

South Australia

Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Act 2024

An Act to amend the *Tobacco and E-Cigarette Products Act 1997*.

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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 (E-Cigarette and Other Reforms) Amendment Act 2024*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Tobacco and E-Cigarette Products Act 1997*

3—Amendment of section 3—Objects of Act

- (1) Section 3(b)—delete "reduce the incidence of smoking and other consumption of tobacco products and e-cigarettes in the population, especially young people" and substitute:

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
- (2) Section 3(b)—after subparagraph (iv) insert:
 - (v) by reducing the availability of tobacco products and e-cigarette products;
- (3) Section 3—after paragraph (c) insert:
 - (d) to ensure that the sale of tobacco products is conducted honestly and free from interference, criminal influence and exploitation.

4—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *authorised officer* insert:

body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth;
- (2) Section 4(1), definition of *contravene*—delete the definition and substitute:

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;
- (3) Section 4(1), definition of *e-cigarette*—delete the definition and substitute:

e-cigarette—see section 5;
- (4) Section 4(1), definition of *e-cigarette product*—delete the definition and substitute:

e-cigarette product—see section 5;
- (5) Section 4(1), definition of *grant*—delete the definition
- (6) Section 4(1)—after the definition of *label* insert:

licence means—

 - (a) a retail licence; or
 - (b) a wholesale licence;
- (7) Section 4(1)—after the definition of *multi-unit premises* insert:

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;

- (8) Section 4(1), definition of ***prescribed packaging requirements***, (a)—delete "*Tobacco Plain Packaging Act 2011*" and substitute:

Public Health (Tobacco and Other Products) Act 2023

- (9) Section 4(1), definition of ***prescribed packaging requirements***, (b)—delete paragraph (b)

- (10) Section 4(1)—after the definition of ***prescribed packaging requirements*** insert:

prohibited product—see section 39C;

- (11) Section 4(1), definition of ***residential premises***, (c)—delete paragraph (c)

- (12) Section 4(1), definition of ***retail***—delete the definition and substitute:

retail connotes a sale to a consumer;

- (13) Section 4(1)—after the definition of ***retail*** insert:

retail licence—see section 7;

- (14) Section 4(1)—after the definition of ***tobacco product*** insert:

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;

- (15) Section 4(1), definition of ***vending machine***—after "obtained by" insert:

the use of a payment card or

- (16) Section 4(1)—after the definition of ***vending machine*** insert:

wholesale connotes a sale for the purpose of resale;

wholesale licence—see section 7;

- (17) Section 4—after subsection (4) insert:

- (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.

5—Insertion of sections 5 and 5A

After section 4 insert:

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.

6—Substitution of Part 2

Part 2—delete the Part and substitute:

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.

7—Amendment of heading to Part 3

Heading to Part 3—delete the heading and substitute:

Part 3—Offences

8—Insertion of heading

Before section 30 insert:

Division 1—Offences relating to tobacco products

9—Amendment of section 30—Restrictions on retail sale of tobacco products and e-cigarette products

(1) Section 30, heading—delete "retail sale of tobacco products and e-cigarette products" and substitute:

sale of tobacco products

(2) Section 30(1)—delete "retail"

(3) Section 30(1)(e)—after "tobacco product" insert:

by retail

(4) Section 30(1), penalty provision—delete the penalty provision and substitute:

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.
- (5) Section 30(2) and (3)—delete subsections (2) and (3)

10—Amendment of section 31—Requirements for packaging tobacco products

Section 31, penalty provision—delete the penalty provision and substitute:

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.

11—Amendment of section 32—Prohibition on sale or supply of certain tobacco products

Section 32, penalty provision—delete the penalty provision and substitute:

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.

12—Amendment of section 33—Possession of certain tobacco products

Section 33(1), penalty provision—delete the penalty provision and substitute:

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.

13—Amendment of section 34A—Prohibited tobacco products

- (1) Section 34A(4)—delete "by retail"
- (2) Section 34A(4), penalty provision—delete the penalty provision and substitute:
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.
- (3) Section 34A(4), expiation fee—delete the expiation fee

14—Amendment of section 35—Sale of sucking tobacco

- (1) Section 35—delete "by retail"
- (2) Section 35, penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:
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.

15—Amendment of section 36—Products designed to resemble tobacco products

- (1) Section 36—delete "by retail"
- (2) Section 36, penalty provision—delete the penalty provision and substitute:
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.

16—Substitution of section 37 and 37A

Section 37 and 37A—delete the sections and substitute:

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.

17—Amendment of section 38—Carrying tray etc of tobacco products or e-cigarette products for making of successive retail sales

(1) Section 38, heading—delete "or e-cigarette products"

(2) Section 38(1)—delete "or e-cigarette products"

(3) Section 38(1)—delete "his or her" and substitute:

their

(4) Section 38(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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.

(5) Section 38(2), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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.

18—Amendment and redesignation of section 38A—Sale or supply of tobacco products or e-cigarette products to children

(1) Section 38A, heading—delete "tobacco products or e-cigarette products to children" and substitute:

certain products to children

(2) Section 38A(1)—delete "or e-cigarette product"

(3) Section 38A(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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.

(4) Section 38A(5)—delete "or e-cigarette products by retail or who occupies premises in which a vending machine that is designed to sell tobacco such products is situated" and substitute:

by retail

(5) Section 38A(5)—delete "his or her customers or of persons using the machine" and substitute:

customers

(6) Section 38A(5), penalty provision—delete "\$1 250" and substitute:

\$5 000

- (7) Section 38A(5), expiation fee—delete "\$160" and substitute:
\$315
- (8) Section 38A—after subsection (5) insert:
- (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.
- (9) Section 38A(6), definition of *responsible person*, (a)—delete "otherwise than by means of a vending machine"
- (10) Section 38A(6), definition of *responsible person*, (b)—delete paragraph (b)
- (11) Section 38A—redesignate the section as amended by this section as section 39E and relocate the section so that it follows section 39D in Part 3 Division 4 (see section 20 of this Act)

19—Amendment and redesignation of section 39—Power to require evidence of age

- (1) Section 39(1)—delete subsection (1) and substitute:
 - (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) Section 39(2), penalty provision—delete "\$750" and substitute:

\$5 000
- (3) Section 39(2), expiation fee—delete "\$105" and substitute:

\$315
- (4) Section 39—redesignate the section as amended by this section as section 70AB and relocate the section so that it follows section 70A

20—Insertion of Part 3 Divisions 2, 3, 4 and heading to Division 5

Before section 40 insert:

Division 2—Offences relating to e-cigarette products

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

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

Maximum penalty:

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

Expiation fee:

- (a) in the case of a body corporate—\$20 000;
 - (b) in the case of an individual—\$5 000.
- (2) Subsection (1) does not apply to a person who is authorised under any other Act or law to sell or supply e-cigarette products.

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

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

Maximum penalty:

- (a) in the case of a body corporate—
 - (i) for a first offence—\$750 000;
 - (ii) for a second or subsequent offence—\$1 100 000.
- (b) in the case of an individual—
 - (i) for a first offence—\$350 000;
 - (ii) for a second or subsequent offence—\$700 000.
- (2) Subsection (1) does not apply to a person in possession of an e-cigarette product for the purpose of a sale that is authorised under any other Act or law.
- (3) In proceedings for an offence against subsection (1), if it is proved that the defendant had possession of a prescribed quantity of e-cigarette products, it is presumed, in the absence of proof to the contrary, that the defendant had possession of the e-cigarette products for the purposes of sale.

Division 3—Prohibited products

39C—Prohibited products

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

Maximum penalty:

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

Expiation fee:

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

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

Maximum penalty:

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

Division 4—Offences relating to children

39D—Sale or supply of tobacco products by children

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

Maximum penalty:

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

Expiation fee:

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

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

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

21—Amendment of section 40—Certain advertising prohibited

- (1) Section 40(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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) Section 40(2), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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) Section 40(3)(a)—delete "or e-cigarette products are sold by retail" and substitute:
are sold

- (4) Section 40(3)(b)—delete "by retail"

22—Amendment of section 41—Prohibition of certain sponsorships

- (1) Section 41(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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) Section 41(2), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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.

23—Amendment of section 42—Competitions and reward schemes etc

Section 42(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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.

24—Amendment of section 43—Free samples

Section 43, penalty provision—delete the penalty provision and substitute:

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.

25—Amendment of section 45—Business promotions to attract smokers

- (1) Section 45, penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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) Section 45—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (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.

26—Amendment of section 46—Smoking banned in enclosed public places, workplaces and shared areas

- (1) Section 46(2), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) Section 46(3), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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.

- (3) Section 46(4), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

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.

27—Amendment of section 48—Smoking in motor vehicle if child present

Section 48(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

28—Amendment of section 49—Smoking banned in certain public transport areas

- (1) Section 49(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) Section 49(5), definition of *prescribed public transport area*—delete the definition and substitute:

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);

29—Amendment of section 50—Smoking banned near certain playground equipment

Section 50(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

30—Amendment of section 51—Smoking banned in certain public areas—short term bans

- (1) Section 51(1)—delete "3" and substitute:

90

- (2) Section 51(4), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) Section 51(5)—delete "such numbers and positions as to be likely to be seen by persons within the area" and substitute:

the manner determined by the Minister by notice in the Gazette

- (4) Section 51(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

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

Expiation fee: \$630.

31—Amendment of section 52—Smoking banned in certain public areas—longer term bans

- (1) Section 52(2), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) Section 52(4)—delete subsection (4) and substitute:

- (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.

32—Amendment of section 63—Appointment of authorised officers

Section 63(4)—delete "members of the police force" and substitute:

police officers

33—Substitution of section 64

Section 64—delete the section and substitute:

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.

34—Amendment of section 65—Power to require information or records or attendance for examination

Section 65(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;

- (b) in the case of an individual—\$250 000.

35—Amendment of section 66—Powers of authorised officers

Section 66(1)(g)—delete paragraph (g) and substitute:

- (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;

36—Insertion of sections 66A and 66B

After section 66 insert:

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.

37—Amendment of section 67—Offence to hinder etc authorised officers

Section 67, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

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

38—Substitution of section 69

Section 69—delete the section and substitute:

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;
 - (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.

39—Insertion of Parts 6, 6AA, 6A and 6B

After section 69 insert:

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.

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
- (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.

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—
 - (a) 72 hours after the time specified in the order; or
 - (b) the order is revoked by the Minister,whichever is the earlier.
- (5) No more than 1 interim closure order may be made for the same premises in a period of 7 days.

69CC—Long term closure order

- (1) A Magistrate may, on the application of the Minister, order that specified premises be closed for a specified period of not more than 6 months (a *long term closure order*) if the Magistrate 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 is, or has been, in effect in relation to the premises under section 69CB.
- (3) An application under subsection (1) must be given to the owner of the premises, unless it is not reasonably practicable to do so.
- (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.

69CD—Tobacco or e-cigarette products not to be sold or supplied at closed premises

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.

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.

40—Amendment of section 70A—Confiscation of products from children

Section 70A(2)—delete "or e-cigarette products that are in the possession of a child in the ordinary course of his or her employment or otherwise for the purposes of sale by retail" and substitute:

that are in the possession of a child in the ordinary course of their employment or otherwise for the purpose of sale

41—Amendment of section 71—Exemptions

- (1) Section 71(1)—delete "Governor may, by proclamation" and substitute:
Minister may, by notice in the Gazette
- (2) Section 71(a)—delete "proclamation" and substitute:
notice

42—Substitution of section 73

Section 73—delete the section and substitute:

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.

43—Amendment of section 75—False or misleading information

Section 75, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

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

44—Amendment of section 76—Minister may require verification of information

Section 76(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

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

45—Substitution of sections 77 and 78

Sections 77 and 78—delete the sections and substitute:

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.
- (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.

46—Amendment of section 79—General defence

Section 79—after "this Act" insert:

, 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,

47—Amendment of section 82—Prosecutions

Section 82(a)—delete "the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*" and substitute:

2 years after the date on which the offence is alleged to have been committed

48—Insertion of section 82A

After section 82 insert:

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.

49—Amendment of section 85—Evidence

After subsection (2) insert:

- (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.

50—Substitution of section 86

Section 86—delete the section and substitute:

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.

51—Insertion of section 86B

After section 86A insert:

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*.

52—Amendment of section 87—Regulations

- (1) Section 87, heading—after "Regulations" insert:
and fee notices
- (2) Section 87(2)(a), (b) and (c)—delete paragraphs (a), (b) and (c) and substitute:
 - (a) the provision by the holder of a licence of prescribed information to the Minister; and
- (3) Section 87(2)(d)—delete "other"
- (4) Section 87(2)(f)—delete "\$10 000" and substitute:
\$20 000

- (5) Section 87(2)(g)—delete "\$500" and substitute:
\$1 000
- (6) Section 87(2)—after paragraph (h) insert:
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.
- (7) Section 87—after subsection (3) insert:
- (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.

53—Substitution of Schedule

Schedule—delete the Schedule and substitute:

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

Schedule 1—Saving and transitional provisions

1—Interpretation

In this Schedule—

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

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

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

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

relevant person means a person who holds a licence—

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

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

2—Existing licences

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

3—Requirement for wholesale licence

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

- (2) In this clause—

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

4—Licence applications

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

5—Licence conditions

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

6—Annual returns

- (1) This clause applies to the holder of a relevant licence (including the holder of a relevant licence that is, on the relevant day, suspended).
- (2) A person to whom this clause applies must, not later than the designated day—
 - (a) pay to the Minister the prescribed fee; and
 - (b) provide to the Minister an annual return in respect of the previous year in the manner and form, and containing the information, required by the Minister.
- (3) The Minister may take action under section 11 of the principal Act as substituted by this Act against a person to whom this clause applies who fails to pay the prescribed fee or provide the annual return in accordance with subclause (2) as if the failure constituted a failure to pay an annual fee or provide the annual return referred to in that section.
- (4) Section 11(1) of the principal Act as substituted by this Act does not apply to a person to whom this clause applies in respect of a particular year if the person has, in accordance with subclause (2), provided an annual return or paid an annual fee in respect of that year.
- (5) In this clause—

designated day means the day falling 11 months after the relevant day.

7—Seized products

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

8—Review proceedings

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

9—Register

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