



TOBACCO PRODUCTS REGULATION ACT 1997

No. 26 of 1997

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ANNO QUADRAGESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1997

No. 26 of 1997

An Act to regulate the sale, packing, importing, advertising and use of tobacco products; to recover from consumers of tobacco products an appropriate contribution towards the State's revenues; to continue the South Australian Sports Promotion, Cultural and Health Advancement Trust and prescribe its functions and powers; to repeal the Tobacco Products Control Act 1986 and the Tobacco Products (Licensing) Act 1986; and for other purposes.

[Assented to 10 April 1997]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Tobacco Products Regulation Act 1997*.

Commencement

2. (1) This Act (other than section 47) will come into operation on a day to be fixed by proclamation.

(2) Section 47 will come into operation on the first Monday in January 1999.

Objects of Act

3. In recognition of the fact that the consumption of tobacco products impairs the health of the citizens of the State and places a substantial burden on the State's financial resources, the objects of this Act are—

(a) to create an economic disincentive to consumption of tobacco products and secure from consumers of tobacco products an appropriate contribution to State revenues (irrespective of the source of the tobacco products) by a scheme under which—

(i) licence fees will be payable by consumers who take out consumption licences; but

- (ii) tobacco merchants who choose to pay *ad valorem* licence fees will free consumers from the licensing requirement for the consumption of tobacco products obtained through the merchants; and
- (b) to reduce the incidence of smoking and other consumption of tobacco products in the population, especially young people—
 - (i) by requiring health warnings to be displayed on tobacco products and otherwise disseminating information about the harmful effects of tobacco consumption;
 - (ii) by prohibiting the supply of tobacco products to children;
 - (iii) by encouraging non-smokers, especially young people, not to start smoking and encouraging and assisting smokers to give up smoking;
 - (iv) by prohibiting or limiting advertising, sponsorships and other practices designed to promote or publicise tobacco products and their consumption;
 - (v) by providing funds to sporting or cultural bodies in place of funds that they might otherwise have received through tobacco advertising and sponsorships; and
- (c) to protect non-smokers from unwanted and unreasonable exposure to tobacco smoke; and
- (d) generally, to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"act" includes an omission; and "to act" has a corresponding meaning;

"authorised officer" means an authorised officer under Part 5;

"child" means a person under the age of 18 years;

"Commissioner" means the person for the time being holding or acting in the position of the Commissioner of State Taxation or a position of Deputy Commissioner of State Taxation and any other person performing any of the duties or functions of the Commissioner of State Taxation or a Deputy Commissioner of State Taxation;

"consume", in relation to a tobacco product, means—

- (a) smoke; or
- (b) inhale (in the form of a powder); or
- (c) chew or suck; or
- (d) give away,

and "consumer" has a corresponding meaning;

"**corresponding law**" means a law of the Commonwealth or another State or a Territory of the Commonwealth declared by regulation to be a law corresponding to this Act;

"**entertainment**" means—

- (a) all kinds of live entertainment including a lecture, talk or debate; or
- (b) the screening of a film, a video tape or any other optical or electronic record;

"**fund**" means the *Sports Promotion, Cultural and Health Advancement Fund* continued under Part 4;

"**grant**" includes renewal; and "**to grant**" includes to renew;

"**health warning**", in relation to a tobacco product, means a warning prescribed by regulation (or by direction of the Minister for Health under the regulations) for the purposes of this Act in relation to tobacco products of that class;

"**label**" includes information that is enclosed in or attached to or is provided with a package containing tobacco products but that does not comprise part of the package; and "**labelling**" and "**labelled**" have a corresponding meaning;

"**place of public entertainment**" means a building, tent or other structure in which entertainment is provided for the benefit of members of the public and in which the audience is seated in rows;

"**premises**" means—

- (a) any land, building or structure; or
- (b) any vehicle;

"**public**" area or place means an area or place that the public, or a section of the public, is entitled to use or that is open to, or is used by, the public or a section of the public (whether access is unrestricted or subject to payment of money, membership of a body or otherwise);

"**purchase**" of tobacco products includes receipt of tobacco products in the course of a business (whether or not for valuable consideration);

"**record**" includes any book, document or writing and any other source of information compiled, recorded or stored by computer, microfilm or other process, or in any other manner or by any other means;

"**relevant period**", in relation to the grant of a tobacco merchant's licence, means the calendar month ending one calendar month before the commencement of the calendar month for which the licence is, or is to be, granted;

"**retail**" connotes a sale to a consumer or an agent for a consumer;

"**sell**" includes supply in the course of a business (whether or not for valuable consideration), and "**sale**" has a corresponding meaning;

"**smoke**" means smoke, hold, or otherwise have control over, an ignited tobacco product;

"sponsorship" includes a scholarship, prize, gift or other benefit;

"sucking tobacco" means tobacco that has been prepared for sucking but not chewing;

"tobacco advertisement" means any writing, still or moving picture, sign, symbol or other visual image or message designed to promote or publicise—

- (a) the purchase or use of a tobacco product; or
- (b) a trademark or brand name, or part of a trademark or brand name, of a tobacco product;

"tobacco merchandising" includes—

- (a) the processing of tobacco for sale; and
- (b) the packaging of tobacco products for sale; and
- (c) the possession or storage of tobacco products for or prior to sale; and
- (d) the distribution of tobacco products; and
- (e) the sale or purchase of tobacco products by wholesale or the sale of tobacco products by retail;

"tobacco merchant" means a person who engages in tobacco merchandising;

"tobacco product" means—

- (a) a cigarette; or
- (b) a cigar; or
- (c) cigarette or pipe tobacco; or
- (d) tobacco prepared for chewing or sucking; or
- (e) snuff; or
- (f) any other product containing tobacco of a kind prescribed by regulation,

and includes any packet, carton, shipper or other device in which any of the above is contained;

"Trust" means the *South Australian Sports Promotion, Cultural and Health Advancement Trust* continued under Part 4;

"vehicle" includes any kind of aircraft or vessel;

"vending machine" means a device from which a tobacco product can be obtained by the insertion of a coin, banknote or token;

"wholesale" connotes a sale to a tobacco merchant for re-sale.

(2) A health warning may comprise two or more parts and the term "health warning" includes all the parts of such a warning unless the contrary intention appears.

Application of Act

5. (1) This Act applies to tobacco merchants—

(a) who carry on business in the State; or

(b) who carry on business outside the State and in the course of that business dispatch tobacco products to purchasers in the State.

(2) If a tobacco merchant does not carry on business in the State, this Act applies to the merchant as if the sale and dispatch of tobacco products to purchasers in the State constituted the merchant's sole business.

PART 2
LICENCES

DIVISION 1—PRELIMINARY

Interpretation—Certain transactions not sale or purchase

6. (1) If a person returns tobacco products purchased by wholesale or retail from a licensed tobacco merchant to the licensed tobacco merchant, the return of the products and the preceding sale will not be taken to be a sale or purchase of tobacco products for the purposes of this Part.

(2) If a person returns tobacco products purchased by wholesale or retail from a licensed tobacco merchant to the manufacturer or distributor of the products and the manufacturer or distributor replaces them with the same or an equivalent quantity of tobacco products of the same or a similar kind (but of the same prescribed category), the return of the products and the supply of the new products will not be taken to be a sale or purchase of tobacco products for the purposes of this Part.

Interpretation—Tobacco product categories and prescribed percentages for licence fee calculation

7. (1) The following are prescribed categories of tobacco products for the purposes of this Part:

- (a) category A tobacco products—tobacco products contained in packages that are required under the *Trade Practices Act 1974* of the Commonwealth as in force from time to time to bear a statement of average tar content where the number of milligrams so required to be included in the statement as to average tar content is 1, 2 or 4;
- (b) category B tobacco products—tobacco products contained in packages that are required under the *Trade Practices Act 1974* of the Commonwealth as in force from time to time to bear a statement of average tar content where the number of milligrams so required to be included in the statement as to average tar content is 8;
- (c) category C tobacco products—tobacco products contained in packages that are required under the *Trade Practices Act 1974* of the Commonwealth as in force from time to time to bear a statement of average tar content where the number of milligrams so required to be included in the statement as to average tar content is 12, 16 or a greater number;
- (d) category D tobacco products—any other tobacco products.

(2) In this Part—

"prescribed percentage" means—

- (a) in relation to a category A tobacco product—100 per cent; or
- (b) in relation to a category B tobacco product—102 per cent; or
- (c) in relation to a category C or category D tobacco product—105 per cent.

Grouping of tobacco merchants

8. (1) Subject to this section, if a tobacco merchant is an associate of another tobacco merchant or other tobacco merchants, those tobacco merchants are, for the purposes of this Part, a group of tobacco merchants.

(2) For the purposes of this Part, two persons are associates of each other if—

- (a) they are corporations that are related to each other for the purposes of the *Corporations Law*; or
- (b) they have common employees or the employees of one provide services for the other; or
- (c) one is a body corporate and the other is a director or substantial shareholder of the body corporate; or
- (d) they are in partnership; or
- (e) one is an agent of the other; or
- (f) they are both trustees or beneficiaries of the same trust or one is a trustee and the other is a beneficiary of the same trust; or
- (g) there is an agreement, arrangement or understanding under which—
 - (i) one acts in accordance with the directions, instructions or wishes of the other; or
 - (ii) they act in accordance with a pre-arranged pattern; or
- (h) a chain of associations can (by applying any one or more of the above provisions) be traced between them through another person or other persons.

(3) A tobacco merchant that holds a restricted licence will not, while the condition of the licence is observed, be regarded as a member of a group of tobacco merchants.

(4) The Commissioner may, if satisfied that a member of a group of tobacco merchants will carry on business in substantial independence from the other member or members of the group, determine that the tobacco merchant will not be regarded as a member of the group.

(5) While a determination is in force under subsection (4), the tobacco merchant will not be regarded as a member of the group.

(6) The Commissioner may, by notice in writing to the tobacco merchant, revoke a determination under subsection (4).

(7) In this section—

"beneficiary" includes a person—

- (a) who is an object of a discretionary trust; or
- (b) who will take or acquire an interest in default of an appointment under a discretionary trust;

"substantial shareholder" in relation to a body corporate means—

- (a) a person who is in a position to control or substantially influence the decisions taken at a general meeting of the body corporate; or

- (b) a person who is a member of a group that is in a position to control or substantially influence decisions taken at a general meeting of the body corporate.

DIVISION 2—CONSUMPTION LICENCES

Unlawful consumption of tobacco products

9. (1) Subject to this section, a person must not consume a tobacco product unless—

- (a) that person holds a consumption licence; or
- (b) the tobacco product was obtained from the holder of a class A tobacco merchant's licence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) This section does not prevent a person from consuming a tobacco product if—

- (a) the person obtained the tobacco product, while outside the State, for personal consumption; or
- (b) the person obtained the tobacco product as a gift from a person who is neither a tobacco merchant nor an associate of a tobacco merchant.

Consumption licences

10. (1) A consumption licence may be granted for a term of 3 months, 6 months or 12 months.

(2) The fee for a consumption licence is—

- (a) if granted for a 3 month term—\$500;
- (b) if granted for a 6 month term—\$1 000;
- (c) if granted for a 12 month term—\$2 000.

(3) An application for a consumption licence—

- (a) must be made in writing to the Minister; and
- (b) must contain—
- (i) the applicant's name and address; and
- (ii) a statement, signed by the applicant, to the effect that the applicant is of or over the age of 18 years; and
- (c) must be accompanied by the appropriate fee.

(4) If an application for a consumption licence is made in accordance with subsection (3), the Minister must (unless the Minister has reason to doubt the veracity of the declaration as to the applicant's age) grant a licence to the applicant.

(5) A consumption licence must contain a warning in a form approved by the Minister for Health against the dangers of smoking.

DIVISION 3—TOBACCO MERCHANTS' LICENCES

Requirement for licence

11. (1) A person must not carry on the business of tobacco merchandising unless the person holds a tobacco merchant's licence.

Maximum penalty: \$20 000.

(2) If a tobacco merchant is a member of a group, a tobacco merchant's licence cannot be held by a member of the group independently of the other members of the group but must be held on behalf of all members of the group.

(3) Where a tobacco merchant's licence is held on behalf of a group of tobacco merchants, each member of the group is a licensed tobacco merchant.

Classes and terms of licences

12. (1) Tobacco merchants' licences are divided into the following classes for the purposes of this Part:

(a) class A licences—

- (i) unrestricted class A licences—licences that are not subject to any condition; and
- (ii) restricted class A licences—licences that are subject to a condition that the licensee must not, during the period for which the licence remains in force—
 - (A) sell tobacco products except tobacco products purchased from the holder of a class A licence; or
 - (B) purchase tobacco products for sale except from the holder of a class A licence,

being tobacco products in respect of which a licence fee has been paid under this Division;

(b) class B licences—licences that are subject to a condition that the licensee must not, during the period for which the licence remains in force, sell tobacco products by retail without obtaining from the purchaser a declaration in the form set out in form 1 or form 2 of schedule 1 before the purchaser leaves the licensee's premises or, if the tobacco product is not taken by the purchaser from the premises, before it is dispatched to the purchaser.

(2) A restricted class A licence or a class B licence will not be granted to an applicant for a tobacco merchant's licence unless the applicant applies for such a licence.

(3) If the condition of a licence is not observed—

(a) the licensee is guilty of an offence and liable to a fine not exceeding \$20 000; and

- (b) in the case of a restricted class A licence, the licence fee for each month in which the condition is not observed will be reassessed by the Commissioner as if the licence were an unrestricted class A licence and the relevant period were that month.

(4) Subject to this section, a tobacco merchant's licence will be granted for a term of one calendar month.

(5) If a tobacco merchant's licence is granted after the commencement of a calendar month—

- (a) the licence will expire at the end of the month; and
- (b) the licence will, if the Minister so determines, operate retrospectively from the first day of the month.

(6) The Minister may, at the Minister's discretion, grant a restricted class A licence or a class B licence on the basis that the licence will be automatically renewed, without further application by the tobacco merchant, up to a total period (not exceeding 12 months) specified in the licence.

(7) A licensed tobacco merchant may surrender the licence to the Minister at any time.

Application for tobacco merchant's licence

13. (1) An application for a tobacco merchant's licence—

- (a) must be made in writing to the Minister; and
- (b) must contain the applicant's name and, if the applicant is a member of a group, the names of all tobacco merchants in the group; and
- (c) must state—
- (i) the address or addresses of the premises from which the tobacco merchant carries or proposes to carry on business; and
- (ii) if the tobacco merchant is a member of a group—the address or addresses of premises from which other members of the group carry on business; and
- (d) must contain any further statements or declarations required by the Minister.

(2) An application for an unrestricted class A licence must state the following:

- (a) —
- (i) in the case of an applicant who is not a member of a group—the aggregate value of tobacco products of each prescribed category (not being tobacco products purchased from the holder of a class A tobacco merchant's licence) sold by the merchant during the relevant period; or
- (ii) in the case of an applicant who is a member of a group—the aggregate value of tobacco products of each prescribed category (not being tobacco products purchased from the holder of a class A tobacco merchant's licence) sold by members of the group during the relevant period; and

- (b) whether the applicant sold tobacco products for delivery and consumption outside the State during the relevant period, and if so—
- (i) the value of the tobacco products of each prescribed category so sold; and
 - (ii) the names and addresses of the persons to whom those tobacco products were sold.

(3) An application for a restricted class A licence must contain—

- (a) a declaration that during the period of two months preceding the date of the application the applicant has not sold tobacco products other than tobacco products purchased from the holder of a class A tobacco merchant's licence; and
- (b) a declaration that the applicant does not intend to sell tobacco products other than tobacco products purchased from the holder of a class A tobacco merchant's licence.

(4) An application for a class B licence must contain a declaration that the applicant does not intend to sell tobacco products by retail without obtaining from the purchaser a declaration in the form set out in form 1 or form 2 of schedule 1 before the purchaser leaves the applicant's premises or, if the tobacco product is not taken by the purchaser from the premises, before it is dispatched to the purchaser.

(5) The Minister may refuse to grant a tobacco merchant's licence if satisfied that the applicant or any associate of the applicant has contravened this Act or a corresponding law or is not for any reason a fit and proper person.

Cancellation or suspension of licence

14. The Minister may, by written notice to the holder of a tobacco merchant's licence, suspend or cancel the licence if satisfied that the licensee or an associate of the licensee has contravened this Act or a corresponding law or is not or is no longer for any reason a fit and proper person.

Licence fees

15. (1) Subject to this section, the fee for an unrestricted class A tobacco merchant's licence is—

- (a) if the tobacco merchant is not a member of a group—\$2 plus—
 - (i) the prescribed percentage of the aggregate value of tobacco products of each prescribed category (not being tobacco products purchased from the holder of a class A tobacco merchant's licence) sold by the merchant to the holder of a class A tobacco merchant's licence during the relevant period; and
 - (ii) a percentage equal to the prescribed percentage plus 5 per cent of the aggregate value of tobacco products of each prescribed category (not being tobacco products purchased from the holder of a class A tobacco merchant's licence) sold by the merchant otherwise than to the holder of a class A tobacco merchant's licence during the relevant period;
- (b) if the tobacco merchant is a member of a group—\$2 plus—

- (i) the prescribed percentage of the aggregate value of tobacco products of each prescribed category (not being tobacco products purchased from the holder of a class A tobacco merchant's licence) sold by the members of the group to the holder of a class A tobacco merchant's licence during the relevant period; and
- (ii) a percentage equal to the prescribed percentage plus 5 per cent of the aggregate value of tobacco products of each prescribed category (not being tobacco products purchased from the holder of a class A tobacco merchant's licence) sold by the members of the group otherwise than to the holder of a class A tobacco merchant's licence during the relevant period.

(2) The fee for a restricted class A licence or a class B licence is \$2 multiplied by the number of months in the period for which the licence is to be in force or \$10 whichever is the lesser (but this fee is, in the case of a restricted class A licence, subject to reassessment if the condition of the licence is not observed).

(3) Licence fees for tobacco merchants' licences will be assessed by the Commissioner.

(4) If an applicant for an unrestricted class A tobacco merchant's licence did not carry on business during the relevant period, or part of the relevant period, the Commissioner may assess a licence fee on the basis of—

- (a) the Commissioner's estimates of the scale of the business that would have been carried on by the applicant during the relevant period or that part of the relevant period if the applicant had then carried on business; and
- (b) assumptions by the Commissioner as to the nature of that business.

(5) If the information for assessing a licence fee is incomplete, the Commissioner may supply the deficiency by making any estimate or assumption that appears reasonable in the circumstances.

(6) The value of tobacco products that the Commissioner is satisfied have been sold for delivery and consumption outside the State will be disregarded in assessing licence fees under this section.

(7) If a tobacco merchant deals in tobacco products directly imported by the merchant from outside Australia, then, for the purpose of assessing licence fees, sales of tobacco products by that tobacco merchant will, if the Commissioner so determines, be treated as if made to the holder of a class A tobacco merchant's licence (whether actually so made or not).

(8) If the Commissioner determines that this subsection should apply in relation to a particular holder of a class A tobacco merchant's licence, then—

- (a) sales of tobacco products to that tobacco merchant by any other holder of such a licence will be disregarded in assessing the vendor's licence fee; but
- (b) the purchaser's licence fee will be assessed as if those tobacco products had not been purchased from the holder of such a licence.

(9) A licence fee is payable by the person to whom the licence is or is to be issued and, if that person is a member of a group of tobacco merchants, the members of the group are jointly and severally liable to pay the fee.

(10) A licence fee must be paid before the issue of the licence, but the Commissioner may grant an extension of time for payment of a licence fee, or permit payment of a licence fee to be made by instalments.

Valuation of tobacco products

16. (1) The Minister may, by notice in the *Gazette*—

- (a) set out values for, or a basis for valuing, tobacco products;
- (b) vary or revoke any such notice previously published.

(2) A notice under subsection (1)—

- (a) may set out values for, or a basis for valuing, tobacco products by reference to a specified document as published or in force at a specified time, or as published or in force from time to time; and
- (b) may confer a discretionary power on the Commissioner to determine values for tobacco products in specified circumstances.

(3) While such a notice is in force, the tobacco products will, for the purposes of assessing licence fees, be valued in accordance with the notice.

Reassessment of licence fee

17. (1) The Commissioner may at any time reassess or further reassess a licence fee assessed under this Division if—

- (a) it appears that—
 - (i) an error was made in the original assessment or a previous reassessment; or
 - (ii) the information, or an estimate or assumption, on which the original assessment or a previous reassessment was based is erroneous or incomplete; or
- (b) it is appropriate on account of amendments effected to this Act.

(2) If the fee is increased on reassessment, the Commissioner may recover as a debt due to the Crown, in a court of competent jurisdiction, the amount by which the fee is increased from the person to whom the licence was issued or, if that person was a member of a group of tobacco merchants, from any member or members of the group.

DIVISION 4—REVIEWS AND APPEALS

Reviews

18. (1) A person who is dissatisfied with a decision of the Minister or the Commissioner under this Part may—

- (a) in the case of a decision of the Minister—apply to the Minister for a review of the decision;
- (b) in the case of a decision of the Commissioner—apply to the Commissioner for a review of the decision.

(2) An application for review—

- (a) must be made within one month after the applicant received notice of the decision to which the application relates; and
- (b) must set out in detail the grounds on which the applicant seeks the review.

(3) An application for review of an assessment or reassessment by the Commissioner of a licence fee for a tobacco merchant's licence may only be made if the licence fee as assessed or reassessed by the Commissioner has been paid.

(4) If an application is made under subsection (1), the Minister or the Commissioner must review the decision to which the application relates.

(5) On a review the Minister or the Commissioner may—

- (a) confirm or vary the decision under review; or
- (b) quash the decision and substitute for it a decision that should, in the Minister's or the Commissioner's opinion, have been made in the first instance.

(6) The Minister or the Commissioner must inform the applicant in writing of the result of the review.

Appeals

19. (1) A person who is dissatisfied with a decision taken by the Minister or the Commissioner on a review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.

(2) The Court may, in exercising its jurisdiction under this section, be constituted of a Magistrate.

(3) Subject to subsection (4), an appeal must be instituted within one month of receipt of notice of the Minister's or the Commissioner's decision.

(4) The Court may dispense with the requirement in subsection (3) if satisfied that it is just and reasonable in the circumstances of the case to do so.

(5) The Court may, on the hearing of an appeal—

- (a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks appropriate; and
- (b) make an order as to any other matter that the case requires (including an order for costs).

DIVISION 5—MISCELLANEOUS

Refunds

20. If a licence fee is reduced on reassessment under Division 3 or on a review or appeal under Division 4, the amount overpaid must be refunded by the Commissioner and the Consolidated Account is appropriated accordingly.

Returns by class B licensees

21. The holder of a class B tobacco merchant's licence must, within seven days after the end of each month, send to the Commissioner—

- (a) a return—
 - (i) showing the quantities of tobacco products of each class sold by the tobacco merchant during the month; and
 - (ii) differentiating the quantities referred to above into subclasses by reference to the brand names of the tobacco products; and
 - (iii) containing any other information relating to the sales required under the regulations; and
- (b) all declarations obtained by the merchant during the month.

Maximum penalty: \$20 000.

Declaration by person purchasing from class B licensee

22. A person purchasing a tobacco product by retail from the holder of a class B tobacco merchant's licence who is requested by the holder of the licence, or a person acting on behalf of the holder of the licence, to sign a declaration in the form set out in form 1 or form 2 of schedule 1 and who takes the tobacco product from the tobacco merchant's premises without signing such a declaration is guilty of an offence.

Maximum penalty: \$2 500.

Notice to be displayed for the information of prospective purchasers from class B licensees

23. (1) The holder of a class B tobacco merchant's licence must not engage in tobacco merchandising unless a notice or notices are prominently displayed in the premises used by the merchant for tobacco merchandising so as to ensure (as far as reasonably practicable) that prospective purchasers will, before purchasing tobacco products, or selecting tobacco products for purchase, be made aware—

- (a) that the tobacco merchant is the holder of a class B licence; and
- (b) that purchasers of tobacco products will be required to sign a declaration under this Act; and
- (c) that the tobacco products cannot be lawfully consumed without a consumption licence.

Maximum penalty: \$20 000.

(2) One such notice must be prominently displayed at or near the main entrance to the merchant's premises so as to be clearly legible by members of the public as they enter the premises.

(3) A notice displayed under this section must conform with any requirements of the regulations as to its form or contents.

(4) This section does not apply to premises situated outside the State.

Notice to be given to Commissioner

24. (1) A person must not act as a tobacco merchant within the State unless the person has given notice to the Commissioner in the manner and containing the information prescribed by regulation—

- (a) not more than two months before commencing to so act; and
- (b) at not more than two monthly intervals while continuing to so act.

Maximum penalty: \$20 000.

(2) Subsection (1) does not apply to a person if the person is a licensed tobacco merchant.

Records to be kept by tobacco merchants

25. (1) Subject to subsection (2), a person who engages or has engaged in tobacco merchandising—

- (a) must keep records of his or her dealings in tobacco products in accordance with the regulations; and
- (b) must preserve those records for a period of five years or a lesser period determined by the Commissioner.

Maximum penalty: \$10 000.

(2) Subject to subsection (3), where tobacco products are being transported by a person prior to their sale by retail, the person—

- (a) must keep a record containing the prescribed particulars in the vehicle being used to transport the tobacco products while they are being transported; and
- (b) must preserve those records for a period of five years or a lesser period determined by the Commissioner.

Maximum penalty: \$10 000.

(3) The preservation of a record is not required under this section if the Commissioner notifies the tobacco merchant to that effect.

Invoice to be prepared for sale by wholesale

26. A person selling tobacco products by wholesale must prepare and tender to the purchaser an invoice containing the prescribed particulars in respect of the sale.

Maximum penalty: \$10 000.

Endorsement to be made on wholesale invoices

27. A licensed tobacco merchant who sells tobacco products by wholesale must endorse or cause to be endorsed on every invoice issued by the merchant in relation to such a sale the following statement:

SOLD BY LICENSED TOBACCO MERCHANT—LICENCE No.
licence number).

(here insert the

Maximum penalty: \$10 000.

PART 3
CONTROLS RELATING TO TOBACCO PRODUCTS

Interpretation

28. In this Part—

"sell" has the same meaning as in section 4, and includes offer or expose for such sale, and "sale" has a corresponding meaning.

Application of Part

29. This Part does not apply in relation to anything done by means of a radio or television broadcast.

Sale of tobacco products by retail

30. (1) A person must not sell a tobacco product by retail unless it is enclosed in a package that complies with the regulations and is labelled in accordance with the regulations.

Maximum penalty: \$5 000.

(2) A person must not sell a tobacco product by retail that is enclosed in two or more packages unless each package complies with the regulations and is labelled in accordance with the regulations.

Maximum penalty: \$5 000.

(3) A person must not sell a tobacco product by retail if the package containing the tobacco product is wrapped in a material that is not wholly transparent.

Maximum penalty: \$5 000.

(4) A person must not sell cigarettes by retail in a package containing less than 20.

Maximum penalty: \$5 000.

Importing and packing of tobacco products

31. (1) A person must not import tobacco products that have been packed for sale by retail unless—

- (a) the packages in which the tobacco products are packed comply with the regulations and are labelled in accordance with the regulations; and
- (b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages imported by that person in each financial year.

Maximum penalty: \$5 000.

(2) A person who packs tobacco products for sale by retail must ensure—

- (a) that the packages in which the tobacco products are packed comply with the regulations and are labelled in accordance with the regulations; and

- (b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages packed by that person in each financial year.

Maximum penalty: \$5 000.

(3) Where tobacco products have been packed for sale by retail in two or more packages only the smallest of those packages and the warning it displays will be taken into account when determining the number of packages on which each health warning is displayed.

Tobacco products in relation to which no health warning has been prescribed

32. Despite any other provision of this Act, where no health warning is prescribed by regulation (or by direction of the Minister for Health under the regulations) in relation to a tobacco product of a particular class—

- (a) a tobacco product of that class need not be enclosed in a package; and
- (b) a package that contains a tobacco product of that class need not (provided it does not also contain a tobacco product of a class in relation to which a health warning is prescribed) display a health warning.

Advertisements of tobacco products

33. (1) Subject to subsection (3), a person must not publish, or cause to be published, an advertisement for a tobacco product unless the advertisement incorporates, or appears in conjunction with, a health warning.

Maximum penalty: \$5 000.

(2) The warning must be published in the prescribed manner and form.

(3) The Governor may, by regulation, exclude a class of advertisements from the operation of this section.

Information as to tar, nicotine, etc., content of cigarettes

34. (1) A person who sells cigarettes by retail must, on demand by a customer who is considering purchasing cigarettes, provide the customer with information as to the quantity of tar and carbon monoxide that will be produced, and the quantity of nicotine that will be released, in the normal course of smoking each cigarette.

Maximum penalty: \$5 000.

(2) The information must be provided in writing in a form approved by the South Australian Health Commission.

Maximum penalty: \$750.

Sale of sucking tobacco

35. A person must not sell sucking tobacco by retail.

Maximum penalty: \$5 000.

Sale of confectionery

36. A person must not sell by retail confectionery that is designed to resemble a tobacco product.

Maximum penalty: \$5 000.

Sale of tobacco products by vending machine

37. A person must not sell cigarettes or any other tobacco product by means of a vending machine unless the machine is situated on licensed premises within the meaning of the *Liquor Licensing Act 1985*.

Maximum penalty: \$5 000.

Sale of tobacco products to children

38. (1) A person must not supply, or offer to supply, (whether by sale, gift or any other means) a tobacco product to a child or a person who the supplier knows or has reason to believe will supply the product to a child.

Maximum penalty: \$5 000.

(2) A person must not permit a child to obtain a tobacco product from a vending machine situated on premises that he or she occupies.

Maximum penalty: \$5 000.

(3) It is a defence to a charge of an offence against subsections (1) and (2)—

- (a) to prove that the defendant had reasonable cause to believe that the child was of, or over, the age of 18; or
- (b) where a tobacco product was supplied by means of a vending machine—to prove that the defendant had taken all precautions that were reasonably required to ensure that the tobacco product was not supplied to a child.

(4) A person who sells tobacco products by retail or who occupies premises on which a vending machine that is designed to sell tobacco products is situated must display a notice in the prescribed form setting out the effect of, and the penalty for, an offence against, subsection (1) in a manner and position that is likely to attract the attention of his or her customers or of persons using the machine.

Maximum penalty: \$750.
Expiation fee: \$105.

(5) If a court convicts a person who is not a member of a group of tobacco merchants of an offence against subsection (1) or (2) and the person has previously been convicted of an offence against either of those subsections within the immediately preceding three years—

- (a) the court may disqualify the person from applying for or holding a tobacco merchant's licence during such period (not exceeding six months) as the court orders; or

- (b) if the person supplies tobacco products (including by vending machine) at two or more premises the court may, instead of disqualifying the person, order that for the purposes of this Act the person will be taken to be an unlicensed tobacco merchant in respect of the supply of tobacco products from premises specified by the court during such period (not exceeding six months) as the court orders.

(6) If a court convicts a person who is a member of a group of tobacco merchants of an offence against subsection (1) or (2) and the person has previously been convicted of an offence against either of those subsections within the immediately preceding three years—

- (a) the court may disqualify the person from applying for or holding a tobacco merchant's licence during such period (not exceeding six months) as the court orders and, in that event, the licence held on behalf of the group is cancelled and a person cannot hold a licence on behalf of a group that includes the convicted person during the period of his or her disqualification; or
- (b) the court may order that for the purposes of this Act the person will be taken to be an unlicensed tobacco merchant in respect of the supply of tobacco products from premises specified by the court during such period (not exceeding six months) as the court orders.

(7) Subsections (5) and (6) do not limit or affect the power of the Minister to suspend or cancel a tobacco merchant's licence.

Evidence of age may be required

39. (1) If an authorised person suspects on reasonable grounds that a person seeking to obtain a tobacco product may be a child, he or she may require the person to produce evidence, to his or her satisfaction, of the person's age.

(2) A person who—

- (a) fails, without reasonable excuse, to comply with a requirement under this section; or
- (b) makes a false statement, or produces false evidence, in response to such a requirement,

is guilty of an offence.

Maximum penalty: \$200.

Expiation fee: \$75.

(3) In this section—

"authorised person" means—

- (a) a tobacco merchant or an employee of a tobacco merchant; or
- (b) an authorised officer.

Certain advertising prohibited

40. (1) A person must not for any direct or indirect pecuniary benefit display a tobacco advertisement so that it may be seen in or from a public place.

Maximum penalty: \$5 000.

(2) A person must not—

- (a) distribute to the public any unsolicited leaflet, handbill, or other document that constitutes a tobacco advertisement; or
- (b) sell any object that constitutes or contains a tobacco advertisement.

Maximum penalty: \$5 000.

(3) This section does not apply in relation 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; or
- (b) a tobacco advertisement that is an accidental or incidental part of a film or video tape; or
- (c) a tobacco advertisement of a prescribed kind that is displayed inside a shop or warehouse within a prescribed distance from the place where tobacco products are offered for sale; or
- (d) a tobacco advertisement of a prescribed kind that is displayed at a prescribed distance from a shop or warehouse where tobacco products are offered for sale; or
- (e) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

Prohibition of certain sponsorships

41. (1) A person must not promote or publicise, or agree to promote or publicise—

- (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
- (b) the name or interests of a manufacturer or distributor of a tobacco product in association directly or indirectly with that tobacco product,

under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person.

Maximum penalty: \$5 000.

(2) A person must not provide, or agree to provide, a sponsorship under a contract or arrangement of a kind referred to in subsection (1).

Maximum penalty: \$5 000.

(3) This section does not apply in relation to any contract providing sponsorship for a cricket match in South Australia that forms part of the Sheffield Shield series or a series of international cricket matches.

Competitions

42. (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) provide or offer to provide—

(i) a prize, gift or other benefit; or

(ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which any person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or

(b) conduct a scheme declared by regulation to be a scheme to promote the sale of a tobacco product or to promote smoking generally.

Maximum penalty: \$5 000.

(2) It is a defence to a charge of an offence against subsection (1) 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.

Free samples

43. A person must not, for the purpose of inducing or promoting the sale of a tobacco product, offer or give to a member of the public a free sample of a tobacco product.

Maximum penalty: \$5 000.

Smoking in buses

44. (1) Subject to subsection (2), a person must not smoke in a bus that is carrying members of the public.

Maximum penalty: \$200.

Expiation fee: \$75.

(2) Subsection (1) does not apply where the bus has been hired for the exclusive use of members of a group.

Smoking in lifts

45. (1) A person must not smoke in a lift.

Maximum penalty: \$200.

Expiation fee: \$75.

(2) A person who, being the owner or a lessee or occupier of a building, or part of a building, in which a lift is situated, is responsible for the maintenance of the lift, must cause a notice in the prescribed form and made of the prescribed material to be displayed in the lift.

Maximum penalty: \$200.
Expiation fee: \$75.

Smoking in places of public entertainment

46. A person who attends a place of public entertainment to be entertained must not smoke in the auditorium of the place of public entertainment at any time before the entertainment commences, during the entertainment or after it has concluded.

Maximum penalty: \$5 000.

Smoking in enclosed public dining or cafe areas

47. (1) In this section—

"bar or lounge area" means an area that is primarily and predominantly used for the consumption of alcoholic drinks rather than meals;

"enclosed" area or place means an area or place that is, except for doorways, passageways and internal wall openings, completely or substantially enclosed by a solid permanent ceiling or roof and solid permanent walls or windows, whether the ceiling, roof, walls or windows are fixed or movable and open or closed;

"enclosed public dining or cafe area" means a public area that—

- (a) is comprised of the whole or part of an enclosed public place; and
- (b) is established or set aside for the purpose (whether or not the exclusive purpose) of—
 - (i) in the case of licensed premises—the consumption of meals; or
 - (ii) in any other case—the consumption of food or non-alcoholic drinks, or both, purchased at the place;

"entertainment area" means an area—

- (a) in which live entertainment (within the meaning of the *Liquor Licensing Act 1985*) is being provided; and
- (b) that is being used primarily and predominantly for the consumption of alcoholic drinks rather than meals;

"licensed premises" means licensed premises within the meaning of the *Liquor Licensing Act 1985*;

"meal" means a genuine meal eaten by a person seated at a table.

(2) Subject to this section, a person must not smoke in an enclosed public dining or cafe area.

Maximum penalty: \$200.
Expiation fee: \$75.

(3) Subsection (2) does not apply in relation to the following:

- (a) if there are two or more separate enclosed public areas used for the consumption of meals within licensed premises—one (and only one) of those areas that—
 - (i) is a bar or lounge area; and
 - (ii) is for the time being designated in the prescribed manner by the licensee as a smoking area;
- (b) an area within licensed premises (whether being the whole or part of an enclosed public area) that—
 - (i) is a bar or lounge area; and
 - (ii) is for the time being exempted by the Minister for Health;
- (c) licensed premises consisting of or including only a single enclosed public area (not the subject of an exemption under paragraph (b)) while meals are neither available nor being consumed in the area;
- (d) an entertainment area within licensed premises between the hours of 9 p.m. and 5 a.m. the next day;
- (e) an area while it is not open for business;
- (f) an area while a special arrangement exists (negotiated separately for a single occasion) under which it is given over to the exclusive use of members of a group;

(4) An exemption in respect of an area within licensed premises—

- (a) may be given on written application by the licensee in a manner and form approved by the Minister for Health and accompanied by the prescribed fee;
- (b) may be subject to conditions fixed by the Minister for Health, which may include conditions requiring—
 - (i) the display of signs;
 - (ii) the installation, operation and maintenance of ventilation and air conditioning equipment;
 - (iii) the maintenance of a bar or lounge area as a distinct area separated by at least 1.5 metres from an area occupied by tables and chairs used for meals;
- (c) may be varied or revoked by the Minister for Health on application by the licensee or on contravention of or non-compliance with a condition of the exemption.

(5) The provisions of Division 4 of Part 2 relating to reviews and appeals apply in relation to a decision of the Minister for Health under subsection (4) in the same way as in relation to a decision of the Minister under Part 2 but with references to the Administrative and Disciplinary Division of the District Court to be read as references to the Licensing Court of South Australia.

(6) The occupier of an enclosed public dining or cafe area—

- (a) must display signs in the area in accordance with the regulations; and
- (b) must not, if an exemption under subsection (4) relates to the area, contravene or fail to comply with a condition of the exemption.

Maximum penalty: In the case of a natural person—\$500.
 In the case of a body corporate—\$1 000.

(7) If smoking occurs in an enclosed public dining or cafe area in contravention of subsection (2), the occupier of the enclosed public dining or cafe area is guilty of an offence.

Maximum penalty: In the case of a natural person—\$500;
 In the case of a body corporate—\$1 000.

(8) It is a defence to a charge of an offence against subsection (7) if the defendant proves that he or she did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

- (a) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (b) he or she—
 - (i) requested the person smoking to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

PART 4
SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST

Continuation of Trust

48. (1) The *South Australian Sports Promotion, Cultural and Health Advancement Trust* continues in existence.

(2) The Trust—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) is capable of acquiring, holding, dealing with and disposing of any interest in real and personal property; and
- (e) is capable of acquiring or incurring any other rights or liabilities.

(3) The Trust is an agency of the Crown and holds its property on behalf of the Crown.

(4) A document is duly executed by the Trust if it is sealed with the common seal of the Trust and signed by two members of the Trust.

(5) A document apparently executed by the Trust will be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed.

Constitution of Trust

49. (1) The Trust will consist of seven persons appointed by the Governor, of whom—

- (a) one will be a person with knowledge and experience in the area of public health nominated by the Minister for Health; and
- (b) three will be persons with knowledge and experience in the area of sports or sports administration nominated by the Minister for Recreation and Sport; and
- (c) one will be a person with knowledge and experience in the area of the arts or arts administration nominated by the Minister for the Arts; and
- (d) one will be a person with knowledge and experience in the area of advertising.

(2) One member of the Trust will be appointed by the Governor to chair meetings of the Trust.

(3) The Governor and each nominating Minister must, in appointing persons as members of the Trust (other than the member who is to chair meetings of the Trust), endeavour to ensure as far as is practicable that men and women are equally represented.

(4) The Governor may appoint a person to be the deputy of a member of the Trust and the deputy may perform or exercise the functions and powers of that member in the member's absence.

Term and conditions of membership

50. (1) The appointment of a member of the Trust will be for a term, not exceeding three years, specified in the instrument of appointment and such a member will, at the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may remove a member of the Trust from office for—

- (a) misconduct; or
- (b) neglect of duty; or
- (c) incapacity to carry out satisfactorily the duties of office; or
- (d) failure to carry out satisfactorily the duties of office.

(3) The office of a member of the Trust becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister for Health; or
- (d) is absent without leave of the Trust from three consecutive meetings of the Trust; or
- (e) is removed from office by the Governor under subsection (2).

(4) On the office of a member of the Trust becoming vacant, a person must be appointed in under this section to the vacant office.

Remuneration

51. The members of the Trust are entitled to receive such allowances and expenses as may, from time to time, be determined by the Governor.

Vacancies or defects in appointment of members

52. An act or proceeding of the Trust is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Proceedings

53. (1) A quorum of the Trust consists of four members.

(2) The member appointed to chair the Trust will preside at meetings of the Trust at which that member is present.

(3) If the member appointed to chair the Trust is absent from a meeting of the Trust, a member chosen by the members present at the meeting will preside at the meeting.

(4) A decision carried by a majority of votes cast by members at a meeting is a decision of the Trust.

(5) Each member present at a meeting of the Trust has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(6) The Trust must have accurate minutes kept of its proceedings and make them available to all members of the Trust.

(7) Subject to this Act, the Trust may determine its own procedures.

Disclosure of interest

54. (1) A member of the Trust who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Trust—

(a) must disclose the nature of the interest to the Trust; and

(b) must not take part in any deliberation or decision of the Trust with respect to the matter.

Maximum penalty: \$2 500.

(2) A disclosure under this section must be recorded in the minutes of the Trust.

Delegation by Trust

55. (1) Subject to this section, the Trust may, by instrument in writing, delegate any of its powers, duties or functions under this Act—

(a) to a member or employee of the Trust; or

(b) to a committee established by or under this Act to advise or assist the Trust.

(2) The Trust may not delegate its function of determining to whom or in what amounts financial support may be provided from the Fund.

(3) A power, duty or function delegated under this section may, if the instrument of delegation so provides, be subdelegated.

(4) Where a delegation is made to a committee under this section—

(a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of the delegation; and

(b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.

(5) A delegation or subdelegation under this section—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the delegator to act personally in any matter; and

(c) is revocable at will by the delegator.

(6) A person to whom, or a member of a committee to which, a power, duty or function is delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which that person has a direct or indirect pecuniary interest or other personal interest.

Committees

56. (1) The following committees established by the *Tobacco Products Control Act 1986* continue in existence under this Act:

- (a) the *Health Advisory Committee* to advise or assist the Trust in matters relating to health; and
- (b) the *Sport and Recreation Advisory Committee* to advise or assist the Trust in matters relating to sport and recreation; and
- (c) the *Cultural Advisory Committee* to advise or assist the Trust in respect of cultural matters.

(2) The Health Advisory Committee will consist of—

- (a) the member of the Trust appointed to chair the Trust (who will preside at meetings of the committee); and
- (b) the member of the Trust appointed on the nomination of the Minister for Health; and
- (c) two other persons appointed by the Trust on the nomination of the Minister for Health.

(3) The Sport and Recreation Advisory Committee will consist of—

- (a) the member of the Trust appointed to chair the Trust (who will preside at meetings of the committee); and
- (b) the members of the Trust appointed on the nomination of the Minister for Recreation and Sport; and
- (c) two other persons appointed by the Trust on the nomination of that Minister.

(4) The Cultural Advisory Committee will consist of—

- (a) the member of the Trust appointed to chair the Trust (who will preside at meetings of the committee); and
- (b) the member of the Trust appointed on the nomination of the Minister for the Arts; and
- (c) two other persons appointed by the Trust on the nomination of that Minister.

(5) The Trust may establish any other committee (which may consist of members of the Trust, other persons or both members and others) to advise or assist it in the performance of its functions.

(6) A committee continued in existence by, or established under, this section may act in relation to any matter referred or delegated to it by the Trust and will be governed in its proceedings by rules approved by the Trust.

(7) A member of a committee continued in existence by, or established under, this section is entitled to such receive such allowances and expenses as may, from time to time, be determined by the Minister for Health.

Functions and powers of Trust

57. (1) The functions of the Trust are to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption, and more particularly for that purpose—

- (a) to manage the Fund and provide financial support from the Fund by way of grants, loans or other financial accommodation to sporting and cultural bodies or for any sporting, recreational or cultural activities that contribute to health;
- (b) to conduct or support public awareness programmes;
- (c) to provide sponsorships;
- (d) to keep statistics and other records;
- (e) to provide advice to the Minister for Health;
- (f) to consult regularly with Government departments and agencies and liaise with persons and bodies affected by this Act;
- (g) to perform such other functions as are assigned to the Trust—
 - (i) by the Minister for Health acting after consultation with the Minister for Recreation and Sport and the Minister for the Arts; or
 - (ii) by or under this or any other Act.

(2) The Trust has all such powers as are reasonably necessary for the effective performance of its functions.

(3) The Trust must, in performing its functions and exercising its powers—

- (a) endeavour to ensure that any sporting or cultural body that received financial support through tobacco advertising or sponsorships before the commencement of the prohibition of such advertising or sponsorships (enacted by the *Tobacco Products Control Act Amendment Act 1988*) is not financially disadvantaged by the operation of this Act; and
- (b) have regard to any guidelines issued from time to time by the Minister for Health after consultation with the Minister for Recreation and Sport and the Minister for the Arts.

Continuation of Fund

58. (1) The Fund at the Treasury known as the *Sports Promotion, Cultural and Health Advancement Fund* continues in existence.

(2) The Fund consists of—

- (a) money paid into the Fund under this Act; and
- (b) all other money received by the Trust.

(3) The Fund may be applied by the Trust in accordance with a budget approved by the Minister for Health—

- (a) in paying amounts that the Trust determines should be paid by way of grant, loan or other financial accommodation under this Act; and
- (b) in paying costs and expenses incurred by the Trust under this Act; and
- (c) in making other payments required or authorised by this or any other Act to be made from the Fund.

Employees of Trust

59. (1) The Trust may appoint such employees as are necessary for the effective performance of its functions.

(2) The Trust's employees are not Public Service employees but are employed subject to terms and conditions determined by the Trust.

(3) The Trust may, with the approval of the appropriate Minister, make use of the services of Public Service employees or employees of a Government agency or of facilities or equipment of the Government or a Government agency.

Budget

60. (1) The Trust must before 1 June in each year submit to the Minister for Health for the Minister's approval a budget to govern the Trust's financial operations for the next financial year.

(2) The budget must be in a form required by the Minister for Health.

(3) The Trust may at any time, with the approval of the Minister for Health, alter its budget.

(4) The Minister for Health must, before giving an approval under this section, consult with the Treasurer, the Minister for Recreation and Sport and the Minister for the Arts.

Accounts and audit

61. (1) The Trust must cause proper accounts to be kept of its financial affairs and must prepare a statement of accounts in respect of each financial year.

(2) The Auditor-General may at any time and must at least once in each financial year audit the accounts of the Trust.

Annual report

62. (1) The Trust must, on or before 31 October in each year, deliver to the Minister for Health a report on its operations during the period of 12 months that ended on the preceding 30 June.

(2) The report must incorporate the audited statement of accounts for the Trust in relation to the relevant period.

(3) The Minister for Health must, within 14 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

PART 5
INVESTIGATIONS

Appointment of authorised officers

63. (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Minister, may at any time, revoke an appointment or vary, revoke or add a condition of an appointment.

(4) All members of the police force and authorised officers under the *Taxation Administration Act 1996* are authorised officers for the purposes of this Act.

Identification of authorised officers

64. (1) An authorised officer, other than a member of the police force, must be issued with an identity card—

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer for the purposes of this Act.

(2) Where the powers of an authorised officer have been limited by conditions under this Part, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.

(3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—

- (a) in the case of an authorised officer who is a member of the police force and is not in uniform—his or her certificate of authority; or
- (b) in the case of an authorised officer who is not a member of the police force—his or her identity card.

Power to require information or records or attendance for examination

65. (1) The Minister or the Commissioner may, for a purpose related to the administration or enforcement of this Act, by written notice served on a person, require the person—

- (a) to provide to the Minister or the Commissioner (either orally or in writing) information that is described in the notice; or
- (b) to attend and give evidence before the Minister or the Commissioner or an authorised officer; or
- (c) to produce to the Minister or the Commissioner a record in the person's custody or control that is described in the notice.

(2) The Minister or the Commissioner may require that evidence be given under this section on oath.

(3) If a person, without reasonable excuse, refuses or fails—

- (a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Minister or the Commissioner; or
- (b) to comply with any other requirement of the Minister or the Commissioner as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section,

the person is guilty of an offence.

Maximum penalty: \$20 000.

Powers of authorised officers

66. (1) Subject to this Part—

- (a) an authorised officer may enter and remain on premises and inspect the premises and any part of or thing in or on the premises as reasonably required in connection with the administration or enforcement of this Act;
- (b) with the authority of a warrant issued under this Part or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on premises;
- (c) require a person to produce a record, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required with the administration or enforcement of this Act;
- (d) examine, copy or take extracts from a record or require a person to provide a copy of a record, as reasonably required in connection with the administration or enforcement of this Act;
- (e) examine and test ventilation and air conditioning equipment in an enclosed public dining or cafe area;
- (f) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;
- (g) seize and retain tobacco products or records if the authorised officer reasonably suspects that an offence against this Act has been committed in relation to the products or records or that the products or records may afford evidence of an offence against this Act;
- (h) if the authorised officer reasonably suspects that a person has sold or purchased tobacco products or otherwise engaged in tobacco merchandising in contravention of this Act, seize and retain all tobacco products on or adjacent to premises that the authorised officer reasonably suspects are being used by the person for tobacco merchandising;
- (i) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

- (j) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- (k) require a person holding or claiming to hold a licence to produce it for inspection;
- (l) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration and enforcement of this Act.

(2) A magistrate may issue a warrant for the purposes of subsection (1) if satisfied that the warrant is reasonably required for the administration or enforcement of this Act.

(3) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

Offence to hinder, etc., authorised officers

67. A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or
- (d) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$20 000.

Self-incrimination

68. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce or provide a record or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with a requirement to answer a question or to produce or provide a record or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce or provide a record or information—the fact of production or provision of the record or the information (as distinct from the contents of the record or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under this Act).

Powers in relation to seized tobacco products

69. (1) If tobacco products are seized under this Part, the following provisions apply:

- (a) the Commissioner may, if satisfied that it is necessary to do so to avoid loss due to the deterioration of the products, determine that the products are forfeited to the Crown and sell the products by public tender;
- (b) apart from paragraph (a), the products will be forfeited to the Crown if a court convicts a person of an offence against this Act in relation to the products, unless the court determines that the circumstances of the offence were trifling;
- (c) subject to this section, the owner of the products will be entitled to recover the products or, if the products have been forfeited by determination of the Commissioner or have deteriorated, will be entitled to be paid compensation by the Crown in respect of the products—
 - (i) if a prosecution for an offence against this Act in relation to the products has been commenced but—
 - (A) the defendant is acquitted; or
 - (B) the prosecution is withdrawn or lapses; or
 - (C) the court hearing the proceedings determines that the circumstances of the offence were trifling; or
 - (ii) if—
 - (A) a prosecution for an offence against this Act in relation to the products has not been commenced within three months of the date of seizure; and
 - (B) the District Court determines, on application by the owner, that the justice of the case requires that the products be returned or that compensation be paid;
- (d) at the end of the period of three years from the date of seizure—
 - (i) if the products have not been forfeited or returned to the owner, they are forfeited to the Crown; and
 - (ii) in any case, the owner will not have any right to recover the products or be paid compensation in respect of the products (other than a right that has already arisen or been determined under paragraph (c));
- (e) if the products are forfeited otherwise than under paragraph (a), the Commissioner may sell the products by public tender;

- (f) any compensation payable under this section in respect of the products will be in an amount equal to the consideration paid by the owner of the products when he or she purchased them or, where the owner is the manufacturer of the products, their value (determined in accordance with section 16 for the purpose of assessing licence fees) as at the date of seizure;
- (g) the owner of the products has no right to recover the products or be paid compensation in respect of the products apart from under this section.

(2) If tobacco products, when seized under this Part, are on or adjacent to premises that are being used for tobacco merchandising by a person who has sold or purchased tobacco products or otherwise engaged in tobacco merchandising in contravention of this Act, any such contravention by the person is, for the purposes of subsection (1), to be taken to be an offence against this Act in relation to the products so seized.

PART 6
APPLICATION OF FEES REVENUE

Application of fees revenue

70. (1) The money collected by way of licence fees under this Act must be paid into the Consolidated Account.

(2) Not less than 5.5 per cent of the amount collected under this Act by way of fees for tobacco merchants' licences (not being restricted licences) must be paid into the Fund for application in accordance with the provisions of Part 4.

(3) Payments must be made into the Fund for the purposes of subsection (2) at times and in amounts determined by the Treasurer after consultation with the Minister for Health.

(4) This section is sufficient authority for the appropriation, from the Consolidated Account, of the payments referred to in subsection (2).

**PART 7
MISCELLANEOUS**

Exemptions

71. (1) Subject to this section, the Governor may, by proclamation—

- (a) exempt a person or tobacco product, or a class of persons or tobacco products, from the operation of a provision of this Act subject to such conditions as may be set out in the proclamation;
- (b) vary or revoke an exemption under this section.

(2) An exemption from the operation of a provision of Part 3 may not be granted under this section except as recommended by the appropriate Minister—

- (a) to facilitate the promotion and conduct of a sporting or cultural event or function; or
- (b) to relieve undue hardship that might result if the exemption were not granted.

(3) For the purposes of subsection (2), the appropriate Minister is—

- (a) in relation to an exemption to facilitate the promotion and conduct of a sporting event or function—the Minister for Recreation and Sport;
- (b) in relation to an exemption to facilitate the promotion and conduct of a cultural event or function—the Minister for the Arts;
- (c) in any other case—the Minister for Health.

(4) The Minister for Recreation and Sport and the Minister for the Arts must, before recommending that an exemption be granted in relation to a sporting or cultural event or function—

- (a) consult with the Minister for Health; and
- (b) have regard to whether—
 - (i) there is national or international interest in the event or function; and
 - (ii) there are links between the event or function and other events or functions outside the State; and
 - (iii) reasonable efforts have been made to obtain support for the event or function that would not require the granting of such an exemption.

Delegation

72. (1) A Minister or the Commissioner may delegate powers or functions under this Act to any person or body.

(2) A power, duty or function delegated under this section may, if the instrument of delegation so provides, be subdelegated.

(3) A delegation or subdelegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the delegator to act in any matter; and
- (d) is revocable at will by the delegator.

Register of licences

73. (1) The Minister must cause a register to be kept of licensees under Part 2.

(2) The register must be kept available for public inspection at a place approved by the Minister during ordinary office hours.

Unlawful holding out as tobacco merchant

74. A person who is not a licensed tobacco merchant must not hold himself or herself out as a licensed tobacco merchant.

Maximum penalty: \$50 000.

False or misleading information

75. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Maximum penalty: \$50 000.

Minister may require verification of information

76. (1) Where a person is required to furnish information under this Act, the Minister or the Commissioner may require that the information be verified by statutory declaration.

(2) A person who fails, without reasonable excuse, to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty: \$20 000.

Report from police

77. The Commissioner of Police must, at the request of the Minister, provide to the Minister any information required by the Minister for the purpose of determining an application for a licence or whether a licence should be suspended or cancelled.

Confidentiality

78. A person must not divulge any information consisting of or relating to information obtained (whether by that person or some other person) in the administration of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act; or

- (d) to an officer of this or another State, or of a Territory, or of the Commonwealth, employed in the administration of laws relating to taxation or customs; or
- (e) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$10 000.

General defence

79. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Immunity from personal liability

80. (1) No personal liability attaches to—

- (a) the Commissioner; or
- (b) a member of the Trust; or
- (c) an employee of the Trust; or
- (d) a member of a committee continued in existence or established under this Act; or
- (e) an authorised officer; or
- (f) any other person engaged in the administration of this Act,

for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Offences by bodies corporate

81. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Prosecutions

82. Proceedings for an offence against this Act must be commenced within five years after the date on which the offence is alleged to have been committed.

Recovery of amounts payable under Act

83. (1) An amount payable under this Act may be recovered by the Commissioner, as a debt due to the Crown, in a court of competent jurisdiction.

(2) A certificate purporting to be signed by the Commissioner and stating that a specified amount is an amount payable under this Act by a specified person is admissible in proceedings for the recovery of that amount and will, in the absence of proof to the contrary, be proof of the amount payable.

Recovery of amounts from third parties

84. (1) Where the Commissioner is entitled to recover an amount from a person ("the indebted person") under this Act, the Commissioner may require any of the following persons instead of the indebted person to pay the amount:

- (a) a person from whom money is due or accruing or may become due to the indebted person;
- (b) a person who holds or may subsequently hold money for or on account of the indebted person;
- (c) a person who holds or may subsequently hold money on account of some other person for payment to the indebted person;
- (d) a person having authority from some other person to pay money to the indebted person.

(2) The Commissioner's requirement is to be made by written notice served on the person.

(3) A copy of the notice must also be served on the indebted person.

(4) The amount that the person is required by the notice to pay to the Commissioner is so much of the money referred to in subsection (1) as is sufficient to pay the amount remaining unpaid, or, if the money is insufficient, all of it.

(5) The money must be paid to the Commissioner on receipt of the notice, or when the money is held by the person, or after such period (if any) as may be specified by the Commissioner, whichever is the later or latest.

(6) A person subject to a requirement of the Commissioner under this section must comply with the requirement.

Maximum penalty: \$10 000.

(7) A person who makes a payment in accordance with this section is to be taken to be acting under the authority of the indebted person and of all other persons concerned and is entitled to indemnity from the indebted person in respect of the payment.

(8) If, after a person is given a notice under this section by the Commissioner, the whole or a part of the amount is paid by another person, the Commissioner must, by written notice, advise the person of the payment and cancel the prior notice or amend it accordingly.

(9) An amount that is required to be paid by a person under this section but remains unpaid may be recovered by the Commissioner from the person as a debt.

Evidence

85. (1) In any proceedings for an offence against this Act, an apparently genuine document purporting to be—

- (a) a certificate of the Minister certifying that a specified person was an authorised officer at a specified date; or
- (b) a certificate of the Minister certifying that a specified person was or was not the holder of a licence of a specified kind at a specified date; or
- (c) a certificate of the Commissioner certifying that a specified number of milligrams was the average tar content of a specified tobacco product as required under the *Trade Practices Act 1974* of the Commonwealth, as in force from time to time, to be stated on the package in which the product was contained,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(2) The presence on any premises of a vending machine from which tobacco products may be obtained is to be taken to constitute conclusive evidence that the occupier of the premises has sold tobacco products by means of the machine.

(3) If, in proceedings for an offence against this Act, it is proved that a person purchased or was in possession of more than a prescribed quantity of tobacco products it will be presumed, in the absence of proof to the contrary, that the person purchased or was in possession of the tobacco products for the purposes of sale.

Service

86. (1) A notice, order or other document to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice, order or other document required or authorised to be given to or served on a person may—

- (a) if the person is the holder of a licence under this Act—be given to or served on the person—

- (i) by posting it to the person at the address last provided by the person for that purpose; or
 - (ii) by transmitting it to the person by facsimile transmission to the number last provided by the person for that purpose; or
- (b) if the person is a body corporate—be given to or served on the person in accordance with section 220 of the *Corporations Law*.

Regulations

87. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) may require tobacco merchants to furnish returns relating to stocks of, or dealings in, tobacco products;
- (b) may require that tobacco products sold by retail by holders of class B tobacco merchant's licences bear distinctive markings, or be enclosed in packages or wrappers bearing distinctive markings, designed to alert potential consumers into whose hands they may fall of the illegality of consuming the products without a consumption licence;
- (c) prescribe the design, construction and materials of packages containing tobacco products;
- (d) prescribe warnings and information (or empower the Minister for Health to give directions as to warnings and information) that must be displayed on packages containing tobacco products;
- (e) prescribe other labelling requirements (or empower the Minister for Health to give directions as to other labelling requirements) for packages containing tobacco products;
- (f) prescribe warnings that must be displayed in, or in conjunction with, advertisements of tobacco products and the manner and form in which those warnings must be displayed;
- (g) impose a penalty not exceeding \$2 500 for a breach of a regulation.

(3) A regulation may prescribe a warning in relation to tobacco products generally or in relation to tobacco products of a particular class.

(4) This Act may be amended by regulation for the purpose of altering licence fees.

(5) If a regulation made under subsection (4) is disallowed, the provision affected by the amendment reverts to the form in which it existed immediately before the amendment.

SCHEDULE 1

Declaration by person purchasing from class B licensee

Form 1

Tobacco Products Regulation Act 1997

DECLARATION UNDER SECTION 22 BY PERSON PURCHASING TOBACCO PRODUCTS FROM HOLDER OF CLASS B TOBACCO MERCHANT'S LICENCE

1. I (here insert the name of the purchaser) of (here insert the address of the purchaser) acknowledge that I have purchased from (here insert the name of the tobacco merchant) the following tobacco products (here state the nature (including the brand names) and quantities of tobacco products purchased).

*In purchasing these tobacco products I acted as agent for (here insert the name of the principal) of (here insert the address of the principal).

(*strike out if not applicable)

2. I declare that—

*I am the holder of consumption licence No. (here insert the number of the consumption licence)

*my principal is the holder of consumption licence No. (here insert the number of the consumption licence)

(*strike out whichever item is not applicable)

Date: Signed

Form 2

Tobacco Products Regulation Act 1997

DECLARATION UNDER SECTION 22 BY PERSON PURCHASING TOBACCO PRODUCTS FROM HOLDER OF CLASS B TOBACCO MERCHANT'S LICENCE

1. I (here insert the name of the purchaser) of (here insert the address of the purchaser) acknowledge that I have purchased from (here insert the name of the tobacco merchant) the following tobacco products (here state the nature (including the brand names) and quantities of tobacco products purchased).

*In purchasing these tobacco products I acted as agent for (here insert the name of the principal) of (here insert the address of the principal).

(*strike out if not applicable)

2. I understand that a person who consumes these tobacco products without a consumption licence commits an offence against the Tobacco Products Regulation Act 1997 and is liable to a maximum fine of \$5,000.

3. I undertake to pay to the State of South Australia the sum of \$315 by way of expiation fee if—

*I or any person acting with my consent consumes these tobacco products in contravention of the Act.

*I, my principal or any person acting with the consent of either of us consumes these tobacco products in contravention of the Act.

(*strike out whichever item is not applicable)

Date: Signed

SCHEDULE 2*Repeal and Transitional Provisions***Repeal**

1. The following Acts are repealed:

- (a) *Tobacco Products Control Act 1986*;
- (b) *Tobacco Products (Licensing) Act 1986*.

Licensing

2. (1) A consumption licence in force under the *Tobacco Products (Licensing) Act 1986* continues in force as a consumption licence under this Act until the end of the period for which it was granted.

(2) A tobacco merchant's licence in force under the *Tobacco Products (Licensing) Act 1986* immediately before the commencement of this Act continues in force—

- (a) in the case of a restricted licence—as a restricted class A licence;
- (b) in the case of an unrestricted licence—as an unrestricted class A licence,

under this Act (subject to surrender under this Act) until the end of the period for which it was granted.

Records to be kept by tobacco merchants

3. The requirements imposed under section 25 to keep records in relation to tobacco products apply in relation to tobacco merchandising and transporting of tobacco products whether occurring before or on or after the commencement of that section.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL, Governor