



# **Tobacco and Other Smoking Products Act 1998**

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Queensland

# Tobacco and Other Smoking Products Act 1998

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# Tobacco and Other Smoking Products Act 1998

**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 75) commences on a day to be fixed by proclamation.
- (2) Section 75 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.

### **4 How object is to be achieved**

The object is to be achieved mainly by—

- (a) restricting the supply of tobacco and other smoking products to children; and

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

## 5 Definitions

The dictionary in the schedule 1 defines particular words used in this Act.

## 6 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

## 7 Meaning of *personal vaporiser* and *personal vaporiser related product*

- (1) A *personal vaporiser* is a device that—
- (a) is capable of being used to deliver a substance into an individual's body when the individual inhales through the device; and
  - (b) has 1 or more of the following parts—
    - (i) a battery;
    - (ii) a cartridge or container to store a liquid, vapour or gas;
    - (iii) an electric heating element.

- 
- (2) However, a ***personal vaporiser*** does not include any of the following—
- (a) a device included in the register under the *Therapeutic Goods Act 1989* (Cwlth), other than a device designed for the purpose of helping a person to stop smoking;
  - (b) a device designed to be used to deliver oxygen into an individual's body;
  - (c) a bong, hookah or ice pipe;
  - (d) a device prescribed under a regulation for this subsection.
- (3) A ***personal vaporiser related product*** means any of the following—
- (a) a device or other product that—
    - (i) is apparently intended to be part of a personal vaporiser; and
    - (ii) is not capable of being used to deliver a substance into an individual's body without an adjustment, modification or addition;
- Examples for paragraph (a)—*
- an electric heating element, battery, cartridge, container or mouthpiece
  - a product that combines an electric heating element and cartridge in a single unit
- (b) a device or other product to which paragraph (a) does not apply that is apparently intended to be used in connection with a personal vaporiser.
- Example for paragraph (b)*
- a liquid that is to be used in a personal vaporiser, whether or not the liquid is in a cartridge or container
- (4) However, a ***personal vaporiser related product*** does not include any other device or product prescribed under a regulation for this subsection.

## **8 Meaning of *retail outlet***

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

## **9 Meaning of *wholesale outlet***

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

## **10 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, an Australian or foreign passport or an Australia Post Keypass; 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.

## **11 Act binds all persons**

This Act binds all persons.



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## Part 2 Retail and wholesale licences

### Division 1 Preliminary

#### 12 Definitions for part

In this part—

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

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

*Note*—

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

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

**licensed retailer** means a retailer that holds a retail licence.

**online sale** means a sale transacted over the internet.

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

**retail licence** means a licence granted under this Act that authorises the sale of smoking products to the public by retail sale.

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

**specific conditions** see section 15(1).

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

## Division 2                    General information about licences

### 13            Retail licence

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

*Note—*

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

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

### 14            Wholesale licence

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

*Note—*

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

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

## **15 Conditions of retail or wholesale licences**

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

## **16 When retail or wholesale licence ceases to have effect**

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

## **Division 3 Application and grant**

### **17 Who may apply for retail or wholesale licence**

- (1) The following entities may apply to the chief executive for a retail or wholesale licence—
  - (a) the owner of a business that proposes to sell smoking products;

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

## 18 Requirements for application

- (1) An application for a retail or wholesale licence must—
- (a) be made in the approved form; and
  - (b) if the applicant is a corporation—include sufficient information to identify the directors of the corporation; and
  - (c) be accompanied by the proof of identification required by the approved form; and
  - (d) if the application relates to a retail or wholesale outlet—identify the location of the retail or wholesale outlet; and
  - (e) if the application relates to an online shop—state the website address of the online shop; and
  - (f) if the application relates to the sale of smoking products at liquor licensed premises—be accompanied by a copy of the liquor licence for the premises; and

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- (g) be accompanied by sufficient information to identify all licences to supply a smoking product by retail or wholesale, if any, held by the applicant under a law of the Commonwealth or another State; and
  - (h) be accompanied by the fee, if any, prescribed by regulation.
- (2) The application must be made for either a retail or wholesale licence.

*Note—*

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

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

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

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

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

***registrable body*** see the Corporations Act, section 9.

## 19 Rejection of particular applications

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

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

## **20 Criteria for grant**

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

- (a) retail sales are the primary activity of the business to which the licence relates; and
- (b) the retail outlet for the licence is not a liquor licensed premises.

## 21 Deciding application

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

*Example—*

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

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

**owner**, of a business, means the adult individual, corporation or partnership that owns and controls the business.

## 22 Notice of decision

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

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- (a) grant the licence with specific conditions; or
- (b) refuse to grant the licence.

### **23 Term of retail or wholesale licence**

A retail or wholesale licence—

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

## **Division 4 Renewal and restoration**

### **24 Application for renewal of retail or wholesale licence**

- (1) Before a retail or wholesale licence expires, the licensee may apply to the chief executive to renew the licence.
- (2) The application must be—
  - (a) made in the approved form; and
  - (b) accompanied by the fee prescribed by regulation.
- (3) If the term of the retail or wholesale licence ends before the application is decided, the licence continues in effect under this section until the day the chief executive gives the licensee notice of the decision under section 28 or the application is withdrawn, whichever happens first.
- (4) Nothing in subsection (3) prevents the retail or wholesale licence being suspended or cancelled during the period the licence is continued under that subsection.

### **25 Application for restoration of expired retail or wholesale licence**

- (1) If a retail or wholesale licence expires, the licensee may, within 28 days after the expiry, apply to the chief executive to restore the licence.



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

## **26 Criteria for grant**

- (1) The chief executive may grant an application for the renewal or restoration of a retail or wholesale licence only if satisfied—
  - (a) if the application is made by a partnership—each partner is a fit and proper person to be a licensee; or
  - (b) otherwise—the applicant is a fit and proper person to be a licensee.
- (2) However, subsection (3) applies if the application is for the renewal or restoration of a retail licence (liquor).
- (3) Section 20(2) to (4) applies to the application as if a reference to an application for a retail licence (liquor) in that section were a reference to an application for renewal or restoration of a retail licence (liquor).

## **27 Deciding application**

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

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

## **28 Notice of decision**

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

## **29 Term of retail or wholesale licence if renewed or restored**

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

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

# **Division 5 Changes to licences**

## **Subdivision 1 Changes requested by licensee**

### **30 Application for change requested by licensee**

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

### **31 Deciding application**

- (1) After considering an application to change a specific condition, the chief executive may decide to—

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

### **32 Notice of decision**

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

## **Subdivision 2 Changes made by chief executive**

### **33 Application of subdivision**

This subdivision applies if the chief executive—

- (a) reasonably suspects a ground exists for suspending a licence under section 36 or cancelling a licence under section 37; and
- (b) reasonably believes it is necessary in the circumstances, to ensure the health and wellbeing of customers of the

licensee, to take the following action instead of suspending or cancelling the licence—

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

### **34 Show cause notice before changing specific conditions**

- (1) This section applies if, because of a suspicion and belief mentioned in section 33, the chief executive proposes making either of the following changes for a retail or wholesale licence—
  - (a) imposing a new specific condition on the licence;
  - (b) changing a specific condition of the licence.
- (2) Before making the change to the retail or wholesale licence, the chief executive must give the licensee a notice (a *show cause notice*) stating—
  - (a) the chief executive proposes to make the change; and
  - (b) the details of the proposed change; and
  - (c) the reasons for the proposed change; and
  - (d) that the holder may, within 28 days after the notice is given, give the chief executive a written response to the proposed change.

### **35 Decision about changing conditions**

- (1) This section applies if the chief executive gives a licensee a show cause notice under section 34.
- (2) The chief executive must consider all responses complying with section 34(2)(d) before deciding whether to make the change proposed in the show cause notice.
- (3) After considering the responses under subsection (2), the chief executive must—
  - (a) decide whether to make any of the changes proposed in the show cause notice; and



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

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## 37 Cancellation

- (1) The chief executive may cancel a retail or wholesale licence if the chief executive reasonably believes—
  - (a) any of the disciplinary grounds mentioned in section 36(1)(a) to (g) apply in relation to the licence; or
  - (b) the licensee is not a fit and proper person to be a licensee; or
  - (c) if the licensee is a partnership—1 or more partners is not a fit and proper person to be a licensee; or
  - (d) the licensee is placed in administration, is wound up or is deregistered under the Corporations Act.
- (2) Before cancelling the retail or wholesale licence, the chief executive must give the licensee a notice (a *show cause notice*) stating—
  - (a) the chief executive proposes to cancel the retail or wholesale licence; and
  - (b) the disciplinary grounds for the proposed cancellation; and
  - (c) the acts, omissions or circumstances that constitute the stated disciplinary grounds; and
  - (d) that the licensee may, within 28 days after being given the notice, give the chief executive a written response to the notice.
- (3) After considering all responses to the show cause notice complying with subsection (2)(d), the chief executive must—
  - (a) decide to—
    - (i) take no further action; or
    - (ii) suspend or cancel the retail or wholesale licence; and
  - (b) give the licensee notice of the decision.
- (4) If the decision is to suspend or cancel the retail or wholesale licence, the notice must be an information notice.

- (5) The suspension or cancellation—
  - (a) takes effect on the day stated in the information notice; and
  - (b) for a suspension—continues for the period of not more than 90 days as stated in the information notice.
- (6) The day stated in the information notice must be after the day the notice is given to the licensee.

### **38 Immediate suspension without show cause notice**

- (1) This section applies if the chief executive reasonably believes—
  - (a) a disciplinary ground exists for suspending or cancelling a retail or wholesale licence under section 36 or 37; and
  - (b) carrying on the business to which the retail or wholesale licence relates is an unacceptable risk to public health.
- (2) The chief executive may, without giving the licensee a show cause notice under section 36 or 37, immediately suspend the retail or wholesale licence by giving the licensee an information notice for the decision.
- (3) The suspension—
  - (a) takes effect on the day stated in the information notice; and
  - (b) continues for the period of not more than 90 days as stated in the information notice.

### **39 Surrender**

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



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## **Division 7                    Other matters affecting licences**

### **Subdivision 1            Fit and proper persons**

#### **40            Deciding whether person is fit and proper**

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

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

#### **41 Criminal history report**

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

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- (5) However, the duty to comply applies only to information in the possession of the commissioner of the police service or to which the commissioner has access.
- (6) The chief executive must ensure any information received under this section—
- (a) is destroyed as soon as practicable after the information is no longer needed for the purpose for which it was requested; and
  - (b) is not used for any purpose other than the purpose for which it was requested.

*Example—*

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

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

## **Subdivision 2      Additional information and inspections of premises**

### **42      Requesting further information or documents**

- (1) This section applies if any of the following applications are made—
- (a) an application for a retail or wholesale licence under section 17;
  - (b) an application to renew a retail or wholesale licence under section 24;
  - (c) an application to restore a retail or wholesale licence under section 25;
  - (d) an application to change a specific condition of a retail or wholesale licence under section 30.

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

#### **43 Requesting inspection of premises**

- (1) This section applies if—
  - (a) any of the following applications is made—
    - (i) an application for a retail or wholesale licence made under section 17;
    - (ii) an application to renew a retail or wholesale licence made under section 24;
    - (iii) an application to restore a retail or wholesale licence made under section 25;
    - (iv) an application to change a specific condition of a retail or wholesale licence made under section 30;or
  - (b) a licensee notifies the chief executive of a change of premises for a retail or wholesale outlet.
- (2) The chief executive may, by written notice given to the applicant or licensee, ask the applicant or licensee to ensure premises mentioned in the application or notice given to the chief executive are made available for inspection by the chief executive on—

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

*Note—*

Failure of a licensee to make premises available for inspection in compliance with a request under this section is grounds for suspending or cancelling a retail or wholesale licence under section 36 or 37.

### **Subdivision 3      Executors, administrators and trustees as licensees**

#### **44      Death of licensee**

- (1) This section applies if a licensee, who is an individual, dies (the *deceased*).
- (2) The executor of the deceased's estate may carry on the business conducted under the retail or wholesale licence as the licensee.

*Note—*

Under section 47, the executor must notify the chief executive if the executor, administrator or trustee becomes the licensee.

- (3) If the executor carries on the business conducted under the retail or wholesale licence, the executor—
  - (a) is taken to be the licensee; and

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- (b) is taken to be a fit and proper person to be a licensee despite section 40.
- (4) However, the executor may, as licensee, apply to renew or restore the retail or wholesale licence only if the chief executive is satisfied the renewal or restoration is necessary for the proper administration of the deceased's estate.
- (5) To remove any doubt, it is declared that the retail or wholesale licence continues to be subject to all limitations applying to the licence, including, for example, the term of the licence and all conditions applying to the licence.
- (6) Nothing in this section prevents the retail or wholesale licence being suspended or cancelled while the executor is licensee under this section.
- (7) In this section—  
*executor*, of a deceased's estate, means the executor, administrator or trustee of the deceased's estate.

#### **45 Licensee is placed into administration, receivership or liquidation**

- (1) This section applies if a licensee is a corporation and is placed into administration, receivership or liquidation.
- (2) The administrator of the corporation may carry on the business conducted under the retail or wholesale licence as the licensee.

*Note—*

Under section 47, the administrator must notify the chief executive if the administrator becomes the licensee.

- (3) If the administrator of the corporation decides to carry on the business conducted under the retail or wholesale licence, the administrator—
- (a) is taken to be the licensee; and
- (b) is taken to be a fit and proper person to be a licensee despite section 40.

- (4) However, the administrator may, as licensee, apply to renew or restore the retail or wholesale licence only if the chief executive is satisfied the renewal or restoration is necessary for the administration, receivership or liquidation.
- (5) To remove any doubt, it is declared that the retail or wholesale licence continues to be subject to all limitations applying to the licence, including, for example, the term of the licence and all conditions applying to the licence.
- (6) Nothing in this section prevents the retail or wholesale licence being suspended or cancelled while the administrator is licensee under this section.

## **Division 8                      Obligations of licensees**

### **46            Notification of convictions**

- (1) This section applies if a licensee is convicted of any of the following offences during the term of the retail or wholesale licence—
  - (a) an offence against this Act;
  - (b) an offence against a law of the Commonwealth or a State that regulates the supply of smoking products or any substance used in smoking products;
  - (c) an offence relating to fraud, dishonesty, or tax or customs evasion;
  - (d) an indictable offence.
- (2) The licensee must, within 14 days after being convicted of the offence, give notice of the conviction to the chief executive, unless the licensee has a reasonable excuse.  
Maximum penalty—140 penalty units.
- (3) The notice must state—
  - (a) the date of the conviction; and

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- (b) details adequate to identify the relevant offence for the conviction and when the offence was committed; and
- (c) the sentence imposed, if any, for the conviction.

## **47 Notification of particular events**

- (1) This section applies if any of the following events happen in relation to a licence—
  - (a) if the licensee is an individual—
    - (i) the licensee is an insolvent under administration under the Corporations Act, section 9; or
    - (ii) the licensee is disqualified from managing corporations under the Corporations Act, part 2D.6;
  - (b) an executor, administrator or trustee becomes the licensee under section 44;
  - (c) if the licensee is a corporation—
    - (i) the corporation is placed into administration, receivership or liquidation; or
    - (ii) there is a change of directors for the corporation;
  - (d) an administrator becomes the licensee under section 45;
  - (e) if the licensee sells smoking products at liquor licensed premises—the liquor licence for the premises is suspended, cancelled or otherwise ceases to have effect;
  - (f) there is a change in the ownership of the business for the retail or wholesale licence;
  - (g) the premises for a retail or wholesale outlet of the licensee changes;
  - (h) the name, or business name, of the licensee changes.
- (2) The licensee must, within 14 days after the event happens, give notice of the event to the chief executive, unless the licensee has a reasonable excuse.

Maximum penalty—140 penalty units.



- (3) The notice must state sufficient details to identify the event and when the event happened.

#### **48 Licence to be displayed**

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

Maximum penalty—50 penalty units.

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

Maximum penalty—50 penalty units.

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

Maximum penalty—50 penalty units.

- (4) As soon as practicable after a retail or wholesale licence ceases to have effect under section 16, the licensee must remove any display of the licence at a retail outlet, wholesale outlet or online shop.

Maximum penalty—50 penalty units.

- (5) In this section—

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

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

#### **49 Invoices for supply to retailers**

- (1) This section applies if either of the following licensees supplies a smoking product to a retailer—
  - (a) a licensee for a wholesale licence;
  - (b) a licensee for a retail licence to which a limited wholesale condition applies.
- (2) The licensee must give the retailer an invoice for the sale that is in English and that otherwise complies with the requirements prescribed by regulation.  
Maximum penalty—140 penalty units.
- (3) The retailer must keep a copy of the invoice for at least 2 years after being given the invoice.  
Maximum penalty—140 penalty units.

#### **50 Chief executive may require licensee to give particular information**

- (1) This section applies to information in the possession or control of a licensee that the chief executive—
  - (a) requires to determine whether the licensee is a fit and proper person to be a licensee under section 40; or
  - (b) considers necessary for the administration of this Act.
- (2) The chief executive may, by written notice given to the licensee, require the licensee to give the chief executive the information stated in the notice within a reasonable period of at least 14 days as stated in the notice.
- (3) The licensee must comply with the notice, unless the licensee has a reasonable excuse.  
Maximum penalty—50 penalty units.

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## Division 9                      Other offences

### 51            Wholesale to only be made to licensed retailers

- (1) The licensee for a wholesale licence must not sell a smoking product to a retailer unless the retailer holds a retail licence.  
Maximum penalty—1,000 penalty units.
- (2) For subsection (1), a licensee sells a smoking product if—
  - (a) the licensee sells the product; or
  - (b) an employee of the licensee sells the product in the course of the employee's employment.
- (3) It is a defence to a charge under subsection (1) for the licensee to prove that—
  - (a) an employee sold the smoking product to the retailer; and
  - (b) before the employee sold the smoking product, the licensee had taken prevention measures in relation to the employee.
- (4) This section also applies to a licensee for a retail licence to which a limited wholesale condition applies as if a reference to a wholesale licence were a reference to the retail licence.
- (5) In this section—  
*prevention measures* see section 63.

### 52            Particular dealings with licences prohibited

The licensee for a retail or wholesale licence must not—

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

Maximum penalty—200 penalty units.

### **53 False or misleading information**

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

Maximum penalty—50 penalty units.

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

## **Division 10 Register of licences**

### **54 Chief executive must keep register**

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

- (4) The register is to be kept in the way the chief executive considers appropriate, including, for example, in an electronic form.
- (5) The chief executive may publish information contained in the register, other than personal information, on the department's website.
- (6) In this section—
- personal information* means personal information within the meaning of the *Information Privacy Act 2009*, section 12, other than—
- (a) the name of a licensee; or
- (b) information that is lawfully available to the public.

## Division 11            Review of decisions

### Subdivision 1        Preliminary

#### 55        Definitions for division

In this division—

*affected person*, for a decision, means—

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

*internal review*, of an original decision, see section 57(1).

*internal review decision* means a decision made, or taken to have been made, under section 59 on an application for an internal review of an original decision.

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

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

## **Subdivision 2 Internal review**

### **56 Review process must start with internal review**

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

### **57 Who may apply for internal review**

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

### **58 Requirements for application**

- (1) An application for an internal review of an original decision must—
  - (a) be made in the approved form; and
  - (b) for a person who has been given an information notice for the decision—include enough information to enable the chief executive to decide the application; and
  - (c) be made to the chief executive within—

- 
- (i) for a person who has been given an information notice for the decision—20 business days after the day the person is given the notice; or
    - (ii) for a person who has not been given an information notice for the decision—20 business days after the day the person becomes aware of the decision.
  - (2) The chief executive may, at any time, extend the period within which the application may be made.
  - (3) The application does not affect the operation of the original decision or prevent the decision being implemented.

*Note—*

Section 60 provides for a stay of the original decision.

## **59 Internal review**

- (1) The chief executive must, within 20 business days after receiving an application for an internal review of an original decision—
  - (a) review the original decision; and
  - (b) decide to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the affected person for the original decision a QCAT information notice for the decision made under paragraph (b).
- (2) The chief executive and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the chief executive to comply with the subsection.
- (3) For the purpose of delegating the power under this section, the application may be dealt with only by a person who—
  - (a) did not make the original decision; and

- (b) holds a more senior office than the person who made the original decision.
- (4) Subsection (3) does not apply to an original decision made by the chief executive personally.
- (5) If the chief executive does not give the affected person a QCAT information notice within the period required under subsection (1) or a longer period agreed under subsection (2), the chief executive is taken to confirm the original decision.

### **Subdivision 3      Stays**

#### **60      QCAT may stay operation of original decision**

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



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## Subdivision 4 External review

### 61 Applying for external review

- (1) This section applies to a person who must be given a QCAT information notice for an internal review decision under section 59.
- (2) The person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision.

*Note—*

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

## Part 3 Supply of smoking products

### Division 1 Suppliers and employees

#### 62 Application of div 1

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

#### 63 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

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- (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
  - (iii) if the employee is a child—not to supply smoking products to anyone in any circumstances; and
  - (iv) to only supply smoking products as authorised under a retail or wholesale licence applying to the supplier, including all the conditions applying to the licence; and
- (b) warning the employee that if the employee supplies a smoking product to a person 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).

#### **64 Supplier must take prevention measures**

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

Maximum penalty—40 penalty units.

- (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.

#### **65 Supplier must not sell smoking products without licence**

- (1) A supplier must not sell a smoking product unless the supplier holds a retail or wholesale licence that authorises that type of sale.

Maximum penalty—1,000 penalty units.

- (2) This section does not apply to—

- 
- (a) a person selling smoking products as an employee of another person; or
  - (b) a supplier that is a pharmacist if—
    - (i) the smoking product is a regulated substance; and
    - (ii) the supply is made because of a prescription.

- (3) In this section—

*supplier* includes a person who, as part of a business activity, supplies smoking products to retailers.

## **66 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.

## **67 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.

**68 Supplier must ensure child employees do not supply or handle smoking products**

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

Maximum penalty—

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

*Note—*

See section 241 for the application of this section to a small business.

- (2) Subsection (1) does not apply to the supply or handling of a smoking product if—
- (a) the supplier is a pharmacist; and
  - (b) the smoking product is a regulated substance; and
  - (c) the supplier only supplies the smoking product to persons under a prescription.
- (3) Also, subsection (1) does not apply to the handling of a smoking product if the purpose of the handling is to—
- (a) deliver smoking products to premises; or
  - (b) load smoking products into, or unload smoking products from, a vehicle; or
  - (c) warehouse smoking products.
- (4) It is a defence to a charge under subsection (1) for the supplier to prove that, before the supply, the supplier took the prevention measures in relation to the child employee.

- (5) In this section—

***child employee*** means an employee who is a child.

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## **69 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—
  - (a) supply a smoking product to a child; or
  - (b) sell a smoking product unless the supplier holds a retail or wholesale licence that authorises that type of sale.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
  - (b) for a second or later offence—40 penalty units.
- (3) This section does not apply to—
  - (a) an employee who is a child; or
  - (b) the sale of a smoking product if—
    - (i) the supplier is a pharmacist; and
    - (ii) the smoking product is a regulated substance; and
    - (iii) the sale is made under a prescription.

## **70 Order prohibiting or restricting sale of smoking products**

- (1) This section applies if a supplier is convicted of an offence against section 66 or 67.
- (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—

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- (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.

## 71 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 or online shops.
- (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 **supplier 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 website address of the supplier’s online shop;
  - (e) the supplier’s postal address;
  - (f) the supplier’s phone number;

- (g) the supplier's fax number and email address;
  - (h) the chemical composition of the smoking products;
  - (i) the number, type or quantity of smoking products.
- (3) The notice must state—
- (a) the period before the date of the notice, not exceeding 12 months, for which the supplier information is required; and
  - (b) a date, not less than 28 days from the date of the notice, by which the supplier information must be given to the chief executive; and
  - (c) the way the supplier information must be given to the chief executive.

*Example—*

The notice may require the supplier 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 supplier information or disclose supplier 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 2                      Particular restrictions on sales by suppliers**

### **72            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.

### **73            Supplier must not sell smoking products from temporary retail store**

- (1) A supplier must not sell smoking products from a temporary retail store.

Maximum penalty—140 penalty units.

- (2) In this section—

*temporary retail store* means—

- (a) a temporary structure, regardless of whether any part of the structure is permanent; or

*Examples of temporary structures—*

a booth, tent, market stall or stand

- (b) a vehicle or mobile structure, including a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation.

## **Division 3                      Tobacco product vending machines**

### **74            Definitions for div 3**

In this division—

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

- (a) whose employment requires the employee to work near the vending machine; and



- (b) who, in performing the employee's duties, can observe the use of the vending machine.

*gaming machine area* has the meaning given by the *Gaming Machine Act 1991*, schedule 2.

*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).

## **75 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) liquor licensed premises if—
- (i) the liquor licensee for the premises holds a retail licence (liquor); and
  - (ii) the tobacco product vending machine in the premises can be accessed only by the employees of

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the person in charge of the tobacco product vending machine; or

- (b) a tobacco product vending machine while it is not being used by anyone to supply tobacco products.

*Example for paragraph (b)—*

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

- (3) For subsection (2)(a)(ii), a tobacco product vending machine in liquor licensed premises can be accessed only by the employees of the person in charge of the machine if the machine is in a part of the premises that—

- (a) can not be accessed by customers; or

*Example—*

a locked storage area

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

*Example—*

behind a bar or counter and out of reach of customers

- (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.

## **76 Person in charge of tobacco product vending machine in liquor licensed premises must instruct employees**

A person in charge of a tobacco product vending machine in liquor licensed premises must take prevention measures in relation to the person's employees.

Maximum penalty—40 penalty units.

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**77 Supply of tobacco products from vending machines**

- (1) A person in charge of a tobacco product vending machine in liquor 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; or  
(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.

**78 Supply of smoking products at liquor licensed premises from tobacco product vending machines**

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

Maximum penalty—140 penalty units.

**79 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 77; and

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- (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 liquor licensed premises, the order may apply only to the liquor 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 4                      Supply of particular smoking products from coin operated vending machines**

### **80                      Prohibition on use of vending machine to supply personal vaporisers and related products, herbal cigarettes and loose smoking blends**

- (1) A person in possession of a coin operated vending machine must not use the machine to supply personal vaporisers, personal vaporiser related products, herbal cigarettes or a loose smoking blend to another person.  
Maximum penalty—
  - (a) for a first offence—70 penalty units; or
  - (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.

## **Division 5                      Supply of smoking products by adults to children**

### **81            Application of div 5**

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.

### **82            Supply to children prohibited**

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

Maximum penalty—140 penalty units.

(2) 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 6                      False representation of age**

### **83            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 7                    Minimum saleable quantities of smoking products**

### **84            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.

### **85            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.

### **86            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.

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## Division 8                      Defence to charges for offences if age material

### 87            Defence to charge if age material

- (1) This section applies to a charge for an offence against section 66, 67, 69 or 77 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 4                              Advertising, display and promotion of smoking products

### Division 1                      Definitions

#### 88            Definitions for pt 4

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 72 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—

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- (a) a tobacco product, herbal cigarette, loose smoking blend, a thing that is intended to be smoked in a hookah, personal vaporiser, personal vaporiser related product 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 2                      Retail advertising and display**

### **89            Application of division**

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

*Examples—*

smoke-less products, tobacco-free products, vapes

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

### **90            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 or on an online shop.  
Maximum penalty—140 penalty units.



- (3) A supplier must not advertise a smoking product at a retail outlet or on an online shop 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.

## **91 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

## **92 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.

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- (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 1m<sup>2</sup> 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

### **93 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.

### **94 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.

## 95 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.
- (2) However, a supplier is taken to advertise or display a smoking product if—
  - (a) the supplier advertises or displays a business name that includes anything about the price of smoking products;  
or  
*Example—*  
Discount Cigs and Tobacco
  - (b) the supplier advertises or displays more than 1 business name mentioned in subsection (1) in relation to a single business.
- (3) For subsection (2), advertising includes using all mediums of communication, whether alone or in any combination.

*Example—*

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

## 96 Use of ‘tobacconist’ in advertising

- (1) 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.
- (2) In this section—

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

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- (a) 80% or more of average gross turnover is derived from the sale of smoking products by retail; and
- (b) the business is conducted separately from, not in conjunction with, and not within the premises of, any other business.

## 97 Display of signage at supplier's relevant point of sale

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

Maximum penalty—20 penalty units.

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

Maximum penalty—20 penalty units.

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

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

Maximum penalty—20 penalty units.

- (5) In this section—

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

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

## Division 3 Tobacco product vending machines

### 98 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.

## **99 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.

## **100 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

## **101 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.

## **Division 4                      Promotions of smoking products**

### **102      Definitions for div 4**

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.

### **103      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.

### **104      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.

## **105 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—
  - (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 charge under subsection (1) for the defendant to prove 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.

## **106 Smoking product giveaways**

- (1) A person must not supply a smoking product for free or a nominal fee 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 or a nominal fee promotes the sale of a smoking product—
  - (a) it is enough to prove—



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- (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.
- (3) In this section—
- nominal fee*, for a smoking product, means an amount for the product that—
- (a) does not cover the cost of making and supplying the product; or
  - (b) is significantly less than a recommended retail value for the product.

## **107 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

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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.

### **108 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.

### **109 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.

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Maximum penalty—140 penalty units.

- (2) Subsection (1) does not apply to a trademark.
- (3) For subsection (1), it is irrelevant whether the image is displayed as a fixed or moving image, or as part of a video.

## **Part 5                      Smoke-free enclosed places**

### **110      Application of pt 5**

This part does not apply to a motor vehicle under part 6.

### **111      Definition for part**

In this part—

*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 is generally provided free to casino customers.

### **112      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;

*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.
- (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

***residential premises*** does not include multi-unit residential accommodation.

### 113 No smoking sign

- (1) This section applies in relation to each public entrance from an outdoor area to an enclosed place at any of the following premises—
  - (a) premises to which a commercial hotel licence or community club licence under the *Liquor Act 1992* applies;
  - (b) premises, to which a commercial special facility licence under the *Liquor Act 1992* applies, that contain all or part of a casino.
- (2) The liquor licensee of the 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.

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

**114 No food or drink to be provided while person continues smoking after being directed to stop**

- (1) This section applies if a person contravening section 112(1) is directed to stop smoking by—
  - (a) an authorised person; or
  - (b) an occupier of an enclosed place where the contravention is happening; or
  - (c) an employee or agent of an occupier mentioned in paragraph (b).
- (2) If the person (the *first person*) does not comply with the direction 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 112(1).

Maximum penalty—140 penalty units.

- (3) It is a defence to a charge under subsection (2) 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.

**115 Offence by occupier**

- (1) If a person contravenes section 112(1), an occupier of the enclosed place where the contravention happens commits an offence.

Maximum penalty—140 penalty units.

- (2) It is a defence to a charge under subsection (1) 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



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## 119 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;
  - (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) 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 7                      Smoke-free facilities**

### **Division 1                      Application of part**

#### **120      Application of part**

This part does not apply to an enclosed place, other than an enclosed place that is a vehicle or part of a vehicle.

### **Division 2                      Major sports facilities**

#### **121      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*.

#### **122      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.

#### **123      Offence by occupier**

- (1) If a person contravenes section 122(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) It is a defence to a charge under subsection (1) 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 Major event facilities

### 124 Definitions for division

In this division—

*major event facility* means the major event area prescribed by regulation for a major event under the *Major Events Act 2014*, for the period the area is a major event area under that Act.

*major event organiser* has the meaning given in the *Major Events Act 2014*.

### 125 Person must not smoke at major event facility

- (1) A person must not smoke at a major event facility.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply if the person—

- (a) is in a nominated outdoor smoking place; and
- (b) is not consuming food or drink.

- (3) In this section—

*nominated outdoor smoking place* means a clearly designated part, or parts, of an outdoor area of a major event facility—

- (a) where smoking is not otherwise prohibited under this Act; and

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- (b) established by the major event organiser as an area where—
  - (i) smoking is permitted; and
  - (ii) food or drink is not to be consumed.

*Example for paragraph (a)—*

Smoking is prohibited within 10m of children's playground equipment.

## **126 Offence by major event organiser**

- (1) If a person contravenes section 125(1), the major event organiser of the major event facility, or the part of the facility, where the contravention happened, commits an offence.

Maximum penalty—140 penalty units.

- (2) It is a defence to a charge under subsection (1) for the major event organiser to prove—
  - (a) the major event organiser was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
  - (b) the major event organiser, or an employee or agent of the major event organiser—
    - (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 4 Health facilities**

### **127 Person must not smoke at or near health facility**

- (1) A person must not smoke at a health facility.

Maximum penalty—20 penalty units.

- (2) A person must not smoke on land within 5m beyond the boundary of a health facility (the *buffer zone*).

Maximum penalty—20 penalty units.

- 
- (3) Subsection (2) does not apply to a person—
- (a) in the buffer zone at residential premises or on residential land; or
  - (b) in the buffer zone at business premises; or
  - (c) travelling through the buffer zone in a motor vehicle.

- (4) In this section—

*health facility* means—

- (a) land on which a private health facility is situated; or
- (b) land on which a Service provides a health service.

*health service* means a service for maintaining, improving, restoring or managing people's health and wellbeing, but does not include a service provided at a residential aged care facility.

*private health facility* see the *Private Health Facilities Act 1999*, section 8.

*residential aged care facility* see section 131(5).

## Division 5                      School facilities

### 128      Person must not smoke at or near school facility

- (1) A person must not smoke at a school facility.  
Maximum penalty—20 penalty units.
- (2) A person must not smoke on land within 5m beyond the boundary of a school facility (the *buffer zone*).  
Maximum penalty—20 penalty units.
- (3) Subsection (2) does not apply to a person—
  - (a) in the buffer zone at residential premises or on residential land; or
  - (b) in the buffer zone at business premises; or
  - (c) travelling through the buffer zone in a motor vehicle.

(4) In this section—

***non-State school*** means an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*.

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

***school facility*** means land on which—

- (a) a State school provides an educational program under the *Education (General Provisions) Act 2006*; or
- (b) a non-State school provides primary education, secondary education or special education under the *Education (Accreditation of Non-State Schools) Act 2017*; or
- (c) a State school or non-State school provides other educational instruction or activities; or
- (d) a carpark is located if the carpark is—
  - (i) adjacent to a school mentioned in paragraph (a), (b) or (c); and
  - (ii) provided for the exclusive use of the school community of the school.

***State school*** means a state educational institution within the meaning of the *Education (General Provisions) Act 2006*, schedule 4.

## Division 6                      Public swimming facilities

### 129      Person must not smoke at public swimming facility

(1) A person must not smoke at a public swimming facility.

Maximum penalty—20 penalty units.

(2) In this section—

***associated area***, for a swimming pool, means any of the following—

- 
- (a) an area rising from within the pool or a platform over the pool;
  - (b) an area providing access to the pool;
  - (c) an area adjacent to the pool provided for persons to observe swimmers in the pool, change their clothing or sunbathe;
  - (d) diving boards and water slides for the pool;
  - (e) a kiosk and seating area adjacent to the pool;
  - (f) if the area surrounding the pool is enclosed by a fence or wall—the entire area enclosed by the fence or wall.

***public swimming facility***—

- (a) means a swimming pool that is owned or operated by a local government and is open to the public for swimming, whether or not on payment of money; and
- (b) includes the associated area for the swimming pool.

## **Division 7                      Early childhood education and care facilities**

### **130      Person must not smoke at or near early childhood education and care facility**

- (1) A person must not smoke at an early childhood education and care facility.

Maximum penalty—20 penalty units.

- (2) A person must not smoke on land within 5m beyond the boundary of an early childhood education and care facility (the ***buffer zone***).

Maximum penalty—20 penalty units.

- (3) Subsections (1) and (2) do not apply to a person at an early childhood education and care facility if—

- (a) the facility is also residential premises; and

- (b) at the relevant time, the facility is not being used to provide an early childhood education and care service.
- (4) Subsection (2) does not apply to a person—
  - (a) in the buffer zone at residential premises or on residential land; or
  - (b) in the buffer zone at business premises; or
  - (c) travelling through the buffer zone in a motor vehicle.
- (5) For an early childhood education and care facility that is also residential premises, it is a defence to a charge under subsection (1) or (2) for a person to prove that the person was not aware, and could not have reasonably been expected to be aware, that the premises were an early childhood education and care facility.
- (6) In this section—

*early childhood education and care facility* means land on which an early childhood education and care service is provided.

*early childhood education and care service* means—

  - (a) a Queensland approved education and care service under the *Education and Care Services Act 2013*; or
  - (b) an approved education and care service under the *Education and Care Services National Law (Queensland) Act 2011*.

## Division 8 Residential aged care facilities

### 131 Person must not smoke at or near residential aged care facility

- (1) A person must not smoke at a residential aged care facility.  
Maximum penalty—20 penalty units.
- (2) A person must not smoke on land within 5m beyond the boundary of a residential aged care facility (the *buffer zone*).

Maximum penalty—20 penalty units.

- (3) Subsection (1) does not apply to a person within a nominated outdoor smoking place.
- (4) Subsection (2) does not apply to a person—
  - (a) in the buffer zone at residential premises or on residential land; or
  - (b) in the buffer zone at business premises; or
  - (c) travelling through the buffer zone in a motor vehicle.
- (5) In this section—

***home-based aged care*** means residential premises where aged care is provided to a person.

***nominated outdoor smoking place*** means a clearly designated part, or parts, of an outdoor area of a residential aged care facility—

- (a) where smoking is not otherwise prohibited under this Act; and
- (b) established by the occupier of the facility as an area where smoking is permitted.

*Example for paragraph (a)—*

Smoking is prohibited within 10m of children’s playground equipment.

***residential aged care facility***—

- (a) means land on which a facility used to provide aged care is situated; but
- (b) does not include—
  - (i) a retirement village; or
  - (ii) home-based aged care.

***retirement village*** means premises where older members of the community or retired persons reside, or are to reside, in independent living units or serviced units.

## **Part 8                      Smoke-free outdoor places**

### **Division 1                      Outdoor eating or drinking places**

#### **Subdivision 1                      General provisions**

##### **132      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 customers 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 consume food or drink purchased at the festival

- (iii) the place is liquor 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.
- (4) In this section—
- provide*, food or drink, includes distribute, give or sell the food or drink.
- residential premises* does not include multi-unit residential accommodation.

### **133 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) A person must not smoke on land within 5m beyond the boundary of an outdoor eating or drinking place (the *buffer zone*).  
Maximum penalty—20 penalty units.
- (3) Subsection (2) does not apply to a person—
  - (a) in the buffer zone at residential premises or on residential land; or
  - (b) in the buffer zone at business premises; or
  - (c) travelling through the buffer zone in a motor vehicle or on personal transport; or

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- (d) walking through the buffer zone.
- (4) This section does not apply to—
  - (a) a smoking area set aside under section 134 or 144; or
  - (b) a designated outdoor smoking area.

### **134 Smoking area at outdoor eating or drinking place**

- (1) An occupier of an outdoor eating or drinking place may set aside a part of the place as an area in which smoking is allowed (a *smoking area*) if—
  - (a) smoking in the area is not prohibited under this Act, other than under section 133; or

*Example—*

An occupier may not set aside, as a smoking area, an area within 5m of an entrance to an enclosed place, because smoking in that area is prohibited under section 147.

- (b) food or drink is not served in the area or the buffers for the area; or
- (c) entertainment is not offered in the area or the buffers for the area.
- (2) An occupier of an outdoor eating or drinking place establishes a smoking area at the place by—
  - (a) posting a diagram or other notice clearly showing the limits of the area and the buffers for the area; and
  - (b) posting a prominent sign in the area indicating the area as the only part of the outdoor eating or drinking place in which people may smoke; and
  - (c) posting a prominent sign in or around the area directing people not to eat or drink within the area or the buffers for the area.
- (3) If an occupier of an outdoor eating or drinking place establishes a smoking area at the place, the area must be surrounded by a buffer that is at least 2m wide and wholly contained within the place.

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- (4) For subsection (3), a buffer may be a space, an object or a structure.
  - (5) The occupier of an outdoor eating or drinking place must not set aside a part of the place as an area in which smoking is allowed other than in compliance with subsections (1) to (3).

Maximum penalty—140 penalty units.

- (6) This section does not apply to an occupier that is the licensee of—
  - (a) premises to which a commercial hotel licence or community club licence under the *Liquor Act 1992* applies; or
  - (b) premises, to which a commercial special facility licence under the *Liquor Act 1992* applies, that contain all or part of a casino.

### **135 No food or drink to be provided while person continues smoking after being directed to stop**

- (1) This section applies if a person contravening section 133(1) or (2) is directed to stop smoking by—
  - (a) an authorised person; or
  - (b) an occupier of the outdoor eating or drinking place where the contravention is happening; or
  - (c) an employee or agent of an occupier mentioned in paragraph (b).
- (2) If the person (the *first person*) does not comply with the direction, 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 133(1) or (2).

Maximum penalty—140 penalty units.

- (3) It is a defence to a charge under subsection (2) 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.

### **136 Offence by occupier**

- (1) If a person contravenes section 133(1), the occupier of the outdoor eating or drinking place where the contravention happens commits an offence.

Maximum penalty—140 penalty units.

- (2) It is a defence to a charge under subsection (1) 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.

## **Subdivision 2 Provisions for particular liquor licensed premises**

### **137 Designating an outdoor smoking area**

- (1) This section applies to the liquor 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.
- (2) The liquor 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 liquor 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 premises ordinarily accessed by customers.
- (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 customers are not permitted to eat, drink or smoke.

*Examples—*

- an artificial screen, 2.1m high
  - a garden or pathway, 2m wide
- (8) For subsection (7)(a), the height of a screen is to be measured as if the base of the screen were level with the highest point of the ground or floor within 1m on either side of the screen.
  - (9) 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.
  - (10) If a buffer includes a door, the door must remain closed unless customers or employees of the premises are using the door to enter or exit the designated outdoor smoking area.
  - (11) If a buffer includes a window, the window must remain closed while the designated outdoor smoking area is being used.
  - (12) 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 set aside as a smoking area under section 134.

**138 Obligations of liquor licensee of premises with designated outdoor smoking area**

- (1) This section applies to the liquor licensee of premises at which there is a designated outdoor smoking area.
- (2) The liquor 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; and
  - (e) there are no children in the area.

Maximum penalty—140 penalty units.

- (3) Subsection (2)(e) does not apply in relation to a child if the child merely walks through the designated outdoor smoking area.
- (4) The liquor licensee must ensure the designated outdoor smoking area and its buffers comply with section 137(5) to (8).

Maximum penalty—140 penalty units.

- (5) The liquor licensee must—
  - (a) prepare, and keep up-to-date, a smoking management plan complying with section 139; and
  - (b) display a notice in or near the designated outdoor smoking area stating that the smoking management plan is available for perusal by customers on request; and
  - (c) make the plan available for perusal on request by a customer; and
  - (d) produce the plan for inspection on request by an authorised person.

Maximum penalty—70 penalty units.

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- (6) The liquor 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.

### **139 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 137; and
  - (d) state how the liquor licensee will minimise the exposure of employees and customers to environmental tobacco smoke; and
  - (e) describe the training or instruction given to employees to ensure this Act and the plan are complied with; and

*Example—*

training to ensure customers 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 Government precincts**

### **140 Person must not smoke within government precinct**

- (1) A person must not smoke within a government precinct, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) It is a reasonable excuse for subsection (1) that the person was not remaining at the government precinct but was merely passing through the precinct.
- (3) In this section—

*government precinct* means land—

  - (a) adjoining a building occupied by—
    - (i) the State; or
    - (ii) the Legislative Assembly; or
    - (iii) a court or tribunal; or
    - (iv) an entity that represents the State; or
    - (v) another entity established by an Act; and
  - (b) prescribed by regulation.

### **Division 3                      Outdoor markets**

#### **141      Person must not smoke at an outdoor market**

- (1) A person must not smoke at an outdoor market.  
Maximum penalty—20 penalty units.
- (2) Subsection (1) does not apply to a smoking area set aside under section 144.

#### **142      Person must not smoke near entrance to outdoor market**

- (1) A person must not smoke outside an outdoor market within 5m of any part of a clearly designated entrance to, or exit from, an outdoor market, unless the person has a reasonable excuse.  
Maximum penalty—20 penalty units.
- (2) Subsection (1) does not apply to a person—



- (a) at residential premises or on residential land; or
- (b) at business premises; or
- (c) travelling past the entrance in a motor vehicle or on personal transport; or
- (d) walking past the entrance.

### 143 Offence by organiser

- (1) If a person contravenes section 141(1), the organiser of the outdoor market commits an offence.

Maximum penalty—140 penalty units.

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

### 144 Smoking area

- (1) The organiser of an outdoor market may set aside a part of the market as an area in which smoking is allowed (a **smoking area**) if smoking in the area would not be prohibited under this Act, other than under section 141.

*Example—*

An organiser of an outdoor market may not set aside, as a smoking area, an area within 5m of an entrance to an enclosed place, because smoking in that area is prohibited under section 147.

- (2) The organiser of an outdoor market establishes a smoking area at the market by—

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

Maximum penalty—140 penalty units.

## Division 4                      Other outdoor places

### 145      Person must not smoke at a patrolled beach

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

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.

#### **146 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.

#### **147 Person must not smoke near an entrance to an enclosed place**

- (1) A person must not smoke within 5m 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 person in a motor vehicle passing the entrance.
- (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—

*residential premises* does not include multi-unit residential accommodation.

## **148 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.

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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 residential land.
- (3) In this section—

*residential premises* does not include multi-unit residential accommodation.

#### **149 Person must not smoke at outdoor pedestrian mall**

- (1) A person must not smoke at an outdoor pedestrian mall.

Maximum penalty—20 penalty units.

- (2) In this section—

*outdoor pedestrian mall* means each of the following—

- (a) a mall established under the *City of Brisbane Act 2010*, section 88;
- (b) a mall established under the *Local Government Act 2009*, section 80A;
- (c) a mall continued as a mall under the *City of Brisbane Act 2010*, section 258.

#### **150 Person must not smoke at or near public transport waiting point**

- (1) A person must not smoke at a public transport waiting point.

Maximum penalty—20 penalty units.

- (2) A person must not smoke on land within 5m beyond a public transport waiting point (the *buffer zone*), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (3) For subsection (2), a person outside the buffer zone is taken to be within the buffer zone if the person is in a queue that starts at the public transport waiting point or in the buffer zone.
- (4) Subsections (1) and (2) do not apply to a person at a place where smoking is prohibited under the *Transport Infrastructure (Rail) Regulation 2017* or the *Transport Operations (Passenger Transport) Regulation 2018*.
- (5) Subsection (2) does not apply to a person—
  - (a) in the buffer zone at residential premises or on residential land; or
  - (b) in the buffer zone at business premises; or
  - (c) travelling through the buffer zone in a motor vehicle.
- (6) It is a reasonable excuse for subsection (2) that the person was not remaining in the buffer zone but was merely passing through the buffer zone.

- (7) In this section—

***public passenger vehicle*** means any of the following, as defined in the *Transport Operations (Passenger Transport) Act 1994*, used to transport members of the public—

- (a) a fixed track vehicle;
- (b) a bus;
- (c) a ferry;
- (d) a taxi;
- (e) a limousine;
- (f) a booked hire vehicle.

***public transport waiting point*** means any of the following—

- (a) a sign indicating that it is a drop-off or collection point for a public passenger vehicle;
- (b) shelter or seating provided for persons waiting at a drop-off or collection point for a public passenger vehicle;

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- (c) a terminal, jetty, pontoon, platform or landing for the arrival and departure of a public passenger vehicle.

**151 Person must not smoke at or near skate park**

- (1) A person must not smoke within 10m of any part of a skate park.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to a person—

- (a) at residential premises or on residential land; or
- (b) at business premises; or
- (c) travelling in a motor vehicle.

- (3) In this section—

*skate park*—

- (a) means a part of a public place constructed for the purpose of riding or skating any of the following around or over obstacles, jumps and uneven surfaces—

- (i) bicycles;
- (ii) rollerblades or rollerskates;
- (iii) skateboards;
- (iv) scooters; but

- (b) does not include a bicycle path, a footpath or a path shared by cyclists and pedestrians.

**152 Person must not smoke at or near organised under-age sporting event or organised children's activity**

- (1) A person must not smoke at a sporting ground or the viewing area for a water sport during—

- (a) an organised under-age sporting event; or
- (b) a training or practice session to prepare for an organised under-age sporting event; or

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- (c) any break or interval during the organised under-age sporting event or the training or practice session.

Maximum penalty—20 penalty units.

- (2) A person must not smoke in that part of a park or on a similarly defined area of land being used for an organised children's activity.

Maximum penalty—20 penalty units.

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

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

Maximum penalty—20 penalty units.

- (4) Subsection (3) does not apply to a person—

- (a) in the buffer zone at residential premises or on residential land; or
- (b) in the buffer zone at business premises; or
- (c) travelling through the buffer zone in a motor vehicle.

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

- (6) In this section—

*organised children's activity*—

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



*Example—*

a supervised activity for Scouts or Girl Guides

- (b) does not include—
- (i) an excursion; or
  - (ii) attendance at a public event; or
  - (iii) a parade in a public place and intended to be viewed by the public.

*Example for subparagraph (iii)—*

a street parade

***organised under-age sporting event*** means a sporting event—

- (a) organised in advance; and
- (b) organised or intended for, or predominately participated in by, children; and
- (c) conducted by a professional or amateur sporting body or educational institution according to established rules.

***skate park*** see section 151(3).

***sporting ground—***

- (a) means 1 or more of the following places (each a ***playing area***)—
  - (i) a court, field or oval marked for use to play 1 or more sports;

*Examples—*

a soccer field, a cricket oval, a tennis or basketball court

- (ii) a running track;
  - (iii) a racing track for bicycles;
  - (iv) a textured surface used for athletics; and
- (b) includes—
  - (i) any area, seating or other structure provided for persons to observe players and competitors at the playing area; and

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- (ii) any area reserved for players, competitors, umpires or other officials for a game being played at the playing area; and
  - (iii) any waiting or warm-up area for players or competitors waiting to enter the playing area; but
- (c) does not include a bicycle path, a skate park, a path shared by cyclists and pedestrians or a horse racing track.

*viewing area*, for a water sport, means the area set aside for viewing the water sport.

### **153 Person must not smoke at national park**

- (1) A person must not smoke at a national park, or part of a national park, prescribed by regulation.

Maximum penalty—20 penalty units.

- (2) Before recommending the making of a regulation under subsection (1), the Minister must obtain written consent to its making from the Minister responsible for the management of national parks.
- (3) In this section—

*national park* means a national park under the *Nature Conservation Act 1992*.

## **Division 5 Local government may prohibit smoking at other outdoor public places**

### **154 Local government may make local laws prohibiting smoking at other outdoor public places**

- (1) Subsection (2) applies if this Act does not regulate smoking at an outdoor public place.

- (2) A local government may make a local law, including a subordinate local law, prohibiting smoking at the place if the place is in the local government's local government area.
- (3) A local law made under subsection (2) must not provide for a penalty of more than 20 penalty units for a contravention of the law.

### **155 Consultation**

If—

- (a) a local government proposes to make a local law under section 154; and
- (b) the local law is not subject to consultation requirements under the *Local Government Act 2009*, section 29A or the *City of Brisbane Act 2010*, section 31;

the local government must consult with the department about the proposed local law before making it.

### **156 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.

### **157 Fines payable for contravention of local law payable to local government**

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;  
the fine must be paid to the local government.

## Part 9 Prohibited products

### 158 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 to a charge under subsection (1) 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 fumes resulting from heating or burning the drug, in the device, in the drug's crystal, powder, oil or base form.

## 159 Sale, supply and display of bongs

- (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 to a charge under subsection (1) 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.

## 160 Display of hookahs

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

Maximum penalty—140 penalty units.

(2) For subsection (1)—

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

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

## 161 Supply or possession of illicit tobacco

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

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

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

## **162 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.

## **163 Supply of objects resembling tobacco products**

- (1) A person must not, as part of a business activity, supply to a person an object, other than a tobacco product, that resembles a tobacco product.

Maximum penalty—140 penalty units.

- (2) For subsection (1), an object resembles a tobacco product if the object—
  - (a) has an appearance that is likely to cause a reasonable person to consider the object 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.
- (3) However, subsection (1) does not apply to an object that is a personal vaporiser.



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**164 Sale of confectionary-flavoured or fruit-flavoured cigarettes**

- (1) A person must not sell a cigarette that is confectionary-flavoured or fruit-flavoured.

Maximum penalty—140 penalty units.

- (2) Subsection (1) does not apply to a menthol-flavoured cigarette.

**Part 10 Administration of provisions by State and local governments**

**165 State and local governments administer particular provisions**

- (1) Both the State and local governments have a role in administering the following provisions (the *relevant provisions*)—

- (a) part 7, divisions 4 to 8;
- (b) part 8, division 4.

- (2) However, nothing in the relevant provisions imposes a duty on a local government to enforce the relevant provisions.

**166 Role of local government**

In exercising its jurisdiction of local government in enforcing the relevant provisions, the local government has its executive role—

- (a) to administer and enforce the relevant provisions in the local government's local government area; and
- (b) for a patrolled beach area of a patrolled beach or a prescribed outdoor swimming area—to administer and enforce part 8, division 4 for the area whether it is adjacent to or within the local government's local government area.

### **167 State may require report from local government**

- (1) This section applies to a matter under the relevant provisions 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.

### **168 Fines payable to local government**

If—

- (a) a proceeding for an offence is taken for a matter under the relevant provisions by a local government; and
  - (b) a court imposes a fine for the offence;
- the fine must be paid to the local government.

## **Part 11 Monitoring and enforcement**

### **Division 1 Appointment of authorised persons and other matters**

#### **169 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.

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## 170 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.
- (4) A health service chief executive may appoint a person (a ***health service authorised person***) as an authorised person.
- (5) The functions of a health service authorised person are to investigate, monitor and enforce compliance with the following provisions in relation to a relevant facility—
  - (a) section 127(1) and (2);
  - (b) section 131(1) and (2);
  - (c) section 223 to the extent it relates to a person smoking in contravention of a section mentioned in paragraph (a) or (b).
- (6) A conservation officer under the *Nature Conservation Act 1992* is an authorised person and the functions of the officer are to investigate, monitor and enforce compliance with the following sections—
  - (a) section 153;

- (b) section 223 to the extent it relates to a person smoking in contravention of section 153(1).
- (7) A police officer is an authorised person and the functions of the officer are to investigate, monitor and enforce compliance with sections 65 and 161.
- (8) However, sections 171, 173, 176 and 177 do not apply in relation to a conservation officer or police officer as an authorised person.
- (9) To remove any doubt, it is declared that the limited function of an authorised person under subsection (5), (6) or (7) does not limit the powers the authorised person has under this part for the performance of the function.
- (10) In this section—  
*relevant facility*, for a health service authorised person, means a facility at which a service is provided by the Service managed by the health service chief executive who appointed the authorised person.

## **171 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.

## **172 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.

### **173 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.

### **174 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 181(2) or (3).

### **175 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 176 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.

### **176 Resignation**

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

### **177 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.

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## **178 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—  
*official* means—
  - (a) an authorised person; or
  - (b) a person acting under the direction of an authorised person.

## **Division 2 Powers of authorised persons**

### **179 Application of div 2**

This division does not apply to a health service authorised person.

### **180 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.

### **181 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 liquor 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.
- (4) After entering a place under this section, an authorised person may remain at the place for a reasonable period to take either of the following actions, regardless of whether the place continues to be open to the public or open for carrying on business—
  - (a) exercise a power under section 187;
  - (b) if the entry is made for the purpose of checking compliance with an improvement notice—check compliance with the notice.
- (5) In this section—  
*improvement notice* see section 211(2).

## 182 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.

*Note—*

This section does not apply if entry is authorised by section 181(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.

### **183 Evidence of consent**

- (1) Subsection (2) applies if—
  - (a) an issue arises in a court proceeding about whether the occupier of a place consented to an authorised person entering the place under this part; and
  - (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.

### **184 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.

## 185 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 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.

### **186 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 185(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.

### **187 General powers after entering places**

- (1) This section applies to an authorised person who enters a place under section 181.
- (2) However, if an authorised person enters a place to get the occupier's consent to enter premises, this section applies to

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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 owner of the place, occupier of the place or another person at the place to give the authorised person information to help the authorised person ascertain—
    - (i) whether this Act is being complied with; or
    - (ii) if smoking products are sold at the place—the name and contact details of the business that sells the smoking products at the place.
- (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.
- (5) In this section—
- owner*, of a place, includes—
- (a) a lessee for the place; and
  - (b) an agent of the owner who is responsible for the management or maintenance of the place.

### **188 Failure to help authorised person**

- (1) A person required to give reasonable help under section 187(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 187(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.

### **189 Failure to give information**

- (1) A person of whom a requirement is made under section 187(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**

### **190 Application of div 3**

- (1) This division, other than sections 191 and 194, does not apply to a health service authorised person.
- (2) A health service authorised person may exercise a power under section 191 or 194 in the performance of the person's functions.

### **191 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.

*Note—*

See the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity.

- (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.

**192 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—
    - (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.

*Note—*

See the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity.

- (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.

### **193 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
  - (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 192(1); or
    - (ii) shows acceptable evidence of age of the person under section 192(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.

### **194 Power to direct person to stop smoking**

- (1) This section applies if an authorised person finds a person contravening a smoking prohibition.
- (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.
- (4) In this section—

*smoking prohibition* see section 223(2).

## Division 4                    Seizure of evidence

### 195    Application of div 4

This division does not apply to a health service authorised person.

### 196    Restriction of seizure powers

- (1) Nothing in this division authorises an authorised person to seize a digital device if—
  - (a) the authorised person reasonably believes the device is, or contains, evidence of an offence against this Act; and
  - (b) in committing the offence a person used the device to store or display the following things, or an image or other design purporting to be the thing—
    - (i) a digital authority;
    - (ii) a digital evidence of age;
    - (iii) a digital evidence of identity.

- (2) In this section—

*digital authority* see the *Transport Planning and Coordination Act 1994*, section 29AC.

*digital device* see the *Transport Planning and Coordination Act 1994*, section 29AB.

*digital evidence of age* see the *Transport Planning and Coordination Act 1994*, section 29AD.

*digital evidence of identity* see the *Transport Planning and Coordination Act 1994*, section 29AE.

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**197 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.

**198 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.

**199 Securing seized thing**

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

[s 200]

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- (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

## **200 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.

## **201 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.
- (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.

## **202 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).

## **203 Forfeiture of seized things that can not be returned to owner**

- (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.

## **204 Forfeiture of smoking product seized under s 193**

- (1) This section applies to a smoking product seized under section 193.
- (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.

## **205 Forfeiture of illicit tobacco**

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

- (a) the chief executive believes the seized thing is illicit tobacco and it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized; and
  - (b) the chief executive proposes the seized thing be forfeited to the State; and
  - (c) the owner may, within 28 days after being given the notice (the *response period*), give the chief executive a written response to the belief and proposal.
- (3) Also, before making the decision, the chief executive must consider all responses complying with subsection (2)(c).
  - (4) If the chief executive decides the seized thing is forfeited to the State, the chief executive must give the owner of the seized thing written notice of the decision and the reasons for the decision.
  - (5) However, if a proceeding involving the seized thing was started, the chief executive must not act under subsection (1) until the end of the proceeding or any appeal from the proceeding.
  - (6) In this section—  
*seized thing* means a thing seized under section 197 or 198.

## **206 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.

## **207 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.
- (2) Without limiting subsection (1), the chief executive may destroy the thing.

## **208 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.

## **209 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.



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## Division 5                      Other enforcement matters

### 210      Application of div 5

- (1) This division, other than sections 216, 217, 220 and 221, does not apply to a health service authorised person or a conservation officer under the *Nature Conservation Act 1992*.
- (2) Also, this division, other than sections 215, 216, 217, 220 and 221, does not apply to a police officer.

*Note—*

Conservation officers and police officers are authorised persons. See section 170.

### 211      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) each of the following statements that is relevant—
    - (i) that the person must immediately cease the contravention;
    - (ii) that the person must not continue or repeat the contravention.
- (4) If the authorised person believes that reasonable steps may be taken by the person to remedy the contravention or likely contravention, the improvement notice may state the reasonable steps the person must take to remedy the contravention.
- (5) If the improvement notice states reasonable steps the person must take to remedy the contravention or likely contravention, the improvement notice must state the reasonable period during which the person must take the steps.
- (6) The person must comply with the notice, unless the person has a reasonable excuse.
- Maximum penalty for subsection (4)—50 penalty units.
- (7) Subsection (4) does not prevent the prosecution and punishment of the person for the contravention for which the person was given the improvement notice.

## **212 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.
- (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 3.

### **213 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.

### **214 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.

## **215 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.

## **216 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.

## **217 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.

## 218 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.

## **219 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.

## **220 Impersonation of authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

## **221 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.

## **222 Person smoking may be directed to stop**

If a person (the *smoker*) is smoking in contravention of a section 112(1), 122(1), 125(1), 133(1) or (2) or 141(1), the following persons may direct the smoker to stop smoking—

- (a) for a contravention of section 112(1) at an enclosed place—
  - (i) an occupier of the place; or
  - (ii) an employee or agent of the occupier;
- (b) for a contravention of section 122(1) at a major sports facility—
  - (i) an occupier of the facility; or
  - (ii) an occupier of the part of the facility where the contravention is happening; or
  - (iii) an employee or agent of an occupier mentioned in subparagraph (i) or (ii);
- (c) for a contravention of section 125(1) at a major event facility—
  - (i) the major event organiser for the facility; or
  - (ii) the major event organiser for the part of the facility where the contravention is happening; or
  - (iii) an employee or agent of a major event organiser mentioned in subparagraph (i) or (ii);
- (d) for a contravention of section 133(1) or (2) at an outdoor eating or drinking place—

- (i) an occupier of the place; or
  - (ii) an employee or agent of the occupier;
- (e) for a contravention of section 141(1) at an outdoor market—
- (i) the organiser of the outdoor market; or
  - (ii) an employee or agent of the organiser.

*Note—*

An authorised person also has the power to direct the smoker to stop smoking under section 194.

## **223 Person smoking must stop when directed**

- (1) A person smoking in contravention of a smoking prohibition must comply with a direction to stop smoking made to the person by an authorised person or another person authorised under section 222.

Maximum penalty—20 penalty units.

- (2) In this section—

*smoking prohibition* means section 112(1), 122(1), 125(1), 127(1) or (2), 128(1) or (2), 129(1), 130(1) or (2), 131(1) or (2), 133(1) or (2), 140(1), 142(1), 145(1), 146(1), 147(1), 148(1), 149(1), 150(1) or (2), 151(1), 152(1), (2) or (3) or 153(1).

## **Division 6 Appeals for particular forfeiture decisions**

### **224 Definition for division**

In this division—

*forfeiture decision* means a decision of the chief executive to forfeit illicit tobacco under section 205.



## **225    Appealing forfeiture decision**

- (1) This section applies to a person who must be given written notice of a forfeiture decision.
- (2) The person may appeal to a Magistrates Court (the *court*) against the forfeiture decision by filing a notice of appeal with the registrar of the court.
- (3) The notice of appeal must state fully the grounds of the appeal.
- (4) The person must file the notice of appeal within 28 days after written notice of the forfeiture decision is given to the person or the person otherwise becomes aware of the decision.
- (5) However, the court may, on application and at any time, extend the time for filing the notice of appeal.
- (6) The person must serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the chief executive.
- (7) The appeal does not affect the operation of the forfeiture decision or prevent the forfeiture decision being implemented.

## **226    Staying operation of decision**

- (1) A person mentioned in section 225(1) may apply to the court for a stay of the operation of the forfeiture decision.
- (2) The court may, by order, stay the operation of the forfeiture decision to secure the effectiveness of the appeal.
- (3) The court may stay the operation of the forfeiture decision on conditions the court considers appropriate.
- (4) The stay operates for the period decided by the court.
- (5) However, the period of the stay must not extend past the time when the court decides the appeal.

## **227 Powers of court on appeal**

- (1) When deciding the appeal against a forfeiture decision, the court—
  - (a) has the same powers as the chief executive in making the forfeiture decision; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
  - (a) confirm the forfeiture decision; or
  - (b) substitute another decision for the forfeiture decision; or
  - (c) set aside the forfeiture decision and return the matter to the chief executive with directions the court considers appropriate.

## **228 Effect of court's decision on appeal**

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

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## Part 12                      Miscellaneous

### **229      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.
- (2) 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.
- (3) 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.
- (4) 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.

### **230      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.

### **231 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.

### **232 Confidentiality of information**

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

Maximum penalty—50 penalty units.

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

*administrator* means—

- (a) the chief executive; or
- (b) an authorised person; or
- (c) another person who is, or was, employed in the department in which this Act is, or was, administered.

*confidential information*—

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

### **233 Disclosure of information to entities performing relevant functions**

- (1) This section applies to information a person obtains in performing a function or exercising a power under this Act.
- (2) The chief executive may disclose the information to—
  - (a) an entity of the Commonwealth or a State, for performing the entity's functions relating to the regulation of the supply of smoking products; or

[s 234]

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- (b) a law enforcement agency, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance under the *Medicines and Poisons Act 2019*, section 17; or
  - (c) another entity, for a purpose prescribed by regulation.
- (3) However, the chief executive may disclose the information to an entity under subsection (2) only if satisfied—
- (a) the disclosure is reasonably necessary for the entity to exercise its functions; and
  - (b) the information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion.

### **234 Only chief executive may commence particular proceedings**

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

### **235 Approved forms**

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

### **236 Delegation**

- (1) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified person.

- (2) A delegation of a function under subsection (1) may not permit the subdelegation of the function.
- (3) In this section—  
*functions* includes powers.

### **237 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose requirements about signs for part 8.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.
- (4) A regulation may prescribe general conditions for retail or wholesale licences.
- (5) A regulation may prescribe a general condition that requires a licensee to provide employees with particular training about supplying smoking products.
- (6) A regulation may be made about fees for applications and other matters under part 2.
- (7) Without limiting subsection (6), a regulation may—
  - (a) be made about the refund or waiver of all or part of a fee; or
  - (b) prescribe that a fee for an application under part 2 may be charged on a pro rata basis relating to the term of a retail or wholesale licence.
- (8) In this section—  
*general conditions* see section 15(2).

## **Part 13 Transitional**

### **Division 1 Transitional provision for Tobacco and Other Smoking Products Amendment Act 2004**

#### **238 Transitional—court order under s 70**

Section 70 applies only to an offence committed after the commencement of the *Tobacco and Other Smoking Products Amendment Act 2004*, section 8.

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

#### **239 Staged implementation for particular business names allowed**

- (1) This section applies if a supplier uses more than 1 business name that—
  - (a) includes a reference to a smoking product; and
  - (b) was registered before the commencement.
- (2) Section 95(2)(b) does not apply to the supplier until—
  - (a) the supplier renews the registration of more than 1 of the business names under the *Business Names Registration Act 2011* (Cwlth); or
  - (b) the registration of the business names is cancelled or otherwise ends under the *Business Names Registration Act 2011* (Cwlth).



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## 240 Renumbering of Act

- (1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering the provisions in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.
- (2) The numbering and renumbering under subsection (1) is to allocate a number to each section inserted by a later amendment as if that later amendment had commenced.
- (3) Each reference to a provision of this Act in any of the following Acts is amended, when the renumbering under subsection (1) happens, by omitting the reference to the provision and inserting a reference to the provision as renumbered—
  - (a) this Act;
  - (b) the *Forestry Act 1959*, section 62A(4), definition *smoking product*;
  - (c) the *Police Powers and Responsibilities Act 2000*, sections 42, 43 and 60(3)(i);
  - (d) the *Recreation Areas Management Act 2006*, section 115(5), definition *smoking product*.
- (4) A reference to a provision of this Act, in a later amendment, is taken to be a reference to the provision as renumbered under subsection (1).
- (5) If a later amendment inserts a section into this Act, when inserted, the number of the section is amended by renumbering it with the number allocated to it under subsection (2).
- (6) Each reference to a provision of this Act in a provision or words inserted into this Act by a later amendment is amended, when inserted, by omitting the reference to the provision and inserting a reference to the provision as renumbered under subsection (1).
- (7) This section does not limit the *Reprints Act 1992*.
- (8) This section expires on 2 September 2024.

(9) In this section—

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

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

## 241 Staged implementation for small businesses

(1) Section 68 does not apply to a small business until the day that is 1 year after the commencement of that section.

(2) The additional preventative measure stated in section 63, definition *prevention measures*, paragraph (a)(iii) does not apply to a small business until the day that is 1 year after the commencement of that section.

(3) In this section—

*small business* means a supplier that employs less than 20 employees.

## 242 Sections 65 and 69 do not apply while particular applications undecided

(1) This section applies if—

(a) a person or partnership applies for a retail or wholesale licence under part 2 before the commencement of section 65 (each a *proposed licensee*); and

(b) the application has not been decided or withdrawn before the commencement of section 65.

(2) Section 65 does not apply to the proposed licensee until the application is decided or withdrawn, whichever occur first.

(3) Section 69(2)(b) does not apply to an employee of the proposed licensee until the application is decided or withdrawn, whichever occur first.

# Schedule 1      Dictionary

## section 5

*acceptable evidence of age* see section 10.

*acknowledgement certification requirement* see section 212(5).

*acknowledgement production requirement* see section 212(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; or
- (d) for a person appointed under this Act as an authorised person by a health service chief executive—the health service chief executive; or
- (e) for a conservation officer, as an authorised person under section 170(6)—the chief executive of the department administering the *Nature Conservation Act 1992*; or
- (f) for a police officer, as an authorised person under section 170(7)—the commissioner of the police service.

*advertise* includes cause, permit or authorise to be advertised.

*affected person*, for part 2, division 11, see section 55.

*approved form* means a form approved by the chief executive under section 235.

*assisted mobility device* means a device that is—

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

**authorised person** means a person appointed, or holding office, under section 170 as an authorised person.

**bong** see section 159.

**business premises** means—

- (a) means premises used, or intended to be used, for a commercial or industrial activity; and
- (b) includes land on which premises mentioned in paragraph (a) may lawfully be built.

**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 182.

**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 137.

**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 3, division 3, see section 74.

**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.

**forfeiture decision**, for part 11, division 6, see section 224.

**gaming machine** has the meaning given by the *Gaming Machine Act 1991*, schedule 2.

**gaming machine area**, for part 3, division 3, see section 74.

***health service authorised person*** see section 170(4).

***health service chief executive*** see the *Hospital and Health Boards Act 2011*, schedule 2.

***health service employee*** see the *Hospital and Health Boards Act 2011*, schedule 2

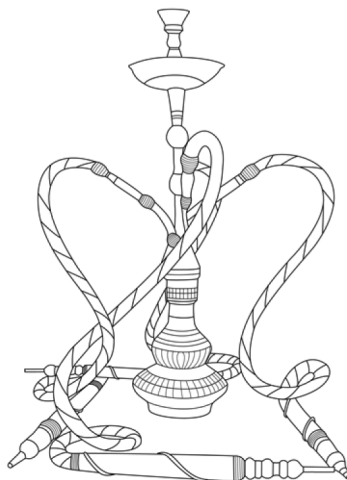
***herbal cigarette*** means a preparation for smoking that—

- (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 or another thing by the drawing of smoke, fumes or vapour, resulting from heating or burning the tobacco or other thing 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 4, see section 88.

***ice pipe*** see section 158.

***illicit tobacco*** see section 161(5).

***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.

***information notice***, for part 2, see section 12.

***inhale***, for an individual, means draw a vapour or gas into the individual's lungs.

***internal review***, for part 2, division 11, see section 57(1).

***internal review decision***, for part 2, division 11, see section 55.

***licensed retailer***, for part 2, see section 12.

***licensee*** means the holder of a retail or wholesale licence.

***limited wholesale condition*** see section 13(3).

***liquor***, for part 3, division 3, see section 74.

***liquor licensed premises*** means—

(a) licensed premises under the *Liquor Act 1992*; or

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

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

**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 event facility**, for part 7, division 3, see section 124.

**major event organiser**, for part 7, division 3, see section 124.

**major sports facility**, for part 7, division 2, see section 121.

**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.

**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.



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

***obstruct*** includes hinder, resist and attempt to obstruct.

***occupier***, of a place or part of a place—

- (a) for part 11, division 2, see section 180; or
- (b) otherwise, means a person having the management or control, or otherwise being in charge, of the place or part.

***online sale***, for part 2, see section 12.

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

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

***original decision***, for part 2, division 11, see section 55.

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

***outdoor eating or drinking place***, for part 8, division 1, see section 132.

***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 145(2).

***patrolled beach area*** see section 145(2).

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

***personal vaporiser*** see section 7(1) and (2).

***personal vaporiser related product*** see section 7(3) and (4).

***person in charge***, of a tobacco product vending machine, means the liquor licensee of liquor 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 5, see section 111.

***prescribed outdoor swimming area*** see section 146(2).

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

***prevention measures***—

- (a) for part 3, division 1, see section 63; and
- (b) for part 3, division 3, see section 74.

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**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 card mentioned in the *Liquor Act 1992*, section 6(1)(a)(i) or (ii).

**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.

**QCAT information notice**, for part 2, division 11, see section 55.

**regulated substance** means—

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

**relevant point of sale**, for part 4, see section 88.

**relevant provisions**, for part 10, see section 165(1).

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

**residential premises** means premises used, or intended to be used, as a place of residence or mainly as a place of residence.

**responsible adult** see section 6.

**retailer** see section 12.

**retail licence** see section 12.

**retail licence (liquor)** see section 12.

**retail outlet** see section 8.

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

**road-related area**, for part 6, see the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, section 13.

**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.

**Service** means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

**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—

- (a) for a smoking product other than a personal vaporiser or a hookah—smoke, hold or otherwise have control over an ignited smoking product; or
- (b) for a personal vaporiser—inhale through the vaporiser; or
- (c) for a hookah—inhale through the hookah.

**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 parts 1, 3 and 11—means a tobacco product, herbal cigarette, loose smoking blend, personal vaporiser or personal vaporiser related product; or
  - (b) for part 4—see section 88; or
  - (c) otherwise—
    - (i) except for a hookah—means a tobacco product, herbal cigarette, loose smoking blend or personal vaporiser; or
    - (ii) for a hookah—means tobacco or another thing that may be smoked in the hookah.

***smoking related product***, for part 4, see section 88.

***specific conditions***, for part 2, see section 15(1).

***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.

***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.

***wholesale licence*** see section 12.

***wholesale outlet*** see section 9.