

(Reprint No. 5)

SOUTH AUSTRALIA

TOBACCO PRODUCTS CONTROL ACT 1986

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 3 April 1995.

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

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
- 2A. Objects of Act
3. Interpretation

PART 2 CONTROLS RELATING TO TOBACCO PRODUCTS

- 3A. Application of Part
4. Sale of tobacco products by retail
5. Importing and packing of tobacco products
6. Tobacco products in relation to which no health warning has been prescribed
7. Advertisements of tobacco products
8. Information as to tar, nicotine, etc., content of cigarettes
9. Sale of sucking tobacco
10. Sale of confectionary
- 10A. Sale of tobacco products by vending machine
11. Sale of tobacco products to children
- 11A. Certain advertising prohibited
- 11C. Prohibition of certain sponsorships
- 11D. Competitions
- 11E. Free samples
12. Smoking in buses
13. Smoking in lifts
- 13A. Smoking in places of public entertainment
14. Powers of authorised officers
- 14A. Exemptions

PART 3 SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST

- 14B. Establishment of Trust
- 14C. Constitution of Trust
- 14D. Functions and powers of Trust
- 14E. Establishment of Fund
- 14F. Budget
- 14G. Further provisions

PART 4 MISCELLANEOUS

15. Offences
16. Regulations

SCHEDULE 1

SCHEDULE 2

*Provisions Relating to Sports Promotion, Cultural and Health
Advancement Trust*

APPENDIX 1 LEGISLATIVE HISTORY

APPENDIX 2 DIVISIONAL PENALTIES

TOBACCO PRODUCTS CONTROL ACT 1986

being

Tobacco Products Control Act 1986 No. 74 of 1986
[Assented to 27 November 1986]¹

as amended by

Tobacco Products Control Act Amendment Act 1988 No. 42 of 1988 [Assented to 5 May 1988]²

Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]³

Tobacco Products Control (Miscellaneous) Amendment Act 1993 No. 71 of 1993 [Assented to 16 September 1993]⁴

Statutes Repeal and Amendment (Places of Public Entertainment) Act 1993 No. 87 of 1993 [Assented to 27 October 1993]⁵

Passenger Transport Act 1994 No. 30 of 1994 [Assented to 26 May 1994]⁶

¹ Came into operation (except ss. 4, 7-13 and Sched.) 1 July 1987, s. 4(1) and (2) came into operation 1 September 1987: *Gaz.* 25 June 1987, p. 1634; ss. 4(3) and (4), 8-13 and Sched. came into operation 1 November 1987: *Gaz.* 15 October 1987, p. 1122; s. 7 had not been brought into operation at the date of this reprint.

² Ss. 1-4, 6, 7, 13, new ss. 14B-14G (as inserted by s. 15), clauses 1-5, 7-12 of Sched. 2 (as inserted by s. 17) and s. 18 came into operation 1 July 1988, ss. 8, 9, 11, new ss. 11C-11E (as inserted by s. 12), new s. 14A (as inserted by s. 15), ss. 16 and 19 came into operation 1 January 1989, new s. 11A (as inserted by s. 12) and s. 14 came into operation 1 July 1989: *Gaz.* 26 May 1988, p. 1333; clause 6 of new Sched. 2 came into operation 1 January 1989: *Gaz.* 22 December 1988, p. 2097; ss. 5, 10 and new s. 11B (as inserted by s. 12) had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

³ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

⁴ Came into operation (except ss. 3(b)-(d), 4-6, 10-12) 1 January 1994: *Gaz.* 4 November 1993, p. 2177; remainder of Act had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

⁵ Came into operation 3 April 1995: *Gaz.* 23 February 1995, p. 422.

⁶ Came into operation 1 July 1994: *Gaz.* 30 June 1994, p. 1843.

NOTE:

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

An Act to regulate the sale, packing, importing, advertising and use of tobacco products; to establish the South Australian Sports Promotion, Cultural and Health Advancement Trust and prescribe its functions and powers; to repeal the Cigarettes (Labelling) Act 1971 and the Tobacco Sales to Children (Prohibition) Act 1984; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Tobacco Products Control Act 1986*.

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

(3) The Governor shall not fix a day for section 7 to come into operation unless the Governor is satisfied that legislation similar in effect to section 7 has come into operation, or is likely to come into operation, in the Australian Capital Territory and at least 3 States of the Commonwealth apart from this State.

Objects of Act

2A. The objects of this Act are as follows:

- (a) to reduce the incidence of smoking and other consumption of tobacco products in the population, especially young people—
 - (i) by requiring health warnings to be displayed on tobacco products and otherwise disseminating information about the harmful effects of tobacco consumption;
 - (ii) by prohibiting the supply of tobacco products to children;
 - (iii) by encouraging non-smokers, especially young people, not to start smoking and encouraging and assisting smokers to give up smoking;
 - (iv) by prohibiting or limiting advertising, sponsorships and other practices designed to promote or publicise tobacco products and their consumption;
 - (v) by providing funds to sporting or cultural bodies in place of funds that they might otherwise have received through tobacco advertising and sponsorships; and
- (b) to protect non-smokers from unwanted and unreasonable exposure to tobacco smoke; and
- (c) generally, to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption.

Tobacco Products Control Act 1986

Interpretation

3. In this Act, unless the contrary intention appears—

"authorised officer" means a person authorised in writing by the Minister to exercise the powers of an authorised officer under this Act;

"child" means a person who has not attained the age of 18;

"entertainment" means—

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

"the Fund" means the Sports Promotion, Cultural and Health Advancement Fund established under Part 3;

"health warning" in relation to a tobacco product means a warning prescribed by regulation for the purposes of this Act in relation to tobacco products of that class;

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

"public place" includes a place to which the public ordinarily has access;

"to sell" includes—

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

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

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

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

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

"tobacco products" means tobacco, cigarettes, cigars and all other products the main ingredient of which is tobacco and which are designed for human consumption;

"the Trust" means the South Australian Sports Promotion, Cultural and Health Advancement Trust established under Part 3.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

**PART 2
CONTROLS RELATING TO TOBACCO PRODUCTS**

Application of Part

3A. This Part does not apply in relation to anything done by means of a radio or television broadcast.

Sale of tobacco products by retail

4. (1) A person shall not sell a tobacco product by retail unless it is enclosed in a package that displays a health warning in the prescribed manner and form.

(2) A person shall not sell by retail a tobacco product that is enclosed in two or more packages unless each package displays a health warning in the prescribed manner and form.

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

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Importing and packing of tobacco products

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

- (a) each package displays a health warning in the prescribed manner and form; and
- (b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages imported by that person in each financial year.

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

- (a) that each package displays a health warning in the prescribed manner and form; and
- (b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages packed by that person in each financial year.

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

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

6. Notwithstanding any other provision of this Act, where no health warning is prescribed in relation to a tobacco product of a particular class—

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

Tobacco Products Control Act 1986

Advertisements of tobacco products¹

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

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

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

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

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

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

Penalty: \$500.

Sale of sucking tobacco

9. (1) A person shall not sell sucking tobacco by retail.

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Sale of confectionary

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

Sale of tobacco products by vending machine

10A. (1) A person must not sell cigarettes or any other tobacco product by means of a vending machine unless the machine is situated on licensed premises within the meaning of the *Liquor Licensing Act 1985*.

(2) The *Frustrated Contracts Act 1988* applies to a contract between the owner or occupier of premises and the owner of a vending machine that is frustrated by the operation of subsection (1) whether the contract was made before or after the commencement of that Act.

Sale of tobacco products to children

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

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

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

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

¹ S. 7 had not been brought into operation at the date of this reprint.

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

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

Penalty: \$500.

Expiation fee: Division 9 fee.

(5) Where a court convicts a person who is not a member of a group of tobacco merchants within the meaning of the *Tobacco Products (Licensing) Act 1986* of an offence against subsection (1) or (2) and the person has previously been convicted of an offence against either of those subsections within the immediately preceding three years—

- (a) the court may disqualify the person from applying for or holding a tobacco merchant's licence under the *Tobacco Products (Licensing) Act 1986* during such period (not exceeding six months) as the court orders; or
- (b) if the person supplies tobacco products (including by vending machine) at two or more premises the court may, instead of disqualifying the person, order that for the purposes of the *Tobacco Products (Licensing) Act 1986* the person will be taken to be an unlicensed tobacco merchant in respect of the supply of tobacco products from premises specified by the court during such period (not exceeding six months) as the court orders.

(6) Where a court convicts a person who is a member of a group of tobacco merchants within the meaning of the *Tobacco Products (Licensing) Act 1986* of an offence against subsection (1) or (2) and the person has previously been convicted of an offence against either of those subsections within the immediately preceding three years—

- (a) the court may disqualify the person from applying for or holding a tobacco merchant's licence under the *Tobacco Products (Licensing) Act 1986* during such period (not exceeding six months) as the court orders and, in that event, the licence held on behalf of the group is cancelled and a person cannot hold a licence on behalf of a group that includes the convicted person during the period of his or her disqualification; or
- (b) the court may order that for the purposes of the *Tobacco Products (Licensing) Act 1986* the person will be taken to be an unlicensed tobacco merchant in respect of the supply of tobacco products from premises specified by the court during such period (not exceeding six months) as the court orders.

(7) The *Tobacco Products (Licensing) Act 1986* will apply to a person who is the subject of an order of a court under subsection (5)(b) or (6)(b) in accordance with the court's order.

Certain advertising prohibited

11A. (1) A person must not for any direct or indirect pecuniary benefit display a tobacco advertisement so that it may be seen in or from a public place.

Tobacco Products Control Act 1986

(2) A person must not—

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

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

(a) a tobacco advertisement in or on—

- (i) a newspaper or magazine;
- (ii) a book;
- (iii) a package containing a tobacco product; or

(b) a tobacco advertisement that is an accidental or incidental part of a film or video tape; or

(c) a tobacco advertisement that is displayed inside a shop or warehouse adjacent to a place where tobacco products are offered for sale; or

(d) a tobacco advertisement that is displayed outside a shop or warehouse where tobacco products are offered for sale but relates only to tobacco products generally or the prices at which particular tobacco products may be purchased; or

(e) a tobacco advertisement that is authorised by the Australian Formula One Grand Prix Board as part of the conduct or promotion of a motor racing event within the meaning of the *Australian Formula One Grand Prix Act 1984*; or

(f) a tobacco advertisement that is displayed or distributed under a contract providing sponsorship for a cricket match in South Australia that forms part of the Sheffield Shield series or a series of international cricket matches; or

(g) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

Prohibition of certain sponsorships

11C. (1) A person must not promote or publicise, or agree to promote or publicise—

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

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

(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).

(3) This section does not apply in relation to any motor racing event within the meaning of the *Australian Formula One Grand Prix Act 1984*.

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

Competitions

11D. (1) A person must not, in connection with the sale of a tobacco product, or for the purpose of promoting the sale of a tobacco product—

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

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

Free samples

11E. A person must not, for the purpose of inducing or promoting the sale of a tobacco product, offer or give to a member of the public a free sample of a tobacco product.

Smoking in buses

12. (1) Subject to subsection (2), a person shall not smoke a tobacco product in a bus that is carrying members of the public.

Penalty: \$200.

Expiation fee: Division 10 fee.

(2) Subsection (1) does not apply where—

(b) the bus has been hired for the exclusive use of members of a group;

Smoking in lifts

13. (1) A person shall not smoke a tobacco product in a lift.

Penalty: \$200.

Expiation fee: Division 10 fee.

Tobacco Products Control Act 1986

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

Penalty: \$200.

Expiation fee: Division 10 fee.

Smoking in places of public entertainment

13A. A person who attends a place of public entertainment to be entertained must not smoke a tobacco product in the auditorium of the place of public entertainment at any time before the entertainment commences, during the entertainment or after it has concluded.

Powers of authorised officers

14. (1) An authorised officer may, at any reasonable time—

- (a) enter premises that the officer believes, on reasonable grounds, are being used for or in connection with the sale, packing, storage, advertising or promotion of tobacco products;
- (b) require any person who is possessed of books of account, or other records, relevant to transactions involving the sale, purchase, advertising or promotion of tobacco products, to produce those books of account or other records for inspection;
- (c) require any person who is in a position to provide information relating to the sale, purchase, supply, packing, importing, advertising or promotion of tobacco products to answer any question on those subjects.

(2) An authorised officer may—

- (a) examine tobacco products and packages used, or intended, for packing tobacco products that are on premises entered under subsection (1);
- (b) examine books of account or other records produced under this section;
- (c) make copies of, or take extracts from, any such books of account or other records;
- (d) retain the books of account or other records for such reasonable period as may be necessary for the purposes referred to above.

(3) Subject to subsection (4), a person shall not—

- (a) hinder an authorised officer in the exercise of powers conferred by this section;
- (b) fail, without reasonable excuse, to comply with a requirement of an authorised officer under this section;
- (c) fail, without reasonable excuse, to answer, to the best of that person's knowledge, information and belief, a question put by an authorised officer.

(4) A person is not obliged to comply with a request or requirement of an authorised officer or to answer a question put by an authorised officer if the officer has failed (after being requested to do so by that person) to produce to that person the officer's written authorisation signed by the Minister.

(5) A person is not obliged to answer a question put by an authorised officer if the answer would result in or tend towards his or her self-incrimination.

Exemptions

14A. (1) Subject to this section, the Governor may, by proclamation—

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

(2) An exemption may not be granted under this section except as recommended by the appropriate Minister—

- (a) to facilitate the promotion and conduct of a sporting or cultural event or function; or
- (b) to allow the performance of a contract entered into before 3 March, 1988; or
- (c) to relieve undue hardship that might result if the exemption were not granted.

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

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

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

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

(5) An exemption granted for a purpose referred to in subsection (2)(b) may not have effect beyond 30 June, 1992.

PART 3
SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST

Establishment of Trust

14B. (1) The South Australian Sports Promotion, Cultural and Health Advancement Trust is established.

(2) The Trust—

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) is capable of suing and being sued; and
- (c) is capable of holding, acquiring, dealing with and disposing of real and personal property; and
- (d) is capable of acquiring or incurring any other rights or liabilities; and
- (e) is an agency of, and holds its property on behalf of, the Crown.

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

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

Constitution of Trust

14C. (1) The Trust will consist of seven persons appointed by the Governor, of whom—

- (a) one will be appointed to be the presiding member of the Trust; and
- (b) one will be a person with knowledge and experience in the area of public health nominated by the Minister; and
- (c) three will be persons with knowledge and experience in the area of sports or sports administration nominated by the Minister of Recreation and Sport; and
- (d) one will be a person with knowledge and experience in the area of the arts or arts administration nominated by the Minister for the Arts; and
- (e) one will be a person with knowledge and experience in the area of advertising.

(2) The Governor and each nominating Minister must, in appointing persons or nominating persons for appointment as members of the Trust (other than the presiding member), endeavour to ensure as far as is practicable that men and women are equally represented.

Functions and powers of Trust

14D. (1) The functions of the Trust are to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption, and more particularly for that purpose—

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

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

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

(3) In addition to its other powers, the Trust has power, after consultation with the Minister, to make a grant from the Fund for the relief of loss suffered as a result of the application of this Act to any matter or thing existing at or before the passing of this Act.

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

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

Establishment of Fund

14E. (1) The Sports Promotion, Cultural and Health Advancement Fund is established at the Treasury.

(2) The Fund consists of—

- (a) money paid into the Fund pursuant to the *Tobacco Products (Licensing) Act 1986*; and
- (b) all other money received by the Trust.

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

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

Tobacco Products Control Act 1986

Budget

14F. (1) The Trust must before 1 June in each year submit to the Minister for the Minister's approval a budget to govern the Trust's financial operations for the next financial year.

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

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

(4) The Minister must, before giving an approval under this section, consult with—

(a) the Treasurer; and

(b) the Minister of Recreation and Sport; and

(c) the Minister for the Arts.

Further provisions

14G. Further provisions governing the constitution of the Trust and its proceedings and operations are set out in schedule 2.

**PART 4
MISCELLANEOUS**

Offences

15. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of a summary offence and, except where otherwise provided, is liable to a penalty not exceeding \$5 000.

(2) Where a person is guilty of an offence against this Act, any other person who caused, permitted or authorised the act or omission that constituted the offence is also guilty of a summary offence and liable to the same penalty as is prescribed for the principal offence.

(3) Where a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is also guilty of a summary offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member exercised reasonable diligence to prevent commission of the offence.

Regulations

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

(2) In particular the regulations may—

(a) prescribe warnings that must be displayed on packages containing tobacco products and in, or in conjunction with, advertisements of tobacco products;

(b) prescribe the manner and form in which those warnings must be displayed or published.

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

Tobacco Products Control Act 1986

SCHEDULE 1

The *Cigarettes (Labelling) Act 1971* and the *Tobacco Sales to Children (Prohibition) Act 1984* are repealed.

SCHEDULE 2

*Provisions Relating to Sports Promotion, Cultural and Health
Advancement Trust*

Term and conditions of membership

1. (1) A member of the Trust will be appointed for such term not exceeding three years as the Governor determines and will, on the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may appoint a deputy of a member and the deputy, while acting in the absence of the member, has all the powers, duties and functions of that member.

(3) A member (or deputy member) is entitled to such allowances and expenses (if any) as the Governor may determine.

(4) The Governor may remove a member from office for—

(a) a breach of, or non-compliance with, conditions of appointment; or

(b) mental or physical incapacity to carry out official duties satisfactorily; or

(c) neglect of duty; or

(d) dishonourable conduct.

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

(a) dies; or

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

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

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

(e) is removed from office by the Governor under this clause.

(6) On the office of a member becoming vacant, a person will be appointed in accordance with this Act to the vacant office but where the office of a member becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

Validity of acts of Trust

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

Meetings and procedure

3. (1) Four members of the Trust constitute a quorum of the Trust.

(2) In the absence of the presiding member at a meeting of the Trust, the members present may decide who is to preside.

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

(4) Each member present at a meeting of the Trust is entitled to one vote on a matter arising for determination at the meeting and the presiding member has, in the event of an equality of votes, a second or casting vote.

(5) The Trust must cause accurate minutes to be kept of its proceedings.

(6) Subject to this Act, the business of the Trust may be conducted in a manner determined by the Trust.

Disclosure of interest

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

(a) must disclose the nature of the interest to the Trust; and

(b) must not take part in any deliberation or decision of the Trust with respect to the matter.

Penalty: \$2 500.

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

Delegation by Trust

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

(a) to a member or employee of the Trust; or

(b) to a committee established by or under this Act to advise or assist the Trust.

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

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

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

(a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of the delegation; and

(b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.

(5) A delegation or subdelegation under this clause—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the delegator to act personally in any matter; and

(c) is revocable at will by the delegator.

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

Committees

6. (1) Three committees are established—

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

(b) a Cultural Advisory Committee to advise or assist the Trust in respect of cultural matters; and

(c) a Health Advisory Committee to advise or assist the Trust in matters relating to health.

Tobacco Products Control Act 1986

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

- (a) the presiding member of the Trust (who will preside at meetings of the committee); and
- (b) the members of the Trust appointed on the nomination of the Minister of Recreation and Sport; and
- (c) two other persons appointed by the Trust on the nomination of that Minister.

(3) The Cultural Advisory Committee will consist of—

- (a) the presiding member of the Trust (who will preside at meetings of the committee); and
- (b) the member of the Trust appointed on the nomination of the Minister for the Arts; and
- (c) two other persons appointed by the Trust on the nomination of that Minister.

(4) The Health Advisory Committee will consist of—

- (a) the presiding member of the Trust (who will preside at meetings of the committee); and
- (b) the member of the Trust appointed on the nomination of the Minister; and
- (c) two other persons appointed by the Trust on the nomination of the Minister.

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

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

(7) A member of a committee established by or under this clause is entitled to such allowances and expenses (if any) as the Minister may determine.

Employees of Trust

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

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

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

Superannuation

8. The Trust is a public authority for the purposes of the *Superannuation Act 1974* and the employees of the Trust are, subject to that Act and any arrangement made between the Trust and the South Australian Superannuation Board, entitled to become contributors to the South Australian Superannuation Fund.

Immunity from liability

9. (1) A member, committee member or employee of the Trust incurs no liability for any act or omission by that person in good faith in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

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

Non-disclosure of information

10. A member, committee member or employee of the Trust must not disclose any confidential information to which he or she has had access in the course of official duties unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or

- (b) in connection with the administration of this Act: or
- (c) for the purposes of any legal proceedings arising out of the administration of this Act.

Penalty: \$2 500.

Accounts and audit

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

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

Annual report

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

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

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

Tobacco Products Control Act 1986

APPENDIX 1

LEGISLATIVE HISTORY

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

Long title:	amended by 42, 1988, s. 3
Heading preceding section 1:	inserted by 42, 1988, s. 4
Section 2A:	inserted by 42, 1988, s. 6
Section 3:	definition of "child" amended by 71, 1993, s. 3(a) definition of "entertainment" inserted by 87, 1993, s. 14(a) definition of "the Fund" inserted by 42, 1988, s. 7 definition of "place of public entertainment" inserted by 87, 1993, s. 14(b) definition of "public place" inserted by 42, 1988, s. 7 definition of "sponsorship" inserted by 42, 1988, s. 7 definition of "tobacco advertisement" inserted by 42, 1988, s. 7 definition of "the Trust" inserted by 42, 1988, s. 7
Section 3A and heading:	inserted by 42, 1988, s. 8
Section 4(4):	repealed by 42, 1988, s. 9
Section 8:	substituted by 71, 1993, s. 7
Section 9(2):	repealed by 42, 1988, s. 11
Section 10A:	inserted by 71, 1993, s. 8
Section 11(1):	amended by 71, 1992, s. 3(1) (Sched.); 71, 1993, s. 9(a)
Section 11(2):	amended by 71, 1992, s. 3(1) (Sched.); 71, 1993, s. 9(b)
Section 11(3):	amended by 71, 1993, s. 9(c)
Section 11(4):	amended by 71, 1992, s. 3(1) (Sched.)
Section 11(5) - (7):	inserted by 71, 1993, s. 9(d)
Section 11A:	inserted by 42, 1988, s. 12
Sections 11C - 11E:	inserted by 42, 1988, s. 12
Section 12(1):	amended by 71, 1992, s. 3(1) (Sched.)
Section 12(2):	amended by 42, 1988, s. 13
Section 12(2)(a):	repealed by 30, 1994, Sched. 4 cl. 2(d)
Section 12(2)(c):	repealed by 42, 1988, s. 13(b)
Section 13:	amended by 71, 1992, s. 3(1) (Sched.)
Section 13A:	inserted by 8, 1993, s. 15
Section 14(1):	amended by 42, 1988, s. 14(a)-(c)
Section 14(5):	inserted by 42, 1988, s. 14(d)
Section 14A:	inserted by 42, 1988, s. 15
	Part 3 comprising ss. 14B - 14G and heading inserted by 42, 1988, s. 15
Heading preceding section 15:	inserted by 42, 1988, s. 15
Section 15:	amended and redesignated as s. 15(1) by 42, 1988, s. 16
Section 15(2) and (3):	inserted by 42, 1988, s. 16(b)
Schedule:	redesignated as Sched. 1 by 42, 1988, s. 17
Schedule 2:	inserted by 42, 1988, s. 17

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.