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New South Wales

# **Public Health Amendment (Tobacco) Bill 1996**

## **Explanatory note**

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

### **Overview of Bill**

The object of this Bill is to change the defence to the offence of selling tobacco to a person under 18 by providing a means for the proof of age of persons purchasing tobacco. This is to be done by extending the application of cards and other documents used for that purpose in relation to liquor sales, as provided for under the *Liquor Act 1982*. The defence will only be available if the customer is over 14. Employers and other persons are also to be liable for the actions of employees in selling tobacco to persons under 18.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the *Public Health Act 1991*.

## Schedule 1 Amendments

**Schedule 1 [1]** changes the defence to the offence of selling tobacco to a person under 18.

Currently, it is a defence if the court is satisfied that the defendant believed, on reasonable grounds, that the person to whom the tobacco was sold was over 18. The new provisions provide that it is a defence if the person to whom the tobacco was sold was over 14 and documentary evidence was produced to the defendant that might reasonably be accepted as applying to the person to whom the tobacco was sold and as proving that the person was at least 18. Documentary evidence for this purpose includes the kind of evidence that may be sought in relation to liquor sales, such as a driver's licence, a passport or a "proof of age" card issued by the Roads and Traffic Authority and may include other evidence.

Environmental health officers (who have enforcement functions under the *Public Health Act 1991*) are to be authorised officers for the purpose of confiscating proof of age cards in cases of suspected fraud or other wrongful use. Persons who sell tobacco and their employees are also to be authorised officers (if over 18) but only on or near the premises or place where the tobacco is sold.

It is an offence under the *Liquor Act 1982* for a person under 18 to knowingly provide false or misleading information to enable the documentary evidence of proof of age to be obtained by that person or any other person. This offence applies where that proof of age is obtained for any purpose, including for the purposes of the new provisions.

**Schedule 1 [2]** inserts proposed section 59A. The proposed section will make employers liable for the contraventions of employees who sell tobacco to persons who are under 18. An employer who did not know of a contravention and could not, by due diligence, have prevented it will not be liable. Persons who appoint agents will also be liable, as well as the holder of the relevant tobacco retailer's licence under the *Business Franchise Licences (Tobacco) Act 1987*.

Public Health Amendment (Tobacco) Bill 1996

Explanatory note

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**Schedule 1 [3]** inserts savings and transitional provisions into Schedule 4. The new defence to the offence of selling tobacco to a person under 18 will not apply in respect of proceedings for an offence alleged to have been committed before the new defence commences. Instead the current defence will continue to apply in such cases. The new provision making employers liable for employees' contraventions of the prohibition on selling tobacco to persons under 18 will not apply to contraventions occurring before the new provision commences.



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# Public Health Amendment (Tobacco) Bill 1996

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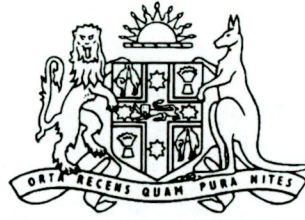
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New South Wales

## **Public Health Amendment (Tobacco) Bill 1996**

No. , 1996

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### **A Bill for**

An Act to amend the *Public Health Act 1991* with respect to the sale of tobacco to minors and the proof of age of persons purchasing tobacco; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Public Health Amendment (Tobacco) Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Public Health Act 1991 No 10**

The *Public Health Act 1991* is amended as set out in Schedule 1.



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## Schedule 1 Amendments

(Section 3)

### [1] Section 59 Sale of tobacco to person under 18 prohibited

Omit subsection (2). Insert instead:

- (2) It is a defence to a prosecution for an offence under subsection (1) if the court is satisfied that: 5
- (a) the person to whom the tobacco was sold was over the age of 14 years at the time of the sale, and
  - (b) at or before the time of the sale there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person to whom the tobacco was sold and as proving that the person was at least 18 years of age. 10
- (3) Evidence that is of a kind prescribed by the regulations for the purposes of section 117E (Reasonable evidence of age) of the *Liquor Act 1982* is taken to be documentary evidence for the purposes of subsection (2). However, this does not preclude the use of any other documentary evidence that might reasonably be accepted as evidence that a person is at least 18 years of age for the purposes of subsection (2). 15 20
- (4) The following persons are authorised persons for the purposes of section 152A (Confiscation of proof of age cards) of the *Liquor Act 1982*: 25
- (a) any environmental health officer,
  - (b) a person who sells tobacco and any employee of that person (being a person or employee over the age of 18 years), but only on, or in the immediate vicinity of, the premises or place where the tobacco is sold. 30

**[2] Section 59A**

Insert after section 59:

**59A Liability of employers**

- (1) If an employee contravenes section 59, 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). 5
- (2) It is a defence to a prosecution against an employer for such a contravention if it is established: 10
  - (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 59 by virtue of this section whether or not the employee has been proceeded against or convicted under that provision. 15
- (4) For the purposes of this section, the following additional persons are taken to be employers of persons who contravene section 59: 20
  - (a) any person who authorised a person who contravenes section 59 to sell tobacco as the person's agent,
  - (b) if the employer of the person is not the holder of a tobacco retailer's licence or group tobacco retailer's licence under the *Business Franchise Licences (Tobacco) Act 1987*, the holder of the licence under that Act under which the tobacco was sold by the person in contravention of section 59. 25  
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**[3] Schedule 4 Savings and transitional provisions**

Insert after Part 3 of Schedule 4:

**Part 4 Provisions consequent on enactment of the  
Public Health Amendment (Tobacco) Act  
1996**

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**13 Sale of tobacco to persons under 18**

(1) Section 59, as amended by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of proceedings for an offence under that section alleged to have been committed before the commencement of that amendment.

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(2) Section 59, as in force immediately before the commencement of that amendment, continues to apply in respect of any such proceedings as if the amendment had not been made.

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**14 Liability of employers**

Section 59A, as inserted by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of a contravention of section 59 that occurred before the commencement of section 59A.

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New South Wales

## **Public Health Amendment (Tobacco) Act 1996 No 33**

Act No 33, 1996

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An Act to amend the *Public Health Act 1991* with respect to the sale of tobacco to minors and the proof of age of persons purchasing tobacco; and for other purposes. [Assented to 24 June 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Public Health Amendment (Tobacco) Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Public Health Act 1991 No 10**

The *Public Health Act 1991* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 59 Sale of tobacco to person under 18 prohibited

Omit subsection (2). Insert instead:

- (2) It is a defence to a prosecution for an offence under subsection (1) if the court is satisfied that:
  - (a) the person to whom the tobacco was sold was over the age of 14 years at the time of the sale, and
  - (b) at or before the time of the sale there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person to whom the tobacco was sold and as proving that the person was at least 18 years of age.
- (3) Evidence that is of a kind prescribed by the regulations for the purposes of section 117E (Reasonable evidence of age) of the *Liquor Act 1982* is taken to be documentary evidence for the purposes of subsection (2). However, this does not preclude the use of any other documentary evidence that might reasonably be accepted as evidence that a person is at least 18 years of age for the purposes of subsection (2).
- (4) The following persons are authorised persons for the purposes of section 152A (Confiscation of proof of age cards) of the *Liquor Act 1982*:
  - (a) any environmental health officer,
  - (b) a person who sells tobacco and any employee of that person (being a person or employee over the age of 18 years), but only on, or in the immediate vicinity of, the premises or place where the tobacco is sold.

**[2] Section 59A**

Insert after section 59:

**59A Liability of employers**

- (1) If an employee contravenes section 59, 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 59 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 59:
  - (a) any person who authorised a person who contravenes section 59 to sell tobacco as the person's agent,
  - (b) if the employer of the person is not the holder of a tobacco retailer's licence or group tobacco retailer's licence under the *Business Franchise Licences (Tobacco) Act 1987*, the holder of the licence under that Act under which the tobacco was sold by the person in contravention of section 59.

**[3] Schedule 4 Savings and transitional provisions**

Insert after Part 3 of Schedule 4:

**Part 4 Provisions consequent on enactment of the  
Public Health Amendment (Tobacco) Act  
1996**

**13 Sale of tobacco to persons under 18**

- (1) Section 59, as amended by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of proceedings for an offence under that section alleged to have been committed before the commencement of that amendment.
- (2) Section 59, as in force immediately before the commencement of that amendment, continues to apply in respect of any such proceedings as if the amendment had not been made.

**14 Liability of employers**

Section 59A, as inserted by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of a contravention of section 59 that occurred before the commencement of section 59A.

[Minister's second reading speech made in—  
Legislative Assembly on 24 April 1996  
Legislative Council on 2 May 1996]

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