

SOUTH AUSTRALIA

TOBACCO PRODUCTS REGULATION ACT 1997

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 May 1998.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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TOBACCO PRODUCTS REGULATION ACT 1997

being

Tobacco Products Regulation Act 1997 No. 26 of 1997
[Assented to 10 April 1997]¹

as amended by

Tobacco Products Regulation (Miscellaneous) Amendment Act 1997 No. 28 of 1997 [Assented to 5 June 1997]²

Tobacco Products Regulations 1997 No. 145 of 1997 [*Gaz.* 5 June 1997, p. 2925]³

Tobacco Products Regulation (Licence Fees) Amendment Act 1998 No. 26 of 1998 [Assented to 2 April 1998]⁴

¹ Came into operation (except s. 47) 5 June 1997: *Gaz.* 5 June 1997, p. 2793; s. 47 will come into operation on the first Monday in January 1999: s. 2(2).

² Came into operation 5 June 1997: s. 2.

³ Came into operation 5 June 1997: reg. 2.

⁴ **Came into operation 1 May 1998: *Gaz.* 23 April 1998, p. 1927.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the regulations see Appendix.*

An Act to regulate the sale, packing, importing, advertising and use of tobacco products; to continue the South Australian Sports Promotion, Cultural and Health Advancement Trust and prescribe its functions and powers; to repeal the Tobacco Products Control Act 1986 and the Tobacco Products (Licensing) Act 1986; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Tobacco Products Regulation Act 1997*.

Commencement

2. (1) This Act (other than section 47) will come into operation on a day to be fixed by proclamation.

(2) Section 47 will come into operation on the first Monday in January 1999.

Objects of Act

3. In recognition of the fact that the consumption of tobacco products impairs the health of the citizens of the State and places a substantial burden on the State's financial resources, the objects of this Act are—

* * * * *

(b) to reduce the incidence of smoking and other consumption of tobacco products in the population, especially young people—

- (i) by requiring health warnings to be displayed on tobacco products and otherwise disseminating information about the harmful effects of tobacco consumption;
- (ii) by prohibiting the supply of tobacco products to children;
- (iii) by encouraging non-smokers, especially young people, not to start smoking and encouraging and assisting smokers to give up smoking;
- (iv) by prohibiting or limiting advertising, sponsorships and other practices designed to promote or publicise tobacco products and their consumption;
- (v) by providing funds to sporting or cultural bodies in place of funds that they might otherwise have received through tobacco advertising and sponsorships; and

(c) to protect non-smokers from unwanted and unreasonable exposure to tobacco smoke; and

(d) generally, to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"act" includes an omission; and "to act" has a corresponding meaning;

"authorised officer" means an authorised officer under Part 5;

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"**child**" means a person under the age of 18 years;

"**consume**", in relation to a tobacco product, means—

- (a) smoke; or
- (b) inhale (in the form of a powder); or
- (c) chew or suck; or
- (d) give away,

and "**consumer**" has a corresponding meaning;

"**entertainment**" means—

- (a) all kinds of live entertainment including a lecture, talk or debate; or
- (b) the screening of a film, a video tape or any other optical or electronic record;

"**fund**" means the *Sports Promotion, Cultural and Health Advancement Fund* continued under Part 4;

"**grant**" includes renewal; and "**to grant**" includes to renew;

"**health warning**", in relation to a tobacco product, means a warning prescribed by regulation (or by direction of the Minister for Health under the regulations) for the purposes of this Act in relation to tobacco products of that class;

"**label**" includes information that is enclosed in or attached to or is provided with a package containing tobacco products but that does not comprise part of the package; and "**labelling**" and "**labelled**" have a corresponding meaning;

"**place of public entertainment**" means a building, tent or other structure in which entertainment is provided for the benefit of members of the public and in which the audience is seated in rows;

"**premises**" means—

- (a) any land, building or structure; or
- (b) any vehicle;

"**public**" area or place means an area or place that the public, or a section of the public, is entitled to use or that is open to, or is used by, the public or a section of the public (whether access is unrestricted or subject to payment of money, membership of a body or otherwise);

"**purchase**" of tobacco products includes receipt of tobacco products in the course of a business (whether or not for valuable consideration);

"**record**" includes any book, document or writing and any other source of information compiled, recorded or stored by computer, microfilm or other process, or in any other manner or by any other means;

"**retail**" connotes a sale to a consumer or an agent for a consumer;

"**sell**" includes supply in the course of a business (whether or not for valuable consideration) and offer or expose for sale or such supply, and "**sale**" has a corresponding meaning;

"**smoke**" means smoke, hold, or otherwise have control over, an ignited tobacco product;

"**sponsorship**" includes a scholarship, prize, gift or other benefit;

"**sucking tobacco**" means tobacco that has been prepared for sucking but not chewing;

"**tobacco advertisement**" means any writing, still or moving picture, sign, symbol or other visual image or message designed to promote or publicise—

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

"**tobacco product**" means—

- (a) a cigarette; or
- (b) a cigar; or
- (c) cigarette or pipe tobacco; or
- (d) tobacco prepared for chewing or sucking; or
- (e) snuff; or
- (f) any other product containing tobacco of a kind prescribed by regulation,

and includes any packet, carton, shipper or other device in which any of the above is contained;

"**Trust**" means the *South Australian Sports Promotion, Cultural and Health Advancement Trust* continued under Part 4;

"**vehicle**" includes any kind of aircraft or vessel;

"**vending machine**" means a device from which a tobacco product can be obtained by the insertion of a coin, banknote or token.

(2) A health warning may comprise two or more parts and the term "**health warning**" includes all the parts of such a warning unless the contrary intention appears.

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**PART 2
LICENCES**

Requirement for licence

6. A person must not—

- (a) carry on the business of selling tobacco products by retail; or
- (b) hold himself or herself as carrying on such a business,

unless the person holds a licence under this Part.

Maximum penalty: \$10 000.

Issue or renewal of licence

7. (1) The Minister may, on application by a person, issue or renew, or refuse to issue or renew, a licence under this Part.

(2) The Minister may, if he or she thinks fit, renew a licence despite the fact that application for renewal of the licence was made after the end of the previous term of the licence.

Licence term, etc.

8. (1) Subject to this Act, a licence expires on the anniversary of the date of issue of the licence and may be renewed on application for successive terms of one year.

(2) A licence has effect, on issue or renewal, from the date specified in the licence for that purpose which may be earlier than the date of application for the issue or renewal of the licence.

(3) The holder of a licence may, at any time, by notice in writing to the Minister, surrender the licence, at which time the licence ceases to have effect.

Licence conditions

9. (1) The Minister may fix conditions of a licence.

(2) Without limiting subsection (1), a licence condition may limit the place or places at which the holder of the licence is authorised to carry on business under the licence or require that the Minister be notified of the place or places at which business is carried on under the licence.

(3) The Minister may, on application or at the Minister's own initiative, vary a licence.

(4) A licence may be varied by endorsement of the licence or by notice in writing to the holder of the licence.

(5) The holder of a licence must not contravene, or fail to comply with, a condition of the licence.

Maximum penalty: \$5 000.

Form of application and licence fee

10. (1) An application for the issue, renewal or variation of a licence must be made to the Minister in a manner and form approved by the Minister and contain the information required by the Minister.

(2) An applicant must provide any further information that the Minister reasonably requires for the purposes of determining the application.

(3) An application may not be granted except on payment of the appropriate fee under the regulations.

Cancellation or suspension of licence

11. The Minister may, by written notice to the holder of a licence, suspend or cancel the licence if satisfied that the holder of the licence has contravened this Act or is not or is no longer for any reason a fit and proper person.

Review of decision of Minister

12. (1) A person who is dissatisfied with a decision of the Minister under this Part may apply to the Minister for a review of the decision.

(2) An application for review—

(a) must be made within one month after the applicant received notice of the decision to which the application relates; and

(b) must set out in detail the grounds on which the applicant seeks the review.

(3) If an application is made under subsection (1), the Minister must review the decision to which the application relates.

(4) On a review the Minister may—

(a) confirm or vary the decision under review; or

(b) quash the decision and substitute for it a decision that should, in the Minister's opinion, have been made in the first instance.

(5) The Minister must inform the applicant in writing of the result of the review.

Appeal

13. (1) A person who is dissatisfied with a decision taken by the Minister on a review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.

(2) The Court may, in exercising its jurisdiction under this section, be constituted of a Magistrate.

(3) Subject to subsection (4), an appeal must be instituted within one month of receipt of notice of the Minister's decision.

(4) The Court may dispense with the requirement in subsection (3) if satisfied that it is just and reasonable in the circumstances of the case to do so.

(5) The Court may, on the hearing of an appeal—

(a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks appropriate; and

(b) make an order as to any other matter that the case requires (including an order for costs).

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**PART 3
CONTROLS RELATING TO TOBACCO PRODUCTS**

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Application of Part

29. This Part does not apply in relation to anything done by means of a radio or television broadcast.

Sale of tobacco products by retail

30. (1) A person must not sell a tobacco product by retail unless it is enclosed in a package that complies with the regulations and is labelled in accordance with the regulations.

Maximum penalty: \$5 000.

(2) A person must not sell a tobacco product by retail that is enclosed in two or more packages unless each package complies with the regulations and is labelled in accordance with the regulations.

Maximum penalty: \$5 000.

(3) A person must not sell a tobacco product by retail if the package containing the tobacco product is wrapped in a material that is not wholly transparent.

Maximum penalty: \$5 000.

(4) A person must not sell cigarettes by retail in a package containing less than 20.

Maximum penalty: \$5 000.

Importing and packing of tobacco products

31. (1) A person must not import tobacco products that have been packed for sale by retail unless—

- (a) the packages in which the tobacco products are packed comply with the regulations and are labelled in accordance with the regulations; and
- (b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages imported by that person in each financial year.

Maximum penalty: \$5 000.

(2) A person who packs tobacco products for sale by retail must ensure—

- (a) that the packages in which the tobacco products are packed comply with the regulations and are labelled in accordance with the regulations; and
- (b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages packed by that person in each financial year.

Maximum penalty: \$5 000.

(3) Where tobacco products have been packed for sale by retail in two or more packages only the smallest of those packages and the warning it displays will be taken into account when determining the number of packages on which each health warning is displayed.

Tobacco products in relation to which no health warning has been prescribed

32. Despite any other provision of this Act, where no health warning is prescribed by regulation (or by direction of the Minister for Health under the regulations) in relation to a tobacco product of a particular class—

- (a) a tobacco product of that class need not be enclosed in a package; and
- (b) a package that contains a tobacco product of that class need not (provided it does not also contain a tobacco product of a class in relation to which a health warning is prescribed) display a health warning.

Advertisements of tobacco products

33. (1) Subject to subsection (3), a person must not publish, or cause to be published, an advertisement for a tobacco product unless the advertisement incorporates, or appears in conjunction with, a health warning.

Maximum penalty: \$5 000.

- (2) The warning must be published in the prescribed manner and form.

(3) The Governor may, by regulation, exclude a class of advertisements from the operation of this section.

Information as to tar, nicotine, etc., content of cigarettes

34. (1) A person who sells cigarettes by retail must, on demand by a customer who is considering purchasing cigarettes, provide the customer with information as to the quantity of tar and carbon monoxide that will be produced, and the quantity of nicotine that will be released, in the normal course of smoking each cigarette.

Maximum penalty: \$5 000.

(2) The information must be provided in writing in a form approved by the South Australian Health Commission.

Maximum penalty: \$750.

Sale of sucking tobacco

35. A person must not sell sucking tobacco by retail.

Maximum penalty: \$5 000.

Sale of confectionery

36. A person must not sell by retail confectionery that is designed to resemble a tobacco product.

Maximum penalty: \$5 000.

Sale of tobacco products by vending machine

37. A person must not sell cigarettes or any other tobacco product by means of a vending machine unless the machine is situated on licensed premises within the meaning of the *Liquor Licensing Act 1985*.

Maximum penalty: \$5 000.

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Sale of tobacco products to children

38. (1) A person must not supply, or offer to supply, (whether by sale, gift or any other means) a tobacco product to a child or a person who the supplier knows or has reason to believe will supply the product to a child.

Maximum penalty: \$5 000.

(2) A person must not permit a child to obtain a tobacco product from a vending machine situated on premises that he or she occupies.

Maximum penalty: \$5 000.

(3) It is a defence to a charge of an offence against subsections (1) and (2)—

(a) to prove that the defendant had reasonable cause to believe that the child was of, or over, the age of 18; or

(b) where a tobacco product was supplied by means of a vending machine—to prove that the defendant had taken all precautions that were reasonably required to ensure that the tobacco product was not supplied to a child.

(4) A person who sells tobacco products by retail or who occupies premises on which a vending machine that is designed to sell tobacco products is situated must display a notice in the prescribed form setting out the effect of, and the penalty for, an offence against subsection (1) in a manner and position that is likely to attract the attention of his or her customers or of persons using the machine.

Maximum penalty: \$750.

Expiation fee: \$105.

(5) If a court convicts a person of an offence against subsection (1) or (2) and the person has previously been convicted of an offence against either of those subsections within the immediately preceding three years—

(a) the court may disqualify the person from applying for or holding a licence under Part 2 during such period (not exceeding six months) as the court orders; or

(b) if the person supplies tobacco products (including by vending machine) at two or more premises the court may, instead of disqualifying the person, order that for the purposes of this Act the person will be taken to be unlicensed under Part 2 in respect of the supply of tobacco products from premises specified by the court during such period (not exceeding six months) as the court orders.

(6) Subsection (5) does not limit or affect the power of the Minister to suspend or cancel a licence under Part 2.

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Evidence of age may be required

39. (1) If an authorised person suspects on reasonable grounds that a person seeking to obtain a tobacco product may be a child, he or she may require the person to produce evidence, to his or her satisfaction, of the person's age.

(2) A person who—

- (a) fails, without reasonable excuse, to comply with a requirement under this section; or
- (b) makes a false statement, or produces false evidence, in response to such a requirement,

is guilty of an offence.

Maximum penalty: \$200.
Expiation fee: \$75.

(3) In this section—

"authorised person" means—

- (a) a person who holds a licence under Part 2 or an employee of such a person; or
- (b) an authorised officer.

Certain advertising prohibited

40. (1) A person must not for any direct or indirect pecuniary benefit display a tobacco advertisement so that it may be seen in or from a public place.

Maximum penalty: \$5 000.

(2) A person must not—

- (a) distribute to the public any unsolicited leaflet, handbill, or other document that constitutes a tobacco advertisement; or
- (b) sell any object that constitutes or contains a tobacco advertisement.

Maximum penalty: \$5 000.

(3) This section does not apply in relation to—

- (a) a tobacco advertisement in or on—
 - (i) a newspaper or magazine; or
 - (ii) a book; or
 - (iii) a package containing a tobacco product; or
- (b) a tobacco advertisement that is an accidental or incidental part of a film or video tape; or
- (c) a tobacco advertisement of a prescribed kind that is displayed inside a shop or warehouse within a prescribed distance from the place where tobacco products are offered for sale; or
- (d) a tobacco advertisement of a prescribed kind that is displayed at a prescribed distance from a shop or warehouse where tobacco products are offered for sale; or
- (e) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

Prohibition of certain sponsorships

41. (1) A person must not promote or publicise, or agree to promote or publicise—

- (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 in association directly or indirectly with that 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.

Maximum penalty: \$5 000.

(2) A person must not provide, or agree to provide, a sponsorship under a contract or arrangement of a kind referred to in subsection (1).

Maximum penalty: \$5 000.

(3) This section does not apply in relation to any contract providing sponsorship for a cricket match in South Australia that forms part of the Sheffield Shield series or a series of international cricket matches.

Competitions

42. (1) A person must not, in connection with the sale of a tobacco product, or for the purpose of promoting the sale of a tobacco product—

- (a) provide or offer to provide—
 - (i) a prize, gift or other benefit; or
 - (ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which any person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or
- (b) conduct a scheme declared by regulation to be a scheme to promote the sale of a tobacco product or to promote smoking generally.

Maximum penalty: \$5 000.

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

Free samples

43. A person must not, for the purpose of inducing or promoting the sale of a tobacco product, offer or give to a member of the public a free sample of a tobacco product.

Maximum penalty: \$5 000.

Smoking in buses

44. (1) Subject to subsection (2), a person must not smoke in a bus that is carrying members of the public.

Maximum penalty: \$200.
Expiation fee: \$75.

(2) Subsection (1) does not apply where the bus has been hired for the exclusive use of members of a group.

Smoking in lifts

45. (1) A person must not smoke in a lift.

Maximum penalty: \$200.
Expiation fee: \$75.

(2) A person who, being the owner or a lessee or occupier of a building, or part of a building, in which a lift is situated, is responsible for the maintenance of the lift, must cause a notice in the prescribed form and made of the prescribed material to be displayed in the lift.

Maximum penalty: \$200.
Expiation fee: \$75.

Smoking in places of public entertainment

46. A person who attends a place of public entertainment to be entertained must not smoke in the auditorium of the place of public entertainment at any time before the entertainment commences, during the entertainment or after it has concluded.

Maximum penalty: \$5 000.

Smoking in enclosed public dining or cafe areas

47. (1) In this section—

"**bar or lounge area**" means an area that is primarily and predominantly used for the consumption of alcoholic drinks rather than meals;

"**enclosed**" area or place means an area or place that is, except for doorways, passageways and internal wall openings, completely or substantially enclosed by a solid permanent ceiling or roof and solid permanent walls or windows, whether the ceiling, roof, walls or windows are fixed or movable and open or closed;

"**enclosed public dining or cafe area**" means a public area that—

- (a) is comprised of the whole or part of an enclosed public place; and
- (b) is established or set aside for the purpose (whether or not the exclusive purpose) of—
 - (i) in the case of licensed premises—the consumption of meals; or
 - (ii) in any other case—the consumption of food or non-alcoholic drinks, or both, purchased at the place;

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"**entertainment area**" means an area—

- (a) in which live entertainment (within the meaning of the *Liquor Licensing Act 1985*) is being provided; and
- (b) that is being used primarily and predominantly for the consumption of alcoholic drinks rather than meals;

"**licensed premises**" means licensed premises within the meaning of the *Liquor Licensing Act 1985*;

"**meal**" means a genuine meal eaten by a person seated at a table.

(2) Subject to this section, a person must not smoke in an enclosed public dining or cafe area.

Maximum penalty: \$200.

Expiation fee: \$75.

(3) Subsection (2) does not apply in relation to the following:

- (a) if there are two or more separate enclosed public areas used for the consumption of meals within licensed premises—one (and only one) of those areas that—
 - (i) is a bar or lounge area; and
 - (ii) is for the time being designated in the prescribed manner by the licensee as a smoking area;
- (b) an area within licensed premises (whether being the whole or part of an enclosed public area) that—
 - (i) is a bar or lounge area; and
 - (ii) is for the time being exempted by the Minister for Health;
- (c) licensed premises consisting of or including only a single enclosed public area (not the subject of an exemption under paragraph (b)) while meals are neither available nor being consumed in the area;
- (d) an entertainment area within licensed premises between the hours of 9 p.m. and 5 a.m. the next day;
- (e) an area while it is not open for business;
- (f) an area while a special arrangement exists (negotiated separately for a single occasion) under which it is given over to the exclusive use of members of a group;

(4) An exemption in respect of an area within licensed premises—

- (a) may be given on written application by the licensee in a manner and form approved by the Minister for Health and accompanied by the prescribed fee;
- (b) may be subject to conditions fixed by the Minister for Health, which may include conditions requiring—
 - (i) the display of signs;

- (ii) the installation, operation and maintenance of ventilation and air conditioning equipment;
 - (iii) the maintenance of a bar or lounge area as a distinct area separated by at least 1.5 metres from an area occupied by tables and chairs used for meals;
- (c) may be varied or revoked by the Minister for Health on application by the licensee or on contravention of or non-compliance with a condition of the exemption.

(5) The provisions of Part 2 relating to reviews and appeals apply in relation to a decision of the Minister for Health under subsection (4) in the same way as in relation to a decision of the Minister under Part 2 but with references to the Administrative and Disciplinary Division of the District Court to be read as references to the Licensing Court of South Australia.

(6) The occupier of an enclosed public dining or cafe area—

- (a) must display signs in the area in accordance with the regulations; and
- (b) must not, if an exemption under subsection (4) relates to the area, contravene or fail to comply with a condition of the exemption.

Maximum penalty: In the case of a natural person—\$500.
 In the case of a body corporate—\$1 000.

(7) If smoking occurs in an enclosed public dining or cafe area in contravention of subsection (2), the occupier of the enclosed public dining or cafe area is guilty of an offence.

Maximum penalty: In the case of a natural person—\$500;
 In the case of a body corporate—\$1 000.

(8) It is a defence to a charge of an offence against subsection (7) if the defendant proves that he or she did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

- (a) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (b) he or she—
 - (i) requested the person smoking to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

PART 4
SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST

Continuation of Trust

48. (1) The *South Australian Sports Promotion, Cultural and Health Advancement Trust* continues in existence.

(2) The Trust—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) is capable of acquiring, holding, dealing with and disposing of any interest in real and personal property; and

(e) is capable of acquiring or incurring any other rights or liabilities.

(3) The Trust is an agency of the Crown and holds its property on behalf of the Crown.

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

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

Constitution of Trust

49. (1) The Trust will consist of seven persons appointed by the Governor, of whom—

(a) one will be a person with knowledge and experience in the area of public health nominated by the Minister for Health; and

(b) three will be persons with knowledge and experience in the area of sports or sports administration nominated by the Minister for Recreation and Sport; and

(c) one will be a person with knowledge and experience in the area of the arts or arts administration nominated by the Minister for the Arts; and

(d) one will be a person with knowledge and experience in the area of advertising.

(2) One member of the Trust will be appointed by the Governor to chair meetings of the Trust.

(3) The Governor and each nominating Minister must, in appointing persons as members of the Trust (other than the member who is to chair meetings of the Trust), endeavour to ensure as far as is practicable that men and women are equally represented.

(4) The Governor may appoint a person to be the deputy of a member of the Trust and the deputy may perform or exercise the functions and powers of that member in the member's absence.

Term and conditions of membership

50. (1) The appointment of a member of the Trust will be for a term, not exceeding three years, specified in the instrument of appointment and such a member will, at the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may remove a member of the Trust from office for—

(a) misconduct; or

(b) neglect of duty; or

(c) incapacity to carry out satisfactorily the duties of office; or

(d) failure to carry out satisfactorily the duties of office.

(3) The office of a member of the Trust becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister for Health; or

(d) is absent without leave of the Trust from three consecutive meetings of the Trust; or

(e) is removed from office by the Governor under subsection (2).

(4) On the office of a member of the Trust becoming vacant, a person must be appointed under this section to the vacant office.

Remuneration

51. The members of the Trust are entitled to receive such allowances and expenses as may, from time to time, be determined by the Governor.

Vacancies or defects in appointment of members

52. An act or proceeding of the Trust is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Proceedings

53. (1) A quorum of the Trust consists of four members.

(2) The member appointed to chair the Trust will preside at meetings of the Trust at which that member is present.

(3) If the member appointed to chair the Trust is absent from a meeting of the Trust, a member chosen by the members present at the meeting will preside at the meeting.

(4) A decision carried by a majority of votes cast by members at a meeting is a decision of the Trust.

(5) Each member present at a meeting of the Trust has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(6) The Trust must have accurate minutes kept of its proceedings and make them available to all members of the Trust.

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(7) Subject to this Act, the Trust may determine its own procedures.

Disclosure of interest

54. (1) A member of the Trust who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Trust—

- (a) must disclose the nature of the interest to the Trust; and
- (b) must not take part in any deliberation or decision of the Trust with respect to the matter.

Maximum penalty: \$2 500.

(2) A disclosure under this section must be recorded in the minutes of the Trust.

Delegation by Trust

55. (1) Subject to this section, the Trust may, by instrument in writing, delegate any of its powers, duties or functions under this Act—

- (a) to a member or employee of the Trust; or
- (b) to a committee established by or under this Act to advise or assist the Trust.

(2) The Trust may not delegate its function of determining to whom or in what amounts financial support may be provided from the Fund.

(3) A power, duty or function delegated under this section may, if the instrument of delegation so provides, be subdelegated.

(4) Where a delegation is made to a committee under this section—

- (a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of 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 delegation or subdelegation under this section—

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act personally in any matter; and
- (c) is revocable at will by the delegator.

(6) A person to whom, or a member of a committee to which, a power, duty or function is delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which that person has a direct or indirect pecuniary interest or other personal interest.

Committees

56. (1) The following committees established by the *Tobacco Products Control Act 1986* continue in existence under this Act:

- (a) the *Health Advisory Committee* to advise or assist the Trust in matters relating to health; and

(b) the *Sport and Recreation Advisory Committee* to advise or assist the Trust in matters relating to sport and recreation; and

(c) the *Cultural Advisory Committee* to advise or assist the Trust in respect of cultural matters.

(2) The Health Advisory Committee will consist of—

(a) the member of the Trust appointed to chair the Trust (who will preside at meetings of the committee); and

(b) the member of the Trust appointed on the nomination of the Minister for Health; and

(c) two other persons appointed by the Trust on the nomination of the Minister for Health.

(3) The Sport and Recreation Advisory Committee will consist of—

(a) the member of the Trust appointed to chair the Trust (who will preside at meetings of the committee); and

(b) the members of the Trust appointed on the nomination of the Minister for Recreation and Sport; and

(c) two other persons appointed by the Trust on the nomination of that Minister.

(4) The Cultural Advisory Committee will consist of—

(a) the member of the Trust appointed to chair the Trust (who will preside at meetings of the committee); and

(b) the member of the Trust appointed on the nomination of the Minister for the Arts; and

(c) two other persons appointed by the Trust on the nomination of that Minister.

(5) The Trust may establish any other committee (which may consist of members of the Trust, other persons or both members and others) to advise or assist it in the performance of its functions.

(6) A committee continued in existence by, or established under, this section may act in relation to any matter referred or delegated to it by the Trust and will be governed in its proceedings by rules approved by the Trust.

(7) A member of a committee continued in existence by, or established under, this section is entitled to receive such allowances and expenses as may, from time to time, be determined by the Minister for Health.

Functions and powers of Trust

57. (1) The functions of the Trust are to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption, and more particularly for that purpose—

(a) to manage the Fund and provide financial support from the Fund by way of grants, loans or other financial accommodation to sporting and cultural bodies or for any sporting, recreational or cultural activities that contribute to health;

(b) to conduct or support public awareness programmes;

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- (c) to provide sponsorships;
- (d) to keep statistics and other records;
- (e) to provide advice to the Minister for Health;
- (f) to consult regularly with Government departments and agencies and liaise with persons and bodies affected by this Act;
- (g) to perform such other functions as are assigned to the Trust—
 - (i) by the Minister for Health acting after consultation with the Minister for Recreation and Sport and the Minister for the Arts; or
 - (ii) by or under this or any other Act.

(2) The Trust has all such powers as are reasonably necessary for the effective performance of its functions.

(3) The Trust must, in performing its functions and exercising its powers—

- (a) endeavour to ensure that any sporting or cultural body that received financial support through tobacco advertising or sponsorships before the commencement of the prohibition of such advertising or sponsorships (enacted by the *Tobacco Products Control Act Amendment Act 1988*) is not financially disadvantaged by the operation of this Act; and
- (b) have regard to any guidelines issued from time to time by the Minister for Health after consultation with the Minister for Recreation and Sport and the Minister for the Arts.

Continuation of Fund

58. (1) The Fund at the Treasury known as the *Sports Promotion, Cultural and Health Advancement Fund* continues in existence.

(2) The Fund consists of—

- (a) money appropriated by Parliament for the purposes of the Fund; and
- (b) all other money received by the Trust.

(3) The Fund may be applied by the Trust in accordance with a budget approved by the Minister for Health—

- (a) in paying amounts that the Trust determines should be paid by way of grant, loan or other financial accommodation under this Act; and
- (b) in paying costs and expenses incurred by the Trust under this Act; and
- (c) in making other payments required or authorised by this or any other Act to be made from the Fund.

Employees of Trust

59. (1) The Trust may appoint such employees as are necessary for the effective performance of its functions.

(2) The Trust's employees are not Public Service employees but are employed subject to terms and conditions determined by the Trust.

(3) The Trust may, with the approval of the appropriate Minister, make use of the services of Public Service employees or employees of a Government agency or of facilities or equipment of the Government or a Government agency.

Budget

60. (1) The Trust must before 1 June in each year submit to the Minister for Health for the Minister's approval a budget to govern the Trust's financial operations for the next financial year.

(2) The budget must be in a form required by the Minister for Health.

(3) The Trust may at any time, with the approval of the Minister for Health, alter its budget.

(4) The Minister for Health must, before giving an approval under this section, consult with the Treasurer, the Minister for Recreation and Sport and the Minister for the Arts.

Accounts and audit

61. (1) The Trust must cause proper accounts to be kept of its financial affairs and must prepare a statement of accounts in respect of each financial year.

(2) The Auditor-General may at any time and must at least once in each financial year audit the accounts of the Trust.

Annual report

62. (1) The Trust must, on or before 31 October in each year, deliver to the Minister for Health a report on its operations during the period of 12 months that ended on the preceding 30 June.

(2) The report must incorporate the audited statement of accounts for the Trust in relation to the relevant period.

(3) The Minister for Health must, within 14 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

**PART 5
INVESTIGATIONS**

Appointment of authorised officers

63. (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Minister, may at any time, revoke an appointment or vary, revoke or add a condition of an appointment.

(4) All members of the police force are authorised officers for the purposes of this Act.

Identification of authorised officers

64. (1) An authorised officer, other than a member of the police force, must be issued with an identity card—

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer for the purposes of this Act.

(2) Where the powers of an authorised officer have been limited by conditions under this Part, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.

(3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—

- (a) in the case of an authorised officer who is a member of the police force and is not in uniform—his or her certificate of authority; or
- (b) in the case of an authorised officer who is not a member of the police force—his or her identity card.

Power to require information or records or attendance for examination

65. (1) The Minister may, for a purpose related to the administration or enforcement of this Act, by written notice served on a person, require the person—

- (a) to provide to the Minister (either orally or in writing) information that is described in the notice; or
- (b) to attend and give evidence before the Minister or an authorised officer; or
- (c) to produce to the Minister a record in the person's custody or control that is described in the notice.

(2) The Minister may require that evidence be given under this section on oath.

(3) If a person, without reasonable excuse, refuses or fails—

- (a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Minister; or

- (b) to comply with any other requirement of the Minister as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section,

the person is guilty of an offence.

Maximum penalty: \$20 000.

Powers of authorised officers

66. (1) Subject to this Part—

- (a) an authorised officer may enter and remain on premises and inspect the premises and any part of or thing in or on the premises as reasonably required in connection with the administration or enforcement of this Act;
- (b) with the authority of a warrant issued under this Part or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on premises;
- (c) require a person to produce a record, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required with the administration or enforcement of this Act;
- (d) examine, copy or take extracts from a record or require a person to provide a copy of a record, as reasonably required in connection with the administration or enforcement of this Act;
- (e) examine and test ventilation and air conditioning equipment in an enclosed public dining or cafe area;
- (f) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;
- (g) seize and retain tobacco products or records if the authorised officer reasonably suspects that an offence against this Act has been committed in relation to the products or records or that the products or records may afford evidence of an offence against this Act;

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- (i) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (j) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- (k) require a person holding or claiming to hold a licence to produce it for inspection;
- (l) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration and enforcement of this Act.

(2) A magistrate may issue a warrant for the purposes of subsection (1) if satisfied that the warrant is reasonably required for the administration or enforcement of this Act.

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(3) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

Offence to hinder, etc., authorised officers

67. A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or
- (d) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$20 000.

Self-incrimination

68. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce or provide a record or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with a requirement to answer a question or to produce or provide a record or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce or provide a record or information—the fact of production or provision of the record or the information (as distinct from the contents of the record or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under this Act).

Powers in relation to seized tobacco products

69. If tobacco products are seized under this Part, the following provisions apply:

- (a) the Minister may, if satisfied that it is necessary to do so to avoid loss due to the deterioration of the products, determine that the products are forfeited to the Crown and sell the products by public tender;
- (b) apart from paragraph (a), the products will be forfeited to the Crown if a court convicts a person of an offence against this Act in relation to the products, unless the court determines that the circumstances of the offence were trifling;

- (c) subject to this section, the owner of the products will be entitled to recover the products or, if the products have been forfeited by determination of the Minister or have deteriorated, will be entitled to be paid compensation by the Crown in respect of the products—
 - (i) if a prosecution for an offence against this Act in relation to the products has been commenced but—
 - (A) the defendant is acquitted; or
 - (B) the prosecution is withdrawn or lapses; or
 - (C) the court hearing the proceedings determines that the circumstances of the offence were trifling; or
 - (ii) if—
 - (A) a prosecution for an offence against this Act in relation to the products has not been commenced within three months of the date of seizure; and
 - (B) the District Court determines, on application by the owner, that the justice of the case requires that the products be returned or that compensation be paid;
- (d) at the end of the period of three years from the date of seizure—
 - (i) if the products have not been forfeited or returned to the owner, they are forfeited to the Crown; and
 - (ii) in any case, the owner will not have any right to recover the products or be paid compensation in respect of the products (other than a right that has already arisen or been determined under paragraph (c));
- (e) if the products are forfeited otherwise than under paragraph (a), the Minister may sell the products by public tender;
- (f) any compensation payable under this section in respect of the products will be in an amount equal to the consideration paid by the owner of the products when he or she purchased them or, where the owner is the manufacturer of the products, their value (determined by reference to the price that would have been obtained from their sale by the owner in the ordinary course of business) as at the date of seizure;
- (g) the owner of the products has no right to recover the products or be paid compensation in respect of the products apart from under this section.

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**PART 7
MISCELLANEOUS**

Exemptions

71. (1) Subject to this section, the Governor may, by proclamation—

- (a) exempt a person or tobacco product, or a class of persons or tobacco products, from the operation of a provision of this Act subject to such conditions as may be set out in the proclamation;
- (b) vary or revoke an exemption under this section.

(2) An exemption from the operation of a provision of Part 3 may not be granted under this section except as recommended by the appropriate Minister—

- (a) to facilitate the promotion and conduct of a sporting or cultural event or function; or
- (b) to relieve undue hardship that might result if the exemption were not granted.

(3) For the purposes of subsection (2), the appropriate Minister is—

- (a) in relation to an exemption to facilitate the promotion and conduct of a sporting event or function—the Minister for Recreation and Sport;
- (b) in relation to an exemption to facilitate the promotion and conduct of a cultural event or function—the Minister for the Arts;
- (c) in any other case—the Minister for Health.

(4) The Minister for Recreation and Sport and the Minister for the Arts must, before recommending that an exemption be granted in relation to a sporting or cultural event or function—

- (a) consult with the Minister for Health; and
- (b) have regard to whether—
 - (i) there is national or international interest in the event or function; and
 - (ii) there are links between the event or function and other events or functions outside the State; and
 - (iii) reasonable efforts have been made to obtain support for the event or function that would not require the granting of such an exemption.

Delegation

72. (1) A Minister may delegate powers or functions under this Act to any person or body.

(2) A power, duty or function delegated under this section may, if the instrument of delegation so provides, be subdelegated.

(3) A delegation or subdelegation under this section—

- (a) must be by instrument in writing; and

- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the delegator to act in any matter; and
- (d) is revocable at will by the delegator.

Register of licences

73. (1) The Minister must cause a register to be kept of licensees under Part 2.

(2) The register must be kept available for public inspection at a place approved by the Minister during ordinary office hours.

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False or misleading information

75. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Maximum penalty: \$50 000.

Minister may require verification of information

76. (1) Where a person is required to furnish information under this Act, the Minister may require that the information be verified by statutory declaration.

(2) A person who fails, without reasonable excuse, to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty: \$20 000.

Report from police

77. The Commissioner of Police must, at the request of the Minister, provide to the Minister any information required by the Minister for the purpose of determining an application for a licence or whether a licence should be suspended or cancelled.

Confidentiality

78. A person must not divulge any information consisting of or relating to information obtained (whether by that person or some other person) in the administration of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act; or

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- (e) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$10 000.

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General defence

79. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Immunity from personal liability

80. (1) No personal liability attaches to—

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- (b) a member of the Trust; or
- (c) an employee of the Trust; or
- (d) a member of a committee continued in existence or established under this Act; or
- (e) an authorised officer; or
- (f) any other person engaged in the administration of this Act,

for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Offences by bodies corporate

81. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Prosecutions

82. Proceedings for an offence against this Act must be commenced—

- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
- (b) in any other case—within five years after the date on which the offence is alleged to have been committed.

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Evidence

85. (1) In any proceedings for an offence against this Act, an apparently genuine document purporting to be—

- (a) a certificate of the Minister certifying that a specified person was an authorised officer at a specified date; or
- (b) a certificate of the Minister certifying that a specified person was or was not the holder of a licence of a specified kind at a specified date,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(2) The presence on any premises of a vending machine from which tobacco products may be obtained is to be taken to constitute conclusive evidence that the occupier of the premises has sold tobacco products by means of the machine.

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Service

86. (1) A notice, order or other document to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice, order or other document required or authorised to be given to or served on a person may—

- (a) if the person is the holder of a licence under this Act—be given to or served on the person—
 - (i) by posting it to the person at the address last provided by the person for that purpose; or
 - (ii) by transmitting it to the person by facsimile transmission to the number last provided by the person for that purpose; or
- (b) if the person is a body corporate—be given to or served on the person in accordance with section 220 of the *Corporations Law*.

Regulations

87. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

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- (c) prescribe the design, construction and materials of packages containing tobacco products;
- (d) prescribe warnings and information (or empower the Minister for Health to give directions as to warnings and information) that must be displayed on packages containing tobacco products;
- (e) prescribe other labelling requirements (or empower the Minister for Health to give directions as to other labelling requirements) for packages containing tobacco products;
- (f) prescribe warnings that must be displayed in, or in conjunction with, advertisements of tobacco products and the manner and form in which those warnings must be displayed;
- (g) impose a penalty not exceeding \$2 500 for a breach of a regulation.

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(3) A regulation may prescribe a warning in relation to tobacco products generally or in relation to tobacco products of a particular class.

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SCHEDULE

Transitional Provision

A class A licence in force under Part 2 immediately before the commencement of this Schedule under which a person was carrying on the business of selling tobacco products by retail continues (subject to the provisions of this Act) as a licence under Part 2 authorising the carrying on of such a business for the balance of the period for which the licence was granted (including periods for which it was to have been automatically renewed).

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APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

| | |
|---------------------------|---|
| Long title: | amended by 26, 1998, s. 3 |
| Section 3(a): | repealed by 26, 1998, s. 4 |
| Section 4(1): | definitions of "Commissioner", "corresponding law" and "relevant period" repealed by 26, 1998, s. 5(a) definition of "sell" amended by 26, 1998, s. 5(b) definitions of "tobacco merchandising", "tobacco merchant" and "wholesale" repealed by 26, 1998, s. 5(c) |
| Section 5: | repealed by 26, 1998, s. 6 |
| | Part 2 comprising ss. 6 - 27 and headings amended by 28, 1997, s. 3, 4; 147, 1997, reg. 14; repealed and ss. 6 - 13 inserted in its place by 26, 1998, s. 7 |
| Section 28: | repealed by 26, 1998, s. 8 |
| Section 38(5): | amended by 26, 1998, s. 9(a) - (c) |
| Section 38(6): | substituted by 26, 1998, s. 9(d) |
| Section 38(7): | repealed by 26, 1998, s. 9(d) |
| Section 39(3): | amended by 26, 1998, s. 10 |
| Section 47(5): | amended by 26, 1998, s. 11 |
| Section 58(2): | amended by 26, 1998, s. 12 |
| Section 63(4): | amended by 26, 1998, s. 13 |
| Section 65: | amended by 26, 1998, s. 14 |
| Section 66(1)(h): | repealed by 26, 1998, s. 15 |
| Section 69(1): | amended by 26, 1998, s. 16(a), (b); redesignated as s. 69 in pursuance of the <i>Acts Republication Act 1967</i> |
| Section 69(2): | repealed by 26, 1998, s. 16(c) |
| | Part 6 comprising s. 70 repealed by 26, 1998, s. 17 |
| Section 72(1): | amended by 26, 1998, s. 18 |
| Section 74: | repealed by 26, 1998, s. 19 |
| Section 76(1): | amended by 26, 1998, s. 20 |
| Section 78(d): | repealed by 26, 1998, s. 21 |
| Section 80(1)(a): | repealed by 26, 1998, s. 22 |
| Section 82: | substituted by 26, 1998, s. 23 |
| Sections 83 and 84: | repealed by 26, 1998, s. 24 |
| Section 85(1)(c): | repealed by 26, 1998, s. 25(a) |
| Section 85(3): | repealed by 26, 1998, s. 25(b) |
| Section 87(2)(a) and (b): | repealed by 26, 1998, s. 26(a) |
| Section 87(4) and (5): | repealed by 26, 1998, s. 26(b) |
| Schedules 1 and 2: | repealed by 26, 1998, s. 27 |
| Schedule: | inserted by 26, 1998, s. 27 |