

Version No. 071
Tobacco Act 1987
No. 81 of 1987

Version incorporating amendments as at 1 July 2010

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Tobacco Act 1987
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The Parliament of Victoria enacts as follows:

Preamble

Whereas—

- (a) the following guiding principles are recognised in relation to the use, supply and promotion of tobacco—
 - (i) tobacco use is so injurious to the health of both smokers and non-smokers as to warrant restrictive legislation;
 - (ii) tobacco use has adverse health effects even with infrequent use and there is no completely safe form of tobacco use;
 - (iii) tobacco use is a widely accepted practice amongst adults which it is inappropriate to ban completely;
 - (iv) the extent of the health effects of smoking requires strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking;
 - (v) the association of smoking with social success, business advancement and sporting prowess through use of advertising and promotion has a particularly harmful effect by encouraging children and young people to take up smoking; and

- (b) it has been resolved to discourage the use of tobacco in all its forms and to prohibit various types of promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death.

The Parliament of Victoria therefore enacts as follows:

PART 1—PRELIMINARY

S. 1
amended by
No. 49/2009
s. 7.

1 Purpose

The purpose of this Act is to prohibit certain sales or promotion of tobacco products and certain non-tobacco products, to create offences in relation to smoking and the possession of tobacco products and to establish the Victorian Health Promotion Foundation.

2 Commencement

- (1) Except as provided in this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 6(1) and (3), 13 and 15 come into operation on 1 April 1988.
- (3) Section 14 comes into operation on 1 July 1988.
- (4) Section 6(2) comes into operation on 1 January 1989.

3 Definitions

In this Act—

acceptable no smoking sign means a sign that contains—

S. 3 def. of
*acceptable
no smoking
sign*
inserted by
No. 45/2005
s. 3(a).

- (a) a no smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol

that clearly indicates that smoking is not permitted, with the symbol being at least 70mm in height; and

- (b) the phrase "No Smoking" or "Smoking Prohibited", or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20mm in height;

angled stack means packages stacked behind each other from the point of view of the customer's side of the customer service area;

S. 3 def. of ***angled stack*** inserted by No. 28/2001 s. 3(1).

approved issuer document means a document issued—

- (a) by a person; or
(b) on behalf of a government department or an agency—

approved by the Minister;

approved venue has the same meaning as in the **Gambling Regulation Act 2003**;

S. 3 def. of ***approved issuer document*** inserted by No. 45/2005 s. 3(a).

S. 3 def. of ***approved venue*** inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3 (Sch. 6 item 13.1(a)).

ban order means an order made by the Minister under section 15N(1);

S. 3 def. of ***ban order*** inserted by No. 49/2009 s. 8(1).

* * * * *

S. 3 def. of ***bar area*** inserted by No. 31/2002 s. 4(1), repealed by No. 45/2005 s. 21(a)(i).

s. 3

S. 3 def. of
bingo
inserted by
No. 31/2002
s. 4(1),
amended by
No. 114/2003
s. 12.1.3
(Sch. 6
item 13.1(b)).

bingo has the same meaning as in the **Gambling Regulation Act 2003**;

S. 3 def. of
bingo area
inserted by
No. 31/2002
s. 4(1).

bingo area has the meaning given by section 3C;

S. 3 def. of
bingo centre
inserted by
No. 31/2002
s. 4(1),
amended by
No. 114/2003
s. 12.1.3
(Sch. 6
item 13.1(b)).

bingo centre has the same meaning as in the **Gambling Regulation Act 2003**;

S. 3 def. of
carton
inserted by
No. 43/2000
s. 4(1).

carton means a package containing packages of a tobacco product, or a package designed to contain packages of a tobacco product, but does not include a package containing individually-wrapped cigars (unless the package contains a further package or packages of the cigars);

S. 3 def. of
casino
inserted by
No. 31/2002
s. 4(1).

casino has the same meaning as in the **Casino Control Act 1991**;

Chairperson means Chairperson of the Foundation;

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* * * * *

S. 3 def. of *controlled shopping centre* inserted by No. 43/2000 s. 4(1), repealed by No. 28/2001 s. 3(2)(a).

declared smoking area, in relation to a casino, means an area declared under section 3E;

S. 3 def. of *declared smoking area* inserted by No. 31/2002 s. 4(1), amended by No. 45/2005 s. 21(a)(ii).

* * * * *

S. 3 def. of *designated non-smoking room* inserted by No. 31/2002 s. 4(1), repealed by No. 45/2005 s. 21(b).

* * * * *

S. 3 def. of *dining area* inserted by No. 43/2000 s. 4(1), repealed by No. 45/2005 s. 21(b).

display, in relation to a tobacco product at a retail outlet or a wholesale outlet, means display to the customers of the retail outlet or wholesale outlet;

S. 3 def. of *display* inserted by No. 43/2000 s. 4(1).

driver has the same meaning as in the **Road Safety Act 1986**;

S. 3 def. of *driver* inserted by No. 49/2009 s. 8(1).

S. 3 def. of
driver licence
inserted by
No. 43/2000
s. 4(1),
repealed by
No. 45/2005
s. 3(b).

* * * * *

S. 3 def. of
enclosed
inserted by
No. 43/2000
s. 4(1),
amended by
No. 31/2002
s. 4(2)(a)(b),
substituted by
No. 45/2005
s. 3(c).

enclosed means an area, room or premises that is
or are substantially enclosed by a roof and
walls, regardless of whether the roof or walls
or any part of them are—

- (a) permanent or temporary;
- (b) open or closed;

S. 3 def. of
*evidence
of age
document*
inserted by
No. 43/2000
s. 4(1),
substituted by
No. 45/2005
s. 3(d).

evidence of age document means a document
that—

- (a) is—
 - (i) a Victorian proof of age card or an
interstate proof of age card; or
 - (ii) a Victorian driver licence or an
interstate driver licence; or
 - (iii) an Australian or foreign passport;
or
 - (iv) an approved issuer document; and
- (b) contains a photograph of the bearer;
and
- (c) indicates, by reference to a date of birth
or otherwise, that the bearer is of or
over a particular age;

S. 3 def. of
exercise yard
inserted by
No. 45/2005
s. 3(a).

exercise yard means an area in a prison (within
the meaning of the **Corrections Act 1986**)
that is provided for the purpose of allowing
prisoners to have access to the open air;

Foundation means the Victorian Health
Promotion Foundation;

gaming machine has the same meaning as in the
Gambling Regulation Act 2003;

S. 3 def. of
*gaming
machine*
inserted by
No. 31/2002
s. 4(1),
amended by
No. 114/2003
s. 12.1.3
(Sch. 6
item 13.1(a)).

gaming machine area has the same meaning as in
the **Gambling Regulation Act 2003**;

S. 3 def. of
*gaming
machine area*
inserted by
No. 31/2002
s. 4(1),
amended by
No. 114/2003
s. 12.1.3
(Sch. 6
item 13.1(a)).

gaming room means a room in an approved venue
in which gaming machines available for
gaming are installed;

S. 3 def. of
gaming room
inserted by
No. 31/2002
s. 4(1).

high roller room means a room in a casino that is
used substantially for gaming by
international visitors to the casino;

S. 3 def. of
*high roller
room*
inserted by
No. 31/2002
s. 4(1).

highway has the same meaning as in the **Road
Safety Act 1986**;

S. 3 def. of
highway
inserted by
No. 49/2009
s. 8(1).

immediate package, in relation to a tobacco
product, means a package containing the
product—

S. 3 def. of
*immediate
package*
inserted by
No. 43/2000
s. 4(1).

- (a) in the case of a tobacco product other
than cigars, not including a package
containing a further package or
packages of the product; and

- (b) in the case of cigars—
- (i) including a package constituted by the individual wrapping of a cigar, and a package containing individually wrapped or unwrapped cigars; but
 - (ii) not including any other package containing a further package or packages of cigars (whether wrapped or unwrapped);

S. 3 def. of *inspector* inserted by No. 43/2000 s. 4(1), amended by No. 46/2008 s. 291.

inspector means a person—

- (a) who is an environmental health officer appointed under section 29 of the **Public Health and Wellbeing Act 2008**; or
- (b) who is appointed under this Act to be an inspector for the purposes of this Act;

S. 3 def. of *interstate driver licence* inserted by No. 45/2005 s. 3(a).

interstate driver licence means a licence issued in another State or a Territory that is the equivalent of a Victorian driver licence;

S. 3 def. of *interstate proof of age card* inserted by No. 45/2005 s. 3(a).

interstate proof of age card means a card issued in another State or a Territory that is the equivalent of a Victorian proof of age card;

S. 3 def. of *licensed premises* inserted by No. 31/2002 s. 4(1).

licensed premises means premises in respect of which a general licence, an on-premises licence or a club licence within the meaning of the **Liquor Control Reform Act 1998** is in force, other than premises that are a restaurant or cafe or a bingo centre;

member means member of the Foundation;

minor gaming permit means a permit issued under Division 2 of Part 3 of Chapter 8 of the **Gambling Regulation Act 2003**;

S. 3 def. of *minor gaming permit* inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3 (Sch. 6 item 13.1(c)).

motor vehicle has the same meaning as in the **Road Safety Act 1986**;

S. 3 def. of *motor vehicle* inserted by No. 49/2009 s. 8(1).

newspaper means any paper or pamphlet in paper form containing any public news or comments on public news or any political matter printed for sale or distribution and published periodically at intervals not exceeding 26 days but does not include any document containing only matter wholly of a commercial nature;

S. 3 def. of *newspaper* substituted by No. 56/1998 s. 5(2).

occupier, in relation to an area or premises, means—

S. 3 def. of *occupier* inserted by No. 43/2000 s. 4(1), substituted by No. 49/2009 s. 8(2).

- (a) a person who appears to be of or over the age of 16 years and who is or appears to be in control of the area or premises, whether or not the person is present in the area or on the premises; or
- (b) a body corporate that is or appears to be in control of the area or premises;

on-airport duty free shop has the same meaning as in regulation 93 of the Customs Regulations 1926 of the Commonwealth;

S. 3 def. of *on-airport duty free shop* inserted by No. 28/2001 s. 3(1).

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S. 3 def. of
outdoor dining or drinking area
inserted by
No. 45/2005
s. 3(a).

outdoor dining or drinking area means any of the following outdoor areas that is predominantly used for the consumption of food or drinks or both—

- (a) a balcony or verandah;
- (b) a courtyard;
- (c) a rooftop;
- (d) a marquee;
- (e) a street or footpath;
- (f) any similar outdoor area;

S. 3 def. of
package
inserted by
No. 43/2000
s. 4(1).

package does not include a transparent wrapping, unless the wrapping has a tobacco advertisement printed on it;

S. 3 def. of
point of sale
inserted by
No. 43/2000
s. 4(1).

point of sale means a place where tobacco products are sold within a retail outlet or wholesale outlet, and includes a vending machine from which tobacco products are sold;

S. 3 def. of
police member
inserted by
No. 45/2005
s. 3(a).

police member means a member of the force within the meaning of the **Police Regulation Act 1958**;

S. 3 def. of
premises
inserted by
No. 43/2000
s. 4(1).

premises includes any part of premises and includes a vehicle or vessel and a permanent or temporary structure;

S. 3 def. of
product line
inserted by
No. 43/2000
s. 4(1),
amended by
No. 31/2002
s. 4(3).

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

* * * * *

- (b) brand name;

(c) nicotine or tar content;

(d) flavour—

but not by the size of the package containing
the tobacco product;

* * * * *

S. 3 def. of
*proof of age
card*
inserted by
No. 43/2000
s. 4(1),
repealed by
No. 45/2005
s. 3(e).

public place includes a place to which the public
ordinarily has access, whether by payment or
not, but does not include a part of a place to
which the public has access by reason only
of the carrying on of a trade, business or
profession on or in that place;

residential care facility means—

- (a) a residential care service, State funded
residential care service or supported
residential service within the meaning
of the **Health Services Act 1988**; or
- (b) an aged care service within the meaning
of the Aged Care Act 1997 of the
Commonwealth;

S. 3 def. of
*residential
care facility*
inserted by
No. 45/2005
s. 3(a).

restaurant or cafe means premises that are, or an
area in premises that is, used by the public,
or a section of the public, predominantly for
the consumption of food or non-alcoholic
drinks purchased on the premises (whether
or not food or non-alcoholic drinks are also
sold on the premises for consumption off the
premises) and—

S. 3 def. of
*restaurant
or cafe*
inserted by
No. 43/2000
s. 4(1).

- (a) in the case of a restaurant or cafe that is
an area in premises, includes any
abutting area in those premises that is

not separately enclosed from that area, irrespective of the purpose or purposes for which the abutting area is used; but

- (b) does not include premises in respect of which a general licence or a club licence within the meaning of the **Liquor Control Reform Act 1998** is in force;

S. 3 def. of *retail outlet* inserted by No. 43/2000 s. 4(1).

retail outlet means premises where tobacco products are available for sale by retail;

S. 3 def. of *retail shopping centre* inserted by No. 43/2000 s. 4(1), substituted by No. 28/2001 s. 3(2)(b), amended by Nos 114/2003 s. 12.1.3 (Sch. 6 item 13.1(b)), 69/2006. s. 224(Sch. 3 item 9).

retail shopping centre means a cluster of premises 5 or more of which are retail premises and—

- (a) all of which have, or if leased would have, a common head landlord; or
(b) each of which is on a lot on the same plan of subdivision and those lots are land affected by an owners corporation within the meaning of the **Subdivision Act 1988**—

but does not include—

- (c) a building with more than one storey except in relation to each storey of the building on which is situated a cluster of premises in respect of which paragraph (a) or (b) applies; or
(d) any part of those premises—
(i) that is not used by the public, or a section of the public; or
(ii) that is an enclosed restaurant or cafe; or
(iii) in respect of which a general licence or a club licence within the meaning of the **Liquor**

Control Reform Act 1998 is in force; or

(iv) that is a bingo centre within the meaning of the **Gambling Regulation Act 2003**; or

(v) that is a road or road related area within the meaning of the **Road Safety Act 1986**;

roof includes any structure or device (whether fixed or movable) that prevents or significantly impedes upward airflow, including a ceiling;

S. 3 def. of *roof* inserted by No. 45/2005 s. 3(a).

* * * * *

S. 3 def. of *room* inserted by No. 31/2002 s. 4(1), repealed by No. 45/2005 s. 3(e).

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health;

S. 3 def. of *Secretary* inserted by No. 43/2000 s. 4(1), substituted by No. 29/2010 s. 73.

sell includes—

- (a) barter or exchange; and
- (b) offer or expose for sale, barter or exchange; and
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously but with a view to gaining or

s. 3

maintaining custom, or otherwise with
a view to commercial gain;

S. 3 def. of
*specialist
tobacconist*
inserted by
No. 49/2009
s. 8(1).

specialist tobacconist means a retail outlet that is
certified by the Secretary as a specialist
tobacconist under section 15U;

S. 3 def. of
*substantially
enclosed*
inserted by
No. 45/2005
s. 3(a).

substantially enclosed includes completely
enclosed;

S. 3 def. of
TAB area
inserted by
No. 31/2002
s. 4(1),
amended by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.1(d)
(i)(ii)),
repealed by
No. 45/2005
s. 21(b).

* * * * *

theatre means a place where any live
entertainment or film is presented, performed
or exhibited to which admission is or may be
procured by payment or by ticket or by any
other means, token or consideration;

S. 3 def. of
*tobacco
advertisement*
amended by
No. 43/2000
s. 4(2),
substituted by
No. 45/2005
s. 3(f).

tobacco advertisement has the meaning given in
section 3B;

S. 3 def. of
*tobacco
company*
inserted by
No. 45/2005
s. 3(a).

tobacco company means—

- (a) a public company (within the meaning
of the Corporations Act) that is engaged
in any one or more of—

- (i) tobacco growing;
 - (ii) manufacturing tobacco products;
 - (iii) wholesaling tobacco products; or
- (b) a proprietary company (within the meaning of the Corporations Act) that is a subsidiary or related body corporate (within the meaning of that Act) of a company referred to in paragraph (a);

tobacco product means tobacco, cigarette or cigar or any other product the main ingredient of which is tobacco and which is designed for human consumption;

tobacco retailing business means the business of selling tobacco by retail, either alone or in conjunction with any other merchandise, and includes—

S. 3 def. of *tobacco retailing business* inserted by No. 43/2000 s. 4(1).

- (a) any such business carried on as part of, or in conjunction with, any other business; and
- (b) any business that consists of, or involves, management of a retail outlet where tobacco products are available for sale by means of a vending machine;

tobacco wholesaling business means the business of selling tobacco for the purposes of resale, either alone or in conjunction with any other merchandise, and includes any such business carried on as part of, or in conjunction with, any other business;

S. 3 def. of *tobacco wholesaling business* inserted by No. 43/2000 s. 4(1).

vending machine means a machine, device or contrivance that is constructed to contain tobacco products that may be obtained from it by an operation that involves the insertion

s. 3A

in the machine, device or contrivance of a coin, token or similar object;

S. 3 def. of *Victorian driver licence* inserted by No. 45/2005 s. 3(a).

Victorian driver licence means a driver licence issued under the **Road Safety Act 1986**;

S. 3 def. of *Victorian proof of age card* inserted by No. 45/2005 s. 3(a).

Victorian proof of age card means a document issued by the Director of Liquor Licensing under section 176 of the **Liquor Control Reform Act 1998**;

S. 3 def. of *wall* inserted by No. 45/2005 s. 3(a).

wall includes any structure or device (whether fixed or movable) that prevents or significantly impedes lateral airflow, including a window or door;

S. 3 def. of *wholesale outlet* inserted by No. 43/2000 s. 4(1).

wholesale outlet means premises where tobacco products are available for sale exclusively by wholesale.

S. 3 def. of *workplace* inserted by No. 45/2005 s. 3(a).

workplace means any premises or area where one or more employees or self-employed persons (or both) work, whether or not they receive any payment for that work.

S. 3A inserted by No. 43/2000 s. 5.

3A Vending machines

The presence on any premises of a vending machine is deemed to constitute the carrying on on those premises of a tobacco retailing business.

S. 3B inserted by No. 43/2000 s. 5, repealed by No. 31/2002 s. 5, new s. 3B inserted by No. 45/2005 s. 4.

3B Tobacco advertisements

- (1) Subject to this section, for the purposes of this Act, a ***tobacco advertisement*** is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that

gives publicity to, or otherwise promotes or is intended to promote—

- (a) smoking; or
 - (b) the purchase or use of a tobacco product or a range of tobacco products; or
 - (c) the whole or a part of a trade mark that is registered under the Trade Marks Act 1955 of the Commonwealth in respect of goods that are or include tobacco products; or
 - (d) the whole or a part of a design that is registered under the Designs Act 2003 of the Commonwealth in relation to products that are or include tobacco products; or
 - (e) the whole or a part of the name of a person—
 - (i) who is a manufacturer of tobacco products; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products; or
 - (f) any other words (for example the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products).
- (2) A reference in subsection (1) to a visual image or a design includes a reference to an image or design consisting of a colour or a scheme of colours.
- (3) Without limiting subsection (1), a tobacco advertisement includes—
- (a) the display of an immediate package of a tobacco product;

S. 3B(4)
amended by
No. 49/2009
s. 9.

- (b) the advertisement of cigarette papers.
- (4) Words, signs or symbols that appear as part of the standard wording of an invoice, statement, order form, letterhead, business card, cheque, manual, or other document, ordinarily used in the normal course of the business of a manufacturer, distributor or retailer of tobacco products (a *business document*) do not, when so appearing, constitute a tobacco advertisement (but this does not prevent a still or moving picture, or other visual image of a business document, from being a tobacco advertisement).
- (5) Words, signs or symbols that appear in or on land or buildings occupied by a manufacturer of tobacco products do not, when so appearing, constitute a tobacco advertisement (but this does not prevent a still or moving picture, or other visual image, of words, signs or symbols that so appear from being a tobacco advertisement).
- (6) For the avoidance of doubt, the taking of any action to prevent a product from causing injury to anyone, including action—
- (a) to recall a product; or
 - (b) to disclose a defect in, or a dangerous characteristic of, a product; or
 - (c) to disclose circumstances in which the use of a product is or may be dangerous; or
 - (d) to disclose procedures for disposing of a product—
- does not constitute a tobacco advertisement.
- (7) If—
- (a) apart from this subsection, something (*the advertisement*) would, technically, be a tobacco advertisement; and

(b) it is clear from the advertisement that its sole or principal purpose is to discourage smoking or the use of tobacco products—

then, despite subsection (1), the advertisement is not a tobacco advertisement for the purposes of this Act.

(8) In this section—

words includes abbreviations, initials and numbers.

3C Bingo area

For the purposes of this Act, an area (other than an outdoor area) is a bingo area at any time when the predominant activity in that area is the conducting of a session of bingo under a minor gaming permit.

S. 3C
inserted by
No. 43/2000
s. 5,
repealed by
No. 28/2001
s. 4,
new s. 3C
inserted by
No. 31/2002
s. 6.

* * * * *

S. 3D
inserted by
No. 43/2000
s. 5,
repealed by
No. 45/2005
s. 21(c).

3E Declared smoking areas in casinos

- (1) For the purposes of this Act, the Minister, by notice published in the Government Gazette, may declare an area in a casino that, in the Minister's opinion, is a high roller room, to be a declared smoking area.
- (2) The Minister, by notice published in the Government Gazette, may revoke or vary a declaration under subsection (1).
- (3) The Minister must consult the Minister administering Part 2 of the **Casino Control Act 1991** before making, revoking or varying a declaration under this section.

S. 3E
inserted by
No. 45/2005
s. 22.

4 Application of Act

- (1) Nothing in this Act applies to anything done by radio or television broadcast.
- (2) Nothing in this Act or the regulations applies to—
 - (a) the labelling of packages of tobacco if the tobacco is packed for sale outside Victoria and is not sold in Victoria; or
 - (b) anything which causes, permits, authorises or assists in the sale or promotion of the sale, purchase, use or consumption of a tobacco product if the sale, purchase, use or consumption occurs solely outside Victoria.
- (3) Nothing in section 9 applies to anything done before 1 January 1989 under a contract or agreement entered into before 8 October 1987.

5 Objects of Act

- (1) The objects of this Act are—
 - (a) the active discouragement of the smoking of tobacco—
 - (i) by encouraging non-smokers, particularly young people, not to start smoking; and
 - (ii) by limiting exposure of children and young people to persuasion to smoke; and
 - (iii) by encouraging and assisting smokers to give up smoking; and
 - (b) the promotion of health and illness prevention.
-

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- (2) In giving effect to the objects of this Act, the Minister shall cause steps to be taken to—
- (a) plan and co-ordinate an integrated State-wide program to reduce the prevalence of smoking in Victoria; and
 - (b) encourage agreements to prohibit or limit the places and times at which people may smoke in enclosed public places or in the work environment; and
 - (c) ensure that tobacco usage by all age and sex groups in the population is monitored and reported upon regularly; and
 - (d) evaluate the effectiveness of anti-smoking programs and plan future activities and policies on tobacco usage.
-

s. 5A

Pt 2
(Heading)
substituted by
No. 43/2000
s. 6.

**PART 2—CONTROLS RELATING TO TOBACCO
PRODUCTS**

Pt 2 Div. 1
(Heading)
inserted by
No. 31/2002
s. 7.

Division 1—No smoking areas

S. 5A
inserted by
No. 43/2000
s. 7(1),
substituted by
No. 45/2005
s. 5.

5A Enclosed workplaces: offence by smoker

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

Penalty: 5 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 one or more persons who do not reside at the premises are present in that part;

S. 5A(2)(b)
repealed by
No. 45/2005
s. 23(1).

* * * * *

S. 5A(2)(d)
substituted by
No. 45/2005
s. 23(2).

- (c) an outdoor dining or drinking area;

- (d) a declared smoking area of a casino;

- (e) a vehicle;

- (f) a place of business occupied by the sole operator of the business that is not for the use of members of the public;

- (g) a personal sleeping or living area of—
 - (i) premises providing accommodation to members of the public for a fee; or
 - (ii) a residential care facility;
 - (h) an area in an approved mental health service (within the meaning of the **Mental Health Act 1986**) that is declared, or that is in a class of area that is declared, by the Secretary, by notice published in the Government Gazette, to be a smoking area;
 - (i) a personal sleeping or living area, or an exercise yard, of a prison within the meaning of the **Corrections Act 1986**;
 - (j) a detention centre established for the purposes of the Migration Act 1958 of the Commonwealth.
- (3) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.
- (4) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

5B Enclosed workplaces: offence by occupier

S. 5B
inserted by
No. 43/2000
s. 7(1),
substituted by
No. 45/2005
s. 5.

- (1) If smoking occurs in an enclosed workplace, in contravention of section 5A, the occupier of the enclosed workplace is guilty of an offence and liable to a penalty not exceeding 10 penalty units,

S. 5B(1)
amended by
No. 49/2009
s. 10.

s. 5C

in the case of a natural person, or 50 penalty units,
in the case of a body corporate.

S. 5B(2)
amended by
No. 68/2009
s. 97(Sch.
item 120.1).

- (2) It is a defence to a prosecution under subsection (1) if the accused proves that the accused did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

S. 5B(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 120.1).

- (a) the accused was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

S. 5B(2)(b)
amended by
No. 68/2009
s. 97(Sch.
item 120.1).

- (b) the accused—
- (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

S. 5BA
inserted by
No. 31/2002
s. 8,
repealed by
No. 45/2005
s. 5.

* * * * *

S. 5C
inserted by
No. 43/2000
s. 7(2),
amended by
Nos 28/2001
s. 5, 31/2002
s. 10(a),
substituted by
No. 45/2005
ss 5, 24.

5C Outdoor dining or drinking areas: offence by smoker

- (1) A person must not smoke in an outdoor dining or drinking area if—
- (a) the area has a roof and walls in place; and
 - (b) the total actual area of the wall surfaces exceeds 75% of the total notional wall area.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

- (3) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

- (4) In this section—

total notional wall area means what would be the total area of the wall surfaces if the walls were—

- (a) at the perimeter of the roofed area; and
- (b) continuous; and
- (c) of a uniform height equal to the lowest height of the roof.

5D Outdoor dining or drinking areas: offence by occupier

S. 5D
inserted by
No. 43/2000
s. 7(2),
amended by
No. 28/2001
s. 6,
substituted by
No. 45/2005
ss 5, 24.

- (1) If smoking occurs in an outdoor dining or drinking area, in contravention of section 5C, the occupier of the area is guilty of an offence and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate.

S. 5D(1)
amended by
No. 49/2009
s. 11.

- (2) It is a defence to a prosecution under subsection (1) if the accused proves that the accused did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

S. 5D(2)
amended by
No. 68/2009
s. 97(Sch.
item 120.2).

- (a) the accused was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

S. 5D(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 120.2).

s. 5E

S. 5D(2)(b)
amended by
No. 68/2009
s. 97(Sch.
item 120.2).

(b) the accused—

- (i) requested the person contravening to stop smoking; and
- (ii) informed the person that the person was committing an offence.

S. 5E
inserted by
No. 31/2002
s. 9,
substituted by
No. 45/2005
ss 5, 24.

5E Outdoor dining or drinking areas: no smoking signs

S. 5E(1)
amended by
No. 49/2009
s. 12.

- (1) The occupier of an outdoor dining or drinking area in which smoking is prohibited by section 5C is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with subsection (2).

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the outdoor dining or drinking area or from within the outdoor dining or drinking area.

S. 5F
inserted by
No. 31/2002
s. 9,
substituted by
No. 45/2005
s. 5.

5F Enclosed restaurants and cafes: no smoking signs

S. 5F(1)
amended by
No. 49/2009
s. 13.

- (1) The occupier of an enclosed restaurant or cafe is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse,

acceptable no smoking signs are not displayed in accordance with subsection (2).

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the enclosed restaurant or cafe or from within the enclosed restaurant or cafe.

5G Retail shopping centres: no smoking signs

- (1) The occupier of a retail shopping centre is guilty of an offence if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with subsection (2).

S. 5G
inserted by
No. 31/2002
s. 9,
substituted by
No. 45/2005
s. 5.

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in such prominent positions at entrances to any enclosed areas of the centre as would reasonably identify those areas of the centre as no smoking areas for persons entering them.
- (3) The maximum penalty for an offence against subsection (1) is 10 penalty units in the case of a natural person and 50 penalty units in the case of a body corporate.

S. 5G(3)
amended by
No. 49/2009
s. 14.

5H Bingo areas and centres: no smoking signs

- (1) The occupier of a bingo area or bingo centre is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse,

S. 5H
inserted by
No. 31/2002
s. 9,
substituted by
No. 45/2005
s. 5.

S. 5H(1)
amended by
No. 49/2009
s. 15.

s. 5G

acceptable no smoking signs are not displayed in accordance with subsection (2).

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the bingo area or bingo centre or from within the bingo area or bingo centre.

Ss 5I, 5J
inserted by
No. 31/2002
s. 9,
repealed by
No. 45/2005
s. 25(a).

* * * * *

S. 5K
inserted by
No. 31/2002
s. 9,
substituted by
No. 45/2005
s. 6.

5K Casinos: no smoking signs

- (1) The occupier of an area of a casino, other than a declared smoking area, is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with subsection (2).

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the area or from within the area.

Tobacco Act 1987
No. 81 of 1987
Part 2—Controls Relating to Tobacco Products

s. 5N

* * * * *

S. 5L
inserted by
No. 31/2002
s. 9,
amended by
No. 45/2005
s. 7(a)-(c),
repealed by
No. 45/2005
s. 25(a).

* * * * *

S. 5M
inserted by
No. 31/2002
s. 9,
amended by
No. 45/2005
s. 7(d),
repealed by
No. 45/2005
s. 25(a).

5N Approved venues: no smoking signs

S. 5N
inserted by
No. 31/2002
s. 9,
substituted by
No. 45/2005
s. 8.

- (1) The occupier of a gaming machine area or an enclosed gaming room is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with subsection (2).

S. 5N(1)
amended by
Nos 45/2005
s. 25(b),
49/2009 s. 17.

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the gaming machine area or enclosed gaming room or from within the area or room.

Tobacco Act 1987
No. 81 of 1987

Part 2—Controls Relating to Tobacco Products

s. 5R

S. 5O
inserted by
No. 31/2002
s. 9,
amended by
No. 45/2005
s. 9(a),
repealed by
No. 45/2005
s. 25(c).

* * * * *

S. 5P
inserted by
No. 31/2002
s. 9,
amended by
No. 45/2005
s. 9(b),
repealed by
No. 45/2005
s. 25(c).

* * * * *

S. 5Q
inserted by
No. 31/2002
s. 9,
repealed by
No. 45/2005
s. 25(c).

* * * * *

S. 5R
inserted by
No. 31/2002
s. 9,
substituted by
No. 45/2005
s. 10.

5R Licensed premises: no smoking signs

S. 5R(1)
amended by
Nos 45/2005
s. 25(d)(i),
49/2009 s. 18.

- (1) The occupier of enclosed licensed premises is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with subsection (2).

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the enclosed licensed premises or from within those premises.

S. 5R(2)
amended by
No. 45/2005
s. 25(d)(ii).

Division 1A—Smoking in motor vehicles

Pt 2 Div. 1A
(Heading and
ss 5S–5U)
inserted by
No. 49/2009
s. 19.

5S Offence to smoke in motor vehicle if person under 18 is present

S. 5S
inserted by
No. 49/2009
s. 19.

Despite anything to the contrary in this Act, a person must not smoke in a motor vehicle, whether or not the motor vehicle is in motion, if another person is present in the motor vehicle and the other person is under the age of 18 years.

Penalty: 5 penalty units.

5T Power to require driver to stop

S. 5T
inserted by
No. 49/2009
s. 19.

- (1) A police member may require a driver or person in charge of a motor vehicle on a highway to stop the motor vehicle if the police member believes on reasonable grounds that a person in the vehicle has committed or is about to commit an offence against section 5S.
- (2) Subject to subsection (3), a person must not fail to stop a motor vehicle when required to do so under subsection (1).

Penalty: 10 penalty units.

- (3) Subsection (2) is not contravened if—
- (a) the person making the requirement to stop is not in uniform; and

s. 5U

- (b) the driver or person in charge of the motor vehicle believed that that person was not a police member.

S. 5U
inserted by
No. 49/2009
s. 19.

5U Evidential burden regarding age

In proceedings for an offence against section 5S, evidence that a person present in the relevant motor vehicle appeared to be under the age of 18 years is, in the absence of evidence to the contrary, proof that the person was under the age of 18 years.

Pt 2 Div. 2
(Heading)
inserted by
No. 31/2002
s. 10(b).

Division 2—Advertising and other controls

6 Certain advertising prohibited

- (1) A person must not for any direct or indirect pecuniary benefit—
- (a) display or cause or permit to be displayed, or authorise the display of, a tobacco advertisement in a theatre; or
 - (b) sell, or cause or permit to be sold, any film or video tape that contains a tobacco advertisement; or
 - (c) distribute or cause or permit to be distributed, or authorise the distribution of, to the public any unsolicited leaflet, handbill or other document that is a tobacco advertisement.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 6(1)
amended by
Nos 45/2005
s. 11(1),
49/2009
s. 20(1).

- (2) A person must not for any direct or indirect pecuniary benefit—
- (a) place or display or cause or permit to be placed or displayed, or authorise the placing or display of, a tobacco advertisement that is visible from a public place; or
 - (b) place or display, or cause or permit to be placed or displayed, or authorise the placing or display of, a tobacco advertisement on the outside of any road, sea or air vehicle or vessel.

S. 6(2)
amended by
No. 45/2005
s. 11(1).

Penalty: 60 penalty units.

- (2A) If there is a tobacco advertisement of a product line of a tobacco product at a point of sale at a retail outlet or wholesale outlet that is not in accordance with section 6A, the person carrying on the tobacco retailing business or the tobacco wholesaling business at that outlet is guilty of an offence and liable to a penalty not exceeding 60 penalty units, in the case of a natural person, or 300 penalty units, in the case of a body corporate.

S. 6(2A)
inserted by
No. 43/2000
s. 8(1) (as
amended by
No. 28/2001
s. 19(1)),
amended by
Nos 45/2005
s. 11(1),
49/2009
s. 20(2)(3).

- (2B) A person must not, in the course of carrying on a tobacco retailing business or tobacco wholesaling business, display tobacco products at a retail outlet or wholesale outlet other than at a point of sale.

S. 6(2B)
inserted by
No. 43/2000
s. 8(1) (as
amended by
No. 28/2001
s. 19(1)),
amended by
Nos 45/2005
s. 11(1),
49/2009
s. 20(4).

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2C) Subsection (2B) does not apply to—
- (a) the display of cigars in an operating humidor; or
 - (b) the display of cartons at an on-airport duty free shop.

S. 6(2C)
inserted by
No. 43/2000
s. 8(1) (as
amended by
No. 28/2001
s. 19(1)).

s. 6

S. 6(2D)
inserted by
No. 45/2005
s. 11(2).

(2D) A tobacco company is guilty of an offence against this subsection, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—

- (a) contravenes subsection (1), (2), (2A) or (2B);
or
- (b) causes another person to contravene subsection (1), (2), (2A) or (2B).

S. 6(2E)
inserted by
No. 45/2005
s. 11(2).

(2E) An offence against subsection (2D) is an indictable offence.

(3) Nothing in this section applies to—

- (a) a tobacco advertisement in or on—
 - (i) a newspaper or magazine; or
 - (ii) a book; or
 - (iii) a package containing a tobacco product, other than a package at a point of sale; or
- (b) a tobacco advertisement that is an accidental or incidental accompaniment to a film or video tape; or
- (c) a tobacco advertisement (other than a display of a tobacco product carried about on a person) at a point of sale inside a retail outlet or wholesale outlet that is in accordance with section 6A; or

S. 6(3)(c)
substituted by
No. 43/2000
s. 8(3) (as
amended by
No. 28/2001
s. 19(3)(a)–(c)).

- (ca) one notice about tobacco products at one or more points of sale at a retail outlet or wholesale outlet that complies with the prescribed requirements as to size, information contained in it and the manner in which the information is set out or displayed;
or

S. 6(3)(ca)
inserted by
No. 43/2000
s. 8(3) (as
amended by
No. 28/2001
s. 19(3)(a)–(c)).

(cb) tickets or labels on, or adjacent to, immediate packages of tobacco products displaying retail prices, being tickets or labels that comply with the prescribed requirements as to size, information contained in them and the manner in which the information is set out or displayed; or

S. 6(3)(cb) inserted by No. 43/2000 s. 8(3) (as amended by No. 28/2001 s. 19(3)(a)-(c)).

(cc) tickets or labels on, or adjacent to, representations of immediate packages of tobacco products in vending machines displaying retail prices, being tickets or labels that comply with the prescribed requirements as to size, information contained in them and the manner in which the information is set out or displayed; or

S. 6(3)(cc) inserted by No. 43/2000 s. 8(3) (as amended by No. 28/2001 s. 19(3)(a)-(c)).

* * * * *

S. 6(3)(d) amended by No. 28/2001 s. 7, repealed by No. 45/2005 s. 11(3).

(e) anything to which, by reason of section 10, this section does not apply; or

(f) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

6A Point of sale advertisements

S. 6A inserted by No. 43/2000 s. 9 (as amended by No. 28/2001 s. 20(1)-(5)).

(1) A tobacco advertisement at one point of sale at a retail outlet or at any point of sale at a wholesale outlet may advertise a product line of a tobacco product in one only of the following ways—

(a) by the display of a single immediate package of the product line in the form in which the package is available for sale at that point of sale (including the display of an immediate

s. 6A

package if only cartons are available for sale);

- (b) by means of a stack dispenser for immediate packages of the product line in the form in which the packages are available for sale at that point of sale if—
 - (i) in the case of an angled stack, the most that is displayed is—
 - (A) any part of the single package at the front of the stack; and
 - (B) any part (other than the face) of the other packages in the stack; and
 - (C) those parts of the faces of the other packages that bear the warning message required by the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004 of the Commonwealth; and
 - (ii) in the case of packages stacked on top of each other, the most that is displayed is any part of the package on the top of the stack and any part of the package on the bottom of the stack;
- (c) if the point of sale is a vending machine, by a single representation of an immediate package of the product line in the form in which the package is available, or usually available, for sale at that point of sale no larger than the actual size of the package, with the same appearance as the package;

S. 6A(1)(b)(i)(C)
amended by
No. 49/2009
s. 21(1).

-
- (d) in the case of a product line of cigars, by the display of either or both of the following—
- (i) up to 13 cigars of the product line in an open box, or in any other manner;
 - (ii) a single closed box full of the product line in the form in which the box is available for sale at that point of sale.
- (2) A tobacco advertisement at any other point of sale at a retail outlet may advertise a product line of a tobacco product by means of a stack dispenser for immediate packages of the product line in the form in which the packages are available at that point of sale if—
- (a) in the case of an angled stack, the most that is displayed is—
 - (i) any part (other than the face) of any package in the stack; and
 - (ii) those parts of the faces of the packages that bear the warning message required by the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004 of the Commonwealth; and
 - (b) in the case of packages stacked on top of each other, the most that is displayed is any part of the package on the top of the stack (but not including the face or the top of that package as stacked or the side or end of that package directly facing the customer) and any part of the package on the bottom of the stack (but not including the face or the bottom of that package as stacked or the side or end of that package directly facing the customer).

S. 6A(2)(a)(ii)
amended by
No. 49/2009
s. 21(2).

-
- (3) A display of tobacco products at a point of sale may not consist of the display of the products, packages of the products or representations of the products or packages so as to constitute a tobacco advertisement itself as distinct from the display of each product, package or representation.
- (4) A display of a product line at a point of sale at a retail outlet may not include the display of a carton of the product line, or any part of the carton, whether or not the carton is empty or partly empty.
- (5) Despite subsection (4), a product line at a point of sale at a retail outlet that is an on-airport duty free shop may be displayed in such a way that—
- (a) one carton of the product line is visible; or
 - (b) in the case of cartons of the same size as each other, the cartons are stacked directly behind each other, and the most that is visible is—
 - (i) any part of the carton at the front of the stack; and
 - (ii) any end or the top (or both) of the next carton in the stack; or
 - (c) in the case of cartons of different sizes, the most that is visible is—
 - (i) one carton of one size; and
 - (ii) any end or the top (or both) of one other carton of that size; and
 - (iii) the smallest side (or one of the smallest sides) of one carton of any other size.
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- (6) A display of a product line at a point of sale at a wholesale outlet—
- (a) may include the display of one or more cartons of the product line, but only with the smallest (or one of the smallest) sides of the carton (or cartons) facing the customer service area; and
 - (b) must otherwise comply with this section.
- (7) The area of display of tobacco products that constitute a tobacco advertisement referred to in subsection (1) at a retail outlet must not exceed the prescribed area.
- (8) A display of tobacco products on a vending machine may include a display of one packet only of each product line available, or usually available, from the machine and must not include the display of any other product lines.

7 Competitions

- (1) A person must not, in connection with the sale of a tobacco product or for the purpose of promoting the sale of a tobacco product—
- (a) supply to the purchaser or any other person—
 - (i) any non-tobacco product or other benefit (whether or not a separate charge is made for that product or benefit); or
 - (ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for any non-tobacco product or other benefit (whether the entitlement or qualification is absolute or conditional); or

S. 7(1) amended by Nos 45/2005 s. 12(1), 49/2009 s. 22.

S. 7(1)(a)(i) substituted by No. 28/2001 s. 8(1)(a).

S. 7(1)(a)(ii) amended by No. 28/2001 s. 8(1)(b).

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S. 7(1)(a)(iii)
amended by
No. 28/2001
s. 8(1)(c).

(iii) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, any non-tobacco product or other benefit (whether the entitlement or qualification is absolute or conditional);
or

(b) conduct a scheme declared by the Governor in Council by Order published in the Government Gazette for the purposes of this section to be a scheme to promote the sale of a tobacco product or to promote smoking generally.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

(2) In proceedings for an offence against subsection (1), it is a defence to prove that the benefit or thing supplied, or participation in the scheme, was only incidentally connected with the purchase of a tobacco product and that equal opportunity to receive the benefit or thing, or to participate in the scheme, was afforded generally to persons who purchased products whether or not they were tobacco products.

S. 7(3)
inserted by
No. 28/2001
s. 8(2).

(3) Subsection (1) does not prohibit the sale of non-tobacco products such as lighters, matches, ashtrays or other items that are necessary for, or ancillary to, the smoking of tobacco products, unless the consideration for the sale of those non-tobacco products is less than it would have been had they not been sold in connection with the sale of tobacco products.

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- (4) For the avoidance of doubt, subsection (1) applies to a tobacco company that, or a person carrying on a tobacco wholesaling business who, does anything referred to in paragraph (a) or (b) of that subsection in connection with the sale of a tobacco product or for the purposes of promoting the sale of a tobacco product. S. 7(4)
inserted by
No. 45/2005
s. 12(2).
- (5) A tobacco company is guilty of an offence against this subsection, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly— S. 7(5)
inserted by
No. 45/2005
s. 12(2).
- (a) contravenes subsection (1); or
- (b) causes another person to contravene subsection (1).
- (6) An offence against subsection (5) is an indictable offence. S. 7(6)
inserted by
No. 45/2005
s. 12(2).

8 Free samples

- (1) A person must not, for the purpose of inducing or promoting— S. 8(1)
amended by
Nos 45/2005
s. 13(1),
49/2009 s. 23.
- (a) the sale of a tobacco product; or
- (b) the use or consumption of a tobacco product;
or
- (c) smoking generally—
- offer, give or distribute to a member of the public a free sample of a tobacco product or a product which advertises a tobacco product.
- Penalty: In the case of a natural person,
60 penalty units;
- In the case of a body corporate,
300 penalty units.
- (2) Nothing in subsection (1) applies to a gratuitous offer of a tobacco product to a person without any

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direct or indirect pecuniary benefit or inducement to purchase a tobacco product.

S. 8(3)
inserted by
No. 45/2005
s. 13(2).

- (3) A tobacco company is guilty of an offence against this subsection, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—
- (a) contravenes subsection (1); or
 - (b) causes another person to contravene subsection (1).

S. 8(4)
inserted by
No. 45/2005
s. 13(2).

- (4) An offence against subsection (3) is an indictable offence.

9 Prohibition of certain sponsorships

S. 9(1)
amended by
Nos 45/2005
s. 14(1),
49/2009
s. 24(1).

- (1) A person must not, under a contract, agreement, undertaking or understanding, whether or not legally binding, with another person—
- (a) promote—
 - (i) a tobacco product; or
 - (ii) a trademark or brand name or part of a trademark or brand name of a tobacco product; or
 - (b) promote the name or interests of a manufacturer or distributor of a tobacco product in association, whether directly or indirectly, with that tobacco product—

in exchange for a sponsorship, gift, prize, scholarship or like benefit given or agreed to be given by another person.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) A person must not, under a contract, agreement, undertaking or understanding, whether or not legally binding, with another person give or agree to give any sponsorship, gift, prize, scholarship or like benefit in exchange for the promotion of, or an agreement to promote, a tobacco product or a name, interest, trademark or brand name referred to in subsection (1).

S. 9(2)
amended by
Nos 45/2005
s. 14(1),
49/2009
s. 24(2).

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (3) Nothing in subsection (1) or (2) applies to the giving of, or an agreement to give, a scholarship by a manufacturer or distributor of a tobacco product to an employee or a member of the family of an employee, of the manufacturer or distributor.
- (4) Nothing in this section applies to the annual festival known as the Myrtleford Tobacco, Hops and Timber Festival.
- (5) A tobacco company is guilty of an offence against this subsection, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—
- (a) contravenes subsection (1) or (2); or
 - (b) causes another person to contravene subsection (1) or (2).
- (6) An offence against subsection (5) is an indictable offence.

S. 9(5)
inserted by
No. 45/2005
s. 14(2).

S. 9(6)
inserted by
No. 45/2005
s. 14(2).

10 Exemptions

S. 10(1)
amended by
No. 43/2000
s. 10.

(1) Sections 6(1)(c), 6(2) or (2A) and 9 do not apply to a person who, under a contract or agreement relating to a sports or arts function or event or series of functions or events, with another person, in exchange for a sponsorship, gift, prize or like benefit, displays only in connection with such a function or event—

(a) the whole or part of a trademark, or brand name of a tobacco product; or

(b) the name of the manufacturer or distributor of a tobacco product—

if the display of the trademark, brand name or name is restricted in accordance with the regulations to—

(c) signs or objects on or within the site of such a function or event; or

(d) naming such a function, event or part of such a function or event, a scholarship, gift or prize; or

(e) any booklet, leaflet or handbill distributed to the public; or

(f) signs or objects on the outside of any road, sea or air vehicle used in any such function or event or on any participant in any such function or event.

(2) The Governor in Council, on the recommendation of the Minister, by Order published in the Government Gazette, may declare that section 6(2) does not apply in respect of a specified tobacco advertisement or a specified class of tobacco advertisement placed or displayed before 1 July 1991 in accordance with an agreement entered into before 8 October 1987.

- (3) In making a recommendation to the Governor in Council for the purposes of subsection (2), the Minister must take into account—
- (a) the desirability of the application of the prohibitions in section 6(2) in stages; and
 - (b) the extent to which undue hardship will be suffered by compliance with section 6(2) before 1 July 1991.

11 Packing of tobacco

S. 11
amended by
No. 49/2009
s. 25.

A person must not sell any tobacco prepared for smoking that is in a package—

- (a) that is not labelled in accordance with the regulations with a prescribed statement and warning (if any) applicable to packages of that class; or
- (b) that is not labelled with the prescribed statement (if any) applicable to packages of that class giving the tar content of the tobacco; or
- (c) that is not labelled with any other prescribed information applicable to packages of that class.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

11A Offence to possess certain tobacco products

S. 11A
inserted by
No. 43/2000
s. 11,
amended by
No. 49/2009
s. 26.

A person who carries on a tobacco retailing business or a tobacco wholesaling business must not, without reasonable excuse, have in the person's possession or under the person's control, any tobacco products that the person knows or ought reasonably to know—

- (a) are smuggled goods or prohibited imports within the meaning of the **Customs Act 1901** of the Commonwealth; or
- (b) are excisable goods within the meaning of the **Excise Act 1901** of the Commonwealth upon which excise duty has not been paid.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

12 Supplying tobacco to person under 18 years

S. 12(1)
amended by
Nos 83/1993
s. 4, 43/2000
s. 12(1)(a),
49/2009
s. 27(1).

- (1) A person must not sell a tobacco product to a person under the age of 18 years.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

S. 12(2)
amended by
Nos 83/1993
s. 4, 45/2005
s. 15(1),
49/2009
s. 27(2).

- (2) A person must not purchase a tobacco product for the use of a person under the age of 18 years.

Penalty: In the case of a natural person,
20 penalty units;

In the case of a body corporate,
100 penalty units.

S. 12(3)
amended by
Nos 83/1993
s. 4, 43/2000
s. 12(1)(b),
substituted by
No. 49/2009
s. 27(3).

- (3) The occupier of premises on which a vending machine is situated must not permit a person under the age of 18 years to obtain a tobacco product from that vending machine.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

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|---|---|
| <p>(3A) If a person (the <i>primary offender</i>) commits an offence against subsection (1), each manager of the primary offender (if any) also commits an offence against that subsection.</p> | <p>S. 12(3A)
 inserted by
 No. 43/2000
 s. 12(2),
 substituted by
 No. 45/2005
 s. 15(2).</p> |
| <p>(3B) Proceedings for an offence committed by a manager because of subsection (3A) may be brought whether or not proceedings have been brought against the primary offender and whether or not the primary offender has been convicted.</p> | <p>S. 12(3B)
 inserted by
 No. 43/2000
 s. 12(2),
 substituted by
 No. 45/2005
 s. 15(2).</p> |
| <p>(3C) If an offence is committed against subsection (1) on premises at which a business is carried on, it must be presumed, unless the contrary is established, that the offence was committed in the course of the carrying on of that business.</p> | <p>S. 12(3C)
 inserted by
 No. 43/2000
 s. 12(2).</p> |
| <p style="text-align: center;">* * * * *</p> | <p>S. 12(3D)
 inserted by
 No. 43/2000
 s. 12(2),
 repealed by
 No. 45/2005
 s. 15(3).</p> |
| <p>(4) It is a defence to a prosecution under this section if a person proves that he or she—</p> | |
| <p style="text-align: center;">* * * * *</p> | <p>S. 12(4)(a)
 amended by
 No. 83/1993
 s. 4,
 repealed by
 No. 45/2005
 s. 15(4)(a).</p> |
| <p style="text-align: center;">* * * * *</p> | <p>S. 12(4)(b)
 amended by
 Nos 83/1993
 s. 4, 43/2000
 s. 12(3),
 repealed by
 No. 45/2005
 s. 15(4)(a).</p> |
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S. 12(4)(c)
inserted by
No. 43/2000
s. 12(3).

(c) at the time of the alleged offence, had seen an evidence of age document of the person whose age is material to the offence, indicating that the person is of or over the age of 18 years; or

S. 12(4)(d)
inserted by
No. 43/2000
s. 12(3),
substituted by
No. 45/2005
s. 15(4)(b).

(d) in the case of a prosecution against a manager for an offence against subsection (1)—
(i) had no knowledge of the primary offence; and
(ii) had taken prevention measures in relation to the primary offender.

S. 12(5)
inserted by
No. 45/2005
s. 15(5).

(5) In this section—

manager of a primary offender, means—

- (a) an employer of the primary offender; or
- (b) a person who authorised the primary offender to sell tobacco products as the person's agent; or
- (c) if the primary offence was committed in the course of carrying on a business—a person who owns, manages, controls, conducts or operates that business;

prevention measures by a manager in relation to a primary offender, means doing the following things at intervals not exceeding 6 months—

- (a) instructing the primary offender—
 - (i) not to sell tobacco products to a person under the age of 18 years in any circumstances, even if the tobacco products are for, or claimed to be for, a person over that age; and

- (ii) to sight an evidence of age document for a person before selling a tobacco product to the person; and
- (b) warning the primary offender that if the primary offender sells tobacco products to a person under the age of 18 years in disregard of the instructions mentioned in paragraph (a), the primary offender commits an offence against this Act; and
- (c) obtaining written acknowledgement by the primary offender that the primary offender received the instructions and warning mentioned in paragraphs (a) and (b);

primary offence means the offence committed by the primary offender;

primary offender has the meaning given in subsection (3A).

13 Vending machines

- (1) A person must not place or cause or permit to be placed in any premises a vending machine for operation by members of the public.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 13
amended by
Nos 16/1997
s. 120, 43/2000
s. 22(1)(a),
114/2003
s. 12.1.3
(Sch. 6
item 13.2),
substituted by
No. 45/2005
s. 16.

S. 13(1)
amended by
No. 49/2009
s. 28.

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- (2) Subsection (1) does not apply to a vending machine that is placed—
- (a) in the bar area of licensed premises in line of sight of a bar; or
 - (b) in an approved venue or in a casino in line of sight of a service counter of the approved venue or casino; or
 - (c) in a bottle shop immediately adjacent to the service counter of the bottle shop.

- (3) In this section—

bar means a place in licensed premises that—

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

bar area means the area—

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

bottle shop means an area in licensed premises where liquor is supplied to customers solely for consumption off the licensed premises;

service counter—

- (a) of an approved venue or a casino, means a counter at which gaming tokens (within the meaning of the **Gambling Regulation Act 2003**) may be issued or redeemed;
- (b) of a bottle shop, means a counter in the bottle shop across which liquor is supplied directly to customers.

13A Mobile selling of tobacco products

S. 13A
inserted by
No. 28/2001
s. 9.

- (1) A person must not, in the course of carrying on a business or in the course of his or her employment, sell any tobacco product that is carried about on his or her person.

S. 13A(1)
amended by
Nos 45/2005
s. 17, 49/2009
s. 29(1).

Penalty: 120 penalty units.

- (2) A person must not authorise another (*the seller*) to sell any tobacco product that is carried about on the seller's person.

S. 13A(2)
amended by
Nos 45/2005
s. 17, 49/2009
s. 29(2).

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (2A) A tobacco company is guilty of an offence against this subsection, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—

S. 13A(2A)
inserted by
No. 49/2009
s. 29(3).

- (a) contravenes subsection (2); or
- (b) causes another person to contravene subsection (1) or (2).

s. 14

S. 13A(2B)
inserted by
No. 49/2009
s. 29(3).

(2B) An offence against subsection (2A) is an indictable offence.

(3) A reference in this section to a tobacco product carried about on a person includes a reference to a tobacco product that is intended to be sold from a tray, bag or other container whether or not it is being carried about on the person at the time of sale.

S. 14
amended by
Nos 28/2001
s. 10, 45/2005
s. 17, 49/2009
s. 30.

14 Packages of cigarettes

A person must not sell cigarettes unless the cigarettes are in a package containing at least 20 cigarettes.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

15 Smokeless tobacco

S. 15(1)
amended by
No. 49/2009
s. 31.

(1) A person must not manufacture or sell a tobacco product other than a product prepared for smoking.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

(2) Subsection (1) does not apply to the manufacture or sale of prescribed tobacco products.

Tobacco Act 1987
No. 81 of 1987
Part 2—Controls Relating to Tobacco Products

s. 15C

* * * * *

S. 15A
inserted by
No. 43/2000
s. 13(1) (as
amended by
No. 28/2001
s. 21(1)(a)
(b)(2)),
repealed by
No. 31/2002
s. 10(c).

* * * * *

S. 15B
inserted by
No. 43/2000
s. 13(2),
substituted by
No. 28/2001
s. 11,
repealed by
No. 31/2002
s. 10(c).

15C Retail outlets: signage

S. 15C
inserted by
No. 43/2000
s. 13(3) (as
amended by
No. 28/2001
s. 22).

(1) The occupier of premises on which a tobacco retailing business is carried on must cause to be displayed on those premises in accordance with the regulations—

S. 15C(1)
amended by
No. 49/2009
s. 32(1).

- (a) a health warning sign; or
- (b) a sign relating to programs assisting in the cessation of smoking.

Penalty: In the case of a natural person,
10 penalty units;
In the case of a body corporate,
50 penalty units.

(2) A sign referred to in subsection (1) must comply with any prescribed requirements as to size, information contained in it (including where

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people may obtain more information) and the manner in which the information is set out or displayed.

S. 15C(3)
inserted by
No. 28/2001
s. 12,
amended by
No. 49/2009
s. 32(2).

- (3) The occupier of premises on which a tobacco retailing business is carried on must cause to be displayed on those premises in accordance with the regulations a prescribed sign relating to the prohibition of the sale of tobacco products to persons under the age of 18 years.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

S. 15D
inserted by
No. 43/2000
s. 14.

15D Prohibition of retailing at premises where offences have been committed

- (1) If—
- (a) a person (*the retailer*) carries on a tobacco retailing business at premises that are a retail outlet; and
 - (b) that person, or an associate of that person, is found guilty of a relevant offence in respect of, or relating to, the carrying on of that business at those premises; and
 - (c) the offence is a first relevant offence committed in respect of those premises by any of the retailer and the associates of the retailer—

the court, in addition to imposing any other penalty, may order that the retailer not carry on a tobacco retailing business at those premises or, if the court so determines, at any new premises within 5 kilometres of those premises, for such period, not exceeding 3 months, and commencing on such date, as the court determines.

(2) If—

- (a) a person (*the retailer*) carries on a tobacco retailing business at premises that are a retail outlet; and
- (b) one relevant offence in respect of, or relating to, the carrying on of that business at those premises has been committed by any of the retailer and the associates of the retailer and there has been a finding of guilt; and
- (c) the retailer, or an associate of the retailer, is found guilty of another relevant offence in respect of, or relating to, the carrying on of that business at those premises—

S. 15D(2)
amended by
No. 49/2009
s. 33(1).

the retailer, or any associate of the retailer, must not carry on a tobacco retailing business at those premises or, if the court so determines, at any new premises within 5 kilometres of those premises, during the period of 3 months or, if the court which makes the finding of guilt specifies a longer period not exceeding 12 months, during that specified period, and commencing on such date, as the court determines.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

(3) If—

- (a) a person (*the retailer*) carries on a tobacco retailing business at premises that are a retail outlet; and
- (b) two or more relevant offences in respect of, or relating to, the carrying on of that business at those premises have been committed by any one or more of the retailer and the

S. 15D(3)
amended by
No. 49/2009
s. 33(2).

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associates of the retailer, and there has been a finding of guilt for each such offence; and

- (c) the retailer, or an associate of the retailer, is found guilty of another relevant offence in respect of, or relating to, the carrying on of that business at those premises—

the retailer, or any associate of the retailer, must not carry on a tobacco retailing business at those premises or, if the court so determines, at any new premises within 5 kilometres of those premises, during the period of 5 years commencing on such date as the court determines.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (4) A person is not prohibited from carrying on a tobacco retailing business at any premises by reason of subsection (2) or (3) if the court referred to in that subsection—
- (a) is satisfied that there are exceptional circumstances and that it is reasonable that the tobacco retailing business continue to be carried on at those premises; and
- (b) makes an order to that effect.
- (5) An offence is not to be taken into account for the purposes of this section while an appeal is pending against a finding of guilt for the offence.
- (6) If two or more persons are found guilty of an offence arising from the sale or possession of the same tobacco products, there is deemed to be only one offence for the purposes of this section.

(7) If a retailer and an associate of a retailer are prohibited from carrying on a tobacco retailing business for 2 or more periods that overlap, those periods are, to the extent that they apply to the same premises, to apply consecutively.

(8) In this section—

associate, in relation to a person, means—

- (a) if the person carries on a tobacco retailing business in partnership with another person, that other person;
- (b) if the person is a corporation—
 - (i) a director or person concerned in the management of the corporation; or
 - (ii) a person who is entitled to more than 25% of the shares in the corporation;

new premises, in relation to an offence by a person in relation to premises, does not include premises at which the person carried on a tobacco retailing business before the offence was committed;

relevant offence means—

- (a) an offence against section 12; or
- (b) an offence against section 11A; or
- (c) an offence against the Customs Act 1901 of the Commonwealth in respect of the possession of tobacco products that are smuggled goods or prohibited imports within the meaning of that Act; or

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- (d) an offence against the Excise Act 1901 of the Commonwealth in respect of the possession of tobacco products that are excisable goods within the meaning of that Act upon which excise duty had not been paid.

Pt 2 Div. 3
(Heading and
ss 15E–15K)
inserted by
No. 45/2005
s. 18.

Division 3—Underage music/dance events

S. 15E
inserted by
No. 45/2005
s. 18.

15E What is an underage music/dance event?

For the purposes of this Division, an *underage music/dance event* is an event that—

- (a) involves the provision of music (whether live or recorded and whether for listening to or dancing to or both); and
- (b) is predominantly organised or intended for, or predominantly attended by, persons under the age of 18 years; and
- (c) is open to members of the public (whether with or without payment); and
- (d) takes place in any area or premises other than a private residence.

S. 15F
inserted by
No. 45/2005
s. 18.

15F No smoking at underage music/dance events

- (1) A person must not smoke in any area or premises while an underage music/dance event is taking place there.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

- (3) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

15G Offence by occupier

S. 15G
inserted by
No. 45/2005
s. 18.

- (1) If smoking occurs in an area or premises while an underage music/dance event is taking place there, in contravention of section 15F, the occupier of the area or premises is guilty of an offence and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate.

S. 15G(1)
amended by
No. 49/2009
s. 34.

- (2) It is a defence to a prosecution under subsection (1) if the accused proves that the accused did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

S. 15G(2)
amended by
No. 68/2009
s. 97(Sch.
item 120.3).

- (a) the accused was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

S. 15G(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 120.3).

- (b) the accused—

S. 15G(2)(b)
amended by
No. 68/2009
s. 97(Sch.
item 120.3).

- (i) requested the person contravening to stop smoking; and

- (ii) informed the person that the person was committing an offence.

s. 15H

15H No smoking signs

S. 15H
inserted by
No. 45/2005
s. 18.

S. 15H(1)
amended by
No. 49/2009
s. 35.

- (1) The occupier of an area or premises where an underage music/dance event is taking place is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with subsection (2).

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the area or premises or from within the area or premises.

S. 15I
inserted by
No. 45/2005
s. 18.

15I Covering vending machines, tobacco advertisements etc.

S. 15I(1)
amended by
No. 49/2009
s. 36.

- (1) The occupier of an area or premises where an underage music/dance event is taking place must ensure that each of the following is removed or covered at all times while the event is taking place—
- (a) a vending machine in the area or premises;
 - (b) a tobacco advertisement in the area or premises;
 - (c) a display of tobacco products in the area or premises.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

(2) In this section—

covered means—

- (a) in relation to a vending machine—
covered by an opaque material or some other means in such a way that none of the top, front, back and sides of the machine or its contents are visible;
- (b) in relation to a tobacco advertisement or display of tobacco products—
covered by an opaque material or some other means in such a way that the advertisement or products are not visible.

15J Prohibition on supplying tobacco at underage music/dance events

A person must not sell a tobacco product to another person in any area or premises while an underage music/dance event is taking place there.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 15J
inserted by
No. 45/2005
s. 18,
amended by
No. 49/2009
s. 37.

15K No offence by minors

Despite anything to the contrary in this Division or the **Sentencing Act 1991**, a person under the age of 18 years does not commit an offence if he or she contravenes a provision of this Division.

S. 15K
inserted by
No. 45/2005
s. 18.

s. 15L

Pt 2 Div. 4
(Heading and
ss 15L, 15M)
inserted by
No. 49/2009
s. 38.

Division 4—Sales of tobacco products from temporary outlets

S. 15L
inserted by
No. 49/2009
s. 38.

15L Offence to sell tobacco products from temporary outlet

- (1) A person must not sell tobacco products from a point of sale that is located in a temporary display stand, booth or tent or other temporary or mobile structure or enclosure, whether or not a part of that display stand, booth, tent, structure or enclosure is permanent.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) A person must not sell tobacco products from a point of sale that is in a retail outlet established in an area or premises for the duration of a specific sports, music or arts-related function or event in the area or premises.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 15M
inserted by
No. 49/2009
s. 38.

15M Offence for tobacco company to sell tobacco products from temporary outlet

- (1) A tobacco company is guilty of an offence against this subsection, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly contravenes section 15L(1) or 15L(2) or causes another person to contravene section 15L(1) or 15L(2).

- (2) An offence against subsection (1) is an indictable offence.

Division 5—Prohibited products

Pt 2 Div. 5
(Heading and
ss 15N–15S)
inserted by
No. 49/2009
s. 38.

15N Ban orders

S. 15N
inserted by
No. 49/2009
s. 38.

- (1) The Minister, by order published in the Government Gazette, may ban a product or a class of products if—
- (a) the Secretary recommends the making of the order to the Minister under section 15O; or
 - (b) the product or the class of products has been prohibited or restricted by or under a law of the Commonwealth or another State or Territory on the ground that the product or the class of products meets one or more criteria that substantially correspond to the criteria set out in section 15O(2)(a).
- (2) A ban order must—
- (a) if the ban order is made on the recommendation of the Secretary, specify that fact and set out the grounds for the recommendation; or
 - (b) if a ban order is made on the basis of a prohibition or restriction by the Commonwealth or another State or Territory, specify that fact and the law or subordinate instrument containing the prohibition or restriction.
- (3) A ban order may apply, adopt or incorporate, wholly or partially or as amended by the order, any matter contained in any document as existing—

s. 150

- (a) from time to time; or
- (b) at a particular time.

S. 150
inserted by
No. 49/2009
s. 38.

150 Secretary may recommend ban order

- (1) The Secretary may recommend to the Minister that a ban order be made in respect of a specified product or a specified class of products.
- (2) The Secretary must not make a recommendation under subsection (1) unless the Secretary has fully investigated the matter and is satisfied that—
 - (a) the product—
 - (i) is a tobacco product and the product or its smoke possesses a distinctive fruity, sweet or confectionery-like character; or
 - (ii) is a tobacco product and has packaging that appeals to children or young people; or
 - (iii) is not a tobacco product but resembles a tobacco product; or
 - (iv) is of a nature or is advertised in a way that may encourage children or young people to smoke; and
 - (b) the supply of the product should be prohibited, having regard to the objects of this Act.
- (3) A recommendation by the Secretary must set out the grounds for the recommendation.

S. 15P
inserted by
No. 49/2009
s. 38.

15P Operation of ban order

A ban order takes effect on the date specified in the ban order or 7 days after the ban order is published in the Government Gazette, whichever is the later.

15Q Amendment or revocation of ban order

The Minister, by order published in the Government Gazette, may amend or revoke a ban order.

S. 15Q
inserted by
No. 49/2009
s. 38.

15R Notice of order

- (1) The Secretary must cause a copy of a ban order, or a copy of an order amending or revoking a ban order—
 - (a) to be given to each person who, to the knowledge of the Minister, supplies the product or class of products in respect of which the ban order was made; and
 - (b) to be published in a newspaper circulating generally throughout the State.
- (2) A copy of a ban order or a copy of an order amending or revoking a ban order must be given and published under subsection (1) within 2 days after the publication of the order in the Government Gazette, or if that is not practicable, as soon as possible after the end of that period.
- (3) A failure to comply with subsection (1) or (2) in relation to a ban order or an order amending or revoking a ban order does not invalidate the order.

S. 15R
inserted by
No. 49/2009
s. 38.

15S Offence to breach a ban order

- (1) A person must not sell by retail or wholesale a product in respect of which a ban order under section 15N is in force.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

S. 15S
inserted by
No. 49/2009
s. 38.

s. 15S

- (2) A tobacco company is guilty of an offence against this subsection and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—
- (a) contravenes subsection (1); or
 - (b) causes another person to contravene subsection (1).
- (3) An offence against subsection (2) is an indictable offence.
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PART 2A—SPECIALIST TOBACCONISTS

Pt 2A
(Heading and
ss 15T–15ZB)
inserted by
No. 49/2009
s. 39.

15T Application for certification as specialist tobacconist

S. 15T
inserted by
No. 49/2009
s. 39.

- (1) A person carrying on or proposing to carry on a tobacco retailing business at premises may apply to the Secretary for certification that the premises are a specialist tobacconist.
- (2) An application for certification must—
 - (a) be in or to the like effect of the form approved by the Secretary; and
 - (b) specify the premises in respect of which the application is made; and
 - (c) include any information specified in the approved form; and
 - (d) be accompanied by the prescribed fee, if any.

15U Determination of application

S. 15U
inserted by
No. 49/2009
s. 39.

- (1) On application under section 15T, the Secretary must determine the application by—
 - (a) certifying that the premises are a specialist tobacconist; or
 - (b) refusing to so certify.
- (2) The Secretary may certify that premises are a specialist tobacconist if the Secretary is satisfied that—
 - (a) a tobacco retailing business is carried on or proposed to be carried on at the premises; and

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- (b) the gross turnover of tobacco products at the premises—
- (i) if the tobacco retailing business is carried on at the premises at the time of the application, constitutes 80 per cent or more of the gross turnover of all products sold at the premises in the 12 months immediately preceding the application or the applicant's period of trading at the premises, whichever is shorter; or
 - (ii) if the tobacco retailing business is proposed to be carried on at the premises at the time of the application, is projected to constitute 80 per cent or more of the projected gross turnover of all products to be sold at the premises in the 12 months immediately following the commencement of trading by the applicant at the premises; and
- (c) certification of the premises is consistent with the objects of this Act; and
- (d) certification of the premises is consistent with any strategic plan, policy statement, code or guideline relating to specialist tobacconists that has been adopted by the Minister; and
- (e) the premises are separated from other retail premises by a wall and that any doorway or entrance to or exit from the premises does not open directly into any other retail premises.
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- (3) The Secretary may refuse to certify premises as a specialist tobacconist if—
 - (a) the applicant does not comply with any requirement of this Act or the regulations; or
 - (b) the Secretary is not satisfied as required by subsection (2).
 - (4) For the purposes of determining an application, the Secretary, by written notice to the applicant, may require the applicant to provide within a reasonable period information relating to the application that is specified in the notice.
 - (5) Before refusing to certify premises, the Secretary must give the applicant an opportunity to make a written submission.
 - (6) If the Secretary certifies that premises are a specialist tobacconist, the Secretary must issue the applicant with a certificate to that effect.

15V Certification holder to notify Secretary of commencement of tobacco retailing business

S. 15V
inserted by
No. 49/2009
s. 39.

A certification holder who proposes to carry on a tobacco retailing business at premises certified as a specialist tobacconist must notify the Secretary within 7 days after the business commences at those premises.

15W Duration of certification

S. 15W
inserted by
No. 49/2009
s. 39.

- (1) The certification of premises remains in force until—
 - (a) the tobacco retailing business carried on at the premises ceases or moves to different premises; or
 - (b) the tobacco retailing business carried on at the premises is no longer carried on by the applicant, whether solely or with any other person; or

(c) the Secretary cancels the certification under section 15X(1) or (4).

(2) If the certification of premises ceases to be in force by reason of subsection (1)(a) or (1)(b), the certification holder must notify the Secretary of that fact within 7 days after the certification ceases to be in force.

S. 15X
inserted by
No. 49/2009
s. 39.

15X Cancellation of certification

- (1) The Secretary may cancel a certification under section 15U for premises if—
 - (a) the certification holder does not comply with a requirement of this Act or the regulations;
or
 - (b) the premises no longer satisfy the criteria set out in section 15U(2).
- (2) For the purposes of determining whether to cancel a certification, the Secretary, by written notice to the certification holder, may require the certification holder to provide within a reasonable period information relating to the certification that is specified in the notice.
- (3) Before cancelling a certification under subsection (1), the Secretary must give the certification holder an opportunity to be heard.
- (4) The Secretary may cancel a certification at the request of the certification holder.
- (5) If premises are certified to be a specialist tobacconist and the certification holder does not commence carrying on a tobacco retailing business at the premises within 12 months after the premises being certified, the certification holder must request the Secretary to cancel the certification under subsection (4).

- (6) If a certification is cancelled, the certification holder must return the certificate issued under section 15U(6) within a reasonable period unless the certification holder satisfies the Secretary that the original certificate is lost, stolen or destroyed.

15Y Notice of determination or cancellation

S. 15Y
inserted by
No. 49/2009
s. 39.

- (1) Within 7 days after determining an application under section 15U, the Secretary must notify the applicant in writing of the determination and, if the application is refused, the grounds for the determination.
- (2) Within 7 days after cancelling a certification under section 15X, the Secretary must notify the certification holder in writing of the cancellation, the grounds for the cancellation and the date of cancellation.

15Z Replacement certificates

S. 15Z
inserted by
No. 49/2009
s. 39.

The Secretary may issue a replacement certificate to a certification holder who satisfies the Secretary that the original certificate is lost, stolen or destroyed.

15ZA Offence to provide false or misleading information to Secretary

S. 15ZA
inserted by
No. 49/2009
s. 39.

- (1) A person must not give information to the Secretary under this Part that the person knows to be false or misleading in any material particular.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

s. 15ZB

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- (2) A person must not produce a document to the Secretary under this Part that the person knows to be false or misleading in any material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 15ZB
inserted by
No. 49/2009
s. 39.

15ZB Specialist tobacconist must display certificate

A person who carries on business at a retail outlet that is certified to be a specialist tobacconist must display the certificate issued under section 15U(6) in a conspicuous place at the retail outlet in a manner that invites attention.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

**PART 3—VICTORIAN HEALTH PROMOTION
FOUNDATION**

16 Victorian Health Promotion Foundation

- (1) There is established by this Act a body to be called the Victorian Health Promotion Foundation.
 - (2) The Foundation—
 - (a) is a body corporate with perpetual succession; and
 - (b) shall have an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property for the purpose of performing its functions and exercising its powers under this Act; and
 - (e) is capable of doing and suffering all such acts and things as bodies corporate may by law do or suffer and which are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.
 - (3) The Foundation represents, and shall be taken to be part of, the Crown.
 - (4) The official seal of the Foundation shall be kept in such custody as the Foundation directs and must not be used except as authorised by the Foundation.
 - (5) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Foundation affixed to a document and shall presume that it was duly affixed.
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17 Objectives of Foundation

The objects of the Foundation are—

- (a) to fund activity related to the promotion of good health, safety or the prevention and early detection of disease; and
- (b) to increase awareness of programs for promoting good health in the community through the sponsorship of sports, the arts and popular culture; and
- (c) to encourage healthy lifestyles in the community and support activities involving participation in healthy pursuits; and
- (d) to fund research and development activities in support of these objects.

18 Functions of Foundation

The following are the functions of the Foundation—

- (a) to promote its objects;
 - (b) to make grants from the Fund for activities, facilities, projects or research programs in furtherance of the objects of the Foundation;
 - (c) to provide sponsorships for sporting or cultural activities;
 - (d) to keep statistics and other records relating to the achievement of the objects of the Foundation;
 - (e) to provide advice to the Minister on matters related to its objects referred by the Minister to the Foundation and generally in relation to the achievement of its objects;
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- (f) to make loans or otherwise provide financial accommodation for activities, facilities, projects or research programs in furtherance of the objects of the Foundation;
- (g) to consult regularly with relevant Government Departments and agencies and to liaise with persons and organisations affected by the operation of this Act;
- (h) to perform such other functions as are conferred on the Foundation by this or any other Act.

S. 18(g)
amended by
No. 43/2000
s. 22(1)(b).

19 Powers of Foundation

- (1) The Foundation has power to do all things necessary to be done in the performance of its functions or achievement of its objects.
- (2) In addition to its other powers, the Foundation has power, following consultation with the Minister, to make grants from the Fund for the relief of loss suffered as a result of the application of this Act to anything existing at or before the date of enactment of this Act where special circumstances warrant assistance of that kind.

20 Foundation to be responsible to Minister

- (1) The Foundation shall perform its functions and exercise its powers subject to any guidelines or directions on any matter or class of matters declared by the Governor in Council on the recommendation of the Minister after consultation with the Minister administering the **Sport and Recreation Act 1972** by notice published in the Government Gazette to be guidelines or directions for the purposes of this section.

s. 21

S. 20(2)
substituted by
No. 43/2000
s. 22(2).

(2) Section 15 of the **Subordinate Legislation Act 1994** applies to a guideline of which notice is published under subsection (1) as if the guideline were a statutory rule within the meaning of that Act notice of which had been published in the Government Gazette on the day on which the notice under subsection (1) was published.

S. 20(3)
substituted by
No. 43/2000
s. 22(2).

(3) A guideline notice of which is published under subsection (1) is subject to disallowance by a House of the Parliament and sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply as if the guideline were a statutory rule notice of which had been published in the Government Gazette on the day on which the notice under subsection (1) was published.

21 Membership of Foundation

- (1) The Foundation shall consist of—
- (a) three persons with expertise in health and illness prevention, one of whom shall be chosen by the Minister from a panel of three names submitted by the Anti-Cancer Council; and
 - (b) four persons with expertise in sport or sports administration, one of whom shall be chosen by the Minister from a panel of three names submitted by the Sports Federation of Victoria or, if that body ceases to exist, another body representing amateur sport in Victoria and nominated by the Minister and one of whom shall be nominated by the Minister as representing country sport; and
 - (c) two persons with expertise in business, management, communications or law; and
 - (d) one person with expertise in the arts or arts administration; and
 - (e) one person with expertise in advertising; and

- (f) three persons who are members of the Legislative Council or the Legislative Assembly elected by the Legislative Council and Legislative Assembly jointly.
- (2) The Minister may appoint a Chairperson and a Deputy Chairperson from amongst the members referred to in subsection (1) (other than paragraph (f)).
- (3) The members (other than the members referred to in subsection (1)(f))—
- (a) shall be appointed by the regulations; and
 - (b) are, in respect of the office of member, subject to the **Public Administration Act 2004** (other than Part 3 of that Act).
- (4) If the regulation appointing a member is disallowed, the appointment ceases to have effect.

S. 21(3)(b) amended by No. 46/1998 s. 7(Sch. 1), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 204.1), 80/2006 s. 26(Sch. item 101).

22 Term of appointment

- (1) Subject to this Part, a member appointed under section 21 holds office for such period not exceeding 5 years as is specified in the instrument of appointment but is eligible for re-appointment.

* * * * *

S. 22(2)(3) repealed by No. 42/1995 s. 224(Sch. 2 item 41).

- (4) A member elected under section 21(1)(f) holds office, subject to this Part for three years but is eligible for re-election.

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- (5) Subject to this Part, a member holds office on such terms and conditions as are determined by the Governor in Council.

23 Remuneration and allowances

A member (other than a member referred to in section 21(1)(f)) shall be paid such remuneration and allowances (if any) as are determined by the Governor in Council.

24 Removal from office

The Governor in Council may remove a member from office.

25 Resignation

A member may resign office by writing signed by him or her and delivered to the Governor in Council.

26 Disclosure of interests etc.

- (1) A member of the Foundation who is in any way, whether directly or indirectly interested in a contract or proposed contract with the Foundation must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the fact and the nature and extent of the interest at a meeting of the Foundation.
- (2) Subsection (1) does not apply if the interest of the member consists only of being a member or creditor of a body that is interested in a contract or proposed contract with the Foundation if the interest may properly be regarded as not being a material interest.
- (3) For the purposes of subsection (1), a general notice given to the members of the Foundation by a member to the effect that he or she is a member, officer or employee of a body and is to be regarded as interested in any contract that may, after the date of the notice, be made with that

body is sufficient declaration of interest in relation to any contract so made or proposed to be made if—

- (a) the notice states the nature and extent of the interest of the member in the body; and
 - (b) when the question of the confirming or entering into a contract is first taken into consideration, the extent of the member's interest is not greater than that stated in the notice; and
 - (c) the notice is read at a meeting of the Foundation or the member takes reasonable steps to ensure that it is brought up and read at the next meeting of the Foundation after it is given.
- (4) A member of the Foundation who possesses any property or holds any office whereby, whether directly or indirectly, interests or duties might be created in conflict with the member's interests or duties as a member must, in accordance with subsection (5), declare at a meeting of the members of the Foundation the fact and nature and extent of the conflict.
- (5) A declaration required by subsection (4) in relation to the possession of any property or the holding of any office must be made by a person—
- (a) if the person possesses the property or holds the office as mentioned in subsection (4) when he or she becomes a member—at the first meeting of the Foundation held after—
 - (i) he or she becomes a member; or
 - (ii) the relevant facts as to the possession of the property or the holding of the office come to his or her knowledge—
- whichever is the later; or

- (b) if the person comes into possession of the property or commences to hold the office as mentioned in subsection (4) after he or she becomes a member—at the first meeting of the Foundation held after the relevant facts as to the possession of the property or the holding of the office come to his or her knowledge.
- (6) The Chairperson must cause to be recorded every declaration under this section in the minutes of the meeting at which it was made.
- (7) This section is in addition to, and not in derogation of, the operation of any Act or rule of law restricting a member from having an interest in contracts with the Foundation or from possessing property or holding offices involving interests or duties in conflict with the member's interests or duties as a member.

S. 27
amended by
No. 43/2000
s. 22(3).

27 Validity of acts and decisions

An act or decision of the Foundation is not invalid by reason only—

- (a) of a vacancy in the office of a member; or
- (b) of any defect or irregularity in or in connection with the appointment of a member; or
- (c) in the case of a person appointed to act as Chairperson or as a member, that the occasion for so acting had not arisen or had ceased.

28 Meetings of Foundation

- (1) The Chairperson shall preside at a meeting of the Foundation at which he or she is present and, if the Chairperson is not present, the members present shall elect a member to preside.
- (2) A majority of members in office at any time constitutes a quorum at a meeting of the Foundation.
- (3) A question arising at a meeting of the Foundation shall be determined by a majority of votes of the members present and voting on the question.
- (4) If there is an equality of votes on a question at a meeting, the Chairperson or other person presiding at the meeting has a casting vote.
- (5) Subject to this Part, the Foundation may regulate its own procedure.

29 Patrons

The Governor in Council may appoint persons as honorary patrons of the Foundation.

30 Advisory committees

- (1) The Foundation may, following consultation with the Minister and the Minister administering the **Sport and Recreation Act 1972**, appoint advisory committees for the purposes of providing advice and information to assist the Foundation in the performance of its functions.
- (2) A member of an advisory committee shall be paid such allowances and expenses as are determined by the Governor in Council.

31 Chief executive officer and staff

- (1) There shall be a chief executive officer of the Foundation, who shall be appointed by the Governor in Council on the recommendation of the Minister for such period and subject to such terms and conditions as are determined by the Governor in Council.
- (2) Before making a recommendation for the purposes of subsection (1), the Minister must seek the advice of the Foundation.
- (3) The Governor in Council may remove the chief executive officer from office.
- (4) The chief executive officer may resign office in writing signed by him or her and delivered to the Governor in Council.
- (5) The chief executive officer is not, in respect of the office of chief executive officer, subject to the **Public Administration Act 2004**.
- (6) The Foundation shall appoint such other staff as are necessary for the purposes of this Part.
- (7) If the chief executive officer or a member of the staff of the Foundation was, immediately before his or her appointment, an officer within the meaning of the **Superannuation Act 1958**, the chief executive officer or member continues, subject to that Act, to be an officer within the meaning of that Act while he or she continues to be the chief executive officer or such a member.

S. 31(5)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 204.2).

- (8) If a person was, immediately before appointment as the chief executive officer or a member of the staff of the Foundation, an employee in the public service, the person upon ceasing to be the chief executive officer or member, is eligible to be employed in the public service with a classification and emolument corresponding with or higher than that which the person held or received in the public service immediately before appointment as the chief executive officer or such a member as if the period of service as the chief executive officer or such a member had been service in the public service.

S. 31(8)
substituted by
No. 46/1998
s. 7(Sch. 1).

32 Victorian Health Promotion Fund

- (1) There shall be established in the Public Account as part of the Trust Fund an account to be known as the Victorian Health Promotion Fund.
- (2) The Fund shall be administered by the Foundation.
- (3) All money received by the Foundation must be paid into the Fund.

S. 32(3)
substituted by
No. 94/1997
s. 21(1).

- (3A) There shall be paid out of the Consolidated Fund (which is to the necessary extent appropriated accordingly) into the Victorian Health Promotion Fund, in respect of the financial year commencing on 1 July 1997, an amount of \$21 395 000 in such instalments and at such times as are determined by the Treasurer.

S. 32(3A)
inserted by
No. 94/1997
s. 21(1).

- (4) There shall be paid out of the Fund in accordance with the budget of the Foundation—
- (a) amounts determined by the Foundation for payment to sporting bodies; and

S. 32(4)(a)
amended by
No. 94/1997
s. 21(2).

s. 32

S. 32(4)(b)
amended by
No. 94/1997
s. 21(2).

- (b) amounts determined by the Foundation for payment to bodies for the purpose of health promotion; and
- (c) other amounts by way of grant or loan or financial accommodation for payment in accordance with this Act to persons or bodies determined by the Foundation; and
- (d) the cost and expenses incurred by the Foundation under this Act; and
- (e) amounts determined by the Minister for payment to a body or bodies specified by the Minister for the purpose of medical research related to the prevention and treatment of illness; and
- (f) any other money authorised under this or any other Act to be paid out of the Fund.

S. 32(5)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 11/2001
s. 3(Sch.
item 76).

- (5) The Foundation may, with the approval of the Minister administering Part 7 of the **Financial Management Act 1994**, maintain an account or accounts with an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth.
- (6) An amount paid to a body out of the Fund under subsection (4) (except paragraph (d)) must be presented or otherwise delivered to the body by the Chairperson or the chief executive officer or by a member of the Foundation (other than a member appointed under section 21(1)(f)) nominated by the Chairperson for that purpose and must be made only in the name of the Foundation.

33 Budget

- (1) The Foundation must, before 1 June in each year, submit to the Minister for the Minister's approval a budget for the next financial year of money to be paid into the Fund and money to be paid out of the Fund.
- (2) The budget must be in a form required by the Minister.
- (2A) The amounts included in the budget for a financial year to be paid out of the Fund to sporting bodies and to bodies for the purpose of health promotion must each be not less than 30% of the total money budgeted to be paid into the Fund out of the Consolidated Fund in that year.
- (3) The Minister may, after consultation with the Treasurer and the Minister administering the **Sport and Recreation Act 1972**, approve a budget as submitted to the Minister, or approve it with such alterations as the Minister determines.
- (4) The Minister may, if requested to do so by the Foundation, at any time, approve alterations to the budget.

S. 33(2A)
inserted by
No. 94/1997
s. 21(3).

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Ss 34–36
repealed by
No. 31/1994
s. 4(Sch. 2
item 90).

Pt 3A
(Heading and
ss 36–36T)
inserted by
No. 43/2000
s. 15.

PART 3A—INSPECTORS AND POWERS OF INSPECTORS

New s. 36
inserted by
No. 43/2000
s. 15.

36 Appointment of persons as inspectors

The Secretary may, by instrument, appoint as an inspector—

- (a) a person nominated by the Chief Executive Officer of a council within the meaning of the **Local Government Act 1989** and employed by, or providing services to, that council;
- (b) an employee or member of a class of employees employed under Part 3 of the **Public Administration Act 2004**.

S. 36(b)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 204.2).

36A Inspector's identity card

- (1) The Secretary must issue an identity card to each inspector.
- (2) An identity card must contain a photograph of the inspector to whom it is issued.

S. 36A
inserted by
No. 43/2000
s. 15.

36B Production of identity card

- (1) An inspector must produce his or her identity card for inspection—
 - (a) before exercising a power under this Part other than a requirement made by post; and
 - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

S. 36B
inserted by
No. 43/2000
s. 15.

S. 36B(2)
amended by
No. 28/2001
s. 13.

- (2) This section does not apply to the exercise of a power under section 36E(1).

36C Power to require names and addresses

S. 36C
inserted by
No. 43/2000
s. 15.

- (1) An inspector may request a person to state his or her name and address if the inspector believes on reasonable grounds that the person has committed, or is about to commit, an offence against a provision of this Act referred to in the Schedule.
- (2) An inspector who makes a request under subsection (1) must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.
- (3) A person must not, in response to a request made by an inspector in accordance with this section—
 - (a) refuse or fail to comply with the request; or
 - (b) state a name that is false in a material particular; or
 - (c) state an address other than the full and correct address of his or her ordinary place of residence or business.

Penalty: 5 penalty units.

- (4) A person who is requested by an inspector to state his or her name and address may request the inspector to state, orally or in writing, his or her name and to produce his or her identity card.
- (5) An inspector must not, in response to a request under subsection (4)—
 - (a) refuse or fail to comply with the request; or
 - (b) state a name that is false in a material particular; or
 - (c) refuse to comply with the request in writing if requested to do so.

Penalty: 5 penalty units.

s. 36D

36D Entry or search with consent

S. 36D
inserted by
No. 43/2000
s. 15.

S. 36D(1)
amended by
No. 49/2009
s. 40.

- (1) If an inspector believes, on reasonable grounds, that a person has contravened this Act, other than Division 1A of Part 2, or the regulations, the inspector, with the consent of the occupier of the premises—
 - (a) may enter and search any premises;
 - (b) may seize anything found on the premises which the inspector believes, on reasonable grounds, to be connected with the alleged contravention;
 - (c) may inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector—
 - (a) has produced his or her identity card for inspection; and
 - (b) has informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search; and

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- (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (3) If an occupier consents to an entry and search, the inspector who requested consent must before entering the premises ask the occupier to sign an acknowledgment in the prescribed form stating—
- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
- (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
- (6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the
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s. 36E

occupier did not consent to the entry and search or to the seizure or the taking of the thing.

S. 36E
inserted by
No. 43/2000
s. 15,
amended by
No. 28/2001
s. 14 (ILA
s. 39B(1)).

36E Entry of premises open to the public

- (1) An inspector may enter and inspect any part of premises that, at the time of the entry and inspection, are open to the public and—
 - (a) may take photographs; and
 - (b) may direct the occupier to remove any tobacco advertisement placed or displayed in the premises in contravention of this Act.
- (2) After entering premises under subsection (1), an inspector may inspect and measure any tobacco advertisement that is visible from the customer's side of the customer service area, whether or not the advertisement is in a part of the premises open to the public.

S. 36E(2)
inserted by
No. 28/2001
s. 14.

S. 36F
inserted by
No. 43/2000
s. 15.

36F Search warrants

- (1) An inspector, with the written approval of the Secretary or, if the inspector is an environmental health officer of a council or a person employed by, or providing services to, a council, with the written approval of the Chief Executive Officer of the council, may apply to a magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened this Act, other than Division 1A of Part 2, or the regulations.
- (2) If a magistrate is satisfied, by the evidence, on oath or by affidavit, of the inspector that there are reasonable grounds to believe that there is a thing or things of a particular kind connected with a

S. 36F(1)
amended by
No. 49/2009
s. 41(1).

S. 36F(2)
amended by
No. 49/2009
s. 41(2).

contravention of this Act, other than Division 1A of Part 2, or the regulations on any premises, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—

- (a) to enter the premises specified in the warrant, if necessary by force; and
- (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) inspect and make copies of, or take extracts from—

a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with the alleged contravention.

- (3) A search warrant issued under this section must state—
 - (a) the purpose for which the search is required and the nature of the alleged contravention; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

s. 36G

- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

S. 36G
inserted by
No. 43/2000
s. 15.

36G Announcement before entry

- (1) On executing a search warrant, the inspector executing the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector need not comply with subsection (1) if he or she believes, on reasonable grounds, that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.

S. 36H
inserted by
No. 43/2000
s. 15.

36H Details of warrant to be given to occupier

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to a person at the premises; and
 - (b) give to the person a copy of the warrant.

36I Seizure of things not mentioned in the warrant

S. 36I
inserted by
No. 43/2000
s. 15.

A search warrant under section 36F authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing is of a kind which could have been included in a search warrant issued under that section and will afford evidence about the contravention of this Act, other than Division 1A of Part 2, or the regulations; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act, other than Division 1A of Part 2, or the regulations.

S. 36I(a)
amended by
No. 49/2009
s. 42.

S. 36I(b)
amended by
No. 49/2009
s. 42.

36J Copies of seized documents

S. 36J
inserted by
No. 43/2000
s. 15.

- (1) If an inspector retains possession of a document seized from a person under this Part, the inspector must give the person, within 21 days after the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

36K Retention and return of seized documents or things

S. 36K
inserted by
No. 43/2000
s. 15.

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

s. 36L

- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 36L extending the period during which the document or thing may be retained.

S. 36L
inserted by
No. 43/2000
s. 15.

36L Magistrates' Court may extend 3 month period

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension of the period for which the inspector may retain the document or thing.
- (2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—
 - (a) for the purposes of an investigation into whether a contravention of this Act, other than Division 1A of Part 2, or the regulations has occurred; or
 - (b) to enable evidence of a contravention of this Act, other than Division 1A of Part 2, or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

S. 36L(2)(a)
amended by
No. 49/2009
s. 43.

S. 36L(2)(b)
amended by
No. 49/2009
s. 43.

36M Requirement to assist inspector during entry

To the extent that it is reasonably necessary to determine compliance with this Act, other than Division 1A of Part 2, or the regulations, an inspector exercising a power of entry under this Part who produces his or her identity card for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

S. 36M
inserted by
No. 43/2000
s. 15,
amended by
No. 49/2009
s. 44.

36N Refusal or failure to comply with requirement

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an inspector under this Part.

Penalty: 60 penalty units.

S. 36N
inserted by
No. 43/2000
s. 15.

36O Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

S. 36O
inserted by
No. 43/2000
s. 15.

s. 36P

(3) If—

- (a) before producing a document that the person is required to produce by or under this Part, the person claims that the document would tend to incriminate the person; and
- (b) the document would in fact tend to incriminate the person—

the document is not admissible in evidence against the person in a criminal proceeding other than a proceeding in respect of an offence against this Act or the regulations.

S. 36P
inserted by
No. 43/2000
s. 15.

36P Offence to give false or misleading information

A person must not—

- (a) give information to an inspector under this Part that the person knows to be false or misleading in any material particular; or
- (b) produce a document to an inspector under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

S. 36Q
inserted by
No. 43/2000
s. 15.

36Q Offence to hinder or obstruct inspector

A person must not, without reasonable excuse, hinder or obstruct an inspector who is exercising a power under this Part.

Penalty: 60 penalty units.

S. 36R
inserted by
No. 43/2000
s. 15.

36R Offence to impersonate inspector

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

36S Service of documents

**S. 36S
inserted by
No. 43/2000
s. 15.**

- (1) A written requirement by an inspector under this Part may be given personally or by registered post to a person—
 - (a) at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of an inspector under this Part may send that document or information to the inspector by registered post.

36T Confidentiality

**S. 36T
inserted by
No. 43/2000
s. 15.**

- (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Part, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.
Penalty: 60 penalty units.
- (2) Subsection (1) does not apply to the giving of information—
 - (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or

s. 36T

- (d) with the written authority of the Secretary or, if the inspector is an environmental health officer of a council or a person employed by, or providing services to, a council, with the written authority of the Chief Executive Officer of the council; or
 - (e) with the written authority of the person to whom the information relates.
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PART 4—MISCELLANEOUS

37 Removal of advertisements

- | | | | | | |
|--|---|---|---|---|--|
| * | * | * | * | * | S. 37(1)
repealed by
No. 43/2000
s. 16(1)(a). |
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 | | | | | |
| (2) If a person is convicted of an offence under section 6(2) or (2A), the Court, in addition to imposing any other penalty, may order— | | | | | S. 37(2)
amended by
No. 43/2000
s. 16(1)(b). |
| (a) that the advertisement may be removed or obscured by an inspector; and | | | | | S. 37(2)(a)
amended by
No. 43/2000
s. 16(1)(c). |
| (b) that the person convicted pay the reasonable costs incurred by the inspector in removing or obscuring the advertisement. | | | | | S. 37(2)(b)
amended by
No. 43/2000
s. 16(1)(c). |
|
 | | | | | |
| (3) Costs payable under subsection (2) may be recovered as a debt due to the Council of the municipality or the State, as the case requires. | | | | | |
| * | * | * | * | * | S. 37(4)
amended by
Nos 125/1993
s. 20(12),
46/1998
s. 7(Sch. 1),
repealed by
No. 43/2000
s. 16(1)(d). |

38 Infringement notices

- | | |
|--|--|
| (1) An inspector or a police member may serve an infringement notice on a person who the inspector or police member believes has committed an infringement offence referred to in an item in the Schedule requiring the person to pay— | S. 38(1)
amended by
No. 43/2000
s. 16(2)(a)(b),
substituted by
Nos 45/2005
s. 19(1),
49/2009
s. 45(1). |
|--|--|

- (a) in the case of a natural person, the infringement penalty specified in column A of the Schedule for that infringement offence;
- (b) in the case of a body corporate, the infringement penalty specified in column B of the Schedule for that infringement offence.

S. 38(1A)
inserted by
No. 45/2005
s. 19(1),
repealed by
No. 32/2006
s. 94(Sch.
item 47(1)),
new s. 38(1A)
inserted by
No. 49/2009
s. 45(2).

- (1A) A police member may serve an infringement notice on a person if the police member has reason to believe that the person has committed an offence against section 5S.

S. 38(1B)
inserted by
No. 49/2009
s. 45(2).

- (1B) The infringement penalty for an offence against section 5S is 2 penalty units.

S. 38(2)
amended by
No. 43/2000
s. 16(2)(a),
substituted by
Nos 45/2005
s. 19(1),
32/2006
s. 94(Sch.
item 47(2)),
amended by
No. 49/2009
s. 45(3).

- (2) An offence referred to in subsection (1) or (1A) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 38(3)
substituted by
No. 32/2006
s. 94(Sch.
item 47(3)),
amended by
No. 49/2009
s. 45(4).

- (3) For the purposes of subsections (1) and (1A), an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional prescribed details.

Tobacco Act 1987
No. 81 of 1987
Part 4—Miscellaneous

s. 39

*	*	*	*	*	<p>S. 38(4) amended by Nos 43/2000 s. 16(2)(a), 45/2005 s. 19(2)(a)(i), repealed by No. 32/2006 s. 94(Sch. item 47(4)).</p>
*	*	*	*	*	<p>S. 38(5) amended by Nos 57/1989 s. 3(Sch. item 198(a)(b)), 43/2000 s. 16(2)(a), 45/2005 s. 19(2)(a)(ii), repealed by No. 32/2006 s. 94(Sch. item 47(4)).</p>
*	*	*	*	*	<p>S. 38(6)(7) repealed by No. 32/2006 s. 94(Sch. item 47(4)).</p>
*	*	*	*	*	<p>S. 38(8) repealed by No. 43/2000 s. 16(2)(c).</p>

39 Proceedings

(1) Subject to subsection (1A), proceedings for an offence under this Act or for an infringement referred to in section 38 may be brought by a police member or an inspector.

S. 39(1)
amended by
Nos 43/2000
s. 16(3),
45/2005
s. 19(2)(b)(i),
49/2009
s. 46(1).

(1A) Proceedings for an offence under Division 1A of Part 2 may not be brought by an inspector.

S. 39(1A)
inserted by
No. 49/2009
s. 46(2).

s. 40

S. 39(2)
amended by
No. 28/2001
s. 15(1).

S. 39(3)
inserted by
No. 28/2001
s. 15(2),
repealed by
No. 45/2005
s. 19(2)(b)(ii).

(2) Proceedings shall not be brought for an offence under section 9 without the consent in writing of the Minister.

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40 Application of penalties

S. 40(2)
amended by
No. 43/2000
s. 17.

(1) Except as provided in subsection (2) penalties under this Act form part of and must be paid into the Consolidated Fund.

(2) Penalties under this Act in respect of proceedings brought by or on behalf of the council of a municipality or in respect of infringement notices served by an inspector who is an environmental health officer of a council or who is employed by, or provides services to, a council are payable to the municipal fund of that council.

41 Offences by a body corporate

S. 41
amended by
No. 45/2005
s. 19(3) (ILA
s. 39B(1)),
substituted by
No. 49/2009
s. 47.

(1) If a body corporate contravenes any provision of this Act, each officer (within the meaning of section 9 of the Corporations Act) of the body corporate who knowingly authorised or permitted the contravention is taken to have contravened the same provision.

(2) Subsection (1) does not apply to an offence against section 6(2D), 7(5), 8(3), 9(5), 13A(2A), 15M(1) or 15S(2).

(3) A person may be proceeded against and convicted under a provision in accordance with subsection (1), whether or not the body corporate has been proceeded against or convicted under that provision.

- (4) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

41AA Conduct by officers, employees or agents

S. 41AA
inserted by
No. 49/2009
s. 48.

- (1) For the purposes of any proceedings under this Act, any conduct engaged in on behalf of a body corporate is deemed to have been engaged in also by the body corporate if the conduct was engaged in by an employee, agent or officer (within the meaning of section 9 of the Corporations Act) of the body corporate within the scope of the actual or apparent authority of the employee, agent or officer.
- (2) If, in any proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an officer of the body corporate within the scope of the officer's actual or apparent authority and the officer had that state of mind; or
 - (b) that the conduct was engaged in by an agent of the body corporate and—
 - (i) the agent acted at the specific direction or with the specific consent or agreement of the body corporate; or
 - (ii) the agent had that state of mind; or
 - (iii) the body corporate was aware of the agent's state of mind when the conduct was engaged in.
- (3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

s. 41A

S. 41A
inserted by
No. 31/2002
s. 11.

41A No double jeopardy

If an act or omission constitutes more than one offence against this Act, the offender is liable to be prosecuted for any or all of those offences but is not liable to be punished more than once for the same act or omission.

42 Civil proceedings

An action does not lie against a person for the failure or refusal to do anything that would constitute an offence against this Act.

S. 42AA
inserted by
No. 31/2002
s. 12,
amended by
No. 114/2003
s. 12.1.3(Sch. 6
item 13.3
(a)-(h)),
repealed by
No. 45/2005
s. 25(e).

* * * * *

S. 42A
inserted by
No. 43/2000
s. 18.

42A Power to require names of persons supplied with tobacco

S. 42A(1)
substituted by
No. 49/2009
s. 49(1).

- (1) The Secretary may, in writing addressed to a person who manufactures tobacco products or sells tobacco products by wholesale, require the person to provide to the Secretary within a reasonable period, being not less than one month after the requirement is made—
 - (a) the names and addresses of persons carrying on a tobacco retailing business in Victoria to whom the person has supplied tobacco products in Victoria within the preceding 12 months; and

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- (b) the addresses of retail outlets in Victoria that the person knows—
- (i) sell tobacco products manufactured by the person; or
 - (ii) sell tobacco products purchased at wholesale from the person, whether directly or indirectly.
- (1A) Information provided to the Secretary in response to a request under subsection (1) must be in or to the effect of the form (including electronic form) approved by the Secretary.
- (2) If a person to whom a requirement under subsection (1) is addressed refuses or fails to respond or provides information that the person knows to be false or misleading in any material particular, the person is guilty of an offence.
- Penalty: In the case of a natural person,
60 penalty units;
- In the case of a body corporate,
300 penalty units.
- (3) The Secretary must not give to any other person, whether directly or indirectly, any information acquired by the Secretary under this section except to the extent necessary to enable an inspector to carry out functions under this Act.
- Penalty: 60 penalty units.
- (4) Subsection (3) does not apply to the giving of information—
- (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) with the written authority of the person to whom the information relates.

S. 42A(1A)
inserted by
No. 49/2009
s. 49(1).

S. 42A(2)
amended by
No. 49/2009
s. 49(2).

s. 42B

S. 42B
inserted by
No. 43/2000
s. 19,
amended by
No. 28/2001
s. 16 (ILA
s. 39B(1)).

42B Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 42, as it has effect on and after the commencement of section 19 of the **Tobacco (Amendment) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 42, as it has effect immediately after the commencement of each of the amendments made to this Act by the **Tobacco (Further Amendment) Act 2001**, to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of section 42, as it has effect on and after the commencement of sections 8 and 9 of the **Tobacco (Miscellaneous Amendments) Act 2002**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 42B(2)
inserted by
No. 28/2001
s. 16.

S. 42B(3)
inserted by
No. 31/2002
s. 13.

43 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) the labelling of packages containing tobacco including the position of labels on packets and the size, colour, style and nature of labels or labelling; and
 - (aa) specifying the method or methods by which average yields of tar, nicotine and carbon monoxide of tobacco in a package are to be determined if a label is required to disclose those yields; and
 - (b) prescribing statements or warnings for the purpose of labelling packages; and
 - (c) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

S. 43(1)(aa)
inserted by
No. 83/1993
s. 5.

-
- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may apply, adopt or incorporate (with or without modification) any matter contained in an Act of the Commonwealth or in an instrument made under such an Act as in force from time to time.
- (3) The regulations are subject to disallowance by a House of the Parliament.
- (4) This section authorises the prescribing by regulation of the matters contained in the Health (Tobacco Warning Labels) Regulations 1986 and those Regulations have effect as if they had been made under this section.
-

S. 43(3)
substituted by
No. 43/2000
s. 22(4).

New Pt 5
(Heading and
ss 44, 45)
inserted by
No. 43/2000
s. 20.

PART 5—TRANSITIONAL

New s. 44
inserted by
No. 43/2000
s. 20.

44 Proceedings under section 6(2)

Despite the repeal of subsection (1) of section 37 by section 16 of the **Tobacco (Amendment) Act 2000**, that subsection, as in force immediately before the commencement of that section, continues to apply in respect of an offence committed before that commencement if a notice under that subsection in respect of that offence was given before that commencement.

New s. 45
inserted by
No. 43/2000
s. 20.

45 Section 15D

A reference in section 15D to an offence does not include a reference to an offence committed before the commencement of section 14 of the **Tobacco (Amendment) Act 2000**.

Pt 5
(Heading)
repealed by
No. 94/1997
s. 21(4).

* * * * *

S. 44
repealed by
No. 94/1997
s. 21(4).

* * * * *

S. 45
repealed by
No. 83/1993
s. 6.

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S. 46
repealed by
No. 83/1993
s. 6, new s. 46
inserted by
No. 49/2009
s. 50.

46 Section 3: definition of *occupier*

- (1) The definition of *occupier* inserted in section 3 by section 8(2) of the **Tobacco Amendment (Protection of Children) Act 2009** applies to—

-
- (a) offences alleged to have been committed;
and
- (b) the exercise of powers under Part 3A—
on or after 1 January 2010.
- (2) For the purposes of subsection (1), if an offence is
alleged to have been committed between 2 dates
of which one is before and one is on or after
1 January 2010, the offence is alleged to have
been committed before 1 January 2010.
-

Sch.

Sch.
substituted by
No. 43/2000
s. 21,
amended by
Nos 28/2001
s. 17(1)(2),
31/2002
s. 14(a)-(c),
substituted by
No. 45/2005
s. 20,
amended by
No. 45/2005
s. 25(f),
substituted by
No. 49/2009
s. 51.

SCHEDULE

Section 38

INFRINGEMENT OFFENCES

<i>Item</i>	<i>Infringement offence</i>	<i>Column A</i>	<i>Column B</i>
		<i>Infringement penalty (natural person)</i>	<i>Infringement penalty (body corporate)</i>
1	An offence against section 5A(1)	1 penalty unit	Not applicable
2	An offence against section 5B(1)	2 penalty units	Not applicable
3	An offence against section 5C(1)	1 penalty unit	Not applicable
4	An offence against section 5D(1)	2 penalty units	Not applicable
5	An offence against section 5E(1)	2 penalty units	5 penalty units
6	An offence against section 5F(1)	2 penalty units	5 penalty units
7	An offence against section 5G(1)	2 penalty units	5 penalty units
8	An offence against section 5H(1)	2 penalty units	5 penalty units
9	An offence against section 5K(1)	2 penalty units	5 penalty units
10	An offence against section 5N(1)	2 penalty units	5 penalty units
11	An offence against section 5R(1)	2 penalty units	5 penalty units
12	An offence against section 6(2AA)	3 penalty units	30 penalty units
13	An offence against section 6(2A)	3 penalty units	30 penalty units

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<i>Item</i>	<i>Infringement offence</i>	<i>Column A</i>	<i>Column B</i>
		<i>Infringement penalty (natural person)</i>	<i>Infringement penalty (body corporate)</i>
14	An offence against section 6(2B)	3 penalty units	30 penalty units
15	An offence against section 12(1)	4 penalty units	60 penalty units
16	An offence against section 12(2)	2 penalty units	12 penalty units
17	An offence against section 12(3)	3 penalty units	30 penalty units
18	An offence against section 13(1)	3 penalty units	30 penalty units
19	An offence against section 13A(1)	4 penalty units	Not applicable
20	An offence against section 13A(2)	4 penalty units	60 penalty units
21	An offence against section 14	3 penalty units	60 penalty units
22	An offence against section 15C(1)	2 penalty units	5 penalty units
23	An offence against section 15C(3)	2 penalty units	5 penalty units
24	An offence against section 15F(1)	1 penalty unit	Not applicable
25	An offence against section 15G(1)	2 penalty units	Not applicable
26	An offence against section 15H(1)	2 penalty units	5 penalty units
27	An offence against section 15I(1)	3 penalty units	30 penalty units
28	An offence against section 15J	3 penalty units	30 penalty units
29	An offence against section 15L(1)	3 penalty units	30 penalty units

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		<i>Column A</i>	<i>Column B</i>
<i>Item</i>	<i>Infringement offence</i>	<i>Infringement penalty (natural person)</i>	<i>Infringement penalty (body corporate)</i>
30	An offence against section 15L(2)	3 penalty units	30 penalty units
31	An offence against section 15S(1)	4 penalty units	60 penalty units
32	An offence against section 15ZB	1 penalty unit	5 penalty units
33	An offence against section 36C(3)	1 penalty unit	Not applicable

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 7 October 1987

Legislative Council: 30 October 1987

Long title

The long title for the Bill for this Act was "A Bill to provide for the regulation of the sale and promotion of tobacco products and for other purposes."

The **Tobacco Act 1987** was assented to on 24 November 1987 and came into operation as follows:

Sections 6(1)(3), 13, 15 on 1 April 1988: section 2(2); section 6(2) on 1 January 1989: section 2(4); section 14 on 1 July 1988: section 2(3); rest of Act on 24 November 1987: section 2(1).

2. Table of Amendments

This Version incorporates amendments made to the **Tobacco Act 1987** by Acts and subordinate instruments.

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Tobacco (Amendment) Act 1993, No. 83/1993

Assent Date: 3.11.93
Commencement Date: Ss 1–3, 5, 6 on 3.11.93; s. 4 on 1.1.94: s. 2(2)
Current State: All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 20(12) on 7.12.93: s. 2(4)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 90) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 41 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Gaming No. 2 Act 1997, No. 16/1997

Assent Date: 6.5.97
Commencement Date: S. 120 on 31.3.98: s. 2(4)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Business Franchise Fees (Safety Net) Act 1997, No. 94/1997

Assent Date: 16.12.97
Commencement Date: S. 21 on 16.12.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Printers and Newspapers (Repeal) Act 1998, No. 56/1998

Assent Date: 13.10.98
Commencement Date: S. 5(2) on 19.11.98: Government Gazette 19.11.98 p. 2792
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco (Amendment) Act 2000, No. 43/2000 (as amended by No. 28/2001)

Assent Date: 6.6.00
Commencement Date: Ss 4–6, 7(2), 11, 12, 13(2), 14, 15, 16(1)(a)(c)(d)(2)(3), 17–22 on 1.11.00: s. 2(2); ss 7(1), 13(1)(3) on 1.7.01: s. 2(3); ss 8–10, 16(1)(b) on 1.1.02: s. 2(4)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 76) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco (Further Amendment) Act 2001, No. 28/2001

Assent Date: 12.6.01
Commencement Date: S. 16 on 13.6.01: s. 2(1); s. 8 on 1.7.01: s. 2(2); ss 7, 9, 10, 12, 15, 17(2) on 1.10.01: s. 2(3); ss 3(2), 4–6, 11 on 1.11.01: s. 2(4); ss 3(1), 13, 14, 17(1) on 1.1.02: s. 2(5)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco (Miscellaneous Amendments) Act 2002, No. 31/2002

Assent Date: 12.6.02
Commencement Date: Ss 4(3), 5, 12 on 13.6.02: s. 2(1); ss 4(1)(2), 6–11, 13, 14 on 1.9.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Gambling Regulation Act 2003, No. 114/2003

Assent Date: 16.12.03
Commencement Date: S. 12.1.3(Sch. 6 item 13) on 1.7.04: Government Gazette 1.7.04 p. 1843
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

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Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 204) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco (Amendment) Act 2005, No. 45/2005

Assent Date: 16.8.05
Commencement Date: Ss 3–20 on 1.3.06: s. 2(1); ss 21–25 on 1.7.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 47) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 9) on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 101) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 291 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco Amendment (Protection of Children) Act 2009, No. 49/2009

Assent Date: 18.8.09
Commencement Date: Ss 7–51 on 1.1.10: s. 2(1)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 120) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

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Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10

Commencement Date: S. 73 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1

Current State: This information relates only to the provision/s
amending the **Tobacco Act 1987**

Endnotes

3. Explanatory Details

No entries at date of publication.