

## Public Health Amendment (Tobacco Control) Bill 1999

### 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* as follows:

- (a) to prohibit a person from engaging in the business of tobacco retailing for a 2 or 12 month period if the person has been convicted of a tobacco sales or advertising offence on 2 or 3 occasions within a 3 year period and to prohibit the display of tobacco products by a person while the subject of such a prohibition,
- (b) to limit such a tobacco retailing prohibition to the premises at which the offence that triggers the prohibition occurred and (unless the Director-General of the Department of Health otherwise orders in a particular case) to premises within a 5 kilometre radius of those premises that were not already being used by the person for tobacco retailing,
- (c) to prevent avoidance of a tobacco retailing prohibition by business restructuring by extending the effect of relevant convictions to persons who have a management role or substantial interest in the business that committed the offence and to other businesses in which such a person has a management role or substantial interest,
- (d) to empower the Director-General to require certain persons to provide information to the Director-General to enable the Director-General to ascertain the identity of persons who have a management role or substantial interest in a business convicted of a relevant offence and to ascertain the businesses in which those persons have a management role or substantial interest,
- (e) to provide that the occupier of premises on which a tobacco vending machine is installed is taken to have contravened any provision of Part 6 of the Act that is committed as a result of the sale of tobacco products by means of the vending machine (with certain defences such as establishing the exercise of due diligence),
- (f) to expand the provision that makes an employer liable for the offence of selling tobacco products to minors committed by an employee by providing that, if the offence is committed in the course of the carrying on of a business, the person who operates the business is taken to be the employer of the person who committed the offence,
- (g) to prohibit the sale of tobacco products by means of door to door selling and to prohibit sales in a public or other prescribed place except the tobacco service area of a shop, retail premises, licensed premises or the Sydney Casino, and to make the employer of a person who infringes such a prohibition guilty of an offence also,
- (h) to provide that an order under section 556A of the *Crimes Act 1900* is to be treated as a conviction for the purposes of the tobacco retailing prohibition provisions,
- (i) to provide for the seizure, forfeiture and destruction of tobacco products in a person's possession, custody or control in the course of committing an offence against the tobacco retailing prohibition provisions,
- (j) to make directors and others concerned in the management of a corporation that commits an offence against the tobacco control provisions of the Act guilty of the same offence as the corporation unless they can prove they exercised due diligence and had no knowledge of the offence,
- (k) to consolidate and expand the powers of authorised officers under the tobacco control provisions of the Act,
- (l) to enact consequential savings and transitional provisions and to make minor and consequential amendments.

#### 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 a day or days to be appointed by proclamation.

**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 a provision that provides for explanatory notes in the text of the Act.

**Schedule 1 [2]** and **[3]** make a minor amendment to the definition of **sell** in the Act to include exhibit for sale and display for sale (in addition to the existing expose for sale) as activities constituting the sale of tobacco products.

**Schedule 1 [4]** expands the provision that makes an employer liable for the offence of selling tobacco products to minors committed by an employee by providing that if the offence is committed in the course of the carrying on of a business, the person who operates the business is taken to be the employer of the person who committed the offence.

**Schedule 1 [5]** makes a consequential change to a Division heading.

**Schedule 1 [6]** and **[7]** amend the provision that deals with tobacco vending machines to permit those machines to be placed in the Sydney Casino.

**Schedule 1 [8]** inserts the following new sections:

Proposed section 61FA makes the occupier of premises on which a tobacco vending machine is installed guilty of an offence committed by another person as a result of the sale of tobacco products by means of the vending machine. The section provides defences for the occupier.

Proposed section 61FB prohibits the sale of tobacco products by means of door to door selling and prohibits sales in a public or other prescribed place except the tobacco service area of a shop, retail premises, licensed premises or the Sydney Casino. The section does not apply to sales by vending machine.

Proposed section 61FC makes the employer of a person who commits an offence under section 61FB guilty of that offence also. The section provides defences for the employer.

**Schedule 1 [9]** and **[10]** omit provisions dealing with the powers of authorised officers and proceedings for offences that are being transferred to a new Division of Part 6 of the Act that will be of general application to the whole Part.

**Schedule 1 [11]** inserts new Divisions 5, 6 and 7 into Part 6 of the Act, containing the following provisions:

Proposed section 61Q defines what constitutes engaging in tobacco retailing and contains other interpretative provisions.

Proposed section 61R prohibits a person from engaging in tobacco retailing for a 2 month period if the person has been convicted of the same tobacco related offence on 2 occasions within a 3 year period and for a 12 month period if the person has been convicted of the offence on 3 occasions within a 3 year period. Offences committed on the same day are counted as one offence only except for offences under section 59 of the Act (Sale of tobacco products to minors) committed at separate premises.

Proposed section 61S limits a tobacco retailing prohibition to the premises at which the relevant triggering offence occurred and to premises within 5 kilometres that were not used by the person for tobacco retailing at the time of the triggering offence. The Director-General can in a particular case direct that the prohibition does not apply to specified premises within that 5 kilometre radius.

Proposed section 61T makes it an offence to engage in tobacco retailing in contravention of a tobacco retailing prohibition.

Proposed section 61U creates a further offence of displaying tobacco products while the subject of a tobacco retailing prohibition.

Proposed section 61V provides that an appeal against a relevant conviction operates to defer a tobacco retailing prohibition until the appeal is determined or withdrawn.

Proposed section 61W extends the effect of a conviction for a tobacco related offence to persons who have a management role or substantial interest in the business that committed the offence and to other businesses in which such a person has a management role or substantial interest (to prevent avoidance of the tobacco retailing prohibition provisions by business restructuring).

Proposed section 61X empowers the Director-General to require certain persons to provide information to the Director-General to enable the Director-General to ascertain the identity of persons who have a management role or substantial interest in a business convicted of a relevant offence and to ascertain the businesses in which those persons have a management role or substantial interest.

Proposed section 61Y provides that offences are only counted once to result in a 2 or 12 month retailing prohibition.

Proposed section 61Z provides that an order under section 556A of the *Crimes Act 1900* is to be treated as a conviction for the purposes of the new retailing prohibition provisions.

Proposed section 61ZA authorises the Director-General to issue evidentiary certificates certifying that a person is or was the subject of a tobacco retailing prohibition.

Proposed section 61ZB gives an authorised officer 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 section 61T (Offence of engaging in tobacco retailing while prohibited) or 61U (Offence of displaying tobacco products while prohibited).

Proposed section 61ZC provides for the forfeiture of seized tobacco products by the court that convicts a person for an offence under section 61T or 61U.

Proposed section 61ZD provides for the destruction of forfeited tobacco and the recovery of the costs of destruction from the convicted person.

Proposed section 61ZE provides for the return of seized tobacco in certain circumstances.

Proposed section 61ZF provides that an order under section 556A of the *Crimes Act 1900* is to be treated as a conviction for the purposes of the tobacco forfeiture provisions.

Proposed section 61ZG makes directors and others concerned in the management of a corporation that commits an offence against the tobacco control provisions of the Act guilty of the same offence as the corporation unless they can prove they exercised due diligence and did not have knowledge of the offence.

Proposed sections 61ZH and 61ZI deal with the powers of authorised officers. The powers are transferred (with minor amendments) from the existing restrictions on tobacco advertising and will be of general application to the tobacco control provisions of Part 6 of the Act.

Proposed section 61ZJ provides for the taking of proceedings for offences.

Proposed section 61ZK is a regulation making power.

**Schedule 1 [12]** makes a consequential amendment.

**Schedule 1 [13]** and **[14]** enact savings and transitional provisions.