



New South Wales

Public Health Amendment (Juvenile Smoking) Bill 2002

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 creates an offence for a person under the age of 18 years (a minor) to smoke a tobacco product or non-tobacco smoking product, or to purchase such a product from premises where such products are sold. A good behaviour bond (or a community service order or fine) may be imposed for a first such offence, and a community service order or fine for a second or subsequent such offence.

Section 58 also 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 and removes a surplus reference from that provision.



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New South Wales

Public Health Amendment (Juvenile Smoking) Bill 2002

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

(Section 3)

[1] Sections 58 and 58A

Insert before section 59:

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

(1) A person under the age of 18 years who:

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

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

is guilty of an offence.

Maximum penalty: a good behaviour bond for a first offence, or 10 penalty units or a community service order for a second or subsequent offence.

(2) 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.

Maximum penalty: 20 penalty units.

(3) If a person fails to enter a good behaviour bond in accordance with an order by the court under subsection (1), the court may instead:

(a) make a community service order in respect of the person, or

(b) if the court is not satisfied that the criteria for suitability for community service work under section 86 (1) of the *Crimes (Sentencing Procedure) Act 1999* are met in respect of the person, impose a fine on the person not exceeding 5 penalty units.

(4) A good behaviour bond imposed under subsection (1) must be for a specified term not exceeding 12 months.

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| (5) | A good behaviour bond must contain a condition (in addition to the conditions imposed under section 95 of the <i>Crimes (Sentencing Procedure) Act 1999</i>) to the effect that the person will participate in a program approved by the court designed to assist participants to quit smoking. | 1
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| (6) | Part 8 of the <i>Crimes (Sentencing Procedure) Act 1999</i> applies to a good behaviour bond imposed under subsection (1) as it applies to a good behaviour bond under section 9 of that Act. | 6
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| (7) | A community service order imposed under subsection (1) must direct the defendant to perform community service work for a specified number of hours not exceeding 50 hours. | 9
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| (8) | Part 5 of the <i>Crimes (Administration of Sentences) Act 1999</i> applies to a community service order made under subsection (1) as it applies to a community service order under section 8 of the <i>Crimes (Sentencing Procedure) Act 1999</i> . | 12
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| (9) | Part 7 of the <i>Crimes (Sentencing Procedure) Act 1999</i> (other than section 86 (2)–(4) and Division 3 of that Part) applies to a community service order made under subsection (1) as it applies to a community service order under section 8 of that Act. | 16
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| 58A | Purchasing tobacco products or non-tobacco smoking products on behalf of minors | 21
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| (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. | 23
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| | Maximum penalty: 20 penalty units. | 27 |
| (2) | It is a defence to a prosecution for an offence under this section if the court is satisfied that: | 28
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| (a) | the person on whose behalf the relevant product was purchased was over the age of 14 years, and | 30
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| (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. | 32
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[2] Section 59 Sale of tobacco products or non-tobacco smoking products to minors	1
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Omit section 59 (3) and (4).	3
[3] Section 59AA	4
Insert after section 59:	5
59AA Evidence of age	6
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> .	7
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[4] Sections 60 and 60A	11
Insert after section 59A:	12
60 Minor using false evidence of age	13
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.	14
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Maximum penalty: 10 penalty units.	19
60A Confiscation of proof of age cards	20
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> :	21
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(a) any environmental health officer,	24
(b) 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.	25
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