

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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**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;

*body corporate* has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

*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;

**criminal intelligence** means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

**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;

**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;

**licence** means—

- (a) a retail licence; or
- (b) a wholesale licence;

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

**officer**, in relation to a body corporate, means—

- (a) a director of the body corporate; or
- (b) the chief executive officer of the body corporate; or

- (c) a receiver or manager of any property of the body corporate or a liquidator of the body corporate,

and includes, in relation to a contravention or alleged contravention of this Act by the body corporate, an employee of the body corporate with management responsibilities in respect of the matters to which the contravention or alleged contravention related;

**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;

**retail licence**—see section 7;

**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;

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***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;

***trust***—a trust is considered for the purposes of this Act as a single entity consisting of the trustees and the beneficiaries;

***trust or corporate entity*** means a trust or a body corporate;

***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;

***wholesale*** connotes a sale for the purpose of resale;

***wholesale licence***—see section 7;

***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) For the purposes of this Act, a person occupies a position of authority in a trust or corporate entity if the person—
  - (a) in the case of a body corporate—
    - (i) is a director of the body corporate; or
    - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
    - (iii) manages, or is to manage, the business of the body corporate to be carried out under a licence; or
    - (iv) if the body corporate is a proprietary company—is a shareholder in the body corporate; or
  - (b) in the case of a trust—is a trustee or beneficiary of the trust.
- (6) However—
  - (a) a child who is a shareholder in a proprietary company, or a beneficiary under a trust, is not for that reason to be regarded as a person occupying a position of authority; and
  - (b) a charitable organisation that is the beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.

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## 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.

### **5A—Provisions governing whether person is fit and proper**

- (1) A person is not a fit and proper person for a particular purpose under this Act if—
  - (a) the person has been found guilty or convicted of an offence as prescribed by the regulations; or
  - (b) in the case of a body corporate—
    - (i) the body corporate is a body corporate, or is a body corporate of a class, prescribed by the regulations; or
    - (ii) the body corporate is a prescribed organisation; or
  - (c) in the case of an individual, the individual—
    - (i) is—
      - (A) a member of a prescribed organisation; or
      - (B) a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
    - (ii) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (2) A person is not a fit and proper person to occupy a position of authority in a trust or corporate entity that holds a licence if—
  - (a) the person has been found guilty or convicted of an offence as prescribed by the regulations; or
  - (b) the person is—
    - (i) a member of a prescribed organisation; or
    - (ii) a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
  - (c) the person is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (3) In deciding whether a person is a fit and proper person for a particular purpose under this Act, the Minister must take into consideration—
  - (a) the reputation, honesty and integrity (including the creditworthiness) of the person; and

- (b) the reputation, honesty and integrity of people with whom the person associates; and
- (c) if the person is a body corporate—whether the body corporate is being wound up or is under official management or in receivership; and
- (d) any other factor relevant to the particular purpose to which the decision relates, including any relevant offence of which the person has been convicted or found guilty.

**Note—**

A relevant factor might, for example, be that a person (or, if the person is a body corporate, a director of the body corporate) has been a director of a number of bodies corporate wound up for the benefit of creditors.

- (4) In this section—

**close associate**—see subsection (5);

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975* whether declared as such under that Act or not;

**prescribed organisation**—the following are prescribed organisations:

- (a) a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*;
- (b) a criminal organisation within the meaning of Division 1 or Division 2 of Part 3B of the *Criminal Law Consolidation Act 1935*;
- (c) any other organisation prescribed by the regulations for the purposes of this definition;

**related body corporate**—bodies corporate are related for the purposes of this section if they are related within the meaning of the *Corporations Act 2001* of the Commonwealth;

**spouse**—a person is the spouse of another if they are legally married.

- (5) For the purposes of this section, 2 persons are **close associates** if—

- (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
- (b) they are members of the same household; or
- (c) they are in partnership; or
- (d) they are related bodies corporate; or
- (e) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
- (f) 1 is in a position to exercise control or significant influence over the conduct of the other.

- (6) For the purposes of this section, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.

## Part 2—Licences

### 6—Requirement for licence

- (1) A person must not—
- (a) carry on the business of selling tobacco products by retail; or
  - (b) hold themselves out as carrying on such a business,
- unless the person holds a retail licence.

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) carry on the business of selling tobacco products by wholesale; or
  - (b) hold themselves out as carrying on such a business,
- unless the person holds a wholesale licence.

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.

### 7—Licences

- (1) The Minister may, on application by a person, issue or refuse to issue a licence under this Part which authorises the person, subject to this Act and the conditions of the licence, to sell tobacco products—
- (a) by retail (a *retail licence*); or

- 
- (b) by wholesale (a *wholesale licence*).
- (2) An application for a licence must—
    - (a) be made to the Minister in a manner and form determined by the Minister; and
    - (b) contain the information required by the Minister; and
    - (c) be accompanied by the prescribed fee.
  - (3) The Minister must, before granting a licence, be satisfied that—
    - (a) the applicant is a fit and proper person to hold the licence; and
    - (b) if the applicant is a trust or corporate entity—that each person who occupies a position of authority in the trust or corporate entity is a fit and proper person to occupy such a position in an entity holding such a licence.

### **8—Application for licence to be given to Commissioner of Police**

- (1) The Minister must, in relation to each application for a licence—
  - (a) give the Commissioner of Police a copy of the application; or
  - (b) notify the Commissioner of Police of the identity of the applicant or, if the applicant is a trust or corporate entity, the identity of each person who occupies a position of authority in the trust or corporate entity.
- (2) As soon as reasonably practicable following receipt of an application, or information in respect of an application, the Commissioner of Police—
  - (a) must make available to the Minister such information about criminal convictions as the Commissioner of Police considers relevant to whether the application should be granted; and
  - (b) may make available to the Minister such other information to which the Commissioner of Police has access and considers relevant to whether the application should be granted.

### **9—Conditions of licence**

- (1) The Minister may impose a condition on a licence, or vary or revoke a condition of a licence—
  - (a) on application by the holder of the licence; or
  - (b) on the grant or suspension of a licence; or
  - (c) on application by the Commissioner of Police; or
  - (d) at any time on the Minister's own initiative.
- (2) Without limiting subsection (1), a condition of a licence may limit the sale of tobacco products, including by—
  - (a) preventing the holder of the licence from selling such products except at a place or places specified in the condition; or
  - (b) restricting the points of sale of such products within the place or places at which the holder of the licence may sell such products under the licence; or

- (c) restricting the manner and circumstances in which such products may be sold; or
  - (d) restricting the wholesale of such products to persons unless the person holds a specified authorisation (whether under this or any other Act or law).
- (3) Before imposing, varying or revoking a condition under subsection (1)(c) or (d), the Minister must—
  - (a) give notice in writing to the holder of the licence of the proposed imposition, variation or revocation of the condition; and
  - (b) allow the holder of the licence a period of 28 days (or such longer period as the Minister may in any particular case allow) to show cause why the condition should not be imposed, varied or revoked.
- (4) It is a condition of a licence that the holder of the licence must—
  - (a) keep and retain information relevant to the business carried out under the licence in accordance with the requirements of the regulations; and
  - (b) provide such information to the Minister in the manner prescribed by the regulations—
    - (i) at the prescribed times; or
    - (ii) at any other time on the written request of the Minister.
- (5) The holder of a licence must not contravene a condition of the licence.

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.

## **10—How licences are to be held**

- (1) A licence may be held jointly by 2 or more persons.
- (2) If a licence is held jointly by 2 or more persons, those persons are jointly and severally liable for any civil or criminal liability that attaches to the holder of the licence under this Act.
- (3) If the trustee of a trust holds a licence for the purposes of a business conducted by the trustee under a trust—
  - (a) the name of the trust is to be specified in the licence; and
  - (b) the trust is to be considered as an entity holding the licence jointly with the trustee.

## **11—Annual fee and return**

- (1) The holder of a licence (including the holder of a licence that has been suspended) must, in each year, not later than the day fixed by the regulations—
  - (a) pay to the Minister an annual fee; and

- 
- (b) provide to the Minister an annual return in the manner and form, and containing the information, required by the Minister.
  - (2) If the holder of a licence fails to pay the annual fee or provide the annual return in accordance with subsection (1), the Minister may, by notice in writing, require them to make good the default.
  - (3) If the holder of the licence fails to comply with the notice within a time fixed by the notice (which may not be less than 28 days after service of the notice), the licence is cancelled.
  - (4) The Minister must notify the holder of the licence in writing of the cancellation of the licence.

## 12—Notification of certain changes in holder of licence

- (1) The holder of a licence must, within 14 days after a change in any prescribed particulars, notify the Minister in writing of that change.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) If a person assumes, or ceases to occupy, a position of authority in a trust or corporate entity that holds a licence, the holder of the licence must, within 14 days of the person assuming or ceasing to occupy that position—
  - (a) notify the Minister in writing of the name of the person who has assumed, or ceased to occupy, the position; and
  - (b) in the case of a person who has assumed a position of authority in a trust or corporate entity—provide the Minister with any information required by the Minister for the purposes of determining whether the person meets the requirements of section 7(3).  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (3) The Minister may give a copy of a notice received under subsection (2) to the Commissioner of Police.
- (4) As soon as reasonably practicable following receipt of a notice under subsection (3), the Commissioner of Police—
  - (a) must make available to the Minister information about criminal convictions; and
  - (b) may make available to the Minister other information to which the Commissioner of Police has access,  
relevant to whether the person identified in the notice is a fit and proper person to occupy a position of authority in a trust or corporate entity that holds a licence.
- (5) In this section—  
*prescribed particulars* means the following:
  - (a) the business or trading name under which the holder of the licence carries on business;

- (b) any address for service or other email address, telephone number or street or postal address provided by the holder of the licence for purposes connected with the licence;
- (c) any other particulars prescribed by the regulations.

### 13—Surrender of licence

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

## 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 quantity of prescribed tobacco products that equals or exceeds the prescribed quantity, 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 quantity of e-cigarette products that equals or exceeds the prescribed quantity, 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.
- (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.

## Division 6—Miscellaneous

### 45A—Possession and supply of certain quantities of prescribed product

- (1) A person who, without lawful excuse—

(a) has possession of a commercial quantity of a prescribed product; or

(b) supplies to another person a commercial quantity of a prescribed product,

is guilty of an offence.

Maximum penalty:

(a) in the case of a body corporate—

(i) for a first offence—\$2 225 000;

(ii) for a second or subsequent offence—\$4 500 000;

(b) in the case of an individual—

(i) for a first offence—\$1 050 000;

(ii) for a second or subsequent offence—\$2 100 000.

- (2) A person who, without lawful excuse—

(a) has possession of a large commercial quantity of a prescribed product; or

(b) supplies to another person a large commercial quantity of a prescribed product,

is guilty of an offence.

Maximum penalty:

(a) in the case of a body corporate—

(i) for a first offence—\$4 500 000;

(ii) for a second or subsequent offence—\$6 600 000;

(b) in the case of an individual—

(i) for a first offence—\$2 100 000;

(ii) for a second or subsequent offence—\$4 200 000.

- (3) In this section—

**commercial quantity** of a prescribed product means a quantity of the product that equals or exceeds the amount prescribed for the purposes of this definition;

**large commercial quantity** of a prescribed product means a quantity of the product that equals or exceeds the amount prescribed for the purposes of this definition;

*prescribed product* means—

- (a) an e-cigarette product; or
- (b) a prescribed tobacco product within the meaning of section 33(2); or
- (c) a prohibited product.

#### **45B—Offence related to engaging in prohibited conduct on premises**

- (1) A person who, being the owner of premises or having the management or control of premises, knowingly causes or permits another to engage in prohibited conduct on the premises 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.
- (2) In this section—

*prohibited conduct* means conduct constituting an offence against a provision set out in Schedule A1.

## **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.

### 66AA—Further powers of police officers

- (1) A police officer may carry out general drug detection under the *Controlled Substances Act 1984* in relation to premises that the police officer reasonably suspects are being used for the purposes of, or in connection with, the unlawful sale of tobacco products or e-cigarette products (and, for the purposes of the *Controlled Substances Act 1984*, such premises will be taken to be an area to which section 52A of that Act applies).
- (2) A police officer may carry out a random weapon and explosive search in relation to premises that the police officer reasonably suspects are being used for the purposes of, or in connection with, the unlawful sale of tobacco products or e-cigarette products.
- (3) A police officer may, in carrying out a search under this section, do 1 or more of the following:
  - (a) enter and remain in the premises;
  - (b) inspect or search the premises, any person on the premises and any equipment or other thing on the premises;
  - (c) examine any substance, equipment or device;
  - (d) take and remove from the premises samples of any substance or goods;
  - (e) carry out tests;
  - (f) take photographs or films or make audio, visual or audiovisual records;
  - (g) if the officer suspects on reasonable grounds that an offence against this Act has been committed—seize and remove from the premises anything that the officer has reasonable cause to suspect affords evidence of the offence;
  - (h) give such directions as are reasonably necessary for, or incidental to, the effective exercise of the officer's powers under this section.
- (4) Nothing in this section authorises a police officer to conduct or require an intimate search, an intrusive search or an intimate intrusive search of a person.
- (5) A police officer may, in exercising powers under this section, use a detection dog, a metal detector or an electronic detection system.
- (6) Nothing in this section limits any powers a police officer may have under the *Firearms Act 2015*, the *Explosives Act 1936*, the *Summary Offences Act 1953* or any other Act or law.
- (7) In this section—

**detection dog** means a dog that has completed training of a kind approved by the Commissioner of Police for the purpose of detecting the presence of firearms or explosive;

**electronic detection system** means—

- (a) an electronic device of a kind approved by the Commissioner of Police; or
- (b) a system, of a kind approved by the Commissioner of Police, that involves the use of an electronic device,

for the purpose of detecting the presence of firearms or explosive;

**general drug detection** has the same meaning as in the *Controlled Substances Act 1984*;

*intimate intrusive search* means an intrusive search of the rectum or vagina;

*intimate search* means a search of the body that involves exposure of, or contact with the skin of, the genital or anal area, the buttocks or, in the case of a female, the breasts, and includes an intimate intrusive search;

*intrusive search* means an internal search involving the introduction of anything into a bodily orifice.

## 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 records or things**

- (1) If a record or thing is seized under this Part, the seized record or thing must be dealt with in accordance with the regulations.
- (2) Without limiting the generality of subsection (1), regulations made under this section may provide for the following:
  - (a) procedures relating to the seizure of records or things under this Part;

- (ab) the taking and testing of a sample of any thing seized under this Part;
- (b) the manner in which a seized record or thing may be dealt with including (but not limited to)—
  - (i) the circumstances in which a seized record or thing may be returned to a person or may be forfeited; and
  - (ii) the circumstances in which a seized record or thing may be destroyed; and
  - (iii) the recovery by the Minister of any costs incurred in dealing with the seized record or thing;
- (c) the keeping of records in the prescribed manner in relation to the seized record or thing;
- (d) the circumstances in which compensation may or may not be payable to a person from whom a record or thing has been seized and the manner in which such compensation may be sought.

## Part 6—Controlled purchase operations

### 69A—Interpretation

In this Part—

*controlled purchase officer* means a person authorised by the Minister as a controlled purchase officer under this Part;

*controlled purchase operation* means an operation undertaken under the supervision of an authorised officer the intended purpose of which is to provide a person with an opportunity to commit or to attempt to commit an offence against a prescribed provision;

*designated person* means a child who is of or above the age of 16 years;

*prescribed provision* means a provision of this Act set out in Schedule 1.

### 69B—Controlled purchase officer

- (1) The Minister may, by notice in writing, authorise a person, including, subject to subsection (2), a designated person, to be a controlled purchase officer.
- (2) The Minister must not authorise a designated person to be a controlled purchase officer unless the parent or legal guardian of the person has consented in writing to the proposed authorisation.
- (3) A controlled purchase officer may, for the purposes of a controlled purchase operation, take any action specified by the Minister in the notice of authorisation.

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## 69C—Controlled purchase operation

- (1) If a controlled purchase officer takes action of a kind specified in a notice of authorisation for the purposes of a controlled purchase operation—
  - (a) the controlled purchase officer, the authorised officer and the Minister and any other person involved in the controlled purchase operation do not commit an offence against this Act or any other Act or law and are not liable as a party to an offence committed by another person; and
  - (b) any evidence given by the controlled purchase officer in any proceedings against another person in connection with which the controlled purchase officer took the action is not the evidence of an accomplice.
- (2) An authorised officer responsible for supervising a controlled purchase operation involving a designated person must undertake an assessment of the operation and must ensure that appropriate measures are in place to ensure the safety of the designated person during the operation.
- (3) A controlled purchase officer who is a designated person must give to the authorised officer supervising the controlled purchase operation anything obtained by the officer as a result of the operation.

## Part 6AA—Closure orders

### 69CA—Interpretation

In this Part—

*closure order* means—

- (a) an interim closure order; or
- (ab) a short term closure order; or
- (b) a long term closure order;

*interim closure order*—see section 69CB;

*long term closure order*—see section 69CC;

*mobile premises* means premises constituting a vehicle, building or other structure ordinarily moved from place to place;

*prescribed product* means—

- (a) a prescribed tobacco product within the meaning of section 33(2); or
- (b) a prohibited product;

*short term closure order*—see section 69CBA.

### 69CB—Interim closure order

- (1) The Minister may, by notice in writing, order that specified premises be closed (an *interim closure order*) if the Minister reasonably suspects that—
  - (a) prescribed products are being, or are likely to be, sold or supplied at the premises as part of a business being carried on at the premises; or

- (b) tobacco products or e-cigarette products are being, or are likely to be, unlawfully sold or supplied at the premises as part of a business being carried on at the premises.
- (2) The Minister may, by notice in writing, revoke an interim closure order.
- (3) A notice under this section must be—
  - (a) given to the person apparently in charge of the premises (if any); or
  - (b) posted in a conspicuous place—
    - (i) in the case of premises other than mobile premises—at the entrance to the premises; or
    - (ii) in the case of mobile premises—
      - (A) on the mobile premises; or
      - (B) at the entrance to premises that are connected to the business carried on from the mobile premises.
- (4) The interim closure order has effect from the time specified in the order until 72 hours after the time specified in the order (but nothing prevents the making of a subsequent interim closure order in respect of the same premises).
- (5) No more than 1 interim closure order may be made for the same premises in a period of 7 days.
- (6) For the purposes of this section, the Minister is not required to act in accordance with the principles of procedural fairness.

### **69CBA—Short term closure order**

- (1) The Minister may, by notice in writing, order that specified premises be closed (a *short term closure order*) if the Minister reasonably suspects that—
  - (a) prescribed products are being, or are likely to be, sold or supplied at the premises as part of a business being carried on at the premises; or
  - (b) tobacco products or e-cigarette products are being, or are likely to be, unlawfully sold or supplied at the premises as part of a business being carried on at the premises.
- (2) A short term closure order has effect for a period of 28 days from the day specified in the order (but nothing prevents the making of a subsequent short term closure order in respect of the same premises).
- (3) The Minister may, by notice in writing, vary or revoke a short term closure order.
- (4) A notice under this section must be—
  - (a) given to the person apparently in charge of the premises; or
  - (b) given to the owner of the premises; or
  - (c) posted in a conspicuous place—
    - (i) in the case of premises other than mobile premises—at the entrance to the premises; or
    - (ii) in the case of mobile premises—

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- (A) on the mobile premises; or
  - (B) at the entrance to premises that are connected to the business carried on from the mobile premises.
- (5) A short term closure order may be made regardless of whether an interim closure order is, or has been, in effect in relation to the premises.
- (6) For the purposes of this section, the Minister is not required to act in accordance with the principles of procedural fairness.

### **69CC—Long term closure order**

- (1) The Magistrates Court may, on the application of the Minister, order that specified premises be closed for a specified period of not more than 12 months (a *long term closure order*) if the Court is satisfied that—
- (a) prescribed products have been, or are likely to be, sold or supplied at the premises as part of a business activity; or
  - (b) tobacco products or e-cigarette products have been, or are likely to be, unlawfully sold or supplied at the premises as part of a business activity.
- (2) An application may be made regardless of whether an interim closure order or a short term closure order is, or has been, in effect in relation to the premises.
- (3) An application under subsection (1) must be given to the owner of the premises, unless it is not reasonably practicable to do so (and the owner of the premises may, on application to the Magistrates Court, be a party to the proceedings before the Court in relation to the application).
- (4) An order made under this section must be—
- (a) given to the owner of the premises, unless it is not reasonably practicable to do so; and
  - (b) posted in a conspicuous place—
    - (i) in the case of premises other than mobile premises—at the entrance to the premises; or
    - (ii) in the case of mobile premises—
      - (A) on the mobile premises; or
      - (B) at the entrance to premises that are connected to the business carried on at the mobile premises.
- (5) The Magistrates Court may, on application by the owner of premises, amend or revoke a long term closure order in effect in relation to those premises (and the Minister will be a party to the proceedings in relation to such an application).

### **69CD—Offences relating to closed premises**

- (1) A person must not, while a closure order is in effect in relation to premises—
- (a) sell or supply tobacco products, e-cigarette products or prohibited products at the premises; or

- (b) carry on a business of selling tobacco products, e-cigarette products or prohibited products at the premises.

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) Subject to subsection (3), a person who is present on premises in relation to which a closure order is in effect 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.

Expiation fee:

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

- (3) The Minister may, by notice in writing (an *exemption notice*), exempt a person from the operation of subsection (2) in relation to specified premises on terms and conditions specified in the notice.
- (4) An exemption notice must—
  - (a) be given to the person to whom the exemption applies; and
  - (b) specify the closed premises in relation to which the exemption applies; and
  - (c) set out the details of the condition of the exemption specified in subsection (5).
- (5) It is a condition of an exemption under subsection (3) that the person to whom the exemption applies must not carry on a business, or cause or permit another to carry on a business, on the closed premises specified in the exemption notice.

### **69CE—Certain information relating to closure orders may be made publicly available**

The following information in relation to each closure order may be made publicly available by the Minister in a manner determined by the Minister:

- (a) whether the order is an interim closure order or a long term closure order;
- (b) a description of the premises to which the closure order relates (including the address of the location of the premises);
- (c) the date on which the order was made;

- (d) the period for which the closure order is to be in effect;
- (e) a general description of the reason for the making of the closure order;
- (f) any other prescribed particulars.

### **69CF—Protection from liability**

Despite section 86A, the Crown incurs no liability for a decision of the Minister, or by any person acting on behalf of the Minister, to exercise or not to exercise powers under this Part.

## **Part 6A—Disciplinary action against holder of licence**

### **69D—Cause for disciplinary action**

- (1) There is proper cause for disciplinary action against the holder of a licence if the Minister is satisfied that—
  - (a) the licence was improperly obtained; or
  - (b) an event has occurred, or circumstances come to light, that show—
    - (i) the holder of the licence is not a fit and proper person to hold the licence; or
    - (ii) in the case of the holder of a licence that is a trust or corporate entity—a person who occupies a position of authority in the entity is not a fit and proper person to occupy such a position in a trust or entity holding such a licence; or
  - (c) the holder of the licence has failed to comply with a provision of the Act or the licence (including a condition of the licence); or
  - (d) the holder of the licence has been convicted of an offence against the Act; or
  - (e) the holder of the licence has been convicted of an offence punishable by imprisonment; or
  - (f) the business carried out under the licence is improperly conducted; or
  - (g) it would be contrary to the public interest if the holder of the licence were to continue to hold the licence.
- (2) If the Minister believes on reasonable grounds that there is proper cause for disciplinary action against the holder of a licence, the Minister may do 1 or more of the following:
  - (a) issue a compliance notice to the holder of the licence in accordance with section 69E;
  - (b) issue a default notice to the holder of the licence in accordance with section 69F;
  - (c) take disciplinary action against the holder of the licence in accordance with section 69G.

- (3) The Commissioner of Police must, at the request of the Minister, provide to the Minister any information required by the Minister for the purposes of determining whether there is proper cause to take disciplinary action against the holder of a licence under subsection (1).
- (4) In determining whether there is proper cause for disciplinary action against the holder of a licence under subsection (1), the Minister may have regard to—
  - (a) information provided to the Minister by the Commissioner of Police for that purpose; and
  - (b) such evidence of the conduct (no matter when the conduct is alleged to have occurred) of the holder of the licence or persons with whom the holder of the licence associates (or has associated at any relevant time) as the Minister considers relevant, including information that existed at the time the licence was granted, regardless of whether that information was known or could have been made known to the Minister at that time.

### **69E—Compliance notice**

- (1) The Minister may give a notice to the holder of a licence (a *compliance notice*) specifying grounds for disciplinary action against the holder of the licence and informing them that disciplinary action may be avoided if they take specified action, within a period specified in the notice.
- (2) If the holder of the licence fails to take the specified action within the time allowed in the notice, the holder of the licence 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.

### **69F—Default notice**

The Minister may give a notice to the holder of a licence (a *default notice*) specifying the grounds for disciplinary action against them and informing them that disciplinary action may be avoided by payment of a specified sum not exceeding—

- (a) in the case of the holder of a licence who is a body corporate—\$500 000; or
- (b) in any other case—\$250 000,

within a period specified in the notice.

### **69G—Disciplinary action**

- (1) The Minister may give a notice to the holder of a licence—
  - (a) specifying that the Minister is considering taking disciplinary action against the holder of the licence; and
  - (b) specifying the nature of the cause for disciplinary action; and
  - (c) requiring the holder of the licence to show cause, within a period specified in the notice (which must be at least 14 days), why disciplinary action should not be taken against them; and

- (d) that may require the holder of the licence to take specified action, or cease specified action, within a period specified in the notice, in relation to any matter specified in the notice.
- (2) After considering the submissions (if any) made by the holder of the licence under subsection (1)(c), the Minister may, by order, take disciplinary action in 1 or more of the following ways:
- (a) the Minister may reprimand the holder of the licence;
  - (b) the Minister may impose a fine on the holder of the licence not exceeding—
    - (i) in the case of the holder of a licence who is a body corporate—\$1 000 000; or
    - (ii) in any other case—\$500 000;
  - (c) the Minister may—
    - (i) vary the conditions of the licence; or
    - (ii) give directions to the holder of the licence as to the winding up of the business carried out under the licence; or
    - (iii) suspend the licence for a specified or unlimited period; or
    - (iv) cancel the licence; or
    - (v) if the licence is cancelled—disqualify a person from holding the licence or from being granted any other licence under this Act permanently or for a specified time.
- (3) Disciplinary action takes effect on the date of service of the order on the holder of the licence or on a later date specified in the order.
- (4) If the Minister suspends a licence or imposes a prohibition, the Minister may, at any time, terminate the suspension or prohibition.
- (5) A fine imposed under this section may be recovered as a debt due to the State.
- (6) A person who fails to comply with a requirement, order or direction of the Minister given under this section is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$1 000 000;
- (b) in the case of an individual—\$500 000.

### **69H—Effect of criminal proceedings**

- (1) The Minister may take disciplinary action under this Part whether or not criminal proceedings have been, or are to be, taken in relation to the matters the subject of the disciplinary action and even though a penalty may have been already imposed by the Minister.
- (2) However, the Minister must, in imposing a fine, take into account any fine that has already been imposed in criminal proceedings.

## Part 6B—Review

### 69I—Review by Minister

- (1) A person who is dissatisfied with a decision of the Minister under Part 2, Part 6AA or Part 6A may apply to the Minister for a review of the decision.
- (2) An application for review—
  - (a) must be made within 28 days 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.

### 69J—Review by SACAT

- (1) A person who is dissatisfied with a decision made by the Minister on a review under this Part 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 28 days after the person receives notice of the Minister's decision.

## 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**

- (1) The Minister must maintain a register of licences granted under this Act (the *register*).
- (2) The register must contain the following particulars for each licence:
  - (a) the name and contact details of the holder of the licence;
  - (b) the business name, ABN and address for the business to which the licence relates;
  - (c) the date of issue of the licence;
  - (d) any conditions imposed on the licence by the Minister;
  - (e) the details of any action taken under this Act against the holder of the licence of a kind prescribed by the regulations;
  - (f) any other particulars prescribed by regulation.
- (3) The Minister must make the register publicly available on a website determined by the Minister.

### **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.

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**76A—Enforceable voluntary undertakings**

- (1) The Minister may accept, by notice in writing, an undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
- (2) The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking in respect of the contravention or alleged contravention to which the undertaking relates.
- (3) A person who has given an undertaking may, at any time, with the written agreement of the Minister—
  - (a) vary the undertaking; or
  - (b) withdraw the undertaking.
- (4) A person must not contravene an undertaking made by the person that is in effect.  
Maximum penalty:
  - (a) in the case of a body corporate—\$500 000;
  - (b) in the case of an individual—\$250 000.
- (5) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.
- (6) No proceedings for a contravention or alleged contravention of this Act may be brought against a person who has given an undertaking under this section in relation to that contravention and who has completely discharged the undertaking.
- (7) The Minister may accept an undertaking in relation to a contravention or alleged contravention before proceedings in respect of that contravention have been finalised.
- (8) If the Minister accepts an undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.

**77—Criminal intelligence**

- (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Minister, SACAT, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If the Minister, SACAT or a court—
  - (a) makes a decision under this Act; and
  - (b) the decision is made because of information that is classified by the Commissioner of Police as criminal intelligence,the Minister, SACAT or the court (as the case may be) is not required to provide any grounds or reasons for the decision other than that, in their view, the making of any other decision would have been contrary to the public interest.

- (3) In any proceedings under this Act, the Minister, SACAT or a court—
- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
  - (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

### **78—Disclosure of information**

- (1) A person who obtains information in the course of the administration of this Act must not—
- (a) disclose the information; or
  - (b) give access to the information to another person; or
  - (c) use the information for any purpose.

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
  - (b) in the case of an individual—\$25 000.
- (2) Subsection (1) does not apply to the disclosure of information, or the giving of access to information or the use of information—
- (a) about a person, with the person's consent; or
  - (b) that is necessary for administration of this Act or a designated Act; or
  - (c) by the Minister or a person authorised by the Minister if the Minister reasonably believes the disclosure, access or use—
    - (i) is necessary for administering, monitoring or enforcing compliance with this Act or a designated Act; or
    - (ii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety or to otherwise protect the public interest; or
  - (d) to any other agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the performance of its official functions; or
  - (e) as required or authorised by law; or
  - (f) to a designated Minister, the Commissioner of Police or an authorised person.

- (2a) Subsection (1) does not apply to the disclosure of information by an authorised person in relation to premises—
- (a) in respect of which a closure order under Part 6AA is in effect; or
  - (b) that the authorised person reasonably suspects are being used in connection with an offence against this Act,
- if the person to whom the disclosure is made is—
- (c) the owner or occupier of the premises; or
  - (d) an agent of the owner or occupier of the premises; or
  - (e) a person of a kind prescribed by the regulations for the purposes of this paragraph.
- (2b) Despite section 86A, the Crown incurs no liability as a consequence of a disclosure of information of a kind authorised under subsection (2a).
- (3) Before information obtained in the course of the administration of this Act is disclosed, the Minister may exclude information that the Minister considers to be—
- (a) personal information of a confidential nature; or
  - (b) information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if the information is disclosed; or
  - (c) information the disclosure of which would, or could reasonably be expected to, prejudice the commercial position of a person or confer a commercial advantage on a person; or
  - (d) information the disclosure of which—
    - (i) would be otherwise contrary to the public interest; or
    - (ii) would be inappropriate for such other reason as the Minister thinks fit.
- (4) In this section—
- authorised person** means each of the following:
- (a) a police officer;
  - (b) an authorised officer;
  - (c) a person who is or has been, at any time, engaged in the administration or enforcement of this Act or a designated Act;
  - (d) a person of a class prescribed by regulation for the purposes of this definition;
- designated Act** means the following:
- (a) this Act;
  - (b) the *Controlled Substances Act 1984*;
  - (c) the *Gambling Administration Act 2019*;
  - (d) the *Liquor Licensing Act 1997*;
  - (e) an Act designated by the Minister by notice in the Gazette for the purposes of this definition;

*designated Minister* means a Minister responsible for the administration of a designated Act.

### **78A—Commissioner of Police may provide information to Minister**

Without limiting any other Act or law that requires or authorises the Commissioner of Police to disclose information, the Commissioner of Police may disclose to the Minister any information on any matter relevant to the operation or enforcement of this Act.

### **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.

### **82A—Court may make certain orders**

- (1) If a court finds a person guilty of an offence under this Act, the court may make 1 or more of the following orders:
  - (a) that a licence held by the person is subject to specified conditions;
  - (b) that a licence held by the person is suspended for a specified period or until further order;
  - (c) that a licence held by the person is cancelled;
  - (d) that the person is disqualified from holding or obtaining a licence for a specified period or until further order.
- (2) If a court makes an order under subsection (1), the Registrar of the relevant court must notify the Minister of the details of the order.

### **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
  - (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 A1—Prohibited conduct**

Section 30(1)

Section 31

Section 32

Section 33(1)

Section 34A(4)

Section 35

Section 39A(1)

Section 39B(1)

Section 39C(4)

Section 39E(5a) or (5b)

Section 45A(1) or (2)

## **Schedule 1—Controlled purchase operations—prescribed provisions**

Section 30

Section 32

Section 33

Section 34A

Section 35

Section 39A

Section 39B

Section 39C

Section 39E

## Legislative history

### Notes

- 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](http://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 5.6.1997 p2793</i> ) 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 23.4.1998 p1927</i> )
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 8.4.1999 p1634</i> )
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</i> No. S 285, 13.7.2001 ( <i>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 (c11 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> )

## Tobacco and E-Cigarette Products Act 1997—5.6.2025

### Legislative history

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> )
2025	17	<b><i>Statutes Amendment (Tobacco and E-Cigarette Products—Closure Orders and Offences) Act 2025</i></b>	<b>10.4.2025</b>	<b>Pt 3 (ss 5 to 19)—5.6.2025 (<i>Gazette 5.6.2025 p1386</i>)</b>

## 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
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
<i>contravene</i>	<i>inserted by 39/2018 s 7(6)</i>	31.3.2019
	<i>deleted by 47/2024 s 4(2)</i>	13.12.2024
<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
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)	31.3.2019
	substituted by 47/2024 s 4(4)	28.11.2024
employee	inserted by 42/2004 s 4(2)	6.12.2004
	substituted by 40/2012 Sch 6 cl 7(1)	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>
<i>grant</i>	<i>deleted by 47/2024 s 4(5)</i>	<i>13.12.2024</i>
<i>health warning</i>	<i>amended by 26/1999 s 4 (Sch)</i>	<i>12.4.1999</i>
	<i>amended by 42/2004 s 4(3)</i>	<i>6.12.2004</i>
	<i>substituted by 39/2018 s 7(7)</i>	<i>31.3.2019</i>
	<i>deleted by 15/2023 s 3(1)</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
multi-unit premises	inserted by 42/2004 s 4(4)	6.12.2004
officer	inserted by 47/2024 s 4(7)	13.12.2024
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)	31.8.2023
	amended by 47/2024 s 4(8)	28.11.2024
	(b) deleted by 47/2024 s 4(9)	28.11.2024
prohibited product	inserted by 47/2024 s 4(10)	28.11.2024
<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)	6.12.2004
	(c) deleted by 47/2024 s 4(11)	28.11.2024
retail	substituted by 47/2024 s 4(12)	13.12.2024
retail licence	inserted by 47/2024 s 4(13)	13.12.2024
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
<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
vending machine	amended by 39/2018 s 7(17)	31.3.2019
	amended by 47/2024 s 4(15)	28.11.2024
wholesale	deleted by 26/1998 s 5(c)	1.5.1998
	inserted by 47/2024 s 4(16)	13.12.2024
wholesale licence	inserted by 47/2024 s 4(16)	13.12.2024
workplace	inserted by 42/2004 s 4(9)	6.12.2004
	amended by 40/2012 Sch 6 cl 7(2)	1.1.2013
s 4(2)	<i>deleted by 15/2023 s 3(3)</i>	<i>31.8.2023</i>
s 4(3) and (4)	inserted by 42/2004 s 4(10)	6.12.2004
s 4(5) and (6)	inserted by 47/2024 s 4(17)	13.12.2024
s 4A	<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>
s 5	deleted by 26/1998 s 6	1.5.1998
	inserted by 47/2024 s 5	28.11.2024
s 5A	inserted by 47/2024 s 5	13.12.2024
<i>Pt 2 before substitution by 47/2024</i>	<i>amended by 28/1997 ss 3, 4</i>	<i>5.6.1997</i>
	<i>amended by 145/1997 r 14</i>	<i>5.6.1997</i>
	<i>substituted by 26/1998 s 7</i>	<i>1.5.1998</i>
s 6	<i>amended by 15/2007 s 4</i>	<i>31.5.2007</i>
	<i>amended by 39/2018 s 9, Sch 2</i>	<i>31.3.2019</i>
s 9		
s 9(2)	<i>substituted by 42/2004 s 6</i>	<i>31.3.2005</i>
	<i>amended by 39/2018 s 10(1), (2)</i>	<i>31.3.2019</i>
s 9(5)	<i>amended by 15/2007 s 5</i>	<i>31.5.2007</i>
	<i>amended by 39/2018 s 10(3), Sch 2</i>	<i>31.3.2019</i>
<i>s 13 before substitution by 51/2017</i>		
s 13(2)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 44(a))</i>	<i>1.6.2000</i>
s 13(3)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 44(b))</i>	<i>1.6.2000</i>
s 13(4)	<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>
<i>s 13</i>	<i>substituted by 51/2017 s 268</i>	<i>14.12.2017</i>
Pt 2	substituted by 47/2024 s 6	13.12.2024
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
<i>s 28</i>	<i>deleted by 26/1998 s 8</i>	<i>1.5.1998</i>
	<i>inserted by 43/1999 s 2</i>	<i>5.8.1999</i>
	<i>deleted by 42/2004 s 8</i>	<i>6.12.2004</i>
<i>s 29</i>	<i>deleted by 39/2018 s 12</i>	<i>31.3.2019</i>
<i>s 30 before substitution by 39/2018</i>		
<i>s 30(1)</i>	<i>amended by 15/2007 s 6(1)</i>	<i>31.5.2007</i>
<i>s 30(2)</i>	<i>amended by 15/2007 s 6(2)</i>	<i>31.5.2007</i>
<i>s 30(3)</i>	<i>amended by 15/2007 s 6(3)</i>	<i>31.5.2007</i>
<i>s 30(4)</i>	<i>amended by 15/2007 s 6(4)</i>	<i>31.5.2007</i>
<i>s 30(5)</i>	<i>inserted by 58/2007 s 4</i>	<i>1.6.2008</i>
<i>s 30</i>	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
<i>s 30(1)</i>	(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
<i>s 30(1a)</i>	inserted by 15/2023 s 4(4)	31.8.2023
<i>s 30(2) and (3)</i>	<i>deleted by 47/2024 s 9(5)</i>	<i>28.11.2024</i>
<i>s 31 before substitution by 15/2023</i>		
<i>s 31(1)</i>	<i>amended by 15/2007 s 7(1)</i>	<i>31.5.2007</i>
	<i>amended by 39/2018 Sch 2</i>	<i>31.3.2019</i>
<i>s 31(2)</i>	<i>amended by 15/2007 s 7(2)</i>	<i>31.5.2007</i>
	<i>amended by 39/2018 Sch 2</i>	<i>31.3.2019</i>
<i>s 31</i>	substituted by 15/2023 s 5	31.8.2023
	amended by 47/2024 s 10	28.11.2024
<i>s 32</i>	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
<i>s 33</i>	deleted by 42/2004 s 10	6.12.2004
	inserted by 15/2023 s 5	31.8.2023

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s 33(1)	amended by 47/2024 s 12	28.11.2024
<b>s 33(3)</b>	<b>amended by 17/2025 s 5</b>	<b>5.6.2025</b>
<i>s 34 before deletion by 58/2007</i>		
<i>s 34(1)</i>	<i>amended by 15/2007 s 8(1)</i>	<i>31.5.2007</i>
<i>s 34(2)</i>	<i>amended by 34/2000 Sch 1 cl 18</i>	<i>6.7.2000</i>
	<i>amended by 15/2007 s 8(2)</i>	<i>31.5.2007</i>
<i>s 34</i>	<i>deleted by 58/2007 s 5</i>	<i>1.6.2008</i>
s 34A	inserted by 16/2006 s 4	31.10.2006
s 34A(4)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 13(1)—(3)	28.11.2024
s 35	amended by 15/2007 s 9	31.5.2007
	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 14(1), (2)	28.11.2024
s 36	substituted by 42/2004 s 11	6.12.2004
	amended by 39/2018 s 14, Sch 2	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>	<i>12.4.1999</i>
	<i>substituted by 42/2004 s 12</i>	<i>31.3.2005</i>
	<i>amended by 15/2007 s 10</i>	<i>31.5.2007</i>
	<i>substituted by 58/2007 s 6</i>	<i>1.6.2008</i>
<i>s 37(1)</i>	<i>amended by 39/2018 Sch 2</i>	<i>31.3.2019</i>
<i>s 37(2)</i>	<i>substituted by 39/2018 s 15</i>	<i>31.3.2019</i>
s 37	substituted by 47/2024 s 16	28.11.2024
s 37A	inserted by 39/2018 s 16	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>	<i>5.8.1999</i>
<i>s 38(2)</i>	<i>amended by 43/1999 s 3(b)</i>	<i>5.8.1999</i>
<i>s 38(3)</i>	<i>amended by 43/1999 s 3(c)</i>	<i>5.8.1999</i>
<i>s 38(4)</i>	<i>amended by 43/1999 s 3(d)</i>	<i>5.8.1999</i>
<i>s 38(5)</i>	<i>amended by 26/1998 s 9(a)—(c)</i>	<i>1.5.1998</i>
	<i>amended by 43/1999 s 3(e), (f)</i>	<i>5.8.1999</i>
<i>s 38(6)</i>	<i>substituted by 26/1998 s 9(d)</i>	<i>1.5.1998</i>
<i>s 38(7)</i>	<i>deleted by 26/1998 s 9(d)</i>	<i>1.5.1998</i>
s 38	substituted by 42/2004 s 13	6.12.2004
	heading amended by 47/2024 s 17(1)	28.11.2024
s 38(1)	amended by 15/2007 s 11	31.5.2007
	amended by 39/2018 s 17(1), (2), Sch 2	31.3.2019
	amended by 47/2024 s 17(2)—(4)	28.11.2024

s 38(2)	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 17(5)	28.11.2024
s 44	deleted by 42/2004 s 17	6.12.2004
s 46—see Pt 4		
s 47 before substitution by 42/2004— see Pt 4		
s 47(1)		
entertainment area	amended by 26/1999 s 4 (Sch)	12.4.1999
licensed premises	amended by 26/1999 s 4 (Sch)	12.4.1999
unlicensed premises	inserted by 26/1999 s 3(a)	12.4.1999
s 47(3)	amended by 26/1999 ss 3(b), 4 (Sch)	12.4.1999
s 47(4)	amended by 26/1999 ss 3(c)—(e), 4 (Sch)	12.4.1999
s 47(5)	amended by 26/1998 s 11	1.5.1998
	amended by 26/1999 ss 3(f), 4 (Sch)	12.4.1999
	amended by 4/2000 s 9(1) (Sch 1 cl 44(e))	1.6.2000
s 47(5a)	inserted by 4/2000 s 9(1) (Sch 1 cl 44(f))	1.6.2000
Pt 3 Div 2	inserted by 47/2024 s 20	28.11.2024
<b>s 39B</b>		
<b>s 39B(3)</b>	<b>amended by 17/2025 s 6</b>	<b>5.6.2025</b>
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
s 39E	s 38A inserted by 42/2004 s 13	6.12.2004
	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
s 39E(1)	s 38A(1) amended by 39/2018 s 18(1)—(3)	31.3.2019
	s 38A(1) amended by 47/2024 s 18(2), (3)	28.11.2024
s 39E(5)	s 38A(5) amended by 39/2018 s 18(4), (5), Sch 2	31.3.2019
	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
s 39E(6)		
responsible person	s 38A(6) amended by 39/2018 s 18(6)	31.3.2019
	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
s 40		
s 40(1)	substituted by 42/2004 s 15(1)	31.3.2005
	amended by 15/2007 s 12(1)	31.5.2007
	amended by 39/2018 Sch 2	31.3.2019

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	amended by 39/2018 s 20(1)	1.10.2019
	amended by 47/2024 s 21(1)	28.11.2024
s 40(2)	amended by 15/2007 s 12(2)	31.5.2007
	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
<b>Pt 3 Div 6</b>	<b>inserted by 17/2025 s 7</b>	<b>5.6.2025</b>
<i>Pt 4</i>	<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>	(31.10.2007)
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
<b>s 66AA</b>	<b>inserted by 17/2025 s 8</b>	<b>5.6.2025</b>
ss 66A and 66B	inserted by 47/2024 s 36	28.11.2024
s 67	amended by 39/2018 Sch 2	31.3.2019

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	amended by 47/2024 s 37	28.11.2024
<i>s 69 before substitution by 47/2024</i>	<i>s 69(1) amended by 26/1998 s 16(a), (b)</i>	1.5.1998
	<i>s 69(1) redesignated as s 69 in pursuance of the Acts Republication Act 1967</i>	1.5.1998
	<i>amended by 39/2018 s 27(1)—(3)</i>	31.3.2019
<i>s 69(2)</i>	<i>deleted by 26/1998 s 16(c)</i>	1.5.1998
<i>s 69</i>	substituted by 47/2024 s 38	13.12.2024
<b>s 69(2)</b>	<b>amended by 17/2025 s 9</b>	<b>5.6.2025</b>
Pt 6	deleted by 26/1998 s 17	1.5.1998
	inserted by 42/2004 s 18	6.12.2004
	deleted by 39/2018 s 28	31.3.2019
	inserted by 47/2024 s 39	13.12.2024
Pt 6AA	inserted by 47/2024 s 39	13.12.2024
<b>s 69CA</b>		
<b>closure order</b>	<b>amended by 17/2025 s 10(1)</b>	<b>5.6.2025</b>
<b>short term closure order</b>	<b>inserted by 17/2025 s 10(2)</b>	<b>5.6.2025</b>
<b>s 69CB</b>		
<b>s 69CB(4)</b>	<b>substituted by 17/2025 s 11(1)</b>	<b>5.6.2025</b>
<b>s 69CB(6)</b>	<b>inserted by 17/2025 s 11(2)</b>	<b>5.6.2025</b>
<b>s 69CBA</b>	<b>inserted by 17/2025 s 12</b>	<b>5.6.2025</b>
<b>s 69CC</b>		
<b>s 69CC(1)</b>	<b>amended by 17/2025 s 13(1)—(3)</b>	<b>5.6.2025</b>
<b>s 69CC(2)</b>	<b>amended by 17/2025 s 13(4), (5)</b>	<b>5.6.2025</b>
<b>s 69CC(3)</b>	<b>amended by 17/2025 s 13(6)</b>	<b>5.6.2025</b>
<b>s 69CC(5)</b>	<b>inserted by 17/2025 s 13(7)</b>	<b>5.6.2025</b>
<b>s 69CD</b>		
<b>heading</b>	<b>amended by 17/2025 s 14(1)</b>	<b>5.6.2025</b>
<b>s 69CD(1)</b>	<b>s 69CD redesignated as s 69CD(1) by 17/2025 s 14(2)</b>	<b>5.6.2025</b>
<b>s 69CD(2)—(5)</b>	<b>inserted by 17/2025 s 14(2)</b>	<b>5.6.2025</b>
<b>ss 69CE and 69CF</b>	<b>inserted by 17/2025 s 15</b>	<b>5.6.2025</b>
Pt 6A	inserted by 47/2024 s 39	13.12.2024
Pt 6B	inserted by 47/2024 s 39	13.12.2024
Pt 7		
<i>s 70A</i>	inserted by 15/2007 s 15	31.5.2007
<i>s 70A(1)</i>	amended by 39/2018 s 29(1)	31.3.2019
<i>s 70A(2)</i>	amended by 39/2018 s 29(2)	31.3.2019
	amended by 47/2024 s 40	28.11.2024
<i>s 70A(3)</i>	amended by 39/2018 s 29(3)	31.3.2019
<i>s 70AB</i>	<i>s 39 redesignated as s 70AB by 47/2024 s 19(4)</i>	28.11.2024
<i>s 70AB(1)</i>	<i>s 39(1) amended by 43/1999 s 4</i>	5.8.1999

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	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
s 74	<i>deleted by 26/1998 s 19</i>	1.5.1998
s 75	amended by 39/2018 Sch 2	31.3.2019
	amended by 47/2024 s 43	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	31.3.2019
	amended by 47/2024 s 44	28.11.2024
s 76A	inserted by 47/2024 s 45	13.12.2024
s 77	substituted by 47/2024 s 45	13.12.2024
s 78	(d) deleted by 26/1998 s 21	1.5.1998
	amended by 39/2018 Sch 2	31.3.2019
	substituted by 47/2024 s 45	13.12.2024
<b>s 78(2a) and (2b)</b>	<b>inserted by 17/2025 s 16</b>	<b>5.6.2025</b>
<b>s 78A</b>	<b>inserted by 17/2025 s 17</b>	<b>5.6.2025</b>
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>	1.5.1998
s 80	<i>deleted by 84/2009 s 357</i>	1.2.2010
s 81		

## Tobacco and E-Cigarette Products Act 1997—5.6.2025

### Legislative history

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<i>s 81(1)</i>	<i>s 81 redesignated as s 81(1) by 42/2004 s 20 deleted by 36/2011 s 32</i>	6.12.2004 1.1.2012
<i>s 81(2) and (3)</i>	inserted by 42/2004 s 20	6.12.2004
<i>s 82</i>	substituted by 26/1998 s 23 amended by 47/2024 s 47	1.5.1998 28.11.2024
<i>s 82A</i>	inserted by 47/2024 s 48	13.12.2024
<i>ss 83 and 84</i>	deleted by 26/1998 s 24	1.5.1998
<i>s 83</i>	inserted by 5/2012 s 5	31.5.2012
<i>s 85</i>		
<i>s 85(1)</i>	(c) deleted by 26/1998 s 25(a)	1.5.1998
<i>s 85(2)</i>	amended by 39/2018 s 31(1), (2)	31.3.2019
<i>s 85(3)</i>	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>		
<i>s 86(2)</i>	amended by 23/2001 s 118	15.7.2001
<i>s 86</i>	substituted by 47/2024 s 50	28.11.2024
<i>s 86A</i>	inserted by 39/2018 s 32	31.3.2019
<i>s 86B</i>	inserted by 47/2024 s 51	28.11.2024
<i>s 87</i>	heading amended by 47/2024 s 52(1)	28.11.2024
<i>s 87(2)</i>	(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) (b), (c) deleted by 47/2024 s 52(2)	1.5.1998 12.4.1999 6.12.2004 31.3.2019 28.11.2024 28.11.2024
<i>s 87(3)</i>	substituted by 39/2018 s 33	31.3.2019
<i>s 87(4) and (5)</i>	deleted by 26/1998 s 26(b) inserted by 47/2024 s 52(7)	1.5.1998 28.11.2024
<i>s 87(6)</i>	inserted by 47/2024 s 52(7)	28.11.2024
<b>Sch A1</b>	<b>inserted by 17/2025 s 18</b>	<b>5.6.2025</b>
<i>Sch 1</i>	deleted by 26/1998 s 27 inserted by 47/2024 s 53	1.5.1998 13.12.2024
<i>Sch 2</i>	deleted by 26/1998 s 27	1.5.1998
<i>Sch</i>	inserted by 26/1998 s 27 deleted by 47/2024 s 53	1.5.1998 13.12.2024

## 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.

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### 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.

## ***Statutes Amendment (Tobacco and E-Cigarette Products—Closure Orders and Offences) Act 2025, Pt 3***

### **19—Transitional provisions**

- (1) The owner of premises in relation to which an application for a long term closure order has been made may, in accordance with section 69CC(3) of the *Tobacco and E-Cigarette Products Act 1997* as amended by section 13(6) of this Act, apply to the Magistrates Court to be a party to the proceedings in relation to the application irrespective of whether the application for the making of the long term closure order was made before or after the commencement of that amendment.
- (2) An application may be made to the Magistrates Court to amend or revoke a long term closure order under section 69CC(5) of the *Tobacco and E-Cigarette Products Act 1997* as inserted by section 13(7) of this Act irrespective of whether the long term closure order to which the application relates was made before or after the commencement of that amendment.

### **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  
28.11.2024  
13.12.2024