

Explanatory note

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

Overview of Bill

The object of this Bill is to repeal and re-enact (with amendments) as a separate Act provisions currently contained in Part 6 of the Public Health Act 1991 relating to the sale, advertising and packaging of tobacco products and non-tobacco smoking products. In particular, the Bill makes provision for the following new matters:

- (a) prohibiting the display of tobacco products, non-tobacco smoking products and smoking accessories in shops,
- (b) requiring tobacco products and non-tobacco smoking products to be sold from only one point of sale on premises,
- (c) limiting the number of tobacco vending machines permitted on premises to one vending machine and removing the provision that currently allows vending machines to be situated in staff amenities areas,
- (d) making it an offence to smoke in a motor vehicle while a child under the age of 16 years is present and making the driver liable if a passenger smokes in those circumstances,
- (e) establishing a scheme whereby a person who engages in tobacco retailing is automatically prohibited from continuing to engage in tobacco retailing for specified periods for repeat offences against the proposed Act or the regulations,
- (f) requiring notification to be given to the Director-General of the Department of Health before a person commences to engage in tobacco retailing,
- (g) increasing penalties for most existing tobacco offences.

The Bill also makes consequential amendments to various Acts.

Outline of provisions

Part 1 Preliminary

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 a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Tobacco and other smoking products and sales

Division 1 Tobacco packaging

Clause 5 defines health warning for the purposes of the proposed Part.

Clause 6 prohibits a person from selling a tobacco product that is not in the manufacturer's package and from selling cigarettes individually or in packages of less than 20. The clause does not apply to the sale of single cigars. (See section 54 of the Public Health Act 1991.)

Clause 7 prohibits a person from packaging a tobacco product for sale without a health warning or selling a tobacco product in a package without a health warning.

The clause does not apply to the sale of single cigars. (See sections 55 and 56 of the Public Health Act 1991.)

Clause 8 prohibits the use of certain words on a package in which tobacco is packed or sold. (See section 57 of the Public Health Act 1991.)

Division 2 Sale and display of tobacco and other smoking products

Clause 9 requires the occupier of premises on which tobacco products or non-tobacco smoking products are sold to ensure that the products, and any smoking accessories, cannot be seen by the public from inside or outside the premises.

Clause 10 requires the occupier of premises on which tobacco products or non-tobacco smoking products are sold to ensure that the products, and any smoking accessories, are sold only from one point of sale on the premises. A point of sale will

include a cash register but not a tobacco vending machine.

Clause 11 creates the following offences (see section 57A of the Public Health Act 1991):

(a) an offence of a vendor carrying tobacco products on his or her person in a public place for the purpose of selling the products by retail,

(b) an offence for a person to employ or pay the vendor to undertake such an activity and for a person who has control of premises to cause or permit such an activity on the premises,

(c) an offence for a person to sell tobacco products by retail from mobile or temporary premises,

(d) an offence for a person who has control of premises, and for a person organising a concert or other event on premises, to cause or permit such sales on the premises.

Division 3 Tobacco vending machines

Clause 12 permits tobacco vending machines to be placed only in bar areas and gaming machine areas of hotels, clubs and casinos. Currently, section 61F of the Public Health Act 1991 also enables tobacco vending machines to be placed in premises set aside by employers as staff amenities areas.

Clause 13 prevents a person from placing a tobacco vending machine on premises for the purposes of the sale of tobacco products or non-tobacco smoking products unless it can only be activated by a member of staff of the premises or the products can only be obtained from the machine by a token that is only available from a member of staff of the premises.

Clause 14 requires the owner or lessee of a tobacco vending machine located on premises for the purposes of the sale of tobacco products or non-tobacco smoking products to ensure that the vending machine displays a statement prescribed by the regulations (see section 61F of the Public Health Act 1991) and that the products in the machine, and certain information and representations, are not in view of members of the public.

Clause 15 makes the occupier of premises on which a tobacco vending machine is located for the purposes of the sale of tobacco products or non-tobacco smoking products liable for contraventions of the proposed Division in relation to the machine in certain circumstances.

Part 3 Advertising and promotion of tobacco products

Clause 16 prohibits certain forms of tobacco advertising. (See section 61B of the Public Health Act 1991.)

Clause 17 prohibits the promotion of tobacco products by means of prizes, gifts and other benefits or tickets, coupons or the like. (See section 61C of the Public Health Act 1991.)

Clause 18 prohibits a person from implementing or conducting a shopper loyalty program that extends to the purchase of tobacco products or non-tobacco smoking products or the giving of such products as gifts.

Clause 19 prohibits a person from giving out free samples of tobacco products. (See section 61D of the Public Health Act 1991.)

Clause 20 prohibits a person from promoting or publicising tobacco products or related information under a sponsorship arrangement. (See section 61E of the Public Health Act 1991.)

Clause 21 prohibits a person from manufacturing or selling a tobacco product designed for consumption otherwise than by smoking and from selling food, toys or other products that resemble tobacco products. (See section 61G of the Public Health Act 1991.)

Part 4 Protection of juveniles

Division 1 Juvenile smoking

Clause 22 prohibits a person from selling a tobacco product or non-tobacco smoking product to a person under the age of 18 years. (See section 59 of the Public Health Act 1991.)

Clause 23 prohibits a person from purchasing a tobacco product or non-tobacco smoking product on behalf of a person under the age of 18 years. (See section 58A of the Public Health Act 1991.)

Clause 24 prohibits a manager or member of staff of premises on which a tobacco vending machine is situated from supplying a tobacco vending machine token to a person under the age of 18 years or activating a tobacco vending machine on behalf of a person under the age of 18 years.

Clause 25 prohibits a person from obtaining a tobacco vending machine token on behalf of a person under the age of 18 years.

Clause 26 enables a police officer to seize tobacco products or non-tobacco smoking products from persons in public places reasonably suspected of being under the age of 18 years. (See section 58 of the Public Health Act 1991.)

Clause 27 provides that evidence of age documents constitute documentary evidence of a person's age for the purpose of defences to offences under the proposed Division.

Clause 28 makes an employer liable for offences committed by employees under clauses 22 and 24. (See section 59A of the Public Health Act 1991.)

Division 2 Other measures for the protection of juveniles

Clause 29 enables the Minister to make a declaration in the Gazette that certain tobacco products are prohibited. It is an offence to sell a prohibited tobacco product. (See section 54A of the Public Health Act 1991.)

Clause 30 makes it an offence for a person to smoke in a motor vehicle when a person under the age of 16 years is present in the vehicle. The driver of the vehicle is also guilty of an offence if a passenger smokes in those circumstances.

Part 5 Restrictions on tobacco retailing

Division 1 Preliminary

Clause 31 defines the term "engaging in tobacco retailing" for the purposes of the proposed Part.

Clause 32 defines "conviction" for the purposes of the proposed Part as including being found guilty of an offence even though an order is made not to proceed to conviction.

Division 2 Prohibition against tobacco retailing

Clause 33 provides that a person who has been found guilty of 2 offences against the same provision of the proposed Act or the regulations on the same premises in a 3-year period is prohibited from engaging in tobacco retailing for 3 months. The clause also provides that a person who has been found guilty of 3 offences against the same provision of the proposed Act or the regulations on the same premises in a 3-year period is prohibited from engaging in tobacco retailing for 12 months.

Clause 34 provides that the prohibition from engaging in tobacco retailing only operates at the premises where the relevant offences occurred or other premises within 5 kilometres of those premises (unless those other premises were already being used by the person for tobacco retailing before the last of the relevant offences was committed).

Clause 35 makes it an offence for a person who is prohibited from engaging in tobacco retailing to do so on the premises to which the prohibition applies during the prohibition period provided in clause 33.

Clause 36 requires a person who is prohibited from engaging in tobacco retailing to ensure that tobacco products, non-tobacco smoking products and smoking accessories, and related information, are not displayed on any business premises operated by the person during the prohibition period provided in clause 33.

Clause 37 provides for the effect of appeals against convictions on the operation of

the provisions of the proposed Part.

Clause 38 provides for the way in which offences are to be taken into account for the purposes of clause 33.

Division 3 Notification by tobacco retailers

Clause 39 requires a person to notify the Director-General of the Department of Health before commencing to engage in tobacco retailing. Existing businesses have 3 months after the commencement of the clause to make the notification.

Division 4 Seizure and forfeiture of tobacco products

Clause 40 gives an inspector power to seize tobacco products in a person's possession, custody or control in the course of committing, or for the purposes of committing, an offence under proposed Division 2.

Clause 41 provides for the forfeiture of seized tobacco products by order of the court that convicts a person for an offence under proposed Division 2.

Clause 42 provides for the destruction of forfeited tobacco and the recovery of the costs of destruction from the convicted person.

Clause 43 provides for the return of seized tobacco in certain circumstances.

Part 6 Enforcement

Clause 44 enables inspectors to enter premises and to carry out inspections for the purposes of the proposed Act.

Clause 45 enables an inspector to require certain information from the occupier or person in charge of premises in connection with a suspected offence against the proposed Act or the regulations.

Clause 46 makes it an offence to fail to comply with a requirement or direction of a police officer or an inspector made under the proposed Act or to give false information in relation to such a requirement.

Clause 47 makes it an offence to obstruct a police officer or inspector in the exercise of the police officer's or inspector's functions under the proposed Act or to impersonate an inspector.

Clause 48 enables an inspector to apply for a search warrant to enter premises if satisfied that there are reasonable grounds for believing that the proposed Act or the regulations have been contravened on the premises.

Clause 49 enables a Local Court to make certain orders in relation to the removal of tobacco advertisements displayed in contravention of the proposed Act or the regulations.

Clause 50 enables a police officer or an inspector to issue a penalty notice in relation to offences against the proposed Act or the regulations that are prescribed as penalty notice offences.

Part 7 Proceedings for offences

Clause 51 prevents certain civil proceedings being brought against a person for complying with provisions of the proposed Act or the regulations.

Clause 52 provides for penalties for continuing offences against certain provisions of the proposed Act.

Clause 53 provides for directors and persons concerned in the management of a corporation to be liable for offences committed against the proposed Act or the regulations by the corporation in certain circumstances.

Clause 54 provides that an offence under the proposed Act or the regulations may be dealt with summarily by a Local Court or the Supreme Court and places limitations on the penalty that may be imposed in proceedings brought in a Local Court.

Part 8 Miscellaneous

Clause 55 provides that the Act binds the Crown.

Clause 56 excludes the Director-General of the Department of Health and inspectors from personal liability for certain acts done in good faith for the purpose of executing the proposed Act or the regulations.

Clause 57 makes provision for the service of documents under the proposed Act.

Clause 58 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 59 is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 1.

Clause 60 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Clause 61 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the proposed Schedule provides for lead-in times for certain new offences against the proposed Act.

Schedule 2 Amendment of Acts

Schedule 2 amends the Acts specified in the Schedule as a consequence of the enactment of the proposed Act.