

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

## **EXPLANATORY MEMORANDUM**

### **TOBACCO AMENDMENT BILL (NO. 2) 1999**

Circulated by the authority of the Minister for Health and  
Community Care  
Michael Moore MLA

## **Explanatory Memorandum**

### **Tobacco Amendment Bill (No 2) 1999**

#### **PART 1 - PRELIMINARY**

##### **1. Name of Act**

Clause 1: provides that this amending legislation be named the Tobacco Amendment Act (No 2) 1999.

##### **2. Commencement**

Clause 2: provides that Part 1 of this Act comes into force on the day that it is notified in the Gazette, that Section 7 (the repeal of the *Tobacco Licensing Act 1984*) takes effect on 1 September 2000, and the remaining provisions of this Act will come into force on 1 July 2000.

#### **PART 2 - AMENDMENTS OF THE TOBACCO ACT 1927**

##### **3. Act amended**

Clause 3: provides that this part of the Act will amend the *Tobacco Act 1927*.

##### **4. Insertion**

Clause 4: inserts a part after section 12Q of the Tobacco Act 1927, which is called "Part 7 - Licences". Under the Part 7 title a subtitle is inserted which is called "Division 1 - Preliminary".

##### **Interpretation (Section 43)**

The clause also inserts an interpretation provision (Subsection 43 (1)) that outlines the meaning of a number of terms used in this part. These meanings apply in all cases unless it is indicated that another meaning is to be used in the interpretation of a specific section of the Act. The terms being:

*approved form* which refers to the licence application documentation and the licence itself, both of which must be assented to by the Registrar of Tobacco before they can be used. Any licence application documentation which is not approved by the Registrar of Tobacco will not have to be accepted by the Registrar. Any licence issued by the Registrar of Tobacco must be in a form approved by the Registrar.

*determined fee* which refers to the annual cost of a wholesale tobacco merchant's licence and a retail tobacconist's licence. The Minister is required to set an annual fee for each licence under section 67 of the Act; once the Minister has set that fee a notice must appear in the Gazette outlining the fees payable for each licence.

*licensee* which refers to any person holding a valid wholesale tobacco merchant's licence or a valid retail tobacconist's licence.

*record* which refers to a wide range of information kept on a variety of storage mediums. The Minister may prescribe what information is required to be kept by a licensee through regulations made under section 15 of the Act.

*retail tobaccoist's licence* which refers to a licence issued by the Registrar of Tobacco to a person who has met the eligibility requirements set out in Act. The licence permits the holder to sell tobacco products to persons over 18 years of age.

*tobacco retailing* which refers to the business of selling tobacco products other than by wholesale.

*tobacco wholesaling* which refers to the business of selling tobacco products to tobacco retailers for the purpose of reselling those products.

*wholesale tobacco merchant's licence* which refers to a licence issued by the Registrar of Tobacco to a person who has met the eligibility requirements set out in Act. The licence permits the holder to sell tobacco products to holders of a retail tobaccoist's licence.

The clause inserts a provision (subsection 43(2)) which further defines the term *tobacco retailing* by ensuring that tobacco retailers who sell products other than tobacco products are included in the definition of tobacco retailing (subsection 43(2)(a)).

The clause also inserts a provision which ensures that if a business carries on tobacco retailing as a part of another business or as a partnership, joint-venture or any other business-sharing relationship, then that business is included in the definition of tobacco retailing (subsection 43(2)(b)).

The clause inserts a provision (subsection 43(3)) which provides further direction on the interpretation of the term *tobacco wholesaling*. The purpose of the provision is to ensure that tobacco wholesalers who sell products other than tobacco products are included in the definition of tobacco wholesaling.

The clause also inserts a provision which ensures that if a business carries on tobacco wholesaling as a part of another business or as a partnership, joint-venture or any other business-sharing relationship then that business is included in the definition of tobacco wholesaling (subsection 43(3)(b)).

The clause inserts a provision (subsection 43(3)(c)) which ensures that tobacco wholesaling includes a contract to supply tobacco products to the ACT, regardless of where that contract was made.

The clause inserts a provision which ensures that if a wholesaler is located, registered or carries on business outside the Territory (wholly or in part), then that wholesaler is included in the definition of tobacco wholesaling (subsection 43(3)(d)).

The clause inserts a provision which states that tobacco wholesaling includes the wholesaling of tobacco products which are transported into the ACT from outside the Territory (subsection 43(3)(e)).

The clause inserts a provision that ensures an employee of a person (the employer) who sells tobacco or carries on the business of selling tobacco is not liable for prosecution under any provision of this Part of the Act. The employer is taken to have sold the tobacco or carry on the business of tobacco (subsection 43(4)(a) and (b). This provision is required to insure that action may be taken against the licensee in the event of an offence being committed under any provision in this Part of the Act.

#### **Vending machines (Section 44)**

The clause inserts a provision, which ensures that the occupier of a premises upon which a tobacco product vending machine is located is taken to be carrying on tobacco retailing (section 44).

The clause inserts a subtitle under section 44, which is called 'Division 2 - General'.

#### **Application for, and grant of, licence (Section 45)**

The clause inserts a provision that if a person wishes to obtain a licence (either a wholesale tobacco merchant's licence or a retail tobacconist's licence) then the person may apply to the Registrar of Tobacco for that licence (subsection 45(1)).

To apply for the licence a person must apply in writing on the approved form, that being a form approved by the Minister for use in the license application process (subsection 45(2)(a)). The applicant is also required to provide any information, in writing that the Registrar of Tobacco requires. This information may relate to the proposed location of the business to which the license will apply or any other information pertinent to the granting or operation of a license (subsection 45(2)(b)). The applicant must pay the determined fee to the Registrar (subsection 45(2)(c)).

The Registrar is empowered to require any applicant to supply information relevant to the requirements of the Act. The application form may also require the applicant to provide any information relevant to the requirements of the Act (subsection 45(3)). The clause inserts a provision which requires the Registrar of Tobacco to issue the applicant a licence if the approved application form has been completed and the required fee has been paid.

The issue of a licence is subject to provisions outlined in section 48 of the Act. Section 48 provides grounds upon which the Registrar of Tobacco may refuse a licence application, which generally relate to the past conduct of the applicant in relation to the sale of tobacco products.

The clause inserts a provision which outlines the requirements for the licence, those being the requirement that the licence must be in a form approved by the Minister, must have the address(es) of the premises to which the licence applies (subsections 45(5)(a) and (b).

The clause inserts a provision which describes the operation of a licence. In the case of the wholesale tobacco merchant's licence, the holder is entitled to wholesale tobacco products at each address appearing on the licence (subsection 45 (6)(a)). In the case of the retail tobacconist's licence, the holder is entitled to retail tobacco products at each address appearing on the licence (subsection 45 (6)(b)).

The clause inserts a provision which requires the Registrar of Tobacco to amend the details appearing on a licence if the Registrar receives a request to do so from a licence holder. The request

must be in writing and on a form approved by the Minister (subsection 45 (7)(a)). The Registrar may require a fee to accompany the request for change of licence details, if the Minister has determined that a fee is payable (subsection 45 (7)(b)).

The clause inserts a provision which prohibits the transfer of a licence (subsection 45 (8)). The purpose of this provision is to ensure that each holder of a licence is subject to the licence application vetting process, as this ensures that all licence holders meet the assessment criterion set out in section 48.

#### **Conditions of licence (Section 46)**

The clause inserts a provision which allows the Registrar of Tobacco to specify any conditions to which a licence is subject to. This allows the registrar to control the use of a licence if a licence holder has committed a minor offence against this Act, rather than withdrawing or cancelling the licence (subsection 46 (1)).

The clause inserts a provision which outlines particular conditions to which a licence may be subject. Those conditions include limiting the number of tobacco product points of sale on any premises listed on the licence or prescribing the locations of the tobacco points of sale in any premises listed on the licence (subsection 46 (2)(a) and (b)).

The clause inserts a provision which allows the registrar to issue a licence subject to the applicant undertaking an approved training program which would give the applicant an understanding of the obligations of a licence holder (subsection 46 (3)). This provision only applies to applicants who have been convicted of 2 offences relating to the supply of tobacco products to persons under the age of 18 years, in the 2 years prior to the date of the application.

The clause inserts a provision which permits the registrar to vary or require further conditions on a licence through the serving of a notice on the licensee. The registrar may also cancel any existing licence conditions through the serving of a notice (subsection 46 (4)(a) and (b)).

#### **Duration of a tobacco licence (Section 47)**

The clause inserts a provision which specifies the date upon which the licence becomes valid, that is on the commencement date that appears on the licence (subsection 47 (1)).

The clause inserts a provision, which specifies the date upon which the licence expires, that date being the next 31 August after the commencement date appearing on the licence (subsection 47 (2)).

#### **Refusal to grant licence (Section 48)**

The clause inserts a provision which outlines conditions under which the registrar is prohibited from issuing a retail tobaccoist's licence or a wholesale tobacco merchant's licence. Those conditions are:

- (a) if the licence would permit the sale of tobacco products on a premises which has been prohibited from operating tobacco product vending machines on that premises under disciplinary provisions of the Act;

- (b) if the applicant holds another licence and a condition of that licence prohibits the sale of tobacco products from a particular premises, and the issuing of a subsequent licence would permit the sale of tobacco products from the premises upon which such sales are prohibited by the first licence;
- (c) if the applicant holds another licence which is currently under suspension;
- (d) if the applicant is prohibited from holding a licence as a result of disciplinary action taken by the registrar under the disciplinary provisions of the Act; or
- (e) if the licence is proposed to apply to a particular premises and the applicant is prohibited from holding a licence for those premises because of disciplinary action taken by the registrar under the disciplinary provision of the Act.

The clause inserts a provision which outlines conditions under which the registrar is permitted to refuse to issue a retail tobacconist's licence or a wholesale tobacco merchant's licence. Those conditions are:

- (a) if the applicant is unable to demonstrate that s/he understands the level of responsibility that is required to comply with the provisions of the Act or the role of licensee in relation to the Act;
- (b) if the applicant has been convicted of 2 offences relating to the sale of tobacco products to persons under the age of 18 years in the 2 years prior to the date of application, regardless of the jurisdiction in which the offences took place; or
- (c) if the applicant has previously held a licence and that licence was cancelled as a result of disciplinary action taken by the registrar under the disciplinary provisions of the Act.

The clause inserts a provision which includes in the definition of 'offence', in this section of the Act, those offences of the applicant where no conviction was recorded (subsection 48(3)).

#### **Renewal of a tobacco licence (section 49)**

The clause inserts a provision which requires the registrar to renew a tobacco licence upon receipt of an application to renew (subsection 49 (1)).

In order to renew a licence the licensee is required to make application to the registrar to renew the licence in writing and on the renewal form approved by the Minister (subsection 49 (2)). The licensee may also be required by the registrar to provide further information in writing (subsection 49 (2)(b)(i)). The renewal fee must accompany the renewal application; the amount of which is determined by the Minister (subsection 49 (2)(b)(ii)).

The clause inserts a provision which requires the licensee to provide the registrar with the licence renewal application and the renewal fee 7 days prior to the expiration of the current licence (subsection 49 (3)). The purpose of this provision is to ensure that the registrar is given adequate time to process the renewal application and carry out any checks that may be required prior to the renewing the licence.

The clause inserts a provision which prohibits the registrar from renewing cancelled or surrendered tobacco licences (subsection 49 (4)).

The clause inserts a provision, which requires the registrar to refund any fees paid by an applicant for licence renewal if that renewal is refused (subsection 49 (5)).

The clause specifies that, for this section, 'tobacco licence' includes a retail tobacconist's licence issued under the *Tobacco Licensing Act 1984* (subsection 50(6)). This will permit such licences to be renewed under the present legislation.

#### **Revival of expired retail tobacconist's licences (section 50)**

The clause inserts a provision which requires the registrar to renew an expired retail tobacconist's licence as long as the holder of the expired licence provides the registrar with any particulars, in writing, s/he requires and pays the appropriate fee and the licence had expired within the last 12 months. The expired licence includes a retail tobacconist licence issued under the *Tobacco Licensing Act 1984*. The normal refusal provisions as outlined in section 48 of the Act qualify the reissue of the licence.

#### **Register of tobacco licences (Section 51)**

The clause inserts a provision which requires the registrar to maintain a record of the details relating to each tobacco licence including: the name of the licensee, the licence number and any other details which may appear in the licence (ie. special conditions). The registrar is also required to make these records available for members of the public to view during normal office hours.

#### **Surrender and termination of a tobacco licence (section 52)**

The clause inserts a provision which permits the licensee to hand in their tobacco licence at any time, the licensee must inform the registrar in writing of his/her intention to hand in the licence (subsection 52(1)). A further provision (subsection 52(2)) voids a licence if the required fee for initial licence granting or renewal is not paid and remains unpaid (subsection 52(2)).

Under the "Surrender and termination of a tobacco licence" provisions a subtitle is inserted which is called "Division 3 – Disciplinary action".

#### **Prior notice of proposed disciplinary action (Section 53)**

The clause inserts a provision which prohibits the registrar from taking any disciplinary action without first giving the person to whom the disciplinary action is to be directed written notice. The notice must invite the person to answer any allegations of misconduct and provide reasons why the proposed disciplinary should not be taken. The person to which the disciplinary action is to be directed must be given at least 14 days to reply to the notice (subsection 51(1)).

The notice of intention to take disciplinary action must contain the following elements (subsection 53 (2));

- (a) details of the alleged conduct or actions of the person, to whom the notice applies, which has caused the registrar to consider disciplinary action; and
- (b) the details of disciplinary action the registrar is considering taking; and

- (c) an invitation to provide further details, in writing, regarding the conduct in question and indicating any reasons why the proposed action should not be taken or a lesser action should be taken.

The registrar is required to take in to account any details supplied by the person to whom the notice applies or another person who has an interest in the notice, when making a decision to take disciplinary action (subsection 53 (3)).

The clause inserts a provision which defines an *interested person*, for the purpose of the notice of intention to take disciplinary action, as any person who is involved in the management, control or direction of the tobacco retail business, which the person notified of the disciplinary action is also involved in.

**Disciplinary action – general (section 54)**

The clause inserts provisions, which apply:

- (a) to a person who holds a tobacco licence (a licensee) and whose actions have resulted in a contravention of the Act (Subsection 54 (1)(a));
- (b) to a person who holds a liquor or gaming licence (and has tobacco vending machines on the premises) whose actions have resulted in a contravention of the Act (Subsection 54 (1)(b)); or

The clause inserts a provision which permits the registrar to take certain disciplinary actions, being:

- (a) prohibiting the operation of vending machines on a particular premises or a premises operated by the person to whom the disciplinary action applies for a period of time not exceeding 5 years;
- (b) varying a tobacco licence in order to:
  - (i) limit the number of permitted points of sale (subsection 54(2)(b)(i));
  - (ii) limit the permitted number or size of point of sale displays(subsection 54(2)(b)(i));
  - (iii) limit the size or display of point of sale displays, product information notices or price tickets(subsection 54(2)(b)(i));
  - (iv) limit the number or location of tobacco product vending machines(subsection 54(2)(b)(i));
  - (v) limit the display of tobacco advertising (subsection 54(2)(b)(i));
  - (vi) impose a licence condition which prohibits point of sale displays, tobacco product vending machines or tobacco advertising on or next to a premises to which the licence applies (subsection 54(2)(b)(ii));



- (vii) impose conditions which require more stringent checks to be carried out when selling tobacco products to young people (ie. identification checks with every sale) (subsection 54(2)(b)(iii)); or
  - (viii) imposed conditions which prohibit the selling of tobacco products on any or all of the premises referred to in the licence (subsection 54(2)(b)(iv)).
- (c) prohibit the sale of tobacco products for a limited period of time through the suspension of a tobacco licence for a maximum period of three months (subsection 54 (2)(c));
- (d) cancel any tobacco licence from a date stated on the notice of intention to take disciplinary action (subsection 54 (2)(d); or
- (e) prohibit a person from holding a tobacco licence, or prohibit a person from holding tobacco licence for a nominated premises, for up to 5 years (subsection 54 (2)(e)).

The clause inserts a provision which prohibits the registrar from taking disciplinary action against a person, to whom a notice of intention to take disciplinary action has been served unless the registrar has set out that disciplinary action in the notice or the action taken is not as harsh as the action outline in the notice (subsections 54 (3)(a) and (b)).

The clause inserts a provision which requires the registrar to cancel the tobacco licence of a person convicted of a second offence against the Act within 2 years of a previous conviction for an offence against this Act. The registrar is also required to disqualify that person from holding a tobacco licence for a period of 5 years from the date of the second conviction. This provision also requires the registrar to direct to person not to have tobacco product vending machines available for use on any premises s/he controls for a period of 5 years from the date of the second conviction (subsection 54 (4)).

The clause inserts a provision, which defines *liquor or gaming licence* as meaning a licence issued under the *Liquor Act 1975*, the *Casino Control Act 1988* or the *Gaming Machine Act 1987*.

#### **Cancellation of licence – additional grounds (Section 55)**

The clause inserts a provision, which permits the registrar to cancel a tobacco licence if:

- (a) if the licence was granted by mistake or if the applicant (or his/her agent) provided false or misleading information on the application form;
- (b) if a licence holder has been convicted of an offence under this Part of the Act;
- (c) if the licence holder has been convicted of any offence which has a penalty of a minimum of a year's imprisonment or the licence holder is an undischarged bankrupt; or
- (d) if corporation is the holder of a licence and the corporation is being wound up.

The clause inserts a provision, which permits the registrar to cancel any tobacco licence using a notice which indicates his/her intention to take disciplinary action. This provision only applies to a licence which was granted to a person by mistake.

The registrar is only permitted to cancel a tobacco licence if a notice of intention to take disciplinary action has been issued in accordance with the Act.

Under the section 55 a subtitle is inserted which is called "Division 4 - Offences".

**Permitting operation of a vending machine on premises contrary to a direction (Section 56)**

The clause inserts a provision that makes it an offence to fail to comply with a direction from the registrar that prohibits a person from operating tobacco product vending machines for a nominated period (either on a particular premise or on any premises as nominated by the registrar). The penalty is set at a maximum of 50 penalty units and / or imprisonment for six months (section 56).

**Failure to return licence after variation, suspension or cancellation (Section 57)**

The clause inserts a provision that makes it an offence to fail to return a licence within 14 days which has been varied by the registrar. The penalty is set at a maximum of 5 penalty units (subsection 57(1)).

The clause inserts a provision that makes it an offence to fail to return a licence within 14 days which has been suspended or cancelled by the registrar. The penalty is set at a maximum of 5 penalty units (subsection 57(2)).

**Disqualification (Section 58)**

The clause inserts a provision that makes it an offence for a person who has been prohibited from holding a tobacco licence from operating, managing or being concerned with a tobacco retailing business. The penalty is set at a maximum of 50 penalty units and / or imprisonment for six months (subsection 58(1)).

The clause inserts a provision that makes it an offence for a person who has been prohibited from holding a tobacco licence for a particular premises from operating, managing or being concerned with a tobacco retailing business on that nominated premises. The penalty is set at a maximum of 50 penalty units and / or imprisonment for six months (subsection 58(2)).

**Selling tobacco products without, or in contravention of, a tobacco licence (Section 59)**

The clause inserts a provision that makes it an offence for a person to sell tobacco products unless that person holds a valid tobacco licence. The penalty is set at a maximum of 50 penalty units (subsection 59(1)).

The clause inserts a provision that makes it an offence for a tobacco licence holder to fail to comply with a condition of that licence. The penalty is set at a maximum of 50 penalty units (subsection 59(2)).

**Tobacco wholesaling – offences (Section 60)**

The clause inserts a provision that makes it an offence for a person to wholesale tobacco products without a wholesale tobacco merchant's licence. The penalty is set at a maximum of 100 penalty units (subsection 60(1)).

The clause inserts a provision that makes it an offence for a person to wholesale tobacco products to a person who does not hold a tobacco licence. The penalty is set at a maximum of 100 penalty units (subsection 60(2)). A defence to this offence is provided if:

- (a) the person can show that the person to whom the tobacco products were sold was located outside the ACT and that none of the products were delivered inside the ACT (subsection 60(3)(a));
- (b) the person intended the tobacco products to be delivered outside the ACT and that none of the tobacco products had been delivered inside the ACT (subsection 60(3)(b)); or
- (c) the wholesaler believed that the person to whom s/he was selling the products to was the holder of a tobacco licence (subsection 60(3)(c)).

The clause inserts a provision that makes it an offence for a person, other than the holder of a wholesale tobacco merchant's licence, to sell tobacco products to a person to place in a tobacco product vending machine. The penalty for this offence is set at a maximum of 100 penalty units (subsection 60(4)).

#### **Tobacco retailing – offences (Section 61)**

The clause inserts a provision that makes it an offence for a person to sell, at retail, tobacco products unless that person is the holder of a retail tobacco merchant's licence. The penalty for this offence is set at a maximum of 50 penalty units (subsection 61(1)).

The clause inserts a provision that makes it an offence for a person, other than the holder of a retail tobacco merchant's licence, to operate or permit the operation of tobacco product vending machines on premises, which that person occupies. The penalty for this offence is set at a maximum of 50 penalty units (subsection 61(2)).

The clause inserts a provision that makes it an offence for a tobacco licence holder to sell tobacco products from a premise that is not specified in the licence. The penalty for this offence is set at a maximum of 50 penalty units (subsection 61(3)).

#### **Licence particulars to be displayed (Section 62)**

The clause inserts a provision that makes it an offence for a licensee to fail to display a notice at the point of sale; which sets out the licensee's name, the licence number and the licence conditions which apply to that licence. The penalty for this offence is set at a maximum of 5 penalty units (subsection 62(1) and (2)). This provision does not apply to those premises at which tobacco products are only sold through tobacco product vending machines (subsection 62(3)).

The clause inserts a provision that makes it an offence for a licensee to offer tobacco products for sale from a vending machine which does not have a notice which sets out the licensee's name, the licence number and the conditions which apply to that licence (if any). The notice must be displayed in a prominent position on that vending machine. The penalty for this offence is set at a maximum of 5 penalty units (subsection 62(4)). If there is more than one vending machine on a premise, then a notice must appear on each vending machine, regardless of any other notices displayed on the premise (subsection 62(5)(a) and (b)).

**Licence cancelled or licensee ceasing to carry on business (Section 63)**

The clause inserts a provision that makes it an offence for a person to fail to return a cancelled tobacco licence promptly to the registrar, without reasonable excuse. The penalty for this offence is set at a maximum of 5 penalty units (subsection 63(1)).

The clause inserts a provision that makes it an offence for a licensee to fail to inform the registrar, in writing, of the cessation of their business. The registrar must be informed within 7 days of the business ceasing. The penalty for this offence is set at a maximum of 5 penalty units (subsection 63(2)).

**Invoices (Section 64)**

The clause inserts a provision that makes it an offence for the holder of a tobacco merchant's licence to fail to endorse every invoice issued by the licensee with the words "SOLD BY LICENSED ACT WHOLESALER". The penalty for this offence is set at a maximum of 5 penalty units (subsection 64(1)).

The clause inserts a provision that makes it an offence for a person who is not the holder of a wholesale tobacco merchants licence to issue an invoice, in connection with the sale of tobacco products, upon which the words "SOLD BY LICENSED ACT WHOLESALER". The penalty for this offence is set at a maximum of 50 penalty units (subsection 64(2)).

This requirement ensures that tobacco retailers and enforcement authorities can confirm that tobacco products have been obtained from a licensed wholesaler.

**Retail tobacconist must only obtain tobacco products from a licensed wholesaler (Section 64A)**

The clause inserts a provision that makes it an offence for the holder of a retail tobacconist's licence to obtain tobacco products from a person who does not hold a wholesale tobacco merchant's licence. The penalty for this offence is set at a maximum of 50 penalty units (subsection 64A(1)). A defence against prosecution for this offence is provided if the defendant can show that the tobacco products were obtained for a purpose other than retail selling (subsection 64A(2)).

Under the section 64A a subtitle is inserted which is called "Division 5 – Administrative review".

**Review of decisions (Section 65)**

The clause inserts a provision that permits an aggrieved person to apply to the Administrative Appeals Tribunal for a review of any decision made by the registrar in relation to:

- a) the conditions of a tobacco licence;
- b) the refusal to grant a tobacco licence;
- c) the refusal to renew a tobacco licence;
- d) the issue of a direction;
- e) the variation of a tobacco licence;
- f) the suspension of a tobacco licence;
- g) the cancellation of a tobacco licence;
- h) the disqualification of a person from holding a tobacco licence; or
- i) disciplinary action as a result of a person being convicted of two offences regarding the supply of tobacco products to persons under the age of 18 years within a 2-year period.

The clause inserts a provision that requires the registrar to give notice in writing of any decision made in relation to disciplinary action or the refusal to grant / renew a tobacco licence. The notice must outline the reason(s) for the decision being made and must also comply with the relevant provisions of the *Administrative Appeals Tribunal Act 1989* (section 66).

Under the section 66 a subtitle is inserted which is called "Division 6 – Miscellaneous".

#### **Fees (Section 67)**

The clause inserts a provision that requires the Minister to provide an annual determination of the amount of money the registrar must charge for the grant or renewal of a wholesale tobacco merchant's licence (subsection 67(1)(a)) and a retail tobacconist's licence (subsection 67(1)(b)). In determining the fee the Minister may take in to account the number of premises or points of sale specified on the licence and charge on the basis of those numbers (subsection 67(2)). Once the Minister has determined the fee payable, in order for it to take effect a notice must appear in the *Gazette*. The determination will take effect from the date of *Gazette* notification or a latter date if outlined in the notice (subsection 67(3)(a) and (b)).

#### **Recovery of unpaid fees from unlicensed persons (Section 68)**

There are also provisions for the recovery of unpaid fees from unlicensed persons. These provisions (subsections 68(1) – (6)) provide for powers and responsibilities of the registrar with respect to unpaid fees.

#### **5. Regulations**

Clause 5: amends section 15 of the Act. The amendment inserts further subsections which outline areas which the Executive may make regulation. Those areas are, but not limited to, the exemption of persons or classes of persons from any Part of the Act, the prescription of particular types of records that must be kept (subsections 15 (2)(a) and (b)).

The clause inserts a provision that permits regulations to apply widely or to a specific thing or circumstance, apply differently according to different factors or authorise the determination of any thing (subsections 15 (3)(a), (b) and (c)).

The clause inserts a provision that prohibits the proscription of a penalty for an offence against a regulation to exceed 10 penalty units for a natural person and 50 penalty units for a corporation (subsections 15 (4)(a) and (b)).

#### **6. Renumbering – Parts and sections**

Clause 6: amends the *Tobacco Act 1927*. The amendment (at clause 6(1)) changes the existing section numbers to the numbers outlined in Schedule 1 of this Act. The reason for the renumbering is to provide clear numbering to the Act and remove any unusual or confusing numbering patterns.

The amendment (at clause 6(2)) changes the existing Part numbers to the numbers outlined in Schedule 2 of this Act. The reason for the renumbering is to provide clear numbering to the Act and remove any unusual or confusing numbering patterns.

### **PART 3 – MISCELLANEOUS**

#### **7. Repeal**

Clause 7: repeals the Acts listed at clause 7(1) and Part 3 of the Act listed at clause 7(2). These Acts are repealed because they duplicate the tobacco licensing provisions outlined in this Act and are therefore redundant.

#### **8. Consequential amendments**

Clause 8: amends the Acts listed in Part 1 of Schedule 3 of this Act. The purpose of the amendments is to ensure that references to the *Tobacco Act 1927* which appear in the Acts listed in Schedule 3 are changed to reflect the renumbered Act. The amendments also ensure that any Act which referenced the provisions of the *Tobacco Licensing Act 1984* are changed to reflect the movement of those provisions to the *Tobacco Act 1927*.

The clause amends the Regulations listed in Part 2 of Schedule 3 of this Act. The purpose of the amendments is to ensure that references to the *Tobacco Act 1927* which appear in the Regulations listed in Schedule 3 are changed to reflect the renumbered Act. The clause also changes the name of the *Tobacco Regulations* to the *Tobacco Regulations 1991* for reasons of legal convention.

#### **9. Secrecy**

Clause 9 provides that, notwithstanding any provision of Division 4 of part 9 of the *Taxation Administration Act 1999* or any other ACT law, the Commissioner, or anyone acting under his or her direction, may provide information to the registrar obtained in relation to the *Tobacco Licensing Act 1984* that is reasonably required by the registrar for the purposes of the *Tobacco Act 1927*.