



Tobacco and Other Smoking Products Act 1998

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- **editorial changes made in earlier reprints.**

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Queensland

Tobacco and Other Smoking Products Act 1998

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Tobacco and Other Smoking Products Act 1998

[as amended by all amendments that commenced on or before 24 November 2011]

An Act to restrict the supply of tobacco and other smoking products to children, to restrict advertising and promotion of tobacco and other smoking products, to prohibit smoking in certain places, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Tobacco and Other Smoking Products Act 1998*.

2 Commencement

- (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).

3 Object of Act

The object of this Act is to improve the health of members of the public by reducing their exposure to tobacco and other smoking products.

3A How object is to be achieved

The object is to be achieved mainly by—

[s 4]

- (a) restricting the supply of tobacco and other smoking products to children; and
- (b) restricting the advertising and promotion of tobacco and other smoking products; and
- (c) reducing public exposure to smoke from tobacco and other smoking products; and
- (d) establishing a framework for monitoring, investigative and enforcement activities.

4 Definitions

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

5 Who is a *responsible adult*

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

6 Acceptable evidence of age

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.

7 Act binds all persons

This Act binds all persons.

Part 2 **Supply of smoking products**

Division 1 **Suppliers and employees**

8 **Application of div 1**

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

9 **Meaning of *prevention measures* for div 1**

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 acknowledgement by the employee that the employee received the instructions and warning mentioned in paragraphs (a) and (b).

9A **Supplier must take prevention measures**

- (1) A supplier must take prevention measures in relation to employees of the supplier.

Maximum penalty—40 penalty units.

[s 10]

(2) In this section—

employee, of a supplier, means a person who supplies, or may supply, smoking products in the course of the person's employment.

10 Supplier must not supply smoking products to children

(1) A supplier must not supply a smoking product to a child.

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.

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

11 Supplier must ensure employees do not supply smoking products to children

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

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.

(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.

12 When employee of supplier liable

(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 course of the employee's employment, supply a smoking product to a child.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
(b) for a second or later offence—40 penalty units.

13 Order prohibiting or restricting sale of smoking products

- (1) This section applies if a supplier is convicted of an offence against section 10 or 11.
- (2) The court sentencing the supplier for the offence may, on its own initiative or the application of the prosecutor, make an order—
- (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.
- (3) The period of the order must not be more than—
- (a) for a first offence—6 months; or
- (b) for a second offence—1 year; or
- (c) for a third or later offence—3 years.
- (4) If, when the offence happened, the supplier supplied smoking products at more than 1 outlet, the order may apply only to an outlet where the offence happened.
- (5) The court may make the order in addition to imposing another penalty to which the supplier is liable because of the conviction.
- (6) A person must not contravene an order under this section.
Maximum penalty—420 penalty units.
- (7) A conviction under subsection (6) for contravening an order does not affect the continuation of the order.

[s 13A]

13A Power to require details of retail suppliers

- (1) This section applies if the chief executive reasonably believes a manufacturer or wholesaler of smoking products has supplied smoking products to suppliers for sale at retail outlets.
- (2) The chief executive may, by written notice given to the manufacturer or wholesaler, require the manufacturer or wholesaler to give all or any of the following information (the *contact information*) to the chief executive for each supplier to which the manufacturer or wholesaler has supplied smoking products—
 - (a) the name of the supplier;
 - (b) if a supplier trades under a business name, that business name;
 - (c) the address of the supplier's retail outlet;
 - (d) the supplier's postal address;
 - (e) the supplier's phone number;
 - (f) the supplier's fax number and email address.
- (3) The notice must state—
 - (a) the period before the date of the notice, not exceeding 12 months, for which the contact information is required; and
 - (b) a date, not less than 28 days from the date of the notice, by which the contact information must be given to the chief executive; and
 - (c) the way the contact information must be given to the chief executive.

Example—

The notice may require the contact information to be given by fax or email.
- (4) The manufacturer or wholesaler must comply with the notice, unless the manufacturer or wholesaler has a reasonable excuse.

Maximum penalty—70 penalty units.

- (5) The chief executive may use contact information or disclose contact information to a person only for the following purposes—
- (a) compiling and keeping a list of suppliers so that the suppliers may be advised about matters relating to this Act, including the requirements applying to suppliers;
 - (b) monitoring or enforcing compliance with this Act.

Division 1A Point of sale at a retail outlet

13B Number of points of sale

A supplier must not sell smoking products at more than 1 point of sale at a retail outlet.

Maximum penalty—140 penalty units.

Division 2 Tobacco product vending machines

14 Definitions for div 2

In this division—

bar means a place in licensed premises that—

- (a) is stocked with liquor of various types; and
- (b) is used solely or mainly for the supply of liquor to customers; and
- (c) has a counter—
 - (i) across which liquor is supplied directly to customers; and
 - (ii) at which, or in the immediate vicinity of which, customers may immediately consume the liquor supplied.

[s 14]

bar area, of licensed premises, means the area—

- (a) in the immediate vicinity of a bar; and
- (b) not more than 5m from the outer edge of the counter of the bar.

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.

gaming machine area has the meaning given by the *Gaming Machine Act 1991*, schedule.

liquor has the meaning given by the *Liquor Act 1992*, section 4B.

prevention measures, by a person in charge of a tobacco product vending machine, means, for the person's employees—

- (a) instructing the employees to—
 - (i) 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
 - (ii) 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
- (b) obtaining written acknowledgement by each employee that the employee received the instructions mentioned in paragraph (a).

15 Restriction on location of tobacco product vending machines

- (1) An occupier of premises must not have a tobacco product vending machine in the premises.

Maximum penalty—70 penalty units.

- (2) Subsection (1) does not apply to—
- (a) a bar area of licensed premises if the use of each tobacco product vending machine in the area can be easily observed by persons working behind the bar; or
 - (b) a casino; or
 - (c) a gaming machine area, if each tobacco product vending machine in the area—
 - (i) can be easily observed by employees of the person in charge of the tobacco product vending machine; and
 - (ii) is not more than 1m from a gaming machine in the gaming machine area.
- (3) Also, 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.

- (4) In a prosecution for an offence against subsection (1), 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.

[s 15A]

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

A person in charge of a tobacco product vending machine in a bar area or gaming machine area must take prevention measures in relation to the person's employees.

Maximum penalty—40 penalty units.

16 Supply of tobacco products from vending machines

- (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—70 penalty units; and
(b) for a second or later offence—140 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.

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

- (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)—200 penalty units.

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

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

- (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—70 penalty units; and
 - (b) for a second or later offence—140 penalty units.
- (2) In this section—
possession, of a coin operated vending machine, includes having control of the machine.

[s 18A]

Division 3A Supply of smoking products by adults to children

18A Application of div 3A

This division does not apply to—

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

19 Supply prohibited

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

Maximum penalty—140 penalty units.

- (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 3B False representation of age

19A Person must not falsely represent age

A person must not falsely represent himself or herself to have attained 18 years for the purpose of being supplied with a smoking product.

Maximum penalty—20 penalty units.

Division 5 Minimum saleable quantities of smoking products

22 Cigarettes and herbal cigarettes must be sold in packages

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

Maximum penalty—140 penalty units.

- (2) A supplier must not sell cigarettes or herbal cigarettes in a package containing less than 20 cigarettes.

Maximum penalty—140 penalty units.

23 Loose tobacco must be sold in packages

- (1) A supplier must not sell loose tobacco except in a package.

Maximum penalty—140 penalty units.

- (2) A supplier must not sell loose tobacco in a package containing less than 25g of loose tobacco.

Maximum penalty—140 penalty units.

23A Loose smoking blend must be sold in packages

- (1) A supplier must not sell loose smoking blend except in a package.

Maximum penalty—140 penalty units.

- (2) A supplier must not sell loose smoking blend in a package containing less than 15g of loose smoking blend.

Maximum penalty—140 penalty units.

[s 24]

Division 6 Defence to charges for offences if age material

24 Defence to charge if age material

- (1) This section applies to a charge for an offence against section 10, 11, 12 or 16 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.
- (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 2A Advertising, display and promotion of smoking products

Division 1AA Definitions

25 Definitions for pt 2A

In this part—

humidified room means a room in which the humidity is controlled to preserve the quality of cigars in the room.

relevant point of sale, of a supplier, means the point of sale at a retail outlet at which the supplier sells smoking products.

Note—

Section 13B provides that smoking products may be sold by a supplier at not more than 1 point of sale at a retail outlet.

smoking product means—

- (a) a tobacco product, herbal cigarette, loose smoking blend or smoking related product; or
- (b) a package or carton of a thing mentioned in paragraph (a).

smoking related product means a product, prescribed under a regulation, that is used primarily in the consumption of a tobacco product, herbal cigarette or loose smoking blend.

Division 1 Retail advertising and display

26 Application of div 1

This division does not apply to a tobacco product vending machine.

26A Prohibition on display, and restrictions on advertising, of smoking products

- (1) A supplier must not display a smoking product.
Maximum penalty—140 penalty units.
- (2) A supplier must not advertise a smoking product other than at a retail outlet.
Maximum penalty—140 penalty units.
- (3) A supplier must not advertise a smoking product at a retail outlet in any way other than a way specifically provided for in another section of this division.
Maximum penalty—140 penalty units.
- (4) If a smoking product is kept by a supplier at a retail outlet in compliance with this division, the supplier does not contravene this section merely because the smoking product is seen by another person.

[s 26B]

26B Location of smoking products at retail outlet

Smoking products may be kept at a retail outlet only at or in the following places—

- (a) at or near the supplier's relevant point of sale, only if the smoking products are kept either—
 - (i) on the seller's side of the point of sale; or
 - (ii) above or below a counter, but not on a counter, where customers are served, in a way that the smoking products can not be accessed by customers;
- (b) for cigars—in a humidified room where the cigars can be accessed by customers only if, while a customer is in the room, the customer is accompanied by the supplier or an employee of the supplier;
- (c) in a room or other place, if the smoking products are kept in a way that they can not be accessed by customers.

Example—

a locked storage room used to store products not for immediate sale

26C Smoking products must be kept out of sight of customers

- (1) Smoking products kept at a retail outlet must be kept in a way that they are not visible to customers.
- (2) Also, if smoking products are kept at or near the supplier's relevant point of sale, the smoking products must be concealed by a covering that—
 - (a) is opaque; and
 - (b) is of a colour or design that does not make a feature of the covering as distinct from its surrounds.
- (3) Despite subsections (1) and (2), the fleeting incidental view by a customer of an area of no more than 1m² of smoking products is permitted only to the extent required to carry out activities in the ordinary course of the supplier's business.

Example of activities carried out in the ordinary course of the supplier's business—

removing smoking products as part of a transaction

26D Smoking products must not constitute advertisement

An arrangement of smoking products must not—

- (a) constitute a tobacco advertisement itself; or
- (b) create a composite picture or other meaningful visual image whose component parts are printed on individual cartons or packages.

26E Display of retail prices of smoking products

- (1) This section applies if smoking products are kept at or near a supplier's relevant point of sale.
- (2) The retail price of smoking products available, or usually available, for sale at the retail outlet may be displayed only by a price ticket or other indicator of price—
 - (a) fixed at the place where the smoking products are kept; and
 - (b) in the form prescribed under a regulation.
- (3) A display of the retail price of smoking products must not include anything else about the price of a smoking product, including, for example, a thing that states the price is discounted.
- (4) A supplier does not advertise a smoking product merely by displaying the retail price of the product in compliance with this section.

26HA Certain business names allowed

- (1) A supplier does not advertise or display a smoking product merely by using a business name that includes a reference to a smoking product.

[s 26HB]

- (2) However, a supplier is taken to advertise or display a smoking product if the supplier advertises or displays a business name that includes anything about the price of smoking products.

Example of a business name for subsection (2)—

Discount Cigs and Tobacco

26HB Use of ‘tobacconist’ in advertising

A supplier who is a tobacconist does not advertise or display a smoking product merely by using the word ‘tobacconist’ in an advertisement or display for the tobacconist’s business.

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

- (1) A supplier must display, at the supplier’s relevant point of sale, a sign prescribed under a regulation as a mandatory sign.
Maximum penalty—20 penalty units.
- (2) A supplier may display, at the supplier’s relevant point of sale, a sign prescribed under a regulation as a permitted sign.

Division 2 Tobacco product vending machines

26IA Prohibition on display, and restrictions on advertising, of smoking products

A person in charge of a tobacco product vending machine must not—

- (a) display a smoking product in or on the machine; or
(b) advertise a smoking product in or on the machine other than as allowed under this division.

Maximum penalty—140 penalty units.

26ID Display of retail prices of tobacco product

- (1) If a tobacco product is available or usually available for sale in a tobacco product vending machine, the retail price of the tobacco product may be displayed only by a price ticket, or other indicator of price, as prescribed under a regulation.
- (2) A display of the prices of tobacco products must not include anything else about the price of a tobacco product including, for example, a thing that states the price is discounted.
- (3) A person in charge of a tobacco product vending machine does not advertise a tobacco product merely by displaying the retail price of the product in compliance with this section.

26IE Certain business names allowed

- (1) A person in charge of a tobacco product vending machine does not advertise or display a smoking product merely by using a business name that includes a reference to a smoking product.
- (2) However, a person in charge of a tobacco product vending machine is taken to advertise or display a smoking product if the person advertises or displays a business name that includes anything about the price of smoking products.

Example of a business name for subsection (2)—

Discount Cigs and Tobacco

26IF Person in charge of tobacco product vending machine must attach particular signs

A person in charge of a tobacco product vending machine must attach a sign prescribed under a regulation as a mandatory sign to, or near, the vending machine, as prescribed under a regulation.

Maximum penalty—20 penalty units.

[s 26J]

Division 3 Promotions of smoking products

26J Definitions for div 3

In this division—

entitlement means an entitlement to goods or services, or to a reduced price for goods or services.

object includes a document and does not include a smoking product.

26K When division does not apply

This division does not prevent a promotion of a smoking product by a manufacturer or distributor if the promotion is only to a supplier.

26L Supply of object or entitlement that promotes smoking product etc.

- (1) A person must not supply an object or entitlement that promotes—
- (a) a smoking product; or
 - (b) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (c) the name or interests of a manufacturer or distributor of a smoking product in association, whether directly or indirectly, with the smoking product.

Maximum penalty—140 penalty units.

- (2) In a prosecution for an offence against subsection (1), to establish whether an object or entitlement promotes a matter—
- (a) it is enough to prove—
 - (i) that material published by the defendant relating to the object or entitlement would be likely to cause a reasonable person to believe the object or

-
- entitlement promoted, or was intended to promote, the matter; or
- (ii) that there are other reasonable grounds for believing the object or entitlement promoted, or was intended to promote, the matter; and
- (b) the matter may be found to be promoted by the object or entitlement irrespective of the actual belief of the defendant.
- (3) Subsection (1) does not apply to an object if—
- (a) the primary purpose of the object is not to promote a thing mentioned in subsection (1); and
- (b) the object was—
- (i) lawfully available for supply in Queensland on or after 31 May 2002 and before 31 December 2005; or
- (ii) substantially the same, and made by the same person, as an object under subparagraph (i).
- (4) In this section—
- promotes*, in relation to the promotion of a matter by an object that is a sound recording, video recording or a computer storage device, includes the promotion of the matter by aural or visible material that the object is reasonably capable of producing, or causing to be produced, in its normal use.

26M Supply of object or entitlement in association with smoking product sale or consumption

- (1) A person must not supply an object or entitlement if the supply is in direct or indirect association with the sale or consumption of a smoking product, or of smoking products generally.
- Maximum penalty—140 penalty units.
- (2) In a prosecution for an offence against subsection (1), to establish whether an object or entitlement is supplied in direct or indirect association with a matter—

[s 26N]

- (a) it is enough to prove—
 - (i) that material published by the defendant relating to the object or entitlement would be likely to cause a reasonable person to believe the supply to be in that association, or intended to be in that association; or
 - (ii) that there are other reasonable grounds for believing the supply to be in that association, or intended to be in that association; and
 - (b) the supply may be found to be in that association irrespective of the actual belief of the defendant.
- (3) It is a defence to a prosecution for an offence against subsection (1), if the defendant proves that the person receiving the object or entitlement would have received the same object or entitlement if the person had bought goods of whatever kind other than a smoking product to the same value as the smoking product.
- (4) However, subsection (3) does not apply if the object or entitlement would have been received by the person only if the person had bought the goods from the defendant or from a supplier nominated by the defendant.

26N Smoking product giveaways

- (1) A person must not supply a smoking product for free if the supply promotes the sale of a smoking product.
- Maximum penalty—140 penalty units.
- (2) In a prosecution for an offence against subsection (1), to establish whether the supply of a smoking product for free promotes the sale of a smoking product—
- (a) it is enough to prove—
 - (i) that material published by the defendant relating to the supply would be likely to cause a reasonable person to believe the supply promoted, or was intended to promote, the sale; or

- (ii) that there are other reasonable grounds for believing the supply promoted, or was intended to promote, the sale; and
- (b) the sale may be found to be promoted by the supply irrespective of the actual belief of the defendant.

260 Competition that promotes smoking product

- (1) A person must not conduct a competition that promotes—
 - (a) a smoking product; or
 - (b) a trademark or brand name, or part of a trademark or brand name, of a smoking product; or
 - (c) the name or interests of a manufacturer or distributor of a smoking product in association, whether directly or indirectly, with the smoking product.

Maximum penalty—140 penalty units.

- (2) In a prosecution for an offence against subsection (1), to establish whether a competition promotes a matter—
 - (a) it is enough to prove—
 - (i) that material published by the defendant relating to the competition would be likely to cause a reasonable person to believe the competition promoted, or was intended to promote, the matter; or
 - (ii) that there are other reasonable grounds for believing the competition promoted, or was intended to promote, the matter; and
 - (b) the matter may be found to be promoted by the competition irrespective of the actual belief of the defendant.

[s 26P]

26P Conduct of competition in association with smoking product sale or consumption

- (1) A person must not conduct a competition that has a direct or indirect association with the sale or consumption of a smoking product, or of smoking products generally.

Maximum penalty—140 penalty units.

- (2) In a prosecution for an offence against subsection (1), to establish whether a competition has a direct or indirect association with a matter—

(a) it is enough to prove—

(i) that material published by the defendant relating to the competition would be likely to cause a reasonable person to believe the competition to have that association, or to be intended to have that association; or

(ii) that there are other reasonable grounds for believing the competition to have that association, or to be intended to have that association; and

(b) the competition may be found to have that association irrespective of the actual belief of the defendant.

26PA Image of consumption of smoking product

- (1) A supplier must not, at a retail outlet, display an image that promotes a person or thing consuming, using or being otherwise associated with, a smoking product.

Maximum penalty—140 penalty units.

- (2) Subsection (1) does not apply to a trademark.

Part 2B Smoke-free enclosed places

26PB Application of pt 2B

This part does not apply to a motor vehicle under part 2BA.

26Q Definitions for pt 2B

In this part—

licensed premises means—

- (a) licensed premises under the *Liquor Act 1992*; or
- (b) a place with a permit under the *Liquor Act 1992*, section 97; or
- (c) licensed premises under the *Wine Industry Act 1994*; or
- (d) a place with a permit under the *Wine Industry Act 1994*.

licensee means a person who holds a licence or permit for licensed premises.

premium gaming room means a room of a casino where—

- (a) minimum or maximum bets are generally higher than elsewhere in the casino; and
- (b) food or drink are generally provided free to casino patrons.

26R Person must not smoke in enclosed place

- (1) A person must not smoke in an enclosed place.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to the following—

- (a) residential premises, other than a part of residential premises being used for carrying on a business while 1 or more persons who do not reside at the premises are present in the part of the premises;

[s 26S]

Example of a person who does not reside at the premises—

a person employed in the business

- (b) multi-unit residential accommodation, other than the common areas of the accommodation;
 - (c) a premium gaming room;
 - (d) a secure facility under the *Corrective Services Act 2006*.
- (3) A person who performs in a theatre or other enclosed place does not commit an offence under this section by smoking during the performance if smoking is part of the performance.
- (4) In this section—

common area, of multi-unit residential accommodation, means an area accessible to all, or a specified class of, residents of, or persons employed at, the accommodation.

Example—

a TV room or cooking facilities shared by all, or a specified class of, residents

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

residential premises means premises used, or intended to be used, as a place of residence or mainly as a place of residence and does not include multi-unit residential accommodation.

26S No smoking sign

- (1) This section applies in relation to each public entrance from an outdoor area to an enclosed place at licensed premises.
- (2) The licensee of the licensed premises must display a no smoking sign at the entrance as prescribed under a regulation.
Maximum penalty—20 penalty units.
- (3) In this section—

no smoking sign means a sign—

-
- (a) indicating that smoking is not permitted; and
 - (b) complying with the requirements prescribed under a regulation.

outdoor area means an area that is not an enclosed place.

26U Person smoking must stop when directed

- (1) A person contravening section 26R(1) must comply with a direction to stop the contravention by—

- (a) an authorised person; or

Editor's note—

See section 40A (Power to direct person to stop smoking).

- (b) an occupier of an enclosed place where the contravention is happening, or an employee or agent of the occupier.

Maximum penalty—20 penalty units.

- (2) If a person (the *first person*) does not comply with a direction to stop the contravention and the first person is at a place where food or drink is provided, a person (the *second person*) conducting an on-site food service must not provide food or drink to the first person while the first person continues to contravene section 26R(1).

Maximum penalty—140 penalty units.

- (3) However, for subsection (2), it is a defence for the second person to prove that the second person was not aware, and could not have reasonably been expected to be aware, that the contravention was happening.

26V Offence by occupier

- (1) If a person contravenes section 26R(1), an occupier of the enclosed place where the contravention happens commits an offence.

Maximum penalty—140 penalty units.

[s 26VA]

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

Part 2BA Smoke-free motor vehicles

26VA Definitions for pt 2BA

In this part—

motor vehicle means a motor vehicle within the meaning of the *Transport Operations (Road Use Management) Act 1995*, schedule 4 other than the following—

- (a) a trailer attached to the motor vehicle;
- (b) an aircraft;
- (c) a boat;
- (d) a train.

road see *Transport Operations (Road Use Management) Act 1995*, schedule 4.

road-related area see the *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, section 13.

Editor's note—

Transport Operations (Road Use Management—Road Rules) Regulation 1999—see the Acts Interpretation Act 1954, section 14I and Transport Operations (Road Use Management—Road Rules) Regulation 2009, section 13.

26VB Person must not smoke in motor vehicle being used for business use if anyone else in the vehicle

A person must not smoke in a motor vehicle if—

- (a) the vehicle is on a road or road-related area; and
- (b) the vehicle is being used for business use; and
- (c) another person is in the vehicle.

Maximum penalty—20 penalty units.

26VC Person must not smoke in motor vehicle if person under 16 in the vehicle

A person must not smoke in a motor vehicle if—

- (a) the vehicle is on a road or road-related area; and
- (b) another person in the vehicle is under 16 years of age.

Maximum penalty—20 penalty units.

26VD Defence for s 26VC

It is a defence to a charge for an offence against section 26VC for the defendant to prove that at the time of the offence the defendant honestly and reasonably believed that no person in the vehicle was under 16 years of age.

26VE Evidentiary provisions

- (1) This section applies to a proceeding for an offence under this part.
- (2) A statement in a charge of any of the following, in relation to the time or date mentioned in the charge, is evidence of the matter—
 - (a) a person was under 16 years of age;
 - (b) a thing was a smoking product;
 - (c) a thing was a motor vehicle;

[s 26W]

- (d) a place was a road or road-related area.
- (3) Subsection (4) applies if a defendant intends to challenge either of the following at the hearing of a charge under this part—
 - (a) that a person was under 16 years of age;
 - (b) a thing was a smoking product.
- (4) The defendant must, at least 14 days before the day fixed for the hearing, give notice of the challenge to the prosecution in the approved form signed by the defendant.
- (5) Evidence by a police officer of his or her belief of any matter mentioned in subsection (6) must be accepted by the court as proof of the matter if —
 - (a) the court considers the belief to be reasonable; and
 - (b) there is no evidence to the contrary.
- (6) The matters to which the previous subsection applies are—
 - (a) a person seen by the police officer in a motor vehicle was under 16 years of age; and
 - (b) a thing being smoked by someone in a motor vehicle was a smoking product.

Part 2C Smoke-free outdoor places

Division 1 Outdoor eating or drinking places

26W Meaning of *outdoor eating or drinking place*

- (1) A place is an *outdoor eating or drinking place* if—
 - (a) the place is not an enclosed place or residential premises; and

-
- (b) persons at the place may consume food or drink provided from an on-site food service; and
- (c) any of the following apply—
- (i) a person would reasonably expect the place has been provided for the purpose of consuming food or drink provided from an on-site food service;

Examples—

- an area on a footpath outside a cafe or takeaway food store containing tables and chairs
- an outdoor area at a shopping centre, surrounded by food outlets, apparently provided for patrons to use while consuming food or drink purchased from the outlets

- (ii) the place is bounded by a fence;

Examples—

- a fenced sporting ground at which persons may consume food or drink purchased at the ground
- an area of a park, temporarily fenced off, at which a cultural festival is being conducted and where persons may eat food or drink purchased at the festival

- (iii) the place is licensed premises.

- (2) However, a place is an outdoor eating and drinking place only while—
- (a) food or drink is being provided, or is available to be provided, from an on-site food service; or
- (b) food or drink provided from an on-site food service is being consumed at the place.
- (3) Food or drink is taken to be provided from an on-site food service whether it is—
- (a) served to a person in the outdoor eating or drinking place by or for the person conducting the on-site food service; or
- (b) taken by a person from the on-site food service for consumption in the outdoor eating or drinking place.

[s 26X]

- (4) If an area that would otherwise be within an outdoor eating or drinking place is clearly designated as an area where no food or drink may be consumed, the area is taken not to be part of the outdoor eating or drinking place.
- (5) In this section—
- provide*, food or drink, includes distribute, give or sell the food or drink.
- residential premises*—
- (a) means premises used, or intended to be used, as a place of residence or mainly as a place of residence; and
- (b) does not include hotels, motels, hostels, boarding houses, nursing homes, residential accommodation comprising lots in a community titles scheme and other similar accommodation.

26X Person must not smoke at outdoor eating or drinking place

- (1) A person must not smoke at an outdoor eating or drinking place.
- Maximum penalty—20 penalty units.
- (2) Subsection (1) does not apply to a designated outdoor smoking area.

26Y Person smoking must stop when directed

- (1) A person contravening section 26X(1) must comply with a direction to stop the contravention by—
- (a) an authorised person; or
- (b) an occupier of the outdoor eating or drinking place where the contravention is happening, or an employee or agent of the occupier.
- Maximum penalty—20 penalty units.

-
- (2) If a person (the *first person*) does not comply with a direction to stop the contravention, a person (the *second person*) conducting an on-site food service must not provide food or drink to the first person while the first person continues to contravene section 26X(1).

Maximum penalty—140 penalty units.

- (3) However, for subsection (2), it is a defence for the second person to prove that the second person was not aware, and could not have reasonably been expected to be aware, that the contravention was happening.

26Z Offence by occupier

- (1) If a person contravenes section 26X(1), the occupier of the outdoor eating or drinking place where the contravention happens commits an offence.

Maximum penalty—140 penalty units.

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

26ZA Designating an outdoor smoking area

- (1) This section applies to 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.

[s 26ZA]

- (2) The licensee may designate a part of the licensed outdoor area of the premises as an area in which drinking and smoking is allowed (a *designated outdoor smoking area*) by posting a diagram or other notice clearly showing the limits of the area.
- (3) There may be more than 1 designated outdoor smoking area at the premises.
- (4) The licensee must not designate a part or parts of the licensed outdoor area of the premises under subsection (2) other than in compliance with this section.

Maximum penalty—140 penalty units.

- (5) The total area of the designated outdoor smoking area or areas must not be more than 50% of the whole licensed outdoor area of the premises.
- (6) Each designated outdoor smoking area must have buffers on its perimeter wherever it is adjacent to other parts of the outdoor area of the premises ordinarily accessed by patrons.
- (7) Each buffer must be—
 - (a) a screen, impervious to smoke, at least 2.1m high; or
 - (b) an area, at least 2m wide, in which patrons are not permitted to eat, drink or smoke.

Examples—

- a thick screening hedge, 2.1m high
 - an artificial screen, 2.1m high
 - a garden or pathway, 2m wide
- (8) For a buffer mentioned in subsection (7)(b), at least half of its area must be taken from the area that would otherwise form part of the designated outdoor smoking area.
 - (9) There may not be a designated outdoor smoking area at the premises if any part of the licensed outdoor area of the premises has been designated under section 26W(4) as an area where no food or drink may be consumed.

26ZB Obligations of licensee of premises with designated outdoor smoking area

- (1) This section applies to the licensee of premises at which there is a designated outdoor smoking area.
- (2) The licensee must ensure that, in the designated outdoor smoking area—
 - (a) no food or drink is served; and
 - (b) no food is consumed; and
 - (c) no entertainment is offered; and
 - (d) there are no gaming machines.

Maximum penalty—140 penalty units.

- (3) The licensee must ensure the designated outdoor smoking area and its buffers comply with section 26ZA(5) to (8).

Maximum penalty—140 penalty units.

- (4) The licensee must—
 - (a) prepare, and keep up-to-date, a smoking management plan complying with section 26ZC; and
 - (b) display a notice in or near the designated outdoor smoking area stating that the smoking management plan is available for perusal by patrons on request; and
 - (c) make the plan available for perusal on request by a patron; and
 - (d) produce the plan for inspection on request by an authorised person.

Maximum penalty—70 penalty units.

- (5) The licensee must not allow anyone to smoke anywhere in the licensed outdoor area of the premises other than the designated outdoor smoking area.

Maximum penalty—140 penalty units.

[s 26ZC]

26ZC Smoking management plans

- (1) A *smoking management plan* is a document, prepared for premises at which there is a designated outdoor smoking area, stating how smoking is managed at the premises with the aim of reducing smoking at the premises.
- (2) A smoking management plan must—
 - (a) identify the designated outdoor smoking area; and
 - (b) identify the outdoor areas where food is provided; and
 - (c) identify the buffers under section 26ZA; and
 - (d) state how the licensee will minimise the exposure of staff and patrons to environmental tobacco smoke; and
 - (e) describe the training or instruction given to staff to ensure this Act and the plan are complied with; and

Example—

training to ensure patrons do not smoke outside the designated outdoor smoking area or take food into that area

- (f) provide for signage that clearly identifies where smoking is or is not allowed; and
- (g) include any other matters prescribed under a regulation.

Division 2 Major sports facilities

26ZD Meaning of *major sports facility*

A *major sports facility* is a facility declared to be a major sports facility under the *Major Sports Facilities Act 2001*.

26ZE Person must not smoke at major sports facility

- (1) A person must not smoke at a major sports facility.
Maximum penalty—20 penalty units.
- (2) Subsection (1) does not apply to the following areas of a major sports facility—

- (a) a road or carpark;
- (b) a picnic area or area of parkland.

26ZF Person smoking must stop when directed

A person contravening section 26ZE(1) must comply with a direction to stop the contravention by—

- (a) an authorised person; or
- (b) an occupier of the major sports facility, or the part of the facility, where the contravention is happening, or an employee or agent of the occupier.

Maximum penalty—20 penalty units.

26ZG Offence by occupier

- (1) If a person contravenes section 26ZE(1), the occupier of the major sports facility, or of the part of the facility, where the contravention happened, commits an offence.

Maximum penalty—140 penalty units.

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

Division 3 Other outdoor places

26ZH Person must not smoke at a patrolled beach

- (1) A person must not smoke in a patrolled beach area of a patrolled beach.

[s 26ZI]

Maximum penalty—20 penalty units.

(2) In this section—

line means an imaginary line.

patrolled beach is a beach on which red and yellow flags mark the boundaries for safe swimming at the beach.

patrolled beach area, of a patrolled beach, is the area within—

- (a) a line, at right angles to 1 end of a straight line between the flags, extending seawards for 50m and landwards to the extent of any registered land; and
- (b) another straight line, at right angles to the other end of the line between the flags, extending seawards for 50m and landwards to the extent of any registered land; and
- (c) a line joining the landward ends of the lines mentioned in paragraphs (a) and (b) that follows the boundary of any registered land; and
- (d) a straight line joining the seaward ends of the lines mentioned in paragraphs (a) and (b).

registered land means—

- (a) freehold land on the freehold land register under the *Land Title Act 1994*; or
- (b) leasehold land, road, reserve, trust land, licence, permit or State Housing lease, recorded on a register under the *Land Act 1994*.

seawards means in the direction of the water to which the flags relate.

26ZI Person must not smoke at a prescribed outdoor swimming area

- (1) A person must not smoke at a prescribed outdoor swimming area between sunrise and sunset.

Maximum penalty—20 penalty units.

(2) In this section—

outdoor swimming area means an area in, or adjacent to, a pool or other body of water used by the public for swimming.

Example—

an artificial beach

prescribed outdoor swimming area means an outdoor swimming area, or part of an outdoor swimming area, prescribed under a regulation.

26ZJ Person must not smoke near an entrance to an enclosed place

(1) A person must not smoke within 4m of any part of an entrance to an enclosed place, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) Subsection (1) does not apply to an entrance that is an entrance only to—

- (a) residential premises; or
- (b) multi-unit residential accommodation; or
- (c) premises to which a commercial hotel licence or community club licence under the *Liquor Act 1992* applies; or
- (d) premises, to which a commercial special facility licence under the *Liquor Act 1992* applies, that contain all or part of a casino; or
- (e) a vehicle or part of a vehicle.

(3) Subsection (1) does not apply to—

- (a) a person in a motor vehicle; or
- (b) a person in an outdoor pedestrian mall prescribed under a regulation.

[s 26ZK]

- (4) It is a reasonable excuse for subsection (1) that the person was not remaining at or near the entrance but was merely passing the entrance.
- (5) Subsection (1) applies to an entrance only while either of the following types of access to the enclosed place is available by the entrance—
 - (a) public access;
 - (b) the access usually available by the entrance to enable the place to be used in a way it is ordinarily used.
- (6) In this section—

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

residential premises means premises used, or intended to be used, as a place of residence or mainly as a place of residence and does not include multi-unit residential accommodation.

26ZK Person must not smoke near children's playground equipment

- (1) A person must not smoke within 10m of any part of children's playground equipment situated at a place that is ordinarily open to the public.
Maximum penalty—20 penalty units.
- (2) Subsection (1) does not apply to—
 - (a) a person in a motor vehicle; or
 - (b) a person at residential premises or on land on which residential premises are built or may lawfully be built.
- (3) In this section—

residential premises see section 26ZJ(6).

26ZL Person smoking must stop when directed

A person contravening section 26ZH(1), 26ZI(1), 26ZJ(1) or 26ZK(1) must comply with a direction by an authorised person to stop the contravention.

Maximum penalty—20 penalty units.

26ZM State and local governments administer this division

- (1) Both the State and local governments have a role in administering this division.
- (2) However, nothing in this division imposes a duty on a local government to enforce this division.

26ZN Role of local government

In exercising its jurisdiction of local government in enforcing this division, the local government has its executive role—

- (a) to administer and enforce this division in the local government's area; and
- (b) for a patrolled beach area of a patrolled beach or a prescribed outdoor swimming area—to administer and enforce this division for the patrolled beach area or prescribed outdoor swimming area whether it is adjacent to or within the local government's area.

26ZO State may require report from local government

- (1) This section applies to a matter under this division administered and enforced by local governments.
- (2) The chief executive, by written notice, may ask a local government to give the chief executive information about the local government's administration and enforcement of the matter.
- (3) The local government must comply with the request.

[s 26ZP]

26ZP Fines payable to local government

- (1) This section applies if—
 - (a) a proceeding for an offence is taken for a matter under this division by a local government; and
 - (b) a court imposes a fine for the offence.
- (2) The fine must be paid to the local government.

Division 4 Prohibition on smoking at public transport waiting points and malls by local governments

26ZPA Definitions for div 4

In this division—

ferry service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

local government see the *Local Government Act 1993*, schedule 2.

Editor's Note—

*Local Government Act 1993—*see the *Acts Interpretation Act 1954*, section 14I and *Local Government Act 2009*, schedule 4.

local government area see the *Local Government Act 1993*, schedule 2.

Editor's Note—

*Local Government Act 1993—*see the *Acts Interpretation Act 1954*, section 14I and *Local Government Act 2009*, schedule 4.

local law see the *Local Government Act 1993*, schedule 2.

Editor's Note—

*Local Government Act 1993—*see the *Acts Interpretation Act 1954*, section 14I and *Local Government Act 2009*, schedule 4.

outdoor pedestrian mall means any of the following—

-
- (a) a mall established under the *Local Government Act 1993*;
 - (b) the Chinatown Mall established under the *Local Government (Chinatown and Valley Malls) Act 1984*;
 - (c) the Valley Mall established under the *Local Government (Chinatown and Valley Malls) Act 1984*;
 - (d) the Queen Street Mall established under the *Local Government (Queen Street Mall) Act 1981*.

public passenger service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

public transport waiting point means any of the following—

- (a) a transit terminal for public passenger services;
- (b) a ferry terminal, jetty, pontoon or landing for ferry services;
- (c) a bus stop, bus shelter, bus station or bus lay-by;
- (d) a taxi rank, limousine rank or limousine standing area.

26ZPB Local government may make local laws prohibiting smoking at certain places

- (1) A local government may make a local law prohibiting smoking at all or part of the following places in the local government's local government area—
 - (a) a public transport waiting point that is not in an enclosed place if the place is under local government control;
 - (b) an outdoor pedestrian mall.
- (2) A local law made under subsection (1) must not provide for a penalty of more than 20 penalty units for a contravention of the law.

26ZPC When local law prevails

- (1) This section applies if—

[s 26ZPD]

- (a) a local government makes a local law under this division about an outdoor pedestrian mall; and
 - (b) the mall is prescribed under section 26ZJ(3)(b) as a mall to which section 26ZJ(1) does not apply.
- (2) The local law applies despite a regulation made under section 26ZJ(3)(b).

26ZPD State may require report from local government about local law

- (1) This section applies to a local law made by a local government under this division.
- (2) The chief executive, by written notice, may ask a local government to give the chief executive information about the local government's administration and enforcement of the local law.
- (3) The local government must comply with the request.

26ZPE Fines payable for contravention of local law payable to local government

- (1) This section applies if—
 - (a) a proceeding for an offence is taken for a contravention of a local law made by a local government under this division; and
 - (b) a court imposes a fine for the offence.
- (2) The fine must be paid to the local government.

Part 2D Prohibited products

26ZPF Sale, supply and display of ice pipes

- (1) A person must not—

-
- (a) sell an ice pipe or a component of an ice pipe; or
 - (b) supply an ice pipe, or a component of an ice pipe, as part of a business activity; or
 - (c) display an ice pipe, or a component of an ice pipe—
 - (i) in a shop; or
 - (ii) near, and in connection with, a shop.

Note—

‘Sell’ in paragraph (a) includes expose for sale. See the schedule, definition *sell*.

Maximum penalty—140 penalty units.

- (2) It is a defence for the person to prove that an ice pipe, or a component of an ice pipe, is designed primarily to be used for a purpose other than administering a dangerous drug.

Examples of devices designed primarily to be used for another purpose—

aluminium foil, spoons, test tubes

- (3) For subsection (2), evidence of a disclaimer does not, of itself, prove that the ice pipe or component of an ice pipe is designed primarily to be used for a purpose other than administering a dangerous drug.
- (4) In this section—

component, of an ice pipe, means a device that—

- (a) is apparently intended to be part of an ice pipe; and
- (b) is not capable of being used for administering a dangerous drug in the way described in the definition *ice pipe* without an adjustment, modification or addition.

disclaimer means a statement on, or made in relation to, the ice pipe or component of an ice pipe, at or before the time of the commission of the alleged offence, to the effect that the ice pipe or component is designed or intended to be used for a purpose that is not a purpose related to administering a dangerous drug.

ice pipe means a device capable of being used for administering a dangerous drug by the drawing of smoke or

[s 26ZQ]

fumes resulting from heating or burning the drug, in the device, in the drug's crystal, powder, oil or base form.

26ZQ Sale, supply and display of bong

- (1) A person must not—
 - (a) sell a bong or a component of a bong; or
 - (b) supply a bong, or a component of a bong, as part of a business activity; or
 - (c) display a bong, or a component of a bong—
 - (i) in a shop; or
 - (ii) near, and in connection with, a shop.

Note—

'Sell' in paragraph (a) includes expose for sale. See the schedule, definition *sell*.

Maximum penalty—140 penalty units.

- (2) It is a defence for the person to prove that a bong, or a component of a bong, is designed primarily to be used for a purpose other than administering a dangerous drug.

Examples of devices designed primarily to be used for another purpose—
buckets, garden hoses, water bottles

- (3) For subsection (2), evidence of a disclaimer does not, of itself, prove that the bong or component of a bong is designed primarily to be used for a purpose other than administering a dangerous drug.

- (4) In this section—

bong—

- (a) means a device capable of being used for administering a dangerous drug by the drawing of smoke or fumes, resulting from heating or burning the drug in or on the device, through water or another liquid in the device; but
- (b) does not include a hookah.

component, of a bong, means a device that—

- (a) is apparently intended to be part of a bong; and
- (b) is not capable of being used for administering a dangerous drug in the way described in the definition *bong*, paragraph (a), without an adjustment, modification or addition.

disclaimer means a statement on, or made in relation to, the bong or component of a bong, at or before the time of the commission of the alleged offence, to the effect that the bong or component is designed or intended to be used for a purpose that is not a purpose related to administering a dangerous drug.

26ZQA Display of hookahs

A person must not display in a shop more than the number of hookahs prescribed under a regulation.

Maximum penalty—140 penalty units.

26ZR Supply of smokeless tobacco products

A person must not, without lawful authority or excuse, supply a smokeless tobacco product to another person.

Maximum penalty—140 penalty units.

26ZS Supply of food or toys resembling tobacco products

- (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—140 penalty units.

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

[s 27]

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

Part 3 Monitoring and enforcement

Division 1 Appointment of authorised persons and other matters

27 Powers generally

- (1) An authorised person has the powers given under this Act.
- (2) In exercising the powers an authorised person is subject to the directions of the administering executive.
- (3) If the authorised person is appointed by 2 or more chief executive officers, the authorised person is subject to the directions of the chief executive officer of the local government for the area in which the authorised person is exercising his or her powers under this Act.

28 Appointment

- (1) The chief executive may appoint any of the following persons as an authorised person—
 - (a) a public service officer or employee;
 - (b) a health service employee;
 - (c) a person prescribed under a regulation.

-
- (2) The chief executive officer of a local government may appoint any of the following persons as an authorised person for the local government and its area—
 - (a) an employee of the local government;
 - (b) if another local government consents—an employee of the other local government;
 - (c) another person under contract to the local government.
 - (3) The chief executive officers of 2 or more local governments may appoint an employee of, or another person under contract to, one of the local governments to be an authorised person for the local governments' areas.

29 Qualifications for appointment

The administering executive may appoint a person as an authorised person only if the administering executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

30 Appointment conditions and limit on powers

- (1) An authorised person holds office on the conditions stated in—
 - (a) the authorised person's instrument of appointment; or
 - (b) a signed notice given to the authorised person; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to an authorised person or a regulation may limit the authorised person's powers under this Act.
- (3) In this section—

signed notice means a notice signed by the administering executive.

[s 30A]

30A Issue of identity card

- (1) The administering executive must issue an identity card to each authorised person.
- (2) The identity card must—
 - (a) contain a recent photo of the authorised person; and
 - (b) contain a copy of the authorised person's signature; and
 - (c) identify the person as an authorised person under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

30B Production or display of identity card

- (1) In exercising a power under this Act in relation to another person, an authorised person must—
 - (a) produce the authorised person's identity card for the other person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to another person only because the authorised person has entered a place as mentioned in section 33(2) or (3).

30C When authorised person ceases to hold office

- (1) An authorised person ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;

-
- (b) under another condition of office, the authorised person ceases to hold office;
 - (c) the authorised person's resignation under section 30D takes effect.
- (2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- (3) In this section—
condition of office means a condition on which the authorised person holds office.

30D Resignation

An authorised person may resign by signed notice given to the administering executive.

30E Return of identity card

- (1) A person who ceases to be an authorised person must return the person's identity card to the administering executive within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (2) For subsection (1), for a person appointed under this Act as an authorised person by 2 or more chief executive officers, the identity card must be returned to one of the chief executive officers.

31 Protection from liability

- (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—

[s 32]

official means—

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

Division 2 Powers of authorised persons

32 Meaning of *occupier* for div 2

In this division—

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

33 Entry of places by authorised persons

- (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.
- (3) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—
 - (a) enter land around premises at the place to an extent that is necessary to contact the occupier; or
 - (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

34 Consent to entry

- (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.

Editor's note—

This section does not apply if entry is authorised by section 33(1)(b) or (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 acknowledgement of the consent (a ***consent acknowledgement***).
- (4) The consent acknowledgement 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 acknowledgement, the authorised person must promptly give a copy to the occupier.

35 Evidence of consent

- (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

[s 36]

- (b) a consent acknowledgement is not produced in evidence for the entry; and
 - (c) it is not proved the occupier consented to the entry.
- (2) The court may presume the occupier did not consent.

36 Warrants

- (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.

36A Special warrants

- (1) An authorised person may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised person—
 - (a) the magistrate must tell the authorised person—
 - (i) what the terms of the warrant are; and
 - (ii) the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (a *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the terms of the warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and

[s 36B]

the exercise of the other powers stated in the warrant issued by the magistrate.

- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) If—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
 - (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

36B Warrants—procedure before entry

- (1) This section applies if an authorised person named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the authorised person's identity card or a copy of another document evidencing the authorised person's appointment;
 - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 36A(6), a copy of the facsimile warrant or warrant form;

-
- (c) tell the person the authorised person is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

37 General powers after entering places

- (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 at the place; or
 - (c) take a thing, or a sample of or from a thing, at the place for analysis; or
 - (d) take an extract from, or copy, a document at 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 at the place, to give the authorised person reasonable help to exercise the authorised person's powers mentioned in paragraphs (a) to (e); or
 - (g) require the occupier of the place, or a person at the place, to give the authorised person information to help

[s 37A]

the authorised person ascertain whether this Act is being complied with.

- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

37A Failure to help authorised person

- (1) A person required to give reasonable help under section 37(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If an individual is required under section 37(3)(f) to give information, or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

37B Failure to give information

- (1) A person of whom a requirement is made under section 37(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

Division 3 Other enforcement powers of authorised persons

38 Power to require name and address

- (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—50 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.

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

- (1) An authorised person may require a person to show acceptable evidence of age of the person if the authorised person—
- (a) either—

[s 40]

- (i) observes the person being supplied a smoking product; or
 - (ii) reasonably believes the person has just been 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—5 penalty units.
- (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.

40 Power to seize smoking product

- (1) This section applies if—
- (a) an authorised person either—
 - (i) observes a person being supplied a smoking product; or
 - (ii) reasonably believes a person has just been supplied a smoking product; and

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- (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
 - (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.

40A Power to direct person to stop smoking

- (1) This section applies if an authorised person finds a person contravening section 26R(1), 26X(1), 26ZE(1), 26ZH(1), 26ZI(1), 26ZJ(1) or 26ZK(1).
- (2) The authorised person may direct the person to stop smoking.
- (3) When directing the person to stop smoking, the authorised person must tell the person it is an offence not to comply with the direction.

Division 4 Seizure of evidence

40B Seizing evidence at a place that may be entered without consent or a warrant

An authorised person who enters a place that may be entered under this part without the consent of the occupier and without a warrant, may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act.

[s 41]

41 Seizing evidence at a place that may only be entered with consent or a warrant

- (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.

42 Securing seized thing

Having seized a thing, an authorised person may do 1 or more of the following—

- (a) move the thing from the place where it was seized (the *place of seizure*);
- (b) leave the thing at the place of seizure but take reasonable steps to restrict access to it;
- (c) if the thing is equipment—make it inoperable.

Example of restricting access to a thing—

sealing a thing and marking it to show access to it is restricted

Example of making equipment inoperable—

removing a component of equipment without which the equipment is not capable of being used

42A Tampering with seized thing

- (1) If an authorised person restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an authorised person's approval.

Maximum penalty—50 penalty units.

- (2) If an authorised person makes seized equipment inoperable, a person must not tamper with the equipment, without an authorised person's approval.

Maximum penalty—50 penalty units.

- (3) In this section—

tamper includes attempt to tamper.

42B Powers to support seizure

- (1) To enable a thing to be seized, an authorised person may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
(b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

- (2) The requirement—

- (a) must be made by written notice; or
(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

- (3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

[s 42C]

- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

42C Receipt for seized thing

- (1) As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt (given the thing's nature, condition and value).

42D Forfeiture of seized things

- (1) A seized thing is forfeited to the State if the authorised person who seized the thing—
 - (a) can not find its owner, after making reasonable inquiries; or
 - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
 - (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
 - (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.

42E Forfeiture of smoking product seized under s 40

- (1) This section applies to a smoking product seized under section 40.
- (2) The smoking product is forfeited to the State—
 - (a) at the end of 6 months from the day it was seized; or
 - (b) if a proceeding involving the supply of the smoking product is started within 6 months from the day it was seized—at the end of the proceeding and any appeal from the proceeding.

43 Forfeiture on conviction

- (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.

44 Dealing with forfeited things etc.

- (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.

[s 44A]

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

44A Return of seized things

- (1) If a seized thing is not forfeited, the authorised person must return it to its owner—
 - (a) at the end of 6 months; or
 - (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing is forfeited, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

44B Access to seized things

- (1) Until a seized thing is forfeited or returned, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Division 5 Other enforcement matters

44C Improvement notices

- (1) This section applies if an authorised person reasonably believes a person—
 - (a) is contravening a provision of this Act; or
 - (b) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated.

-
- (2) The authorised person may, by written notice (an *improvement notice*) given to the person, require the person to remedy—
- (a) the contravention or likely contravention; or
 - (b) the things or operations causing the contravention or likely contravention.
- (3) The improvement notice must state—
- (a) that the authorised person believes the person—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated; and
 - (b) the provision the authorised person believes is being, or has been, contravened; and
 - (c) briefly, how the provision is being, or has been, contravened; and
 - (d) the reasonable steps the person must take to remedy the contravention or likely contravention; and
 - (e) that the person must take the steps within a stated reasonable period.
- (4) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

44D Power to require production of written acknowledgement

- (1) An authorised person may require a supplier or a person in charge of a tobacco product vending machine to make available for inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person, a written acknowledgement obtained by the supplier or person.

[s 44E]

- (2) The authorised person may keep the acknowledgement to copy it.
- (3) If the authorised person copies an acknowledgement, the authorised person may require the person responsible for keeping the acknowledgement to certify the copy as a true copy of the acknowledgement.
- (4) The authorised person must return the acknowledgement to the person as soon as practicable after copying it.
- (5) However, if a requirement (an *acknowledgement certification requirement*) is made of a person under subsection (3), the authorised person may keep the acknowledgement until the person complies with the requirement.
- (6) A requirement under subsection (1) is called an *acknowledgement production requirement*.
- (7) In this section—

written acknowledgement means a written acknowledgement obtained by a supplier or person in charge of a tobacco product vending machine from an employee of the supplier or person in taking prevention measures mentioned in part 2.

44E Failure to produce acknowledgement

- (1) A person of whom an acknowledgement production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person not to comply with an acknowledgement production requirement that complying with the requirement might tend to incriminate the person.

44F Failure to certify copy of acknowledgement

A person of whom an acknowledgement certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

44G Power to require information

- (1) This section applies if an authorised person reasonably believes—
 - (a) an offence against this Act has been committed; and
 - (b) a person may be able to give information about the offence.
- (2) The authorised person may, by written notice given to the person, require the person to give information about the offence to the authorised person at a stated reasonable time and place.
- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

45 False or misleading information

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

Maximum penalty—50 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.

[s 46]

46 False, misleading or incomplete documents

- (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—50 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.

47 Notice of damage

- (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.

48 Compensation

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under this part the person may claim compensation—
 - (a) for the exercise or purported exercise of a power by or for the State—from the State; or
 - (b) for the exercise or purported exercise of a power by or for a local government—from the local government.
- (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 to be paid in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

49 Impersonation of authorised person

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

[s 50]

50 Obstructing authorised persons

- (1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—
- (a) it is an offence to obstruct the authorised person, unless the person has a reasonable excuse; and
 - (b) the authorised person considers the person's conduct is an obstruction.

Part 4 Miscellaneous

51 Evidence that a thing is labelled as a particular product

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

51A Responsibility for acts or omissions of representatives

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

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.

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.

51B Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits

[s 51C]

an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

51C Act does not create or preserve right to smoke

- (1) To remove any doubt, it is declared that this Act does not create or preserve a right for a person to smoke in or at any place.
- (2) Also, nothing in this Act affects the operation of another Act to the extent that the other Act prohibits smoking at any place.

53 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose requirements about signs for part 2C.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

Part 5 Transitional

54 Transitional—court order under s 13

Section 13 applies only to an offence committed after the commencement of the *Tobacco and Other Smoking Products Amendment Act 2004*, section 8.

55 Transitional—amendment of regulation

The amendment of the *Tobacco and Other Smoking Products Regulation 1998* by the *Tobacco and Other Smoking Products Amendment Act 2004* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Schedule Dictionary

section 4

acceptable evidence of age see section 6.

acknowledgement certification requirement see section 44D(5).

acknowledgement production requirement see section 44D(6).

administering executive means—

- (a) for a person appointed under this Act as an authorised person by the chief executive—the chief executive; or
- (b) for a person appointed under this Act as an authorised person by a chief executive officer—the chief executive officer; or
- (c) for a person appointed under this Act as an authorised person by 2 or more chief executive officers—the chief executive officers.

advertise includes cause, permit or authorise to be advertised.

authorised person means a person appointed, or holding office, under section 28 as an authorised person.

bar, for part 2, division 2, see section 14.

bar area, for part 2, division 2, see section 14.

carton means a package containing, or designed to contain, immediate packages of a smoking product.

casino has the meaning given by the *Casino Control Act 1982*, schedule.

chief executive officer means the chief executive officer of a local government.

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.

community titles scheme has the meaning given by the *Body Corporate and Community Management Act 1997*, section 10.

consent acknowledgement see section 34.

consumption, of a smoking product, includes smoking, inhaling or chewing the smoking 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.

dangerous drug see the *Drugs Misuse Act 1986*, section 4.

designated outdoor smoking area see section 26ZA.

display includes cause, permit or authorise to be displayed.

driver licence 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.

employee, for part 2, division 2, see section 14.

enclosed means—

- (a) for a place other than a vehicle or part of a vehicle—having a ceiling or roof and, except for doors and passageways, completely or substantially enclosed, whether permanently or temporarily; or
- (b) for a place that is a vehicle, or part of a vehicle—having a ceiling or roof and, except for doors and exits, completely or substantially enclosed, whether permanently or temporarily.

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.

face, for an immediate package, means the surface (or if 2 surfaces have the same area, either of the surfaces) of the package whose area is greater than the area of each of its other surfaces.

food service means a business, or an enterprise of a commercial, charitable or community nature, that sells food or drink.

gaming machine has the meaning given by the *Gaming Machine Act 1991*, schedule.

gaming machine area, for part 2, division 2, see section 14.

health service employee means a person appointed under the *Health Services Act 1991*, section 24.

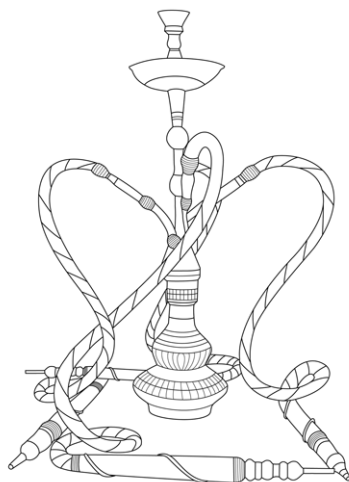
herbal cigarette means a preparation for smoking that—

- (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.

hookah means a fully assembled device—

- (a) for smoking tobacco by the drawing of smoke or fumes, resulting from heating or burning the tobacco in the device, through water or another liquid in the device; and
- (b) that has—
 - (i) 1 or more openings; and
 - (ii) 1 or more flexible hoses, each with a mouthpiece, through which the smoke or fumes are drawn.

Example of a hookah—



humidified room, for part 2A, see section 25.

immediate package, for a smoking product, means a package containing the product but does not include a package containing a further package or packages of the product.

licensed premises, for part 2B, see section 26Q.

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

licensee, for part 2B, see section 26Q.

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

liquor, for part 2, division 2, see section 14.

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.

loose tobacco means a tobacco product for smoking that is cut for retail sale, but does not include a cigarette or a cigar.

Example—

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

lot see the *Body Corporate and Community Management Act 1997*, schedule 6.

major sports facility, for part 2C, division 2, see section 26ZD.

mouthpiece, in relation to a flexible hose of a hookah, means a device or part of a device—

- (a) of a type usually attached to the end of the hose; and
- (b) designed particularly for the purpose of being held in the human mouth for inhaling smoke or fumes drawn through the hose.

obstruct includes hinder, resist and attempt to obstruct.

occupier, of a place or part of a place—

- (a) for part 3, division 2, see section 32; or
- (b) otherwise, means a person having the management or control, or otherwise being in charge, of the place or part.

on-site food service, in relation to a place, means a food service at, or adjacent to, the place.

outdoor area, of premises, means any area at the premises that is not enclosed.

outdoor eating or drinking place, for part 2C, division 1, see section 26W.

package means—

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

- (c) for loose tobacco—a package containing loose tobacco packed by the manufacturer, or importer, of the loose tobacco; or
- (d) for loose smoking blend—a package containing loose smoking blend packed by the manufacturer, or importer, of the loose smoking blend; or
- (e) for cigarette papers—a package containing cigarette papers packed by the manufacturer, or importer, of the papers; or
- (f) for cigars—a package containing cigars packed by the manufacturer, or importer, of the cigars.

patrolled beach see section 26ZH(2).

patrolled beach area see section 26ZH(2).

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 and vacant land.

point of sale means a place where there is a counter or similar fixture where smoking products are sold within a retail outlet, but does not include a tobacco product vending machine.

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; and
- (d) a vehicle.

premium gaming room, for part 2B, see section 26Q.

prescribed outdoor swimming area see section 26ZI(2).

prevention measures—

- (a) for part 2, division 1, see section 9; and
- (b) for part 2, division 2, see section 14.

product line means a kind of smoking product distinguishable from other kinds by 1 or more of the following characteristics—

- (a) trademark;
- (b) brand name;
- (c) nicotine or tar content;
- (d) flavour;
- (e) the number of items in the immediate package in which it is sold.

proof of age card means a proof of age card, or adult proof of age card, mentioned in the *Liquor Act 1992*, section 6(1).

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).

publish includes cause, permit or authorise to be published.

relevant point of sale, for part 2A, see section 25.

responsible adult see section 5.

retail outlet means premises where smoking products are available for sale by retail.

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

- (a) offer or agree to sell; and
- (b) invite to treat or expose for sale; and
- (c) attempt to sell; and
- (d) cause or permit to be sold.

shop includes—

- (a) any part of a building or place that is used for the sale, or supply as part of a business activity, of goods; and
- (b) a stall or other structure used for the sale, or supply as part of a business activity, of goods at a market or elsewhere.

smoke means smoke, hold or otherwise have control over an ignited smoking product.

smokeless tobacco product means tobacco, or something containing tobacco, prepared for consumption other than by being smoked.

Examples—

snuff, chewing tobacco

smoking product—

- (a) for part 2A, see section 25; or
- (b) otherwise, means a tobacco product, herbal cigarette or loose smoking blend.

smoking related product, for part 2A, see section 25.

supplier means a person who, as part of a business activity, supplies smoking products to the public, but does not include a person who 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 supply; and
- (c) expose for supply; and
- (d) attempt to supply; and
- (e) cause or permit to be supplied.

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

- (a) 80% or more of the average gross turnover of the business 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.

tobacco product means tobacco prepared for consumption or something containing tobacco for consumption, and includes

a cigarette, cigar and loose tobacco but does not include a smokeless tobacco product.

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 24 November 2011. Future amendments of the Tobacco and Other Smoking Products Act 1998 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
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	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	31 May 1998	1 June 1998
1A	1999 Act No. 42	1 December 1999	1 December 1999
1B	1999 Act No. 61	20 February 2000	22 February 2000
1C	2000 Act No. 5	1 July 2000	14 July 2000
1D	2001 Act No. 20	11 May 2001	14 June 2001
2	2002 Act No. 22	31 May 2002	7 June 2002

Reprint No.	Amendments included	Effective	Notes
2A	2002 Act No. 43	1 October 2002	
2B	2003 Act No. 9	28 March 2003	
2C	2004 Act No. 47	18 November 2004	
2D	2004 Act No. 47	1 January 2005	
2E	2004 Act No. 47	31 December 2005	

Reprint No.	Amendments included	Effective	Notes
2F	2004 Act No. 47 2006 Act No. 25	1 July 2006	prov exp 30 June 2006
2G 3	2006 Act No. 29 —	28 August 2006 28 August 2006	R2G withdrawn, see R3
3A	2006 Act No. 46	15 December 2006	
3B	2007 Act No. 28	5 July 2007	
3C	2007 Act No. 54	9 November 2007	
3D	2008 Act No. 48	1 January 2009	
3E	2009 Act No. 44	1 January 2010	
3F 4	2008 Act No. 72 —	24 July 2010 24 July 2010	R3F withdrawn, see R4
4A	2011 Act No. 32	18 November 2011	
4B	2011 Act No. 41	24 November 2011	

5 List of legislation

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

amending legislation—

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)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001 No. 20 pts 1–2 (this Act is amended, see amending legislation below)

date of assent 11 May 2001

ss 1–3, 29, 48 commenced on date of assent (see s 2(1))

remaining provisions commenced 31 May 2002 (see s 2(2))

amending legislation—

Tobacco Legislation Amendment Act 2002 No. 22 (amends 2001 No. 20 above)

date of assent 17 May 2002

commenced on date of assent

Health Legislation Amendment Act 2001 No. 78 ss 1–2, 237 sch 4

date of assent 15 November 2001

ss 1–2, 237 commenced on date of assent

remaining provisions commenced 31 May 2002 (2002 SL No. 97)

Gambling Legislation Amendment Act 2002 No. 43 ss 1–2, 112 sch 2

date of assent 12 September 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 2002 (2002 SL No. 263)

Health and Other Legislation Amendment Act 2003 No. 9 ss 1, 67 sch

date of assent 28 March 2003

commenced on date of assent

Tobacco and Other Smoking Products Amendment Act 2004 No. 47 ss 1–47

date of assent 18 November 2004

ss 1–2 commenced on date of assent

ss 4, 5(3), 6–8, 10–32, 46, 47(3), 47(7), 47(10) commenced 31 December 2005 (see s 2(3))

ss 33(2), 37, 40 (except to the extent it ins new pt 2C, div 1), 40A, 41–43, 45, 47(2), 47(6), 47(9) commenced 1 January 2005 (see s 2(2))

ss 33(1), 33(3), 34, 36, 38–39, 40 (to the extent it ins new pt 2C, div 1), 47(4), 47(8) commenced 1 July 2006 (see s 2(4))

s 44 commenced 1 January 2005 (2004 SL No. 271)

remaining provisions commenced on date of assent

Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2(1), 241(2) sch 4

date of assent 29 May 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2006 (see s 2(1))

Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 28 August 2006 (2006 SL No. 213)

Health Legislation Amendment Act 2006 No. 46 pts 1, 19

date of assent 10 November 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 2006 (2006 SL No. 309)

Health and Other Legislation Amendment Act 2007 No. 28 pts 1, 5

date of assent 28 May 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 5 July 2007 (2007 SL No. 144)

Mental Health and Other Legislation Amendment Act 2007 No. 54 s 1, pt 11

date of assent 9 November 2007

commenced on date of assent

Liquor and Other Acts Amendment Act 2008 No. 48 ss 1–2, 59(1) sch 1

date of assent 19 September 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2009 (see s 2)

Adult Proof of Age Card Act 2008 No. 72 ss 1–2, pt 9 div 2

date of assent 11 December 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 24 July 2010 (2010 SL No. 182)

Health and Other Legislation Amendment Act 2009 No. 44 ss 1, 2(3), pt 21

date of assent 3 November 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2010 (2009 SL No. 290)

Health and Hospitals Network Act 2011 No. 32 ss 1–2, pt 14, s 332 sch 1 pt 2

date of assent 28 October 2011

ss 1–2 commenced on date of assent

pt 14 commenced 18 November 2011 (2011 SL No. 228)

remaining provisions not yet proclaimed into force (see s 2)**Health Legislation Amendment Act 2011 No. 41 ss 1, 2(d), pt 8**

date of assent 24 November 2011

ss 1–2 commenced on date of assent

ss 70–72 not yet proclaimed into force (see s 2(d))

remaining provisions commenced on date of assent

6 List of annotations

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7 **List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

Form 1 Version 1—Challenge Notice (pubd gaz 16 July 2010 p 1141)

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