

TOBACCO AND OTHER SMOKING PRODUCTS (PREVENTION OF SUPPLY TO CHILDREN) AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The main policy objective of the Bill is to improve the health of the public by reducing their exposure to tobacco and other smoking products.

Means of Achieving Objectives

In June 1999, the Ministerial Council on Drug Strategy (comprising all Australian Health and Police Ministers) endorsed the *National Tobacco Strategy 1999 to 2002-2003*. The Strategy's goal is to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms.

Queensland as a signatory to the Strategy accordingly developed the Queensland Tobacco Action Plan. The Plan records proposed actions by the Queensland Government over the period 2000/01 to 2003/04 in order to comprehensively address smoking issues.

The Bill gives effect to the Plan by amending the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998* to—

- further restrict the availability of tobacco and other smoking products to children by limiting the placement of tobacco product vending machines to bar and gaming machine areas of liquor licensed premises and to casinos
- restrict advertising of tobacco and other smoking products at retail outlets
- prohibit promotions of tobacco and other smoking products
- reduce public exposure to smoke from tobacco and other smoking products
- strengthen the monitoring and enforcement of the Act.

Tobacco Product Vending Machines

Access to tobacco products is an important factor in the uptake of smoking. Reducing access to tobacco products is likely to contribute to reducing the overall prevalence of smoking. The *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998* currently restricts the location of vending machines to licensed premises. This Bill further restricts tobacco product vending machines to bar or gaming machine areas of licensed premises and to casinos. Tobacco product vending machines located in bar areas and gaming machine areas of licensed premises must be easily observed by persons working in the area to prevent children accessing tobacco products from the vending machines. A tobacco product vending machine in a casino is not required to be easily observed by employees, as children are not permitted in casinos.

Advertising and Promotion

Research has confirmed that children are more sensitive to tobacco advertising and promotion than adults and indicates that young people's exposure and receptivity to advertising and promotion is an important factor in determining future smoking behavior.

The Bill will generally restrict the advertising and display of smoking products by retailers to the point of sale in a retail outlet and in accordance with Part 2A, Division 1. Permitted forms of display will be—

- Smoking products may only be located at a point of sale in a retail outlet but not on the counter
- Cigars may be located away from the point of sale if the cigars are in a humidified container or room
- The only smoking products that are permitted to be on display are ones that are available, or usually available, for sale at the outlet
- Retail outlets may display each product line¹ of an immediate package (eg a packet of cigarettes) in one of three ways, ie an individual packet, by means of a stack dispenser or a representation of the package. This restriction also applies to vending machines.

¹ A "product line" means a kind of smoking product distinguishable from other kinds by trademark, brand name, nicotine or tar content, flavour and number of items in the immediate package.

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- A retailer may also display up to 13 cigars and one carton of each product line
- The display of prices of a smoking product at a retail outlet are to be displayed only on a price ticket (or other indicator of price) or a single price board or both.

Duty free shops are allowed to display smoking products anywhere in the retail outlet and will be able to display more than one carton of each product line.

A display of smoking products is not to constitute a tobacco advertisement itself, eg packages that have a part of a picture printed on the side so that they create an image when they are placed together.

A person will not be able to promote, or conduct a competition that promotes, a smoking product, trademark, brand name or the name or interests of a manufacturer or distributor of a smoking product.

A person will not be able to supply a smoking product for free if the supply promotes the sale of a smoking product.

Passive Smoking

There is consistent evidence concerning the health effects of breathing environmental tobacco smoke (“ETS”). Exposure to ETS can cause bronchitis, pneumonia and other chest illnesses in children, and can increase the risk of cardiovascular disease, lung cancer and other lung diseases in adults. Short-term ETS exposure can also cause ‘irritant’ effects on the eyes, nose, throat and airways due to irritant chemicals in tobacco smoke.

The Bill will reduce the public’s exposure to ETS by making it an offence for a person to smoke in an enclosed place. However, there are a number of exceptions, namely, a person may smoke in the following places—

- an individual’s home (unless the home is being used for business purposes and another person, such as an employee, is present)
- a vehicle being used privately or a business vehicle where only one person is in the vehicle
- a private living area in a hostel or other multiple unit dwelling, eg a motel room
- premium gaming (or ‘high roller’) rooms in casinos

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- licensed premises (other than a dining area when meals are available to be consumed or a gaming table area in a casino)
- a secure facility (ie a prison facility)
- a person (eg an actor) who smokes during a performance if the smoking is part of the performance.

An occupier will still be able to prohibit smoking in the exempt areas, eg a licensee can make all or part of a licensed premises smoke free.

It will also be an offence if a person fails to stop smoking after being directed to stop smoking by an authorised person or an occupier of an enclosed place (ie a person in charge of a restaurant), or an employee or agent of the occupier.

It will be an offence for an occupier of an enclosed place if a person smokes in the enclosed place. However, the occupier will have a defence if the occupier was not aware of the contravention, or the occupier or an employee or agent of the occupier directed the person to stop smoking and told the person it was an offence to fail to stop smoking.

Enforcement Provisions

Clauses 27 to 46 expand the powers of authorised persons under the Act so that the wider range of offences contained in the amended Act can be effectively enforced.

Estimated Cost for Government Implementation

The implementation of the Queensland Tobacco Action Plan will involve the training of authorised persons, education campaigns and new signage. These costs are to be met from the existing Queensland Health budget.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

Reversal of onus of proof

Section 26M(1) prohibits a person from supplying an object or entitlement if the supply is in direct or indirect association with the supply of a smoking product. Section 26M(3) provides that it is a defence to a

prosecution under subsection (1) if the defendant proves that the person receiving the object or entitlement would have received the same object or entitlement if the person had bought goods other than a smoking product to the same value. (For example, a ‘fly buys’ scheme where a customer accrues points on all items for sale in the store).

There may be circumstances where the precise basis for receiving an object or entitlement is difficult to ascertain, as the prosecution would otherwise be required to prove that a person would not receive such an object or entitlement from purchasing another product. In these circumstances it is reasonable for the defendant to prove such matters.

Section 26V provides that if a person contravenes the prohibition on smoking in enclosed places the occupier of the enclosed place also commits an offence. It is a defence for the occupier to prove that they could not reasonably have been expected to be aware of the contravention or that they (or their agent) directed the person to stop smoking and informed the person that it was an offence not to comply with a direction to stop smoking.

While this provision effectively reverses the onus of proof, it is important to note that the prohibition on smoking in enclosed places is the primary mechanism to protect people from the effects of passive smoking. Having regard to the object of the legislation to reduce public exposure to smoke from tobacco and other smoking products, it is appropriate that occupiers of enclosed places be required to take steps to direct people to stop smoking in areas where it is prohibited and inform them that it is an offence to continue smoking. The Act effectively requires an occupier to demonstrate they have taken such steps.

Reasonable excuse for failure to comply with acknowledgment production requirement

Section 44E (Failure to produce acknowledgment) makes it an offence for a person to fail to provide a written acknowledgment to an authorised person unless the person has a reasonable excuse. (A written acknowledgment is required as part of the “prevention measures” – refer section 9 of the current Act and the new section 14). The provision specifies that it is not a reasonable excuse for the person not to comply with the requirement if compliance might tend to incriminate the person. This provision may be regarded as compromising the person’s protection against self-incrimination.

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An authorised person's power is limited to requiring a person to produce or make available for inspection a written acknowledgment. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person.

Liability of person for conduct of representatives

Section 51A provides that an act or omission by a person's representative, relating to an offence against the Bill, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. In these circumstances, the person will have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Section 51B provides that, if a corporation is convicted of an offence against the legislation, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with the relevant provision. The effect of this clause is to presume an executive officer of a corporation to be guilty unless the executive officer can prove that he or she took all reasonable steps to ensure the corporation complied with the provision, or that he or she was not in a position to influence the conduct of the corporation in relation to the offence.

While these provisions effectively provide for the reversal of the onus of proof, it is important to note that the offences provided for under the legislation deal with major public health issues (eg. supply of cigarettes to children, advertising and promotion of tobacco and smoking products). Having regard to the object of the legislation, it is appropriate that:

- a person be required to oversee the conduct of his or her representatives and, in doing so, make reasonable efforts to ensure that his or her employees or agents comply with the requirements of the legislation;
- an executive officer who is in a position to influence the conduct of a corporation be required to ensure the corporation complies with the legislation; and

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- an executive officer who is responsible for a contravention of the legislation, be accountable for his or her actions and not be able to 'hide' behind the corporation.

As such, sections 51A and 51B are warranted to ensure that there is effective accountability at a corporate level.

Consultation

Extensive consultation has been undertaken in relation to the Bill.

In August-October 1999, consultation was undertaken on the policy proposals underpinning the proposed legislation. A consultation workbook concerning the Queensland Tobacco Action Plan was distributed to 180 stakeholders. The workbook was based on the National Tobacco Strategy and detailed the strategies and legislative initiatives recommended under the National Tobacco Strategy.

The stakeholders included non-government health-based organisations (eg Heart Foundation of Australia, Queensland Cancer Fund and Australian Medical Association), industry (eg Queensland Retail Tobacco Traders' Association, Queensland Retail Traders' and Shopkeepers' Association, Retailers' Association of Queensland, Queensland Newsagents' Association, Shopping Centre Council of Australia and Motor Trades Association of Queensland) and unions.

During July-August 2000, stakeholders were consulted during the development of the policy framework for the Bill. The following three papers were distributed to stakeholders-

- *Option for consideration: Prohibiting the placement of self-service tobacco vending machines in particular types or areas of liquor licensed premises which may be more easily accessible to children*
- *Option for consideration: Legislation to reduce or eliminate tobacco advertising at the point-of-sale and tobacco promotional campaigns*
- *Option for consideration: Phased smoking bans in enclosed workplaces and public places, and in rooms of liquor licensed premises when meals are being consumed.*

These papers were distributed to 96 stakeholders including non-government health organisations, industry and unions.

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In March 2001, a consultation draft of the Bill was distributed to key stakeholders including:

- Action for Smoking and Health
- Australian Medical Association (Queensland Branch)
- Heart Foundation of Australia
- Queensland Cancer Fund
- Queensland casinos
- Queensland Retail Tobacco Traders' Association
- Queensland Retail Traders' and Shopkeepers' Association
- Retailers' Association of Queensland
- Australian Workers Union
- Queensland Council of Unions
- Queensland Hotels Association
- Queensland Newsagents' Association
- Queensland Chamber of Commerce and Industry
- Motor Trades Association of Queensland
- Tobacco manufacturers.

Meetings were subsequently held with key stakeholders to discuss the consultation draft of the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the provisions of the Act. *Clause 29* will commence on assent as it addresses an anomaly in the enforcement of the current provisions of the Act. Given the extensive changes to the Act, *clause 48* defers the statutory review of the Act for 3

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years. As the review was to commence by 31 May 2001, the amendment to this section needs to commence before that time.

Clause 3 states that Part 2 of the Bill amends the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*.

Clause 4 replaces the long title of the Act to reflect the broader coverage of the Act.

Clause 5 replaces the short title in section 1 of the Act.

Clause 6 replaces section 3 with new sections 3 and 3A. The new section 3 outlines the main object of the Act, which is to improve the health of members of the public by reducing their exposure to tobacco and other smoking products. The new section 3A sets out how the main object is to be achieved.

Clause 7 inserts a new section 9A that creates an offence for a supplier not to take the prevention measures² for an employee. The Act currently encourages suppliers to take the prevention measures by removing suppliers' liability for the sale of smoking products to children by an employee if the prevention measures have been taken. This amendment strengthens this requirement by making it a stand-alone offence.

Clause 8 amends section 10(1) by increasing the maximum penalties for the offence of an individual supplier supplying smoking products to children.

Clause 9 amends section 11(1) by increasing the maximum penalties for a supplier who fails to ensure employees do not supply smoking products to children.

Clause 10 amends section 12(2) by increasing the maximum penalties for an employee who supplies a smoking product to a child, after the prevention measures have been taken. Section 12(2) is also amended to make the wording of section 12(2) consistent with the new definition of "employee" in section 9A.

2 'Prevention measures' involve a supplier instructing an employee to not supply smoking products to children and if the employee is not satisfied a person is an adult, to sight acceptable evidence of age of the person. The employer must also warn the employee that it is an offence if the employee disregards the employer's instructions about supply to children. The employer must also obtain written acknowledgment by the employees that they received the instructions and warning. (See section 9 of the Act.)

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Clause 11 amends section 13(5) by increasing the maximum penalty for a supplier who contravenes a court order made under section 13(3).

Clause 12 replaces section 14 and 15. The new section 14 sets out the definitions for Part 2, Division 2 (Tobacco Product Vending Machines).

The new section 15 further restricts the placement of tobacco product vending machines to bar and gaming machine areas of licensed premises and to casinos. A tobacco product vending machine in a bar area or a gaming machine area must be easily observed by employees to prevent children from gaining access to tobacco products. This does not apply to tobacco product vending machines in casinos as children are prohibited from entering casinos.

The new section 15A creates an offence if a person in charge of a tobacco product vending machine in a bar area or gaming machine area of a licensed premises does not take prevention measures for the person's employees. This amendment has been made for the same reason as the amendment made by clause 7.

Clause 13 amends section 16(1) by increasing the maximum penalties for a person in charge of a tobacco product vending machine who allows a child to obtain a tobacco product from a vending machine.

Clause 14 amends section 17(5) by increasing the maximum penalty for a person in charge of a tobacco product vending machine who contravenes a court order made under section 17(3).

Clause 15 amends section 18(1) by increasing the maximum penalties for a person in possession of a coin-operated vending machine who uses the machine to supply herbal cigarettes or a loose smoking blend to another person.

Clause 16 amends section 18A(a)(ii) to make the wording of the subsection consistent with the new definition of "employee" in section 14.

Clause 17 amends section 19(1) by increasing the maximum penalty for an adult who supplies a smoking product to a child.

Clause 18 replaces section 20. This section increases the maximum penalty for a supplier who does not display a prohibition sign for a point of sale in a way prescribed under a regulation. A supplier will be required to display a prohibition sign for all smoking products, for example, a store that sells herbal cigarettes must display prohibition signs. Currently the Act requires prohibition signs for tobacco products only.

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Clause 19 replaces section 21. This section increases the maximum penalty for a person in charge of a tobacco product vending machine who does not attach a prohibition sign to, or display a prohibition sign near, the vending machine.

Clause 20 amends section 22(1) by increasing the maximum penalty for a supplier who does not sell cigarettes or herbal cigarettes in a package. Section 22(2) is also amended by increasing the maximum penalty for a supplier who sells cigarettes or herbal cigarettes in a package containing less than 20 cigarettes.

Clause 21 amends section 23 by increasing the maximum penalty for a supplier who sells prepackaged loose tobacco in quantities of less than 25 g.

Clause 22 amends section 23A by increasing the maximum penalty for a supplier who sells prepackaged loose smoking blends in quantities of less than 15 g.

Clause 23 amends section 24(1) by increasing the maximum penalty for a person who supplies to another person food or toys resembling tobacco products.

Clause 24 replaces the heading to Part 2, Division 7.

Clause 25 omits section 25.

Clause 26 inserts sections 26A to 26P contained in a new Part 2A – “Advertising Display and Promotion of Smoking Products” and sections 26Q to 26V contained in a new Part 2B – “Smoke-Free Enclosed Places”.

The new section 26A creates an offence for a supplier to advertise or display a smoking product except at a retail outlet and as provided for in Part 2A, Division 1. The supplier also must not *cause* a smoking product to be advertised or displayed except at a retail outlet and as provided for in Part 2A, Division 1. For example, a supplier must not direct an employee of the supplier, while working at the retail outlet, to wear a shirt advertising a tobacco product.

The new section 26B(1) provides that a display of smoking products must only be at a point of sale. Smoking products must be either on the seller’s side (eg on a shelf behind the seller) or above or below a counter where customers are served, provided a customer cannot directly access them (eg in an enclosed glass cabinet beneath the counter). Section 26B(2) provides that smoking products must not be located on a counter where customers are served. For example, a display of cigarettes in a container

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cannot be placed on the customer service counter. However, a duty free shop can display smoking products anywhere in a duty free shop.

Section 26B(3) provides that cigars may also be located other than at a point of sale if they are in a humidified container or humidified room with access controlled by a supplier or an employee of the supplier. Section 26B(6) defines the terms “humidified container” and “humidified room” for the purposes of section 26B.

The new section 26C provides that the display of smoking products at a retail outlet can only consist of smoking products that are available for sale, or usually available for sale, at the retail outlet.

The new section 26D provides that a supplier can only display a product line of an immediate package of a smoking product in one of the three ways outlined in subsection (1).

The new section 26E provides that a supplier can display up to 13 individual cigars of each product line.

The new section 26F(1) provides that only one carton of each product line can be displayed in a retail outlet. Section 26F(2) provides that a duty free shop can display more than one carton of each product line.

The new section 26G(1) provides that a display of smoking products must not constitute a tobacco advertisement as distinct from a display allowed under Part 2A, Division 1. Section 26G(2) provides that packages must not be arranged to create a composite picture or other meaningful visual image. For example, a retailer must not display packages that have a part of a picture printed on the side so that when they are placed together it creates a full picture.

The new section 26H provides for the display of prices of a smoking product at a retail outlet only on a price ticket (or other indicator of price) or a single price board or both, as prescribed under the regulations.

The new section 26I provides that a retailer will be required to display quit smoking signs in relation to points of sale (including vending machines) at retail outlets, as prescribed under the regulations.

The new section 26J provides definitions for Part 2A, Division 3 (Promotions of smoking products).

The new section 26K provides that Part 2A, Division 3 (Promotions of smoking products) does not prevent a promotion of a smoking product by a manufacturer or distributor if the promotion is only to a supplier, for example, a competition run by a tobacco company offering a prize to the

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retailer who sells the most packets of a particular product line during a particular month.

The new section 26L prohibits a person from supplying an object or entitlement that promotes a smoking product; or the trademark or brand name of a smoking product; or the names or interests of a manufacturer or distributor of a smoking product. It would not be an offence for a retailer to only discount the price of a smoking product.

Section 26M(1) makes it an offence if a person supplies an object or entitlement if the supply is in direct or indirect association with the sale or consumption of a smoking product, or of smoking products generally. (For example, a retailer offering a \$10 gift voucher to be redeemed at the store if a person purchases more than \$50 worth of tobacco products; or a retailer offering to sell a packet of cigarettes and a cigarette lighter together at a discounted price). Section 26M(3) provides a defence if the defendant proves that the person receiving the object or entitlement would have received the same object or entitlement if the person had bought goods, other than a smoking product, to the same value as the smoking product. (For example, a 'fly buys' scheme where a customer accrues points on all items for sale in the store).

The new section 26N provides that a person must not supply a smoking product for free if the supply promotes the sale of any smoking product. It would not be an offence under this section for a person to merely give a cigarette to another person, as the supply of the cigarette does not promote the sale of any smoking product. However, it would be an offence under this section if a tobacco company promotes an offer whereby a customer will receive a free packet of cigarettes conditional upon the customer first purchasing a packet of cigarettes.

The new section 26O provides that a person must not conduct a competition that promotes a smoking product; or a trademark or brand name of a smoking product; or the names or interests of a manufacturer or distributor of a smoking product. For example, a tobacco company must not promote a scheme where, if a customer fills out a form stating their details, the customer is eligible to win clothing that has a tobacco product brand name printed on it.

Section 26P(1) prohibits a person from conducting a competition that has a direct or indirect association with the sale or consumption of a smoking product. For example, a tobacco company must not conduct a scheme whereby a person who purchases a packet of cigarettes is then eligible to go into a draw to win a holiday.

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The new section 26Q sets out the definitions for Part 2B (Smoke-Free Enclosed Places).

“Gaming table area”, for a casino, is defined to mean an area within 2.4 metres of a gaming table at a casino. The distance of 2.4 metres is based on the layout of the casinos as approved under the casino licences. The effect of this is that the whole area containing the gaming tables is to be smoke free. The area will end at a distance of 2.4 metres from the outer edge of the tables situated on the perimeter of the area.

The new section 26R(1) creates an offence if a person smokes in an enclosed place. Section 26R(2) sets out a number of exemptions to section 26R(1) (ie places where smoking is allowed):

- Subsection (2)(a) permits smoking in residential premises. However, if part of the premises is being used as a business, a person cannot smoke if one or more persons, who do not reside at the premises, are present. For example, if an employee who does not reside at the premises is present in that part of the premises neither the employee nor the employer can smoke. However, this does not prevent a person who resides at the premises from smoking in the “business” part of the premises if no other persons are present;
- Subsection (2)(b) permits smoking in an individual’s private living area in a hostel or other multiple unit dwelling, for example a motel room or a hostel room shared by more than one person. However, there is no smoking in common areas, such as a TV room shared by all residents of a boarding house. This subsection does not apply to a licensed premises as section 26R(2)(e) provides an exemption for licensed premises;
- Subsection (2)(c) permits smoking in a vehicle being used for private use or for business use where only one person is present;
- Subsection (2)(d) permits smoking in a premium gaming room, that is, a room in a casino commonly known as a ‘high rollers room’. A person may smoke in gaming table areas in a premium gaming room;
- Subsection (2)(e) permits smoking in licensed premises. However, smoking is not permitted in dining areas in these premises when meals are available for consumption or are being consumed, or in gaming table areas of casinos. A person could smoke in the common areas of hotels, as hotels are licensed premises.

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- Subsection (2)(f) permits smoking within a secure facility, ie a prison facility.

The new section 26R(3) permits a person to smoke in an enclosed place if the smoking is part of a performance.

The new section 26S creates an offence if the licensee responsible for a dining area or gaming table area mentioned in section 26R(2)(e) does not display a “no smoking sign” for the area as prescribed under the regulations.

The new section 26T states that this Act does not create or preserve a right for a person to smoke in an enclosed place. For example, an occupier of a licensed premises can make all or part of the licensed premises smoke free. This Act also does not affect the operation of other Acts that prohibit smoking. (For example, the *Petroleum Regulation 1966* prohibits smoking in certain potentially dangerous situations).

The new section 26U creates an offence if a person contravening section 26R fails to comply with a direction to stop smoking.

The new section 26V creates an offence for an occupier of an enclosed place where a person is contravening section 26R. However, an occupier is not liable for an offence if the occupier can prove:

- the occupier was not aware, and could not have reasonably been expected to be aware of the contravention; or
- the occupier or an employee or agent of the occupier directed the person to stop smoking and told the person it was an offence to fail to stop smoking.

Clause 27 specifies that an authorised person holds office on the conditions stated in their instrument of appointment; and that an authorised person may be appointed for a term or for the period during which the person holds another position (eg a position as a public service employee or health service employee).

Clause 28 amends section 29(3) by increasing the maximum penalty for a person who does not return the person’s identity card after ceasing to be an authorised person.

Clause 29 replaces section 30 and requires an authorised person to first produce or display the authorised person’s identity card before exercising any powers under the Act. However, provision is also made for the authorised person to produce the card at the first reasonable opportunity where it is not immediately practical to do so. Section 30(3) re-states the

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legal position that an authorised person who enters a place pursuant to sections 33(2) or (3) of the Act is not exercising a power and, as such, is not required to show identification for the purposes of section 30. The actions described in sections 33(2) and (3) of the Act are actions that any person could do, regardless of whether they are “authorised persons” under the Act.

Clause 30 amends section 33 to allow an authorised person, for the purpose of asking the occupier of a place for consent to enter, to enter part of the place the authorised person reasonably considers members of the public are ordinarily allowed to enter when they wish to contact the occupier.

Clause 31 inserts sections 36A and 36B. Section 36A makes provision for an authorised person to apply for a warrant by phone, fax, radio or another form of communication because of urgent or other special circumstances. Section 36B outlines the procedures that must be followed by an authorised person prior to entering a place under a warrant.

Clause 32 amends section 37 to give power to an authorised person to take an extract of a document and also to be able to require a person to give the authorised person information about compliance with the Act, unless the person has a reasonable excuse.

Clause 33 inserts sections 37A and 37B. The new section 37A creates an offence for a person who fails to give reasonable help required under section 37(3)(f), unless the person has a reasonable excuse. The new section 37B creates an offence for a person who fails to comply with a requirement to give information under section 37(3)(g).

Clause 34 amends section 38(5) by increasing the maximum penalty for a person who fails to comply with a request from an authorised person under section 38(2) and (3).

Clause 35 amends section 39 by giving an authorised person power to require a person to show acceptable evidence of age of the person in circumstances where the authorised person reasonably believes a person has just been supplied a smoking product and suspects on reasonable grounds the person is a child. (For example, where a child walks into a store with money in his or her hand and walks out with a packet of cigarettes and change). Section 39(5) is amended by increasing the maximum penalty for a person who does not comply with a requirement by an authorised person under section 39(2) or (4).

Clause 36 amends section 40(1)(a) for the same reasons as outlined for clause 35.

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Clause 37 inserts section 40A which gives an authorised person power to direct a person contravening section 26R (Person must not smoke in enclosed place) to stop smoking.

Clause 38 inserts section 40B which provides an authorised person with the power to seize a thing at a place entered, without consent or a warrant, if the authorised person reasonably believes that the thing is evidence of an offence against the Act.

Clause 39 amends the heading of section 41.

Clause 40 omits section 42 and inserts sections 42 and 42A to 42D.

Section 42 enables an authorised person to take the following action in relation to a thing which has been seized – that is, move the thing from the place where it was seized; leave the thing at the place of seizure but restrict access to it; or make any seized equipment inoperable.

Section 42A makes it an offence for a person to tamper with a seized thing, or something restricting access to the thing, without an authorised person's approval.

Section 42B makes provision for an authorised person to require the person in control of a thing to be seized to take it to a stated reasonable place by a stated reasonable time; and if necessary, to remain in control of it at the stated place for a reasonable period. It is an offence for a person to fail to comply with a requirement or further requirement made under section 42B, unless the person has a reasonable excuse.

Section 42C requires an authorised person to issue a receipt for any seized thing and give the receipt to the person from whom it was seized. However, if for some reason this proves impractical, the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

Section 42D sets out the circumstances under which a seized thing will be forfeited to the State, for example, if the owner cannot be found, after making reasonable enquires, or if it cannot be returned to its owner, after making reasonable efforts.

Clause 41 inserts section 44A and 44B.

Section 44A sets out the circumstance under which an authorised person must return a thing which has been seized but not forfeited to the State, for example, at the end of 6 months or where an inspector is satisfied that the thing does not need to be retained as evidence.

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Section 44B provides for the owner of any seized thing to have access to it for inspection or copying (if a document), until it is forfeited or returned.

Clause 42 inserts sections 44C to 44G.

Section 44C enables an authorised person to issue an improvement notice if an authorised person reasonably believes that a person is contravening a provision of this Act; or has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated.

Section 44D sets out the circumstances in which an authorised person may require a person to make available, or produce, a written acknowledgment mentioned in Part 2 (Supply of Smoking Products). (Refer definition of “prevention measures” in sections 9 and 14).

Section 44E makes it an offence to fail to produce an acknowledgment form in accordance with a request made under section 44D unless the person has a reasonable excuse. However, it is not a reasonable excuse for a person not to comply on the grounds that the requirement might tend to incriminate the person.

Section 44F makes it an offence to fail to comply with a request under section 44D to certify that a copy of the written acknowledgment is a true copy, unless the person has a reasonable excuse.

Section 44G enables an authorised person to require a person, by written notice, to provide information about an offence against this Act. It is an offence to fail to comply with such a request, unless the person has a reasonable excuse.

Clause 43 amends section 45(1) by increasing the maximum penalty for a person who states anything false or misleading to an authorised person.

Clause 44 amends section 46(1) by increasing the maximum penalty for a person who gives an authorised person a document containing false, misleading or incomplete information in a material particular.

Clause 45 amends section 49 by increasing the maximum penalty for a person who pretends to be an authorised person.

Clause 46 replaces section 50. Section 50(1) increases the maximum penalty for a person who obstructs an authorised person while exercising a power under the Act. The new section 50(2) creates a duty on an authorised person to warn a person that the obstruction is an offence.

Clause 47 inserts new sections 51A and 51B.

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Section 51A specifies that an act or omission of a person's representative, in relation to an offence against this Act, is taken to have been done by the person if the representative was acting within the scope of the representative's authority. However, the person can utilise the defence provided for under this provision and prove that they could not, by the exercise of reasonable diligence, have prevented the act or omission.

Section 51B places an obligation on the executive officers of a corporation to ensure that the corporation complies with the legislation. As such, this provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that they exercised reasonable diligence to ensure the corporation complied with the provision or were not in a position to influence the conduct of the corporation in relation to the offence.

Clause 48 amends section 52 to defer for three years both the review of the Act and the tabling in the Legislative Assembly of a report on the outcome of the review. Given the major amendments to the Act resulting from this Bill, a statutory review is not warranted at this time.

Clause 49 amends the schedule (Dictionary) by inserting new definitions used in the Act.

"Point of sale" is defined to mean a place where there is a counter or other similar fixture where smoking products are sold within a retail outlet. This would include a customer service counter but does not include, for example, a person walking around a hotel selling cigarettes. In the latter case, the person could not display smoking products as they would be in breach of section 26B.

Clause 50 states that Part 3 of the Bill amends the *Health Services Act 1991*.

Clause 51 amends section 51 of the *Health Services Act 1991* to ensure that it applies consistently with this Act.

Clause 52 states that Part 4 amends the *Police Powers and Responsibilities Act 2000*.

Clause 53 makes consequential amendments to section 32(4)(a) of the *Police Powers and Responsibilities Act 2000*.

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Clause 54 makes consequential amendments to section 35 of the *Police Powers and Responsibilities Act 2000*. Section 35(1)(a) is amended to make it consistent with the amendments to section 39(1)(a) and section 40(1)(a) of the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*.