



New South Wales

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).

Explanatory note

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.

Public Health Amendment (Tobacco Control) Bill 1999

Explanatory note

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.

First print

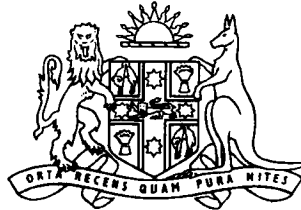


New South Wales

Public Health Amendment (Tobacco Control) Bill 1999

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 (Tobacco Control) Bill 1999

No. , 1999

A Bill for

An Act to amend the *Public Health Act 1991* to make further provision for the enforcement of controls on the sale and advertising of tobacco; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Public Health Amendment (Tobacco Control) Act 1999</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 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	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert after section 3 (2):	4
	(3) Notes included in this Act do not form part of this Act.	5
[2]	Section 53 Definitions	6
	Omit “or expose” from paragraph (b) of the definition of <i>sell</i> .	7
[3]	Section 53, definition of “sell”	8
	Insert after paragraph (c):	9
	(c1) expose for sale, exhibit for sale or display for sale, and	10
[4]	Section 59A Liability of employers	11
	Insert at the end of section 59A (4):	12
	(b) if the contravention occurs in the course of the carrying on of a business—any person who owns, manages, controls, conducts or operates that business.	13 14 15
	(5) If a contravention of section 59 occurs on the premises on which a business is carried on, it is to be presumed, unless the contrary is established, that the contravention occurred in the course of the carrying on of that business.	16 17 18 19
[5]	Part 6, Division 4 heading	20
	Omit the heading. Insert instead:	21
Division 4	Advertising and marketing of tobacco products	22 23

-
- (3) This section is not affected by the terms of any agreement or other arrangement with respect to the use or operation of the tobacco vending machine or the sale of tobacco products by means of the machine (including an agreement or other arrangement entered into before the commencement of this section). 1
2
3
4
5
6
- (4) In this section, *tobacco vending machine* has the same meaning as in section 61F. 7
8
- 61FB Restrictions on where tobacco products can be sold** 9
- (1) A person must not go from house to house selling tobacco products. 10
11
Maximum penalty: 50 penalty units. 12
- (2) A person must not sell a tobacco product while in a public place or a place prescribed by the regulations, except in the tobacco service area of premises that comprise a shop, retail premises, licensed premises or such other premises as may be prescribed by the regulations for the purposes of this subsection. 13
14
15
16
17
18
Maximum penalty: 50 penalty units. 19
- (3) This section does not apply to the sale of tobacco products by means of a tobacco vending machine (within the meaning of section 61F). 20
21
22
- (4) In this section: 23
- house* means any premises where people reside, whether permanently or not. 24
25
- licensed premises* means: 26
- (a) licensed premises under the *Liquor Act 1982* (including that Act as it applies to or in respect of the casino under section 89 of the *Casino Control Act 1992*), or 27
28
29
- (b) the defined premises of a registered club under the *Registered Clubs Act 1976*, or 30
31
- (c) the casino under the *Casino Control Act 1992*. 32
- public place* includes any place to which the public or a section of the public ordinarily has access, whether or not by payment or by invitation. 33
34
35
-

tobacco service area of premises means an area of the premises to which members of the public do not ordinarily have access and from where sales of tobacco products are ordinarily effected.

61FC Liability of employers and others

- (1) If an employee contravenes section 61FB, the employer is taken to have contravened that section (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).
- (2) It is a defence to a prosecution against an employer for such a contravention if it is established:
 - (a) that the employer had no knowledge of the contravention, and
 - (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under section 61FB by virtue of this section whether or not the employee has been proceeded against or convicted under that provision.
- (4) For the purposes of this section, the following additional persons are taken to be employers of persons who contravene section 61FB:
 - (a) any person who authorised a person who contravenes section 61FB to sell tobacco as the person's agent, or
 - (b) if the contravention occurs in the course of the carrying on of a business—any person who owns, manages, controls, conducts or operates that business.
- (5) If a contravention of section 61FB occurs on the premises on which a business is carried on, it is to be presumed unless the contrary is established that the contravention occurred in the course of the carrying on of that business.

[9] Sections 61I, 61J and 61M

Omit the sections.

[10] Section 61P Regulations	1
Omit section 61P (1) (g).	2
[11] Part 6, Divisions 5, 6 and 7	3
Insert after Division 4 of Part 6:	4
Division 5 Tobacco sales—enforcement provisions	5
61Q Interpretation	6
(1) For the purposes of this Division, a person engages in tobacco retailing when tobacco products are sold by retail in the course of the carrying on of a business operated by the person.	7 8 9
Note. Section 53 gives <i>sell</i> a wide definition. It includes, among other things, offer to sell.	10 11
(2) If a sale of tobacco products occurs on premises on which a business is carried on, it is to be presumed for the purposes of this Division, unless the contrary is established, that the sale occurred in the course of the carrying on of that business.	12 13 14 15
(3) For the purposes of this Division, a person is considered to operate a business if the person:	16 17
(a) owns, manages, controls, conducts or operates the business, or	18 19
(b) has (within the meaning of section 61W) a management role or substantial interest in a body corporate that operates the business or a substantial interest in a trust under which the business is operated.	20 21 22 23
(4) For the purposes of this Division:	24
(a) every sale that is not a sale by wholesale or otherwise for the purposes of resale is taken to be a sale by retail, and	25 26 27
(b) a sale is presumed to be a sale by retail unless it is established that the sale is a sale by wholesale or otherwise for the purposes of resale.	28 29 30
Note. Every sale that is not by wholesale or otherwise for resale is a retail sale. This includes sales in restaurants, motels and duty free shops.	31 32

61R	Prohibition against tobacco retailing for multiple offences	1
(1)	A person who has been convicted of 2 offences against the same provision of this Part or the regulations under this Part committed within any 3 year period is prohibited from engaging in tobacco retailing for a 2 month period beginning 21 days after the day of the later of the 2 convictions.	2 3 4 5 6
(2)	A person who has been convicted of 3 offences against the same provision of this Part or the regulations under this Part committed within any 3 year period is prohibited from engaging in tobacco retailing for a 12 month period beginning 21 days after the day of the latest of the 3 convictions.	7 8 9 10 11
(3)	If a person is convicted of 2 or more offences committed on the same day against the same provision of this Part or the regulations under this Part, those convictions are together to be counted for the purposes of this Division as one conviction only, except as provided by subsection (4).	12 13 14 15 16
(4)	In the case of offences against section 59 (Sale of tobacco products to minors) subsection (3) applies only to require convictions for offences committed at the same premises to be counted together as one conviction. In this subsection, <i>premises</i> means the premises of a shop, restaurant, licensed premises (within the meaning of section 61FB) or other retail outlet.	17 18 19 20 21 22 23
	Note. Offences under section 59 committed by a person at particular premises are treated separately under subsection (3) from other offences committed by the person under that section on that day but at different premises.	24 25 26 27
(5)	For the purposes of this section, a retail outlet that is adjacent to and forms part of the operations of another retail outlet is taken to be a part of that other retail outlet.	28 29 30
(6)	The Director-General may in a particular case from time to time increase (or further increase) the period of 21 days referred to in subsection (1) or (2) by notice in writing given to the person concerned.	31 32 33 34
(7)	This section does not apply to an offence under any of the following provisions of this Part:	35 36
(a)	section 55 (Packing of tobacco product without health warning prohibited),	37 38

	(b) section 57 (1) (a) (concerning packaging of tobacco products),	1 2
	(c) section 61G (3) (concerning the sale of confectionary and toys).	3 4
(8)	When a court convicts a person for an offence under this Part, the clerk or other proper officer of the court must notify the Director-General in writing of the conviction.	5 6 7
61S	Prohibition applicable to certain premises only	8
(1)	A prohibition under section 61R applies only to prohibit a person from engaging in tobacco retailing at the following premises (which are referred to in this Division as <i>the prohibited premises</i>):	9 10 11 12
	(a) the premises at which the triggering offence was committed, and	13 14
	(b) any premises within 5 kilometres of the premises at which the triggering offence was committed except premises at which the person engaged in tobacco retailing before the triggering offence was committed.	15 16 17 18
(2)	The Director-General may in a particular case direct by instrument in writing that a prohibition under section 61R does not apply to specified premises that are premises to which subsection (1) (b) applies, and those premises are then not prohibited premises for the purposes of the prohibition under that section.	19 20 21 22 23 24
	Note. The premises where the triggering offence was committed will still be prohibited premises.	25 26
(3)	In this section:	27
	<i>premises</i> means the premises of a shop, restaurant, licensed premises (within the meaning of section 61FB) or other retail outlet.	28 29 30
	<i>triggering offence</i> means:	31
	(a) in the case of a 2 month prohibition period, the second of the 2 offences that resulted in the prohibition, or	32 33
	(b) in the case of a 12 month prohibition period, the third of the 3 offences that resulted in the prohibition.	34 35

(4)	For the purposes of this section, a retail outlet that is adjacent to and forms part of the operations of another retail outlet is taken to be a part of that other retail outlet.	1 2 3
61T	Offence of engaging in tobacco retailing while prohibited	4
(1)	A person who is prohibited under this Division from engaging in tobacco retailing for any period is guilty of an offence if the person engages in tobacco retailing during that period at the prohibited premises.	5 6 7 8
(2)	If a person is prohibited from engaging in tobacco retailing for 2 or more periods that overlap, those periods are, to the extent that they apply to the same premises, to apply consecutively.	9 10 11
(3)	A person who is guilty of an offence under this section is liable:	12 13
(a)	in the case of an individual, to a penalty of not more than 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence, or	14 15 16
(b)	in the case of a body corporate, to a penalty of not more than 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.	17 18 19
(4)	If a continuing state of affairs is created by an offence under this section the offender is liable to a penalty of not more than:	20 21
(a)	50 penalty units in the case of an individual, or	22
(b)	100 penalty units in the case of a body corporate,	23
	in respect of each day on which that offence continues, in addition to the penalty specified in subsection (3).	24 25
61U	Offence of displaying tobacco products while prohibited	26
(1)	When a person is prohibited under this Division from engaging in tobacco retailing, the person is guilty of an offence if any tobacco products are displayed on the prohibited premises when the person is operating a business there.	27 28 29 30
	Note. This section does not require that the display be display for sale. Mere display is sufficient.	31 32

-
- | | |
|--|----------------------|
| (2) A person who is guilty of an offence under this section is liable: | 1
2 |
| (a) in the case of an individual, to a penalty of not more than 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence, or | 3
4
5 |
| (b) in the case of a body corporate, to a penalty of not more than 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence. | 6
7
8 |
| (3) If a continuing state of affairs is created by an offence under this section the offender is liable to a penalty of not more than: | 9
10 |
| (a) 50 penalty units in the case of an individual, or | 11 |
| (b) 100 penalty units in the case of a body corporate, | 12 |
| in respect of each day on which that offence continues, in addition to the penalty specified in subsection (2). | 13
14 |
| (4) Tobacco products in a tobacco vending machine (within the meaning of section 61F) on prohibited premises are for the purposes of this section taken to be displayed on those premises. | 15
16
17
18 |
| (5) This section does not apply to: | 19 |
| (a) the display of tobacco products by customers, or | 20 |
| (b) the display of tobacco products in such other circumstances as may be prescribed by the regulations as exempt from this section. | 21
22
23 |
| 61V Effect of appeal against conviction | 24 |
| (1) An offence is not to be taken into account for the purposes of this Division while an appeal against the conviction for the offence is pending. | 25
26
27 |
| (2) If the conviction stands following determination or withdrawal of the appeal: | 28
29 |
| (a) the conviction is then taken into account as provided by this Division, and | 30
31 |
-

- (b) any period for which a person is prohibited from engaging in tobacco retailing that would (were it not for this section) have commenced before the appeal is determined or withdrawn instead commences 21 days after the appeal is determined or withdrawn. 1
2
3
4
5
- (3) The Director-General may in a particular case from time to time increase (or further increase) the period of 21 days referred to in subsection (2) by notice in writing given to the person concerned. 6
7
8
9
- 61W Business interests—effect of convictions** 10
- (1) When a body corporate or the trustee of a trust is convicted of an offence under this Part in connection with the carrying on of a business operated by the body corporate or under the trust: 11
12
13
- (a) each person who has a management role or substantial interest in the body corporate or a substantial interest in the trust is for the purposes of this Division taken to have been convicted of the offence also, and 14
15
16
17
- (b) each body corporate in which a person referred to in paragraph (a) has a management role or substantial interest is for the purposes of this Division taken to have been convicted of the offence also (whether or not the body corporate was in existence at the date of the offence), and 18
19
20
21
22
23
- (c) the trustee and any manager of a trust in which a person referred to in paragraph (a) has a substantial interest is for the purposes of this Division taken to have been convicted of the offence also (whether or not the trust was in existence at the date of the offence). 24
25
26
27
28
- (2) A person is considered to have a management role or substantial interest in a body corporate if: 29
30
- (a) the person is a director, secretary or executive officer (as defined in the *Corporations Law*) of the body corporate, or 31
32
33

-
- | | | |
|------------|---|----------------------------------|
| (b) | the person is entitled to more than 10% of the issued share capital of the body corporate (with the shares to which a person is entitled including shares to which the person is entitled in accordance with section 609 of the <i>Corporations Law</i>). | 1
2
3
4
5 |
| (3) | A person is considered to have a substantial interest in a trust if the person (whether or not as the trustee of another trust) is the beneficiary in respect of more than 10% of the value of the interests in the trust. | 6
7
8
9 |
| (4) | The Director-General may in a particular case direct by instrument in writing that: | 10
11 |
| (a) | subsection (1) (b) does not apply to a body corporate in respect of a particular offence, but only if the body corporate is not a related body corporate (within the meaning of the <i>Corporations Law</i>) of the body corporate convicted of the offence, or | 12
13
14
15
16 |
| (b) | subsection (1) (c) does not apply in respect of a trust in respect of a particular offence. | 17
18 |
| (5) | The regulations may create exceptions to this section. | 19 |
| 61X | Power to require information from convicted persons and others | 20 |
| (1) | When a body corporate or the trustee of a trust is convicted of an offence under this Part in connection with the carrying on of a business operated by the body corporate or under the trust the Director-General may require certain persons to provide specified information to the Director-General, as provided by this section. | 21
22
23
24
25
26 |
| (2) | The body corporate or trustee may be required to provide information that the Director-General may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the body or a substantial interest in the trust. | 27
28
29
30
31 |
| (3) | A person whom the Director-General reasonably believes has a management role or substantial interest in the body corporate or a substantial interest in the trust may be required to provide information that the Director-General may reasonably require to ascertain: | 32
33
34
35
36 |
-

Schedule 1 Amendments

(a)	the identity of each body corporate in which that person has a management role or substantial interest, or	1 2
(b)	the identity of the trustee and any manager of a trust in which that person has a substantial interest.	3 4
(4)	A requirement to provide information is to be imposed by direction in writing served on the person, body or trustee concerned. The direction must specify a period of not less than 7 days as the period within which the required information must be provided.	5 6 7 8 9
(5)	A person who fails without reasonable excuse to comply with a requirement of a direction under this section is guilty of an offence.	10 11 12
	Maximum penalty:	13
(a)	in the case of an individual, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence, or	14 15 16
(b)	in the case of a body corporate, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.	17 18 19
(6)	A person who in purported compliance with a requirement of a direction under this section provides information that is false or misleading in a material particular is guilty of an offence unless the person satisfies the court that he or she did not know and could not reasonably be expected to have known that the information was false or misleading.	20 21 22 23 24 25
	Maximum penalty:	26
(a)	in the case of an individual, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence, or	27 28 29
(b)	in the case of a body corporate, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.	30 31 32
61Y	Offences only to be taken into account once	33
(1)	An offence may only be taken into account once under section 61R (1) in respect of a particular person and once under section 61R (2) in respect of that person.	34 35 36

(2) An offence that has been taken into account under section 61R (1) in respect of a particular person may also be taken into account under section 61R (2) in respect of that person.	1 2 3
Note. If 3 offences are committed within a 3 year period, the first 2 offences give rise to a 2 month prohibition and the third offence (taken into account with the first 2) results in a further 12 month prohibition. However the second and third offences do not give rise to another 2 month prohibition. Further offences cannot be taken into account with offences that have already been taken into account.	4 5 6 7 8 9
61Z Order under s 556A treated as conviction	10
For the purposes of this Division, the making of an order under section 556A of the <i>Crimes Act 1900</i> in respect of an offence is taken to be a conviction for the offence.	11 12 13
61ZA Evidentiary certificate	14
(1) The Director-General may issue a certificate to the effect that a person specified in the certificate is or was prohibited under this Division from engaging in tobacco retailing for a period and in respect of premises specified in the certificate.	15 16 17 18
(2) Such a certificate is evidence of the matters certified.	19
(3) A certificate purporting to be a certificate issued by the Director-General under this section is presumed to have been so issued unless the contrary is established.	20 21 22
Division 6 Seizure and forfeiture of tobacco products	23
61ZB Seizure of tobacco products for contravention of retailing prohibition	24 25
(1) An authorised officer may seize any tobacco product that the authorised officer believes on reasonable grounds is 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).	26 27 28 29 30 31 32

(2) Any tobacco product seized under this section may, at the option of the authorised officer who made the seizure or of any authorised officer acting in his or her place, be detained in the place or vehicle where it was found or be removed to another place and detained there.	1 2 3 4 5
(3) If the tobacco product is to be detained in the place or vehicle where it was found, the authorised officer may:	6 7
(a) place it in a room, compartment or cabinet in that place or vehicle, and	8 9
(b) mark, fasten and seal the door or opening providing access to that room, compartment or cabinet.	10 11
(4) A person who, without lawful authority, retakes or attempts to retake any tobacco products seized under this section or resists or attempts to prevent such a seizure is guilty of an offence.	12 13 14
Maximum penalty:	15
(a) in the case of an individual, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence, or	16 17 18
(b) in the case of a body corporate, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.	19 20 21
(5) The seizure of tobacco products under this section for which there was reasonable cause does not subject the State, the Minister, the Director-General, an authorised officer or any other person to any action, liability, claim or demand.	22 23 24 25
61ZC Forfeiture of tobacco on conviction	26
(1) If a court that convicts a person for an offence under section 61T or 61U finds that any tobacco product seized under this Division was in any person's possession, custody or control in the course of committing, or for the purposes of committing, the offence, the court is to order the tobacco product to be forfeited to the Crown unless the court is of the opinion that exceptional circumstances justify the court not ordering the tobacco product to be forfeited.	27 28 29 30 31 32 33 34
(2) The court's order operates to forfeit the tobacco products to the Crown.	35 36

61ZD	Destruction of forfeited tobacco	1
(1)	The Director-General is to cause all tobacco products forfeited under this Division to be destroyed.	2 3
(2)	The person convicted of the offence that resulted in forfeiture of tobacco products is liable to pay to the Director-General the reasonable costs incurred in destroying the tobacco products, and any such costs may be recovered by the Director-General in a court of competent jurisdiction as a debt due to the Crown.	4 5 6 7 8
(3)	In proceedings for recovery of the costs of destroying tobacco products, a certificate signed by the Director-General certifying the amount of those costs and the manner in which they were incurred is evidence of the matters certified.	9 10 11 12
61ZE	Return of seized tobacco	13
	Any tobacco products seized under this Division must be returned to the person from whom they were seized (or to such other person as appears to the Director-General to be entitled to them) if:	14 15 16 17
(a)	proceedings for an offence under section 61T or 61U have not been commenced against the person from whom they were seized within 42 days after seizure, or	18 19 20
(b)	proceedings for such an offence against the person have been commenced within that 42 days but the court that disposes of the proceedings does not convict the person or does not make an order for forfeiture of the tobacco products, or	21 22 23 24 25
(c)	the Director-General becomes satisfied that the tobacco products were not, at the time they were seized, in a person's possession, custody or control in the course of committing, or for the purposes of committing, an offence under section 61T or 61U.	26 27 28 29 30
61ZF	Order under s 556A treated as conviction	31
	For the purposes of this Division, the making of an order under section 556A of the <i>Crimes Act 1900</i> in respect of an offence is taken to be a conviction for the offence.	32 33 34

Division 7	General	1
61ZG	Offences by corporations	2
(1)	If a corporation commits an offence under this Part or the regulations under this Part, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have committed the same offence unless he or she proves that:	3 4 5 6 7
(a)	the offence was committed without his or her knowledge, and	8 9
(b)	he or she exercised all such due diligence to prevent the commission of that offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.	10 11 12 13
(2)	A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted under that provision.	14 15 16 17
(3)	Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Part or the regulations under this Part.	18 19 20
(4)	Section 78 (Offences by corporations) does not apply to an offence under this Part or the regulations under this Part.	21 22
61ZH	Powers of authorised officers	23
(1)	For the purpose of ascertaining whether any of the provisions of this Part or the regulations made under this Part are being or have been complied with or contravened in any premises, an authorised officer may, alone or with such police officers or other persons as may be necessary, enter and inspect the premises.	24 25 26 27 28 29
(2)	On entering any premises, the authorised officer may do any of the following:	30 31
(a)	open and inspect any package on which a tobacco advertisement is displayed or that the officer reasonably believes contains any tobacco product,	32 33 34

-
- | | | |
|-------------|--|--|
| (b) | examine any labelling or advertising material that appears to be intended for use in connection with the sale of any tobacco product, | 1
2
3 |
| (c) | open, or require the opening of, and examine any appliance, cabinet, dispensing unit or other item that appears to be used in connection with the sale of tobacco products, | 4
5
6
7 |
| (d) | take such photographs, or videotape or other films, as the authorised officer considers necessary, | 8
9 |
| (e) | inspect any invoice or record on the premises (including any invoice or record stored electronically) relating to tobacco products, advertising or promotional material supplied to the occupier of the premises, the ownership of any business conducted on the premises, or the employment of persons in any such business, | 10
11
12
13
14
15 |
| (f) | make copies of any such invoice or record or any part of it and, for that purpose, take away and retain (for such time as may, for that purpose, be reasonably necessary) any such invoice or record, | 16
17
18
19 |
| (g) | generally make such investigations and inquiries as may be necessary to ascertain whether an offence under this Part or any regulations made under this Part is being or has been committed. | 20
21
22
23 |
| (3) | This section does not authorise an authorised officer acting without a search warrant to enter any premises or part of any premises used as a dwelling without the consent of the occupier. | 24
25
26
27 |
| 61ZI | Authorised officer may require information | 28 |
| (1) | An authorised officer may at any time require a person by whom the officer reasonably suspects any provision of this Part or the regulations made under this Part is being or has been contravened, or who is apparently in charge of premises where such a contravention is occurring or evidently has occurred, to state his or her name and address and (if the person is not the occupier of the premises or the owner or operator of the business conducted there) the name of the occupier of the premises or of that owner or operator or of the person's employer. | 29
30
31
32
33
34
35
36
37
38 |
-

- (2) If the contravention concerns an advertisement or any object containing an advertisement, the authorised officer may require a person referred to in subsection (1) to produce for inspection any invoice or record relating to the advertisement or object or relating to any tobacco products in connection with which the material for the advertisement, or the object, was obtained. 1
2
3
4
5
6
- (3) A person who, without a reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence. 7
8
9
Maximum penalty: 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence. 10
11
- (4) A person who in purported compliance with a requirement under this section provides information that is false or misleading in a material particular is guilty of an offence unless the person satisfies the court that he or she did not know and could not reasonably be expected to have known that the information was false or misleading. 12
13
14
15
16
17
Maximum penalty: 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence. 18
19
- (5) A person is not guilty of an offence under subsection (3) unless, at the time at which the relevant requirement was made: 20
21
- (a) the authorised officer had identified himself or herself to the person as an authorised officer, and 22
23
- (b) the person had been warned that a refusal or failure to comply with the request constituted an offence. 24
25
- 61ZJ Proceedings for offences** 26
- (1) Proceedings for an offence under this Part or the regulations made under this Part may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction. 27
28
29
30
- (2) The maximum pecuniary penalty that can be imposed by a Local Court for any such offence is 100 penalty units or the maximum pecuniary penalty elsewhere provided in this Part, whichever is less. 31
32
33
34

(3) Proceedings for any such offence that are brought before a Local Court may be brought at any time within 12 months after the date on which the offence was committed.	1 2 3
61ZK Regulations	4
The regulations may make provision for or with respect to the form of notices to be used in connection with the entry by authorised officers on to any premises under this Division, and the manner and occasion of use of such notices.	5 6 7 8
[12] Section 79 Proceedings for offences	9
Omit “61M” from section 79 (2). Insert instead “61ZJ”.	10
[13] Schedule 4 Savings and transitional provisions	11
Insert at the end of clause 1 (2A):	12
<i>Public Health Amendment (Tobacco Control) Act 1999</i>	13
[14] Schedule 4, Part 6	14
Insert after Part 5:	15
Part 6 Provisions consequent on enactment of Public Health Amendment (Tobacco Control) Act 1999	16 17 18
19 Sales by vending machine	19
Section 61FA does not apply to a sale of tobacco products that occurs before the commencement of that section.	20 21
20 Liability of employers	22
Section 59A (4) (b) does not apply to a contravention of section 59 that occurs before the commencement of the amendment of that section by the <i>Public Health Amendment (Tobacco Control) Act 1999</i> .	23 24 25 26

21	Authorised officers	1
(1)	Anything done or commenced under section 61I or 61J before the repeal of those sections is taken to have been done or commenced under section 61ZH or 61ZI, respectively.	2 3 4
(2)	Sections 61ZH and 61ZI extend to offences committed before the commencement of those sections.	5 6
22	Prior offences not counted	7
	Section 61R (Prohibition against tobacco retailing for multiple offences) does not apply in respect of an offence committed before the commencement of that section.	8 9 10
23	Offences by corporations	11
	Section 61ZG does not apply to an offence committed before the commencement of that section.	12 13