

2004

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

TOBACCO (VENDING MACHINE BAN) AMENDMENT BILL 2004

EXPLANATORY STATEMENT

**Circulated by the authority of
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Overview

The objective of this Bill is to prohibit the use of vending machines for the purpose of selling tobacco products in the Territory.

The Bill has been tabled in response to concern that cigarette vending machines remain a common source of tobacco products for minors, and also to accompany the Territory's prohibition on smoking in enclosed public places.

The Bill avoids administrative difficulties by ensuring that the Act commences at the same time as the tobacco retailing licensing cycle, meaning that the substantive provisions commence at the same time as the 2005-06 tobacco licences.

Notes on clauses

Clause 1 — Name of Act

This clause provides for the Bill's name.

Clause 2 — Commencement

Subclause (1) – This subclause provides for section 14 (which is about ensuring that the registrar must not grant or renew licences that would authorise tobacco machines after 1 September 2005) to commence the day after the Act's notification day.

Subclause (2) – This subclause provides for the remainder of the Bill to commence on 1 September 2005.

Clause 3 — Legislation amended

This clause states the bill amends the *Tobacco Act 1927*, and includes a note to indicate that it also amends subordinate legislation.

Clause 4 — Legislation amended

This clause states the Part 2 of the Bill amends the *Tobacco Act 1927*.

Clause 5 — New section 2B

This provision provides that other legislation applies to this Act, and inserts new notes indicating the new offence created by the proposed new section 16 (Prohibition on sale of smoking products by vending machine) is subject to the provisions of the Criminal Code, and that the use of penalty units in the offence is interpreted by the Legislation Act.

Clause 6 — Location of display – Section 12 (1) (b) and (2) (b) (ii)

This clause removes the exemption for cigarette vending machines from existing laws prescribing how smoking products must be displayed.

Clause 7 — Supply of smoking product to under 18 year olds – Section 14 (3) and (4)

This clause removes the existing offence against permitting a minor from accessing a cigarette vending machine, together with an additional defence to prosecution for that offence.

Clause 8 — Section 14

This is a technical amendment to renumber subsections when next republished to maintain the enumeration of the section.

Clause 9 — Section 16

This clause omits the existing clause 16 (which is about the location of and display of warning signs on vending machines) with a new section 16 that creates two new offences in the Act. These offences prevent the use of cigarette vending machines on premises where it is available for use by the public. The penalty for each of these offences is 50 penalty units.

Clause 10 — Health warnings at point of sale displays – Section 22

This clause removes the exemption for cigarette vending machines from displaying health warnings at a point of sale.

Clause 11 — Prohibited smoking advertising – Section 23 (6), definition of *personal use advertisement*, paragraph (b)

This clause removes a reference to vending machines that is no longer necessary.

Clause 12 — Meaning of tobacco retailing – Section 44 (3)

This clause removes a reference to vending machines that is no longer necessary.

Clause 13 — New section 49A

This clause inserts a requirement that the registrar must not grant, renew or revive a licence that would authorise the use of a vending machine for the sale of tobacco products.

Clause 14 — New Section 49B

This clause is transitional provision that ensures that after the notification of this Act, the registrar must not grant, renew or revive a licence that would authorise the use of a vending machine after 1 September 2005.

Clause 15 — Refusal to grant or renew tobacco licence – Section 50 (1) (a) and (b)

This clause removes a reference to vending machines that is no longer necessary, with drafting changes to consolidate the section.

Clause 16 — Section 50 (1)

This is a technical amendment to renumber subsections when next republished to maintain the enumeration of the section.

Clause 17 — Disciplinary action – general – Section 56 (1)

This is a consequential amendment to reflect drafting changes in other parts of the Act, and to remove a reference to vending machines that is no longer required.

Clause 18 — Section 56 (2) (a)

This clause removes the ability of the registrar to impose a condition on a licensee not to use a vending machine, as vending machines will not longer be licensed under this Act.

Clause 19 — Section 56 (2) (b) (ii) and (ii)

This clause removes 2 references to vending machines that are no longer necessary.

Clause 20 — Section 56 (2)

This is a technical amendment to renumber subsections when next republished to maintain the enumeration of the section.

Clause 21 — Section 56 (4) (b) and (c)

This clause removes the duty of the registrar to direct a person not to use a vending machine, as vending machines will not longer be licensed under this Act.

Clause 22 — Section 56 (5)

This clause removes the definition of *liquor or gaming licence* as this is no longer required, as it was only used to describe places where a vending machine could be located.

Clause 23 — Section 58

This clause removes the existing offence of not complying with a direction not to use vending machines, as this direction is no longer available to the registrar.

Clause 24 — Tobacco retailing – offences – Section 63 (2)

This clause removes the existing offence against using a vending machine without a licence, as vending machines will no longer be licensed under this Act.

Clause 25 — Section 63 (3)

This is a technical amendment to renumber subsections when next republished to maintain the enumeration of the section.

Clause 26 — Licence particulars to be displayed – Section 64 (3), (4) and (5)

This clause removes requirements for displaying licences for vending machines, as vending machines will no longer be licensed under this Act.

Clause 27 — Review of decisions – Section 68 (d)

This clause removes the ability of a person to seek a review of a decision made under section 56 (2) (a), as this provision has been removed by an earlier amendment.

Clause 28 — Section 68

This is a technical amendment to renumber subsections when next republished to maintain the enumeration of the section.

Clause 29 — Dictionary, definition of *point of sale*

This clause removes a reference to vending machines that is no longer necessary.

Clause 30 — Dictionary, definition of *vending machine*

This clause omits the current definition of vending machine, and replaces it with a more comprehensive definition; including reference to the sale of smoking products and that the device can be operated without the personal attention or manipulation of the seller.

Clause 31 — Legislation Amended – pt 3

This clause states the Part 3 of the Bill amends the *Tobacco Regulations 1991*.

Clause 32 — Part 2

This clause omits Part 2 of the Tobacco Regulations (which are about vending machine notices). These are no longer required as vending machines will no longer be licensed under the Act.

Clause 33 — Application – Act, s 22 – Regulation 3

This clause removes a reference to vending machines that is no longer necessary.

Clause 34 — Regulations – renumbering

This is a technical amendment to renumber provisions when next republished to maintain the enumeration of the Regulations.