

FIRST PRINT

TOBACCO ADVERTISING PROHIBITION BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to encourage healthier lifestyles by prohibiting certain activities aimed at promoting the sale of tobacco products and consequently reducing the incentive for people to smoke.

The Bill also establishes the New South Wales Health Foundation whose objectives include the funding of activities related to the promotion of good health, especially among the young.

The Bill prohibits the advertising of tobacco products in certain specified ways and also prohibits the use of competitions and other activities for the purpose of promoting tobacco products.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act binds the Crown.

Clause 3 states the purposes of the proposed Act as the following:

- (a) the active discouragement of smoking by:
- encouraging non-smokers not to start smoking
 - limiting exposure of young people to persuasion to smoke
 - encouraging smokers to give up smoking
- (b) the promotion of good health.

Clause 4 defines certain terms used in the proposed Act.

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PART 2—TOBACCO PRODUCTS

Clause 5 prohibits commercial tobacco advertising:

- in, or so that it can be seen or heard from, a public place
- on unsolicited material distributed to the public
- by means of goods sold, hired or supplied for some benefit

but does not prohibit such advertising:

- on radio or television
- in a newspaper or book printed or published outside the State, if incidental to the main purpose of the newspaper or book
- on a package containing a tobacco product
- incidental to a film or video tape
- in a tobacconist's shop or similar retail outlet
- on documents used in the ordinary course of business
- otherwise exempted under the Act

The clause does not prohibit advertising before 1 November 1995 under a contract entered into before 1 November 1991.

The maximum penalty for a first offence, if committed by an individual, is 50 penalty units (currently \$5,000) and for subsequent offences is 100 penalty units (currently \$10,000).

The maximum penalty for a first offence, if committed by a corporation, is 200 penalty units (currently \$20,000) and for subsequent offences is 400 penalty units (currently \$40,000).

An additional daily penalty of up to 50 penalty units (for an individual) or 200 penalty units (for a corporation) may be imposed in the case of a continuing offence. (Penalties for offences under Part 2 are set out in proposed section 28.)

Clause 6 prohibits certain kinds of promotional schemes conducted either in connection with the sale of a tobacco product or for the purpose of promoting such sales.

The Governor is empowered by the proposed section to declare schemes as promoting the sale of a tobacco product or as promoting smoking generally and the conduct of any such scheme is prohibited.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 7 prohibits the offering, giving or distributing of free samples of tobacco products as a promotion of a sale of such a product.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 8 prohibits the promotion of, or agreements to promote, tobacco products or their trademark or brand name in return for a sponsorship of some activity and also prohibits the provision of a sponsorship on such terms, subject to certain exceptions and exemptions.

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The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 9 prohibits the placement of tobacco vending machines in premises where they may be operated by the public unless the premises are either:

- licensed under the Liquor Act 1982
- a staff amenity area provided by an employer

The clause also provides that the owner or lessee of a tobacco vending machine who does not display a statement prescribed by regulations on the front of the machine commits an offence.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 10 prohibits the sale of loose cigarettes or of packets containing less than 20 cigarettes.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 11 prohibits the sale of tobacco products that are not prepared for smoking (such as chewing tobacco or snuff) except in certain circumstances set out in regulations.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 12 provides some exemptions from the prohibitions contained in proposed sections 5 and 8. The exemptions are to be specified by the Minister in a notice published in the Gazette and must have regard to certain criteria set out in the clause or, where designed to avoid significant hardship, are to operate only for a specified transitional period.

PART 3—NEW SOUTH WALES HEALTH PROMOTION FOUNDATION

Clause 13 establishes a body corporate having the corporate name of New South Wales Health Promotion Foundation.

Clause 14 provides for the Foundation to inform the Minister of its activities as required.

Clause 15 provides for the Foundation to consist of 9 members representing appropriate organisations and Departments.

Clause 16 provides for members of the Foundation who are representative of non-governmental organisations to be appointed for periods not exceeding 3 years.

Clause 17 provides for the members' remuneration and allowances.

Clause 18 provides for the resignation of members.

Clause 19 gives formal effect to Schedule 1 relating to further provisions governing the constitution, proceedings and operations of the Foundation.

Clause 20 states the objectives of the Foundation as being:

- to fund activities promoting good health

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- to offer sponsorship of sporting and arts activities as an alternative to that of tobacco manufacturers or wholesalers
- to fund research relevant to health promotion
- to raise funds through donations and grants and the marketing of goods and services related to health promotion
- to fulfil the purposes of the proposed Act

Clause 21 gives the Foundation the powers necessary to achieve its objectives and provides that, in the exercise of those powers, priority is to be given (for 5 years) to compensating persons (other than manufacturers or wholesalers of tobacco products) who have suffered hardship as a consequence of the operation of the proposed Act.

Clause 22 empowers the Minister to give directions to the Foundation concerning its functions and requires any such direction to be reported in the Foundation's annual report.

Clause 23 provides for the personnel and consultancy resources necessary for the Foundation to achieve its objectives.

Clause 24 provides for the funding of the Foundation and for the establishment of the New South Wales Health Promotion Fund.

Provision is also made for the proportional allocation of funding under the Foundation's annual program and for the return to the Consolidated Fund of any funds not spent within 4 months of the end of the financial year.

Clause 25 provides for temporary investment of the Foundation's funds.

Clause 26 applies the Public Finance and Audit Act 1983 to the operations of the Foundation, subject to the other provisions of Part 3.

PART 4—ENFORCEMENT

Clause 27 establishes a Tobacco Advertisements Reduction Committee.

Clause 28 requires the Committee to use its best endeavours to have billboard, taxi and certain other tobacco advertisements removed over the period ending on 1 November 1995.

Clause 29 authorises a Local Court to order the removal or obscuring of illegal tobacco advertisements in public places.

Clause 30 authorises council and certain other government officials to enter premises to remove or obscure tobacco advertisements under such a court order.

Clause 31 makes it an offence to intimidate or obstruct such an official.

Clause 32 provides that any prosecution under the proposed Act requires the consent of the Director-General of the Department of Health or of an authorised person.

Clause 33 states the penalties for offences against the proposed Act.

Clause 34 allows proceedings for an offence against the proposed Act to be taken in a Local Court (in which case the maximum penalty that may be imposed is 50 penalty units) or, at the option of the prosecutor, on indictment.

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Clause 35 provides that every officer of a body corporate that commits an offence also commits a like offence. The clause defines "officer" and provides a statutory defence for any such officer.

PART 5—GENERAL

Clause 36 bars civil proceedings against a person for the doing, or the omission to do, any thing which is done or omitted to be done in compliance with the proposed Act.

Clause 37 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 38 provides that, 3 years after the proposed Act has commenced, the Minister is to have its operation, and the continuing need for it, investigated and a report made. The report is to be tabled in Parliament.

Clause 39 gives effect to the amendments to other Acts set out in Schedule 2.

SCHEDULE 1—FURTHER PROVISIONS RELATING TO NEW SOUTH WALES HEALTH PROMOTION FOUNDATION

Clause 1 defines certain terms used in Schedule 1.

Clause 2 provides for the meetings of the Foundation and the procedures to be followed.

Clause 3 requires the disclosure of a member's pecuniary or other interests.

Clause 4 empowers the Foundation to delegate some of its functions.

Clause 5 empowers the Foundation to establish committees.

Clause 6 requires a member or officer of the Foundation to act honestly and with reasonable care and diligence.

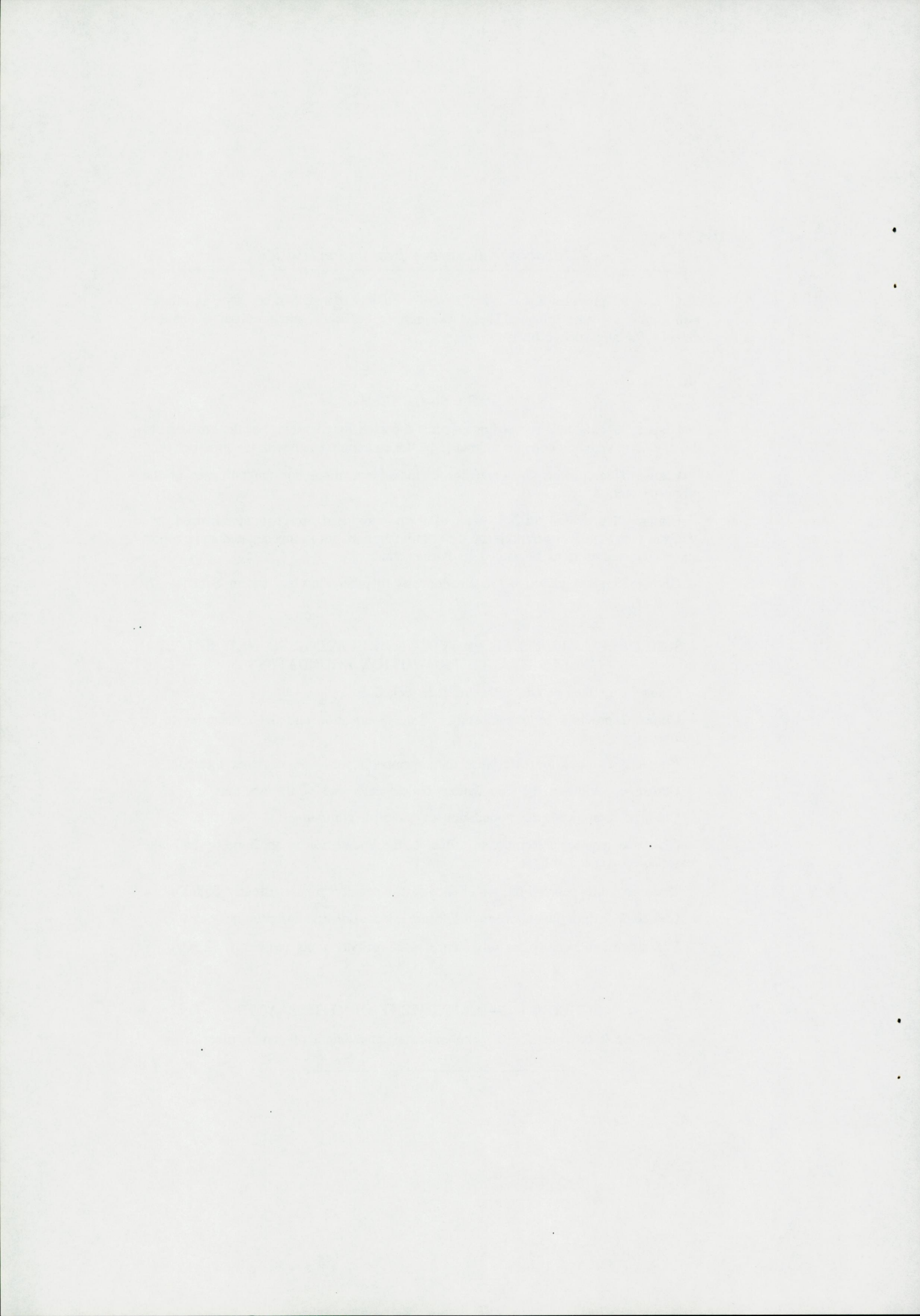
The maximum penalty for an offence is 50 penalty units (currently \$5,000).

Clause 7 forbids unauthorised disclosure of confidential information.

The maximum penalty for an offence is 25 penalty units (currently \$2,500).

SCHEDULE 2—AMENDMENT OF OTHER ACTS

Schedule 2 provides for the consequential amendment of certain other Acts.



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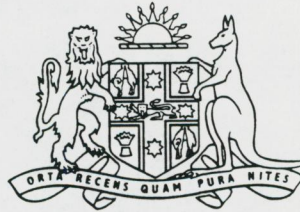
SCHEDULE 1—FURTHER PROVISIONS RELATING TO NEW SOUTH WALES

HEALTH PROMOTION FOUNDATION

SCHEDULE 2—AMENDMENT OF OTHER ACTS

TOBACCO ADVERTISING PROHIBITION BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to prohibit the advertising of tobacco and tobacco products, trade marks, brand names and logos, and for other purposes.

Tobacco Advertising Prohibition 1991

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Tobacco Advertising Prohibition Act 1991.

Act binds the Crown

2. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Purposes of Act

3. The purposes of this Act are:

- (a) the active discouragement of the smoking of tobacco by:
 - (i) encouraging non-smokers, particularly young people, not to start smoking;
 - (ii) limiting exposure of children and young people to persuasion to smoke; and
 - (iii) encouraging and assisting smokers to give up smoking;and
- (b) the promotion of good health and the prevention of illness.

Definitions

4. In this Act:

“**appointed day**” means 1 November 1991;

“**authorised officer**” means:

- (a) a health surveyor appointed by the council of a city, municipality or shire; or
- (b) a person authorised as an officer for the purposes of this Act by an order made by the Director-General of the Department of Health;

“**banned contract**” means:

- (a) a contract or arrangement that was entered into before the appointed day and anything done under which, because of Part 2, is wholly or partly unlawful; or

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- (b) a contract or arrangement which the Foundation considers there to have been a reasonable likelihood would have been entered into after the appointed day but for the passing of this Act and anything done under which, because of Part 2, would have been wholly or partly unlawful, but only if the potential parties to the contract or arrangement have, before 26 September 1991, been parties to a contract or arrangement anything done under which, if it continued beyond the appointed day, would pursuant to Part 2 be wholly or partly unlawful;

“banned sponsorship” means sponsorship under a banned contract;

“benefit”, in relation to a banned contract or banned sponsorship, means any benefit that would have flowed to a person other than a manufacturer or wholesaler of a tobacco product as a result of a banned contract or banned sponsorship;

“book” includes any printed material in any language;

“brand name” includes any part of a brand name;

“Foundation” means the New South Wales Health Promotion Foundation established by section 13 (1);

“Fund” means the New South Wales Health Promotion Fund referred to in section 24 (2);

“newspaper” includes a copy of any magazine, journal or periodical or any other publication copies of which contain:

- (a) news, information or reports of events; or
- (b) remarks, observations or comments about any news, information or events or about any other matter of interest to the public or to any section of the public,

which are printed in any language and published at regular or irregular intervals;

“objective” means an objective of the Foundation set out in section 20;

“package”, in relation to a tobacco product, means package:

- (a) in which the tobacco product is packed by a manufacturer; and
- (b) which is in contact with the tobacco product;

“premises” includes any place;

“public place” includes a place to which the public or a section of the public ordinarily has access, whether or not by payment or by invitation;

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“**racing**” means horse racing and pacing, dog racing and motor car and motorcycle racing;

“**sell**” includes:

- (a) barter or exchange;
- (b) offer or expose for sale, barter or exchange;
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously, but with a view to gaining or maintaining custom or otherwise with a view to commercial gain;

“**sponsorship**” includes:

- (a) scholarship, prize, gift or other benefit; and
- (b) financial arrangement (other than a genuine contract of employment or a genuine contract for services) for the direction, promotion or publicity of one or more of the matters referred to in section 8 (1) (a) and (b) through the medium of sporting, arts, youth, educational or other like activities;

“**sporting**” includes recreational and other activities but does not include racing;

“**tobacco advertisement**” means writing, still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of two or more of them, that gives publicity to, or otherwise promotes:

- (a) the purchase or use of a tobacco product; or
- (b) the trademark or brand name, or part of a trademark or brand name, of a tobacco product;

“**tobacco product**” means tobacco, cigarette or cigar or any other product the main, or a substantial, ingredient of which is tobacco and which is designed for human consumption or use, but excludes nicotine or a product containing nicotine in so far as the Poisons Act 1966 applies to or in relation to nicotine or a product containing nicotine;

“**tobacco vending machine**” means machine, device or contrivance that is constructed to contain tobacco products that can be obtained from it by an operation which involves:

- (a) the insertion in that machine, device or contrivance of a coin, token or similar object; or

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- (b) any other action taken without the assistance of the vendor or his or her employee or agent;

“trademark” includes part of a trademark.

PART 2—TOBACCO PRODUCTS**Certain advertising prohibited**

5. (1) A person who in New South Wales for any direct or indirect benefit displays a tobacco advertisement in, or so that it can be seen or heard from, a public place commits an offence.

(2) A person who in New South Wales:

(a) distributes to the public any unsolicited object; or

(b) sells, hires or supplies for any direct or indirect benefit any object, that constitutes or contains a tobacco advertisement commits an offence.

(3) This section does not apply in relation to anything done before 1 November 1995 under a contract or arrangement entered into before 1 November 1991.

(4) This section does not apply in relation to:

(a) anything done by means of a radio or television broadcast;

(b) a tobacco advertisement in or on a newspaper or book printed or published outside New South Wales, the sole or main purpose of which newspaper or book is not the promotion or publicising of the purchase or use of a tobacco product or a trademark or brand name of a tobacco product;

(c) a tobacco advertisement in or on a package or carton containing a tobacco product;

(d) a tobacco advertisement that is an incidental accompaniment to the subject of a film or video tape (not being a film or video tape which is wholly or mainly concerned with the promotion of tobacco products);

(e) a tobacco advertisement that is displayed inside a shop or other retail outlet where tobacco products are offered or exposed for sale, that is directly adjacent to a place where all or any of those tobacco products are offered or exposed for sale and that complies with any regulations made under section 36 (1) (c);

(f) an invoice, statement, order, letterhead, business card, cheque, manual or other document that is ordinarily used in the course of the business of a manufacturer or distributor of a tobacco product; or

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(g) anything to which this section does not apply by virtue of an exemption granted under section 12.

(5) Subsection (3) (e) does not apply to a tobacco advertisement that is visible from a public place on or after 1 July 1993 regardless of when the advertisement was first displayed.

(6) In any proceedings for an offence under subsection (1), it is presumed that, if there is present in the relevant tobacco advertisement:

- (a) the name of a person who manufactures or distributes any tobacco product;
- (b) a trademark, of which a person who manufactures or distributes any tobacco product is the registered proprietor or the registered user within the meaning of the Trade Marks Act 1955 of the Commonwealth; or
- (c) a brand name, used by a person who manufactures or distributes any tobacco product,

that person displayed that tobacco advertisement for a direct or indirect benefit, until the contrary is proved.

(7) In any proceedings for an offence under this section, if the thing that is alleged to constitute a tobacco advertisement contains the trademark or brand name of a tobacco product, it is presumed to be designed to promote or publicise the tobacco product to which it relates until the contrary is proved.

Competitions

6. (1) A person who, in connection with the sale of a tobacco product or for the purpose of promoting the sale of a tobacco product:

- (a) supplies (whether it is sent from inside or outside New South Wales) to the purchaser, or any other person, in New South Wales:
 - (i) a prize, gift or other benefit; or
 - (ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit (whether that entitlement or qualification is absolute or conditional); or
- (b) conducts (whether from inside or outside New South Wales) a scheme:

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- (i) prescribed to be a scheme to promote the sale of a tobacco product or to promote smoking generally; and
- (ii) the whole or any part of which is implemented in New South Wales,

commits an offence.

(2) It is a defence in proceedings for an offence under subsection (1) to prove that the benefit or thing supplied, or participation in the relevant scheme, was only incidentally connected with the purchase of a tobacco product and that equal opportunity to receive that benefit or thing, or to participate in that scheme, and to buy products other than tobacco products, was afforded generally to persons who purchased products, whether or not they were tobacco products.

Free samples

7. A person who, for the purpose of inducing or promoting the sale of a tobacco product, offers, gives or distributes to another person a free sample of a tobacco product commits an offence.

Prohibition of sponsorships

8. (1) A person who promotes or publicises, or agrees to promote or publicise, in New South Wales:

- (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
- (b) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product) in association directly or indirectly with the tobacco product,

under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person commits an offence.

(2) A person who provides, or agrees to provide, a sponsorship under a contract or arrangement of a kind referred to in subsection (1) commits an offence.

(3) For the purposes of subsection (1) (b), the name or interests of a manufacturer or distributor of a tobacco product are taken to be in association directly or indirectly with the tobacco product if that name or those interests are commonly associated by members of the public in New South Wales with the tobacco product.

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- (4) This section does not apply in relation to:
- (a) anything done before 1 November 1995 under a contract or arrangement entered into before 1 November 1991; or
 - (b) anything to which this section does not apply by virtue of an exemption granted under section 12.

Tobacco vending machines

9. (1) A person who places, or causes or permits to be placed, in any premises in New South Wales a tobacco vending machine for operation by members of the public commits an offence unless the premises are:

- (a) licensed premises within the meaning of the Liquor Act 1982; or
- (b) premises set aside by an employer as a staff amenity area.

(2) A person who:

- (a) owns or is the lessee of a tobacco vending machine in New South Wales; and
- (b) does not ensure that a statement in the prescribed form is kept conspicuously displayed on the front of the vending machine,

commits an offence.

Packages of cigarettes

10. A person who sells cigarettes in New South Wales:

- (a) in a package containing less than 20 cigarettes; or
- (b) otherwise than in a package,

commits an offence.

Smokeless tobacco

11. (1) A person who manufactures or sells in New South Wales a tobacco product other than a tobacco product prepared for smoking commits an offence.

(2) Subsection (1) does not apply to the manufacture or sale of prescribed tobacco products in prescribed circumstances.

Exemptions

12. (1) Subject to this section, the Minister may, by notice published in the Gazette:

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- (a) exempt a person or class of persons either wholly or in part from the operation of section 5 or 8 subject to such conditions (if any) as are set out in that notice or prescribed for the purposes of this paragraph; or
 - (b) amend or repeal an exemption granted under this section.
- (2) An exemption may be granted under this section only after consultation between the Minister and the appropriate Minister, and having regard to the nature and background of the event, function or series concerned and to the purposes of this Act, to facilitate the promotion and conduct of:
- (a) a sporting, racing or arts event or function; or
 - (b) a series of sporting, racing or arts events or functions,
- of national or international significance.
- (3) The “**appropriate Minister**” is:
- (a) in relation to an exemption to facilitate the promotion and conduct of a sporting or racing event or functions or a series of such events or functions, the Minister for Sport, Recreation and Racing; or
 - (b) in relation to an exemption to facilitate the promotion and conduct of an arts event or function or a series of such events or functions, the Minister for Arts.
- (4) The Minister must, when deciding whether or not to grant an exemption under this section for the purpose referred to in subsection (2) (a), have regard to:
- (a) any substantial connection between the relevant event or function or series of events or functions and other significant events or functions outside the State; and
 - (b) any reasonable efforts that have been made to obtain sufficient financial or other support for the relevant event or function or series of events or functions from sources other than the advertising of tobacco products to render the exemption unnecessary.
- (5) An exemption granted under this section has no effect after 1 November 1995.

**PART 3—NEW SOUTH WALES HEALTH PROMOTION
FOUNDATION**

Establishment of Foundation

13. (1) The New South Wales Health Promotion Foundation is established.

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(2) The Foundation is:

- (a) a body corporate with perpetual succession and is to have a common seal;
- (b) capable of suing and being sued in its corporate name and of acquiring, holding, dealing with and disposing of real and personal property;
- (c) capable of acquiring or incurring any other rights or liabilities and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer; and
- (d) a statutory body representing the Crown.

(3) The common seal of the Foundation is to be in a form determined by the Foundation, must be kept in such custody as the Foundation directs and must not, subject to subsection (4), be used except as authorised by the Foundation.

(4) A document is duly executed by the Foundation if it is sealed with the common seal of the Foundation and signed by 2 members.

(5) A document apparently executed by the Foundation is presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed.

Provision of information to Minister

14. The Foundation is required to provide the Minister with such information and reports concerning the activities of the Foundation as the Minister may from time to time require.

Constitution of Foundation

15. (1) The Foundation is to consist of 10 members, of whom:

- (a) one is to be appointed by the Minister on the nomination of the Premier and will be the Chairperson of the Foundation;
- (b) one is to be appointed by the Minister on the nomination of the National Heart Foundation of Australia, New South Wales Division;
- (c) one is to be appointed by the Minister on the nomination of the New South Wales Academy of Sport;
- (d) one is to be appointed by the Minister on the nomination of the Shires Association of New South Wales to represent country sporting interests;
- (e) one is to be appointed by the Minister on the nomination of the New South Wales State Cancer Council;

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- (f) one is to be the person for the time being holding or acting in the office of the Director-General of the Department of Health or the nominee of that person;
- (g) one is to be the chief executive officer of the department principally assisting the Minister for Sport, Recreation and Racing or the nominee of that chief executive officer;
- (h) one is to be the chief executive officer of the department principally assisting the Minister for Arts or the nominee of that chief executive officer;
- (i) one is to be the Director of the Office of Education and Youth Affairs or the nominee of the Director; and
- (j) one is to be a solicitor or barrister appointed by the Minister.

(2) The Premier is required, before making a nomination for the purposes of subsection (1) (a), to consult with the parliamentary leader of each party in the Parliament.

(3) A nomination referred to in subsection (1) (a), (b), (c), (d) or (e) must:

- (a) be submitted in writing to the Minister at his or her request; and
- (b) be in respect of a person who is willing to accept appointment as a member.

(4) If at any time:

- (a) the Premier; or
- (b) the body referred to in subsection (1) (b), (c), (d) or (e),

does not submit a nomination within 30 days after the making of the relevant request referred to in subsection (3) (a), the Minister may, without the submission of that nomination, appoint a person to be the member concerned to represent the interests of the Premier or body in default until:

- (c) the relevant nomination is submitted and a member is appointed on that nomination; or
- (d) the expiry of the period (being a period not exceeding 3 years) specified in the instrument of appointment under this subsection, whichever is the sooner.

(5) A person appointed, and holding office as a member, under subsection (4) is for all purposes taken to be duly appointed as a member and to be the representative of the Premier or body in default.

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(6) The Minister must, before making an appointment under subsection (4) because the Premier has failed to make a nomination, consult with the parliamentary leader of each party in the Parliament.

(7) The Chairperson is to preside over any meeting, or part of a meeting, of the Foundation at which the Chairperson is present.

(8) The members must, at the first meeting of the Foundation after the appointed day and thereafter at the first meeting of the Foundation after a Deputy Chairperson ceases to be a member, elect a Deputy Chairperson from among their number to preside, while he or she remains a member, over any meeting, or part of a meeting, of the Foundation from which the Chairperson is absent.

(9) A member, other than the member referred to in subsection (1) (a), may by a written notice served on the person concerned and on the Chairperson nominate a person:

- (a) to be his or her deputy and to attend; and
- (b) to represent the interests of the relevant body or of the Director-General of the Department of Health or of the relevant department at,

any meeting, or part of a meeting, of the Foundation from which that member is absent.

(10) A deputy nominated under subsection (9) has, while attending a meeting, or part of a meeting, of the Foundation from which the member who nominated him or her is absent, all the functions of a member.

Term of appointment or nomination

16. (1) Each member referred to in section 15 (1) (a), (b), (c), (d), (e) and (j) will hold office for such period not exceeding 3 years as is specified in the instrument of his or her appointment and is eligible for reappointment.

(2) A deputy nominated under section 15 (9) will, unless his or her nomination is earlier withdrawn by written notice served on that deputy and on the Chairperson by the member who made that nomination, hold office for such period ending on or before the end of the period for which that member holds office as is specified in the relevant instrument of nomination.

Remuneration and allowances of members and deputies

17. A member and his or her deputy are each of them entitled to such remuneration and allowances (if any) as the Minister from time to time determines in respect of the member or deputy.

Resignation of members

18. A member referred to in section 15 (1) (a), (b), (c), (d), (e) or (j) may resign his or her office by notice in writing signed by the member and delivered to the Minister.

Further provisions relating to constitution etc. of Foundation

19. Further provisions governing the constitution, proceedings and operations of the Foundation are set out in Schedule 1.

Objectives of Foundation

20. (1) The objectives of the Foundation are:

- (a) to fund activities related to the promotion of good health in general, with particular emphasis on young people;
- (b) to offer an alternative source of funds for sporting and arts activities currently supported by manufacturers or wholesalers of tobacco products;
- (c) to support sporting and arts activities which encourage healthy lifestyles and advance health promotion programs;
- (d) to provide funds to replace tobacco advertising with health promotion advertising;
- (e) to provide grants to organisations engaged in health promotion programs;
- (f) to fund research relevant to health promotion;
- (g) to raise funds by soliciting donations and grants and, subject to subsection (2), engaging in the production or marketing (or both) referred to in section 21 (2) (d) in order to support the work of the Foundation;
- (h) to evaluate and report on the effectiveness of the performance of the Foundation in achieving health promotion activities; and
- (i) generally to fulfil the purposes set out in section 3.

(2) It is not an objective of the Foundation to make a profit by engaging in production or marketing referred to in section 21 (2) (d), but any surplus of revenue over expenditure arising as a result of that engagement must be paid into and to the credit of the Fund.

(3) In providing funds or grants under this Act, the Foundation may impose such conditions as it considers desirable to fulfil the purposes set out in section 3.

Powers of Foundation

21. (1) The Foundation has power to do all things necessary or convenient to be done for or in connection with the achievement of its objectives.

(2) Without limiting the generality of subsection (1), the Foundation may, in its absolute discretion:

- (a) after consultation with the Minister, make grants from the Fund to persons other than manufacturers or wholesalers of tobacco products who have suffered hardship as a result of the loss of benefits under a banned contract entered into before the appointed day; or
- (b) make grants for the purpose of providing support to persons who have lost or who will lose benefits under a banned sponsorship;
- (c) make grants to:
 - (i) sporting organisations;
 - (ii) arts organisations;
 - (iii) health organisations;
 - (iv) community organisations;
 - (v) research organisations;
 - (vi) youth organisations; and
 - (vii) racing organisations;
- (d) engage in the production or marketing of goods and services which themselves constitute or form part of health promotion activities in order:
 - (i) to promote the purposes of this Act and the objectives of the Foundation; and
 - (ii) by generating revenue to cover the cost of that production or marketing or both; and
- (e) do anything necessary or desirable for implementing the capacity conferred on it by section 13 (2).

(3) For the period of 5 years from the appointed day, the Foundation must give priority to applicants for grants:

- (a) firstly, pursuant to subsection (2) (a); and
 - (b) secondly, pursuant to subsection (2) (b),
- up to the full amount of any loss of benefit.

Ministerial directions

22. (1) The Minister may give directions in writing to the Foundation with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Foundation must give effect to any such direction.

(2) The text of any direction given under subsection (1) is to be included in the annual report relating to the affairs of the Foundation submitted under the Annual Reports (Statutory Bodies) Act 1984.

Staff of Foundation

23. (1) The Foundation may, subject to any relevant award or industrial agreement, appoint and employ, either on a permanent full-time basis or otherwise and on such terms and conditions as the Foundation determines, a Director of the Foundation and such other persons as the Foundation considers necessary to assist that Director and to enable the Foundation to achieve its objectives.

(2) The Foundation is not to appoint or employ any person otherwise than in accordance with an establishment scheme from time to time approved by the Minister which shall set out:

- (a) the numbers of staff which may be employed and the general functions each is intended to perform; and
- (b) the salary range for each such person.

(3) With the consent of the Minister or within a budget approved by the Minister, the Foundation may engage under a contract for services or other arrangement any consultant or person to provide such administrative, professional, technical or other assistance as the Foundation considers necessary to enable it to achieve its objectives.

(4) The Foundation may, by arrangement made between it and the Minister concerned, and on such terms and conditions as may be mutually arranged by it with that Minister, make use, either full-time or part-time of:

- (a) the services of any officer or employee employed in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a Department of the Government or of an administrative office or any public body constituted by an Act.

(5) The appointment and employment or engagement of a person under subsection (1) or (3) does not:

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- (a) render the provisions of the Public Sector Management Act 1988 or of any Act applying to persons as officers of the Public Service applicable to the person; or
- (b) affect or prejudice the application to the person of the provisions referred to in paragraph (a) if they applied to him or her at the time of his or her appointment or engagement.

Funds of Foundation

24. (1) The funds available for the purpose of enabling the Foundation to achieve its objectives and to exercise and perform its functions consist of:

- (a) any money provided by Parliament and paid to the Foundation; and
- (b) any money, other than money referred to in paragraph (a), lawfully received by, made available to or payable to the Foundation.

(2) The funds referred to in subsection (1) are to be deposited into a fund in the Special Deposits Account in the Treasury to be called the "New South Wales Health Promotion Fund".

(3) There is to be paid from the money from time to time in and standing to the credit of the Fund:

- (a) the remuneration and allowances payable to members and their deputies and to persons employed under section 23 (1);
- (b) expenditure incurred by the Foundation in achieving its objectives and exercising and performing its functions and in complying with subsection (8); and
- (c) all expenditure, other than expenditure referred to in paragraphs (a) and (b), lawfully incurred by the Foundation for the purposes of, and in meeting the costs and expenses of the administration of, this Act.

(4) A publication, pamphlet or advertisement that is paid for, wholly or in part, from the money from time to time in and standing to the credit of the Fund shall not contain any picture of, statement by or reference to any member of Parliament, other than any statement or reference of that kind:

- (a) required by law; or
- (b) necessary or desirable for a proper understanding of the subject matter of that publication, pamphlet or advertisement,

nor is any such money to be paid under subsection (3) in such a manner that any member of Parliament is, or appears to be, associated with that payment.

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(5) The Foundation must not decide nor announce any decision to disburse any part of the Fund, pursuant to section 21 (2) (c) during the period from the issue of the writs for a general election to be held within the State, whether State or Federal, until the close of voting in that election.

(6) All money in and standing to the credit of the Fund immediately before the commencement of a financial year shall, subject to subsection (3), remain in and standing to the credit of the Fund after that commencement.

(7) The Foundation must endeavour to ensure that, in each financial year:

- (a) not less than 30% of the money paid under subsection (3) in any one financial year is disbursed to sporting organisations;
- (b) not less than 15% of the money paid under subsection (3) in any one financial year is disbursed to arts organisations; and
- (c) not more than 50% of the money paid under subsection (3) in any one financial year is disbursed to any one of the following categories of organisations:
 - (i) sporting organisations;
 - (ii) arts organisations;
 - (iii) health organisations;
 - (iv) community organisations;
 - (v) research organisations; or
 - (vi) racing organisations,

which the Foundation is satisfied are promoting, or will promote, the objectives of the Foundation.

(8) The Foundation is required to endeavour to disburse the funds received by it from the State for the objectives of the Foundation within the year they are received or reasonably soon thereafter and must include in its annual report the reason for any accumulation beyond that year.

(9) Any amount of funds received by the Foundation from the State which has not been disbursed within 4 months after the end of the financial year in respect of which those funds are allocated or within 4 months of its receipt (if received after the end of that financial year) shall be paid to the Consolidated Fund.

Temporary investment of money in Fund

25. All money recorded as standing to the credit of the Fund may, until required by the Foundation for the purposes of this Act, be

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temporarily invested in accordance with powers granted to the Foundation under Part 3 of the Public Authorities (Financial Arrangements) Act 1987 and the Treasurer shall cause all interest derived from that investment to be paid to the credit of the Fund.

Application of Public Finance and Audit Act 1983

26. Subject to this Part, the provisions of the Public Finance and Audit Act 1983 regulating the financial administration and audit of statutory authorities apply to and in respect of the Foundation and its operations.

PART 4—ENFORCEMENT**Tobacco Advertisements Reduction Committee**

27. (1) The Tobacco Advertisements Reduction Committee is established.

(2) The Committee is to consist of:

- (a) the Chairperson of the Foundation, who is the chairperson of the Committee and is to preside at its meetings, if present;
- (b) 2 officers of the Department of Health for the time being nominated by the Director-General of that Department; and
- (c) 2 persons for the time being nominated by the chief executive officer of the Outdoor Advertising Association of Australia.

(3) A nomination must:

- (a) be submitted in writing to the Minister at his or her request; and
- (b) be in respect of a person who is willing to be a member.

(4) If at any time a person does not submit a nomination within 30 days after the making of the relevant request, the Minister may appoint a person to be the member concerned to represent the interests of the person or body in default until the relevant nomination is submitted.

(5) Clauses 2, 3, 6 and 7 of Schedule 1 apply to the meetings and members of the Committee in the same way as they apply to meetings and members of the Foundation, except that 4 members constitute a quorum for a meeting of the Committee.

Staged reduction of advertisements

28. (1) The Committee is required, by liaising with advertisers and manufacturers and wholesalers of tobacco products, to use its best endeavours to have removed or obscured tobacco advertisements of the following kinds:

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(a) those displayed on billboards so that the advertisements can be seen from public places;

(b) those displayed on taxis and other public vehicles.

(2) As soon as is practicable after the commencement of this Act (but not later than by 1 July 1992), the Committee is to ascertain, as accurately as it reasonably can, the number of tobacco advertisements of the kinds referred to in subsection (1) and to report that number to the Minister.

(3) The Committee is to attempt to have the number of advertisements that was reported to the Minister removed or obscured in the following stages:

(a) at least 25% of that number by 1 July 1993;

(b) at least 50% of that number by 1 July 1994;

(c) all of the advertisements by 1 November 1995.

(4) If the Committee is unable to ascertain a number for the purposes of this section, it is to attempt to have the advertisements removed or obscured at such a rate as may be advised to the Committee by the Director-General of the Department of Health.

Removal of certain advertisements

29. (1) This section applies to a tobacco advertisement:

(a) after 1 July 1992, if the advertisement was placed or displayed in contravention of this Act; or

(b) after 1 November 1995, whether or not the advertisement was placed or displayed in contravention of this Act.

(2) If a tobacco advertisement is situated in a public place or on any premises from which it can be seen from a public place, a Local Court constituted by a Magistrate sitting alone may order:

(a) that the advertisement be removed or obscured by an authorised officer; and

(b) if any person has been convicted of an offence against this Act relating to the placing or displaying of the advertisement, that the person pay the reasonable costs incurred by the authorised officer in removing or obscuring the advertisement.

(3) An authorised officer does not commit a civil wrong and is not liable for damages for anything done or omitted to be done while removing or obscuring a tobacco advertisement with reasonable care under the authority of such an order.

(4) Any tobacco advertisement in the form of an article that is removed in accordance with such an order is taken to be the property of such person as is specified in the order.

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(5) If any costs are payable under such an order, they may be recovered in a court of competent jurisdiction as a debt due to the Crown or a council, as the case requires.

(6) This section does not apply to a tobacco advertisement while it may be lawfully displayed in accordance with an exemption provided by this Act.

Power of entry

30. (1) An authorised officer may enter any premises to remove or obscure a tobacco advertisement under the authority of an order made by a Local Court.

(2) This section does not allow the entry of any premises or part of premises used as a dwelling.

Intimidation or obstruction of authorised officer

31. A person must not in any way intimidate or obstruct an authorised officer who is removing or obscuring a tobacco advertisement under the authority of an order made by a Local Court or who is attempting to do so.

Maximum penalty:

- 50 penalty units for a first offence; or
- 100 penalty units for a second or subsequent offence.

Consent required for prosecutions

32. Proceedings for an offence against this Act shall not be commenced without the consent in writing of the Director-General of the Department of Health or a person authorised by him or her in writing for the purpose of this section.

Penalties

33. (1) A person who commits an offence under a provision of this Act specified in the Table to this subsection is liable:

- (a) in the case of an individual, to a penalty of not more than:
 - (i) 50 penalty units for a first offence; or
 - (ii) 100 penalty units for a second or subsequent offence; or
- (b) in the case of a body corporate, to a penalty of not more than:
 - (i) 200 penalty units for a first offence; or
 - (ii) 400 penalty units for a second or subsequent offence.

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TABLE

Section 5 (1) or (2), 6 (1), 7, 8 (1) or (2), 9 (1) or (2), 10 or 11 (1).

(2) If a continuing state of affairs is created by an offence referred to in subsection (1), the offender is liable to a penalty of not more than:

- (a) 50 penalty units in the case of an individual; or
- (b) 200 penalty units in the case of a body corporate,

in respect of each day on which that offence continues, in addition to the penalty specified in that subsection.

Proceedings for offences

34. (1) Proceedings for an offence against this Act or the regulations may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

(2) An offence against this Act may be dealt with as an indictable offence, but only if the prosecutor proposes that the offence be so dealt with.

(3) If proceedings for such an offence are disposed of in a summary manner before a Local Court, the maximum penalty that may be imposed is 50 penalty units, or the maximum penalty for the offence (whichever is the lesser), despite any other provision of this Act.

(4) If proceedings for such an offence are taken on indictment, the maximum penalty that may be imposed is the maximum penalty for the offence.

(5) Proceedings for such an offence may be commenced at any time within 12 months after the date on which the offence is alleged to have been committed.

(6) Proceedings against a person for an offence against this Act relating to the placing or displaying of a tobacco advertisement:

- (a) must not be commenced unless an authorised officer has given to the person a notice in writing to the effect that proceedings may be commenced after the period of 30 days after the notice is given if the tobacco advertisement has not been removed or adequately obscured; and
- (b) must not be commenced if the tobacco advertisement was removed or adequately obscured during that period and has not been reinstated at any time before commencement of the proceedings.

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Offences by bodies corporate

35. (1) When a body corporate commits an offence under this Act, every officer of the body corporate commits the same offence unless he or she proves that:

- (a) the offence was committed without his or her consent or connivance; and
- (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.

(2) In subsection (1):

“officer”, in relation to a body corporate, means:

- (a) a director, secretary or executive officer of the body corporate;
- (b) a receiver, or receiver and manager, of property of the body corporate, or any other authorised person who enters into possession or assumes control of property of the body corporate for the purpose of enforcing any charge;
- (c) an official manager or a deputy official manager of the body corporate;
- (d) a liquidator of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons,

and any other person, by whatever name called and whether or not a director of the body corporate, who is concerned, or takes part, in the management of the body corporate.

PART 5—GENERAL**Certain civil proceedings barred**

36. An action at law or in equity does not lie against a person for:

- (a) the omission to do any thing the doing of which; or
- (b) the doing of any thing the omission to do which,

would constitute an offence under this Act.

Regulations

37. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

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necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular:

- (a) prescribing the labelling of packages containing tobacco, including the position of labels on packages and the size, colour, style and nature of labels or labelling;
- (b) prescribing statements or warnings for the purpose of labelling of any such packages;
- (c) prescribing the size, colour, style, position and nature of tobacco advertisements displayed inside shops and other retail outlets where tobacco products are offered or exposed for sale, and any statements or warnings to be included in those tobacco advertisements;
- (d) prescribing the labelling of tobacco vending machines;
- (e) prescribing the duty of persons packing, or causing other persons to pack, specified tobacco products prepared for smoking to label those tobacco products in a specified manner;
- (f) prohibiting the sale of packages containing specified tobacco products prepared for smoking unless those packages are labelled in a specified manner; and
- (g) creating offences and providing in respect of any such offence a penalty not exceeding 10 penalty units.

(2) In this section, “**specified**” means specified in regulations made under this section.

Review of Act

38. (1) Within a period of 12 months commencing on the third anniversary of the appointed day, the Minister must cause an investigation and review to be conducted, and a report prepared, concerning:

- (a) the operation of this Act;
- (b) the operation of the Foundation.

(2) The Minister must cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament as soon as is practicable after the completion of that report.

Amendment of other Acts

39. The Acts specified in Schedule 2 are amended as set out in that Schedule.

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SCHEDULE 1—FURTHER PROVISIONS RELATING TO NEW SOUTH WALES HEALTH PROMOTION FOUNDATION

(Sec. 19)

Definitions

1. (1) In this Schedule, “committee” means a committee established under clause 5.
- (2) A reference in this Schedule to a member includes a reference to the deputy of a member.

Meetings and procedure

2. (1) Six members constitute a quorum for a meeting of the Foundation.
- (2) A decision carried by the votes of a majority of the members present and voting at a meeting of the Foundation at which a quorum is present is a decision of the Foundation.
- (3) Each member present at a meeting of the Foundation is entitled to one vote on a matter arising for determination at that meeting and the presiding member has, in the event of an equality of votes, a second or casting vote.
- (4) The Foundation must cause accurate minutes to be kept of its proceedings.
- (5) The Minister is to convene the first meeting of the Foundation.
- (6) Subject to this Act, the business of the Foundation may be conducted in any manner determined by the Foundation.

Disclosure of interest

3. (1) A member who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Foundation:
 - (a) must disclose the nature of that interest to the Foundation; and
 - (b) must not take part in any deliberation or decision of the Foundation with respect to that matter.

Maximum penalty: 25 penalty units.

- (2) A disclosure under this clause is required to be recorded in the minutes of the Foundation.

Delegation by Foundation

4. (1) Subject to this clause, the Foundation may, by instrument in writing, delegate any of its functions:
 - (a) to a member or employee of the Foundation; or
 - (b) to a committee.
- (2) The Foundation must not delegate its function of determining to whom or in what amounts financial support may be provided from the Fund.
- (3) A function delegated under this clause may, if the instrument of delegation so provides, be subdelegated.

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SCHEDULE 1—FURTHER PROVISIONS RELATING TO NEW SOUTH WALES
HEALTH PROMOTION FOUNDATION—*continued*

- (4) When a delegation is made to a committee under this clause:
- (a) the instrument of delegation may regulate the procedures to be followed by the committee when acting under the delegation; and
 - (b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.
- (5) A person to whom, or a member of a committee to which, a function is delegated under this clause is disqualified from acting under the delegation in relation to any matter in which that person or member of a committee has a direct or indirect pecuniary interest or other personal interest.

Committees

5. (1) The Foundation may establish one or more committees to advise or assist it in the exercise or performance of its functions. In any event, the Foundation must establish 3 advisory committees to advise on:

- (a) the arts;
- (b) sport; and
- (c) racing,

each of which must include a reasonable number of representatives of people in rural districts.

(2) A committee established under subclause (1) may act in relation to any matter referred or delegated to it by the Foundation and is to be governed in its proceedings by rules approved by the Foundation.

(3) A member of a committee established under subclause (1) is entitled to such allowances and expenses (if any) as the Minister may determine.

Duty to act honestly

6. A member or officer of the Foundation must at all times act honestly and exercise a reasonable degree of care and diligence in the exercise of his or her powers or the performance of his or her duties.

Maximum penalty: 50 penalty units.

Non-disclosure of information

7. A member, member of a committee or employee of the Foundation must not disclose any information declared in writing by the Foundation to be confidential, to which information he or she has had access in the course of official duties, unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration of this Act; or
- (c) for the purposes of any legal proceedings arising out of the administration of this Act.

Maximum penalty: 25 penalty units.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 39)

Public Finance and Audit Act 1983 No. 152

In Schedule 2, insert in alphabetical order:

New South Wales Health Promotion Foundation.

State Authorities Superannuation Act 1987 No. 211

At the end of Part 1 of Schedule 1, insert:

New South Wales Health Promotion Foundation

State Authorities Non-Contributory Superannuation Act 1987 No. 212

At the end of Part 1 of Schedule 1, insert:

New South Wales Health Promotion Foundation
