

South Australia

Tobacco and E-Cigarette Products Act 1997

An Act to regulate tobacco products and e-cigarette products, and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Tobacco and E-Cigarette Products Act 1997*.

3—Objects of Act

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, and in recognition of the potential harm caused by smoking e-cigarettes, the objects of this Act are—

- (b) to take steps to eliminate the uptake of smoking and to reduce the consumption of tobacco products and e-cigarette products to the greatest extent possible, especially by young people—
 - (i) by requiring health warnings to be displayed on tobacco products and e-cigarette products and otherwise disseminating information about the harmful effects of such smoking or consumption;
 - (ii) by prohibiting the supply of tobacco products and e-cigarette 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 e-cigarette products and their consumption;
 - (v) by reducing the availability of tobacco products and e-cigarette products;
- (c) to protect non-smokers from unwanted and unreasonable exposure to tobacco smoke and e-cigarette vapour;
- (d) to ensure that the sale of tobacco products is conducted honestly and free from interference, criminal influence and exploitation.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—
 - act* includes an omission; and *to act* has a corresponding meaning;

advertise tobacco products or e-cigarette products means take any action that is designed to publicise or promote such products, smoking, or the sale of such products, whether visual or auditory means are employed and whether such products are directly depicted or referred to or symbolism of some kind is employed, and includes take any action of a kind prescribed by regulation;

authorised officer means an authorised officer under Part 5;

child means a person under the age of 18 years;

cigarette does not include an e-cigarette;

consume means—

- (a) in relation to a tobacco product—
 - (i) smoke; or
 - (ii) inhale (in the form of a powder); or
 - (iii) chew or suck; or
 - (iv) give away; or

- (b) in relation to an e-cigarette—smoke;

contract of service means—

- (a) a contract under which 1 person is employed by another; or
- (b) a training contract under the *South Australian Skills Act 2008*; or
- (c) a contract, arrangement or understanding under which a person receives on-the-job training from another;

contravene includes fail to comply with;

e-cigarette—see section 5;

e-cigarette advertisement includes 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 an e-cigarette product; or
- (b) a trademark or brand name, or part of a trademark or brand name, of an e-cigarette product;

e-cigarette product—see section 5;

employee means a person who is employed under a contract of service or who works under a contract of service;

enclosed public place, workplace or shared area means—

- (a) an enclosed public place; or
- (b) an enclosed workplace; or
- (c) an enclosed shared area;

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

label includes information that is enclosed in or attached to or is provided with a package containing tobacco products or e-cigarette products but that does not comprise part of the package;

multi-unit premises means premises divided into parts that are in separate ownership or let or provided for separate occupation;

place includes a vehicle;

premises means—

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

prescribed packaging requirements means—

- (a) the requirements for the retail packaging and appearance of tobacco products in the *Public Health (Tobacco and Other Products) Act 2023* of the Commonwealth; and
- (c) any other requirements prescribed by the regulations;

prohibited product—see section 39C;

public area or **public 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 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 or e-cigarette products includes receipt of such 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 or other process, or in any other manner or by any other means;

residential premises means—

- (a) a house, home or residential unit, apartment or flat; or
- (b) a bedroom or living area let or provided for separate occupation (for example, accommodation in a motel, hotel, boarding house, hostel, nursing home or college or accommodation for employees); or
- (d) any other place of a kind prescribed by regulation;

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

SACAT means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

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;

shared area means an area in multi-unit premises the use of which is shared by persons from various parts of the premises that are in separate ownership or occupation;

shisha tobacco means a fibrous plant product (whether or not comprised of or containing tobacco) that is designed for smoking in a shisha, hookah, water pipe or similar device;

smoke means—

- (a) in relation to a tobacco product—smoke, hold or otherwise have control over, an ignited tobacco product; or
- (b) in relation to an e-cigarette—inhale from, hold or otherwise have control over, an e-cigarette that is in use;

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

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

tobacco advertisement includes 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
- (ca) shisha tobacco; or
- (d) tobacco prepared for chewing or sucking; or
- (e) snuff; or
- (f) any other product, of a kind prescribed by regulation, that is comprised of or contains tobacco; or
- (g) any product (other than an e-cigarette product) that does not contain tobacco but is designed for smoking,

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

vehicle includes any kind of aircraft or vessel;

vending machine means a device from which a product can be obtained by the use of a payment card or the insertion of a coin, banknote or token;

workplace has the same meaning as in the *Work Health and Safety Act 2012*, but does not include—

- (a) a place occupied as residential premises; or
 - (b) a place (other than a vehicle) where only a single self-employed person is working; or
 - (c) a vehicle that is used for work purposes by only one person; or
 - (d) any other place of a kind prescribed by regulation.
- (3) A place or area is **enclosed** if it is fully enclosed or is at least partially covered by a ceiling and has walls such that the total area of the ceiling and wall surfaces exceeds 70 per cent of the total notional ceiling and wall area.

- (4) For the purposes of subsection (3)—
- (a) **ceiling** includes any structure or device (whether fixed or movable) that prevents or impedes upward airflow, but does not include anything prescribed by regulation;
 - (b) **wall** includes any structure or device (whether fixed or movable) that prevents or impedes lateral airflow, but does not include anything prescribed by regulation;
 - (c) the **total notional ceiling and wall area** is the sum of—
 - (i) what would be the total area of the wall surfaces if—
 - (A) the walls were continuous, any gap in the walls being filled by a surface of the minimum area required for the purpose; and
 - (B) the walls were of a uniform height equal to the lowest height of the ceiling; and
 - (ii) what would be the floor area of the space within the walls if the walls were continuous as referred to in subparagraph (i).

5—Definition of e-cigarette product and related terms

- (1) In this Act—

e-cigarette means—

- (a) a device (whether or not filled with a vaping substance) that generates or releases, or is designed or intended to generate or release, using a heating element and by electronic means, an aerosol, vapour or mist for direct inhalation by its user; or
- (b) a device to which paragraph (a) would apply if the device were not temporarily or permanently inoperable, incomplete, damaged or unfinished;

e-cigarette accessory means a cartridge, capsule, pod or other vessel—

- (a) that is for use in, or with, an e-cigarette; and
- (b) whether or not the cartridge, capsule, pod or other vessel—
 - (i) contains a vaping substance; or
 - (ii) is designed or intended to be refilled;

e-cigarette product means any of the following:

- (a) an e-cigarette;
- (b) an e-cigarette accessory;
- (c) a vaping substance;
- (d) a product the presentation of which includes an express or implied representation that the product is of a kind referred to in paragraph (a), (b) or (c);
- (e) a product of a kind or class determined to be an e-cigarette product under subsection (3);

vaping substance means—

- (a) nicotine in solution in any concentration (including in a salt or base form); or
 - (b) any liquid or other substance for use in, or with, an e-cigarette,
- and includes a container (other than an e-cigarette or an e-cigarette accessory), or part of such a container, in which a liquid or other substance referred to in paragraph (a) or (b) is present.
- (2) For the purposes of paragraph (d) of the definition of **e-cigarette product** in subsection (1)—
 - (a) the presentation of the product includes matters in relation to—
 - (i) the name of the product; and
 - (ii) the labelling and packaging of the product; and
 - (iii) any advertising or informational material associated with the use or supply of the product; and
 - (b) a product is taken to be presented as being a particular kind of product even if the presentation—
 - (i) is capable of being misleading or confusing as to the content or proper use or identification of the product; or
 - (ii) suggests that the product has ingredients, components or characteristics that it does not have.
 - (3) The Minister may, by notice in the Gazette, determine that, for the purposes of this Act, a specified product or a specified class of product—
 - (a) is or is not an e-cigarette product; or
 - (b) when used, advertised, or presented for use or supply in a particular way, is or is not an e-cigarette product.

Part 2—Licences

6—Requirement for licence

A person must not—

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

unless the person holds a licence under this Part.

Maximum penalty: \$20 000.

Expiation fee: \$1 000.

7—Issue or renewal of licence

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

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- (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.

8—Licence term etc

- (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.

9—Licence conditions

- (1) The Minister may fix conditions of a licence.
- (2) Without limiting subsection (1), a licence condition may limit the sale of tobacco products or e-cigarette products, including by—
 - (a) a condition under which the holder of the licence is prevented from selling such products except at a single place specified in the condition (with the effect that a separate licence will be required by the person for any or each other place at which the person sells such products);
 - (b) a condition that restricts the points of sale of such products within the place at which the holder of the licence may sell such products 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 a condition of the licence.
Maximum penalty: \$10 000.
Expiation fee: \$500.

10—Form of application and licence fee

- (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.

11—Cancellation or suspension of licence

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.

12—Review of decision of Minister

- (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.

13—Review

- (1) A person who is dissatisfied with a decision taken by the Minister on a review may apply to SACAT under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the Minister's decision.
- (2) An application for review must be made within 1 month after the person receives notice of the Minister's decision.

Part 3—Offences

Division 1—Offences relating to tobacco products

30—Restrictions on sale of tobacco products

- (1) The following provisions apply in relation to the sale of tobacco products:
 - (a) a person must not sell cigarettes—
 - (i) singly or loose; or
 - (ii) if the package enclosing the cigarettes—
 - (A) contains, or is designed to contain, fewer than 20 cigarettes; or
 - (B) is able, or is readily able, to be divided into portions containing fewer than 20 cigarettes each;
 - (b) a person must not sell a tobacco product unless it is enclosed in a package that complies with the prescribed packaging requirements;
 - (c) a person must not sell a tobacco product by retail if the order for the product has been placed by mail, telephone, fax, email, Internet or other electronic means.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$5 000.

- (1a) In subsection (1)(b), a reference to a tobacco product enclosed in a package includes a tobacco product that is enclosed in 2 or more packages.

31—Requirements for packaging tobacco products

A person must not package tobacco products for retail sale in a manner that the person knows or ought reasonably to know does not comply with the prescribed packaging requirements.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

32—Prohibition on sale or supply of certain tobacco products

A person must not sell or supply tobacco products that the person knows or ought reasonably to know—

- (a) are prohibited goods as defined in the *Customs Act 1901* of the Commonwealth; or
- (b) are excisable goods as defined in the *Excise Act 1901* of the Commonwealth on which excise duty has not been paid.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

33—Possession of certain tobacco products

- (1) A person must not, without lawful excuse, have possession of prescribed tobacco products for the purpose of sale.

Maximum penalty:

- (a) in the case of a body corporate—
- (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
- (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.
- (2) In this section—
- prescribed tobacco product** means tobacco products that—
- (a) are prohibited goods within the meaning of the *Customs Act 1901* of the Commonwealth; or
 - (b) do not comply with the prescribed packaging requirements.
- (3) In proceedings for an offence against subsection (1), if it is proved that the defendant had possession of a prescribed quantity of prescribed tobacco products, it is presumed, in the absence of proof to the contrary, that the defendant had possession of the prescribed tobacco products for the purposes of sale.

34A—Prohibited tobacco products

- (1) The Minister may, by notice in the Gazette, declare that a class of tobacco products specified in the notice are prohibited tobacco products.
- (2) The Minister must not make a declaration under subsection (1) unless the Minister is satisfied that—
- (a) the tobacco products, or the smoke of the products, possesses a distinctive fruity, sweet or confectionary-like character; and
 - (b) the nature of the products, or the way they are advertised, might encourage young people to smoke.
- (3) The Minister may, by further notice in the Gazette, vary or revoke a notice under this section.
- (4) A person must not sell a prohibited tobacco product.
- Maximum penalty:
- (a) in the case of a body corporate—
- (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
- (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

35—Sale of sucking tobacco

A person must not sell sucking tobacco.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$5 000.

36—Products designed to resemble tobacco products

A person must not sell any product (other than a tobacco product or an e-cigarette) that is designed to resemble a tobacco product.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

Expiation fee:

- (a) in the case of a body corporate—\$10 000;
- (b) in the case of an individual—\$2 500.

37—Sale of tobacco products by vending machine

A person must not sell cigarettes or any other tobacco product by means of a vending machine.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

Expiation fee:

- (a) in the case of a body corporate—\$10 000;
- (b) in the case of an individual—\$2 500.

38—Carrying tray etc of tobacco products for making of successive retail sales

- (1) A person must not go amongst persons in premises carrying tobacco products in a tray or container or otherwise on their person for the purpose of making successive sales of such products by retail.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

Expiation fee:

- (a) in the case of a body corporate—\$10 000;
 - (b) in the case of an individual—\$2 500.
- (2) A person must not cause or permit another to engage in the practice referred to in subsection (1) in premises under the person's control.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

Expiation fee:

- (a) in the case of a body corporate—\$10 000;
- (b) in the case of an individual—\$2 500.

Division 2—Offences relating to e-cigarette products

39A—Offence relating to sale or supply of e-cigarette products

- (1) A person must not sell or supply an e-cigarette product.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$5 000.

- (2) Subsection (1) does not apply to a person who is authorised under any other Act or law to sell or supply e-cigarette products.

39B—Offence relating to possession of e-cigarette products

- (1) A person must not have possession of an e-cigarette product for the purpose of sale.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

- (2) Subsection (1) does not apply to a person in possession of an e-cigarette product for the purpose of a sale that is authorised under any other Act or law.

- (3) In proceedings for an offence against subsection (1), if it is proved that the defendant had possession of a prescribed quantity of e-cigarette products, it is presumed, in the absence of proof to the contrary, that the defendant had possession of the e-cigarette products for the purposes of sale.

Division 3—Prohibited products

39C—Prohibited products

- (1) The Minister may, by notice in the Gazette, declare that a product or a class of products specified in the notice is a prohibited product.
- (2) The Minister must not make a declaration under subsection (1) unless the Minister is satisfied that the product—
- (a) is presented or advertised in a manner that indicates that the product contains nicotine; or
 - (b) may be used, or is presented or advertised, as an alternative to smoking.
- (3) A person must not sell or supply a prohibited product.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$5 000.

- (4) A person must not have possession of a prohibited product for the purpose of sale.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Division 4—Offences relating to children

39D—Sale or supply of tobacco products by children

- (1) A person must not employ, authorise or allow a child to sell or supply a tobacco product other than in accordance with this section

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

Expiation fee:

- (a) in the case of a body corporate—\$10 000;
- (b) in the case of an individual—\$315.

- (2) This section does not prevent the employment or authorisation of a child to sell or supply a tobacco product if the child is of or above the age of 16 years.

39E—Sale or supply of certain products to children

- (1) If a tobacco product is sold or supplied to a child, the responsible person is guilty of an offence, or if there is more than one responsible person, each responsible person is guilty of an offence.

Maximum penalty:

- (a) in the case of a responsible person who is the proprietor of a business—
 - (i) in the case of a body corporate—
 - (A) for a first offence—\$1 000 000;
 - (B) for a second or subsequent offence—\$1 500 000;
 - (ii) in the case of an individual—
 - (A) for a first offence—\$500 000;
 - (B) for a second or subsequent offence—\$750 000;
- (b) in any other case—
 - (i) in the case of a body corporate—
 - (A) for a first offence—\$750 000;
 - (B) for a second or subsequent offence—\$1 100 000;
 - (ii) in the case of an individual—
 - (A) for a first offence—\$350 000;
 - (B) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$30 000;
- (b) in the case of an individual—\$10 000.

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- (2) It is a defence to a charge of an offence against subsection (1) that was allegedly committed in the course of a business to prove that—
- (a) the proprietor of the business or some person acting on behalf of the proprietor of the business required the minor to produce evidence of age of a kind prescribed by regulation; and
 - (b) the minor made a false statement, or produced false evidence, in response to that requirement; and
 - (c) in consequence the person who served or assisted the minor reasonably assumed that the minor was of or above the age of 18 years.
- (3) It is a defence to a charge of an offence against subsection (1) that was allegedly committed otherwise than in the course of a business to prove that the defendant had reasonable cause to believe that the child was of or above the age of 18 years.
- (4) The defence under subsection (2) or (3) applies to the exclusion of the general defence under section 79.
- (5) A person who sells tobacco products by retail 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 customers.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5a) A person who sells or supplies an e-cigarette product to a child is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$1 000 000;
 - (ii) for a second or subsequent offence—\$1 500 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$500 000;
 - (ii) for a second or subsequent offence—\$750 000.

Expiation fee:

- (a) in the case of a body corporate—\$30 000;
- (b) in the case of an individual—\$10 000.

- (5b) A person who sells or supplies a prohibited product to a child is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$1 000 000;
 - (ii) for a second or subsequent offence—\$1 500 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$500 000;
 - (ii) for a second or subsequent offence—\$750 000.

Expiation fee:

- (a) in the case of a body corporate—\$30 000;
 - (b) in the case of an individual—\$10 000.
- (6) In this section—
- responsible person**, in relation to the sale or supply of a tobacco product or e-cigarette product to a child, means—
- (a) if the product is sold or supplied in the course of a business—
 - (i) the proprietor of the business; or
 - (ii) a person who sells or supplies the product on behalf of the proprietor; or
 - (c) if the product is sold or supplied otherwise than in the course of a business—the person who sells or supplies the product.

Division 5—Offences relating to promotion of tobacco products and e-cigarette products

40—Certain advertising prohibited

- (1) A person must not advertise tobacco products or e-cigarette products in the course of a business or for any direct or indirect pecuniary benefit.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$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 e-cigarette advertisement; or
 - (b) sell any object that constitutes or contains a tobacco advertisement or e-cigarette advertisement.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;

(ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$5 000.

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

- (a) the display, in accordance with the regulations, of signs outside premises where tobacco products are sold; or
- (b) the provision of assistance to customers or potential customers by sales assistants in premises where tobacco products or e-cigarette products are sold; or
- (c) action of a kind prescribed by regulation; or
- (e) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

41—Prohibition of certain sponsorships

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

- (a) a tobacco product or e-cigarette product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product or e-cigarette product; or
- (b) the name or interests of a manufacturer or distributor of a tobacco product or e-cigarette product in association directly or indirectly with that 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:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$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:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—

- (i) for a first offence—\$350 000;
- (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$5 000.

42—Competitions and reward schemes etc

- (1) A person must not, in connection with the sale of a tobacco product or e-cigarette product, or for the purpose of promoting the sale of a tobacco product or e-cigarette 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
 - (iii) a number of points, or a similar device, by the accumulation of which a person may become entitled to, or 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 e-cigarette product or to promote smoking generally.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of an individual—\$5 000.

- (2) It is a defence to a charge of an offence against subsection (1)(a) to prove that it was not practicable for the person to identify the particular item or items purchased that gave rise to the supply of the benefit or thing.

43—Free samples

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

Maximum penalty:

- (a) in the case of a body corporate—

- (i) for a first offence—\$750 000;
- (ii) for a second or subsequent offence—\$1 100 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.

45—Business promotions to attract smokers

- (1) A person must not display signs, or engage in a practice of any kind, designed to promote a business as welcoming or permitting smoking on its premises.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

Expiation fee:

- (a) in the case of a body corporate—\$10 000;
- (b) in the case of an individual—\$2 500.

- (2) This section does not apply in relation to the display of a sign, in accordance with the requirements of the regulations, that indicates an area where smoking is not prohibited.

Part 4—Restrictions on smoking

46—Smoking banned in enclosed public places, workplaces and shared areas

- (1) Smoking is banned in an enclosed public place, workplace or shared area.
- (2) If a person smokes in contravention of subsection (1), the person is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) If smoking occurs in an enclosed public place in contravention of subsection (1), the occupier of the place is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$25 000;
 - (ii) for a second or subsequent offence—\$50 000;
- (b) in the case of an individual—
 - (i) for a first offence—\$10 000;
 - (ii) for a second or subsequent offence—\$20 000.

Expiation fee: \$630.

- (4) If smoking occurs in an enclosed workplace in contravention of subsection (1), the employer with responsibility for the workplace under the *Work Health and Safety Act 2012* is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—
- (i) for a first offence—\$25 000;
 - (ii) for a second or subsequent offence—\$50 000;
- (b) in the case of an individual—
- (i) for a first offence—\$10 000;
 - (ii) for a second or subsequent offence—\$20 000.

Expiation fee: \$630.

- (5) It is a defence to an offence against subsection (3) or (4) if the defendant proves—
- (a) 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
 - (b) that—
 - (i) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (ii) he or she requested the person smoking to stop smoking and informed the person that the person was committing an offence.

48—Smoking in motor vehicle if child present

- (1) A person must not smoke in a motor vehicle if a child is also present in the motor vehicle.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) In proceedings for an offence against this section an allegation in the complaint that a child was present in a motor vehicle at a specified time will be accepted as proved in the absence of proof to the contrary.
- (3) In this section—

child means a person under 16 years of age;

motor vehicle has the same meaning as in the *Motor Vehicles Act 1959*.

49—Smoking banned in certain public transport areas

- (1) A person must not smoke in a prescribed public transport area.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) Without limiting any other provision of this Act, subsection (1) does not apply to a person smoking in a motor vehicle.
- (3) For the purposes of this section, a person will be taken to be in a prescribed public transport area if any part of the person is within the prescribed public transport area.

(4) In proceedings for an offence against this section, an allegation in the complaint that a specified place is a prescribed public transport area will be accepted as proved in the absence of proof to the contrary.

(5) In this section—

prescribed public transport area means—

- (a) any part of a bus stop, tram stop, railway station, taxi rank, airport or similar place that is—
 - (i) a public area; and
 - (ii) used or intended to be used, by passengers boarding or alighting from public transport; and
 - (iii) wholly or partly covered by a roof; and
- (b) any public area within 5 m of a place described in paragraph (a);

public transport includes—

- (a) a taxi service; and
- (b) a transport service provided by aircraft or vessel.

50—Smoking banned near certain playground equipment

(1) A person in a public area must not smoke within 10 metres of any prescribed children's playground equipment.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) Without limiting any other provision of this Act, subsection (1) does not apply to a person smoking in a motor vehicle.

(3) For the purposes of this section—

- (a) a person will be taken to be in a public area if any part of the person is within the public area; and
- (b) a person will be taken to be within 10 metres of prescribed children's playground equipment if any part of the person is within 10 metres of any part of the prescribed children's playground equipment.

(4) In proceedings for an offence against this section, an allegation in the complaint that—

- (a) specified equipment is children's playground equipment; or
- (b) specified children's playground equipment is prescribed children's playground equipment,

will be accepted as proved in the absence of proof to the contrary.

(5) In this section—

prescribed children's playground equipment means children's playground equipment (however described) that is located in a public area.

51—Smoking banned in certain public areas—short term bans

- (1) The Minister may, by notice in the Gazette, declare that smoking is banned in the public area or areas described, or shown on a map, in the notice and during a period not exceeding 90 days specified in the notice.
- (2) A notice under subsection (1)—
 - (a) may be of general application or vary in its application in respect of each public area to which it applies; and
 - (b) may exempt specified areas, specified circumstances or specified times from the operation of subsection (4); and
 - (c) may be conditional or unconditional.
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).
- (4) A person who smokes in contravention of a notice under subsection (1) is guilty of an offence.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (5) The occupier of a public area to which a notice under subsection (1) applies must place signs in the area setting out the effect of the notice in the manner determined by the Minister by notice in the Gazette.
Maximum penalty:
 - (a) in the case of a body corporate—\$10 000;
 - (b) in the case of an individual—\$5 000.Expiation fee: \$630.
- (6) For the purposes of this section, a person will be taken to be in a particular area if any part of the person is within the area.

52—Smoking banned in certain public areas—longer term bans

- (1) The Governor may, by regulation, declare that smoking is banned in the public areas described, or shown on a map, in the regulations for the purposes of this section.
- (2) A person who smokes in a public area declared by the regulations to be a public area in which smoking is banned is guilty of an offence.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) A regulation made under this section—
 - (a) may exempt specified areas, specified circumstances or specified times from the operation of subsection (2); and
 - (b) may be conditional or unconditional.
- (4) The occupier of a public area to which a declaration under this section applies must indicate the effect of the declaration to persons within the area in the manner prescribed by the regulations.
Maximum penalty:

- (a) in the case of a body corporate—\$10 000;
 - (b) in the case of an individual—\$5 000.
- Expiation fee: \$630.

Part 5—Investigations

63—Appointment of authorised officers

- (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 police officers are authorised officers for the purposes of this Act.

64—Identification of authorised officers

- (1) The Minister must provide each authorised officer (other than a police officer) with a certificate of identity.
- (2) An authorised officer (other than a police officer) must, at the request of a person in relation to whom the authorised officer has exercised, or intends to exercise, powers under the Act, produce their certificate of identity for the inspection of the person.

65—Power to require information or records or attendance for examination

- (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:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

66—Powers of authorised officers

- (1) Subject to this Part, an authorised officer may—
- (a) 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 any record as reasonably required in connection 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 area that is subject to smoking restrictions under this Act;
 - (f) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;
 - (g) if the authorised officer suspects on reasonable grounds that an offence has been committed—seize and retain any record or thing that the officer believes—
 - (i) affords evidence of the offence; or
 - (ii) has been used in connection with the commission of the offence;
 - (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.
- (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.

66A—Compliance direction

- (1) An authorised officer may, by notice in writing, give a direction (a *compliance direction*) to a person for the purpose of securing compliance with a requirement under this Act or a licence (including a condition of a licence).
- (2) A compliance direction—
 - (a) must—
 - (i) specify the person to whom it is issued; and
 - (ii) specify the grounds on which it is given; and
 - (iii) allow a reasonable time for compliance with the direction as specified in the direction; and
 - (b) may impose any requirement reasonably required for the purpose for which the direction is given, including 1 or more of the following:
 - (i) a requirement that the person discontinue or not commence, a specified activity indefinitely or for a period specified in the direction;
 - (ii) a requirement that the person take specified action within a specified period;
 - (iii) a requirement that the person provide specified information to the authorised officer within a specified period.
- (3) A person issued with a compliance direction may apply to the Minister for a review of the direction within 28 days after receiving the direction or such longer period as the Minister may allow in a particular case.
- (4) Unless the Minister decides to the contrary, an application for review of a compliance direction does not suspend operation of the direction.
- (5) On review of a compliance direction, the Minister may—
 - (a) confirm the direction (with or without modification); or
 - (b) revoke the direction.
- (6) A person to whom a compliance direction is given must comply with the direction within the time allowed in the direction.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

66B—Embargo notices

- (1) This section applies if—
 - (a) an authorised officer is authorised to seize any record or thing under this Part; and
 - (b) the record or thing cannot, or cannot readily, be physically seized and removed or stored.
- (2) An authorised officer may issue an embargo notice under this section.

- (3) An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record or thing, or any part of it, without the written consent of an authorised officer.
- (4) The embargo notice must—
- (a) contain the particulars required by the regulations; and
 - (b) list the activities that it forbids; and
 - (c) set out a copy of subsection (9).
- (5) On issuing an embargo notice, an authorised officer must—
- (a) cause a copy of the notice to be given to the owner of the record or thing; or
 - (b) if that person cannot be located after all reasonable steps have been taken to do so—affix a copy of the notice to the record or thing in a prominent position.
- (6) A person must not knowingly do anything that is forbidden by an embargo notice.
- Maximum penalty:
- (a) in the case of a body corporate—\$500 000;
 - (b) in the case of an individual—\$250 000.
- (7) A person must not instruct or request another person to do anything that the first mentioned person knows is forbidden by an embargo notice.
- Maximum penalty:
- (a) in the case of a body corporate—\$500 000;
 - (b) in the case of an individual—\$250 000.
- (8) It is a defence to a prosecution for an offence against subsection (6) to establish that the person charged—
- (a) moved the record or thing, or part of it, for the purpose of protecting or preserving it; and
 - (b) notified the authorised officer who issued the embargo notice of the move, and of the new location of the record or thing or part of it, within 48 hours after the move.
- (9) A person to whom an embargo notice has been given must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.
- Maximum penalty:
- (a) in the case of a body corporate—\$500 000;
 - (b) in the case of an individual—\$250 000.
- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record or thing, or part of it, in contravention of this section is void.

67—Offence to hinder etc authorised officers

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:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

68—Self-incrimination

- (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).

69—Powers in relation to seized products

If tobacco products or e-cigarette 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;
- (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) any products forfeited under this section may be disposed of in such manner as the Minister may direct;
- (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.

Part 7—Miscellaneous

70A—Confiscation of products from children

- (1) A prescribed person who becomes aware that tobacco products or e-cigarette products are in the possession of a child may confiscate the products from the child.
- (2) Subsection (1) does not apply to tobacco products that are in the possession of a child in the ordinary course of their employment or otherwise for the purpose of sale in accordance with this Act.
- (3) If tobacco products or e-cigarette products are confiscated under subsection (1)—
 - (a) the products are forfeited by the child; and
 - (b) the products must be destroyed as soon as is reasonably practicable by the prescribed person; and
 - (c) no compensation is payable in relation to the confiscation of the products.

(4) In this section—

prescribed person, in relation to a child, means—

- (a) a member of the police force; or
- (b) any other authorised officer under Part 5; or
- (c) a person performing the duties of a teacher at a school attended by the child (whether or not such duties are being performed on the grounds of the school).

70AB—Power to require evidence of age

(1) An authorised person may require a person—

- (a) who is, or who has recently been, in possession of a tobacco product, an e-cigarette product or a prohibited product; and
- (b) who the authorised person reasonably suspects is a child,

to produce evidence as to the person's age that complies with the requirements of the regulations.

(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: \$5 000.

Expiation fee: \$315.

(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.

71—Exemptions

(1) The Minister may, by notice in the Gazette—

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

(5) Without limiting subsection (1), the Minister may, by notice in writing, exempt a person, or a class of persons, from the operation of a provision of this Act in respect of an artistic performance.

(6) An exemption under subsection (5) may be conditional or unconditional.

(7) The Minister may, by notice in writing, vary or revoke an exemption under subsection (5).

72—Delegation

- (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.

73—Register of licences

- (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.

75—False or misleading information

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:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

76—Minister may require verification of information

- (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:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000.

77—Report from police

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.

78—Confidentiality

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

Maximum penalty: \$20 000.

79—General defence

It is a defence to a charge of an offence against this Act, including a charge of an offence against a body corporate or an individual where conduct or a state of mind is imputed to the body or individual under this Part, 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.

81—Vicarious liability

- (2) If an employee or agent is convicted of an offence against this Act, the employer or principal 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.
- (3) If an offence is committed against this Act in relation to a sale, any person who has derived or would, if the sale were completed, expect to derive a direct or indirect pecuniary benefit from the transaction 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.

82—Prosecutions

Proceedings for an offence against this Act must be commenced—

- (a) in the case of an expiable offence—within 2 years after the date on which the offence is alleged to have been committed;
- (b) in any other case—within five years after the date on which the offence is alleged to have been committed.

83—Expiation notices may be given to certain children

Despite section 6 of the *Expiation of Offences Act 1996*, an expiation notice for an offence against this Act may be given to a child who has attained the age of 15 years.

85—Evidence

- (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 or e-cigarette products may be obtained is to be taken to constitute conclusive evidence that the occupier of the premises has sold such products by means of the machine.
- (3) In proceedings for an offence against this Act by a body corporate, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

86—Imputation of conduct or state of mind of officer, employee etc

For the purposes of proceedings for an offence against this Act—

- (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of their actual, usual or ostensible authority will be imputed to the body corporate; and
- (b) the conduct and state of mind of an employee or agent of an individual acting within the scope of their actual, usual or ostensible authority will be imputed to that individual.

86A—Immunity

- (1) No personal liability attaches to an authorised officer or any other person engaged in the administration of this Act for an honest act or omission in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function, power or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

86B—Exclusion of compensation

No right to compensation arises as a result of the expropriation or diminution of rights of the holder of a licence by the amendments to this Act made by the *Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Act 2024*.

87—Regulations and fee notices

- (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), the regulations may make provision for or in relation to—
 - (a) the provision by the holder of a licence of prescribed information to the Minister; and
 - (d) warnings in relation to tobacco products or e-cigarette products generally or tobacco products or e-cigarette products of a particular class; and
 - (e) signs that must be displayed in relation to places or areas where smoking is prohibited or permitted and the manner and form in which those signs must be displayed; and
 - (f) fines (not exceeding \$20 000) for offences against the regulations; and
 - (g) expiation fees (not exceeding \$1 000) for alleged offences against the regulations; and

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- (h) evidentiary provisions to facilitate proof of contraventions of the Act or the regulations for the purposes of proceedings for offences; and
 - (i) provisions of a saving or transitional nature consequent on any amendments to this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act.
- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature consequent on the enactment of the *Tobacco Products Regulation (E-Cigarettes and Review) Amendment Act 2018* or on the commencement of a specified provision of that Act or on the making of regulations under this Act; and
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or an authorised officer.
- (4) Without limiting any other provisions of this section, the regulations may, for transitional purposes—
- (a) provide that this Act or specified provisions of this Act will not apply in relation to a particular person or thing, or a class of person or thing, until a specified day; or
 - (b) modify the application of this Act or provisions of this Act in relation to a particular person or thing, or a class of person or thing, until a specified day.
- (5) The Minister may prescribe fees (including an annual fee) for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (6) The Minister may, on application by a person or on the Minister's own initiative, waive, reduce or refund a prescribed fee payable by a person under this Act.

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).

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Tobacco Products Regulation Act 1997

Legislation repealed by principal Act

The *Tobacco and E-Cigarette Products Act 1997* repealed the following:

Tobacco Products Control Act 1986

Tobacco Products (Licensing) Act 1986

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1997	26	<i>Tobacco Products Regulation Act 1997</i>	10.4.1997	5.6.1997 (<i>Gazette</i> 5.6.1997 p2793) except s 47—4.1.1999: s 2(2)
1997	28	<i>Tobacco Products Regulation (Miscellaneous) Amendment Act 1997</i>	5.6.1997	5.6.1997: s 2
1997	(145)	<i>Tobacco Products Regulations 1997</i> (Gazette 5.7.1997 p2925)	—	5.6.1997: r 2
1998	26	<i>Tobacco Products Regulation (Licence Fees) Amendment Act 1998</i>	2.4.1998	1.5.1998 (<i>Gazette</i> 23.4.1998 p1927)
1998	61	<i>Tobacco Products Regulation (Dissolution of Sports Promotion, Cultural and Health Advancement Trust) Amendment Act 1998</i>	3.9.1998	3.9.1998
1999	26	<i>Tobacco Products Regulation (Smoking in Unlicensed Premises) Amendment Act 1999</i>	1.4.1999	12.4.1999 (<i>Gazette</i> 8.4.1999 p1634)
1999	43	<i>Tobacco Products Regulation (Sale of Products Designed for Smoking) Amendment Act 1999</i>	5.8.1999	5.8.1999

2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 44)—1.6.2000 (<i>Gazette 18.5.2000 p2554</i>)
2000	10	<i>Tobacco Products Regulation (Evidence of Age) Amendment Act 2000</i>	20.4.2000	20.4.2000
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 18)—6.7.2000 (<i>Gazette 6.7.2000 p5</i>)
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 31 (s 118)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette No. S 285, 13.7.2001 (Gazette 21.6.2001 p2270)</i>
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 (<i>Gazette 13.11.2003 p4048</i>)
2004	42	<i>Tobacco Products Regulation (Further Restrictions) Amendment Act 2004</i>	4.11.2004	6.12.2004 except ss 6, 12 & 15—31.3.2005 (<i>Gazette 2.12.2004 p4444</i>)
2006	16	<i>Tobacco Products Regulation (Prohibited Tobacco Products) Amendment Act 2006</i>	6.7.2006	31.10.2006 (<i>Gazette 10.8.2006 p2642</i>)
2007	9	<i>Tobacco Products Regulation (Smoking in Cars) Amendment Act 2007</i>	5.4.2007	31.5.2007 (<i>Gazette 10.5.2007 p1980</i>)
2007	15	<i>Tobacco Products Regulation (Miscellaneous Offences) Amendment Act 2007</i>	5.4.2007	31.5.2007 (<i>Gazette 10.5.2007 p1979</i>)
2007	58	<i>Tobacco Products Regulation (Miscellaneous) Amendment Act 2007</i>	29.11.2007	1.6.2008 (<i>Gazette 13.12.2007 p4813</i>)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 158 (s 357)—1.2.2010 (<i>Gazette 28.1.2010 p320</i>)
2011	36	<i>Statutes Amendment (Directors' Liability) Act 2011</i>	22.9.2011	Pt 24 (s 32)—1.1.2012 (<i>Gazette 15.12.2011 p4988</i>)
2012	5	<i>Tobacco Products Regulation (Further Restrictions) Amendment Act 2012</i>	22.3.2012	31.5.2012 (<i>Gazette 12.4.2012 p1394</i>)
2012	40	<i>Work Health and Safety Act 2012</i>	15.11.2012	Sch 6 (cll 7 & 8)—1.1.2013: s 2
2016	7	<i>Tobacco Products Regulation (Artistic Performances) Amendment Act 2016</i>	17.3.2016	17.3.2016
2017	51	<i>Statutes Amendment (SACAT No 2) Act 2017</i>	28.11.2017	Pt 48 (ss 267 to 269)—14.12.2017 (<i>Gazette 12.12.2017 p4960</i>)
2018	39	<i>Tobacco Products Regulation (E-Cigarettes and Review) Amendment Act 2018</i>	6.12.2018	31.3.2019 except substitution of s 30(2) by ss 13 & 20—1.10.2019 (<i>Gazette 31.1.2019 p372</i>)
2020	40	<i>Training and Skills Development (Miscellaneous) Amendment Act 2020</i>	19.11.2020	Sch 1 (cl 9)—1.7.2021 (<i>Gazette 24.6.2021 p2260</i>)

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2023	15	<i>Tobacco and E-Cigarette Products (Tobacco Product Prohibitions) Amendment Act 2023</i>	26.5.2023	31.8.2023 (<i>Gazette 25.8.2023 p3115</i>)
2024	47	<i>Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Act 2024</i>	7.11.2024	28.11.2024 except ss 4(1), (2), (5) to (7), (12) to (14), (16) & (17), 5 insofar as it inserts s 5A, 6, 38, 39, 42, 45, 48 & 53—13.12.2024 (<i>Gazette 28.11.2024 p4274</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 26/1998 s 3	1.5.1998
	amended by 61/1998 s 3	3.9.1998
	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
	amended by 39/2018 s 4	31.3.2019
Pt 1		
s 1	substituted by 39/2018 s 5	31.3.2019
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	24.11.2003
s 3	(a) deleted by 26/1998 s 4	1.5.1998
	(b)(v) deleted by 61/1998 s 4	3.9.1998
	(d) deleted by 61/1998 s 4	3.9.1998
	amended by 39/2018 s 6(1)—(6)	31.3.2019
	amended by 47/2024 s 3(1)—(3)	28.11.2024
s 4		
s 4(1)		
advertise	inserted by 42/2004 s 4(1)	6.12.2004
	amended by 39/2018 s 7(1)—(3)	31.3.2019
body corporate	inserted by 47/2024 s 4(1)	13.12.2024—not incorporated
cigarette	inserted by 39/2018 s 7(4)	31.3.2019
<i>Commissioner</i>	<i>deleted by 26/1998 s 5(a)</i>	1.5.1998
consume	substituted by 39/2018 s 7(5)	31.3.2019
contract of service	inserted by 40/2012 Sch 6 cl 7(1)	1.1.2013
	amended by 40/2020 Sch 1 cl 9	1.7.2021
contravene	inserted by 39/2018 s 7(6)	31.3.2019
	deleted by 47/2024 s 4(2)	13.12.2024—not incorporated
<i>corresponding law</i>	<i>deleted by 26/1998 s 5(a)</i>	1.5.1998
criminal intelligence	inserted by 47/2024 s 4(2)	13.12.2024—not incorporated
e-cigarette	inserted by 39/2018 s 7(6)	31.3.2019
	substituted by 47/2024 s 4(3)	28.11.2024

e-cigarette advertisement	inserted by 39/2018 s 7(6)	31.3.2019
e-cigarette product	inserted by 39/2018 s 7(6) substituted by 47/2024 s 4(4)	31.3.2019 28.11.2024
employee	inserted by 42/2004 s 4(2) substituted by 40/2012 Sch 6 cl 7(1)	6.12.2004 1.1.2013
enclosed public place, workplace or shared area	inserted by 42/2004 s 4(2)	6.12.2004
<i>fund</i>	<i>deleted by 61/1998 s 5</i>	<i>3.9.1998</i>
grant	deleted by 47/2024 s 4(5)	13.12.2024—not incorporated
<i>health warning</i>	<i>amended by 26/1999 s 4 (Sch)</i> <i>amended by 42/2004 s 4(3)</i> <i>substituted by 39/2018 s 7(7)</i> <i>deleted by 15/2023 s 3(1)</i>	<i>12.4.1999</i> <i>6.12.2004</i> <i>31.3.2019</i> <i>31.8.2023</i>
label	amended by 39/2018 s 7(8)	31.3.2019
licence	inserted by 47/2024 s 4(6)	13.12.2024—not incorporated
multi-unit premises	inserted by 42/2004 s 4(4)	6.12.2004
officer	inserted by 47/2024 s 4(7)	13.12.2024—not incorporated
place	inserted by 42/2004 s 4(4)	6.12.2004
<i>place of public entertainment</i>	<i>deleted by 42/2004 s 4(4)</i>	<i>6.12.2004</i>
prescribed packaging requirements	inserted by 15/2023 s 3(2) amended by 47/2024 s 4(8) (b) deleted by 47/2024 s 4(9) inserted by 47/2024 s 4(10)	31.8.2023 28.11.2024 28.11.2024 28.11.2024
prohibited product		
<i>public</i>	<i>deleted by 42/2004 s 4(5)</i>	<i>6.12.2004</i>
public area or public place	inserted by 42/2004 s 4(5)	6.12.2004
purchase	amended by 39/2018 s 7(9)	31.3.2019
record	amended by 39/2018 s 7(10)	31.3.2019
<i>relevant period</i>	<i>deleted by 26/1998 s 5(a)</i>	<i>1.5.1998</i>
residential premises	inserted by 42/2004 s 4(6) (c) deleted by 47/2024 s 4(11)	6.12.2004 28.11.2024
retail	substituted by 47/2024 s 4(12)	13.12.2024—not incorporated
retail licence	inserted by 47/2024 s 4(13)	13.12.2024—not incorporated
SACAT	inserted by 51/2017 s 267	14.12.2017
sell	amended by 26/1998 s 5(b)	1.5.1998
shared area	inserted by 42/2004 s 4(7)	6.12.2004
shisha tobacco	inserted by 39/2018 s 7(11)	31.3.2019

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smoke	substituted by 39/2018 s 7(12)	31.3.2019
tobacco advertisement	amended by 39/2018 s 7(13)	31.3.2019
<i>tobacco merchandising</i>	<i>deleted by 26/1998 s 5(c)</i>	<i>1.5.1998</i>
<i>tobacco merchant</i>	<i>deleted by 26/1998 s 5(c)</i>	<i>1.5.1998</i>
tobacco product	amended by 42/2004 s 4(8)	6.12.2004
	amended by 39/2018 s 7(14)—(16)	31.3.2019
trust	inserted by 47/2024 s 4(14)	13.12.2024—not incorporated
<i>Trust</i>	<i>deleted by 61/1998 s 5</i>	<i>3.9.1998</i>
trust or corporate entity	inserted by 47/2024 s 4(14)	13.12.2024—not incorporated
vending machine	amended by 39/2018 s 7(17)	31.3.2019
	amended by 47/2024 s 4(15)	28.11.2024
<i>wholesale</i>	<i>deleted by 26/1998 s 5(c)</i>	<i>1.5.1998</i>
wholesale	inserted by 47/2024 s 4(16)	13.12.2024—not incorporated
wholesale licence	inserted by 47/2024 s 4(16)	13.12.2024—not incorporated
workplace	inserted by 42/2004 s 4(9)	6.12.2004
	amended by 40/2012 Sch 6 cl 7(2)	1.1.2013
<i>s 4(2)</i>	<i>deleted by 15/2023 s 3(3)</i>	<i>31.8.2023</i>
<i>s 4(3) and (4)</i>	inserted by 42/2004 s 4(10)	6.12.2004
<i>s 4(5) and (6)</i>	inserted by 47/2024 s 4(17)	13.12.2024—not incorporated
<i>s 4A</i>	<i>inserted by 42/2004 s 5</i>	<i>6.12.2004</i>
	<i>deleted by 39/2018 s 8</i>	<i>31.3.2019</i>
<i>s 5</i>	deleted by 26/1998 s 6	1.5.1998
	inserted by 47/2024 s 5	28.11.2024
<i>s 5A</i>	inserted by 47/2024 s 5	13.12.2024—not incorporated
Pt 2	amended by 28/1997 ss 3, 4	5.6.1997
	amended by 145/1997 r 14	5.6.1997
	substituted by 26/1998 s 7	1.5.1998
<i>s 6</i>	amended by 15/2007 s 4	31.5.2007
	amended by 39/2018 s 9, Sch 2	31.3.2019
<i>s 9</i>		
<i>s 9(2)</i>	substituted by 42/2004 s 6	31.3.2005
	amended by 39/2018 s 10(1), (2)	31.3.2019
<i>s 9(5)</i>	amended by 15/2007 s 5	31.5.2007
	amended by 39/2018 s 10(3), Sch 2	31.3.2019
<i>s 13 before substitution by 51/2017</i>		
<i>s 13(2)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 44(a))</i>	<i>1.6.2000</i>
<i>s 13(3)</i>	<i>amended by 4/2000 s 9(1) (Sch 1 cl 44(b))</i>	<i>1.6.2000</i>
<i>s 13(4)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 44(c))</i>	<i>1.6.2000</i>
<i>s 13(5)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 44(d))</i>	<i>1.6.2000</i>

s 13	substituted by 51/2017 s 268	14.12.2017
Pt 2	substituted by 47/2024 s 6	13.12.2024—not incorporated
Pt 3		
heading	substituted by 42/2004 s 7	6.12.2004
	amended by 39/2018 s 11	31.3.2019
	substituted by 47/2024 s 7	28.11.2024
Pt 3 Div 1		
heading	inserted by 47/2024 s 8	28.11.2024
s 28	<i>deleted by 26/1998 s 8</i>	1.5.1998
	<i>inserted by 43/1999 s 2</i>	5.8.1999
	<i>deleted by 42/2004 s 8</i>	6.12.2004
s 29	<i>deleted by 39/2018 s 12</i>	31.3.2019
<i>s 30 before substitution by 39/2018</i>		
s 30(1)	<i>amended by 15/2007 s 6(1)</i>	31.5.2007
s 30(2)	<i>amended by 15/2007 s 6(2)</i>	31.5.2007
s 30(3)	<i>amended by 15/2007 s 6(3)</i>	31.5.2007
s 30(4)	<i>amended by 15/2007 s 6(4)</i>	31.5.2007
s 30(5)	<i>inserted by 58/2007 s 4</i>	1.6.2008
s 30	substituted by 39/2018 s 13	31.3.2019 except s 30(2)—1.10.2019
	heading amended by 47/2024 s 9(1)	28.11.2024
s 30(1)	(c) and (d) deleted by 15/2023 s 4(1)	31.8.2023
	amended by 15/2023 s 4(1)—(3)	31.8.2023
	amended by 47/2024 s 9(2)—(4)	28.11.2024
s 30(1a)	inserted by 15/2023 s 4(4)	31.8.2023
s 30(2) and (3)	deleted by 47/2024 s 9(5)	28.11.2024
<i>s 31 before substitution by 15/2023</i>		
s 31(1)	<i>amended by 15/2007 s 7(1)</i>	31.5.2007
	<i>amended by 39/2018 Sch 2</i>	31.3.2019
s 31(2)	<i>amended by 15/2007 s 7(2)</i>	31.5.2007
	<i>amended by 39/2018 Sch 2</i>	31.3.2019
s 31	substituted by 15/2023 s 5	31.8.2023
	amended by 47/2024 s 10	28.11.2024
s 32	amended by 26/1999 s 4 (Sch)	12.4.1999
	amended by 42/2004 s 9	6.12.2004
	substituted by 15/2023 s 5	31.8.2023
	amended by 47/2024 s 11	28.11.2024
s 33	deleted by 42/2004 s 10	6.12.2004
	inserted by 15/2023 s 5	31.8.2023
s 33(1)	amended by 47/2024 s 12	28.11.2024

<i>s 34 before deletion by 58/2007</i>		
<i>s 34(1)</i>	<i>amended by 15/2007 s 8(1)</i>	31.5.2007
<i>s 34(2)</i>	<i>amended by 34/2000 Sch 1 cl 18</i>	6.7.2000
	<i>amended by 15/2007 s 8(2)</i>	31.5.2007
<i>s 34</i>	<i>deleted by 58/2007 s 5</i>	1.6.2008
<i>s 34A</i>	<i>inserted by 16/2006 s 4</i>	31.10.2006
<i>s 34A(4)</i>	<i>amended by 39/2018 Sch 2</i>	31.3.2019
	amended by 47/2024 s 13(1)—(3)	28.11.2024
<i>s 35</i>	<i>amended by 15/2007 s 9</i>	31.5.2007
	<i>amended by 39/2018 Sch 2</i>	31.3.2019
	amended by 47/2024 s 14(1), (2)	28.11.2024
<i>s 36</i>	<i>substituted by 42/2004 s 11</i>	6.12.2004
	<i>amended by 39/2018 s 14, Sch 2</i>	31.3.2019
	amended by 47/2024 s 15(1), (2)	28.11.2024
<i>s 37 before substitution by 47/2024</i>		
	<i>amended by 26/1999 s 4 (Sch)</i>	12.4.1999
	<i>substituted by 42/2004 s 12</i>	31.3.2005
	<i>amended by 15/2007 s 10</i>	31.5.2007
	<i>substituted by 58/2007 s 6</i>	1.6.2008
<i>s 37(1)</i>	<i>amended by 39/2018 Sch 2</i>	31.3.2019
<i>s 37(2)</i>	<i>substituted by 39/2018 s 15</i>	31.3.2019
s 37	substituted by 47/2024 s 16	28.11.2024
<i>s 37A</i>	<i>inserted by 39/2018 s 16</i>	31.3.2019
	deleted by 47/2024 s 16	28.11.2024
<i>s 38 before substitution by 42/2004</i>		
<i>s 38(1)</i>	<i>amended by 43/1999 s 3(a)</i>	5.8.1999
<i>s 38(2)</i>	<i>amended by 43/1999 s 3(b)</i>	5.8.1999
<i>s 38(3)</i>	<i>amended by 43/1999 s 3(c)</i>	5.8.1999
<i>s 38(4)</i>	<i>amended by 43/1999 s 3(d)</i>	5.8.1999
<i>s 38(5)</i>	<i>amended by 26/1998 s 9(a)—(c)</i>	1.5.1998
	<i>amended by 43/1999 s 3(e), (f)</i>	5.8.1999
<i>s 38(6)</i>	<i>substituted by 26/1998 s 9(d)</i>	1.5.1998
<i>s 38(7)</i>	<i>deleted by 26/1998 s 9(d)</i>	1.5.1998
<i>s 38</i>	<i>substituted by 42/2004 s 13</i>	6.12.2004
	heading amended by 47/2024 s 17(1)	28.11.2024
<i>s 38(1)</i>	<i>amended by 15/2007 s 11</i>	31.5.2007
	<i>amended by 39/2018 s 17(1), (2), Sch 2</i>	31.3.2019
	amended by 47/2024 s 17(2)—(4)	28.11.2024
<i>s 38(2)</i>	<i>amended by 39/2018 Sch 2</i>	31.3.2019
	amended by 47/2024 s 17(5)	28.11.2024

<i>s 44</i>	<i>deleted by 42/2004 s 17</i>	<i>6.12.2004</i>
<i>s 46—see Pt 4</i>		
<i>s 47 before substitution by 42/2004— see Pt 4</i>		
<i>s 47(1)</i>		
<i>entertainment area</i>	<i>amended by 26/1999 s 4 (Sch)</i>	<i>12.4.1999</i>
<i>licensed premises</i>	<i>amended by 26/1999 s 4 (Sch)</i>	<i>12.4.1999</i>
<i>unlicensed premises</i>	<i>inserted by 26/1999 s 3(a)</i>	<i>12.4.1999</i>
<i>s 47(3)</i>	<i>amended by 26/1999 ss 3(b), 4 (Sch)</i>	<i>12.4.1999</i>
<i>s 47(4)</i>	<i>amended by 26/1999 ss 3(c)—(e), 4 (Sch)</i>	<i>12.4.1999</i>
<i>s 47(5)</i>	<i>amended by 26/1998 s 11</i>	<i>1.5.1998</i>
	<i>amended by 26/1999 ss 3(f), 4 (Sch)</i>	<i>12.4.1999</i>
	<i>amended by 4/2000 s 9(1) (Sch 1 cl 44(e))</i>	<i>1.6.2000</i>
<i>s 47(5a)</i>	<i>inserted by 4/2000 s 9(1) (Sch 1 cl 44(f))</i>	<i>1.6.2000</i>
Pt 3 Div 2	inserted by 47/2024 s 20	28.11.2024
Pt 3 Div 3	inserted by 47/2024 s 20	28.11.2024
Pt 3 Div 4	inserted by 47/2024 s 20	28.11.2024
Pt 3 Div 4		
<i>s 39E</i>	<i>s 38A inserted by 42/2004 s 13</i>	<i>6.12.2004</i>
	s 38A heading amended by 47/2024 s 18(1)	28.11.2024
	s 38A redesignated as s 39E by 47/2024 s 18(11)	28.11.2024
<i>s 39E(1)</i>	<i>s 38A(1) amended by 39/2018 s 18(1)—(3)</i>	<i>31.3.2019</i>
	s 38A(1) amended by 47/2024 s 18(2), (3)	28.11.2024
<i>s 39E(5)</i>	<i>s 38A(5) amended by 39/2018 s 18(4), (5), Sch 2</i>	<i>31.3.2019</i>
	s 38A(5) amended by 47/2024 s 18(4)—(7)	28.11.2024
s 39E(5a) and (5b)	s 38A(5a) and (5b) inserted by 47/2024 s 18(8)	28.11.2024
<i>s 39E(6)</i>		
<i>responsible person</i>	<i>s 38A(6) amended by 39/2018 s 18(6)</i>	<i>31.3.2019</i>
	s 38A(6) amended by 47/2024 s 18(9)	28.11.2024
	s 38A(6) (b) deleted by 47/2024 s 18(10)	28.11.2024
Pt 3 Div 5		
heading	inserted by 47/2024 s 20	28.11.2024
<i>s 40</i>		
<i>s 40(1)</i>	<i>substituted by 42/2004 s 15(1)</i>	<i>31.3.2005</i>
	<i>amended by 15/2007 s 12(1)</i>	<i>31.5.2007</i>
	<i>amended by 39/2018 Sch 2</i>	<i>31.3.2019</i>
	<i>amended by 39/2018 s 20(1)</i>	<i>1.10.2019</i>
	amended by 47/2024 s 21(1)	28.11.2024
<i>s 40(2)</i>	<i>amended by 15/2007 s 12(2)</i>	<i>31.5.2007</i>

	amended by 39/2018 Sch 2	31.3.2019
	amended by 39/2018 s 20(2), (3)	1.10.2019
	amended by 47/2024 s 21(2)	28.11.2024
s 40(3)	amended by 42/2004 s 15(2)	31.3.2005
	(d) deleted by 42/2004 s 15(2)	31.3.2005
	amended by 39/2018 s 20(4), (5)	1.10.2019
	amended by 47/2024 s 21(3), (4)	28.11.2024
s 41		
s 41(1)	amended by 15/2007 s 13(1)	31.5.2007
	amended by 39/2018 s 21(1)—(3), Sch 2	31.3.2019
	amended by 47/2024 s 22(1)	28.11.2024
s 41(2)	amended by 15/2007 s 13(2)	31.5.2007
	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 22(2)	28.11.2024
s 41(3)	<i>deleted by 42/2004 s 16</i>	<i>6.12.2004</i>
s 42		
s 42(1)	amended by 58/2007 s 7(1)	1.6.2008
	amended by 39/2018 s 22, Sch 2	31.3.2019
	amended by 47/2024 s 23	28.11.2024
s 42(2)	substituted by 58/2007 s 7(2)	1.6.2008
s 43	amended by 39/2018 s 23(1), (2), Sch 2	31.3.2019
	amended by 47/2024 s 24	28.11.2024
s 45	substituted by 42/2004 s 17	6.12.2004
	amended by 15/2007 s 14	31.5.2007
	amended by 39/2018 Sch 2	31.3.2019
s 45(1)	s 45 amended and redesignated as s 45(1) by 47/2024 s 25(1), (2)	28.11.2024
s 45(2)	inserted by 47/2024 s 25(2)	28.11.2024
Pt 4	<i>amended by 26/1998 s 12</i>	<i>1.5.1998</i>
	<i>deleted by 61/1998 s 6</i>	<i>3.9.1998</i>
Pt 4	inserted by 42/2004 s 17	6.12.2004
s 46		
s 46(2)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 26(1)	28.11.2024
s 46(3)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 26(2)	28.11.2024
s 46(4)	amended by 40/2012 Sch 6 cl 8	1.1.2013
	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 26(3)	28.11.2024
s 47	<i>expired: s 47(8)—omitted under Legislation Revision and Publication Act 2002</i>	<i>(31.10.2007)</i>
s 48	inserted by 9/2007 s 4	31.5.2007
s 48(1)	amended by 39/2018 Sch 2	31.3.2019

	amended by 47/2024 s 27	28.11.2024
s 49	inserted by 5/2012 s 4	31.5.2012
s 49(1)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 28(1)	28.11.2024
s 49(5)		
prescribed public transport area	substituted by 47/2024 s 28(2)	28.11.2024
s 50	inserted by 5/2012 s 4	31.5.2012
s 50(1)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 29	28.11.2024
s 51	inserted by 5/2012 s 4	31.5.2012
s 51(1)	amended by 39/2018 s 24(1)	31.3.2019
	amended by 47/2024 s 30(1)	28.11.2024
s 51(4)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 30(2)	28.11.2024
s 51(5)	substituted by 39/2018 s 24(2)	31.3.2019
	amended by 47/2024 s 30(3), (4)	28.11.2024
s 52	inserted by 5/2012 s 4	31.5.2012
s 52(1)	amended by 39/2018 s 25(1)	31.3.2019
s 52(2)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 31(1)	28.11.2024
s 52(3)	substituted by 39/2018 s 25(2)	31.3.2019
s 52(4)	substituted by 39/2018 s 25(2)	31.3.2019
	substituted by 47/2024 s 31(2)	28.11.2024
Pt 5		
s 63		
s 63(4)	amended by 26/1998 s 13	1.5.1998
	amended by 47/2024 s 32	28.11.2024
s 64	substituted by 47/2024 s 33	28.11.2024
s 65	amended by 26/1998 s 14	1.5.1998
s 65(3)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 34	28.11.2024
s 66		
s 66(1)	(h) deleted by 26/1998 s 15	1.5.1998
	amended by 39/2018 s 26(1)—(5)	31.3.2019
	amended by 47/2024 s 35	28.11.2024
ss 66A and 66B	inserted by 47/2024 s 36	28.11.2024
s 67	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 37	28.11.2024
s 69	s 69(1) amended by 26/1998 s 16(a), (b)	1.5.1998
	s 69(1) redesignated as s 69 in pursuance of the <i>Acts Republication Act 1967</i>	1.5.1998
	amended by 39/2018 s 27(1)—(3)	31.3.2019

Tobacco and E-Cigarette Products Act 1997—28.11.2024 to 12.12.2024
Legislative history

s 69(2)	<i>deleted by 26/1998 s 16(c)</i>	1.5.1998
s 69	substituted by 47/2024 s 38	13.12.2024—not incorporated
Pt 6	<i>deleted by 26/1998 s 17</i>	1.5.1998
	<i>inserted by 42/2004 s 18</i>	6.12.2004
	<i>deleted by 39/2018 s 28</i>	31.3.2019
Pt 6	inserted by 47/2024 s 39	13.12.2024—not incorporated
Pt 6AA	inserted by 47/2024 s 39	13.12.2024—not incorporated
Pt 6A	inserted by 47/2024 s 39	13.12.2024—not incorporated
Pt 6B	inserted by 47/2024 s 39	13.12.2024—not incorporated
Pt 7		
s 70A	inserted by 15/2007 s 15	31.5.2007
s 70A(1)	amended by 39/2018 s 29(1)	31.3.2019
s 70A(2)	amended by 39/2018 s 29(2)	31.3.2019
	amended by 47/2024 s 40	28.11.2024
s 70A(3)	amended by 39/2018 s 29(3)	31.3.2019
s 70AB	s 39 redesignated as s 70AB by 47/2024 s 19(4)	28.11.2024
s 70AB		
s 70AB(1)	s 39(1) amended by 43/1999 s 4	5.8.1999
	s 39(1) amended by 42/2004 s 14(1)	6.12.2004
	s 39(1) amended by 39/2018 s 19	31.3.2019
	s 39(1) substituted by 47/2024 s 19(1)	28.11.2024
s 70AB(2)	s 39(2) amended by 39/2018 Sch 2	31.3.2019
	s 39(2) amended by 47/2024 s 19(2), (3)	28.11.2024
s 70AB(3)		
authorised person	s 39(3) amended by 26/1998 s 10	1.5.1998
	s 39(3) amended by 10/2000 s 2	20.4.2000
	s 39(3) (ab) deleted by 42/2004 s 14(2)	6.12.2004
s 71		
s 71(1)	amended by 39/2018 s 30(1), (2)	31.3.2019
	amended by 47/2024 s 41(1), (2)	28.11.2024
s 71(2)	<i>deleted by 39/2018 s 30(3)</i>	31.3.2019
s 71(3)	<i>amended by 26/1999 s 4 (Sch)</i>	12.4.1999
	<i>amended by 42/2004 s 19(1)</i>	6.12.2004
	<i>deleted by 39/2018 s 30(3)</i>	31.3.2019
s 71(4)	<i>amended by 26/1999 s 4 (Sch)</i>	12.4.1999
	<i>amended by 42/2004 s 19(2)</i>	6.12.2004
	<i>deleted by 39/2018 s 30(3)</i>	31.3.2019
s 71(5)—(7)	inserted by 7/2016 s 3	17.3.2016
s 72		
s 72(1)	amended by 26/1998 s 18	1.5.1998
s 73	substituted by 47/2024 s 42	13.12.2024—not incorporated
s 74	<i>deleted by 26/1998 s 19</i>	1.5.1998

s 75	amended by 39/2018 Sch 2 amended by 47/2024 s 43	31.3.2019 28.11.2024
s 76		
s 76(1)	amended by 26/1998 s 20	1.5.1998
s 76(2)	amended by 39/2018 Sch 2 amended by 47/2024 s 44	31.3.2019 28.11.2024
s 76A	inserted by 47/2024 s 45	13.12.2024—not incorporated
s 77	substituted by 47/2024 s 45	13.12.2024—not incorporated
s 78	(d) deleted by 26/1998 s 21 amended by 39/2018 Sch 2 substituted by 47/2024 s 45	1.5.1998 31.3.2019 13.12.2024—not incorporated
s 79	amended by 47/2024 s 46	28.11.2024
<i>s 80 before deletion by 84/2009</i>		
s 80(1)	<i>(a) deleted by 26/1998 s 22</i>	<i>1.5.1998</i>
s 80	<i>deleted by 84/2009 s 357</i>	<i>1.2.2010</i>
s 81		
s 81(1)	<i>s 81 redesignated as s 81(1) by 42/2004 s 20 deleted by 36/2011 s 32</i>	<i>6.12.2004 1.1.2012</i>
s 81(2) and (3)	inserted by 42/2004 s 20	6.12.2004
s 82	substituted by 26/1998 s 23 amended by 47/2024 s 47	1.5.1998 28.11.2024
s 82A	inserted by 47/2024 s 48	13.12.2024—not incorporated
<i>ss 83 and 84</i>	<i>deleted by 26/1998 s 24</i>	<i>1.5.1998</i>
s 83	inserted by 5/2012 s 5	31.5.2012
s 85		
s 85(1)	(c) deleted by 26/1998 s 25(a)	1.5.1998
s 85(2)	amended by 39/2018 s 31(1), (2)	31.3.2019
s 85(3)	deleted by 26/1998 s 25(b) inserted by 47/2024 s 49	1.5.1998 28.11.2024
<i>s 86 before substitution by 47/2024</i>		
s 86(2)	<i>amended by 23/2001 s 118</i>	<i>15.7.2001</i>
s 86	substituted by 47/2024 s 50	28.11.2024
s 86A	inserted by 39/2018 s 32	31.3.2019
s 86B	inserted by 47/2024 s 51	28.11.2024
s 87	heading amended by 47/2024 s 52(1)	28.11.2024
s 87		
s 87(2)	(a) and (b) deleted by 26/1998 s 26(a) amended by 26/1999 s 4 (Sch) amended by 42/2004 s 21(1)—(4) substituted by 39/2018 s 33 amended by 47/2024 s 52(2)—(6)	1.5.1998 12.4.1999 6.12.2004 31.3.2019 28.11.2024

	(b), (c) deleted by 47/2024 s 52(2)	28.11.2024
s 87(3)	substituted by 39/2018 s 33	31.3.2019
s 87(4) and (5)	deleted by 26/1998 s 26(b)	1.5.1998
	inserted by 47/2024 s 52(7)	28.11.2024
s 87(6)	inserted by 47/2024 s 52(7)	28.11.2024
<i>Sch 1</i>	<i>deleted by 26/1998 s 27</i>	<i>1.5.1998</i>
Sch 1	inserted by 47/2024 s 53	13.12.2024—not incorporated
<i>Sch 2</i>	<i>deleted by 26/1998 s 27</i>	<i>1.5.1998</i>
Sch	inserted by 26/1998 s 27	1.5.1998
	deleted by 47/2024 s 53	13.12.2024—not incorporated

Transitional etc provisions associated with Act or amendments

Tobacco Products Regulation (Dissolution of Sports Promotion, Cultural and Health Advancement Trust) Amendment Act 1998

2—Interpretation

In this Act—

the Minister means the Minister for Human Services;

the Trust means the South Australian Sports Promotion, Cultural and Health Advancement Trust.

7—Transitional provisions

- (1) All moneys held in account in the Sports Promotion, Cultural and Health Advancement Fund at the Treasury immediately before the commencement of this Act are to be transferred to the Consolidated Account.
- (2) All property, rights and liabilities vested in or attaching to the Trust immediately before the commencement of this Act vest in or attach to the Minister.

Statutes Amendment (SACAT No 2) Act 2017

269—Transitional provisions

- (1) A right of appeal under section 13 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the District Court.
- (2) Nothing in this section affects any proceedings before the District Court commenced before the relevant day.
- (3) In this section—

principal Act means the *Tobacco Products Regulation Act 1997*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

Tobacco Products Regulation (E-Cigarettes and Review) Amendment Act 2018, Sch 1—Transitional provisions

1—Interpretation

In this Schedule—

principal Act means the *Tobacco Products Regulation Act 1997* as in force immediately before the commencement of this clause.

2—Licences

- (1) A licence that is in force under Part 2 of the principal Act immediately before the commencement of this clause will, on the commencement of this clause, be taken to authorise the carrying on of the business of selling e-cigarette products by retail.
- (2) A reference to a tobacco product in a licence condition in force immediately before the commencement of this clause will, on the commencement of section 10 of this Act, be taken to include a reference to an e-cigarette product.

3—References to *Tobacco Products Regulation Act 1997*

A reference in a licence under the principal Act or in any instrument, contract, agreement or other document to the *Tobacco Products Regulation Act 1997* will, on and from the commencement of this clause, have effect as if it were a reference to the *Tobacco and E-Cigarette Products Act 1997*.

Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Act 2024, Sch 1—Saving and transitional provisions

1—Interpretation

In this Schedule—

Minister means the Minister to whom the administration of the principal Act is committed;

principal Act means the *Tobacco and E-Cigarette Products Act 1997*;

relevant day means the day on which section 6 of this Act comes into operation;

relevant licence means a licence issued by the Minister under Part 2 of the principal Act as in force immediately before the relevant day;

relevant person means a person who holds a licence—

- (a) issued to the person under Part 2 of the principal Act as in force immediately before the commencement of this clause; and
- (b) in force immediately before the relevant day;

SACAT means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

2—Existing licences

- (1) Subject to this Schedule, an amendment to the principal Act effected by a provision of this Act applies in relation to a licence granted under the principal Act, and in respect of the holder of a licence under the principal Act, whether the licence was granted before or after the commencement of that provision.

- (2) The Minister may issue to the holder of a licence granted and in force under the principal Act as in force immediately before the commencement of a provision of this Act a replacement copy of the licence in order to take account of modifications effected by the provision.
- (3) A relevant licence in force under Part 2 of the principal Act as in force immediately before the relevant day continues as a retail licence as if it had been issued under Part 2 of the principal Act as substituted by this Act.
- (4) The suspension of a licence effected under section 11 of the principal Act before the relevant day continues as if the suspension was effected under section 69G(2)(c)(iii) of the principal Act as inserted by this Act.

3—Requirement for wholesale licence

- (1) During the relevant period—
 - (a) a relevant licence will be taken to authorise the sale of tobacco products by wholesale; and
 - (b) a person who carries on the business of selling tobacco products by wholesale or who holds themselves out as carrying on such a business does not commit an offence against section 6(2) of the principal Act as substituted by this Act.
- (2) In this clause—

relevant period means the period of 6 months after the relevant day.

4—Licence applications

An application for a licence under Part 2 of the principal Act that has been made but not determined before the relevant day may be determined by the Minister as if the application had been made under Part 2 of the principal Act as substituted by this Act.

5—Licence conditions

- (1) Subject to subclause (2), a condition of a licence issued by the Minister under section 9 of the principal Act as in force immediately before the relevant day remains in force as a condition of a licence under section 9 of the principal Act as substituted by this Act.
- (2) A condition of a relevant licence that provides for the expiry of the licence is void.
- (3) An application by the holder of a licence under section 9 of the principal Act that has been made but not finally determined before the relevant day may be continued and completed as if the application had been made under section 9 of the principal Act as substituted by this Act.

6—Annual returns

- (1) This clause applies to the holder of a relevant licence (including the holder of a relevant licence that is, on the relevant day, suspended).
- (2) A person to whom this clause applies must, not later than the designated day—
 - (a) pay to the Minister the prescribed fee; and
 - (b) provide to the Minister an annual return in respect of the previous year in the manner and form, and containing the information, required by the Minister.

-
- (3) The Minister may take action under section 11 of the principal Act as substituted by this Act against a person to whom this clause applies who fails to pay the prescribed fee or provide the annual return in accordance with subclause (2) as if the failure constituted a failure to pay an annual fee or provide the annual return referred to in that section.
 - (4) Section 11(1) of the principal Act as substituted by this Act does not apply to a person to whom this clause applies in respect of a particular year if the person has, in accordance with subclause (2), provided an annual return or paid an annual fee in respect of that year.
 - (5) In this clause—
designated day means the day falling 11 months after the relevant day.

7—Seized products

Products that have been seized under Part 5 of the principal Act as in force immediately before the day on which section 38 of the Act comes into operation may be dealt with in accordance with section 69 of the principal Act as in force on the day on which section 38 of the Act commences.

8—Review proceedings

- (1) An application for a review under section 12 of the principal Act that has been made but not finally determined before the relevant day may be continued and determined under section 69I of the principal Act as inserted by this Act as if the application had been made under that section.
- (2) An application to SACAT for a review under section 13 of the principal Act that has been made but not finally determined before the relevant day may be continued and determined by the Tribunal under section 69J of the principal Act as inserted by this Act as if the application had been made under that section.

9—Register

The register kept under section 73 of the principal Act as in force immediately before the commencement of section 42 of this Act will, on that commencement, be taken to form part of the register required to be maintained under section 73 of the principal Act as substituted by this Act.

Historical versions

- Reprint No 1—5.6.1997
- Reprint No 2—1.5.1998
- Reprint No 3—3.9.1998
- Reprint No 4—12.4.1999
- Reprint No 5—5.8.1999
- Reprint No 6—20.4.2000
- Reprint No 7—1.6.2000
- Reprint No 8—6.7.2000
- Reprint No 9—15.7.2001
- Reprint No 10—24.11.2003

6.12.2004
31.3.2005
31.10.2006
31.5.2007
1.6.2008
1.2.2010
1.1.2012
31.5.2012
1.1.2013
17.3.2016
14.12.2017
31.3.2019
1.10.2019
1.7.2021
31.8.2023