

Introduced by the Hon D E Oldfield, MLC

First print



New South Wales

Public Health Amendment (Juvenile Smoking) Bill 2002 (No 2)

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Health Act 1991* to create certain offences aimed at reducing the use of tobacco products and non-tobacco smoking products by persons under the age of 18 years.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Public Health Act 1991* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts new sections 58 and 58A into the principal Act. Section 58 (1) prohibits a person under the age of 18 years (a minor) from smoking a tobacco product or non-tobacco smoking product, or from purchasing such a product from premises where such products are sold. A person who contravenes this provision does not commit an offence but may be given a caution or warning under the *Young Offenders Act 1997*.

Under section 58 (7), a police officer who reasonably suspects that a person has contravened section 58 (1) may require the person to give their name and address, proof of age, and information relating to the identity of anyone who supplied them with the product. Section 58 (8) makes it an offence for the person to give false information in response to, or to refuse to comply with, such a requirement.

Under section 58 (3), a police officer may seize a tobacco product or non-tobacco smoking product in the possession of a person in a public place if the officer reasonably suspects the person is under the age of 18 years.

Section 58 (10) creates an offence for a person to send a minor to premises where tobacco products or non-tobacco smoking products are sold for the purpose of purchasing any such product.

Section 58A creates an offence for a person to purchase a tobacco product or non-tobacco smoking product on behalf of a minor from premises where such products are sold. A defence is provided to a person prosecuted under section 58A if the minor was over the age of 14 years and had produced to the defendant documentary evidence that might reasonably be accepted as proving that the minor was at least 18 years of age.

Schedule 1 [2] removes two provisions, consequential on the amendments made by Schedule 1 [3] and [4].

Schedule 1 [3] restates more simply an existing provision concerning evidence of age and relates it also to the defence created by proposed section 58A (2).

Schedule 1 [4] creates an offence for a minor to produce false evidence of the minor's age to any person in order to purchase any tobacco product or non-tobacco smoking product. Schedule 1 [4] also relocates an existing provision concerning confiscation of proof of age cards. The provision is modified by removing a surplus reference, and by including police officers as persons authorised to confiscate proof of age cards.



New South Wales

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Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Public Health Act 1991 No 10	2
Schedule 1 Amendments	3



New South Wales

Public Health Amendment (Juvenile Smoking) Bill 2002 (No 2)

No , 2002

A Bill for

An Act to amend the *Public Health Act 1991* with respect to the use of tobacco products and non-tobacco smoking products by minors and the availability of such products to them.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Public Health Amendment (Juvenile Smoking) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Public Health Act 1991 No 10	7
The <i>Public Health Act 1991</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

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(Section 3)

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[1] Sections 58 and 58A

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Insert before section 59:

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58 Minors using or purchasing tobacco products or non-tobacco smoking products

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(1) A person under the age of 18 years must not:

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(a) smoke a tobacco product or non-tobacco smoking product, or

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(b) purchase a tobacco product or non-tobacco smoking product from premises where such products are sold.

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(2) A person who contravenes subsection (1) is not guilty of an offence, but may be given a caution or warning under the *Young Offenders Act 1997* as if the contravention were an offence to which that Act applies.

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(3) A police officer may seize a tobacco product or non-tobacco smoking product in the possession of a person in a public place if the officer suspects on reasonable grounds that the person is under the age of 18 years.

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(4) Any tobacco product or non-tobacco smoking product seized under subsection (3) is forfeited to the Crown.

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(5) A tobacco product or non-tobacco smoking product may be seized under subsection (3) from a person's possession even though the person is under the age of criminal responsibility.

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(6) A person may not be arrested for contravention of subsection (1), except so far as may be necessary for the purpose of giving the person:

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(a) a warning under Part 3 of the *Young Offenders Act 1997*, or

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(b) a caution under Part 4 of that Act.

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- (7) A police officer who reasonably suspects that a person has contravened subsection (1) may require that person:
- (a) to state his or her full name and residential address, and
 - (b) to produce then, or at the police station within a reasonable time, documentary evidence that might reasonably be accepted as applying to the person and as proving that the person is at least 18 years of age, and
 - (c) to give information relating to the identity of anyone who supplied the tobacco product or non-tobacco smoking product concerned to the person.
- (8) A person the subject of a requirement under subsection (7) must not:
- (a) refuse to state his or her full name and residential address, or
 - (b) state a false name or residential address, or
 - (c) without a reasonable excuse, refuse or fail to produce evidence of age as referred to in subsection (7) (b), or
 - (d) refuse to give information relating to the identity of any person who supplied the tobacco product or non-tobacco smoking product to the person, or
 - (e) give false information in relation to the requirement under subsection (7) (c).
- Maximum penalty: \$20.
- (9) The regulations may make provision for or with respect to the following:
- (a) the procedure to be followed as regards the seizure of tobacco products or non-tobacco smoking products under subsection (3),
 - (b) without limiting paragraph (a), prescribing the circumstances in which, and the procedure by which, tobacco products or non-tobacco smoking products seized under this section are to be returned.

(10)	A person who sends a person under the age of 18 years to premises where tobacco products or non-tobacco smoking products are sold for the purpose of purchasing any such product is guilty of an offence.	1 2 3 4
	Maximum penalty: 20 penalty units.	5
58A	Purchasing tobacco products or non-tobacco smoking products on behalf of minors	6 7
(1)	A person who purchases, on behalf of a person under the age of 18 years, a tobacco product or non-tobacco smoking product from premises where such products are sold is guilty of an offence.	8 9 10 11
	Maximum penalty: 20 penalty units.	12
(2)	It is a defence to a prosecution for an offence under this section if the court is satisfied that:	13 14
(a)	the person on whose behalf the relevant product was purchased was over the age of 14 years, and	15 16
(b)	at or before the time the relevant product was purchased there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person and as proving that the person was at least 18 years of age.	17 18 19 20 21
[2]	Section 59 Sale of tobacco products or non-tobacco smoking products to minors	22 23
	Omit section 59 (3) and (4).	24
[3]	Section 59AA	25
	Insert after section 59:	26
59AA	Evidence of age	27
	For the purposes of sections 58A (2) and 59 (2), documentary evidence includes evidence that is of a kind prescribed by the regulations for the purposes of section 117E (Reasonable evidence of age) of the <i>Liquor Act 1982</i> .	28 29 30 31

[4] Sections 60 and 60A	1
Insert after section 59A:	2
60 Minor using false evidence of age	3
A person under the age of 18 years who, in order to purchase any tobacco product or non-tobacco smoking product, produces to any person a document that purports to be evidence that the person producing the document is at least 18 years of age is guilty of an offence.	4 5 6 7 8
Maximum penalty: 10 penalty units.	9
60A Confiscation of proof of age cards	10
The following persons are authorised persons for the purposes of section 152A (Confiscation of proof of age cards) of the <i>Liquor Act 1982</i> :	11 12 13
(a) any police officer,	14
(b) any environmental health officer,	15
(c) a person who sells tobacco products or non-tobacco smoking products and any employee of that person (being a person or employee of or above the age of 18 years), but only while on, or in the immediate vicinity of, the premises where the tobacco products or non-tobacco smoking products are sold.	16 17 18 19 20 21