

**1990**

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

**TOBACCO (AMENDMENT) BILL 1990  
EXPLANATORY MEMORANDUM**

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Minister for Health, Education and the Arts  
Gary Humphries**

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## **TOBACCO (AMENDMENT) BILL 1990**

The Tobacco (Amendment) Bill will amend the Tobacco Act of 1927. The Tobacco (Amendment) Bill makes it an offence to supply by sale or purchase tobacco products for use by a person under the age of 18 years. The Bill also makes it an offence for the owner and licensee of premises licensed under the Liquor Act 1975 upon which a vending machine for tobacco products has been placed to allow a person under the age of 18 years to use those machines.

Vending machines must only be placed on premises licensed under the Liquor Act 1975.

The Tobacco (Amendment) Bill will also prohibit certain types of advertising, promotion or sponsorship of tobacco products. The Bill provides for certain exemptions from the advertising, promotion and sponsorship provision. The Bill applies to directors, servants and agents of a body corporate. The Bill will also bind the Crown.

Details of the Bill follow.

Details of the Tobacco (Amendment) Bill 1990 are as follows:-

Section 1 cites the short title of the Bill.

Section 2 provides for the Bill to commence on a date notified in the Gazette. Provision has been made for commencement of any Sections which are not commenced on the day that the Bill comes into force, or as subsequently notified by the Minister by notice in the Gazette, to be commenced at the end of a period of six months from the date the Act comes into force.

Section 3 refers to the "Principal Act" which means the Tobacco Act 1927.

Section 4 inserts a new heading into the Principal Act "Part I Preliminary".

Section 5 repeals Section 10 of the Principal Act and inserts various Sections and Parts.

New Section 2 specifies that the Tobacco Act 1927 is to bind the Crown, however the Crown is not liable to be prosecuted.

New Section 3 details various new definitions to be inserted into the Principal Act.

**2.**

**Part II - Supply of Tobacco Products**

New Section 4 (1) and (2) specifies that the supply of tobacco products to persons under 18 years of age is an offence, punishable by a fine of \$1,000. The offence relates to persons selling tobacco products or to the occupier of premises on which has been placed a vending machine which distributes tobacco products.

New Section 4(3) creates various defences to a prosecution under the above subsections in that a defendant had reasonable cause to believe that the person purchasing or obtaining the tobacco was 18 years or over or the defendant took reasonable precautions to ensure that the tobacco product was not sold or supplied to a person under the age of 18 years.

New Section 5 details that it is an offence, punishable by a fine of \$1,000, to purchase tobacco products for use by persons under 18 years.

New Section 6 specifies that vending machines for the sale of tobacco products must only be placed on premises licensed under the Liquor Act of 1975. A fine of \$1,000 is provided for a breach of this section.

3.

New Section 6(2) deems it an offence for a person who owns or possesses a vending machine to not keep a statement in the prescribed form displayed on the machine.

New Section 7 creates an offence for a person to manufacture or sell a tobacco product other than a product prepared for smoking.

New Section 8 creates an offence that a person shall not sell confectionery or a toy designed to resemble a tobacco product or contained in a package that is designed to resemble a tobacco product.

New Section 9 creates an offence for a person to sell cigarettes in a quantity fewer than 20.

**Part III - Advertising and Sponsorship**

New Section 10 creates the offence that a person shall not directly or indirectly gain a pecuniary benefit from permitting to be displayed or authorising the display of a tobacco advertisement in a theatre; sell, cause or permit or authorise to be sold a film or video tape that contains a tobacco advertisement; distribute, cause, permit or authorise to be distributed to the public any unsolicited leaflet, handbill or other document that is a tobacco advertisement; or place or display a tobacco advertisement that is visible from a public place.

New Section 10(2) specifies that the previous subsection does not apply to a tobacco advertisement in a newspaper, magazine, book or package containing a tobacco product; a tobacco advertisement that is incidental company to a film or video tape; a tobacco advertisement which is displayed inside a shop or warehouse adjacent to where tobacco products are offered for sale; a tobacco advertisement displayed outside a tobacco retailer's premises which does not contain a trademark or brand name; a document ordinarily used in the course of business or an exempt advertisement which has been exempted by notice published in the Gazette by the Minister.

New Section 10(3) specifies that the Minister may exempt certain advertisements from the operation of the above subsections by notice in the Gazette.

New Section 10(4) specifies that a notice under the above subsection is a Disallowable Instrument.

New Section 11(1) specifies that if an authorised officer believes on reasonable grounds that a person has contravened 10(1)(d) the officer must give that person 30 days notice in writing to remove the relevant advertisement.

5.

New Section 11(2) details that proceedings in the above subsection cannot be commenced until the period of 30 days after that notice has lapsed and shall not be commenced at all if the advertisement has been removed or obscured as previously requested.

New Section 11(3) states that if a court convicts a person of the offence under the above subsection, the court may impose the fine and order that the advertisement be removed.

New Section 11(4) specifies that if a person is convicted under the above subsection, that person must pay reasonable costs for the removal of the offending advertisement.

New Section 11(5) states that an authorised officer means an inspector or a person authorised for the purposes of the Public Health Act 1928.

New Section 12(1) This section creates the offence that a person shall not, whether under a contract or not, promote or agree to promote a tobacco product, trademark, brand name or part thereof, or the name or interest of a manufacturer or distributor of a tobacco product in exchange for a sponsorship, gift, prize, scholarship or other benefit. Punishable by a fine of \$5,000.

New Section 12(2) a person shall not whether under a contract, agreement, undertaking or understanding give or agree to do so any sponsorship, gift prize, scholarship in relation to tobacco product trademark, brand name or part thereof, or the name or interest of a manufacturer or distributor of a tobacco product. Punishable by a fine of \$5,000.

New Section 12(3) specifies that the above subsections do not apply to a sponsorship being given by a manufacturer or distributor of a tobacco product to an employee or a member of the family of an employee of that manufacturer or distributor.

New Section 12(4) allows the Minister by notice published in the Gazette to exempt a specified contract, agreement, undertaking or understanding from the operation of the above subsections.

New Section 12(5) specifies that a notice under subsection 12(4) is a Disallowable Instrument.

#### Part IV Miscellaneous

New Section 13(1) provides for the conduct of directors, servants and agents of a body corporate or a natural person in relation to the state of mind when a particular offence was committed. It must be shown that the director, servant or agent of the body or a servant or agent of a person had the required state of mind and that the conduct was engaged in by that director, servant or agent within the scope of his or her apparent authority.



7.

New Section 13(2) requires that the state of mind includes a reference to knowledge, intention, opinion, belief of purpose on behalf of a body corporate or a person.

New Section 13(3) establishes that any conduct engaged on behalf of a body corporate or a natural person within the scope of their actual or apparent authority is to be taken as having been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and that due diligence was exercised to avoid the conduct.

New Section 13(4) specifies that a reference in the above section to a director of a body corporate includes a reference to member of a body corporate incorporated for public purposes under the law of the Territory, Commonwealth, State or another Territory.

New Section 13(5) a reference in the above subsections includes a reference to failing or refusing to engage in conduct.

New Section 14 "Corporations - penalties". This section provides for penalties against a body corporate. The court may impose a penalty not exceeding 5 times the maximum amount that would have been imposed on a natural person.

New Section 15 provides that the Executive to make Regulations under the Tobacco Act 1927.

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