

Tobacco (Amendment) Bill

As Sent Print

EXPLANATORY MEMORANDUM

General

The purpose of this Bill is to amend the Tobacco Act.

Clause Notes

Clause 1 sets out the purposes of the Bill.

Clause 2 is the commencement provision. Sections 1 and 2 come into operation on the day after Royal Assent. The remaining provisions of the Act (except sections 7(1), 8, 9, 10, 13(1) and (3) and 16(1)(b)) will come into operation on 1 November 2000. All of the Act will be in operation on 1 July 2001.

Clause 3 states that the Tobacco Act is the Principal Act.

Clause 4 defines various terms for the purposes of the Act.

Clause 5 inserts a number of new preliminary sections into the Bill.

Section 3A deems the presence on any premises of a vending machine to constitute the carrying on on those premises of a tobacco retailing business.

Section 3B provides that agents and employees of tobacco retailers are not themselves tobacco retailers for the purposes of the Act.

Section 3C allows for retail shopping centres to be declared to be controlled shopping centres for the purposes of the Act.

Section 3D defines "dining area" for the purposes of the Act.

Clause 6 inserts a new heading to Part 2 of the Act.

- Clause 7 creates offences for people who smoke in enclosed restaurants and cafes, dining areas and controlled shopping centres (sections 5A and 5C). It also creates offences for the occupiers of enclosed restaurants and cafes, dining areas and controlled shopping centres in which smoking has occurred (sections 5B and 5D).
- Clause 8 creates an offence for tobacco retailers who allow a tobacco advertisement at their retail outlet which is not in accordance with the new more restrictive provisions regarding point of sale tobacco advertisements provided for in clause 9.
- Clause 9 allows for tobacco products to be advertised by displays of the packages of those products, and, in the case of vending machines, by displays of representations of those products. It also allows for regulations to be made which limit the total area of those displays at retail outlets.
- Clause 10 allows for an exemption from the offence created by clause 8 if the tobacco advertisement is part of a sports or arts sponsorship agreement and is in accordance with regulations made under the Act.
- Clause 11 creates an offence for tobacco retailers and wholesalers who possess tobacco products which are smuggled goods or prohibited imports within the meaning of the Customs Act 1901 of the Commonwealth or in respect of which excise duty has not been paid under the Excise Act 1901 of the Commonwealth.
- Clause 12 increases the penalties for sale of tobacco products to a person under the age of 18, and for permitting a person under the age of 18 to obtain a tobacco product from a vending machine. It also deems an offence of supplying tobacco products to a person under the age of 18 which is committed by an employee to have been committed by that person's manager, unless the manager had no knowledge of the offence and could not have prevented its commission. It also allows for persons who are considering supplying tobacco products to another person to have regard to an evidence of age document in determining the age of that other person.

- Clause 13 imposes signage requirements in respect of enclosed restaurants and cafes, dining areas, controlled shopping centres and tobacco retail outlets.
- Clause 14 establishes a system whereby tobacco retailers who commit certain offences against the Act are liable to be prohibited from continuing to sell tobacco products. This tobacco retailing ban may be imposed by the court after one relevant offence. In respect of second and subsequent relevant offences, the ban automatically follows from a finding of guilt unless the court decides that there are exceptional circumstances which justify the ban not being imposed.
- Clause 15 provides for the appointment of inspectors and sets out their powers and duties.
- Clause 16 repeals section 37(1) of the Act which requires that proceedings for an offence relating to a tobacco advertisement must not be commenced against a person unless he or she has failed to remove that advertisement within 30 days of being requested to do so by an authorised officer. It also allows a court which convicts a person of the offence created by clause 8 to direct the removal of the relevant tobacco advertisement. It also amends sections 37, 38 and 39 so as to replace "authorised officer" with "inspector".
- Clause 17 allows penalties paid in respect of infringement notices served by an environmental health officer of a council or an inspector who is employed by, or provides services to, a council, to be payable to the municipal fund of the council.
- Clause 18 allows the Secretary to the Department of Human Services to require manufacturers and wholesalers of tobacco products to provide the names and addresses of tobacco retailers to whom they have supplied those products.
- Clause 19 states that it is the intention of section 42 of the Act to alter or vary section 85 of the **Constitution Act 1975**.

- Clause 20 deals with transitional issues that may arise from the repeal of section 37(1) and the establishment of the system whereby tobacco retailers who commit certain offences against the Act are liable to be prohibited from continuing to sell tobacco products.
- Clause 21 provides for infringement notices to be issued in respect of certain offences.
- Clause 22 revises the Act to remove references to repealed Acts, and remedy a number of typographical errors.