

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO CONTROL ACT

As in force at 20 May 2011

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 20 May 2011. Any amendments that commence after that date are not included.

TOBACCO CONTROL ACT

An Act to restrict smoking in certain public places and workplaces, to regulate packaging, advertising (including through sponsorship), and display of tobacco and other smoking products, to regulate conduct of premises at which tobacco and other smoking products are sold by retail, to prohibit sale and supply of tobacco and other smoking products to children, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Tobacco Control Act*.

2 Commencement

- (1) Part 3, Divisions 2, 3 (other than section 23) and 4 (other than section 27) and section 28 come into operation on 31 May 2003.
- (2) The remaining provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3 Object

The object of this Act is to reduce the harm to people's health from the consumption of tobacco and other smoking products:

- (a) by discouraging people from smoking; and
- (b) by reducing people's exposure to environmental tobacco smoke; and
- (c) by supporting people to stop smoking.

4 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent that the legislative powers of the Legislative Assembly permit, the Crown in all its other capacities.

5 Definitions

In this Act, unless the contrary intention appears:

adult means a person who is 18 or more years of age.

air-conditioning inlet area means an area within 3 metres of an air-conditioning inlet (whether indoors or outdoors) through which air is directed into a smoke-free area, other than an air-conditioning inlet that draws air from an exempt area.

authorised officer has the meaning in section 47.

brand, in relation to a tobacco product, means a work produced for the purpose of advertising or promoting the tobacco product.

brand marketing, in relation to a tobacco product, means the distribution or supply (whether for valuable consideration or not) by or on behalf of a manufacturer, distributor, wholesaler or retailer of tobacco products of a thing (other than a tobacco product that is packaged in accordance with this Act and the Regulations) that bears:

- (a) the brand, brand name or trade mark of a tobacco product; or
- (b) the name of the manufacturer; or
- (c) the name of the distributor, wholesaler or retailer who is engaged solely or predominantly in the distribution, wholesaling or retailing of tobacco products; or
- (d) a name that a reasonable person would associate with a tobacco product.

brand name, in relation to a tobacco product, means the brand name, or any part of it, under which the tobacco product is sold, and includes a trade mark.

Chief Health Officer means the Chief Health Officer under the *Public Health Act*.

child means a person who is under 18 years of age.

commercial passenger vehicle has the same meaning as in the *Commercial Passenger (Road) Transport Act*.

Director means the Director of Licensing appointed under section 22(1) of the *Northern Territory Licensing Commission Act* or the person appointed under section 22(2) of that Act to act as the Director while acting as the Director.

educational facility means:

- (a) a school, including all of the school's buildings and grounds; or
- (b) a pre-school, including all of the pre-school's buildings and grounds; or
- (c) a commercial childcare facility (other than domestic premises used for that purpose), including all of the facility's buildings and grounds; or
- (d) domestic premises used as a commercial childcare facility, but only during the hours of operation of the facility and not including the premises' grounds; or
- (e) any other facility primarily used for the provision of education or care for children, including all of the facility's buildings and grounds.

enclosed public area means a place, or a part of a place, that is used or is intended to be used by members of the public and has a ceiling or roof and (except for doorways and passageways) is completely or substantially enclosed by walls, windows, blinds, curtains or other objects, materials or things.

enclosed workplace area means a place, or part of a place, of employment (other than an enclosed public place) that has a ceiling or roof and (except for doorways and passageways) is completely or substantially enclosed by walls, windows, blinds, curtains or other objects, materials or things, but does not include a place, or part of a place, of business that is in or on domestic premises if that place or part is not used and is not intended to be used by members of the public or employees of the business.

entrance area means an area within 2 metres of a door, window or other opening that opens into or onto an enclosed public area or an enclosed workplace area.

exempt area means an area designated under section 11 to be an exempt area.

food service area has the meaning in section 5A.

indoor food service area means a food service area that is part of an enclosed public area or part of an enclosed workplace area.

infringement notice means an infringement notice within the meaning of the *Fines and Penalties (Recovery) Act* that is issued under the Regulations in respect of an offence against this Act or the Regulations.

licensed tobacco retailer means the holder of a tobacco retail licence.

liquor licensed premises means premises that are licensed under the *Liquor Act* for the sale and consumption of liquor in, on or at the premises.

liquor licensee means a person who holds a licence under the *Liquor Act* for liquor licensed premises.

outdoor eating and drinking area, see section 5B.

outdoor food service area means a food service area that is not an enclosed public area or an enclosed workplace area.

outdoor public venue means an outdoor venue that is used or is intended to be used by the public, or part of such venue, if that place or part has fixed seating.

package, in relation to a tobacco product, means the package in which the tobacco product is sold or supplied or is intended to be sold or supplied, and includes:

- (a) a box, carton, cylinder, packet, pouch and tin; and
- (b) a wrapping other than a transparent outer wrapping.

photographic identification means:

- (a) a current driver's licence that includes a photograph, and indicates the date of birth, of the person to whom it is issued; or
- (b) a passport; or
- (c) a form of photographic identification prescribed by the Regulations.

premises includes a building, a vehicle and a vessel.

public transport means a vehicle or vessel (including but not limited to a commercial passenger vehicle, train or ferry) that is used or is intended to be used by fare-paying passengers, and includes the driver's seat, a cabin or any other place in or on the vehicle or vessel from which it is driven or otherwise controlled or operated.

public transport area means:

- (a) a place (including but not limited to a bus stop, station, terminal or airport) that is used or is intended to be used by passengers boarding or alighting from public transport and at which shelter is provided for those passengers; or
- (b) an area within a prescribed distance (if any) of a taxi zone within the meaning of the *Australian Road Rules*, whether shelter is provided in that area for passengers boarding or alighting from taxis or not.

sell includes:

- (a) to barter or exchange; and
- (b) to offer or expose for sale, barter or exchange; and
- (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (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.

shared accommodation means:

- (a) a residential facility for which an approval is in force under the *Aged Care Act 1997* (Cth) for an approved provider to provide residential care to persons in the facility; or
- (b) a boarding-house within the meaning of Part IV of the *Public Health (Shops, Eating Houses, Boarding-houses, Hostels and Hotels) Regulations*.

smoke-free area has the meaning in section 7.

smoking means releasing smoke or fumes from an ignited tobacco product, and includes holding or controlling an ignited tobacco product.

specialist tobacconist means a person who conducts a business selling tobacco products by retail where:

- (a) 85% or more of the average annual gross turnover of the business is derived from the sale of tobacco products; and
- (b) the business is conducted separately from, and not in conjunction with, any other business.

tobacco product has the meaning in section 6.

tobacco retail licence means a tobacco retail licence referred to in section 28.

trade mark means a registered trade mark within the meaning of the *Trade Marks Act 1995* of the Commonwealth.

value-added marketing, in relation to a tobacco product, means a marketing device, plan or scheme (other than price discounting):

- (a) that depends on the purchase of a tobacco product; or
- (b) that provides or is intended to provide a material incentive to purchase a tobacco product, being a material incentive that is in addition to the acquisition of the tobacco product; or
- (c) a purpose of which is to obtain information that is intended or is likely to be used to market tobacco products.

vending machine means a machine that is used or is intended to be used to dispense tobacco products directly to customers.

voluntarily declared area, see section 7A.

5A Food service area

- (1) An area is a food service area during any period food is prepared or served in the area.
- (2) However, an area is not a food service area during a period if the only food prepared or served in the area during the period is a prescribed class of food.
- (3) In this section:

pre-packaged food means food that is sealed in the container or package in which the manufacturer of the food intended the food to be sold by retail.

preparing or serving, of food, does not include:

- (a) selling pre-packaged food; or
- (b) eating food (including food prepared or served elsewhere).

service, of food, includes self-service.

5B Outdoor eating and drinking area

- (1) An area is an *outdoor eating and drinking area* if:
- (a) the area is used or intended to be used by members of the public but is not an enclosed public area; and
 - (b) persons in the area may consume food or drink provided from an on-site food service; and
 - (c) either of the following apply:
 - (i) a person would reasonably expect the area is used or intended to be used for consuming food or drink provided from the on-site food service;
 - (ii) the area is bounded by a fence.

Example for paragraph (c)(i)

An area on a footpath outside a cafe or takeaway food store where there are tables and chairs.

Examples for paragraph (c)(ii)

1 A fenced sporting ground at which persons may consume food or drink purchased at the ground.

2 An area of a park, temporarily fenced off, in which persons may consume food or drink purchased at a cultural festival conducted in the park.

- (2) An area may be an outdoor eating and drinking area whether or not the area constitutes liquor licensed premises.
- (3) However, an area is an outdoor eating and drinking area only while:
- (a) food or drink is being provided, or is available to be provided, from an on-site food service; or
 - (b) food or drink provided from an on-site food service is being consumed in the area.
- (4) Food or drink is taken to be provided from an on-site food service whether it is:
- (a) served to a person in the outdoor eating or drinking area by or for a person conducting the on-site food service; or
 - (b) taken by a person from the on-site food service for consumption in the outdoor eating or drinking area.

- (5) If an area that would otherwise be within an outdoor eating or drinking area is clearly designated as an area where no food or drink may be consumed, the area is taken not to be part of the outdoor eating or drinking area.
- (6) Despite subsections (1) to (5), each of the following is not an outdoor eating and drinking area:
- (a) premises used, or intended to be used, as a place of residence or mainly as a place of residence;
 - (b) the playing field of a sporting facility while it is being used for sporting activities;
 - (c) an area constituting car parks, boat ramps or driveways (for example, the drive-through area of a bottle shop);
 - (d) an area that is larger than 5 acres and is separated (by a barrier or other means) from any on-site food service;
 - (e) an area exempt under section 5C.
- (7) In this section:

on-site food service, in relation to an area, means a business, or an enterprise of a commercial, charitable or community nature, that provides food or drink in, or adjacent to, the area.

provide, food or drink, includes give or sell the food or drink.

5C Exemption for major event

- (1) The Minister may, by *Gazette* notice, declare all or part of an area in which a major public event will be held not to be an outdoor eating and drinking area during all or part of the event.
- (2) The Minister may make the declaration only if:
- (a) the person responsible for organising the major public event (the ***event organiser***) applied to the Minister for the declaration at least 3 months, or a shorter period approved by the Minister, before the event; and
 - (b) the Minister is satisfied reasonable measures will be put in place to minimise the exposure of members of the public and anyone acting for the event organiser to environmental tobacco smoke.
- (3) An exemption may specify any conditions the Minister considers reasonable in the circumstances.

- (4) If a declaration is made under subsection (1) in relation to a major public event, the event organiser must comply with the conditions specified in the exemption.

Maximum penalty: If the offender is an individual – 20 penalty units.

 If the offender is a body corporate – 100 penalty units.

6 Tobacco products

- (1) A tobacco product is a product, the main ingredient of which is tobacco, that is used or is intended to be used for human consumption by smoking or chewing, and includes tobacco, cigarettes and cigars.
- (2) A tobacco product includes a product, the main ingredient of which is plant matter (other than tobacco) the possession of which is lawful, that is used or is intended to be used for human consumption by smoking.
- (3) A tobacco product does not include:
- (a) nicotine or a product containing nicotine, but only to the extent that the *Poisons and Dangerous Drugs Act* applies in relation to the nicotine or product containing nicotine; or
 - (b) matter that is normally used or is normally intended to be used for burning as incense.

Part 2 Smoke-free areas

7 Smoke-free area

- (1) Subject to subsection (2), a smoke-free area is any of the following:
- (a) an enclosed public area;
 - (b) an enclosed workplace area;
 - (c) an outdoor public venue;
 - (d) a food service area;
 - (e) public transport;
 - (f) a public transport area;
 - (g) shared accommodation;

- (h) an educational facility;
 - (i) an entrance area;
 - (j) an air-conditioning inlet area;
 - (k) a voluntarily declared area;
 - (l) an outdoor eating and drinking area.
- (2) A smoke-free area does not include:
- (a) domestic premises (other than domestic premises to which paragraph (d) of the definition of *educational facility* in section 5 applies); or
 - (b) an exempt area.

7A Voluntarily declared area

- (1) The owner or occupier of premises that include an outdoor area that is used or intended to be used by members of the public may declare all or part of that area (a *voluntarily declared area*) to be a smoke-free area.
- (2) The declaration has effect only if the owner or occupier of the premises prepares and keeps in the premises for inspection by members of the public and authorised officers a document (the *smoke-free area plan*) that:
- (a) identifies the smoke-free area; and
 - (b) if a commercial operation is conducted in, on or from the premises – describes the training or instruction that is given to staff to ensure this Act and the smoke-free area plan are complied with; and
 - (c) provides for signage that clearly identifies where smoking is or is not allowed in or on the premises (including signage required under section 8).

8 Signs to be displayed

- (1) An occupier of a smoke-free area must display the prescribed sign or signs indicating that the area is a smoke-free area.

Maximum penalty: If the offender is an individual – 20 penalty units.

 If the offender is a body corporate –
100 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.
- (3) An occupier does not commit an offence against subsection (1) in relation to a smoke-free area of a class prescribed under subsection (4).
- (4) The Regulations may prescribe a class or classes of smoke-free areas in relation to which subsection (1) does not apply.

9 Smoker commits offence

- (1) A person must not smoke in a smoke-free area.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves:
 - (a) that there were no prescribed signs in place indicating that the area was a smoke-free area; and
 - (b) that there was no other indication given by the occupier of the area that it was a smoke-free area; and
 - (c) that the defendant did not know, and could not reasonably have been expected to know, that the area was a smoke-free area.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant was taking part in a bona fide theatrical performance and did not continue to smoke for longer than was necessary for the purposes of the performance.

10 Occupier commits offence

- (1) If a person smokes in a smoke-free area, the occupier of the smoke-free area commits an offence.

Maximum penalty: If the offender is an individual – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves:
 - (a) that the prescribed sign or signs had been displayed as required by section 8(1); and

- (b) that the defendant and his or her employees and agents did not encourage smoking in the smoke-free area (including but not limited to by not providing ashtrays for the area); and
 - (c) that:
 - (i) the defendant and his or her employees and agents did not know, and could not reasonably have been expected to know, that the person was smoking; or
 - (ii) within a reasonable time of becoming aware that the person was smoking, the defendant or one of his or her employees or agents had asked the person to stop smoking or to move to an area in which smoking is not prohibited under this Act or the Regulations; and
 - (d) if applicable – that the defendant and his or her employees and agents had stopped providing the person smoking with goods and services.
- (3) A person who is asked to stop smoking or to move in accordance with subsection (2)(c), or who is no longer being served in accordance with subsection (2)(d), remains liable to pay for any goods and services that the person has already been provided with, or has already ordered, but has not yet paid for.
- (4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the person smoking was taking part in a bona fide theatrical performance and did not continue to smoke for longer than was necessary for the purposes of the performance.

11 Exempt areas

- (1) Subject to subsection (2), the Regulations may permit the occupier of premises or the occupiers of a class of premises to designate an area within the premises to be an exempt area, subject to the conditions (if any) specified in the Regulations.
- (2) An occupier of premises cannot designate any of the following areas to be an exempt area:
- (a) a dance floor;
 - (b) an indoor food service area;
 - (c) a common access area (including but not limited to a foyer area, a doorway, a passageway, a stairway, a toilet or ablution area, or a changing room);

13 Size of cigarette packets for sale

A person must not sell cigarettes other than in packets containing 20 or more cigarettes.

Maximum penalty: If the offender is an individual – 20 penalty units.

If the offender is a body corporate –
100 penalty units.

14 Weight of loose tobacco for sale

A person must not sell loose tobacco other than in packets containing 25 grams or more of loose tobacco.

Maximum penalty: If the offender is an individual – 20 penalty units.

If the offender is a body corporate –
100 penalty units.

Division 2 Advertising and sponsorship restrictions

15 Tobacco advertising in public places prohibited

- (1) A person must not display, publish or broadcast an advertisement for a tobacco product so that it can be seen or heard in or from a public place.

Maximum penalty: If the offender is an individual – 200 penalty units.

If the offender is a body corporate –
1 000 penalty units.

- (2) A person does not commit an offence against subsection (1) if:
- (a) the display, publication or broadcast is for a bona fide purpose other than the promotion of the tobacco product; or
 - (b) the advertisement is in, on or part of the packaging of the tobacco product, but only if the advertisement does not extend beyond the borders of the packaging and was not added to the packaging after the tobacco product was sold by wholesale; or
 - (c) the advertisement is, or is in a class of advertisements, prescribed by the Regulations.

16 Brand marketing and value-added marketing prohibited

A person must not engage in brand marketing or value-added marketing in relation to a tobacco product.

Maximum penalty: If the offender is an individual – 200 penalty units.

If the offender is a body corporate –
1 000 penalty units.

17 Price discounting not to be advertised

A person who engages in price discounting to market tobacco products must not advertise the price discounting of a tobacco product.

Maximum penalty: If the offender is an individual – 20 penalty units.

If the offender is a body corporate –
100 penalty units.

18 Restrictions on price boards

A person who sells tobacco products by retail must not display the availability or prices of tobacco products other than on a price board that complies with the prescribed requirements (if any).

Maximum penalty: If the offender is an individual – 20 penalty units.

If the offender is a body corporate –
100 penalty units.

19 Sponsorship of events restricted

(1) A person must not sponsor a public event if, included as part of the sponsorship arrangement, is the display, publication or broadcast of:

(a) the brand, brand name or trade mark of a tobacco product; or

(b) the name of a manufacturer of a tobacco product; or

(c) the name of a distributor, wholesaler or retailer who is engaged solely or predominantly in the distribution, wholesaling or retailing of tobacco products; or

- (d) a name that a reasonable person would associate with a tobacco product.

Maximum penalty: If the offender is an individual – 200 penalty units.

If the offender is a body corporate –
1 000 penalty units.

- (2) In subsection (1):

public event means an event that members of the public may attend, whether on payment of an entry fee or not.

Division 3 Display restrictions

20 Display of tobacco products

- (1) The occupier of premises in, on or from which tobacco products are sold must ensure the products cannot be seen from inside or outside the premises.

Maximum penalty: If the offender is an individual – 20 penalty units.

If the offender is a body corporate –
100 penalty units.

- (2) Subsection (1) does not apply in relation to:
- (a) the display of tobacco products which can only be seen by the occupier of the premises or someone acting for the occupier of the premises; or
 - (b) the display of tobacco products:
 - (i) in or on a vending machine; or
 - (ii) the display of particular tobacco products to a particular person for a sale of the products; or
 - (iii) the display of particular tobacco products by a particular person following the sale of the products to the person; or
 - (iv) the display of tobacco products in circumstances prescribed by regulation.

- (3) An offence against subsection (1) is a regulatory offence.

- (b) a prescribed notice indicating that selling tobacco products to children is prohibited.

Maximum penalty: If the offender is an individual – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

Division 4 Restrictions on points of sale

24 Occupier commits offence

- (1) If the points of sale for tobacco products in or on premises contravene this Division, the occupier of the premises commits an offence.

Maximum penalty: If the offender is an individual – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

25 Number of points of sale

The number of points of sale of tobacco products in or on premises is not to exceed:

- (a) for premises that are not liquor licensed premises – one point of sale; or
- (b) for liquor licensed premises – one over the counter point of sale, and one vending machine, in each bar area of the premises.

26 Vending machines restricted to certain areas of liquor licensed premises

- (1) A vending machine can only be located in or on liquor licensed premises.

- (2) A vending machine can only be located in an area of liquor licensed premises if, by virtue of a declaration under section 106 of the *Liquor Act* or the conditions of the licence under the *Liquor Act*.
- (a) children are prohibited from entering or remaining in the area; or
- (b) a child may only enter or remain in the area if the child is in the company of the child's parent, guardian or spouse.
- (3) A vending machine that is in an area of liquor licensed premises to which subsection (2)(b) applies can only be located in the line of sight of a bar service area that forms part of the area to which that subsection applies.

27 Signs to be displayed at points of sale other than vending machines

At a point of sale other than a vending machine, the following are to be displayed:

- (a) a prescribed health warning;
- (b) a prescribed notice indicating that selling tobacco products to children is prohibited.

Part 4 Licensing of tobacco retailers

28 Offence to sell by retail without licence

A person must not sell a tobacco product by retail unless:

- (a) the person sells the tobacco product in, on or from premises specified in a tobacco retail licence; and
- (b) the person is:
- (i) the licensed tobacco retailer in respect of the premises referred to in paragraph (a); or
- (ii) an employee or agent of that licensed tobacco retailer; or
- (iii) any other person authorised under the tobacco retail licence referred to in paragraph (a) to sell tobacco products by retail in, on or from the premises referred to in paragraph (a); and

- (c) the sale is otherwise authorised under the tobacco retail licence referred to in paragraph (a).

Maximum penalty: If the offender is an individual – 500 penalty units.

If the offender is a body corporate –
2 500 penalty units.

29 Grant or refusal of licence

- (1) An application for the grant of a tobacco retail licence:
 - (a) is to be in a form approved by the Director; and
 - (b) is to specify the premises to which the application relates; and
 - (c) is to be accompanied by the information and fee prescribed by regulation.
- (2) On receipt of an application for the grant a tobacco retail licence in accordance with subsection (1), the Director may:
 - (a) grant the licence subject to the conditions (if any) specified in the licence; or
 - (b) refuse to grant the licence.
- (3) The Director may only grant a tobacco retail licence if:
 - (a) the Director is satisfied:
 - (i) if the application relates to liquor licensed premises – that the applicant is the liquor licensee of those premises; and
 - (ii) if the application relates to any other kind of premises – that the applicant is an adult; and
 - (iii) as to the prescribed criteria (if any); and
 - (b) the Director is not aware of any other reason to refuse to grant the licence.
- (4) In considering an application for the grant of a tobacco retail licence, the Director may require the applicant to provide further specified information with a specified period.
- (5) If a tobacco retail licence is granted to a specialist tobacconist, that is to be indicated on the licence.

- (6) For the purposes of subsection (3)(a)(iii), the Regulations may prescribe different criteria for different classes of application.

29A Renewal of licence

- (1) The holder of a tobacco retailer licence may apply for the renewal of the licence at any time while it is in force.
- (2) Section 29 applies to an application under subsection (1) in the same way as it applies to an application for the grant of a tobacco retailer licence.

30 Conditions of licence

The holder of a tobacco retail licence that is in force must comply with the conditions of the licence.

Maximum penalty: If the offender is an individual – 100 penalty units.

 If the offender is a body corporate – 500 penalty units.

31 Effect of licence

A tobacco retail licence authorises the sale of tobacco products by retail in, on or from the premises specified in the licence, subject to the conditions (if any) specified in the licence.

32 When a licence is in force

- (1) A tobacco retail licence ceases to be in force when the first of the following happens:
- (a) the expiration of 12 months from and including the date of the grant or renewal of the licence;
 - (b) the licence is surrendered or cancelled under this Part;
 - (c) if the licensed tobacco retailer is an individual – he or she dies;
 - (d) if the licensed tobacco retailer is a body corporate – it is dissolved.
- (2) To avoid doubt, a tobacco retail licence that is suspended remains in force while suspended unless it ceases to be in force under subsection (1).

33 Licence to be displayed

A licensed tobacco retailer must display a copy of his or her tobacco retail licence at each point of sale for tobacco products in or on the premises so that the copy of the licence can be seen clearly by customers at that point of sale.

Maximum penalty: If the offender is an individual – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

34 Surrender of licence

A licensed tobacco retailer may surrender his or her licence by returning it to the Director.

35 Variation of conditions

- (1) An application for the variation of the conditions of a tobacco retail licence may be made by the licensed tobacco retailer and is to be:
 - (a) in a form approved by the Director; and
 - (b) accompanied by the prescribed information (if any).
- (2) On receipt of an application for the variation of the conditions of a tobacco retail licence in accordance with subsection (1), the Director may:
 - (a) vary the conditions of the licence in the way proposed in the application or in a different way from that proposed in the application; or
 - (b) refuse to vary those conditions.
- (3) The Director may, on his or her own initiative, vary the conditions of a tobacco retail licence.
- (4) The variation of the conditions of a tobacco retail licence:
 - (a) may include the omission or substitution of some or all of those conditions or the addition of further conditions; and
 - (b) may include the substitution of other premises for the premises specified in the licence.
- (5) In considering an application for the variation of the conditions of a tobacco retail licence, the Director may require the applicant to provide further specified information with a specified period.

36 Transfer of licence

- (1) An application for approval to transfer a tobacco retail licence may be made by the proposed transferee and is to be:
 - (a) in a form approved by the Director; and
 - (b) accompanied by the prescribed information (if any).
- (2) On receipt of an application for approval to transfer a tobacco retail licence in accordance with subsection (1), the Director may:
 - (a) approve the transfer of the licence subject to the conditions (if any) specified in the approval; or
 - (b) refuse to approve the transfer of the licence.
- (3) The conditions on which the transfer of a tobacco retail licence is approved:
 - (a) may be the same as or different from the conditions on which the transferor held the licence; and
 - (b) may include the substitution of other premises for the premises specified in the licence.
- (4) The Director must not approve the transfer of a tobacco retail licence if, had the application been for the grant of the licence instead, the Director would have refused to grant the licence.
- (5) In considering an application for approval to transfer a tobacco retail licence, the Director may require the proposed transferee to provide further specified information within a specified period.
- (6) The transfer of a tobacco retail licence takes effect on the date on which the Director approves the transfer or, if the approval specifies a later date, the later date.

37 Director to be notified of change in circumstances

A licensed tobacco retailer must notify the Director of a change in his or her circumstances that is relevant to his or her tobacco retail licence within 14 days of becoming aware of the change.

Maximum penalty: If the offender is an individual – 20 penalty units.

 If the offender is a body corporate – 100 penalty units.

38 Cancellation or suspension

- (1) The Director may cancel or suspend a tobacco retail licence if:
 - (a) a retailer under the licence is found guilty of an offence against section 42 or 43; or
 - (b) a retailer under the licence is found guilty of 2 or more offences against this Act or the Regulations (other than offences against section 42 or 43); or
 - (c) 2 or more retailers under the licence are each found guilty of an offence against this Act or the Regulations (other than offences against section 42 or 43); or
 - (d) a retailer under the licence is issued with 2 or more infringement notices within a 12-month period; or
 - (e) 2 or more retailers under the licence are each issued with an infringement notice within a 12-month period; or
 - (f) the licensed tobacco retailer provided the Director with information in support of his or her application for the grant of, or approval to transfer, his or her tobacco retail licence that was false or misleading in a material particular.
- (2) The suspension of a tobacco retail licence has, during the period of suspension, the same effect as the cancellation of the licence.
- (3) For the purposes of subsection (1), a person is a retailer under a tobacco retail licence if the person is:
 - (a) the licensed tobacco retailer; or
 - (b) an employee or agent of that licensed tobacco retailer; or
 - (c) any other person authorised under the tobacco retail licence to sell tobacco products by retail.

39 Notice to show cause

- (1) If the Director proposes to make:
 - (a) a decision under section 29 granting a tobacco retail licence subject to a specified condition or refusing to grant a tobacco retail licence; or
 - (aa) a decision under section 29A renewing a tobacco licence subject to a specified condition or refusing to renew a tobacco licence; or

- (b) a decision under section 35 varying the conditions of a tobacco retail licence (either in a different way from that proposed in the application or on the Director's own initiative) or refusing to vary the conditions of a tobacco retail licence; or
- (c) a decision under section 36 approving the transfer of a tobacco retail licence subject to a specified condition or refusing to approve the transfer of a tobacco retail licence; or
- (d) a decision under section 38 cancelling or suspending a tobacco retail licence,

the Director must invite the applicant for the grant of the licence, the licensed tobacco retailer or the proposed transferee (as the case may be) to provide, within a specified period, written reasons as to why the Director should not make that decision or should make a different decision.

- (2) Before making a decision of a kind referred to in subsection (1)(a), (b), (c) or (d), the Director must consider any reasons provided by the applicant, licensed tobacco retailer or proposed transferee in accordance with subsection (1).

40 Notice of and reasons for decision

- (1) Within the prescribed period after making a decision under this Part, the Director must give the applicant for the grant of the licence, the licensed tobacco retailer or both the proposed transferee and transferor (as the case may be):
 - (a) written notice of the decision; and
 - (b) if the decision is of a kind referred to in section 39(1)(a), (b), (c) or (d) – written reasons for the decision.
- (2) In subsection (1):

prescribed period means:

- (a) the period (if any) prescribed by the Regulations; or
- (b) if no period is prescribed for the purposes of paragraph (a) – 28 days.

41 Review of Director's decisions

A decision of the Director under this Part is reviewable by the Northern Territory Licensing Commission under Part 4 of the *Northern Territory Licensing Commission Act*.

43 Supply to, or purchase for, children prohibited

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

Maximum penalty: If the offender is an individual – 200 penalty units.

If the offender is a body corporate –
1 000 penalty units.

- (2) A person must not purchase a tobacco product for use by a child.

Maximum penalty: If the offender is an individual – 200 penalty units.

If the offender is a body corporate –
1 000 penalty units.

44 Defence

It is a defence to a prosecution for an offence against section 42(1) (including an offence committed by virtue of section 42(3), (4) or (5)) or an offence against section 43 if the defendant proves:

- (a) that, immediately before the sale, supply, offer or purchase of the tobacco product, the person who sold, supplied or offered to supply, or who purchased, the tobacco product was shown photographic identification indicating that the sale, supply or offer was being made to, or the purchase was for, an adult; and
- (b) that, at that time, a reasonable person would have had no reason to suspect that the photographic identification was false or related to another person.

45 False identification

A person who uses:

- (a) false photographic identification; or
- (b) another person's photographic identification,

to obtain or attempt to obtain a tobacco product commits an offence.

Maximum penalty: 20 penalty units.

- (2) A person who held an appointment as an authorised officer must, in the absence of reasonable excuse, return his or her identity card to the Chief Health Officer as soon as practicable after ceasing to hold that appointment.

Maximum penalty: 20 penalty units.

49 Functions

The functions of an authorised officer include the administration and enforcement of this Act and the Regulations.

50 Entry and search powers

- (1) An authorised officer may, at all reasonable times, enter premises where the authorised officer believes tobacco products are being packaged, sold, supplied, or displayed for the purpose of sale or supply.
- (2) An authorised officer who enters premises under subsection (1) may do any of the following:
- (a) inspect the premises and any vending machines found in or on the premises;
 - (b) examine any tobacco products, and any packages that are used or are intended to be used for packaging tobacco products, found in or on the premises;
 - (c) take measurements of the premises or any thing found in or on the premises;
 - (d) take photographs, films or audio, video or other recordings of the premises;
 - (e) if the authorised officer believes on reasonable grounds that an offence against this Act or the Regulations has been or is being committed – seize goods or other things or samples of goods or other things for use as evidence in a prosecution for the offence;
 - (f) take copies of or extracts from documents found in or on the premises;
 - (g) require a person in or on the premises to:
 - (i) answer questions or provide information; or
 - (ii) make available documents kept on the premises; or

- (iii) provide reasonable assistance to the authorised officer in relation to the exercise of his or her powers under this section.
- (3) After seizing goods, things or samples under subsection (2)(e), an authorised officer must give a receipt for the goods, things or samples to:
 - (a) the occupier or a person apparently in charge of the premises;
or
 - (b) the person who the authorised officer reasonably believes was in possession of the goods, things or samples.
- (4) The following provisions apply in relation to goods, things or samples seized under subsection (2)(e):
 - (a) if a prosecution for an offence against this Act or the Regulations is instituted within 12 months after the seizure and the defendant is found guilty, the court may order that:
 - (i) the goods, things or samples be forfeited to the Territory;
or
 - (ii) the defendant pay to the Territory an amount equal to the market value of the goods, things or samples when seized, being the value determined by the court;
 - (b) if:
 - (i) a prosecution for an offence against this Act or the Regulations is not instituted within 12 months after the seizure; or
 - (ii) on such a prosecution being instituted within that period, the defendant is not found guilty or the court does not make an order under paragraph (a),the authorised officer must release the goods, things or samples to the owner or the person who had possession, custody or control over the goods, things or samples immediately before they were seized.

51 Power to require identification

- (1) Where an authorised officer believes on reasonable grounds that a person whose name, address or age is not known to the officer may be able to assist the officer in inquiries in connection with an offence against this Act or the Regulations that has been, may have been, is being or may be committed, the officer may require the

person:

- (a) to state his or her name, address and age; and
 - (b) to provide, without delay, proof of age.
- (2) When requiring a person to make a statement or provide proof of age under subsection (1), the authorised officer must warn the person that it is an offence to fail to comply with the requirement.

52 Obstruction etc. of authorised officers

A person must not, without reasonable excuse:

- (a) obstruct or hinder an authorised officer in the exercise of his or her powers under this Act or the Regulations; or
- (b) refuse or fail to comply with a requirement of an authorised officer under this Act or the Regulations.

Maximum penalty: If the offender is an individual – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

53 Wholesalers to provide information about retailers

- (1) The Director may require a wholesaler of tobacco products to provide the Director with information sufficient to identify the retailers of tobacco products to whom the wholesaler sells or supplies tobacco products and to locate the business premises of those retailers.
- (2) A wholesaler must comply with a requirement under subsection (1).

Maximum penalty: If the offender is an individual – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

54 False or misleading statements

A person must not, in purported compliance with a requirement under this Act or the Regulations or for any other reason, provide to the Director or an authorised officer:

- (a) information that is, to the person's knowledge, false or misleading in a material particular; or

- (b) a document containing information that is, to the person's knowledge, false or misleading in a material particular.

Maximum penalty: If the offender is an individual – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

55 Delegation by Chief Health Officer or Director

- (1) The Chief Health Officer or the Director may delegate in writing to a person any of his or her powers or functions under this Act or the Regulations.
- (2) If the Chief Health Officer delegates to the Director a power or function under section 47 in relation to the appointment of authorised officers, the Director may delegate in writing to a person that power or function.

56 Legal immunity

- (1) This section applies to a person who is or has been:
- (a) the Chief Health Officer; or
 - (b) the Director; or
 - (c) an authorised officer; or
 - (d) a person required to assist an authorised officer under section 50(2)(g)(iii).
- (2) No civil or criminal proceedings lie against a person to whom this section applies in relation to an act done or omission made in good faith in the exercise or purported exercise of a power or the performance or purported performance of a function under this Act or the Regulations.
- (3) Subsection (2) does not affect any liability that the Territory would, but for that subsection, have for an act or omission.
- (4) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of an authorised officer who is or has been a member of the Police Force.

57 Confidentiality

- (1) This section applies to a person who is or has been:
- (a) the Chief Health Officer; or

- (b) the Director; or
 - (c) an authorised officer.
- (2) A person to whom this section applies must not directly or indirectly:
- (a) make a record of, or communicate to another person, information acquired by him or her because of involvement in the administration or enforcement of this Act or the Regulations; or
 - (b) produce to a person, or permit a person to have access to, a document furnished to him or her for the purposes of this Act or the Regulations,
- unless it is:
- (c) necessary for the purposes of this Act or the Regulations; or
 - (d) authorised or required by this Act or the Regulations or another law of the Territory.

Maximum penalty: 100 penalty units.

Part 7 Miscellaneous

57A Acquisition on just terms

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

58 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) The Regulations may:
- (a) exempt specialist tobacconists from compliance with one or more of the provisions in Part 3, Division 2, 3 or 4; or
 - (b) modify one or more of the provisions in Part 3, Division 2, 3 or 4 in their application to specialist tobacconists; or
 - (c) require specialist tobacconists to comply with one or more of the provisions of the Regulations instead of one or more of the provisions in Part 3, Division 2, 3 or 4.
- (3) For the purpose of prescribing a sign, health warning or notice, the matters that the Regulations may provide for include but are not limited to all or any of the following:
- (a) the words, symbols or images that comprise the sign, health warning or notice;
 - (b) the place where those words, symbols or images are to be marked;
 - (c) the size, type face and colour in which those words, symbols or images are to be marked and the colour of their background;
 - (d) the manner of marking, whether by printing or otherwise, the sign, health warning or notice;
 - (e) the manner, form and method of displaying the sign, health warning or notice;
 - (f) the area or size of the sign, health warning or notice.
- (4) The Regulations may provide for any of the following matters:
- (a) the application, adoption or incorporation (wholly or in part and with or without modification) an instrument or other document as in force at a particular time or from time to time;
 - (b) penalties for offences against the Regulations not exceeding 100 penalty units for an individual and 500 penalty units for a body corporate;
 - (c) offences against the Regulations to be regulatory offences;
 - (d) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations;

- (e) the service of an infringement notice in respect of payment of a prescribed amount on a person alleged to have committed an offence referred to in paragraph (d) and the particulars to be included in that notice.
- (5) The Regulations may make different provision for different matters or different classes of matters.

Part 8 Transitional matters for Tobacco Control Legislation Amendment Act 2010

59 Outdoor eating and drinking areas – exemption for transitional period

- (1) The purpose of this section is to allow the licensee of liquor licensed premises to apply for and be granted an exemption relating to provisions about outdoor eating and drinking areas contained in the *Tobacco Control Legislation Amendment Act 2010* before the commencement of those provisions.

Note for subsection (1)

The Tobacco Control Legislation Amendment Act 2010, Part 3, Division 1 includes amendments to this Act that relate to outdoor eating and drinking areas. These amendments commence on 2 January 2011.

- (2) The licensee of liquor licensed premises may apply to the Minister for an exemption relating to all or specified parts of a proposed outdoor eating and drinking area in or on the premises from the smoke-free requirements during a specified period within the transitional period.
- (3) The application must:
 - (a) be made before the start of the transitional period; and
 - (b) state both of the following:
 - (i) the licensee intends to designate an outdoor smoking area for the premises;
 - (ii) work for establishing the area cannot reasonably be completed before 2 January 2011 or a later specified date that is before the end of the transitional period.
- (4) The Minister may grant the exemption only if satisfied about the matters mentioned in subsection (3)(b).
- (5) The exemption may include any conditions the Minister considers reasonable in the circumstances.

(6) In this section:

outdoor eating and drinking area means an outdoor eating and drinking area as defined in section 5B of this Act after section 16 of the *Tobacco Control Legislation Amendment Act 2010* commences.

outdoor smoking area means an outdoor smoking area as defined in regulation 3 of the Regulations after section 30 of the *Tobacco Control Legislation Amendment Act 2010* commences.

smoke-free requirements means the requirements that apply to a smoke-free area under this Act.

transitional period means the period from and including 2 January 2011 to the end of 30 September 2011.

60 Savings – existing tobacco retail licences

- (1) Section 32 applies to a tobacco retail licence in force immediately before 2 January 2011 with the following changes:
 - (a) section 32(1)(a) does not apply to the licence; and
 - (b) the licence continues in force until and including 31 December 2011 unless it ceases to be in force at an earlier time under section 32(1)(b), (c) or (d).
- (2) Subsection (1) applies to the licence despite any provision to the contrary stated in the licence.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Tobacco Control Act 2002 (Act No. 68 2002)***

Assent date	11 December 2002
Commenced	pt 3, divs 2, 3 (other than s 23), 4 (other than s 27) and s 28: 31 May 2003; rem: 1 January 2003 (s 2)

Tobacco Control Act Amendment Act 2003 (Act No. 24, 2003)

Assent date	26 June 2003
Commenced	31 May 2003 (s 2)

Commercial Passenger (Road) Transport (Consequential Amendments) Act 2003 (Act No. 41, 2003)

Assent date	7 July 2003
Commenced	1 August 2003 (<i>Gaz</i> G30, 30 July 2003, p 2)

Police Administration Amendment (Powers and Liability) Act 2005 (Act No. 11, 2005)

Assent date	17 March 2005
Commenced	20 April 2005 (<i>Gaz</i> G16, 20 April 2005, p 5)

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date	14 December 2005
Commenced	14 December 2005

Tobacco Control Legislation Amendment Act 2010 (Act No. 25, 2010)

Assent date	30 June 2010
Commenced	pt 3: 2 January 2011; rem: 30 June 2010 (s 2)

Private Hospitals and Private Nursing Homes Amendment Act 2011 (Act No. 16, 2011)

Assent date	20 May 2011
Commenced	20 May 2011

3 LIST OF AMENDMENTS

s 3	amd No. 25, 2010, s 28
s 5	amd No. 24, 2003, s 4; No. 41, 2003, s 5; No. 25, 2010, ss 4 and 15; No. 16, 2011, s 19
s 5A	ins No. 24, 2003, s 5
ss 5B – 5C	ins No. 2010, s 16
s 7	amd No. 25, 2010, ss 5 and 17
s 7A	ins No. 25, 2010, s 6
ss 8 – 10	amd No. 25, 2010, s 28
s 11	amd No. 24, 2003, s 6; No. 25, 2010, s 18
ss 12 – 17	amd No. 25, 2010, s 28
s 18	amd No. 25, 2010, s 19
s 19	amd No. 25, 2010, s 28
s 20	sub No. 25, 2010, s 20
s 21	amd No. 24, 2003, s 7 rep No. 25, 2010, s 20
s 22	amd No. 25, 2010, s 21
ss 23 – 24	amd No. 25, 2010, s 28
s 28	amd No. 25, 2010, s 28
s 29	amd No. 25, 2010, s 22
s 29A	ins No. , 2010, s 23
s 30	sub No. 25, 2010, s 7
s 32	sub No. 25, 2010, s 24
s 33	amd No. 25, 2010, s 28
ss 37 – 38	amd No. 25, 2010, s 28
s 39	amd No. 25, 2010, s 25
ss 42 – 43	amd No. 25, 2010, s 28
s 45	amd No. 25, 2010, s 8
s 46	amd No. 25, 2010, s 28
s 48	amd No. 25, 2010, s 9
s 50	amd No. 25, 2010, s 28
ss 52 – 54	amd No. 25, 2010, s 28
s 56	amd No. 11, 2005, s 27; No. 44, 2005, s 35; No. 25, 2010, s 28
s 57	amd No. 25, 2010, s 10
s 57A	ins No. 25, 2010, s 26
s 58	amd No. 25, 2010, s 28
pt 8 hdg	sub No. 25, 2010, s 11
s 59	sub No. 25, 2010, s 11
s 60	rep No. 25, 2010, s 11 ins No. 25, 2010, s 27