

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, May 2023*



Queensland

**No.
A BILL for**

An Act to amend the Forestry Act 1959, the Police Powers and Responsibilities Act 2000, the Recreation Areas Management Act 2006 and the Tobacco and Other Smoking Products Act 1998 for particular purposes



Queensland

Tobacco and Other Smoking Products Amendment Bill 2023

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2023

A Bill

for

An Act to amend the *Forestry Act 1959*, the *Police Powers and Responsibilities Act 2000*, the *Recreation Areas Management Act 2006* and the *Tobacco and Other Smoking Products Act 1998* for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Tobacco and Other Smoking Products Amendment Act 2023*.

2 Commencement

- (1) Sections 27 to 41, 45 to 48, 51(1) and (3), 54, 58, 64 and 66(3) commence on 1 September 2023.
- (2) Sections 42 and 43 commence on 1 July 2024.
- (3) Sections 8 to 11, 13 to 16, 51(4), 65 and 66(4) and (5) commence on 1 September 2024.

Part 2 Amendment of Tobacco and Other Smoking Products Act 1998

3 Act amended

This part and schedule 1 amend the *Tobacco and Other Smoking Products Act 1998*.

4 Amendment of s 3A (How object is to be achieved)

Section 3A—
insert—

- (e) establishing a licensing scheme for the sale of smoking products, including a disciplinary scheme for licensees.

5 Insertion of new ss 5B and 5C

After section 5A—

insert—

5B Meaning of *retail outlet*

- (1) A *retail outlet* is premises at which smoking products are available for sale by retail.
- (2) Each of the premises mentioned in subsection (1) is taken to be a separate retail outlet regardless of ownership, any trading name or franchise agreements relating to the premises.

5C Meaning of *wholesale outlet*

- (1) A *wholesale outlet* is premises from which smoking products are available for sale by wholesale.
- (2) Each of the premises mentioned in subsection (1) is taken to be a separate wholesale outlet regardless of ownership, any trading name or franchise agreements relating to the premises.

6 Amendment of s 6 (Acceptable evidence of age)

Section 6(a), ‘or an Australian or foreign passport’—

omit, insert—

, an Australian or foreign passport or an Australia Post Keypass

7 Insertion of new pt 1A

After section 7—

[s 7]

insert—

Part 1A Retail and wholesale licences

Division 1 Preliminary

7A Definitions for part

In this part—

information notice, for a decision, means a notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may ask for a review of the decision under this Act;
- (d) how, and the period within which, the review may be started;
- (e) if the person may apply for a stay of the operation of the decision under this Act—how the person may apply for the stay.

licensed retailer means a retailer that holds a retail licence.

online sale means a sale transacted over the internet.

retailer means a business that, as part of a business activity, sells smoking products to the public by way of retail sale.

retail licence means a licence granted under this

Act that authorises the sale of smoking products to the public by retail sale.

retail licence (liquor) means a retail licence under which the authorisation is limited to selling smoking products to customers at liquor licensed premises.

specific conditions see section 7D(1).

wholesale licence means a licence granted under this Act that authorises the sale of smoking products to licensed retailers by wholesale.

Division 2 General information about licences

7B Retail licence

- (1) A retail licence authorises the licensee to sell smoking products to the public by retail from 1 retail outlet or 1 online shop.

Note—

Selling smoking products from more than 1 retail outlet or online shop requires additional retail licences.

- (2) However—
 - (a) if an online shop is for online sales of smoking products from 1 retail outlet, a retail licence authorises the licensee to sell smoking products by retail from both the online shop and the retail outlet; and
 - (b) the authorisation under a retail licence (liquor) is limited to selling smoking products to customers at 1 liquor licensed premises.
- (3) The authorisation under a retail licence may be expanded by a specific condition authorising the

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licensee to sell limited quantities of smoking products by wholesale to smaller licensed retailers (a *limited wholesale condition*).

7C Wholesale licence

- (1) A wholesale licence authorises the licensee to sell smoking products by wholesale to licensed retailers from 1 wholesale outlet or 1 online shop.

Note—

Selling smoking products from more than 1 wholesale outlet or online shop requires additional wholesale licences.

- (2) However, if an online shop is for online sales of smoking products from 1 wholesale outlet, a wholesale licence authorises the licensee to sell smoking products by wholesale from both the online shop and the wholesale outlet.

7D Conditions of retail or wholesale licences

- (1) A retail or wholesale licence is subject to conditions imposed on the licence by the chief executive under this part (the *specific conditions*).
- (2) A retail or wholesale licence is also subject to the conditions prescribed by regulation (the *general conditions*).

7E When retail or wholesale licence ceases to have effect

- (1) A retail or wholesale licence ceases to have effect if—
 - (a) the licence is cancelled or surrendered; or
 - (b) the business for the licence is sold.
- (2) A retail or wholesale licence does not have effect

during any period of suspension of the licence.

- (3) A retail licence (liquor) also—
 - (a) ceases to have effect if the related liquor licence is cancelled or surrendered; and
 - (b) does not have effect during any period of suspension of the related liquor licence.

Division 3 Application and grant

7F Who may apply for retail or wholesale licence

- (1) The following entities may apply to the chief executive for a retail or wholesale licence—
 - (a) the owner of a business that proposes to sell smoking products;
 - (b) an adult individual, corporation or partnership that proposes to establish a business that is intended to sell smoking products;
 - (c) an adult individual, corporation or partnership that proposes to purchase a business that sells smoking products.
- (2) However, if smoking products are proposed to be sold at liquor licensed premises—
 - (a) the application must be for a retail licence (liquor); and
 - (b) only the liquor licensee for liquor licensed premises may apply to the chief executive for the licence.
- (3) If the applicant is a partnership, the partners must jointly make the application under subsection (1).
- (4) In this section—

owner, of a business, means the adult individual,

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corporation or partnership that owns and controls the business.

7G Requirements for application

- (1) An application for a retail or wholesale licence must—
 - (a) be made in the approved form; and
 - (b) if the applicant is a corporation—include sufficient information to identify the directors of the corporation; and
 - (c) be accompanied by the proof of identification required by the approved form; and
 - (d) if the application relates to a retail or wholesale outlet—identify the location of the retail or wholesale outlet; and
 - (e) if the application relates to an online shop—state the website address of the online shop; and
 - (f) if the application relates to the sale of smoking products at liquor licensed premises—be accompanied by a copy of the liquor licence for the premises; and
 - (g) be accompanied by sufficient information to identify all licences to supply a smoking product by retail or wholesale, if any, held by the applicant under a law of the Commonwealth or another State; and
 - (h) be accompanied by the fee, if any, prescribed by regulation.
- (2) The application must be made for either a retail or wholesale licence.

Note—

Two separate applications are required if a person intends to apply for a retail licence and a wholesale licence.

- (3) Also, if the application relates to the sale of smoking products at liquor licensed premises, the application must be for a retail licence (liquor).
- (4) If the application is made by a partnership, the application must—
 - (a) nominate either of the following for the partnership—
 - (i) the firm-name;
 - (ii) the Australian registered body number; and
 - (b) include identifying information for each partner; and
 - (c) identify any limited partners.
- (5) In this section—

Australian registered body number means the number given by ASIC to a registrable body on registration under the Corporations Act, part 5B.2.

firm-name see the *Partnership Act 1891*, schedule.

limited partner see the *Partnership Act 1891*, schedule.

registrable body see the Corporations Act, section 9.

7H Rejection of particular applications

- (1) The chief executive must reject an application for a retail or wholesale licence if—

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- (a) the applicant applied for a retail or wholesale licence in the previous 6 months and the application was refused; or
 - (b) the applicant held a retail or wholesale licence that was cancelled within the previous 6 months.
- (2) Any fee paid for an application rejected under subsection (1) must be returned to the applicant.

71 Criteria for grant

- (1) The chief executive may grant an application for a retail or wholesale licence only if satisfied—
- (a) if the application is made by a partnership—each partner is a fit and proper person to be a licensee; or
 - (b) otherwise—the applicant is a fit and proper person to be a licensee.
- (2) However, the chief executive must grant an application for a retail licence (liquor) if the applicant is the liquor licensee for the liquor licensed premises at which smoking products are proposed to be sold.
- (3) Subsection (2) does not apply if—
- (a) a retail licence (liquor) for the liquor licensed premises has ever been cancelled; or
 - (b) the liquor licence for the liquor licensee is suspended.
- (4) The chief executive must refuse to grant an application for a retail licence (liquor) if—
- (a) the applicant is not the liquor licensee for the liquor licensed premises at which smoking products are proposed to be sold; or

- (b) the liquor licence for the liquor licensee is not in force when the application is considered.
- (5) A limited wholesale condition may only be granted for a retail licence if—
 - (a) retail sales are the primary activity of the business to which the licence relates; and
 - (b) the retail outlet for the licence is not a liquor licensed premises.

7J Deciding application

- (1) After considering an application for a retail or wholesale licence, the chief executive must decide to—
 - (a) grant the application; or
 - (b) refuse to grant the application.
- (2) Also, if the applicant is not yet the owner of the business to which the application relates, the chief executive may grant the application on the condition that the applicant becomes the owner of the business.

Example—

If the applicant is a corporation that proposes to purchase a business that sells smoking products, the chief executive may grant the application subject to the condition that the applicant completes the purchase.

- (3) In granting the application, the chief executive may impose conditions on the licence that the chief executive considers appropriate for the purpose of ensuring compliance with this Act or mitigating the health risks associated with the sale of smoking products.
- (4) In this section—
owner, of a business, means the adult individual,

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corporation or partnership that owns and controls the business.

7K Notice of decision

- (1) As soon as practicable after deciding an application for a retail or wholesale licence, the chief executive must give the applicant notice of the decision.
- (2) The notice of the decision must be an information notice if the decision is to—
 - (a) grant the licence with specific conditions; or
 - (b) refuse to grant the licence.

7L Term of retail or wholesale licence

A retail or wholesale licence—

- (a) is granted for the term of 1 year or the shorter period stated in the licence and agreed to by the licensee; and
- (b) takes effect on the day stated in the licence.

Division 4 Renewal and restoration

7M Application for renewal of retail or wholesale licence

- (1) Before a retail or wholesale licence expires, the licensee may apply to the chief executive to renew the licence.
- (2) The application must be—
 - (a) made in the approved form; and
 - (b) accompanied by the fee prescribed by regulation.

- (3) If the term of the retail or wholesale licence ends before the application is decided, the licence continues in effect under this section until the day the chief executive gives the licensee notice of the decision under section 7Q or the application is withdrawn, whichever happens first.
- (4) Nothing in subsection (3) prevents the retail or wholesale licence being suspended or cancelled during the period the licence is continued under that subsection.

7N Application for restoration of expired retail or wholesale licence

- (1) If a retail or wholesale licence expires, the licensee may, within 28 days after the expiry, apply to the chief executive to restore the licence.
- (2) The application must be—
 - (a) made in the approved form; and
 - (b) accompanied by the fee prescribed by regulation.
- (3) The retail or wholesale licence is taken to have continued in effect under this section from the day of expiry until the day the chief executive gives the licensee notice of the decision under section 7Q or the application is withdrawn, whichever happens first.
- (4) Nothing in subsection (3) prevents the retail or wholesale licence being suspended or cancelled during the period the licence is continued under that subsection.

7O Criteria for grant

- (1) The chief executive may grant an application for the renewal or restoration of a retail or wholesale licence only if satisfied—

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- (a) if the application is made by a partnership—each partner is a fit and proper person to be a licensee; or
 - (b) otherwise—the applicant is a fit and proper person to be a licensee.
- (2) However, subsection (3) applies if the application is for the renewal or restoration of a retail licence (liquor).
- (3) Section 7I(2) to (4) applies to the application as if a reference to an application for a retail licence (liquor) in that section were a reference to an application for renewal or restoration of a retail licence (liquor).

7P Deciding application

After considering an application for the renewal or restoration of a retail or wholesale licence, the chief executive must decide to—

- (a) grant the application; or
- (b) refuse to grant the application.

7Q Notice of decision

- (1) As soon as practicable after deciding an application for the renewal or restoration of a retail or wholesale licence, the chief executive must give the applicant notice of the decision.
- (2) The notice of the decision must be an information notice if the decision is to refuse to grant the application.

7R Term of retail or wholesale licence if renewed or restored

The renewal or restoration of a retail or wholesale licence extends the term of the licence—

- (a) by 1 year or the shorter period agreed to by the licensee; and
- (b) starting on the day after the licence would have expired but for the renewal or restoration.

Division 5 Changes to licences

Subdivision 1 Changes requested by licensee

7S Application for change requested by licensee

- (1) A licensee may apply to the chief executive to change a specific condition of the retail or wholesale licence, including, for example, applying for the inclusion of a limited wholesale condition.
- (2) The application must be—
 - (a) made in the approved form; and
 - (b) accompanied by the fee, if any, prescribed by regulation.

7T Deciding application

- (1) After considering an application to change a specific condition, the chief executive may decide to—
 - (a) grant the application; or
 - (b) refuse to grant the application.
- (2) In granting the application, the chief executive may amend or remove a specific condition of the licence to the extent it is necessary to grant the application.

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- (3) However, a limited wholesale condition may only be applied to a retail licence if retail sales are the primary activity of the business to which the licence relates.
- (4) The change to a specific condition takes effect on the day stated in the notice of the decision.
- (5) If the decision is to grant the application, the chief executive must give the applicant a replacement copy of the licence incorporating the granted changes.

7U Notice of decision

- (1) As soon as practicable after deciding an application to change a specific condition, the chief executive must give the applicant notice of the decision.
- (2) The notice of the decision must be an information notice if the decision is to refuse to change all the specific conditions as requested in the application.

Subdivision 2 Changes made by chief executive

7V Application of subdivision

This subdivision applies if the chief executive—

- (a) reasonably suspects a ground exists for suspending a licence under section 7Y or cancelling a licence under section 7Z; and
- (b) reasonably believes it is necessary in the circumstances, to ensure the health and wellbeing of customers of the licensee, to take the following action instead of suspending or cancelling the licence—

- (i) impose a new specific condition on the licence;
- (ii) change a specific condition of the licence.

7W Show cause notice before changing specific conditions

- (1) This section applies if, because of a suspicion and belief mentioned in section 7V, the chief executive proposes making either of the following changes for a retail or wholesale licence—
 - (a) imposing a new specific condition on the licence;
 - (b) changing a specific condition of the licence.
- (2) Before making the change to the retail or wholesale licence, the chief executive must give the licensee a notice (a *show cause notice*) stating—
 - (a) the chief executive proposes to make the change; and
 - (b) the details of the proposed change; and
 - (c) the reasons for the proposed change; and
 - (d) that the holder may, within 28 days after the notice is given, give the chief executive a written response to the proposed change.

7X Decision about changing conditions

- (1) This section applies if the chief executive gives a licensee a show cause notice under section 7W.
- (2) The chief executive must consider all responses complying with section 7W(2)(d) before deciding whether to make the change proposed in the show cause notice.

- licensee has been convicted of an offence for the contravention;
- (d) the licensee attempted to obstruct an authorised person in the exercise of a power under this Act;
 - (e) the licensee failed to comply with a request to make premises available for inspection made under section 7ZF;
 - (f) the licensee held another retail or wholesale licence that was suspended or cancelled under this Act;
 - (g) if the licensee is a partnership—a partner held a retail or wholesale licence that was suspended or cancelled under this Act.
- (2) Before suspending the retail or wholesale licence, the chief executive must give the licensee a notice (a *show cause notice*) stating—
- (a) the chief executive proposes to suspend the licence; and
 - (b) the disciplinary grounds for the proposed suspension; and
 - (c) the acts, omissions or circumstances that constitute the stated disciplinary grounds; and
 - (d) that the licensee may, within 28 days after being given the notice, give the chief executive a written response to the notice.
- (3) After considering all responses to the show cause notice complying with subsection (2)(d), the chief executive must—
- (a) decide to—
 - (i) take no further action; or
 - (ii) suspend the retail or wholesale licence; and

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- (b) give the licensee notice of the decision.
- (4) If the decision is to suspend the retail or wholesale licence, the notice must be an information notice.
- (5) The suspension—
 - (a) takes effect on the day stated in the information notice; and
 - (b) continues for the period of not more than 90 days as stated in the information notice.
- (6) The day stated in the information notice must be after the day the notice is given to the licensee.

7Z Cancellation

- (1) The chief executive may cancel a retail or wholesale licence if the chief executive reasonably believes—
 - (a) any of the disciplinary grounds mentioned in section 7Y(1)(a) to (g) apply in relation to the licence; or
 - (b) the licensee is not a fit and proper person to be a licensee; or
 - (c) if the licensee is a partnership—1 or more partners is not a fit and proper person to be a licensee; or
 - (d) the licensee is placed in administration, is wound up or is deregistered under the Corporations Act.
- (2) Before cancelling the retail or wholesale licence, the chief executive must give the licensee a notice (a *show cause notice*) stating—
 - (a) the chief executive proposes to cancel the retail or wholesale licence; and
 - (b) the disciplinary grounds for the proposed cancellation; and

- (c) the acts, omissions or circumstances that constitute the stated disciplinary grounds; and
 - (d) that the licensee may, within 28 days after being given the notice, give the chief executive a written response to the notice.
- (3) After considering all responses to the show cause notice complying with subsection (2)(d), the chief executive must—
- (a) decide to—
 - (i) take no further action; or
 - (ii) suspend or cancel the retail or wholesale licence; and
 - (b) give the licensee notice of the decision.
- (4) If the decision is to suspend or cancel the retail or wholesale licence, the notice must be an information notice.
- (5) The suspension or cancellation—
- (a) takes effect on the day stated in the information notice; and
 - (b) for a suspension—continues for the period of not more than 90 days as stated in the information notice.
- (6) The day stated in the information notice must be after the day the notice is given to the licensee.

7ZA Immediate suspension without show cause notice

- (1) This section applies if the chief executive reasonably believes—
- (a) a disciplinary ground exists for suspending or cancelling a retail or wholesale licence under section 7Y or 7Z; and

[s 7]

- (b) carrying on the business to which the retail or wholesale licence relates is an unacceptable risk to public health.
- (2) The chief executive may, without giving the licensee a show cause notice under section 7Y or 7Z, immediately suspend the retail or wholesale licence by giving the licensee an information notice for the decision.
- (3) The suspension—
 - (a) takes effect on the day stated in the information notice; and
 - (b) continues for the period of not more than 90 days as stated in the information notice.

7ZB Surrender

- (1) A licensee may surrender a retail or wholesale licence by written notice (a *surrender notice*) given to the chief executive.
- (2) A retail or wholesale licence surrendered under subsection (1) ceases to have effect on the day the surrender notice is given to the chief executive or any later day stated in the notice.

Division 7 Other matters affecting licences

Subdivision 1 Fit and proper persons

7ZC Deciding whether person is fit and proper

- (1) In deciding whether a person is a fit and proper person to be a licensee, the chief executive must have regard to the following matters—

- (a) whether the person holds or has previously held a retail or wholesale licence;
 - (b) the specific conditions of any retail or wholesale licence held or previously held by the person;
 - (c) whether a retail or wholesale licence held or previously held by the person is or has been suspended or cancelled;
 - (d) whether or not the person has contravened this Act, regardless of whether the person has been convicted of an offence for the contravention;
 - (e) whether or not the person has contravened a law of the Commonwealth or a State that regulates the supply of smoking products or any substance used in smoking products;
 - (f) whether the person has been convicted of an indictable offence relating to fraud, dishonesty, or tax or customs evasion;
 - (g) if the person is an individual—whether the person—
 - (i) is, or has been, an insolvent under administration under the Corporations Act, section 9; or
 - (ii) is, or has been, disqualified from managing corporations under the Corporations Act, part 2D.6;
 - (h) if the person is a corporation—whether the corporation is, or has been, placed into administration, receivership or liquidation.
- (2) Also, in deciding whether a person is a fit and proper person to be a licensee, the chief executive may have regard to—
- (a) if the licensee is a corporation—

[s 7]

- (i) whether or not a director of the corporation has contravened this Act, regardless of whether the person has been convicted of an offence for the contravention; and
 - (ii) whether or not a director of the corporation has contravened a law of the Commonwealth or a State that regulates the supply of smoking products or any substance used in smoking products; and
- (b) any other matter the chief executive considers relevant.
- (3) However, a liquor licensee is taken to be a fit and proper person to be a licensee for a retail licence (liquor) unless the liquor licence is suspended.

7ZD Criminal history report

- (1) This section applies if the chief executive is considering whether a person is a fit and proper person to be a licensee.
- (2) The chief executive may ask the commissioner of the police service for a criminal history report about—
 - (a) the person being considered; and
 - (b) if the person being considered is a corporation—a person who is a director of the corporation.
- (3) However, the chief executive may make the request only if the person has given the chief executive written consent for the request.
- (4) The commissioner of the police service must comply with the request.
- (5) However, the duty to comply applies only to

information in the possession of the commissioner of the police service or to which the commissioner has access.

- (6) The chief executive must ensure any information received under this section—
- (a) is destroyed as soon as practicable after the information is no longer needed for the purpose for which it was requested; and
 - (b) is not used for any purpose other than the purpose for which it was requested.

Example—

Reusing the information for another matter involving the person to which the information relates.

- (7) For subsection (6)(a), information in an electronic document may be destroyed in a way that complies with an authority given by the archivist under the *Public Records Act 2002* for the disposal of public records of the department.

Subdivision 2 Additional information and inspections of premises

7ZE Requesting further information or documents

- (1) This section applies if any of the following applications are made—
- (a) an application for a retail or wholesale licence under section 7F;
 - (b) an application to renew a retail or wholesale licence under section 7M;
 - (c) an application to restore a retail or wholesale licence under section 7N;

[s 7]

- (d) an application to change a specific condition of a retail or wholesale licence under section 7S.
- (2) The chief executive may, by written notice given to the applicant, ask the applicant for further information or a document the chief executive needs to decide the application.
- (3) The notice must be given to the applicant within 30 days after the application is made.
- (4) Information or documents given to the chief executive by the applicant under this section are taken to be part of the application and must be considered by the chief executive before deciding the application.
- (5) If the applicant does not give the chief executive requested information or documents within 14 days after receiving the notice, or the later day agreed to by the applicant and the chief executive, the application is taken to have been withdrawn.

7ZF Requesting inspection of premises

- (1) This section applies if—
 - (a) any of the following applications is made—
 - (i) an application for a retail or wholesale licence made under section 7F;
 - (ii) an application to renew a retail or wholesale licence made under section 7M;
 - (iii) an application to restore a retail or wholesale licence made under section 7N;
 - (iv) an application to change a specific condition of a retail or wholesale licence made under section 7S; or

- (b) a licensee notifies the chief executive of a change of premises for a retail or wholesale outlet.
- (2) The chief executive may, by written notice given to the applicant or licensee, ask the applicant or licensee to ensure premises mentioned in the application or notice given to the chief executive are made available for inspection by the chief executive on—
 - (a) the day stated in the written notice; or
 - (b) a day to be agreed between the applicant and the chief executive.
- (3) The written notice must be given to the applicant or licensee within 30 days after the application is made or notice is given to the chief executive.
- (4) The day on which the premises are requested to be made available for inspection by the chief executive must be within 14 days after the day the written notice is given to the applicant or licensee.
- (5) If the premises are not made available for inspection by the chief executive on the stated or agreed day, the application is taken to have been withdrawn.

Note—

Failure of a licensee to make premises available for inspection in compliance with a request under this section is grounds for suspending or cancelling a retail or wholesale licence under section 7Y or 7Z.

Subdivision 3 Executors, administrators and trustees as licensees

7ZG Death of licensee

- (1) This section applies if a licensee, who is an individual, dies (the *deceased*).

[s 7]

- (2) The executor of the deceased's estate may carry on the business conducted under the retail or wholesale licence as the licensee.

Note—

Under section 7ZJ, the executor must notify the chief executive if the executor, administrator or trustee becomes the licensee.

- (3) If the executor carries on the business conducted under the retail or wholesale licence, the executor—

- (a) is taken to be the licensee; and
(b) is taken to be a fit and proper person to be a licensee despite section 7ZC.

- (4) However, the executor may, as licensee, apply to renew or restore the retail or wholesale licence only if the chief executive is satisfied the renewal or restoration is necessary for the proper administration of the deceased's estate.

- (5) To remove any doubt, it is declared that the retail or wholesale licence continues to be subject to all limitations applying to the licence, including, for example, the term of the licence and all conditions applying to the licence.

- (6) Nothing in this section prevents the retail or wholesale licence being suspended or cancelled while the executor is licensee under this section.

- (7) In this section—

executor, of a deceased's estate, means the executor, administrator or trustee of the deceased's estate.

7ZH Licensee is placed into administration, receivership or liquidation

- (1) This section applies if a licensee is a corporation and is placed into administration, receivership or

liquidation.

- (2) The administrator of the corporation may carry on the business conducted under the retail or wholesale licence as the licensee.

Note—

Under section 7ZJ, the administrator must notify the chief executive if the administrator becomes the licensee.

- (3) If the administrator of the corporation decides to carry on the business conducted under the retail or wholesale licence, the administrator—
 - (a) is taken to be the licensee; and
 - (b) is taken to be a fit and proper person to be a licensee despite section 7ZC.
- (4) However, the administrator may, as licensee, apply to renew or restore the retail or wholesale licence only if the chief executive is satisfied the renewal or restoration is necessary for the administration, receivership or liquidation.
- (5) To remove any doubt, it is declared that the retail or wholesale licence continues to be subject to all limitations applying to the licence, including, for example, the term of the licence and all conditions applying to the licence.
- (6) Nothing in this section prevents the retail or wholesale licence being suspended or cancelled while the administrator is licensee under this section.

Division 8 Obligations of licensees

7ZI Notification of convictions

- (1) This section applies if a licensee is convicted of any of the following offences during the term of

[s 7]

the retail or wholesale licence—

- (a) an offence against this Act;
 - (b) an offence against a law of the Commonwealth or a State that regulates the supply of smoking products or any substance used in smoking products;
 - (c) an offence relating to fraud, dishonesty, or tax or customs evasion;
 - (d) an indictable offence.
- (2) The licensee must, within 14 days after being convicted of the offence, give notice of the conviction to the chief executive, unless the licensee has a reasonable excuse.

Maximum penalty—140 penalty units.

- (3) The notice must state—
- (a) the date of the conviction; and
 - (b) details adequate to identify the relevant offence for the conviction and when the offence was committed; and
 - (c) the sentence imposed, if any, for the conviction.

7ZJ Notification of particular events

- (1) This section applies if any of the following events happen in relation to a licence—
- (a) if the licensee is an individual—
 - (i) the licensee is an insolvent under administration under the Corporations Act, section 9; or
 - (ii) the licensee is disqualified from managing corporations under the Corporations Act, part 2D.6;

- (b) an executor, administrator or trustee becomes the licensee under section 7ZG;
 - (c) if the licensee is a corporation—
 - (i) the corporation is placed into administration, receivership or liquidation; or
 - (ii) there is a change of directors for the corporation;
 - (d) an administrator becomes the licensee under section 7ZH;
 - (e) if the licensee sells smoking products at liquor licensed premises—the liquor licence for the premises is suspended, cancelled or otherwise ceases to have effect;
 - (f) there is a change in the ownership of the business for the retail or wholesale licence;
 - (g) the premises for a retail or wholesale outlet of the licensee changes;
 - (h) the name, or business name, of the licensee changes.
- (2) The licensee must, within 14 days after the event happens, give notice of the event to the chief executive, unless the licensee has a reasonable excuse.
- Maximum penalty—140 penalty units.
- (3) The notice must state sufficient details to identify the event and when the event happened.

7ZK Licence to be displayed

- (1) A licensee must display an approved copy of the retail or wholesale licence at the retail or wholesale outlet for the licence so that the copy can be easily read by customers at the outlet at all times the outlet is open.

[s 7]

Maximum penalty—50 penalty units.

- (2) If a licensee sells smoking products by online sale, the licensee must display an approved copy of the retail or wholesale licence on the website for the relevant online shop.

Maximum penalty—50 penalty units.

- (3) If requested by an authorised person, a licensee must produce the retail or wholesale licence for inspection by the authorised person.

Maximum penalty—50 penalty units.

- (4) As soon as practicable after a retail or wholesale licence ceases to have effect under section 7E, the licensee must remove any display of the licence at a retail outlet, wholesale outlet or online shop.

Maximum penalty—50 penalty units.

- (5) In this section—

approved copy, of a retail or wholesale licence, means a copy of the licence that—

- (a) complies with the requirements prescribed by regulation; and
- (b) contains the information about the licence prescribed by regulation.

7ZL Invoices for supply to retailers

- (1) This section applies if either of the following licensees supplies a smoking product to a retailer—
 - (a) a licensee for a wholesale licence;
 - (b) a licensee for a retail licence to which a limited wholesale condition applies.
- (2) The licensee must give the retailer an invoice for the sale that is in English and that otherwise complies with the requirements prescribed by

regulation.

Maximum penalty—140 penalty units.

- (3) The retailer must keep a copy of the invoice for at least 2 years after being given the invoice.

Maximum penalty—140 penalty units.

7ZM Chief executive may require licensee to give particular information

- (1) This section applies to information in the possession or control of a licensee that the chief executive—
- (a) requires to determine whether the licensee is a fit and proper person to be a licensee under section 7ZC; or
 - (b) considers necessary for the administration of this Act.
- (2) The chief executive may, by written notice given to the licensee, require the licensee to give the chief executive the information stated in the notice within a reasonable period of at least 14 days as stated in the notice.
- (3) The licensee must comply with the notice, unless the licensee has a reasonable excuse.
- Maximum penalty—50 penalty units.

Division 9 Other offences

7ZN Wholesale to only be made to licensed retailers

- (1) The licensee for a wholesale licence must not sell a smoking product to a retailer unless the retailer holds a retail licence.

[s 7]

Maximum penalty—1,000 penalty units.

- (2) For subsection (1), a licensee sells a smoking product if—
 - (a) the licensee sells the product; or
 - (b) an employee of the licensee sells the product in the course of the employee's employment.
- (3) It is a defence to a charge under subsection (1) for the licensee to prove that—
 - (a) an employee sold the smoking product to the retailer; and
 - (b) before the employee sold the smoking product, the licensee had taken prevention measures in relation to the employee.
- (4) This section also applies to a licensee for a retail licence to which a limited wholesale condition applies as if a reference to a wholesale licence were a reference to the retail licence.
- (5) In this section—
prevention measures see section 9.

7ZO Particular dealings with licences prohibited

The licensee for a retail or wholesale licence must not—

- (a) purport to sell or transfer the licence to someone else; or
- (b) notify or advertise that the licence is available for sale or transfer; or
- (c) permit or allow someone else to hold out that the person is the holder of the licence.

Maximum penalty—200 penalty units.

7ZP False or misleading information

- (1) A person must not, in relation to a retail or wholesale licence or an application under this Act—
 - (a) state anything to the chief executive that the person knows is false or misleading in a material particular; or
 - (b) give the chief executive information or a document the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when making the statement or giving the information or document—
 - (a) tells the chief executive, to the best of the person's ability, how the statement, information or document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the chief executive.

Division 10 Register of licences

7ZQ Chief executive must keep register

- (1) The chief executive must keep a register of all retail licences and wholesale licences.
- (2) The register must contain the following information for each retail or wholesale licence—
 - (a) the business name for the retail or wholesale outlet for the licence;
 - (b) the address of the retail or wholesale outlet for the licence.

[s 7]

- (3) The register may contain other information the chief executive considers appropriate.
- (4) The register is to be kept in the way the chief executive considers appropriate, including, for example, in an electronic form.
- (5) The chief executive may publish information contained in the register, other than personal information, on the department's website.
- (6) In this section—

personal information means personal information within the meaning of the *Information Privacy Act 2009*, section 12, other than—

 - (a) the name of a licensee; or
 - (b) information that is lawfully available to the public.

Division 11 Review of decisions

Subdivision 1 Preliminary

7ZR Definitions for division

In this division—

affected person, for a decision, means—

- (a) if the decision is an original decision—a person who must be given an information notice for the decision under this part; or
- (b) if the decision is an internal review decision—the person who applied for the internal review.

internal review, of an original decision, see section 7ZT(1).

internal review decision means a decision made, or taken to have been made, under section 7ZV on an application for an internal review of an original decision.

original decision means a decision for which an information notice must be given under this part.

QCAT information notice, for a decision, means a notice complying with the QCAT Act, section 157(2).

Subdivision 2 Internal review

7ZS Review process must start with internal review

An affected person for an original decision may apply to QCAT for a review of the decision only if a decision on an application for an internal review of the decision has been made, or taken to have been made, under this subdivision.

7ZT Who may apply for internal review

- (1) An affected person for an original decision may apply to the chief executive for a review of the decision under this subdivision (an ***internal review***).
- (2) If the affected person has not been given an information notice for the original decision, the affected person may ask the chief executive for an information notice for the decision.
- (3) A failure by the chief executive to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

[s 7]

7ZU Requirements for application

- (1) An application for an internal review of an original decision must—
 - (a) be made in the approved form; and
 - (b) for a person who has been given an information notice for the decision—include enough information to enable the chief executive to decide the application; and
 - (c) be made to the chief executive within—
 - (i) for a person who has been given an information notice for the decision—20 business days after the day the person is given the notice; or
 - (ii) for a person who has not been given an information notice for the decision—20 business days after the day the person becomes aware of the decision.
- (2) The chief executive may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the original decision or prevent the decision being implemented.

Note—

Section 7ZW provides for a stay of the original decision.

7ZV Internal review

- (1) The chief executive must, within 20 business days after receiving an application for an internal review of an original decision—
 - (a) review the original decision; and
 - (b) decide to—
 - (i) confirm the original decision; or

- (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision; and
 - (c) give the affected person for the original decision a QCAT information notice for the decision made under paragraph (b).
- (2) The chief executive and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the chief executive to comply with the subsection.
 - (3) For the purpose of delegating the power under this section, the application may be dealt with only by a person who—
 - (a) did not make the original decision; and
 - (b) holds a more senior office than the person who made the original decision.
 - (4) Subsection (3) does not apply to an original decision made by the chief executive personally.
 - (5) If the chief executive does not give the affected person a QCAT information notice within the period required under subsection (1) or a longer period agreed under subsection (2), the chief executive is taken to confirm the original decision.

Subdivision 3 Stays

7ZW QCAT may stay operation of original decision

- (1) If an application is made for an internal review of an original decision under subdivision 2, the applicant may immediately apply, as provided under the QCAT Act, to QCAT for a stay of the decision.

[s 8]

- (2) QCAT may make an order staying the operation of the original decision to secure the effectiveness of the internal review and any later review by QCAT.
- (3) A stay by QCAT under this section—
 - (a) may be given on conditions QCAT considers appropriate; and
 - (b) operates for the period fixed by QCAT; and
 - (c) may be amended or revoked by QCAT.
- (4) The period of a stay by QCAT under this section must not extend past the end of the period within which an application for a review of the internal review decision may be made under the QCAT Act.

Subdivision 4 External review

7ZX Applying for external review

- (1) This section applies to a person who must be given a QCAT information notice for an internal review decision under section 7ZV.
- (2) The person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of the internal review decision, either on application by a person or on its own initiative.

8 Amendment of s 9 (Meaning of *prevention measures* for div 1)

- (1) Section 9, definition *prevention measures*, paragraph (a)—
insert—

-
- (iii) if the employee is a child—not to supply smoking products to anyone in any circumstances; and
 - (iv) to only supply smoking products as authorised under a retail or wholesale licence applying to the supplier, including all the conditions applying to the licence; and
- (2) Section 9, definition *prevention measures*, paragraph (b), ‘smoking products to children’—
- omit, insert—*
- a smoking product to a person

9 Insertion of new s 9B

After section 9A—

insert—

9B Supplier must not sell smoking products without licence

- (1) A supplier must not sell a smoking product unless the supplier holds a retail or wholesale licence that authorises that type of sale.
Maximum penalty—1,000 penalty units.
- (2) This section does not apply to—
 - (a) a person selling smoking products as an employee of another person; or
 - (b) a supplier that is a pharmacist if—
 - (i) the smoking product is a regulated substance; and
 - (ii) the supply is made because of a prescription.
- (3) In this section—
supplier includes a person who, as part of a

[s 10]

business activity, supplies smoking products to
retailers.

10 Insertion of new s 11A

After section 11—

insert—

11A Supplier must ensure child employees do not supply or handle smoking products

- (1) A supplier must ensure a child employee of the supplier does not—
 - (a) supply a smoking product to a person in the course of the child’s employment; or
 - (b) handle a smoking product in the course of the child’s employment.

Maximum penalty—

- (a) for a first offence—140 penalty units; or
- (b) for a second offence—280 penalty units; or
- (c) for a third or later offence—420 penalty units.

Note—

See section 57 for the application of this section to a small business.

- (2) Subsection (1) does not apply to the supply or handling of a smoking product if—
 - (a) the supplier is a pharmacist; and
 - (b) the smoking product is a regulated substance; and
 - (c) the supplier only supplies the smoking product to persons under a prescription.
- (3) Also, subsection (1) does not apply to the handling of a smoking product if the purpose of the handling is to—

- (a) deliver smoking products to premises; or
 - (b) load smoking products into, or unload smoking products from, a vehicle; or
 - (c) warehouse smoking products.
- (4) It is a defence to a charge under subsection (1) for the supplier to prove that, before the supply, the supplier took the prevention measures in relation to the child employee.
- (5) In this section—
- child employee* means an employee who is a child.

11 Amendment of s 12 (When employee of supplier liable)

- (1) Section 12(2), from ‘employment’ to ‘child.’—

omit, insert—

employment—

- (a) supply a smoking product to a child; or
- (b) sell a smoking product unless the supplier holds a retail or wholesale licence that authorises that type of sale.

- (2) Section 12—

insert—

- (3) This section does not apply to—
- (a) an employee who is a child; or
 - (b) the sale of a smoking product if—
 - (i) the supplier is a pharmacist; and
 - (ii) the smoking product is a regulated substance; and
 - (iii) the sale is made under a prescription.

[s 12]

12 Amendment of s 13A (Power to require details of retail suppliers)

- (1) Section 13A(1), after ‘retail outlets’—
insert—
or online shops
- (2) Section 13A(2), ‘(the *contact information*)’—
omit, insert—
(the *supplier information*)
- (3) Section 13A(2)—
insert—
(ca) the website address of the supplier’s online shop;
- (4) Section 13A(2)—
insert—
(g) the chemical composition of the smoking products;
(h) the number, type or quantity of smoking products.
- (5) Section 13A(3) and (5), ‘contact information’—
omit, insert—
supplier information

13 Amendment of s 14 (Definitions for div 2)

Section 14, definitions *bar* and *bar area*—
omit.

14 Amendment of s 15 (Restriction on location of tobacco product vending machines)

Section 15(2) and (3)—

omit, insert—

- (2) Subsection (1) does not apply to—
- (a) liquor licensed premises if—
- (i) the liquor licensee for the premises holds a retail licence (liquor); and
- (ii) the tobacco product vending machine in the premises can be accessed only by the employees of the person in charge of the tobacco product vending machine; or
- (b) a tobacco product vending machine while it is not being used by anyone to supply tobacco products.

Example for paragraph (b)—

A tobacco product vending machine being stored, transported or repaired.

- (3) For subsection (2)(a)(ii), a tobacco product vending machine in liquor licensed premises can be accessed only by the employees of the person in charge of the machine if the machine is in a part of the premises that—
- (a) can not be accessed by customers; or

Example—

a locked storage area

- (b) the liquor licensee restricts to employees only.

Example—

behind a bar or counter and out of reach of customers

15 Amendment of s 15A (Person in charge of tobacco product vending machine in bar area or gaming machine area must instruct employees)

- (1) Section 15A, heading, ‘bar area or gaming machine area’—

[s 16]

omit, insert—

liquor licensed premises

- (2) Section 15A, ‘a bar area or gaming machine area’—

omit, insert—

liquor licensed premises

16 Insertion of new s 16A

After section 16—

insert—

16A Supply of smoking products at liquor licensed premises from tobacco product vending machines

- (1) This section applies if—
- (a) tobacco products may be purchased from a tobacco product vending machine at liquor licensed premises; and
 - (b) an employee of the person in charge of the tobacco product vending machine must purchase the tobacco product from the machine on behalf of a customer.
- (2) The employee must not supply the tobacco product to the customer at any part of the liquor licensed premises other than a point of sale for the premises.

Maximum penalty—140 penalty units.

17 Amendment of s 19 (Supply prohibited)

- (1) Section 19, heading, after ‘Supply’—

insert—

to children

- (2) Section 19(2)—

omit.

18 Amendment of s 25 (Definitions for pt 2A)

Section 25, definition, *smoking product*, paragraph (a), after ‘loose smoking blend,’—

insert—

a thing that is intended to be smoked in a hookah,

19 Replacement of s 26 (Application of div 1)

Section 26—

omit, insert—

26 Application of division

- (1) This division applies to the display and advertisement of smoking products by suppliers.
- (2) To remove any doubt, it is declared that if a supplier displays or advertises a smoking product, it is irrelevant that the display or advertisement uses a description or colloquialism for the smoking product instead of the ordinary name of the product.

Examples—

smoke-less products, tobacco-free products, vapes

- (3) This division does not apply to a tobacco product vending machine.

20 Amendment of s 26A (Prohibition on display, and restrictions on advertising, of smoking products)

Section 26A(2) and (3), after ‘retail outlet’—

insert—

or on an online shop

[s 21]

21 Amendment of s 26HA (Certain business names allowed)

Section 26HA(2)—

omit, insert—

(2) However, a supplier is taken to advertise or display a smoking product if—

(a) the supplier advertises or displays a business name that includes anything about the price of smoking products; or

Example—

Discount Cigs and Tobacco

(b) the supplier advertises or displays more than 1 business name mentioned in subsection (1) in relation to a single business.

(3) For subsection (2), advertising includes using all mediums of communication, whether alone or in any combination.

Example—

radio advertisements using different business names for each advertisement to target or attract specific consumer groups

22 Amendment of s 26HB (Use of ‘tobacconist’ in advertising)

Section 26HB—

insert—

(2) In this section—

tobacconist means a person who conducts a business selling smoking products by retail if—

(a) 80% or more of average gross turnover is derived from the sale of smoking products by retail; and

- (b) the business is conducted separately from, not in conjunction with, and not within the premises of, any other business.

23 Replacement of s 26HC (Display of signage at supplier's relevant point of sale)

Section 26HC—

omit, insert—

26HC Display of signage at supplier's relevant point of sale

- (1) A supplier must display a mandatory sign at the supplier's relevant point of sale.

Maximum penalty—20 penalty units.

- (2) A supplier must not display more than 1 mandatory sign at the supplier's relevant point of sale.

Maximum penalty—20 penalty units.

- (3) A supplier may display a permitted sign at the supplier's relevant point of sale.

- (4) However, a supplier must not display more than 1 permitted sign at the supplier's relevant point of sale.

Maximum penalty—20 penalty units.

- (5) In this section—

mandatory sign means a sign prescribed under a regulation as a mandatory sign.

permitted sign means a sign prescribed under a regulation as a permitted sign.

24 Amendment of s 26N (Smoking product giveaways)

- (1) Section 26N, after 'free'—

insert—

[s 25]

or a nominal fee

(2) Section 26N—

insert—

(3) In this section—

nominal fee, for a smoking product, means an amount for the product that—

- (a) does not cover the cost of making and supplying the product; or
- (b) is significantly less than a recommended retail value for the product.

25 Amendment of s 26PA (Image of consumption of smoking product)

Section 26PA—

insert—

- (3) For subsection (1), it is irrelevant whether the image is displayed as a fixed or moving image, or as part of a video.

26 Amendment of s 26Q (Definitions for pt 2B)

(1) Section 26Q, heading—

omit, insert—

26Q Definition for part

(2) Section 26Q, definitions *licensed premises* and *licensee*—

omit.

(3) Section 26Q, definition *premium gaming room*, ‘patrons’—

omit, insert—

customers

27 Amendment of s 26U (Person smoking must stop when directed)

(1) Section 26U, heading—

omit, insert—

26U No food or drink to be provided while person continues smoking after being directed to stop

(2) Section 26U(1)—

omit, insert—

(1) This section applies if a person contravening section 26R(1) is directed to stop smoking by—

- (a) an authorised person; or
- (b) an occupier of an enclosed place where the contravention is happening; or
- (c) an employee or agent of an occupier mentioned in paragraph (b).

(3) Section 26U(2), ‘If a person’—

omit, insert—

If the person

(4) Section 26U(2), ‘a direction to stop the contravention’—

omit, insert—

the direction

28 Omission of s 26VI (Person smoking must stop when directed)

Section 26VI—

omit.

29 Omission of s 26VM (Person smoking must stop when directed)

Section 26VM—

[s 30]

omit.

30 Omission of s 26VP (Person smoking must stop when directed)

Section 26VP—

omit.

31 Amendment of s 26VQ (Person must not smoke at or near school facility)

(1) Section 26VQ(4)—

insert—

school community, for a school, means the students, teachers, parents of students, visitors and other employees for the school.

(2) Section 26VQ(4), definition *school facility*—

insert—

(d) a carpark is located if the carpark is—

- (i) adjacent to a school mentioned in paragraph (a), (b) or (c); and
- (ii) provided for the exclusive use of the school community of the school.

32 Omission of s 26VR (Person smoking must stop when directed)

Section 26VR—

omit.

33 Omission of s 26VT (Person smoking must stop when directed)

Section 26VT—

omit.

34 Omission of s 26VV (Person smoking must stop when directed)

Section 26VV—

omit.

35 Omission of s 26VX (Person smoking must stop when directed)

Section 26VX—

omit.

36 Insertion of new pt 2C, div 1, sdiv 1, hdg

Before section 26W—

insert—

Subdivision 1 General provisions

37 Amendment of s 26W (Meaning of *outdoor eating or drinking place*)

Section 26W(4) and (4A)—

omit.

38 Amendment of s 26X (Person must not smoke at outdoor eating or drinking place)

Section 26X(2)—

omit, insert—

(2) A person must not smoke on land within 5m beyond the boundary of an outdoor eating or drinking place (the *buffer zone*).

Maximum penalty—20 penalty units.

(3) Subsection (2) does not apply to a person—

[s 39]

- (a) in the buffer zone at residential premises or on residential land; or
 - (b) in the buffer zone at business premises; or
 - (c) travelling through the buffer zone in a motor vehicle or on personal transport; or
 - (d) walking through the buffer zone.
- (4) This section does not apply to—
- (a) a smoking area set aside under section 26XA or 26ZGA; or
 - (b) a designated outdoor smoking area.

39 Insertion of new s 26XA

After section 26X—

insert—

26XASmoking area at outdoor eating or drinking place

- (1) An occupier of an outdoor eating or drinking place may set aside a part of the place as an area in which smoking is allowed (a *smoking area*) if—
- (a) smoking in the area is not prohibited under this Act, other than under section 26X; or
- Example—*
- An occupier may not set aside, as a smoking area, an area within 5m of an entrance to an enclosed place, because smoking in that area is prohibited under section 26ZJ.
- (b) food or drink is not served in the area or the buffers for the area; or
 - (c) entertainment is not offered in the area or the buffers for the area.
- (2) An occupier of an outdoor eating or drinking place establishes a smoking area at the place by—

- (a) posting a diagram or other notice clearly showing the limits of the area and the buffers for the area; and
 - (b) posting a prominent sign in the area indicating the area as the only part of the outdoor eating or drinking place in which people may smoke; and
 - (c) posting a prominent sign in or around the area directing people not to eat or drink within the area or the buffers for the area.
- (3) If an occupier of an outdoor eating or drinking place establishes a smoking area at the place, the area must be surrounded by a buffer that is at least 2m wide and wholly contained within the place.
- (4) For subsection (3), a buffer may be a space, an object or a structure.
- (5) The occupier of an outdoor eating or drinking place must not set aside a part of the place as an area in which smoking is allowed other than in compliance with subsections (1) to (3).
- Maximum penalty—140 penalty units.
- (6) This section does not apply to an occupier that is the licensee of—
- (a) premises to which a commercial hotel licence or community club licence under the *Liquor Act 1992* applies; or
 - (b) premises, to which a commercial special facility licence under the *Liquor Act 1992* applies, that contain all or part of a casino.

40 Amendment of s 26Y (Person smoking must stop when directed)

- (1) Section 26Y, heading—
omit, insert—

[s 41]

26Y No food or drink to be provided while person continues smoking after being directed to stop

(2) Section 26Y(1)—

omit, insert—

(1) This section applies if a person contravening section 26X(1) or (2) is directed to stop smoking by—

- (a) an authorised person; or
- (b) an occupier of the outdoor eating or drinking place where the contravention is happening; or
- (c) an employee or agent of an occupier mentioned in paragraph (b).

(3) Section 26Y(2), ‘If a person’—

omit, insert—

If the person

(4) Section 26Y(2), ‘a direction to stop the contravention’—

omit, insert—

the direction

(5) Section 26Y(2), after ‘section 26X(1)’—

insert—

or (2)

41 Insertion of new pt 2C, div 1, sdiv 2, hdg

After section 26Z—

insert—

Subdivision 2 Provisions for particular liquor licensed premises

42 Amendment of s 26ZA (Designating an outdoor smoking area)

- (1) Section 26ZA(6), ‘of the outdoor area’—
omit.
- (2) Section 26ZA—
insert—
- (9A) If a buffer includes a door, the door must remain closed unless customers or employees of the premises are using the door to enter or exit the designated outdoor smoking area.
- (9B) If a buffer includes a window, the window must remain closed while the designated outdoor smoking area is being used.
- (3) Section 26ZA(10), from ‘designated under’ to ‘consumed’—
omit, insert—
set aside as a smoking area under section 26XA

43 Amendment of s 26ZB (Obligations of liquor licensee of premises with designated outdoor smoking area)

- (1) Section 26ZB(2)—
insert—
- (e) there are no children in the area.
- (2) Section 26ZB—
insert—
- (2A) Subsection (2)(e) does not apply in relation to a child if the child merely walks through the designated outdoor smoking area.

44 Amendment of s 26ZD (Person must not smoke within government precinct)

- (1) Section 26ZD(1), after ‘precinct’—

[s 45]

insert—

, unless the person has a reasonable excuse

(2) Section 26ZD—

insert—

(1A) It is a reasonable excuse for subsection (1) that the person was not remaining at the government precinct but was merely passing through the precinct.

45 Omission of s 26ZE (Person smoking must stop when directed)

Section 26ZE—

omit.

46 Insertion of new pt 2C, div 2A

Part 2C—

insert—

Division 2A Outdoor markets

26ZE Person must not smoke at an outdoor market

- (1) A person must not smoke at an outdoor market.
Maximum penalty—20 penalty units.
- (2) Subsection (1) does not apply to a smoking area set aside under section 26ZGA.

26ZF Person must not smoke near entrance to outdoor market

- (1) A person must not smoke outside an outdoor market within 5m of any part of a clearly designated entrance to, or exit from, an outdoor market, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to a person—
 - (a) at residential premises or on residential land; or
 - (b) at business premises; or
 - (c) travelling past the entrance in a motor vehicle or on personal transport; or
 - (d) walking past the entrance.

26ZG Offence by organiser

- (1) If a person contravenes section 26ZE(1), the organiser of the outdoor market commits an offence.

Maximum penalty—140 penalty units.

- (2) It is a defence to a charge under subsection (1) for the organiser of the outdoor market to prove that—
 - (a) the organiser was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
 - (b) the organiser, or an employee or agent of the organiser—
 - (i) directed the person to stop smoking; and
 - (ii) told the person it was an offence not to comply with the direction to stop smoking.

26ZGA Smoking area

- (1) The organiser of an outdoor market may set aside a part of the market as an area in which smoking is allowed (a *smoking area*) if smoking in the area

[s 47]

would not be prohibited under this Act, other than under section 26ZE.

Example—

An organiser of an outdoor market may not set aside, as a smoking area, an area within 5m of an entrance to an enclosed place, because smoking in that area is prohibited under section 26ZJ.

- (2) The organiser of an outdoor market establishes a smoking area at the market by—
 - (a) posting a diagram or other notice clearly showing the limits of the area; and
 - (b) posting a prominent sign in the area indicating the area as the only part of the market in which people may smoke; and
 - (c) posting a prominent sign in or around the area directing people not to eat or drink within the area or within 5m of the boundary of the area.
- (3) The organiser of an outdoor market must not set aside a part of the market as an area in which smoking is allowed other than in compliance with subsections (1) and (2).

Maximum penalty—140 penalty units.

47 Amendment of s 26ZKD (Person must not smoke at or near under-age sporting event)

- (1) Section 26ZKD, heading, ‘under-age sporting event’—
omit, insert—

**organised under-age sporting event or
organised children’s activity**

- (2) Section 26ZKD—
insert—

(1A) A person must not smoke in that part of a park or

on a similarly defined area of land being used for an organised children's activity.

Maximum penalty—20 penalty units.

(3) Section 26ZKD(2)—

omit, insert—

(2) A person must not smoke on land within 10m beyond the boundary of any of the following places (the **buffer zone**) when smoking is prohibited under subsection (1) or (1A)—

- (a) a sporting ground;
- (b) the viewing area for a water sport;
- (c) that part of a park or a similarly defined area of land being used for an organised children's activity.

Maximum penalty—20 penalty units.

(4) Section 26ZKD—

insert—

(3A) To remove any doubt, it is declared that if an organised children's activity is being conducted in a park or on other land, the activity is not taken to use the entire park or land merely because the activity is being conducted in the park or on the land.

(5) Section 26ZKD(4), definition *organised under-age sporting event*, paragraph (b), 'persons under 18'—

omit, insert—

children

(6) Section 26ZKD(4)—

insert—

organised children's activity—

- (a) means an outdoor activity—

[s 48]

- (i) conducted by an association or club; and
- (ii) organised in advance; and
- (iii) organised for the participation of children; but

Example—

a supervised activity for Scouts or Girl Guides

(b) does not include—

- (i) an excursion; or
- (ii) attendance at a public event; or
- (iii) a parade in a public place and intended to be viewed by the public.

Example for subparagraph (iii)—

a street parade

48 Omission of s 26ZL (Person smoking must stop when directed)

Section 26ZL—

omit.

49 Amendment of s 26ZQA (Display of hookahs)

Section 26ZQA(2)—

omit, insert—

(2) For subsection (1)—

- (a) the display of a part of a hookah is taken to be the display of a hookah; and
- (b) the display of packaging for a hookah is taken to be the display of a hookah if—
 - (i) the packaging includes a picture of a hookah; or

-
- (ii) the packaging includes a statement that the package is for a hookah; and
 - (c) the display of a static or moving image of a hookah or a part of a hookah is taken to be the display of a hookah.
- (3) For subsection (2)(b), it is irrelevant whether the packaging contains a hookah or a part of a hookah.

50 Insertion of new s 26ZQB

After section 26ZQA—

insert—

26ZQB Supply or possession of illicit tobacco

- (1) A supplier must not supply illicit tobacco.
Maximum penalty—300 penalty units.
- (2) A supplier must not store or otherwise be in possession of illicit tobacco at the premises where the supplier supplies smoking products.
Maximum penalty—140 penalty units.
- (3) It is a defence to a charge under subsection (2) for the supplier to prove that the illicit tobacco is for personal use by the supplier or an employee of the supplier.
- (4) Subsection (3) does not apply if the quantity of illicit tobacco is a commercial quantity.
- (5) In this section—
commercial quantity, for illicit tobacco, means more than the quantity prescribed by regulation.
health warning means—
 - (a) a health warning under the *Tobacco Plain Packaging Act 2011* (Cwlth), section 4; or
 - (b) a similar warning prescribed by regulation.

[s 51]

illicit tobacco means a smoking product that does not comply with any of the following requirements—

- (a) each plain packaging requirement;
- (b) a requirement to include a health warning under a law of the Commonwealth prescribed by regulation;
- (c) another requirement for the smoking product under a law of the Commonwealth prescribed by regulation.

plain packaging requirement means a tobacco product requirement under the *Tobacco Plain Packaging Act 2011* (Cwlth), section 4.

51 Amendment of s 28 (Appointment)

- (1) Section 28(5)(b) to (d)—

omit, insert—

- (b) section 26VW(1) and (2);
- (c) section 50B to the extent it relates to a person smoking in contravention of a section mentioned in paragraph (a) or (b).

- (2) Section 28—

insert—

- (5A) A conservation officer under the *Nature Conservation Act 1992* is an authorised person and the functions of the officer are to investigate, monitor and enforce compliance with sections 26ZKE and 26ZL.
- (5B) A police officer is an authorised person and the functions of the officer are to investigate, monitor and enforce compliance with section 26ZQB.
- (5C) However, sections 29, 30A, 30D and 30E do not apply in relation to a conservation officer or

police officer as an authorised person.

(5D) To remove any doubt, it is declared that the limited function of an authorised person under subsection (5), (5A) or (5B) does not limit the powers the authorised person has under this part for the performance of the function.

(3) Section 28(5A), from ‘with’—

omit, insert—

with the following sections—

(a) section 26ZKE;

(b) section 50B to the extent it relates to a person smoking in contravention of section 26ZKE(1).

(4) Section 28(5B), ‘section 26ZQB’—

omit, insert—

sections 9B and 26ZQB

52 Amendment of s 33 (Entry of places by authorised persons)

(1) Section 33(2)(b), before ‘licensed premises’—

insert—

liquor

(2) Section 33—

insert—

(4) After entering a place under this section, an authorised person may remain at the place for a reasonable period to take either of the following actions, regardless of whether the place continues to be open to the public or open for carrying on business—

(a) exercise a power under section 37;

[s 53]

(b) if the entry is made for the purpose of checking compliance with an improvement notice—check compliance with the notice.

(5) In this section—

improvement notice see section 44C(2).

53 Amendment of s 37 (General powers after entering places)

(1) Section 37(3)(g)—

omit, insert—

(g) require the owner of the place, occupier of the place or another person at the place to give the authorised person information to help the authorised person ascertain—

(i) whether this Act is being complied with; or

(ii) if smoking products are sold at the place—the name and contact details of the business that sells the smoking products at the place.

(2) Section 37—

insert—

(5) In this section—

owner, of a place, includes—

(a) a lessee for the place; and

(b) an agent of the owner who is responsible for the management or maintenance of the place.

54 Amendment of s 40A (Power to direct person to stop smoking)

(1) Section 40A(1), ‘relevant provision’—

omit, insert—

smoking prohibition

- (2) Section 40A(4), definition *relevant provision—*

omit, insert—

smoking prohibition see section 50B(2).

55 Amendment of s 42D (Forfeiture of seized things)

Section 42D, heading, after ‘things’—

insert—

that can not be returned to owner

56 Insertion of new s 42F

After section 42E—

insert—

42F Forfeiture of illicit tobacco

- (1) The chief executive may decide a seized thing is forfeited to the State if the chief executive—
 - (a) is satisfied the thing is illicit tobacco; and
 - (b) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, before making the decision, the chief executive must give the owner of the seized thing a notice stating that—
 - (a) the chief executive believes the seized thing is illicit tobacco and it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized; and
 - (b) the chief executive proposes the seized thing be forfeited to the State; and

[s 57]

- (c) the owner may, within 28 days after being given the notice (the *response period*), give the chief executive a written response to the belief and proposal.
- (3) Also, before making the decision, the chief executive must consider all responses complying with subsection (2)(c).
- (4) If the chief executive decides the seized thing is forfeited to the State, the chief executive must give the owner of the seized thing written notice of the decision and the reasons for the decision.
- (5) However, if a proceeding involving the seized thing was started, the chief executive must not act under subsection (1) until the end of the proceeding or any appeal from the proceeding.
- (6) In this section—
seized thing means a thing seized under section 40B or 41.

57 Amendment of s 44C (Improvement notices)

- (1) Section 44C(3)(d) and (e)—
omit, insert—
 - (d) each of the following statements that is relevant—
 - (i) that the person must immediately cease the contravention;
 - (ii) that the person must not continue or repeat the contravention.
- (2) Section 44C—
insert—
 - (3A) If the authorised person believes that reasonable steps may be taken by the person to remedy the contravention or likely contravention, the

improvement notice may state the reasonable steps the person must take to remedy the contravention.

(3B) If the improvement notice states reasonable steps the person must take to remedy the contravention or likely contravention, the improvement notice must state the reasonable period during which the person must take the steps.

(3) Section 44C—

insert—

(5) Subsection (4) does not prevent the prosecution and punishment of the person for the contravention for which the person was given the improvement notice.

58 Insertion of new ss 50A and 50B

After section 50—

insert—

50A Person smoking may be directed to stop

If a person (the *smoker*) is smoking in contravention of a section 26R(1), 26VH(1), 26VL(1), 26X(1) or (2) or 26ZE(1), the following persons may direct the smoker to stop smoking—

- (a) for a contravention of section 26R(1) at an enclosed place—
 - (i) an occupier of the place; or
 - (ii) an employee or agent of the occupier;
- (b) for a contravention of section 26VH(1) at a major sports facility—
 - (i) an occupier of the facility; or

[s 58]

- (ii) an occupier of the part of the facility where the contravention is happening; or
 - (iii) an employee or agent of an occupier mentioned in subparagraph (i) or (ii);
- (c) for a contravention of section 26VL(1) at a major event facility—
 - (i) the major event organiser for the facility; or
 - (ii) the major event organiser for the part of the facility where the contravention is happening; or
 - (iii) an employee or agent of a major event organiser mentioned in subparagraph (i) or (ii);
- (d) for a contravention of section 26X(1) or (2) at an outdoor eating or drinking place—
 - (i) an occupier of the place; or
 - (ii) an employee or agent of the occupier;
- (e) for a contravention of section 26ZE(1) at an outdoor market—
 - (i) the organiser of the outdoor market; or
 - (ii) an employee or agent of the organiser.

Note—

An authorised person also has the power to direct the smoker to stop smoking under section 40A.

50B Person smoking must stop when directed

- (1) A person smoking in contravention of a smoking prohibition must comply with a direction to stop smoking made to the person by an authorised person or another person authorised under section 50A.

Maximum penalty—20 penalty units.

(2) In this section—

smoking prohibition means section 26R(1), 26VH(1), 26VL(1), 26VO(1) or (2), 26VQ(1) or (2), 26VS(1), 26VU(1) or (2), 26VW(1) or (2), 26X(1) or (2), 26ZD(1), 26ZF(1), 26ZH(1), 26ZI(1), 26ZJ(1), 26ZK(1), 26ZKA(1), 26ZKB(1) or (2), 26ZKC(1), 26ZKD(1), (1A) or (2) or 26ZKE(1).

59 Insertion of new pt 3, div 6

Part 3—

insert—

Division 6 Appeals for particular forfeiture decisions

50C Definition for division

In this division—

forfeiture decision means a decision of the chief executive to forfeit illicit tobacco under section 42F.

50D Appealing forfeiture decision

- (1) This section applies to a person who must be given written notice of a forfeiture decision.
- (2) The person may appeal to a Magistrates Court (the *court*) against the forfeiture decision by filing a notice of appeal with the registrar of the court.
- (3) The notice of appeal must state fully the grounds of the appeal.
- (4) The person must file the notice of appeal within 28 days after written notice of the forfeiture

[s 59]

decision is given to the person or the person otherwise becomes aware of the decision.

- (5) However, the court may, on application and at any time, extend the time for filing the notice of appeal.
- (6) The person must serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the chief executive.
- (7) The appeal does not affect the operation of the forfeiture decision or prevent the forfeiture decision being implemented.

50E Staying operation of decision

- (1) A person mentioned in section 50D(1) may apply to the court for a stay of the operation of the forfeiture decision.
- (2) The court may, by order, stay the operation of the forfeiture decision to secure the effectiveness of the appeal.
- (3) The court may stay the operation of the forfeiture decision on conditions the court considers appropriate.
- (4) The stay operates for the period decided by the court.
- (5) However, the period of the stay must not extend past the time when the court decides the appeal.

50F Powers of court on appeal

- (1) When deciding the appeal against a forfeiture decision, the court—
 - (a) has the same powers as the chief executive in making the forfeiture decision; and
 - (b) is not bound by the rules of evidence; and

- (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
 - (a) confirm the forfeiture decision; or
 - (b) substitute another decision for the forfeiture decision; or
 - (c) set aside the forfeiture decision and return the matter to the chief executive with directions the court considers appropriate.

50G Effect of court's decision on appeal

- (1) If the court substitutes another decision for the forfeiture decision—
 - (a) the substituted decision is taken to be a decision of the chief executive; and
 - (b) the chief executive may give effect to the substituted decision as if—
 - (i) the substituted decision were the forfeiture decision made by the chief executive; and
 - (ii) no application for appeal of the forfeiture decision had been made.
- (2) If the court sets aside the forfeiture decision and returns the matter to the chief executive with directions, any decision made by the chief executive in accordance with the directions may not be appealed against under this division.

60 Insertion of new ss 52–52D

After section 51C—

insert—

[s 60]

52 Confidentiality of information

- (1) This section applies to confidential information that an administrator—
 - (a) obtains in performing a function under this Act; or
 - (b) obtains access to, whether directly or indirectly, from a person performing a function under this Act.
- (2) The administrator must not, directly or indirectly, disclose the confidential information to another person unless the disclosure is permitted under subsection (3).

Maximum penalty—50 penalty units.

- (3) An administrator is permitted to disclose confidential information to another person if—
 - (a) the person to whom the information relates consents to the disclosure; or
 - (b) the disclosure is made for the administration of this Act; or
 - (c) the disclosure is necessary for the performance of a function or exercise of a power under this Act; or
 - (d) the disclosure is required or permitted by law; or
 - (e) the disclosure is in a form that does not identify the person to whom the information relates.
- (4) In this section—

administrator means—

 - (a) the chief executive; or
 - (b) an authorised person; or

- (c) another person who is, or was, employed in the department in which this Act is, or was, administered.

confidential information—

- (a) means personal information within the meaning of the *Information Privacy Act 2009*, section 12; but
- (b) does not include information that is lawfully available to the public.

52A Disclosure of information to entities performing relevant functions

- (1) This section applies to information a person obtains in performing a function or exercising a power under this Act.
- (2) The chief executive may disclose the information to—
 - (a) an entity of the Commonwealth or a State, for performing the entity's functions relating to the regulation of the supply of smoking products; or
 - (b) a law enforcement agency, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance under the *Medicines and Poisons Act 2019*, section 17; or
 - (c) another entity, for a purpose prescribed by regulation.
- (3) However, the chief executive may disclose the information to an entity under subsection (2) only if satisfied—
 - (a) the disclosure is reasonably necessary for the entity to exercise its functions; and

[s 60]

- (b) the information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion.

52B Only chief executive may commence particular proceedings

- (1) This section applies to a proceeding for an offence against this Act arising from a police officer exercising a power under this Act as an authorised person.
- (2) Only the chief executive may commence the proceeding.
- (3) The commissioner of the police service must comply with a written request made by the chief executive for a report about the following—
 - (a) the exercise of the power by the police officer;
 - (b) the evidence of the offence that the police officer obtained from exercising the power.

52C Approved forms

The chief executive may approve forms for use under this Act.

52D Delegation

- (1) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified person.
- (2) A delegation of a function under subsection (1) may not permit the subdelegation of the function.
- (3) In this section—

functions includes powers.

61 Amendment of s 53 (Regulation-making power)

Section 53—

insert—

- (4) A regulation may prescribe general conditions for retail or wholesale licences.
- (5) A regulation may prescribe a general condition that requires a licensee to provide employees with particular training about supplying smoking products.
- (6) A regulation may be made about fees for applications and other matters under part 1A.
- (7) Without limiting subsection (6), a regulation may—
 - (a) be made about the refund or waiver of all or part of a fee; or
 - (b) prescribe that a fee for an application under part 1A may be charged on a pro rata basis relating to the term of a retail or wholesale licence.
- (8) In this section—

general conditions see section 7D(2).

62 Insertion of new pt 5, div 1, hdg

Before section 54—

insert—

Division 1

**Transitional provision for
Tobacco and Other
Smoking Products
Amendment Act 2004**

[s 63]

63 Insertion of new pt 5, div 2

After section 54—

insert—

**Division 2 Transitional provisions for
Tobacco and Other
Smoking Products
Amendment Act 2023**

**55 Staged implementation for particular business
names allowed**

- (1) This section applies if a supplier uses more than 1 business name that—
 - (a) includes a reference to a smoking product; and
 - (b) was registered before the commencement.
- (2) Section 26HA(2)(b) does not apply to the supplier until—
 - (a) the supplier renews the registration of more than 1 of the business names under the *Business Names Registration Act 2011* (Cwlth); or
 - (b) the registration of the business names is cancelled or otherwise ends under the *Business Names Registration Act 2011* (Cwlth).

64 Insertion of new s 56

Part 5, division 2—

insert—

56 Renumbering of Act

- (1) On the commencement of this section, the

provisions of this Act are amended by numbering and renumbering the provisions in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.

- (2) The numbering and renumbering under subsection (1) is to allocate a number to each section inserted by a later amendment as if that later amendment had commenced.
- (3) Each reference to a provision of this Act in any of the following Acts is amended, when the renumbering under subsection (1) happens, by omitting the reference to the provision and inserting a reference to the provision as renumbered—
 - (a) this Act;
 - (b) the *Forestry Act 1959*, section 62A(4), definition *smoking product*;
 - (c) the *Police Powers and Responsibilities Act 2000*, sections 42, 43 and 60(3)(i);
 - (d) the *Recreation Areas Management Act 2006*, section 115(5), definition *smoking product*.
- (4) A reference to a provision of this Act, in a later amendment, is taken to be a reference to the provision as renumbered under subsection (1).
- (5) If a later amendment inserts a section into this Act, when inserted, the number of the section is amended by renumbering it with the number allocated to it under subsection (2).
- (6) Each reference to a provision of this Act in a provision or words inserted into this Act by a later amendment is amended, when inserted, by omitting the reference to the provision and inserting a reference to the provision as renumbered under subsection (1).

[s 65]

- (7) This section does not limit the *Reprints Act 1992*.
- (8) This section expires on 2 September 2024.
- (9) In this section—

amending Act means the *Tobacco and Other Smoking Products Amendment Act 2023*.

later amendment means a provision of the amending Act that commences after 1 September 2023.

65 Insertion of new ss 57 and 58

Part 5, division 2—

insert—

57 Staged implementation for small businesses

- (1) Section 11A does not apply to a small business until the day that is 1 year after the commencement of that section.
- (2) The additional preventative measure stated in section 9, definition *prevention measures*, paragraph (a)(iii) does not apply to a small business until the day that is 1 year after the commencement of that section.
- (3) In this section—
small business means a supplier that employs less than 20 employees.

58 Sections 9B and 12 do not apply while particular applications undecided

- (1) This section applies if—
 - (a) a person or partnership applies for a retail or wholesale licence under part 1A before the commencement of section 9B (each a ***proposed licensee***); and

-
- (b) the application has not been decided or withdrawn before the commencement of section 9B.
 - (2) Section 9B does not apply to the proposed licensee until the application is decided or withdrawn, whichever occur first.
 - (3) Section 12(2)(b) does not apply to an employee of the proposed licensee until the application is decided or withdrawn, whichever occur first.

66 Amendment of sch (Dictionary)

- (1) Schedule, definitions *licensed premises*, *licensee*, *retail outlet* and *tobacconist*—

omit.

- (2) Schedule—

insert—

affected person, for part 1A, division 11, see section 7ZR.

approved form means a form approved by the chief executive under section 52C.

forfeiture decision, for part 3, division 6, see section 50C.

illicit tobacco see section 26ZQB(5).

information notice, for part 1A, see section 7A.

internal review, for part 1A, division 11, see section 7ZT(1).

internal review decision, for part 1A, division 11, see section 7ZR.

licensed retailer, for part 1A, see section 7A.

licensee means the holder of a retail or wholesale licence.

limited wholesale condition see section 7B(3).

[s 66]

liquor licensed premises means—

- (a) licensed premises under the *Liquor Act 1992*; or
- (b) a place with a permit under the *Liquor Act 1992*; or
- (c) licensed premises under the *Wine Industry Act 1994*; or
- (d) a place with a permit under the *Wine Industry Act 1994*.

liquor licensee means a person who, under the *Liquor Act 1992* or the *Wine Industry Act 1994*, holds a licence or permit for liquor licensed premises.

multi-unit residential accommodation means hotels, motels, hostels, boarding houses, residential accommodation comprising lots in a community titles scheme and other similar accommodation.

online sale, for part 1A, see section 7A.

online shop means a website for a business that enables customers to purchase products or services from the business.

original decision, for part 1A, division 11, see section 7ZR.

QCAT information notice, for part 1A, division 11, see section 7ZR.

residential land means land on which residential premises may lawfully be built.

retailer see section 7A.

retail licence see section 7A.

retail licence (liquor) see section 7A.

retail outlet see section 5B.

specific conditions, for part 1A, see section 7D(1).

wholesale licence see section 7A.

wholesale outlet see section 5C.

(3) Schedule—

insert—

assisted mobility device means a device that is—

- (a) designed to transport a person who is unable to walk or has difficulty in walking; and
- (b) powered by a motor; and
- (c) capable of being controlled by the person using it.

personal transport means a bicycle, scooter, skateboard or assisted mobility device.

(4) Schedule, definitions *bar* and *bar area*—

omit.

(5) Schedule—

insert—

prescription see the *Medicines and Poisons Act 2019*, schedule 1.

regulated substance means—

- (a) a regulated substance under the *Medicines and Poisons Act 2019*, section 17; or
- (b) another substance prescribed by regulation.

(6) Schedule, definition *administering executive*—

insert—

- (e) for a conservation officer, as an authorised person under section 28(5A)—the chief executive of the department administering the *Nature Conservation Act 1992*; or

[s 66]

- (f) for a police officer, as an authorised person under section 28(5B)—the commissioner of the police service.
- (7) Schedule, definition *person in charge*, ‘licensee of licensed premises’—
omit, insert—
liquor licensee of liquor licensed premises

Schedule 1 Other amendments

section 3

Tobacco and Other Smoking Products Act 1998

1 Section 14, definitions *bar* and *bar area*, before ‘licensed premises’—

insert—

liquor

2 Section 15(2)(a), before ‘licensed premises’—

insert—

liquor

3 Section 16(1) and 17(4), before ‘licensed premises’—

insert—

liquor

4 Section 26M(3), from ‘It is a defence’ to ‘proves that’—

omit, insert—

It is a defence to a charge under subsection (1) for the defendant to prove that

5 Section 26R(4), definition *multi-unit residential accommodation*—

omit.

6 Section 26S(2), ‘licensee’—

omit, insert—

liquor licensee

7 Section 26U(3), from ‘However’ to ‘prove that’—

omit, insert—

It is a defence to a charge under subsection (2) for the second person to prove that

8 Section 26V(2), from ‘However’ to ‘prove’—

omit, insert—

It is a defence to a charge under subsection (1) for the occupier to prove

9 Section 26VD, ‘for an offence against’—

omit, insert—

under

10 Section 26VJ(2), from ‘However’ to ‘prove’—

omit, insert—

It is a defence to a charge under subsection (1) for the occupier to prove

11 Section 26VN(2), from ‘However’ to ‘prove’—

omit, insert—

It is a defence to a charge under subsection (1) for the major event organiser to prove

12 Section 26VO(3)(a), ‘land on which residential premises may lawfully be built’—

omit, insert—

residential land

13 Section 26VQ(3)(a), ‘land on which residential premises may lawfully be built’—

omit, insert—

residential land

14 Section 26VU(4)(a), ‘land on which residential premises may lawfully be built’—

omit, insert—

residential land

15 Section 26VU(5), after ‘defence to’—

insert—

a charge under

16 Section 26VW(4)(a), ‘land on which residential premises may lawfully be built’—

omit, insert—

residential land

17 Section 26W(1)(c)(i), examples, ‘patrons’—

omit, insert—

customers

18 Section 26W(1)(c)(ii), examples, ‘eat’—

omit, insert—

consume

19 Section 26W(1)(c)(iii), before ‘licensed premises’—

insert—

liquor

20 Section 26W(5), definition *multi-unit residential accommodation*—

omit.

21 Section 26Y(3), from ‘However’ to ‘prove’—

omit, insert—

It is a defence to a charge under subsection (2) for the second person to prove

22 Section 26Z(2), from ‘However’ to ‘prove’—

omit, insert—

It is a defence to a charge under subsection (1) for the occupier to prove

23 Section 26ZA(1), (2) and (4), ‘licensee’—

omit, insert—

liquor licensee

24 Section 26ZA(6) and (7)(b), ‘patrons’—

omit, insert—

customers

25 Section 26ZB, ‘licensee’—

omit, insert—

liquor licensee

- 26 Section 26ZB(4)(b), ‘patrons’—**
omit, insert—
customers
- 27 Section 26ZB(4)(c), ‘patron’—**
omit, insert—
customer
- 28 Section 26ZC(2)(d), ‘licensee’—**
omit, insert—
liquor licensee
- 29 Section 26ZC(2)(d) and (e), ‘staff’—**
omit, insert—
employees
- 30 Section 26ZC(2)(d), ‘patrons’—**
omit, insert—
customers
- 31 Section 26ZC(2)(e), example, ‘patrons’—**
omit, insert—
customers
- 32 Section 26ZJ(6), definition *multi-unit residential accommodation*—**
omit.

33 Section 26ZK(2)(b), ‘land on which residential premises are built or may lawfully be built’—

omit, insert—

residential land

34 Section 26ZK(3), definition *residential premises*, ‘see section 26ZJ(6)’—

omit, insert—

does not include multi-unit residential accommodation

35 Section 26ZKB(4), ‘*Transport Infrastructure (Rail) Regulation 2006*’—

omit, insert—

Transport Infrastructure (Rail) Regulation 2017

36 Section 26ZKB(5)(a), ‘land on which residential premises may lawfully be built’—

omit, insert—

residential land

37 Section 26ZKC(2)(a), ‘land on which residential premises may lawfully be built’—

omit, insert—

residential land

38 Section 26ZKD(3)(a), ‘land on which residential premises may lawfully be built’—

omit, insert—

residential land

39 Section 26ZPF(2), after ‘defence’—

insert—

to a charge under subsection (1)

40 Section 26ZQ(2), after ‘defence’—

insert—

to a charge under subsection (1)

41 Section 35(1)(a), after ‘proceeding’—

insert—

about

42 Section 44BA, after ‘a health service authorised person’—

insert—

or a conservation officer under the *Nature Conservation Act 1992*

43 Section 44BA—

insert—

- (2) Also, this division, other than sections 44G, 45, 46, 49 and 50, does not apply to a police officer.

Note—

Conservation officers and police officers are authorised persons. See section 28.

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