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

ELEVENTH ASSEMBLY

Tobacco and Other Smoking Products Amendment Bill 2025

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)**

**Presented by
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TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL 2025 (Bill)

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Bill is a complementary bill to the *Tobacco and Other Smoking Products (Vaping Goods) Amendment Act 2025 (Vaping Goods Reforms)*. The Bill modernises and updates the enforcement powers utilised by authorised officers under the *Tobacco and Smoking Products Act* (the Act). This will ensure enforcement powers are aligned with the new regulatory objectives introduced by the Vaping Goods Reforms.

On 8 April 2025, the Legislative Assembly passed the Vaping Goods Reforms, which updated various key definitions in the Act. The Vaping Goods Reforms was a response to the Commonwealth prohibition of the importation, domestic manufacture, supply, commercial possession and advertisement of all vaping goods (**Commonwealth Reforms**). The Vaping Goods Reforms aligns relevant ACT laws with the Commonwealth Reforms to enable the supply of vaping goods for therapeutic purposes while ensuring the sale of recreational vaping goods is prohibited. This reform included removing restrictions for pharmacies that provide therapeutic vaping goods and classifying non-therapeutic vaping goods as 'prohibited smoking products' under the Act.

The purpose of the Bill is to complement the Vaping Goods Reforms and clarify and modernise existing enforcement powers under the Act to improve operational efficiency and legal certainty and to align its enforcement provisions with contemporary legislative standards in other ACT laws. In addition, by prohibiting tobacco products which do not meet requirements under Commonwealth laws, the Bill will also achieve better alignment between Territory and Commonwealth laws.

Harms of Smoking Products

The Act regulates and prohibits various smoking products. These products, including cigarettes, other tobacco products and non-therapeutic vaping goods, pose well-known risks to the health of the ACT community.

The harms to people from smoking are well established. Smoking increases the risk of cardiovascular disease, cancer, chronic lung diseases, diabetes and a range of other conditions. Smoking is the leading cause of preventable disease and death in Australia and up to two thirds of people who smoke long-term will die of a smoking-related disease.¹

Non-therapeutic vaping goods, which were classified as prohibited smoking products in the Vaping Goods Reforms, are also understood to have both short and long-term negative health effects. Short-term effects include acute lung damage and nicotine dependence². Long-term

¹ Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2019

² Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G. Electronic cigarettes

effects of use are still to be discovered however there is evidence vaping outside of a therapeutic context acts as a gateway to tobacco smoking, meaning that people who have vaped have an increased risk of subsequently taking up tobacco smoking³.

How the Offences under the Act mitigate smoking related harms

Vaping use has been rising in young people. In 2022, 28.7 per cent of 18–24-year-olds in the ACT reported daily or occasional use of e-cigarettes, compared to 7.1 per cent of all adults.⁴ Children and young people are proportionally the highest users of vaping goods, with 18–24-year-olds, 25-29 year olds and 14-17 year olds showing the highest levels of use nationally in that order⁵. This high usage of vaping goods can at least be partially explained by minors having a reported “easy access” to vaping goods purchased by other people or purchasing them from non-pharmacy retailers, online or through social media.⁶

By allowing for more effective regulatory mechanisms, in addition to supporting better regulation of smoking products more generally, the Bill intends to reduce the availability of non-therapeutic vaping goods to young people. Non-therapeutic vaping goods were included as ‘prohibited smoking products’ in the Vaping Goods Reforms, prohibiting their retail sale under the Act. The Bill will strengthen enforcement powers, making them more appropriate to address the new context of prohibited smoking products.

The strengthened enforcement framework of the Bill

Overall, the Bill is intended to modernise the enforcement provisions of the Act, to modernise the drafting, and ensure that the enforcement framework is effective and human rights compliant.

The Bill will also make some substantive changes to the enforcement mechanisms under the Act to allow for more effective regulation of smoking products, which will in turn help mitigate the impact of these products on the health of the ACT community. The enforcement powers under the Act were originally designed to encourage compliance with a licensing scheme rather than be used for active enforcement against the illicit smoking product trade.

Authorised officers under the Act are appointed by the Director-General. The Commissioner for Fair Trading, investigators under the *Fair Trading (Australian Consumer Law) Act 1992*, police officers and public health officers under the *Public Health Act 1997* are also authorised officers under the Act.

The Bill expands the powers of authorised officers to be better adapted to target the illicit smoking product market (particularly in relation to vaping products), in addition to the licensing

and health outcomes: systematic review of global evidence. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022

³ Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G. Electronic cigarettes and health outcomes: systematic review of global evidence. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022

⁴ACT Health: 2022 ACT General Health Survey Statistical Report <https://www.act.gov.au/open/epidemiology-publications/2022-act-general-health-survey-statistical-report>

⁵Australian Institute of Health and Welfare (AIHW) 2024, *Young people’s use of vapes and e-cigarettes*, viewed 20 June 2025, <https://www.aihw.gov.au/reports/smoking/young-peoples-vapes-e-cigarettes>

⁶ Watts, C., Egger, S., Dessaix, A., Brooks, A., Jenkinson, E., Grogan, P. and Freeman, B. (2022), Vaping product access and use among 14–17-year-olds in New South Wales: a cross-sectional study. *Australian and New Zealand Journal of Public Health*, 46: 814-820. <https://doi.org/10.1111/1753-6405.13316>

scheme. This includes expanding authorised officer's ability to enter premises for an inspection, the government's ability to retain seized goods, enabling the issuing of infringement notices and modifying identity card requirements for authorised officers.

Under the Bill, authorised officers will be empowered to enter premises to conduct an inspection in a broader range of circumstances. This power is currently limited to premises that are searched pursuant to a search warrant, when the occupier consents or to enter retail outlets where smoking products are publicly available for sale (see s 35).

Before entering premises to conduct an inspection and exercising enforcement powers, authorised officers are required to present an identity card and tell the affected person the reason for exercising the power (see s 35). This Bill amends the requirement for an identity card to include an authorised person's name. Instead, the identity card must contain either the authorised officer's name or a unique identifying number that can be used to identify the authorised officer (see s 34). This responds to increased risks of occupational violence posed to authorised officers, which have been anecdotally reported across multiple jurisdictions in Australia. These incidents of occupational violence have been linked to authorised officers being personally identifiable, which has in turn made those officers an easier target for threats of violence. The updates to the identity card provisions also modernises these provisions to include defences for the failure to return offences, where the identity card is lost or stolen, or destroyed by someone else.

Illicit trade in smoking products can occur in a broad range of circumstances, including via social media, and from unlicensed premises including residential homes or cars. As many of these circumstances would not constitute a retail outlet where smoking products are available for sale to the public (meaning search powers are only available with a warrant or consent, even in public places), the current search powers are inadequate to deal with this issue. To make these powers better adapted to regulate the illicit trade in smoking products, the Bill expands this power to include any premises that are open to the public and any premises where there is a "serious and urgent public health risk". The intent is to allow for an authorised officer to be able to enter any retailer who may be selling prohibited smoking products to the public for an inspection, with similar powers to enter as the public.

The Bill also expands the government's ability to retain seized goods during an inspection, allowing the government to retain seized goods if a prosecution for an offence or an infringement notice is served within one year of the seizure or if the owner's possession of the item would constitute of an offence which is prosecuted within the same period. The intent is for seized prohibited smoking products, such as vaping goods, to be able to be permanently seized by the territory, allowing for a reduction in the availability of illicit vaping goods.

Many offences in the Act are included in the *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010* (**TOSP Infringement Notice Regulations**). Inclusion in the TOSP Infringement Notice Regulations allows for infringement notices to be issued to a person where an authorised officer has a reasonable belief that the person has committed an offence. This Bill adds section 22 of the Act, the prohibition on the sale of prohibited smoking products, to the TOSP Infringement Notice Regulations. The intent is that making the sale of prohibited smoking goods an infringement notice offence will increase the enforcement of this provision. When combined with the recent Vaping Goods Reforms which included vaping goods as 'prohibited smoking products', this will help to better regulate and

enforce the ban on illicit vaping goods. Enabling the issuing of infringement notices allows for quicker and cheaper resolution of disputes, both for the Government and retailers.

The enforcement provisions of the Bill will align the Act with modern regulatory enforcement frameworks to improve the consistency and transparency of regulatory actions. This includes updates to streamline enforcement provisions, such as the provision to effectively give all authorised officers the power to apply to a magistrate to exercise warrant powers (see section 40). It is acknowledged that police officers already have a range of powers under the *Crime Act 1900* and there may be some overlap between the new enforcement functions and these powers. However, this is necessary to give effect to the range of circumstances in which authorised officers may be required to undertake enforcement activities. In practice, compliance activity under the Act is typically undertaken by civilian enforcement officers. However, it is expected that sometimes enforcement activities will need to be accompanied by police officers. So, whilst police officers may not be typically taking an active role in exercising search and seizure powers, it is necessary to ensure they have the same scope of powers as other authorised officers under the Act.

Prohibition of tobacco products which do not comply with Commonwealth laws

In addition to the changes to the enforcement provisions, the Bill also amends the definition of 'prohibited smoking product'. The Bill amends section 3D to prohibit any tobacco product that does not comply with the *Public Health (Tobacco and Other Products) Act 2023* (Cwlth) (Commonwealth Public Health Act) or any other requirements of Commonwealth law as may be prescribed by regulation.

The Commonwealth Public Health Act sets a range of requirements around the packaging, naming, appearance, physical features and content of tobacco products, which are designed to improve public health and discourage smoking. In particular, the Commonwealth Public Health Act sets requirements around displaying health warnings on cigarette packaging. Tobacco products which do not meet these requirements are already prohibited under Commonwealth law.

The Bill will achieve better alignment between Commonwealth and Territory laws by also making these products a prohibited smoking product under the Act. In addition, the provision will be future proofed so that any other tobacco products which do not meet requirements set under another Commonwealth law can be prescribed as prohibited smoking products at a later date. This will ensure that a Regulation can be made to respond to changes to tobacco laws at the Commonwealth level and ensure continued alignment of ACT laws.

Once tobacco products which do not meet Commonwealth requirements are included within the definition of a prohibited smoking product, the offence at section 22 of the Act will also prohibit the sale of those products at the Territory level. This will ensure that the updated enforcement mechanisms in the Bill will apply to these products, allowing appropriate search and seizure powers to apply to those products (in the same way as any other prohibited smoking product under the Act).

CONSULTATION ON THE PROPOSED APPROACH

Key stakeholders, including ACT Government agencies were engaged throughout the development of the Bill. Access Canberra, the Justice and Community Safety Directorate and ACT Policing were consulted on as part of the development of the Bill.

The Health and Community Services Directorate (HCSD) participates in the national E-Cigarette Working Group and National Vaping Working Group (NVWG). HCSD has endorsed the National Vaping Enforcement Framework as part of the NVWG, which has been agreed by the Therapeutic Goods Administration, the Australian Border Force, the Australian Federal Police, ACT Policing, and the health and policing departments of every Australian jurisdiction.

HCSD also participates in the Forum on Compliance Officer Workplace Health and Safety and have had informal conversations with other jurisdictions about threats of occupational violence against authorised officers.

CLIMATE IMPACT

The amendments may lead to more effective enforcement activities relating to the seizure of illegal tobacco and other smoking-related products. This may help reduce environmental contamination and fire-risk associated with the improper storage and disposal of associated tobacco and smoking-related products and accessories. Other than this limited aspect, the Bill is not expected to have any substantial impact on the climate or the environment.

CONSISTENCY WITH HUMAN RIGHTS

The proposed amendments have been carefully considered in the context of the objects of the *Human Rights Act 2004* (**HR Act**). Any limitations on human rights are justifiable as reasonable limits set by laws in a free and democratic society, as required by section 28 of the HR Act. Importantly, the Bill also supports and strengthens protection of several rights under the HR Act. The human rights limitations created by this Bill creates are reasonable, necessary, proportionate to and the least restrictive approach to achieve the overall policy objective of this Bill.

Rights engaged

This Bill engages the following rights under the HR Act:

- Section 9 – Right to life (promoted)
- Section 11(2) – Protection of children (promoted)
- Section 12 – Right to privacy and reputation (limited)
- Section 21 – Right to a fair trial (limited)
- Section 22 – Rights in criminal proceedings (limited)
- Section 27B – Rights to work and other work-related rights

Rights Promoted

This Bill promotes the following rights under the HR Act:

- Section 9 – Right to life
- Section 11(2) – Protection of children
- Section 27B - Right to work and other work-related rights

Section 9 – Right to life and section 11 – Protection of children

Section 9(1) of the HR Act recognises that everyone has the right to life and that no-one may be arbitrarily deprived of life. The right to life requires the ACT Government to safeguard life where there may be a real and immediate direct or indirect risk to life.

Where a government is aware of a real and immediate risk to life, it must take reasonable action to protect individuals, including an obligation to take reasonable measures to safeguard against identifiable risks to life, including protecting people in the ACT against the harm caused by tobacco and vaping products.

Section 11(2) of the HR Act provides that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. This section also requires that the best interests of the child be taken into account to provide not only the need for safety but also requirements of health to be protected.

Smoking products, including cigarettes and vaping products, pose a risk to the health of the ACT community, including the health of children.

By updating the enforcement mechanisms, the Bill will help regulators to be more responsive to the sale of illegal smoking products, and other illegal practices which pose harm to the community.

For example, by making the sale of prohibited smoking products a strict liability offence (s 22(2)) for which an infringement notice may be issued (Schedule 1), regulators can promptly take enforcement action whilst minimising the resourcing burden required for the prosecution of an offence. This will make it easier for regulators to respond effectively to the sale of prohibited smoking products (including non-therapeutic vapes and products which do not comply with the Commonwealth Public Health Act). Similarly, increasing the powers of authorised officers to enter and search premises which are open to the public, will make enforcing offences relating to the illegal trading of smoking products more effective. Finally, making it clearer that illegal smoking products may be permanently seized helps to ensure that illegal smoking products are not returned to the community.

These changes will in turn limit the availability of prohibited smoking products in the community and help to prevent the negative health outcomes for children and others in the community, associated with those products.

More generally, improving the consistency between the enforcement mechanisms of the Act with other regulatory regimes administered by Access Canberra will help to ensure more effective and efficient regulatory responses. This will make the regulation of smoking products more effective, and reduce noncompliance, helping the Act to better achieve its purpose of mitigating the health-related harms to the community caused by smoking products.

The amendments will therefore align with the ACT Government's obligations to take positive steps to protect life, especially for vulnerable populations such as children and people with chronic illnesses.

Section 27B – Right to work and other work-related rights

Section 27B of the HR Act recognises that everyone has the right to work, including the right to just and favourable conditions of work. The Bill includes provisions to modify the identity card requirements for authorised officers (s 34) which is intended to promote this right to access decent, favourable and safe working conditions.

By modifying the identity card requirements, an authorised officer can be issued an identity card that contains a unique identifying number rather than their name. This alternative is intended to provide authorised officers with a degree of separation from public duties and personal privacy, thereby protecting authorised officers from potential occupational violence. When individuals affected by enforcement activities know the name of the authorised officer involved, it increases the risk of threats being made, which can compromise the authorised officer's safety. Such threats have been reported as occurring in some Australian jurisdictions.

Updating the identity card requirements to protect authorised officers from being personally identified helps ensure safer and healthier working conditions for those undertaking enforcement activities under the Act. It also reduces the deterrent effect that personal safety concerns may have on public servants considering these roles, thereby supporting the right to work and enabling enforcement activities to be carried out in a safe and favourable work environment.

Rights Limited

This Bill limits the following rights under the HR Act:

- Section 12 – Right to privacy and reputation
- Section 21 – Right to a fair trial
- Section 22 – Rights in proceedings

Section 12 – Right to privacy and reputation

1. Nature of the right and limitation (s 28(a) and (c))

Section 12 of the HR Act protects individuals from unlawful or arbitrary interference with privacy, family, home, or correspondence.

Broadly, the intention of the new enforcement provisions is to align those provisions with more modern examples in the ACT statute book and to improve the human rights protections of those mechanisms. This will help to ensure that the enforcement mechanisms under the Act allow authorised persons to respond effectively in a broad range of circumstances, and in a manner where the rights of individuals are appropriately safeguarded.

However, the new enforcement mechanisms, including changes in relation to identity cards, powers of entry, and seizure of goods, will also limit the right to privacy in several ways. For each of these enforcement powers, similar powers already exist under the current drafting of the Act, but the framing of the powers will be changed by the Bill.

The enforcement powers to be reframed under the Bill, in a way which limits the right of privacy and reputation are detailed as follows:

Section 34 Identity cards	Provides that an identity card that is given to an appointed authorised officer under the Act, which must show either the authorised officer's name or a unique identifying number and stating that the person is an authorised officer.
Section 36 Direction to give name and address	Provides that an authorised person may on reasonable grounds request the name and address of a person who has committed or is committing or is about to commit an offence under the Act or may be able to assist in the investigation of an offence against the Act.
Section 37 Powers of authorised person to enter premises	Provides for powers of an authorised officer to enter premises that are open to the public, with consent, with a warrant, if the authorised officer believes on reasonable grounds an offence is being committed on the premises or if the risk to a person, the environment or public health is so serious and urgent that immediate entry to the premises without a warrant is necessary. Importantly, an authorised officer only has power to enter premises that are only used for residential purposes with consent or with a warrant.
Section 39 General powers on entry to premises	Specifies the scope of actions an authorised person can do under the Bill in relation to the premises or anything at the premises, upon entering a premises under this part (whether with consent, under warrant or any other basis upon which premises are entered under section 37). It also authorises an authorised person to direct a person to give information, a document, or other thing, answer a question, and to give assistance to exercise a power under this part.
Section 41E Authorised person may seize things at premises	An authorised person who is satisfied that a thing is connected with an offence under the Act and that the seizure is necessary for listed reasons, may seize the thing at the premises, in specific circumstances.
Section 41I Return of seized things	This section provides for the return of things seized under division 6.4. Overall, this section helps to safeguard and mitigate the impact on the right of privacy on the seizure of goods. However, in contrast to previous section 42(1)(a), the new section 41E of the Bill provides for prosecution in relation to an offence and the seizure of goods to be commenced and finalised within 12 months of the items

	being seized or an infringement notice for the relevant offence being served on the owner rather than only commenced within 90 days as is currently provided by section 42 of the Act. This may impact the right to privacy by increasing the period during which a person may have their personal goods confiscated.
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2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of modifying existing enforcement provisions in the Act is to promote more effective regulation of smoking products – including prohibited smoking products such as non-therapeutic vapes and products which do not meet the requirements of the Commonwealth Public Health Act – in order to limit the illicit supply of these products and deter would-be offenders from committing any offence under the Act.

Improving the enforcement provisions within the Act will also align with more modern regulatory frameworks. This will improve the consistency and transparency of regulatory actions.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

For the purposes of ensuring effective regulation of smoking products, including maximising the public health benefits of the Vaping Goods Reforms, it is important that authorised officers have adequate powers in relation to entry, search and seizure. This is to ensure that the risks associated with the smoking products and compliance with the Act more broadly (including in relation to the illicit sale of prohibited smoking products) can be appropriately managed in a timely and efficient manner.

Where an offence relating to smoking products is taking place and therefore posing a risk to the health and safety of the community, it is important that adequate and appropriately limited enforcement powers are in place to prevent immediate and future harms.

The Bill contains a power to enter premises which is more broadly scoped than the current section 35 of the Act. This is necessary because whilst the legal sale and supply of smoking products occurs via premises licensed under Part 7, the illicit sale of such items, including vaping products, occurs across a broader range of premises. Smoking products, particularly prohibited smoking products, have known public health risks and due to the chemicals and substances those goods may contain and can also pose significant risks to the environment if improperly sold, stored or disposed of.

To ensure that premises are not being used for the illegal acquisition, storage or subsequent sale of smoking products, it is important that the powers of entry are sufficiently broad to allow authorised officers to reasonably enter any premises accessible by the public, or for where there is a serious and urgent risk to the environment or public health (s 37 of the Bill). It is also necessary for the authorised person to be able to exercise their functions by being able to physically enter, inspect, seize goods or request information (ss 39, 41E and 41I of the Bill).

The Bill's updated identity card provisions provide for a unique identifying number as an alternative to an authorised officer's name (s 34). This modification will allow authorised officers to maintain their privacy while exercising their public duties as an authorised officer. Persons affected by the enforcement activities of authorised officers that may seek to retaliate will be less likely to personally identify and target an authorised officer. This will help reduce the likelihood of violence against authorised officers undertaking enforcement activities associated with illicit smoking products.

4. *Proportionality (s 28(2)(e))*

The extent to which a person's right to privacy may be limited by the enforcement powers depends on the specific circumstances of an investigation of a matter under the Act. The Bill provides for the minimum scope and range of powers necessary to support authorised officers to respond effectively under a broad spectrum of risks in relation to smoking products.

The offences under the Act relate primarily to conduct of a commercial nature. For example, section 8 which sets maximum points of sale for different categories of retail outlets. Consequently, the exercise of the new enforcement functions set out in the Bill will commonly occur in the context of commercial business premises, rather than in respect of people's homes.

Where the exercise of enforcement powers occurs outside of the commercial context, for example an investigation of the sale of smoking products by an unlicensed provider (such as selling smoking products via social media with collection from a residential house or car), the scope of the powers have been appropriately circumscribed. In particular, the power to enter premises used only for residential purposes is limited under the Bill so that entry is permitted only with consent, or with a warrant (s 37(1)(b) and (d)). Requiring a warrant for residential only premises provides an additional safeguard, as it requires a magistrate to be satisfied that there are reasonable grounds for suspecting that a thing or activity is being engaged in at the premises in connection with an offence under the Act (s 41C).

Even for non-residential premises, the Bill narrowly confines the circumstances where an authorised officer may enter premises not open to the public without consent or a warrant. Entry to premises not open to the public is only authorised where the authorised officer believes on reasonable grounds that an offence is being committed (or is likely to be) and when there is a risk to a person, the environment or public health that is so serious as to necessitate immediate entry.

Where items have been seized during a search, the new enforcement mechanisms provide that the item is not required to be returned or compensation paid, if prosecution of the offence is started within 1 year, and that proceeding results in a conviction, or if during the same period an infringement notice is uncontested. These changes are necessary to provide sufficient clarity around the timing of the return of goods. This also ensures that there is sufficient time to undertake a thorough investigation of regulatory offences prior to the commencement of any prosecution.

The modification of identity card requirements to provide for a unique identifying number as an alternative to an authorised officer's name is necessary to protect individual authorised officers from personal harm and occupational violence. However, the right to privacy continues

to be safeguarded by ensuring that each authorised officer's identity card must have a unique identifying number. This will ensure that the authority of the authorised officer to undertake the relevant enforcement activity can continue to be independently verified through the enforcement agency (currently Access Caberra). Identity cards will also be required to contain a photo, and state the individual is an authorised officer. These requirements will ensure that affected persons will be able to identify the person undertaking enforcement activities as an authorised officer and will continue to be able to verify that person's authority by contacting the enforcement agency and quoting the unique identifying number to be cross checked against the records kept by the enforcement agency.

The remaining existing enforcement provisions under Part 6 of the Act are of a similar character to the revised provisions under new Part 6 set out in the Bill.

Whilst some of the enforcement provisions have been increased in scope, including provisions providing for more flexible powers of entry, the Bill has also introduced a range of additional safeguards to protect against unlawful or arbitrary interferences with privacy, family, home, or correspondence. These safeguards will help to ensure that individuals understand their rights at the time that enforcement powers are exercised and can properly identify authorised officers to ensure that purported exercises of enforcement powers are legitimate and authorised by law. The safeguards will also make the exercise of search and seizure powers more clearly confined, as well as more transparent and accountable. These additional safeguards include:

- Section 35 of the Bill provides that before exercising relevant enforcement powers which limit the right to privacy (specifically ss 36(1), 37(1)(b) or (c) or 39(1)(e)), an authorised officer must show their identity card, tell the affected person the reason for the exercise of the power, and alert the person to the existence of obligations to comply with directions from authorised officers (see ss 36(3) and 39(1)(e)). This requirement will help to ensure that affected people have a clearer understanding of their rights and obligations when search powers are being exercised. Ensuring that the authorised officer adequately identifies themselves also helps to prevent unlawful interference with privacy by allowing individuals to verify the legitimacy of enforcement actions.
- Section 38 of the Bill requires that before asking an occupier for consent to enter premises an authorised officer must tell the occupier the purpose of the proposed entry, produce proof of identity for themselves and any persons accompanying them, the reason for and the identity of each person accompanying the authorised officer, that anything seized may be used in evidence, and that consent may be refused. These provisions reinforce the requirements for consent and ensure that when consent is relied upon to enter and search premises, that consent has been properly informed and is freely given, mitigating risks that consent may be improperly obtained.
- Section 40 of the Bill explicitly circumscribes the power of a magistrate to issue a warrant, to circumstances where there are reasonable grounds for suspecting there is (or will be) a thing or activity connected with an offence under the Act at the premises to be searched. This provides transparency of, as well as appropriate limitations to, the power to issue a warrant which were not explicitly detailed in the existing powers to issue a warrant under current section 40 of the Act.

- Section 41B of the Bill requires, prior to entry, an authorised officer to identify themselves and announce they are authorised to enter to the occupier. Section 41C of the Bill requires a copy of any warrant to be given to the occupier. These new safeguards help to prevent unlawful interference with privacy by allowing individuals to verify the legitimacy of enforcement actions. These safeguards also help to minimise the circumstances where force may be used to enter premises (which would be a more significant interference with a person's privacy or home) by ensuring that the individual is made aware of the legal authority on which the authorised officer is entering the premises.
- Sections 41D, 41F and 41H of the Bill include new rights for the occupier to watch the conduct of any search, make recordings of items seized and be provided with a receipt for any items seized. These new rights help to safeguard against unlawful confiscation of personal property by ensuring the seizure of any goods during the exercise or search powers, is done in a manner which is transparent and accountable.

Therefore, while new Part 6 set out in the Bill provides for powers for authorised persons to take actions necessary for enforcement, the Bill also provides for safeguards to ensure that the enforcement provisions are powers not to be misused, so that a person's right to privacy is impacted to the least extent possible. This ensures the limitation to a right to privacy created by the increased scope of the enforcement powers is reasonable and proportionate to the purpose of ensuring effective regulation of smoking products.

These safeguards will help to ensure that individuals understand their rights and obligations under the law and will promote accountability and transparency in the exercise of enforcement powers. This will strengthen the protections of the Act against unlawful or arbitrary interferences with privacy, home including interferences in a person's home, in the exercise of search powers by authorised officers.

Section 22 – Rights in criminal proceedings

Strict Liability and Reverse Burden Offences

1. Nature of the right and limitation (s 28(a) and (c))

Section 22(1) of the HR Act recognises that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. Section 22(2) provides that a person must not be compelled to testify against themselves or to confess guilt.

The Bill includes provisions which limit the right to be presumed innocent. There are a number of offences in the Bill which either reverse the evidential burden to the accused or provide for strict liability of the offence. These are set out as follows.

Section 22(2) Prohibition on sale of prohibited smoking product	Section 22 of the Act provides an existing offence for sale of a prohibited smoking product, new subparagraph (2) makes that offence a strict liability offence. This will facilitate the offence becoming an infringement notice offence (see Schedule 1).
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	It is noted that the Bill will also expand the definition of ‘prohibited smoking product’ to capture tobacco products that do not comply Commonwealth Public Health Act and requirements of other laws of the Commonwealth as may be prescribed by regulation. While this change extends the application and operation of the strict liability offence for sale of such products at section 22, it does not substantively change the scope of products which may be legally sold in the Territory. This is because the tobacco products captured by the amended definition are already prohibited under Commonwealth law and existing federal regulatory controls already operate to restrict their sale and other prohibited dealings.
Section 34 Identity cards	New section 34 will maintain the existing offence of failing to return an identity card, however it will also introduce a defence where the identity card is lost, stolen, or destroyed by someone else. To rely on the new defence at section 34(5) the accused will have the evidential burden of proof in relation to the loss or destruction of the identity card.
Section 36 Direction to give name and address	Provides that an authorised person may require the person to state the person’s name and home address if the authorised person believes on reasonable grounds that the person has committed an offence under the Bill or may be able to assist in the investigation of an offence. A person must then comply with a direction of an authorised person to provide evidence of the correctness of the information if they believe on reasonable grounds the information is false and misleading. To rely on the defence at section 36(5) an accused person has the evidential burden to prove that the authorised person did not comply with section 35 (Requirements before certain powers can be exercised). Strict liability also attaches to the offence at subparagraph (3), in respect of failures to comply with a direction given.
Section 39 General powers on entry to premises	Provides for enforcement of the TOSP Act where a person does not comply with a direction to give information, a document, or other thing, to answer a question, or to give the authorised person reasonable help.

	An accused person has the evidential burden to prove that the authorised person did not comply with s 35 (Requirements before certain powers can be exercised).
Section 41G Person must not interfere with seized things	Provides for enforcement of the Bill where a person interferes with a seized thing without approval. This offence is a strict liability offence.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of modifying existing enforcement provisions in the Act is to promote more effective regulation of smoking products, including vaping goods prohibited by the Vaping Goods Reforms, in order to limit the illicit sale, supply and storage of these products and seize illegal products. Making the enforcement of the Act more effective will also help deter would-be offenders from committing any offence under the Act.

Improving the enforcement provisions within the Act will also align the Act with more modern regulatory frameworks. This will improve the consistency and transparency of regulatory actions.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

To ensure that the community is adequately protected from harms associated with smoking products, and to maximise the public health and safety benefits of the Vaping Goods Reforms, it is necessary to provide adequate regulatory powers in support of enforcement when regulating smoking products in the ACT.

Various offences in the Bill (ss 22, 36, 39 and 41G) engage the right to be presumed innocent by making the offence a strict liability offence or reversing the evidential burden of proof.

For section 22, this change is necessary to ensure a swift and effective regulatory response to the sale of prohibited smoking products – including vaping goods prohibited by the Vaping Goods Reforms, and products prohibited under the Commonwealth Public Health Act. This ability to respond swiftly and effectively, is further supported by making section 22 an infringement notice offence.

For the balance of strict liability and reverse onus offences, the limitation is necessary to ensure the effective enforcement of and compliance with the requirements of the Bill by enabling relevant offences, to be efficiently prosecuted. The limitation on section 22 of the HR Act is aimed at promoting the regulatory framework to ensure effective enforcement of regulatory requirements in relation to smoking products.

4. *Proportionality (s 28(2)(e))*

Generally, where the burden of proof has been reversed in relation to a particular factor, this will be because the accused person is uniquely or better placed to produce evidence of the relevant thing. The elements that the alleged offender is being asked to prove in the above provisions are in relation to elements which in all the circumstances it would be unreasonable for the prosecution to be required to establish. For those offences which include a reverse

burden of proof, it is important that the burden of proof on the defendant is only an evidentiary burden. This means that the defendant is only required to raise evidence sufficient to raise a reasonable possibility that a matter exists (in order to challenge a legal presumption). If the defendant achieves this, the prosecution must refute that evidence beyond all reasonable doubt. Accordingly, for those offences with a reversed burden of proof, the limitation of a person's rights under section 22 of the HR Act are necessary to ensure that appropriate regulatory action can be taken.

Strict liability offences typically arise in a regulatory context where, for reasons such as public safety and ensuring that regulatory schemes are complied with, criminal penalties are required. A defendant can reasonably be expected, because of their involvement with the regulated activity, to know what the requirements of the law are, and as such the mental, or fault, element can justifiably be excluded. The liability elements of each offence are consistent with the *Guide to Framing Offences*. It is also important to note that the defence of reasonable mistake of fact remains available for the elements of each strict liability offence.

The strict liability offence pertaining to the sale of prohibited smoking products primarily affects retail suppliers of smoking products (who are licensees under the Act). To the extent it affects other entities, sale of smoking products is highly regulated and has been for many years, therefore people who sell those products without being appropriately licensed would be highly likely to be aware that they are selling the product illegally. The balance of offences relates to the powers of authorised officers. Each of the affected entities can be expected to have a high degree of awareness and general understanding of the regulatory framework. Therefore, in each case the relevant defendant can be reasonably expected to know what the requirements of the law are, and therefore the mental, or fault element can justifiably be excluded.

A less restrictive approach (namely making the offence not strict liability) would still enable enforcement but would not be as effective a deterrent given the nature of the strict liability offences. Further, if the prohibited conduct is unable to be prevented, it could have the effect of undermining the enforceability of the regulatory regime. A less restrictive approach may result in a failure to limit availability of prohibited smoking products, or ineffective enforcement of other important regulatory limitations on smoking products necessary to protect public health.

Section 22(2) Prohibition on sale of prohibited smoking product	<i>Limitation of section 22 rights</i> Section 22 of the TOSP Act provides an existing offence for sale of a prohibited smoking product, and the new subparagraph (2) makes that offence a strict liability offence. <i>Reason why the limitation is reasonable</i> This offence primarily impacts retailer suppliers of smoking products. These entities can be expected to have a high degree of awareness and general understanding of the regulatory framework. To the extent the offence relates to people who are not licenced, the need for licencing to legally sell smoking products has been well established for many years under the
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	Act. Accordingly, there is high community awareness that the sale of smoking products is highly regulated whether the seller is a licensee under the Act. Therefore, in each case the relevant defendant can be reasonably expected to know what the requirements of the law are, and particularly the kinds of products which are prohibited smoking products for the purposes of section 22 and therefore the mental, or fault element can justifiably be excluded.
Section 34 Identity cards <i>Provides for an identity card to be issued to an authorised officer by the Director-General, and for an offence for failing to return an identity card within 7 days after the person stops being an authorised officer.</i>	<i>Limitation of section 22 rights</i> Section 34 retains the existing strict liability offence for failing to return an identity card and introduces a new defence where the identity card is lost, stolen or destroyed by someone else. The accused person has the evidential burden to prove the identity card was lost, stolen or destroyed. <i>Reason why the limitation is reasonable</i> The accused person will be uniquely aware of, and able to provide evidential proof in relation to whether their identity card was lost or stolen. In relation to the offence being a strict liability offence, as an authorised person under section 34, the accused person will know, or ought to know, their legal obligation to return their identity card. Regarding the retention of the strict liability offence, identification of authorised people is critical to the safeguards in the Bill in respect of the enforcement functions, such as exercise of warrants, entry to premises and seizing property. Accordingly, there is a high risk of harm to the community should an identification card be used to gain entry to premises or information, by a person fraudulently acting as an authorised person under the Act. Retaining the strict liability offence in relation to return of identity cards is necessary to manage this risk. Given the importance of the security of identity cards, a less restrictive approach would not adequately protect the community from this risk.
Section 36 Direction to give name and address <i>Provides for an authorised person to state the person's name and home address if the authorised person believes on</i>	<i>Limitation of section 22 rights</i> An accused person has the evidential burden to prove that the authorised person did not comply with section 35 (requirements before certain powers can be exercised). This offence is also a strict liability offence.

<i>reasonable grounds that the person has committed an offence under the Act. A person must then comply with a direction of an authorised person to provide evidence of the correctness of the information if they believe on reasonable grounds the information is false and misleading.</i>	<i>Reason why the limitation is reasonable</i> This offence is an important feature of investigations under the Act, and therefore necessary for the effective enforcement of the regulatory regime. Given the nature of this offence, it would not be reasonable to expect the prosecution to demonstrate for each contravention of the offence that the authorised person complied with each of the requirements in section 35. The defendant is better placed to provide evidence that one of those requirements was not met. In relation to the offence at sub paragraph (3) being a strict liability offence, this replicates the existing provision at section 39(5) and so does not limit the right further than the existing legislation. It is noted that if an evidential onus would be less restrictive on the right to be presumed innocent found in section 22 of the HR Act, it would not serve the legitimate objective of the Bill. Strict liability only attaches to the failure of a person to comply with a direction as described in sub paragraph (3). The person is only required to provide identification showing their name and address. In the context, with the authorised person being required to comply with s 35, it should be expected that the individual would be aware of the obligation to comply with the request. An inability of an authorised person to identify a particular individual who is believed to be involved in the commission of an offence, or assist in the investigation of such an offence, would provide an avenue for individuals under investigation to undermine the enforcement of the regulatory regime. It is necessary for this offence to be a strict liability offence to address this risk as this will mean that the defendant's act alone should dictate whether an offence occurs rather than the state of mind of the defendant.
Section 39 General powers on entry to premises <i>Provides for enforcement of the Bill where a person does not comply with a direction to give information, a document, or other thing, to produce a document or other thing, to answer a question, or to give the authorised person reasonable help.</i>	<i>Reverse burden relates to the following factor</i> An accused person has the evidential burden to prove that the authorised person did not comply with section 39(3) (requirements before certain powers can be exercised). <i>Reason why the limitation is reasonable</i> This offence is an important feature of the investigation of breaches of the Act and is therefore necessary for the effective enforcement of the regulatory regime. Given the nature of this offence, it would not be reasonable to expect the prosecution to demonstrate for each contravention that

	the authorised person complied with each of the requirements in sections 39(3) and 40. The defendant is better placed to provide evidence that one of those requirements was not met. It is important that the burden of proof on the defendant is only an evidentiary burden. This means that the defendant is only required to raise evidence sufficient to raise a reasonable possibility that a matter exists (for example, reasonable evidence that they did not receive the information required to be provided under section 35) in order to challenge a legal presumption. If the defendant achieves this, the prosecution must refute that evidence beyond all reasonable doubt.
Section 41G Person must not interfere with seized things	<i>Limitation of section 22 rights</i> Provides for enforcement of the Bill where a person interferes with a seized thing without approval. This offence is a strict liability offence. <i>Reason why the limitation is reasonable</i> This offence is an important feature of the investigation of breaches of the Act, and therefore necessary for the effective enforcement of the regulatory regime. In relation to the offence being a strict liability offence, although an evidential onus would be less restrictive on the right to be presumed innocent found in section 22 of the HR Act, it would not serve the legitimate objectives of the Bill as effectively. This offence is balanced by safeguards, including section 41H which provides a safeguard to the person who has had items seized to make them aware of items being seized. Section 41H requires an authorised officer to provide receipt to the owner of things seized that specifies, amongst other things, what has been seized, why it has been seized and where the thing will be taken (if it is being relocated). In the circumstances of this offence, the person is only required not to interfere with seized things, as such interference would significantly compromise the enforceability of the regulatory regime. It is necessary for this offence to be a strict liability offence to address this risk as this will mean that the defendant's act alone should dictate the offence, rather than the state of mind of the defendant. A less restrictive alternative would not adequately deter the conduct of interference with seized things.

Abrogation of the right to self-incrimination (provision of information for claiming privilege against self-incrimination and client legal privilege)

1. *Nature of the right and limitation (s 28(a) and (c))*

The Bill will retain, and does not abrogate, a person's right to rely on legal professional privilege or the privilege against self-incrimination. A person may continue to rely on the relevant privileges without limitation by the Bill by virtue of section 170 and 171 of the *Legislation Act 2001* (Legislation Act).

Whilst the Bill does not abrogate the rights to privilege, it impacts a derived right by removing existing protections requiring authorised officers to specifically advise people of these protections, and to require an authorised officer to request a signed written acknowledgement from a person asked to provide information (i.e. the occupier of the premises) that they have been told of their rights. The requirement that this written acknowledgement needs to be produced in evidence in order to admit information obtained under this enforcement provision in relation to enforcement proceedings, has also been removed.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of modifying existing enforcement provisions in the Act is to promote more effective regulation of smoking products, including prohibited smoking products such as non-therapeutic vapes, which will in turn limit the illicit supply of these products and deter would-be offenders from committing any offence under the Act.

Improving the enforcement provisions within the Act will also align and streamline with more modern regulatory frameworks. This will improve the consistency and transparency of regulatory actions across the ACT.

Removing the additional requirements to specifically advise a person of the privileges and to obtain a written acknowledgement, will modernise the drafting of enforcement provisions of the Act and allow for more effective operation of enforcement functions. Removing these requirements will also improve the consistency of the Act with other similar regulatory regimes (set out in detail in the rational connection and proportionality analysis below). Consistency between enforcement regimes allows enforcement to be more effective and reduces the risk of accidental non-compliance with legislative requirements.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Removing the requirement for authorised officers to advise of the privileges will simplify and streamline enforcement processes and bring available enforcement actions in line with the largely consistent approach to privilege specified in the Legislation Act. Removing the requirement for an individual to sign a written acknowledgment also prevents poor enforcement outcomes where the relevant person does not agree to sign. Overall, clear and straightforward procedures will facilitate better understanding and compliance with regulatory requirements, ultimately leading to more effective enforcement outcomes.

The protections at section 38 were first introduced into the Act prior to the inclusion of standard protections of the right to rely on legal privilege and the privilege against self-incrimination into

the *Legislation Act 2001* in 2002. Now that these rights are protected in standard terms by the provisions of the Legislation Act, provisions which further protect those rights are only ever rarely (if ever) included in modern regulatory regimes.

The requirement to advise on the right to claim privilege is different from other similar regulatory regimes such as the *Firearms Act 1996*, the *Food Act 2001*, the *Medicines, Poisons and Therapeutic Goods Act 2008* and the *Radiation Protection Act 2006*. These regulatory regimes are similar to the Act as the authorised officers tasked with enforcement are often not policemen and are mostly civilian enforcement officers. Where enforcement functions are different and authorised officers are subject to specific or unique requirements, it can be more operationally difficult to ensure that authorised officers exercising enforcement activities are aware of their obligations to advise on the right to claim privilege and consistently comply with it. This can lead to accidental non-compliance which would undermine effective enforcement of the Act.

4. Proportionality (s 28(2)(e))

The Bill will not compel a person to give evidence that may incriminate them and therefore does not abrogate the right against self-incrimination. The removal of the additional requirements set out by section 38 of the Act is the minimum step required to achieve consistency with other similar regulatory regimes. The approach taken in the Bill to the privilege against self-incrimination and legal professional privilege is similar to, or less restrictive than, a range of other similar regulatory regimes. Examples of other similar and recent regulatory regimes that contain similar enforcement functions and do not require a signed written acknowledgment include section 51 of the *Food Act 2001*, section 105 of the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 206 of the *Firearms Act 1996*, and section 94 of the *Radiation Protection Act 2006*.

It is also important to consider that the obligation to provide further information is generally aimed at commercial businesses or individual sellers of smoking products that would be aware of the regulatory regime for smoking products, rather than being targeted towards vulnerable individuals or individuals in personal possession of smoking products. Therefore, such entities would be aware of their rights and obligations under smoking laws as well as the protections available to them.

Accordingly, to ensure broad consistency, the Bill takes the least restrictive approach to its engagement with the privilege against self-incrimination and legal professional privilege.

Tobacco and Other Smoking Products Amendment Bill 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Tobacco and Other Smoking Products Amendment Bill 2025**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This is a technical clause and sets out the name of the Act as the Tobacco and Other Smoking Products Amendment Act 2025 (the Act).

Clause 2 Commencement

This clause provides that the Act will commence on the day after its notification day, which differs from the automatic commencement date as the notification day (Legislation Act, s. 75(1)).

Clause 3 Legislation amended

This clause identifies that the Act amends the *Tobacco and Other Smoking Products Act 1927* and also amends Schedule 1 of the *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010*.

Clause 4 Meaning of *prohibited smoking product* Section 3D (1), definition of *prohibited smoking product*, new paragraph (aa)

This clause includes within the definition of ‘prohibited smoking product’ tobacco products that do not comply with requirements of the Commonwealth’s *Public Health (Tobacco and Other Products) Act 2023* or a requirement under another law of the Commonwealth as prescribed by regulation. This will ensure that tobacco products which do not meet the requirements set at Commonwealth law are also prohibited under the Act.

Clause 5 Prohibition on sale of prohibited smoking product New section 22 (2)

This clause amends the offence provision section 22 by inserting a new subsection (2) which has been inserted to make the offence of selling a prohibited smoking product a strict liability offence. An offence of strict liability means that someone can be found guilty of selling a prohibited smoking product in the absence of any requirement of intention, even where the accused did not need to intend to commit the crime.

Clause 6 Section 31

This clause substitutes section 31. The intention of this amendment is to update the definitions pertaining to enforcement provisions in line with the amendments in clause 6.

Clause 7 Sections 34 to 42

This clause substitutes sections 34, 35, 36, 37, 38, 39, 40, and 42 and replaces them with sections 34, 35, 36, 37, 38, 39, 40, 41, 41A, 41B, 41C, 41D, 41E, 41F, 41G, 41H, 41I, 41J, 41K, 41L, and 42. This clause has the effect of re-ordering, amending and adding in enforcement provisions to modernise and update the enforcement functions and powers for the Act.

Section 34 – Identity cards

Section 34 provides that the director-general must give an identity card to an authorised officer appointed under the Act. Section 34(2)(a) amends the wording of the current section in terms of the requirements of what an identity card must show by inserting the words 'or a unique identification number' after 'the authorised officer's name' to provide that an identity must show either of the two. Section 34 also adds a new subsection (5) to provide for defences for failure to return offences, if an identity card is lost or stolen, or destroyed by someone else.

Section 35 - Requirements before certain powers can be exercised

Section 35 provides that before an authorised person exercises their powers under certain clauses in this part, the authorised person must show their identity card to the affected person, provide reasons for exercising the relevant power to the affected person, and tell the affected person about any relevant offence in relation to the power being exercised. Section 35 also inserts the definitions of 'affected person' and 'identity card' to bring clarity to the provision.

Section 36 - Direction to give name and address

Section 36 has the effect of replacing existing section 39 and provides for an authorised person to direct a person to state their name and home address if the authorised person believes on reasonable grounds that the person has, is or is about to commit an offence against this Act, or who may be able to assist in the investigation of an offence against this Act. Failure to comply with a direction under this clause is a strict liability offence. The maximum penalty of 10 penalty units in current section 39 is reduced to a maximum penalty of 5 penalty units in new section 36.

Section 37 – Powers of authorised officer to enter premises

Section 37 has the effect of replacing existing section 35 and provides for an authorised person to enter premises and prescribes the circumstances under which it is reasonable to do so and the way it may be done. An authorised person may only enter premises or a part of the premises that is being used only for residential purposes with the occupier's consent or in accordance with a warrant.

Section 38 – Obtaining consent to entry

Section 38 has the effect of replacing existing section 36 and requires that an authorised person when seeking to enter premises under section 37 must tell the occupier the purpose for the entry, the reason for and identity of any other person accompanying the authorised person, and that anything found and seized under this part may be used in evidence in court and that the person has the right to refuse entry. If the occupier consents to entry, the authorised person must give the occupier a written record confirming matters in relation to consent.

Section 39 – General powers on entry to premises

Section 39 has the effect of replacing existing section 37 and stipulates what an authorised person who enters premises may do in relation to the premises or anything at the premises. Among other things an authorised officer may direct the occupier of the premises to do certain prescribed things. A note is also added to refer to the application of the privilege against self-incrimination and client legal privilege as applied by the *Legislation Act*. Failure to comply with such a direction is an offence with a maximum penalty of 50 penalty units

Section 40 – Application for warrant

Section 40 provides for an authorised officer to apply to a magistrate for a warrant to enter premises and states the requirements for an application.

Section 41 - Decision on application for warrant

Section 41A provides for the matters a magistrate must be reasonably satisfied of before issuing a warrant under section 40 and provides for the information that must be contained in the warrant terms.

Section 41A – Warrant issued on remote application

Section 41A provides the method by which a magistrate may issue a warrant on a remote application. It requires the authorised person to swear the remote application and give the sworn application to the magistrate.

Section 41B – Announcement before entry under warrant

Section 41B specifies what an authorised person must do before anyone enters premises under a warrant.

Section 41C – Warrant etc to be given to occupier

Section 41C requires that an authorised person must give the occupier present at the time a warrant is being executed, a copy of the warrant or equivalent, and a document setting out the rights and obligations of the person.

Section 41D – Occupier entitled to watch search etc

Section 41D provides for the occupier of the premises being searched to observe the search being conducted, unless this would impede the search, or the person is under arrest.

Section 41E – Authorised person may seize things at premises

Section 41E provides for an authorised person who enters premises with the occupier's consent to seize anything at the premises if seizure of the thing is necessary to prevent the thing from being concealed, lost or destroyed, or necessary to prevent the thing from being used to commit, continue or repeat the offence, or the thing is connected with an offence against the Act. If the authorised person enters premises under a warrant, the authorised person may seize anything that the warrant authorises. Section 41E also provides for a seized thing to be removed from the place of seizure or to have access to it restricted.

Section 41F Owner etc may access seized things

Section 41F provides for a person entitled to inspect a thing seized to be able to inspect the thing, make a visual recording of the thing, and if the thing is a document, take extracts from or make copies of the thing.

Section 41G Person must not interfere with seized things

Section 41G provides that a person commits an offence if a person interferes with a seized thing, or anything containing a seized thing, where the person does not have the approval of an authorised officer to interfere with the thing. Failure to comply is an offence under this section and is an offence of strict liability. The maximum penalty for this offence is 50 penalty units.

Section 41H Authorised person must give receipt for seized things

Section 41H requires an authorised person to provide a receipt to the owner of things seized and specifies what information must be included in the receipt.

Section 41I Return of seized things

Section 41I provides for a thing seized to be returned to its owner or subject to specified conditions, for reasonable compensation paid to the owner by the Territory.

Section 41J Order disallowing seizure

Section 41J provides that a person claiming to be entitled to a thing seized under this division may apply to the Magistrates Court for an order disallowing the seizure and sets out the process for such an application to be made.

Section 41K Costs of disposal of forfeited things

Section 41K provides that if a person is found guilty or convicted of an offence, the seized thing is connected with an offence, and the person was the owner of the thing seized thing immediately before its forfeiture, costs incurred in relation to lawful disposal are a debt owed by the person.

Section 41L – Damage etc to be minimised

Section 41L requires an authorised officer in executing functions under this part to take all reasonable steps to ensure that as little inconvenience, detriment and damage as is practicable is caused.

Section 42 – Compensation for exercise of enforcement powers

Section 42 provides that a person who has suffered loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised officer or a person assisting an authorised officer may make a claim for compensation to a court of competent jurisdiction. Section 42 also provides for things that are to be taken into account by the court in considering whether an order for compensation is to be made.

Clause 8 Dictionary, definition of *identity card*

This clause removes the definition of ‘identity card’ from the Dictionary of the Act which relates to a term used in section 34, as specific definitional changes have been made to section 34 and the term is defined in the new section 35.

Clause 9 Dictionary, new definition of *warrant*

This clause adds the definition of ‘warrant’ to the Dictionary of the Act to refers to and links the term as defined in section 31 which relates to part 6 of the Act pertaining to enforcement.

Schedule 1 - Consequential Amendments

Clause [1.1] Schedule 1, new item 6A

This clause adds a new provision to the infringement notice offences and penalties schedule of the *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010* by adding a new schedule item 6A to amend the penalty associated with the offence contained in section 22(1) of the Act.