualification

s 12E ins 1999 No 57 s 18
om 2000 No 16 s 8 sch 3

Review of decisions

s 12T ins 1999 No 57 s 18
om 2000 No 16 s 8 sch 3

Notification of decisions

s 12U ins 1999 No 57 s 18
om 2000 No 16 s 8 sch 3

Other display requirements by regulation

s 13 orig s 13 om 1957 No 10
(prev s 3L) ins 1999 No 57 s 5
renum 2000 No 16 s 6 sch 1
om A2008-50 s 8

Supply of smoking products

pt 3 hdg (prev pt 2 hdg) ins 1990 No 39
renum 2000 No 16 s 6 sch 2
sub 2000 No 53 amdt 1.13

Endnotes

4 Amendment history

Supply of smoking product to under 18 year olds

s 14 hdg sub 2002 No 30 amdt 3.906
s 14 orig s 14 sub 1936 No 10
om 1957 No 10
ins 1990 No 39
om 1998 No 54
(prev s 4) sub 1936 No 10
am 1937 No 19
om 1957 No 10
ins 1990 No 39
am 1998 No 54
sub 1999 No 57 s 6
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdts 1.14-1.17, amdt 1.76; A2004-49 s 7;
ss renum R12 LA (see A2004-49 s 8); A2008-50 s 9,
amdt 1.1

Purchase of smoking products for use by under 18 year olds

s 15 hdg sub 2000 No 53 s 3 sch 1
s 15 orig s 15 ins 1936 No 10
om 1957 No 10
(prev s 5) om 1936 No 10
ins 1990 No 39
am 1998 No 54; 1999 No 57 s 7
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.18
sub A2008-50 amdt 1.2

Prohibition on sale of smoking products by vending machine

s 16 orig s 16 ins 1936 No 10
om 1957 No 10
(prev s 6) am 1936 No 10
om 1957 No 10
ins 1990 No 39
am 1998 No 54; 1999 No 57 s 8; 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.19, amdt 1.20; A2006-2 amdt 1.20
sub A2004-49 s 9

Tobacco for non-smoking purposes

s 17 hdg sub 2000 No 53 amdt 1.21
s 17 orig s 17 ins 1936 No 10
om 1957 No 10
(prev s 7) om 1957 No 10
ins 1990 No 39
am 1998 No 54; 1999 No 57 s 9
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.78
sub A2008-50 amdt 1.3

Food and toys resembling or promoting smoking products

s 18 hdg sub 2000 No 53 amdt 1.21
s 18 orig s 18 ins 1936 No 10
om 1957 No 10
(prev s 8) am 1936 No 10
om 1957 No 10
ins 1990 No 39
am 1998 No 54
sub 1999 No 57 s 10
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.22, amdt 1.23, amdt 1.76, amdt 1.78
sub A2008-50 amdt 1.3

Declared smoking products

s 18A ins A2008-50 amdt 1.4

Prohibition on sale or import of declared smoking product

s 18B ins A2008-50 amdt 1.4

Sale of cigarettes

s 19 (prev s 9) am 1936 No 10
om 1957 No 10
ins 1990 No 39
am 1998 No 54; 1999 No 57 s 11
renum 2000 No 16 s 6 sch 1
am 2000 No 53 s 8, amdt 1.78
sub A2008-50 s 10

Display of smoking products

s 20 hdg sub 2000 No 53 amdt 1.24
s 20 (prev s 9A) ins 1999 No 57 s 12
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.76, amdt 1.78
sub A2008-50 s 10

Endnotes

4 Amendment history

Prohibited smoking products

s 21 (prev s 9B) ins 1999 No 57 s 13
renum 2000 No 16 s 6 sch 1
am 2000 No 53 s 9
sub A2008-50 s 10

Prohibition on sale of prohibited smoking product

s 22 (prev s 9C) ins 1999 No 57
renum 2000 No 16 s 6 sch 1
am 2000 No 53 s 10
sub 2001 No 68 s 5
am A2004-49 s 10
sub A2008-50 s 10

Administrative review

pt 3C hdg ins 1999 No 57 s 18
om 2000 No 16 s 8 sch 3

Advertising, promotion and sponsorship

pt 4 hdg (prev pt 3 hdg) ins 1990 No 39
sub 1999 No 57 s 14
renum 2000 No 16 s 6 sch 2

Prohibited smoking advertising

s 23 hdg sub 2000 No 53 amdt 1.24
s 23 (prev s 10) am 1966 No 19
sub 1990 No 39
am 1993 No 98; 1998 No 54; 1999 No 57 s 15
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.25, amdt 1.26, amdts 1.74-1.78; 2001
No 44 amdts 1.4025-1.4027; A2004-49 s 11
sub A2008-50 s 11

Removal of smoking advertisements

s 24 hdg sub 2000 No 53 amdt 1.27
s 24 (prev s 11) am 1936 No 10
om 1957 No 10
ins 1990 No 39
am 1993 No 98; 1997 No 70; 1999 No 57 s 16; 2000 No 16 s 8
sch 3
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.28, amdt 1.74, amdt 1.75; A2008-50
s 12, amdt 1.5

Smoking product promotions

s 25 hdg sub 2000 No 53 amdt 1.29
s 25 (prev s 11A) ins 1999 No 57 s 17
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdts 1.76-1.78
sub A2008-50 s 13

Prohibition of smoking product sales contributing to customer reward scheme

s 25A ins A2008-50 s 13

Smoking product giveaways

s 26 hdg sub 2000 No 53 amdt 1.29
s 26 (prev s 11B) ins 1999 No 57 s 17
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.76, amdt 1.78
sub A2008-50 amdt 1.6

Competitions that promote smoking products etc

s 27 hdg sub 2000 No 53 amdt 1.29
s 27 (prev s 11C) ins 1999 No 57 s 17
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdts 1.76-1.78
sub A2008-50 amdt 1.6

Prohibition of sponsorships

s 28 (prev s 12) om 1957 No 10
ins 1990 No 39
am 1993 No 98; 1998 No 54
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.30, amdt 1.76, amdt 1.78; 2001 No 44
amdts 1.4028-1.4030
sub A2008-50 s 14

Registrar and deputy registrars

pt 5 hdg (prev pt 3A hdg) ins 1999 No 57 s 18
sub as pt 5 hdg 2000 No 16 s 8 sch 3

Registrar of tobacco

s 29 (prev s 12A) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.31
sub A2007-3 amdt 3.495
(2)-(4) exp 12 April 2008 (s 29 (4) (LA s 88 declaration
applies))

Deputy registrars of tobacco

s 30 (prev s 12B) ins 1999 No 57 s 18
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.31
sub A2007-3 amdt 3.495
(3)-(5) exp 12 April 2008 (s 30 (5) (LA s 88 declaration
applies))

Endnotes

4 Amendment history

Enforcement

pt 6 hdg (prev pt 3B hdg) ins 1999 No 57 s 18
renum 2000 No 16 s 6 sch 2

Interpretation for pt 6

s 31 (prev s 12F) ins 1999 No 57 s 18
renum 2000 No 16 s 6 sch 1

Authorised officers

s 32 (prev s 12G) ins 1999 No 57 s 18
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.31, amdt 1.32
sub A2007-3 amdt 3.496
(3)-(5) exp 12 April 2008 (s 32 (5) (LA s 88 declaration
applies))

Exercise of powers by authorised officers who are police officers

s 33 (prev s 12H) ins 1999 No 57 s 18
renum 2000 No 16 s 6 sch 1

Identity cards

s 34 (prev s 12J) ins 1999 No 57 s 18
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.33
sub A2008-50 amdt 1.7
(5)-(7) exp on the day they commence (s 34 (7) (LA s 88
declaration applies))

Powers of entry

s 35 (prev s 12K) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.77

Consent to entry

s 36 (prev s 12L) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1

Powers of authorised officers

s 37 (prev s 12M) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1
am A2008-50 amdt 1.8

Provision of information under s 37 (f)—claim of privilege

s 38 (prev s 12N) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1
am 2002 No 11 amdt 2.94, amdt 2.95; ss renum R6 LA
(see 2002 No 11 amdt 2.96)

Power to require name and address

s 39 (prev s 12P) ins 1999 No 57 s 18
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.34
sub A2008-50 amdt 1.9

Search warrants

s 40 (prev s 12Q) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1

Failing to comply with requirement of authorised officer

s 41 hdg sub A2004-15 amdt 2.189
s 41 (prev s 12R) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1
am 2000 No 53 amdt 1.35, amdt 1.36; A2004-15 amdt 2.190,
amdt 2.191
om A2008-50 amdt 1.10

Seized items

s 42 (prev s 12S) ins 1999 No 57 s 18
am 2000 No 16 s 8 sch 3
renum 2000 No 16 s 6 sch 1

Tobacco compliance testing

pt 6A hdg ins A2006-41 s 4

Definitions—pt 6A

s 42A ins A2006-41 s 4
def **approved procedures** ins A2006-41 s 4
def **approved program** ins A2006-41 s 4
def **authorised officer** ins A2006-41 s 4
def **conduct** ins A2006-41 s 4
def **compliance test** ins A2006-41 s 4
def **engage in conduct** ins A2006-41 s 4
def **purchase assistant** ins A2006-41 s 4
def **young person** ins A2006-41 s 4

What is a compliance test?

s 42B ins A2006-41 s 4

Approval of compliance testing programs

s 42C ins A2006-41 s 4

Approval of compliance testing procedures

s 42D ins A2006-41 s 4

Carrying out of compliance testing

s 42E ins A2006-41 s 4
am A2008-20 amdt 3.44, amdt 3.45

Endnotes

4 Amendment history

Lawfulness of compliance testing

s 42F ins A2006-41 s 4

Indemnification of authorised officers and purchase assistants

s 42G ins A2006-41 s 4

Annual report about compliance testing

s 42H ins A2006-41 s 4

Licences

pt 7 hdg ins 2000 No 16 s 4

Interpretation

div 7.1 hdg (prev pt 7 div 1 hdg) ins 2000 No 16 s 4
sub 2000 No 53 amdt 1.37

Definitions for pt 7

s 43 ins 2000 No 16 s 4
sub 2000 No 53 amdt 1.38
def **approved form** om 2001 No 44 amdt 1.4031
def **determined fee** om 2001 No 44 amdt 1.4031

Meaning of tobacco retailing

s 44 orig s 44 ins 2000 No 16 s 4
om 2000 No 53 s 3 sch 1
(prev s 43A) ins 2000 No 53 amdt 1.38
renum R4 LRA (see 2000 No 53 s 11)
am A2004-49 s 12

Meaning of tobacco wholesaling

s 45 (prev s 43B) ins 2000 No 53 amdt 1.38
renum R4 LRA (see 2000 No 53 s 11)

Liability of employer for acts of employee

s 46 (prev s 43C) ins 2000 No 53 amdt 1.38
renum R4 LRA (see 2000 No 53 s 11)

Licences

div 7.2 hdg (prev pt 7 div 2 hdg) ins 2000 No 16 s 4
sub 2000 No 53 amdt 1.39

Application for, and grant of, tobacco licence

s 47 (prev s 45) ins 2000 No 16 s 4
renum R4 LRA (see 2000 No 53 s 11)
am 2001 No 44 amdts 1.4032-1.4036; ss renum R5 LA
(see 2001 No 44 amdt 1.4037)

Conditions of tobacco licence

s 48 (prev s 46) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.40, amdt 1.14, amdt 1.77
renum R4 LRA (see 2000 No 53 s 11)
am A2008-50 s 15

Duration of tobacco licence

s 49 (prev s 47) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.42
renum R4 LRA (see 2000 No 53 s 11)
am A2008-50 s 16

No vending machines authorised

s 49A ins A2004-49 s 13
am A2008-50 s 17

2005/2006 licences—no vending machines authorised

s 49B ins A2004-49 s 14
exp 1 September 2006 (s 49B (2))

Refusal to grant or renew tobacco licence

s 50 hdg (prev s 48 hdg) sub 2000 No 53 amdt 1.43
renum 2000 No 53 s 11
s 50 (prev s 48) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.44-1.47
renum R4 LRA (see 2000 No 53 s 11)
am A2004-49 s 15; pars renum R12 LA (see A2004-49 s 16);
A2008-36 amdt 1.633, amdt 1.634

Renewal of tobacco licence

s 51 (prev s 49) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.48
renum R4 LRA (see 2000 No 53 s 11)
am 2001 No 44 amdt 1.4038, amdt 1.4039; 2002 No 30
amdt 3.907

Revival of expired retail tobacconist's licences

s 52 (prev s 50) ins 2000 No 16 s 4
renum R4 LRA (see 2000 No 53 s 11)
am 2002 No 30 amdt 3.907
om A2008-50 s 18

Register of tobacco licences

s 53 (prev s 51) ins 2000 No 16 s 4
renum R4 LRA (see 2000 No 53 s 11)

Surrender and termination of tobacco licence

s 54 (prev s 52) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.77
renum R4 LRA (see 2000 No 53 s 11)

Occupational discipline—licensees

div 7.3 hdg (prev pt 7 div 3 hdg) ins 2000 No 16 s 4
sub 2000 No 53 amdt 1.49; A2008-36 amdt 1.635

Endnotes

4 Amendment history

Meaning of *licensee*—div 7.3

s 55 (prev s 53) ins 2000 No 16 s 4
renum R4 LRA (see 2000 No 53 s 11)
sub A2008-36 amdt 1.635

Grounds for occupational discipline

s 56 (prev s 54) ins 2000 No 16 s 4
am 2000 No 53 amdts 1.50-1.54
renum R4 LRA (see 2000 No 53 s 11)
am A2006-2 amdt 1.21; A2004-49 ss 17-19, s 21, s 22;
pars renum R12 LA (see A2004-49 s 20)
sub A2008-36 amdt 1.635

Application to ACAT for occupational discipline

s 57 (prev s 55) ins 2000 No 16 s 4
renum R4 LRA (see 2000 No 53 s 11)
sub A2008-36 amdt 1.635

Orders for occupational discipline

s 58 hdg (prev s 56 hdg) sub 2000 No 53 amdt 1.56
renum R4 LRA (see 2000 No 53 s 11)
s 58 (prev s 56) ins 2000 No 16 s 4
renum R4 LRA (see 2000 No 53 s 11)
om A2004-49 s 23
ins A2008-36 amdt 1.635
am A2008-37 amdt 1.480; A2008-50 s 19

Offences

div 7.4 hdg (prev pt 7 div 4 hdg) ins 2000 No 16 s 4
sub 2000 No 53 amdt 1.55; A2008-50 amdt 1.11

Failure to return tobacco licence

s 59 (prev s 57) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.57, amdt 1.77
renum R4 LRA (see 2000 No 53 s 11)
sub A2008-50 amdt 1.11

Disqualification

s 60 (prev s 58) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.58, amdt 1.77
renum R4 LRA (see 2000 No 53 s 11)
sub A2008-50 amdt 1.11

Selling smoking products without, or in contravention of, tobacco licence

s 61 hdg (prev s 59 hdg) sub 2000 No 53 amdt 1.59
renum R4 LRA (see 2000 No 53 s 11)
s 61 (prev s 59) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.77
renum R4 LRA (see 2000 No 53 s 11)
sub A2008-50 amdt 1.11

Tobacco wholesaling—offences

s 62 (prev s 60) ins 2000 No 16 s 4
 am 2000 No 53 amdt 1.60, amdt 1.77
 renum R4 LRA (see 2000 No 53 s 11)
 sub A2008-50 amdt 1.11

Tobacco retailing—offences

s 63 (prev s 61) ins 2000 No 16 s 4
 am 2000 No 53 amdt 1.61
 renum R4 LRA (see 2000 No 53 s 11)
 am A2004-49 s 24; pars renum A2004-49 s 25
 sub A2008-50 amdt 1.11

Display of licence details

s 64 (prev s 62) ins 2000 No 16 s 4
 am 2000 No 53 amdt 1.62, amdt 1.77
 renum R4 LRA (see 2000 No 53 s 11)
 am A2004-49 s 26
 sub A2008-50 amdt 1.11

Licensee stops carrying on business

s 65 (prev s 63) ins 2000 No 16 s 4
 renum R4 LRA (see 2000 No 53 s 11)
 sub A2008-50 amdt 1.11

Endorsement on wholesale tobacco merchant's invoices

s 66 hdg (prev s 64 hdg) sub 2000 No 53 amdt 1.63
 renum R4 LRA (see 2000 No 53 s 11)
 s 66 (prev s 64) ins 2000 No 16 s 4
 am 2000 No 53 amdt 1.64, amdt 1.77
 renum R4 LRA (see 2000 No 53 s 11)
 sub A2008-50 amdt 1.11

Retail tobacconist must only obtain smoking products from licensed wholesaler

s 67 hdg (prev s 64A hdg) sub 2000 No 53 amdt 1.65
 renum R4 LRA (see 2000 No 53 s 11)
 s 67 (prev s 64A) ins 2000 No 16 s 4
 renum R4 LRA (see 2000 No 53 s 11)
 sub A2008-50 amdt 1.11

Notification and review of decisions

div 7.5 hdg (prev pt 7 div 5 hdg) ins 2000 No 16 s 4
 sub 2000 No 53 amdt 1.66; A2008-36 amdt 1.636

Meaning of *reviewable decision*—div 7.5

s 68 (prev s 65) ins 2000 No 16 s 4
 renum R4 LRA (see 2000 No 53 s 11)
 am A2004-49 s 27; pars renum R12 LA (see A2004-49 s 28)
 sub A2008-36 amdt 1.636

Endnotes

4 Amendment history

Reviewable decision notices

s 69 (prev s 66) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.67
renum R4 LRA (see 2000 No 53 s 11)
sub A2008-36 amdt 1.636

Applications for review

s 69A ins A2008-36 amdt 1.636

Miscellaneous

div 7.6 hdg (prev pt 7 div 6 hdg) ins 2000 No 16 s 4
sub 2000 No 53 amdt 1.68

Determination of fees

s 70 hdg (prev s 67 hdg) renum R4 LRA (see 2000 No 53 s 11)
sub 2001 No 44 amdt 1.4040
s 70 (prev s 67) ins 2000 No 16 s 4
am 2000 No 53 amdt 1.69
renum R4 LRA (see 2000 No 53 s 11)
am 2001 No 44 amdt 1.4041, amdt 1.4042; ss renum R5 LA
(see 2001 No 44 amdt 1.4043)

Recovery of unpaid fees from unlicensed persons

s 71 (prev s 68) ins 2000 No 16 s 4
renum R4 LRA (see 2000 No 53 s 11)

Miscellaneous

pt 8 hdg (prev pt 4 hdg) ins 1990 No 39
renum 2000 No 16 s 6 sch 2

Acts and omissions of representatives

s 72 (prev s 13 and then s 69) ins 1990 No 39
renum as s 69 2000 No 16 s 6 sch 1
renum as s 72 R4 LRA (see 2000 No 53 s 11)
sub A2004-15 amdt 1.40

Approved forms

s 72A ins 2001 No 44 amdt 1.4044
am A2007-3 amdt 3.497

Regulation-making power

s 73 hdg (prev s 70 hdg) sub 2000 No 53 amdt 1.70
renum R4 LRA (see 2000 No 53 s 11)
s 73 (prev s 15 and then s 70) am 2000 No 53 amdt 1.71,
amdt 1.72
renum as s 70 2000 No 16 s 6 sch 1
renum as s 73 R4 LRA (see 2000 No 53 s 11)
am 2001 No 44 amdts 1.4045-1.4047; A2008-50 s 20, s 21

- Transitional**
pt 9 hdg ins 2000 No 53 amdt 1.73
exp 1 September 2001 (s 75 (1))
- Licences under the Tobacco Licensing Act**
s 74 (prev s 71) ins 2000 No 53 amdt 1.73
renum R4 LRA (see 2000 No 53 s 11)
exp 1 September 2001 (s 75 (1))
- Expiry of part**
s 75 (prev s 72) ins 2000 No 53 amdt 1.73
renum R4 LRA (see 2000 No 53 s 11)
exp 1 September 2001 (s 75 (1))
- Transitional—repeal of s 52**
s 100 ins A2008-50 s 22
exp 30 November 2008 (s 100 (5))
- Transitional—application of new point of sale display provisions to
tobacconists**
s 101 ins A2008-50 s 23
exp 1 January 2011 (s 101 (5))
- The schedule**
sch am 1937 No 19
om 1957 No 10
- Reviewable decisions**
sch 1 ins A2008-36 amdt 1.637
- Dictionary**
dict ins 2002 No 30 amdt 3.908
am A2008-36 amdt 1.638; A2008-50 s 24, amdt 1.12
def **approved procedures** ins A2006-41 s 5
def **approved program** ins A2006-41 s 5
def **authorised officer** ins 1999 No 57 s 4
am 2000 No 16 sch 3
reloc from s 2 2002 No 30 amdt 3.904
sub A2006-41 s 6
def **carton** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.76
reloc from s 2 2002 No 30 amdt 3.904
def **cigar** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.76
reloc from s 2 2002 No 30 amdt 3.904
def **compliance test** ins A2006-41 s 7
def **conduct** ins A2006-41 s 7
def **connected** ins A2007-3 amdt 3.499

Endnotes

4 Amendment history

- def **deputy registrar** ins 1999 No 57 s 4
sub 2000 No 16 sch 3
reloc from s 2 2002 No 30 amdt 3.904
- def **display** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.76
reloc from s 2 2002 No 30 amdt 3.904
om A2008-50 s 25
- def **drug** ins 2000 No 53 s 5
reloc from s 2 2002 No 30 amdt 3.904
sub A2005-5 s 49
om A2008-50 s 25
- def **engage in conduct** ins A2006-41 s 7
- def **food** ins A2008-50 amdt 1.13
- def **ground for occupational discipline** ins A2008-36
amdt 1.639
- def **herbal product** ins 2000 No 53 s 5
reloc from s 2 2002 No 30 amdt 3.904
sub A2008-50 s 26
- def **identity card** ins 1999 No 57 s 4
am 2000 No 16 sch 3
reloc from s 2 2002 No 30 amdt 3.904
am A2007-3 amdt 3.498
- def **immediate package** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.76
reloc from s 2 2002 No 30 amdt 3.904
- def **import** ins A2008-50 amdt 1.13
- def **licensee** ins A2007-3 amdt 3.499
sub A2008-36 amdt 1.640
- def **occupier** ins 1999 No 57 s 4
reloc from s 2 2002 No 30 amdt 3.904
sub A2007-3 amdt 3.500
- def **offence** ins A2007-3 amdt 3.501
- def **package** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.74
reloc from s 2 2002 No 30 amdt 3.904
om A2008-50 s 27
- def **point of sale** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.77
sub 2001 No 68 s 4
reloc from s 2 2002 No 30 amdt 3.904
sub A2004-49 s 29
- def **point of sale display** ins 1999 No 57 s 4
am 2000 No 16 sch 3; 2000 No 53 amdt 1.76
reloc from s 2 2002 No 30 amdt 3.904
om A2008-50 s 27
- def **premises** ins 1999 No 57 s 4
reloc from s 2 2002 No 30 amdt 3.904

- def **price ticket** ins 1999 No 57 s 4
am 2000 No 16 sch 3
reloc from s 2 2002 No 30 amdt 3.904
sub A2008-50 s 28
- def **product information notice** ins 1999 No 57 s 4
am 2000 No 16 sch 3
reloc from s 2 2002 No 30 amdt 3.904
om A2008-50 s 29
- def **product line** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.5, amdt 1.76
reloc from s 2 2002 No 30 amdt 3.904
- def **public place** ins 1990 No 39 s 5
sub 1999 No 57 s 4
reloc from s 2 2002 No 30 amdt 3.904
om A2008-50 s 30
- def **purchase assistant** ins A2006-41 s 7
- def **registrar** ins 1936 No 10 s 2
om 1957 No 10 s 2
ins 1999 No 57 s 4
sub 2000 No 16 sch 3
reloc from s 2 2002 No 30 amdt 3.904
- def **retail outlet** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.77
reloc from s 2 2002 No 30 amdt 3.904
- def **retail tobacconist's licence** ins A2007-3 amdt 3.501
- def **reviewable decision** ins A2008-36 amdt 1.641
- def **sell** ins 1990 No 39 s 5
sub 1999 No 57 s 4
am 2000 No 16 sch 3
reloc from s 2 2002 No 30 amdt 3.904
- def **smoking advertisement** ins 2000 No 53 s 5
reloc from s 2 2002 No 30 amdt 3.904
- def **smoking product** ins 2000 No 53 s 5
reloc from s 2 2002 No 30 amdt 3.904
- def **smoking product package** ins A2008-50 amdt 1.13
- def **theatre** ins 1990 No 39 s 5
reloc from s 2 2002 No 30 amdt 3.904
om A2008-50 s 31
- def **tobacco licence** ins A2007-3 amdt 3.501
- def **tobacco product** ins 1990 No 39 s 5
sub 2000 No 53 s 2
reloc from s 2 2002 No 30 amdt 3.904
- def **tobacco retailing** ins A2007-3 amdt 3.501
- def **tobacco wholesaling** ins A2007-3 amdt 3.501

Endnotes

5 Earlier republications

def **vending machine** ins 1990 No 39 s 5
sub 2000 No 53 amdt 1.6
reloc from s 2 2002 No 30 amdt 3.904
sub A2004-49 s 30; A2008-50 s 32
def **wholesale outlet** ins 1999 No 57 s 4
am 2000 No 53 amdt 1.77
reloc from s 2 2002 No 30 amdt 3.904
def **wholesale tobacco merchant's licence** ins A2007-3
amdt 3.501
def **young person** ins A2006-41 s 7

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1990 No 39	31 July 1992
2	Act 1993 No 98	31 December 1993
3	<u>Act 2000 No 16</u>	1 July 2000
4	Act 2000 No 53	20 November 2000
4 (RI)	Act 2000 No 53 ‡	1 October 2002
5	Act 2001 No 68	6 November 2001
5 (RI)	Act 2001 No 68 ‡	1 October 2002
6	Act 2002 No 11	30 May 2002
6 (RI)	Act 2002 No 11 ‡	1 October 2002
7	A2002-30	1 October 2002
8	A2004-15	9 April 2004
9	A2004-49	17 August 2004

Republication No	Amendments to	Republication date
10*	A2005-5	6 March 2005
11	A2006-2	1 May 2006
12	A2006-2	1 September 2006
13	A2006-2	2 September 2006
14	A2006-41	25 October 2006
15	A2007-3	12 April 2007
16	A2007-3	13 April 2008
17	<u>A2008-50</u>	16 September 2008
18	<u>A2008-50</u>	27 October 2008
19	<u>A2008-50</u>	1 December 2008

‡ includes retrospective amendment by Act 2002 No 30

6 Renumbered provisions

This Act was renumbered under the *Legislation (Republication) Act 1996* in R4 (see Act 2000 No 16 s 6 and Act 2000 No 53 s 11). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R5 (RI).

Endnotes

7 Uncommenced amendments

7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Tobacco Amendment Act 2008 A2008-50 ss 4-15, ss 19-21, ss 23-32, sch 1

4 Dictionary Section 2, notes

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*price ticket*’—see section 4.’ means that the term ‘price ticket’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

5 Section 2B

substitute

3 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Sections 3 and 4

substitute

4 Meaning of *price ticket*

(1) In this Act:

price ticket, for a product line, means a label that—

- (a) includes no information other than any or all of the following:
 - (i) the name of the product line;
 - (ii) a bar code or similar identifying code;
 - (iii) the price of an item of the product line;
 - (iv) the price of a carton of the product line; and
- (b) is not larger than 15cm²; and
- (c) contains only text; and
- (d) is in Times New Roman type, no character of which is more than 12 points in size; and
- (e) otherwise complies with this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) In this section:

text includes a code mentioned in subsection (1) (a) (ii).

Endnotes

7 Uncommenced amendments

7 Publication of name of manufacturer etc Section 7 (2)

substitute

- (2) However, the publication of the name of a manufacturer, distributor or retailer of smoking products in association with the publication of other material may be either or both of the following:
- (a) a smoking advertisement;
 - (b) taken to be publicity or promotion as mentioned in subsection (1) (b).

8 Part 2

substitute

Part 2 Points of sale

8 Numbers of points of sale

- (1) An occupier of a retail outlet on unlicensed premises commits an offence if the occupier provides more than 1 point of sale at the outlet.

Maximum penalty: 50 penalty units.

- (2) An occupier of a retail outlet on licensed premises commits an offence if the occupier provides more than 5 points of sale at the outlet.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

- (4) 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*.

unlicensed premises means premises other than licensed premises.

9 Location of smoking products

- (1) A smoking product for sale at a retail or wholesale outlet must be located—
 - (a) at a point of sale for the outlet; and
 - (b) on the seller's side of the point of sale, not less than 1m away from any part of the customer service area in relation to the point of sale.
- (2) A price ticket for a product line for sale (or usually available for sale) at a point of sale at a retail or wholesale outlet must be located not less than 1m away from any part of the customer service area in relation to the point of sale.
- (3) An occupier of a retail or wholesale outlet commits an offence if the occupier contravenes subsection (1) or (2).

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

10 Storage of smoking products at points of sale

- (1) A smoking product at a point of sale for a retail or wholesale outlet must be stored out of view of the outlet's customers.
- (2) An occupier of a retail or wholesale outlet commits an offence if the occupier contravenes subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

11 Other location and storage requirements by regulation

An occupier of a retail or wholesale outlet must comply with any additional requirements in relation to the location or storage of smoking products that are prescribed by regulation.

**9 Supply of smoking product to under 18 year olds
Section 14 (1) and (2)**

substitute

- (1) A person commits an offence if the person—
- (a) sells a smoking product to a person who is under 18 years old; and
 - (b) is reckless about whether the person to whom the smoking product is sold is under 18 years old.

Maximum penalty: 200 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
- (a) immediately before the smoking product was sold to the person, the defendant (or an employee or agent of the defendant) (the *seller*) asked the person to show the seller a document of identification; and
 - (b) the person showed the seller a document of identification; and
 - (c) the seller had no reasonable grounds for believing that the document was not a genuine document of identification of the person.

10 Sections 19 to 22

substitute

19 Sale of cigarettes

- (1) A person commits an offence if the person sells cigarettes (including cigarettes made from a herbal product) in a quantity of less than 20.

Maximum penalty: 50 penalty units.

-
- (2) A person commits an offence if the person sells cigarettes (including cigarettes made from a herbal product) in a package designed—
- (a) to hold less than 20 cigarettes; or
 - (b) to be, or be readily able to be, divided into portions each of which contains less than 20 cigarettes.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

20 Display of smoking products

An occupier of a retail or wholesale outlet commits an offence if the occupier displays to customers at the outlet a smoking product within, or adjacent to, the outlet.

Maximum penalty: 50 penalty units.

21 Prohibited smoking products

- (1) The Minister may declare that a smoking product is prohibited (a *prohibited smoking product*).
- (2) The Minister must not make a declaration under subsection (1) unless satisfied that—
- (a) the smoking product, or the smoke of the product, has a distinctive fruity, sweet or confectionary-like character; and
 - (b) the nature of the product, or the product's package or packaging, may be attractive to children.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Endnotes

7 Uncommenced amendments

22 Prohibition on sale of prohibited smoking product

- (1) A person commits an offence if the person sells a prohibited smoking product.

Maximum penalty: 50 penalty units.

- (2) In this section:

prohibited smoking product—see section 21 (1).

11 Section 23

substitute

23 Prohibited smoking advertising

- (1) A person commits an offence if the person—

- (a) sells a film, videotape, DVD or other video recording, or an audio recording, that contains a smoking advertisement; and
- (b) is reckless about whether the film, videotape, DVD or other video recording, or audio recording, contains a smoking advertisement.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person—

- (a) distributes to the public any unsolicited document that contains a smoking advertisement; and

- (b) is reckless about whether the document contains a smoking advertisement.

Maximum penalty: 50 penalty units.

Examples—unsolicited documents—par (a)

- 1 leaflet
- 2 handbill

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A person commits an offence if the person—
- (a) places, displays or broadcasts a smoking advertisement (including a smoking advertisement for a tobacco product at or on a place where tobacco products are for sale); and
 - (b) is reckless about whether the advertisement is visible or audible in or from a public place.

Maximum penalty: 50 penalty units.

- (4) This section does not apply in relation to—
- (a) a smoking advertisement that is an accidental or incidental accompaniment to a film, videotape, DVD or other video recording, or an audio recording; or
 - (b) a single price ticket at a point of sale for each product line for sale (or usually available for sale) at the point of sale; or
 - (c) a personal use advertisement; or
 - (d) a smoking advertisement that is displayed at a point of sale if the advertisement—
 - (i) is to the effect that smoking products are offered for sale to people who are 18 years old or older; and

Endnotes

7 Uncommenced amendments

- (ii) is the only smoking advertisement (other than a price ticket mentioned in paragraph (b)) displayed at the point of sale; and
 - (iii) does not contain a trademark or brand name, or part of a trademark or brand name, of a smoking product; and
 - (iv) does not contain the name of a manufacturer or distributor of a smoking product; and
 - (v) is not larger than A5 paper size (148mm x 210mm); or
- (e) a document ordinarily used in the course of business.
- (5) In this section:

personal use advertisement means the placement, display or broadcast of a smoking advertisement, or of an object displaying a smoking 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 financial benefit; or
- (b) is undertaken in the course of a business that involves the sale of smoking products or the management of a retail outlet.

Example—personal use

The wearing of a T-shirt displaying a smoking advertisement by a person who is not paid to wear the T-shirt.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

public place means a place to which the public or a section of the public has access, whether—

- (a) by payment, membership of a body or otherwise; or

(b) by entitlement or permission.

Examples—public places

- 1 business premises, including professional, trade and commercial premises and wholesale outlets
- 2 a cinema or theatre
- 3 a club, hotel or motel
- 4 a community centre, hall or public library
- 5 government premises
- 6 a hostel or nursing home
- 7 a place of worship
- 8 a public transportation vehicle (including, a bus, taxi or boat)
- 9 a restaurant or cafeteria
- 10 a school, college or university
- 11 a shopping centre, mall or plaza
- 12 sporting or recreational premises.

**12 Removal of smoking advertisements
Section 24**

omit

section 23 (1) (d)

substitute

section 23 (3)

13 Section 25

substitute

25 Smoking product promotions

- (1) A person commits an offence if—
 - (a) the person sells or distributes an object or entitlement; and
 - (b) the object or entitlement promotes 1 or more of the following things:

Endnotes

7 Uncommenced amendments

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

Maximum penalty: 50 penalty units.

- (2) For subsection (1), an object or entitlement sold or distributed by a person promotes a thing mentioned in subsection (1)(b) if a reasonable person would believe that the object or entitlement promotes, or is likely to promote, the thing.
- (3) 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 thing is a reference to the promotion of the thing by aural or visible material that the object is reasonably capable of producing, or of causing to be produced, in its normal use.
- (4) In this section:

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

object does not include a smoking product.

25A Prohibition of smoking product sales contributing to customer reward scheme

- (1) A person commits an offence, if in direct or indirect association with the sale of a smoking product, the person provides, or offers to provide, any of the following benefits:
 - (a) a prize, gift or discount;

- (b) a voucher, ticket or other thing that allows a person access to a prize, gift or discount;
- (c) points or credit in a customer reward scheme that allows a person to qualify for a thing mentioned in paragraph (a) or (b) by accumulating a number of points, or credit, in association with purchases.

Maximum penalty: 50 penalty units.

Example—par (b)

discount petrol vouchers offered by a supermarket chain

Example—par (c)

a shopping rewards program offered by a group of participating businesses, members of which accumulate points by making purchases at those businesses, and redeem the points for rewards

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that it was not reasonably practicable to identify that the sale of the smoking product was associated with the provision of, or offer to provide, the benefit.

14 Section 28

substitute

28 Prohibition of sponsorships

- (1) A person commits an offence if—
 - (a) the person promotes or agrees to promote, under a contract, agreement, undertaking or understanding, whether or not legally binding—
 - (i) a smoking product, or the use of a smoking product; or

Endnotes

- (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product; and
- (b) the person does so in exchange for a sponsorship, gift, prize, scholarship or similar benefit given or agreed to be given by someone else.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person gives or agrees to give, under a contract, agreement, undertaking or understanding, whether or not legally binding, a sponsorship, gift, prize, scholarship or similar benefit; and
 - (b) the person does so in exchange for the promotion of, or an agreement to promote, a thing mentioned in subsection (1) (a).

Maximum penalty: 50 penalty units.

- (3) This section does not apply in relation to a scholarship given, or agreed to be given, by a manufacturer or distributor of a smoking product to an employee, or a family member of an employee, of the manufacturer or distributor.

- (4) In this section:

family member, of a person, means—

- (a) the person's domestic partner; or
- (b) a parent, step-parent or grandparent of the person; or
- (c) a child, stepchild or grandchild of the person; or
- (d) a brother, sister, stepbrother or stepsister of the person.

**15 Conditions of tobacco licence
Section 48 (2) (a)**

omit

section 21

substitute

section 8 (Numbers of points of sale)

**19 Disciplinary action—general
Section 56 (2) (a) (i) and (ii)**

substitute

- (i) to impose more stringent requirements than otherwise apply under this Act in relation to a point of sale, a price ticket or smoking advertising on or adjacent to all or any of the premises specified in the licence; or
- (ii) to impose a condition prohibiting smoking advertising on or adjacent to all or any of the premises specified in the licence; or

s 56 was remade as s 58 by A2008-36 amdt 1.635 and amended by A2008-37 amdt 1.480. The Legislation Act 2001 provides that the reference to s 56 is to be read as a reference to s 58 (see LA 102 (2) (b)).

**20 Regulation-making power
New section 73 (2A)**

insert

- (2A) A regulation may prescribe requirements that must be complied with in relation to the location or storage of smoking products.

21 Section 73 (4)

omit

10 penalty units

Endnotes

7 Uncommenced amendments

substitute

20 penalty units

23 New section 101

insert

101 Transitional—application of new point of sale display provisions to tobacconists

- (1) The new point of sale display provisions do not apply until 1 January 2010 in relation to a person (a *standard tobacconist*) who—
 - (a) holds a retail tobacconist's licence or wholesale tobacco merchant's licence in relation to premises; and
 - (b) carries on business as a retail tobacconist or wholesale tobacconist at the premises; and
 - (c) is not a specialist tobacconist.
- (2) The new point of sale display provisions do not apply until 1 January 2011 in relation to a person (a *specialist tobacconist*) who—
 - (a) holds a retail tobacconist's licence in relation to premises that are not part of premises used by the person for other retail purposes; and
 - (b) carries on business at the premises the main purpose of which is selling smoking products by retail.
- (3) Until the new point of sale display provisions apply in relation to a standard tobacconist or specialist tobacconist, the old point of sale display provisions continue to apply in relation to the tobacconist.

(4) In this section:

new point of sale display provisions means the following provisions of this Act, as in force after this section commences:

- (a) part 2 (Points of sale), other than section 8 (Numbers of points of sale);
- (b) section 20 (Display of smoking products);
- (c) section 23 (Prohibited smoking advertising);
- (d) section 24 (Removal of smoking advertisements);
- (e) section 56 (Disciplinary action—general).

old point of sale display provisions means the *Tobacco Regulation 1991* and the following provisions of this Act, as in force immediately before this section commences:

- (a) part 2 (Point of sale displays);
- (b) section 20 (Display of smoking products at points of sale);
- (c) section 22 (Health warnings at point of sale displays);
- (d) section 23 (Prohibited smoking advertising);
- (e) section 24 (Removal of smoking advertisements);
- (f) section 56 (Disciplinary action—general).

retail tobacconist's licence—see section 43.

wholesale tobacco merchant's licence—see section 43.

(5) This section expires on 1 January 2011.

24 Dictionary, note 2, new dot points

insert

- child
- domestic partner (see s 169 (1))

Endnotes

7 Uncommenced amendments

25 Dictionary, definitions of *display* and *drug*

omit

26 Dictionary, definition of *herbal product*

substitute

herbal product means a product prepared for smoking that contains a herb or other plant matter but does not contain tobacco or a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

27 Dictionary, definitions of *package* and *point of sale display*

omit

28 Dictionary, definition of *price ticket*

substitute

price ticket—see section 4.

29 Dictionary, definition of *product information notice*

omit

30 Dictionary, definition of *public place*

omit

31 Dictionary, definition of *theatre*

omit

32 Dictionary, definition of *vending machine*

substitute

vending machine means a machine or device from which smoking products can be obtained, including by 1 or more of the following:

- (a) electronic funds transfer;
- (b) inserting money, a token or another object.

Example—other objects—par (b)

- 1 credit card
- 2 debit card
- 3 key

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Schedule 1 Criminal Code harmonisation

(see s 3)

[1.1] Section 14 (3)

substitute

- (3) A person commits an offence if the person uses someone else's document of identification, or a forged document of identification, for the purpose of obtaining a smoking product.

Maximum penalty: 10 penalty units.

[1.2] Section 15

substitute

15 Purchase of smoking products for use by under 18 year olds

A person commits an offence if the person purchases a smoking product for use by a person under 18 years old.

Maximum penalty: 50 penalty units.

[1.3] Sections 17 and 18

substitute

17 Tobacco for non-smoking purposes

A person commits an offence if the person manufactures or sells a tobacco product that is not a product prepared for smoking.

Maximum penalty: 50 penalty units.

18 Food and toys resembling or promoting smoking products

(1) A person commits an offence if the person—

- (a) sells or imports food or a toy; and
- (b) the food or toy, or its package or packaging, resembles—
 - (i) a smoking product; or
 - (ii) a smoking product package.

Maximum penalty: 50 penalty units.

(2) For subsection (1), food or a toy resembles a smoking product or a smoking product package if a reasonable person would believe that the resemblance exists, or is likely to exist.

- (3) A person commits an offence if the person—
- (a) sells or imports food or a toy; and
 - (b) the food or toy, or its package or packaging, publicises or otherwise promotes 1 or more of the following things:
 - (i) a smoking product, or the purchase or use of a smoking product;
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product;
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product.

Maximum penalty: 50 penalty units.

- (4) For subsection (3), food or a toy, or its package or packaging, publicises or otherwise promotes a thing mentioned in subsection (3) (b) if a reasonable person would believe that the food, toy, package or packaging publicises or promotes, or is likely to publicise or promote, the thing.

[1.4] New sections 18A and 18B

insert

18A Declared smoking products

- (1) The Minister may declare that food or a toy, or its package or packaging, is a *declared smoking product*.
- (2) The Minister must not make a declaration under subsection (1) unless satisfied that the food or toy, or its package or packaging—
 - (a) resembles a smoking product; or
 - (b) resembles a smoking product package; or
 - (c) may publicise or otherwise promote—

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7 Uncommenced amendments

- (i) a smoking product, or the purchase or use of a smoking product; or
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

18B Prohibition on sale or import of declared smoking product

- (1) A person commits an offence if the person sells or imports a declared smoking product.

Maximum penalty: 50 penalty units.

- (2) In this section:

declared smoking product—see section 18A (1).

[1.5] Section 24 (3)

substitute

- (3) A person commits an offence if the person contravenes a notice under subsection (1).

Maximum penalty (for each day): 5 penalty units.

Note See the Legislation Act, s 193 (Continuing offences).

[1.6] Sections 26 and 27

substitute

26 Smoking product giveaways

- (1) A person commits an offence if—
 - (a) the person supplies a smoking product for free; and
 - (b) the supply promotes the sale of any smoking product for value.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), the supply by a person of a smoking product for free promotes the sale of a smoking product for value if a reasonable person would believe that the supply promotes, or is likely to promote, the sale.

- (3) In this section:

promote includes induce.

supply includes offer or expose.

27 Competitions that promote smoking products etc

- (1) A person commits an offence if the person—
 - (a) conducts a competition; and
 - (b) the competition promotes 1 or more of the following things:
 - (i) a smoking product, or the purchase or use of a smoking product;
 - (ii) a trademark or brand name, or part of a trademark or brand name, of a smoking product;

Endnotes

7 Uncommenced amendments

- (iii) the name or interests of a manufacturer or distributor of a smoking product in association, directly or indirectly, with the smoking product.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), a competition conducted by a person promotes a thing mentioned in subsection (1) (b) if a reasonable person would believe that the competition promotes, or is likely to promote, the thing.
- (3) A person commits an offence if the person—
 - (a) conducts a competition; and
 - (b) the competition has a direct or indirect association with the sale or consumption of a smoking product, or of smoking products generally.

Maximum penalty: 50 penalty units.

- (4) For subsection (3), a competition conducted by a person has a direct or indirect association with a thing mentioned in subsection (3) (b) if a reasonable person would believe that the competition has, or would have, a direct or indirect association with the thing.

[1.7] Section 34

substitute

34 Identity cards

- (1) The chief executive must give an authorised officer (other than a public health officer or police officer) an identity card stating the person's name and position.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and

- (c) anything else prescribed by regulation.
- (3) A person commits an offence if the person—
- (a) stops being an authorised officer; and
 - (b) does not return the person’s identity card to the chief executive not later than 7 days after the day the person stops being an authorised officer.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (2) applies only in relation to a card given by the chief executive after the commencement of this section.
- (6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on the day they commence.

[1.8] New section 37 (2) and (3)

insert

- (2) A person commits an offence if the person fails to take reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

[1.9] Section 39

substitute

39 Power to require name and address

- (1) An authorised officer may require a person to state the person's name and home address if the officer believes on reasonable grounds that the person—
- (a) is committing or has committed an offence against this Act; or
 - (b) can provide evidence of the commission of an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised officer must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The authorised officer must also produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised officer—
- (a) told the person the reason for the requirement; and
 - (b) produced his or her identity card for inspection by the person.

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) In this section:

home address, of a person, means the address of the place where the person usually lives.

[1.10] Section 41

omit

[1.11] Division 7.4

substitute

Division 7.4 Offences**59 Failure to return tobacco licence**

- (1) A licensee commits an offence if—
 - (a) the registrar varies the licensee's licence; and
 - (b) the registrar gives the licensee notice of the variation; and
 - (c) the licensee does not return the licence to the registrar within 14 days after the day the licensee is given the notice.

Maximum penalty: 5 penalty units.

- (2) A licensee commits an offence if—
 - (a) the registrar suspends or cancels the licensee's licence; and
 - (b) the registrar gives the licensee notice of the suspension or cancellation; and
 - (c) the licensee does not return the licence to the registrar within 14 days after the day the licensee is given the notice.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.

60 Disqualification

- (1) A person commits an offence if the person—
 - (a) is disqualified under division 7.3 (Disciplinary action) from holding a tobacco licence for a stated period; and

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(b) is involved in the direction, management or control of a tobacco retailing business during the period.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if the person—

(a) is disqualified under division 7.3 from holding a tobacco licence for particular premises for a stated period; and

(b) is involved in the direction, management or control of a tobacco retailing business at the premises during the period.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

61 Selling smoking products without, or in contravention of, tobacco licence

(1) A person commits an offence if the person—

(a) is not a licensee; and

(b) sells a smoking product.

Maximum penalty: 50 penalty units.

(2) A licensee commits an offence if the licensee contravenes a condition of the licensee's licence.

Maximum penalty: 50 penalty units.

(3) An offence against subsection (2) is a strict liability offence.

62 Tobacco wholesaling—offences

(1) A person commits an offence if the person—

(a) carries on tobacco wholesaling; and

(b) is not the holder of a wholesale tobacco merchant's licence.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if the person—

(a) carries on tobacco wholesaling; and

(b) sells smoking products to someone who is not a licensee.

Maximum penalty: 100 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—

(a) under the contract of sale, the smoking products were to be delivered by the seller to the buyer outside the ACT, and that no part of the smoking products has been delivered by the seller to the buyer in the ACT; or

(b) if the contract did not state that the smoking products were to be delivered outside the ACT, the parties intended the smoking products to be delivered outside the ACT, and that no part of the smoking products has been delivered by the seller to the buyer in the ACT; or

(c) the defendant believed on reasonable grounds that the person to whom the smoking product was sold was a licensee.

(4) A person commits an offence if the person—

(a) is not the holder of a wholesale tobacco merchant's licence; and

(b) sells a smoking product to someone else for sale in a vending machine.

Maximum penalty: 100 penalty units.

63 Tobacco retailing—offences

(1) A person commits an offence if the person—

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- (a) carries on tobacco retailing; and
- (b) is not the holder of a retail tobacconist's licence.

Maximum penalty: 50 penalty units.

- (2) The holder of a retail tobacconist's licence commits an offence if—
 - (a) the holder carries on the business of selling smoking products at premises; and
 - (b) the premises are not stated in the licence as premises that are to be used in relation to the business.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

64 Display of licence details

- (1) The holder of a wholesale tobacco merchant's licence commits an offence if the holder fails to display a licence details notice in a prominent place at each premises at which the holder carries on business as the holder of the licence.

Maximum penalty: 5 penalty units.

- (2) The holder of a retail tobacconist's licence commits an offence if the holder—
 - (a) carries on business as the holder of the licence at premises; and
 - (b) fails to display a licence details notice at or in close proximity to the point of sale (or, if there is more than 1 point of sale, 1 of the points of sale) at the premises.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.

(4) In this section:

licence details notice, in relation to the holder of a licence, means a notice stating—

- (a) the holder's name; and
- (b) the licence number; and
- (c) any conditions that apply to the licence.

65 Licensee stops carrying on business

(1) A licensee commits an offence if the licensee—

- (a) stops carrying on business under the licence; and
- (b) fails to tell the registrar, in writing, that the licensee has stopped carrying on business under the licence as soon as practicable, but not later than 7 days, after the day the person stops carrying on business.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.

66 Endorsement on wholesale tobacco merchant's invoices

(1) The holder of a wholesale tobacco merchant's licence commits an offence if—

- (a) the holder issues an invoice in relation to the sale of a smoking product; and
- (b) the invoice does not state, in upper case letters, 'SOLD BY LICENSED ACT WHOLESALER'.

Maximum penalty: 5 penalty units.

(2) An offence against subsection (1) is a strict liability offence.

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- (3) A person commits an offence if the person—
- (a) is not the holder of a wholesale tobacco merchant's licence; and
 - (b) issues an invoice in relation to the sale of a smoking product that indicates (expressly or impliedly) that the person holds the licence.

Maximum penalty: 50 penalty units.

67 Retail tobacconist must obtain smoking products from licensed wholesaler

- (1) The holder of a retail tobacconist's licence commits an offence if the holder obtains a smoking product from someone who is not the holder of a wholesale tobacco merchant's licence.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant obtained the smoking product for a purpose other than retail sale.

[1.12] Dictionary, note 2, new dot points

insert

- police officer
- public health officer

[1.13] Dictionary, new definitions

insert

food includes confectionery.

import means import into the ACT for sale.

smoking product package means a package that—

- (a) is of a kind commonly used for smoking products; or
- (b) includes a symbol, design or words that indicate that the package contains a smoking product, or a particular product line of a smoking product.

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