

Queensland



TOBACCO AND OTHER SMOKING PRODUCTS (PREVENTION OF SUPPLY TO CHILDREN) ACT 1998

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Information about this reprint

This Act is reprinted as at 22 February 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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**TOBACCO AND OTHER SMOKING
PRODUCTS (PREVENTION OF SUPPLY TO
CHILDREN) ACT 1998**

[as amended by all amendments that commenced on or before 22 February 2000]

**An Act to restrict the supply of tobacco and other smoking products
to children, and for other purposes**

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*.

Commencement

2.(1) This Act (other than section 15) commences on a day to be fixed by proclamation.

(2) Section 15 commences 6 months after the day fixed under subsection (1).

Main object of Act and its achievement

3.(1) The main object of this Act is to reduce the number of children who take up smoking.

(2) This is to be achieved mainly by restricting the availability of smoking products to children.

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Definitions

4. The dictionary in the schedule defines particular words used in this Act.

Who is a “responsible adult”

5. A “responsible adult”, for a child, is an adult who—

- (a) is the child’s parent, step-parent or guardian; or
- (b) has parental rights and responsibilities for the child.

Example of responsible adult under paragraph (b)—

An adult who is an aunt or uncle of a child, living with the child.

Acceptable evidence of age

6. For this Act, acceptable evidence of the age of a person is a document that—

- (a) is a driver licence, proof of age card or an Australian or foreign passport; and
- (b) bears a photograph of the person; and
- (c) indicates by reference to the person’s date of birth or otherwise that the person has attained a particular age.

Act binds all persons

7. This Act binds all persons.

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PART 2—SUPPLY OF SMOKING PRODUCTS

Division 1—Suppliers and employees

Application of div 1

8. This division does not apply to the supply of smoking products from coin-operated vending machines.

Meaning of “prevention measures” for div 1

9. In this division—

“**prevention measures**”, by a supplier in relation to an employee of the supplier, means—

- (a) instructing the employee—
 - (i) not to supply smoking products to children in any circumstances, even if the supply is for, or claimed to be for, an adult; and
 - (ii) to sight acceptable evidence of age for a person before supplying a smoking product to the person, unless satisfied the person is an adult; and
- (b) warning the employee that if the employee supplies smoking products to children in disregard of the instructions mentioned in paragraph (a), the employee commits an offence against this Act; and
- (c) obtaining written acknowledgment by the employee that the employee received the instructions and warning mentioned in paragraphs (a) and (b).

Individual supplier must not supply smoking products to children

10.(1) A supplier who is an individual must not supply a smoking product to a child.

Maximum penalty—

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- (a) for a first offence—13 penalty units; and
- (b) for a second or later offence—26 penalty units.

(2) However, this section does not apply if the supply is by an employee of the supplier.

Supplier must ensure employees do not supply smoking products to children

11.(1) A supplier must ensure an employee of the supplier does not supply a smoking product to a child.

Maximum penalty—26 penalty units.

(2) However, a supplier does not commit an offence against subsection (1) if, before the supply, the supplier took the prevention measures in relation to the employee.

When employee of supplier liable

12.(1) This section applies if a supplier has, in relation to an employee of the supplier, taken the prevention measures.

(2) After the prevention measures have been taken, the employee of the supplier must not, in the ordinary course of employment, supply a smoking product to a child.

Maximum penalty—

- (a) for a first offence—1 penalty unit; and
- (b) for a second or later offence—2 penalty units.

Suppliers may be prohibited from selling smoking products

13.(1) This section applies if—

- (a) a smoking product supplier is convicted of an offence against section 10 or 11; and
- (b) within 2 years after the conviction, the supplier is again convicted of an offence against either section (the “**subsequent offence**”).

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(2) The court sentencing the supplier for the subsequent offence may, on its own initiative or the application of the prosecutor, make an order against the supplier under subsection (3).

(3) The court may make an order applying for a stated period, of at least 2 months but not longer than 1 year—

- (a) prohibiting the supply of all or stated smoking products by the supplier; or
- (b) imposing conditions or restrictions on the supply of smoking products by the supplier.

(4) However, if the supplier supplies smoking products at more than 1 outlet, the order may apply only to the outlets where the offences happened.

(5) A person must not contravene an order under subsection (3).

Maximum penalty for subsection (5)—75 penalty units.

Division 2—Tobacco product vending machines

Definitions for div 2

14. In this division—

“employee”, of a person in charge of a tobacco product vending machine, means an employee of the person—

- (a) whose employment requires the employee to work near the vending machine; and
- (b) who, in performing the employee’s duties, can observe the use of the vending machine.

“prevention measures”, by a person in charge of a tobacco product vending machine in licensed premises, means—

- (a) for the vending machine—locating the vending machine in the premises so that its use can be observed by the person’s employees; and
- (b) for the person’s employees—

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- (i) instructing the employees to—
 - (A) take reasonable steps to ensure that a child does not obtain a tobacco product from the vending machine, even if the product is for, or claimed to be for, an adult; and
 - (B) sight acceptable evidence of age for a person before allowing the person to obtain a tobacco product from the vending machine, unless satisfied the person is an adult; and
- (ii) obtaining written acknowledgment by each employee that the employee received the instructions mentioned in subparagraph (i).

Restriction on location of tobacco product vending machines

15.(1) An occupier of premises (other than licensed premises) must not have a tobacco product vending machine in the premises.

Maximum penalty—13 penalty units.

(2) Subsection (1) does not apply to a tobacco product vending machine while it is not being used by anyone to supply tobacco products.

Example—

Subsection (1) does not apply to a tobacco product vending machine while it is being stored, transported or repaired.

(3) Proof that a tobacco product vending machine was capable of being used to supply tobacco products is evidence that the vending machine was being used to supply tobacco products at the relevant time.

Supply of tobacco products from vending machines

16.(1) A person in charge of a tobacco product vending machine in licensed premises must not allow a child to obtain a tobacco product from the vending machine.

Maximum penalty—

- (a) for a first offence—13 penalty units; and

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(b) for a second or later offence—26 penalty units.

(2) However, the person does not commit an offence against subsection (1) if, before the child obtained the tobacco product, the person had taken the prevention measures.

Persons in charge of tobacco product vending machines may be prohibited from possessing tobacco product vending machines

17.(1) This section applies if—

- (a) a person in charge of a tobacco product vending machine is convicted of an offence against section 16; and
- (b) within 2 years after the conviction, the person is again convicted of an offence against the section (the “**subsequent offence**”).

(2) The court sentencing the person for the subsequent offence may, on its own initiative or the application of the prosecutor, make an order against the person under subsection (3).

(3) The court may make an order applying for a stated period, of at least 2 months but not longer than 1 year—

- (a) prohibiting the person from possessing tobacco product vending machines; or
- (b) imposing conditions or restrictions on the possession or use of tobacco product vending machines by the person.

(4) However, if the person is in charge of a tobacco product vending machine at more than 1 licensed premises, the order may apply only to the licensed premises where the offences happened.

(5) A person must not contravene an order under subsection (3).

Maximum penalty for subsection (5)—75 penalty units.

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Division 3—Supply of herbal cigarettes and loose smoking blends from coin-operated vending machines

Prohibition on use of vending machine to supply herbal cigarettes and loose smoking blends

18.(1) A person in possession of a coin-operated vending machine must not use the machine to supply herbal cigarettes or a loose smoking blend to another person.

Maximum penalty—

- (a) for a first offence—13 penalty units; and
- (b) for a second or later offence—26 penalty units.

(2) In this section—

“**possession**”, of a coin-operated vending machine, includes having control of the machine.

Division 3A—Supply of smoking products by adults to children

Application of div 3A

18A. This division does not apply to—

- (a) the supply of smoking products by—
 - (i) suppliers; or
 - (ii) employees of suppliers in the ordinary course of their employment; or
- (b) the supply of smoking products from coin-operated vending machines.

Supply prohibited

19.(1) An adult must not supply a smoking product to a child (the “**relevant person**”).

Maximum penalty—1 penalty unit.

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(2) However, a responsible adult for a child does not commit an offence by supplying a smoking product to the child.

(3) It is a defence to a charge under subsection (1) for the defendant to prove that at the time of the offence the defendant honestly and reasonably believed that the relevant person was an adult.

Division 4—Signage

Supplier of tobacco products must display prohibition signs

20.(1) A supplier must display prohibition signs, at each place at which the supplier supplies tobacco products, in the way prescribed under a regulation.

Maximum penalty—1 penalty unit.

(2) However, this section does not apply if the supply is from a tobacco product vending machine.

Persons in charge of tobacco product vending machines must attach or display prohibition signs

21. A person in charge of a tobacco product vending machine must attach prohibition signs to, or display prohibition signs near, the vending machine, in the way prescribed under a regulation.

Maximum penalty—1 penalty unit.

Division 5—Minimum saleable quantities of smoking products

Cigarettes and herbal cigarettes must be sold in packages

22.(1) A supplier must sell cigarettes or herbal cigarettes only in a package.

Maximum penalty—1 penalty unit.

(2) A supplier must not sell cigarettes or herbal cigarettes in a package

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containing less than 20 cigarettes.

Maximum penalty—1 penalty unit.

Prepackaged loose tobacco must not be sold under certain quantity

23. A supplier must not sell prepackaged loose tobacco in quantities of less than 25 g.

Maximum penalty—1 penalty unit.

Prepackaged loose smoking blend must not be sold under certain quantity

23A. A supplier must not sell prepackaged loose smoking blend in quantities of less than 15 g.

Maximum penalty—1 penalty unit.

Division 6—Supply of things resembling tobacco products

Supply of food or toys resembling tobacco products

24.(1) A person must not, as part of a business activity, supply to a person—

- (a) food that is not a tobacco product but resembles a tobacco product; or
- (b) a toy that resembles a tobacco product.

Maximum penalty—1 penalty unit.

(2) For subsection (1), food or a toy resembles a tobacco product if the food or toy—

- (a) has an appearance that is likely to cause a reasonable person to consider the food or toy resembles a tobacco product or tobacco product package; or
- (b) is contained in a package that is likely to cause a reasonable person to consider the package resembles a tobacco product

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package; or

- (c) is declared under a regulation to resemble a tobacco product or tobacco product package.

Division 7—Liability for certain offences against part

Liability of person for conduct of representatives

25.(1) This section applies to a proceeding against a person (the “**defendant**”) for an offence against section 22, 23, 23A or 24.

(2) Conduct engaged in by a representative of the defendant within the scope of the representative’s actual or apparent authority is taken to have been also engaged in by the defendant, unless the defendant proves that the defendant took reasonable steps to prevent the conduct.

(3) If it is relevant to prove the defendant’s state of mind about particular conduct, it is enough to show—

- (a) the conduct was engaged in by a representative of the defendant within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

Defence to charge if age material

26.(1) This section applies to a charge for an offence against section 10, 11, 12 or 16¹ in which the age of a person (the “**relevant person**”) is material to the charge.

(2) It is a defence to the charge for the defendant to prove that at the time of the offence the defendant or the defendant’s employee honestly and reasonably believed the relevant person was an adult.

¹ Section 10 (Individual supplier must not supply smoking products to children), 11 (Supplier must ensure employees do not supply smoking products to children), 12 (When employee of supplier liable) or 16 (Supply of tobacco products from vending machines)

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(3) Proof that the defendant or the defendant's employee did not ask the relevant person to produce acceptable evidence of age is evidence that any belief that the relevant person was an adult was not reasonable.

PART 3—MONITORING AND ENFORCEMENT

Division 1—Appointment of authorised persons and other matters

Who are authorised persons

27.(1) The chief executive may appoint any of the following persons as authorised persons—

- (a) public service employees;
- (b) health service employees within the meaning of the *Health Services Act 1991*;
- (c) other persons prescribed under a regulation.

(2) The chief executive may appoint a person as an authorised person only if the chief executive considers the person has the necessary expertise or experience to be an authorised person.

(3) A police officer is, without further appointment, an authorised person.

Terms of appointment

28.(1) An authorised person (other than a police officer) holds office on the conditions stated in the instrument of appointment.

(2) If the instrument provides for a term of appointment, the authorised person ceases to hold office at the end of the term.

(3) An authorised person may resign by signed notice given to the chief executive.

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Authorised person's identity card

29.(1) The chief executive must give an identity card to each authorised person (other than a police officer).

(2) The identity card must—

- (a) contain a recent photograph of the person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised person for this Act; and
- (d) include an expiry date.

(3) A person who ceases to be an authorised person must return the person's identity card to the chief executive as soon as practicable (but within 3 weeks) after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—5 penalty units.

(4) This section does not prevent the issue of a single identity card to a person for this Act and other Acts.

Production or display of authorised person's identity card

30. An authorised person (other than a uniformed police officer) may exercise a power under this part in relation to someone only if—

- (a) the authorised person first produces for the person's inspection—
 - (i) for an authorised person who is a police officer—the authorised person's police identity card; or
 - (ii) for another authorised person—the authorised person's identity card under this Act; or
- (b) the authorised person has the identity card displayed so it is clearly visible to the person.

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Protection from liability

31.(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) an authorised person; or
- (b) a person acting under the direction of an authorised person.

Division 2—Powers of authorised persons

Meaning of “occupier” for div 2

32. In this division—

“occupier”, of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

Entry of places by authorised persons

33.(1) An authorised person may enter a place if—

- (a) the occupier consents to the entry; or
- (b) the entry is authorised by a warrant.

(2) Also, an authorised person may, without the occupier’s consent or a warrant, enter—

- (a) a public place when the place is open to the public; or
- (b) an outlet of a supplier or licensed premises when it is open for carrying on business; or
- (c) the land around premises to ask its occupier for consent to enter the premises.

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Consent to entry

34.(1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place.²

(2) Before asking for consent, the authorised person must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent (a “**consent acknowledgment**”).

(4) The consent acknowledgment must state—

- (a) the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised person consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the consent acknowledgment, the authorised person must promptly give a copy to the occupier.

Evidence of consent

35.(1) Subsection (2) applies if—

- (a) an issue arises in a court proceeding whether the occupier of a place consented to an authorised person entering the place under this part; and
- (b) a consent acknowledgment is not produced in evidence for the entry; and

² This section does not apply if entry is authorised by section 33(1)(b) or (2).

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- (c) it is not proved the occupier consented to the entry.
- (2) The court may presume the occupier did not consent.

Warrants

36.(1) An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this part; and
- (b) the offence for which the warrant is issued; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when entry may be made; and
- (e) the day, within 7 days after the warrant’s issue, when the warrant ends.

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General powers after entering places

37.(1) This section applies to an authorised person who enters a place under section 33.

(2) However, if an authorised person enters a place to get the occupier's consent to enter premises, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the authorised person may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything in the place; or
- (c) take a thing, or a sample of or from a thing, in the place for analysis; or
- (d) copy a document in the place; or
- (e) take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this part; or
- (f) require the occupier of the place, or a person in the place, to give the authorised person reasonable help to exercise the authorised person's powers mentioned in paragraphs (a) to (e).

(4) A person must comply with a requirement under subsection (3)(f), unless the person has a reasonable excuse for not complying.

Maximum penalty—5 penalty units.

(5) If the requirement is to be complied with by the person giving information or producing a document, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might incriminate the person.

(6) A person does not commit an offence under subsection (4) for failing to comply with a requirement unless the authorised person has first warned the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

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Division 3—Other enforcement powers of authorised persons

Power to require name and address

38.(1) This section applies if—

- (a) an authorised person finds a person committing an offence against this Act; or
- (b) an authorised person finds a person in circumstances that lead, or has information that leads, the authorised person to reasonably suspect the person or the person’s employer has just committed an offence against this Act.

(2) The authorised person may require the person to state the person’s name and residential address.

(3) When making the requirement under subsection (2), the authorised person must warn the person it is an offence to fail to state the person’s name or residential address, unless the person has a reasonable excuse.

(4) The authorised person may require the person to give evidence of the correctness of the person’s stated name or residential address if the authorised person reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—5 penalty units.

(6) The person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person’s name and address by an authorised person who suspected the person or the person’s employer had committed an offence against this Act; and
- (b) the person or the person’s employer is not proved to have committed the offence.

Power to require evidence of age, name and address of person observed being supplied a smoking product

39.(1) An authorised person may require a person to show acceptable

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evidence of age of the person if the authorised person—

- (a) observes the person being supplied a smoking product; and
- (b) suspects on reasonable grounds the person is a child.

(2) The authorised person may require the person to state the person's name and residential address if—

- (a) the person refuses, or is unable, to comply with a requirement made under subsection (1); or
- (b) the acceptable evidence of age of the person shown under subsection (1) shows the person is a child.

(3) When making the requirement under subsection (2), the authorised person must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The authorised person may require the person to give evidence of the correctness of the person's stated name or residential address if the authorised person reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—1 penalty unit.

(6) The person does not commit an offence against subsection (5) if no one is proved to have committed an offence against this Act in relation to the supply of the smoking product.

Power to seize smoking product

40.(1) This section applies if—

- (a) an authorised person observes a person being supplied a smoking product; and
- (b) the authorised person suspects on reasonable grounds the person is a child; and
- (c) the person—
 - (i) refuses, or is unable, to comply with a requirement made by the authorised person under section 39(1); or

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- (ii) shows acceptable evidence of age of the person under section 39(1) showing the person is a child; and
 - (d) the authorised person reasonably believes the smoking product is evidence of an offence against this Act.
- (2) The authorised person may seize the smoking product.

Division 4—Seizure of evidence

Power to seize evidence

41.(1) An authorised person who enters a place with the occupier's consent may seize a thing in the place if—

- (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An authorised person who enters a place with a warrant may seize the evidence for which the warrant was issued.

(3) The authorised person may also seize anything else in the place if the person reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed, or used to continue or repeat the offence.

(4) Also, the authorised person may seize a thing in the place if the person reasonably believes that it has just been used in committing an offence against this Act.

Procedure after thing seized

42.(1) As soon as practicable after a thing is seized by an authorised person under section 40 or 41, the authorised person must give a receipt for it to the person from whom it was seized.

- (2) The authorised person must allow a person who would be entitled to

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the seized thing if it were not in the authorised person's possession—

- (a) to inspect it; or
- (b) if it is a document—to copy it.

(3) The authorised person must return the seized thing to the person at the end of—

- (a) 1 year; or
- (b) if a proceeding for an offence involving it is started within 1 year—the proceeding and any appeal from the proceeding.

(4) Despite subsection (3), the authorised person must return the seized thing to the person if the authorised person is satisfied—

- (a) its retention as evidence is no longer necessary; and
- (b) its return is not likely to result in its use in repeating the offence.

Forfeiture on conviction

43.(1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

(2) The court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized—whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

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Dealing with forfeited things etc.

44.(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy the thing.

Division 5—Other enforcement matters

False or misleading information

45.(1) A person must not state anything to an authorised person the person knows is false or misleading in a material particular.

Maximum penalty—5 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person's knowledge.

False, misleading or incomplete documents

46.(1) A person must not give to an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—5 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) informs the authorised person, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false, misleading or incomplete to the person's knowledge.

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Notice of damage

47.(1) This section applies if—

- (a) an authorised person damages something when exercising or purporting to exercise a power under this part; or
- (b) a person (the “**other person**”) acting under the direction of an authorised person damages something when exercising or purporting to exercise a power under this part.

(2) The authorised person must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the authorised person believes the damage was caused by a latent defect in the thing or circumstances beyond the authorised person’s or other person’s control, the authorised person may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised person reasonably believes is trivial.

(6) In this section—

“**owner**”, of a thing, includes the person in possession or control of it.

Compensation

48.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this part.

(3) Compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

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(b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court in considering whether it is just to make the order.

Impersonation of authorised person

49. A person must not pretend to be an authorised person.

Maximum penalty—20 penalty units.

Obstruction of authorised persons

50. A person must not obstruct an authorised person in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—5 penalty units.

PART 4—MISCELLANEOUS

Evidence of thing labelled as smoking product

51.(1) Evidence that a thing is labelled as a tobacco product, or labelled in a way a reasonable person would take to be labelled as a tobacco product, is evidence the thing is or contains a tobacco product.

(2) Evidence that a thing is labelled as a herbal cigarette, or labelled in a way a reasonable person would take to be labelled as a herbal cigarette, is evidence the thing is or contains a herbal cigarette.

(3) Evidence that a thing is labelled as a loose smoking blend, or labelled in a way a reasonable person would take to be labelled as a loose smoking blend, is evidence the thing is or contains a loose smoking blend.

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Review of Act

52.(1) The Minister must ensure the operation of this Act is reviewed.

(2) The review must start within 3 years of the commencement of this section.

(3) The Minister must prepare, and table in the Legislative Assembly, a report on the outcome of the review within 4 years of the commencement of this section.

Regulation-making power

53. The Governor in Council may make regulations under this Act.

SCHEDULE

DICTIONARY

section 4

“acceptable evidence of age” see section 6.

“authorised person” means a person appointed, or holding office, under section 27 as an authorised person.

“child” means an individual who is under 18.

“cigar” includes tobacco leaf rolled into a cylinder with a conical end for smoking.

“cigarette” means a roll of cut tobacco for smoking enclosed in paper, bark, leaf or something else, whether or not the tobacco is mixed with another substance, but does not include a cigar.

“coin-operated vending machine” means a machine or device operated by money, token, debit card or credit card.

“consent acknowledgment” see section 34.

“consumption”, of tobacco product, includes smoking, inhaling or chewing the tobacco product.

“conviction” means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

“driverlicence” includes a licence, permit or other authority issued under a law of the State or another State that authorises a person to drive or ride a motor vehicle on public roads.

“engage in conduct” includes fail to engage in conduct.

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

SCHEDULE (continued)

“herbal cigarette” means a preparation for smoking that—

- (a) is made from a herb or other plant, or a blend of herbs or other plants, whether or not the herb, plant or blend is mixed with another substance; and
- (b) is enclosed in paper, bark, leaf or something else; and
- (c) does not contain tobacco.

“licensed premises” has the meaning given by the *Liquor Act 1992*, section 4.

“licensee” has the meaning given by the *Liquor Act 1992*, section 4.

“loose smoking blend” means a preparation for smoking that does not contain tobacco and is made from a herb or other plant, or a blend of herbs or other plants, and is prepared for retail sale, but does not include a herbal cigarette.

“obstruct” includes hinder, resist and attempt to obstruct.

“package” means—

- (a) for cigarettes—a package containing cigarettes packed by the manufacturer, or importer, of the cigarettes; and
- (b) for herbal cigarettes—a package containing herbal cigarettes packed by the manufacturer, or importer, of the herbal cigarettes.

“person in charge”, of a tobacco product vending machine, means the licensee of licensed premises in which the vending machine is located.

“place” includes premises, vacant land and a vehicle.

“premises” includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated.

“prepackaged loose smoking blend” means a loose smoking blend that is packaged for retail sale.

“prepackaged loose tobacco” means tobacco product for smoking that is

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SCHEDULE (continued)

cut and packaged for retail sale, but does not include a cigarette or cigar.

Example—

Tobacco product commonly called ‘roll your own tobacco’ or ‘pipe tobacco’.

“prohibition sign” means a sign about the supply of tobacco products to children complying with the requirements prescribed under a regulation.

“proof of age card” means a proof of age card mentioned in the *Liquor Act 1992*, section 6(a)(i).

“public place” means a place that the public is entitled to use, is open to the public or is used by the public (whether or not on payment of money).

“representative” means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

“responsible adult” see section 5.

“sell” means sell by retail, wholesale or auction, and includes—

- (a) offer or agree to sell; and
- (b) invite to treat or expose to sale; and
- (c) cause or permit to be sold; and
- (d) attempt to sell or do an act mentioned in paragraphs (a) to (c).

“smoking product” means a tobacco product, herbal cigarette or loose smoking blend.

“state of mind”, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“supplier” means a person who, as part of a business activity, supplies smoking products to the public, but does not include a person who

SCHEDULE (continued)

supplies smoking products to the public as an employee of another person.

“supply” includes—

- (a) distribute, give or sell; and
- (b) offer or agree to distribute or give; and
- (c) cause or permit to be distributed or given; and
- (d) attempt to supply or do an act mentioned in paragraphs (a) to (c).

“tobacco product” means tobacco prepared for consumption or something containing tobacco for consumption, and includes a cigarette, cigar and prepackaged loose tobacco.

“tobacco product package” means a package—

- (a) of a type commonly used for tobacco products; and
- (b) depicting a symbol, design or words that show the package contains a tobacco product.

“tobacco product vending machine” means a coin-operated vending machine used, or intended for use, for selling tobacco products, whether or not it is also used, or intended for use, for selling other products.

“vehicle” includes an aircraft, boat and train.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 22 February 2000. Future amendments of the Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 June 1998
1A	to Act No. 42 of 1999	1 December 1999

5 List of legislation

Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998 No. 1 (prev Tobacco Products (Prevention of Supply to Children) Act 1998)

date of assent 12 March 1998

ss 1–2 commenced on date of assent

s 15 commenced 30 November 1998 (see s 2(2))

remaining provisions commenced 31 May 1998 (1998 SL No. 91)

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as amended by—

Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

Health Legislation Amendment Act 1999 No. 61 ss 1, 2(2) pt 4

date of assent 29 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 20 February 2000 (2000 SL No. 25)

6 List of annotations

Title amd 1999 No. 61 s 14

Short title

s 1 amd 1999 No. 61 s 15

Main object of Act and its achievement

s 3 amd 1999 No. 61 s 16

Acceptable evidence of age

s 6 amd 1999 No. 42 s 54(3) sch pt 3

PART 2—SUPPLY OF SMOKING PRODUCTS

pt hdg sub 1999 No. 61 s 17

Division 1—Suppliers and employees

div hdg sub 1999 No. 61 s 18

Application of div 1

s 8 sub 1999 No. 61 s 19

Meaning of “prevention measures” for div 1

s 9 amd 1999 No. 61 s 20

Individual supplier must not supply smoking products to children

prov hdg amd 1999 No. 61 s 21(1)

s 10 amd 1999 No. 61 s 21(2)–(3)

Supplier must ensure employees do not supply smoking products to children

prov hdg amd 1999 No. 61 s 22(1)

s 11 amd 1999 No. 61 s 22(2)–(3)

When employee of supplier liable

s 12 amd 1999 No. 61 s 23

Suppliers may be prohibited from selling smoking products

prov hdg amd 1999 No. 61 s 24(1)

s 13 amd 1999 No. 61 s 24

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Division 3—Supply of herbal cigarettes and loose smoking blends from coin-operated vending machines

div hdg sub 1999 No. 61 s 25

Prohibition on use of vending machines to supply herbal cigarettes and loose smoking blends

s 18 sub 1999 No. 61 s 25

Division 3A—Supply of smoking products by adults to children

div hdg ins 1999 No. 61 s 25

Application of div 3A

s 18A ins 1999 No. 61 s 25

Supply prohibited

s 19 amd 1999 No. 61 s 26

Supplier of tobacco products must display prohibition signs

prov hdg amd 1999 No. 61 s 27(1)

s 20 amd 1999 No. 61 s 27(2)

Division 5—Minimum saleable quantities of smoking products

div hdg sub 1999 No. 61 s 28

Cigarettes and herbal cigarettes must be sold in packages

prov hdg amd 1999 No. 61 s 29(1)

s 22 amd 1999 No. 61 s 29(2)–(3)

Prepackaged loose tobacco must not be sold under certain quantity

s 23 amd 1999 No. 61 s 30

Prepackaged loose smoking blend must not be sold under certain quantity

s 23A ins 1999 No. 61 s 31

Liability of person for conduct of representatives

s 25 amd 1999 No. 61 s 32

Entry of places by authorised persons

s 33 amd 1999 No. 61 s 33

Power to require evidence of age, name and address of person observed being supplied a smoking product

prov hdg amd 1999 No. 61 s 34

s 39 amd 1999 No. 61 s 34

Power to seize smoking product

prov hdg amd 1999 No. 61 s 35

s 40 amd 1999 No. 61 s 35

Evidence of thing labelled as smoking product

s 51 sub 1999 No. 61 s 36

PART 5—REPEAL AND TRANSITIONAL

pt 5 (ss 54–56) exp 30 November 1998 (see s 56)

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SCHEDULE—DICTIONARY

- def **“driver licence”** amd 1999 No. 42 s 54(3) sch pt 3
- def **“herbal cigarette”** ins 1999 No. 61 s 37(2)
- def **“loose smoking blend”** ins 1999 No. 61 s 37(2)
- def **“package”** sub 1999 No. 61 s 37
- def **“prepackaged loose smoking blend”** ins 1999 No. 61 s 37(2)
- def **“smoking product”** ins 1999 No. 61 s 37(2)
- def **“supplier”** ins 1999 No. 61 s 37(2)
- def **“tobacco product supplier”** om 1999 No. 61 s 37(1)