

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO CONTROL LEGISLATION AMENDMENT ACT 2010

Act No. 25 of 2010

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 25 of 2010

An Act to amend the *Tobacco Control Act* and *Tobacco Control Regulations*

[Assented to 30 June 2010]
[Second reading 6 May 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Tobacco Control Legislation Amendment Act 2010*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on the day on which the Administrator's assent to this Act is declared.
- (2) Part 3 commences on 2 January 2011.

Part 2 Amendments commencing on assent

Division 1 Amendment of Tobacco Control Act

3 Act amended

This Division amends the *Tobacco Control Act*.

4 Amendment of section 5 (Definitions)

(1) Section 5

insert (in alphabetical order)

voluntarily declared area, see section 7A.

(2) Section 5, definitions ***brand marketing***, paragraphs (a) and (b), ***educational facility***, paragraphs (a) (b) and (c), ***photographic identification*** paragraph (a) and ***value-added marketing*** paragraph (a), at the end

insert

or

(3) Section 5, definition ***sell***, paragraphs (a) and (b), at the end

insert

and

5 Amendment of section 7 (Smoke-free area)

(1) Section 7(1)(j)

omit

area.

substitute

area;

(2) After section 7(1)(j)

insert

(k) a voluntarily declared area.

6 New section 7A

After section 7

insert

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).

7 Repeal and substitution of section 30

Section 30

repeal, substitute

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.

8 Amendment of section 45 (False identification)

Section 45, penalty provision

omit, substitute

Maximum penalty: 20 penalty units.

9 Amendment of section 48 (Identity cards)

Section 48(2), penalty provision

omit, substitute

Maximum penalty: 20 penalty units.

10 Amendment of section 57 (Confidentiality)

(1) Section 57(1)(a), at the end

insert

or

(2) Section 57(2), penalty provision

omit, substitute

Maximum penalty: 100 penalty units.

11 Repeal and substitution of Part 8

Part 8

repeal, substitute

**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 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.

Division 2 Amendment of Tobacco Control Regulations

12 Regulations amended

This Division amends the *Tobacco Control Regulations*.

13 Amendment of regulation 8A (Minister may declare high roller room within casino)

(1) Regulation 8A

omit

The Minister

substitute

(1) The Minister

(2) Regulation 8A(1)(a)

omit

in which gaming is conducted only on gaming tables and

substitute

for conducting gaming that

(3) After regulation 8A(1)

insert

(2) The declaration is subject to the conditions specified in the *Gazette* notice.

(3) Without limiting the conditions that may be specified under subregulation (2), the *Gazette* notice must specify that:

(a) the ratio of operating gaming tables located in the room to operating gaming machines located in the room must be as specified in the notice; and

(b) the total number of gaming machines located in the room must not exceed the number specified in the notice.

- (4) The casino licensee must comply with the conditions of the declaration.

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

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

- (5) For this regulation:
- (a) a gaming table is operating only if there is a croupier attending the table; and
- (b) a gaming machine is not operating if:
- (i) there is a sign on the machine indicating that it is not operational; or
- (ii) the machine is not able to be used (for example, because it is out of order or is not switched on).

Part 3 Amendments commencing on 2 January 2011

Division 1 Amendment of Tobacco Control Act

14 Act amended

This Division amends the *Tobacco Control Act*.

15 Amendment of section 5 (Definitions)

Section 5

insert (in alphabetical order)

outdoor eating and drinking area, see section 5B.

16 New sections 5B and 5C

After section 5A

insert

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.

17 Amendment of section 7 (Smoke-free area)

- (1) Section 7(1)(k)

omit

area.

substitute

area;

- (2) After section 7(1)(k)

insert

(l) an outdoor eating and drinking area.

18 Amendment of section 11 (Exempt area)

- (1) Section 11(4), penalty provision

omit

Penalty:

substitute

Maximum penalty:

- (2) Section 11(4), penalty provision

omit

a natural person

substitute

an individual

(3) After section 11(4)

insert

(4A) The regulations may prescribe the following matters:

- (a) the issue by the Director, on application by the licensee of liquor licensed premises, a certificate certifying compliance with specified conditions prescribed under this section for an exempt area that is in or on the premises;
- (b) the fee payable by the licensee for the application;
- (c) any other matters relating to the certificate.

19 Amendment of section 18 (Restrictions on price boards and shelf ticketing)

(1) Section 18, heading

omit

and shelf ticketing

(2) Section 18

omit

or shelf ticket

(3) Section 18, penalty provision

omit

Penalty:

substitute

Maximum penalty:

(4) Section 18, penalty provision

omit

a natural person

substitute

an individual

20 Repeal and substitution of sections 20 and 21

Sections 20 and 21

repeal, substitute

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.

21 Amendment of section 22 (Conditions of vending machine displays)

- (1) Section 22(2)

omit

(2) After section 22(3)

insert

(4) The licensee of liquor licensed premises commits an offence if subsection (1) is contravened in relation to a vending machine in a bar area of the premises.

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

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

(5) An offence against subsection (4) is a regulatory offence.

22 Amendment of section 29 (Grant or refusal of licence)

(1) Section 29(1)(c)

omit

the prescribed information (if any)

substitute

the information and fee prescribed by regulation

(2) Section 29(1)(a) and (3)(a)(i), at the end

insert

and

23 New section 29A

After section 29

insert

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.

24 Repeal and substitution of section 32

Section 32

repeal, substitute

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).

25 Amendment of section 39 (Notice to show cause)

- (1) After section 39(1)(a)

insert

(aa) a decision under section 29A renewing a tobacco licence subject to a specified condition or refusing to renew a tobacco licence; or

- (2) After section 39(1)(a) and (b), at the end

insert

or

26 New section 57A

Before section 58, in Part 7

insert

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.

27 New section 60

After section 59

insert

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.

28 Further amendments of Act

The Schedule has effect.

Division 2 Amendment of Tobacco Control Regulations

29 Regulations amended

This Division amends the *Tobacco Control Regulations*.

30 Amendment of regulation 3 (Definitions)

Regulation 3

insert (in alphabetical order)

outdoor smoking areas, see regulation 15B(1).

31 Amendment of regulation 11 (Outdoor public venues)

(1) Regulation 11

omit

all the words from "For the purposes" to "outdoor public venue"

substitute

(1) For the purposes of section 11(1) of the Act, the occupier of an outdoor public venue (other than a venue where there is an on-site food service)

(2) After regulation 11(1)

insert

(2) In this regulation:

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

32 Repeal of regulation 12

Regulation 12

repeal

33 **New regulations 15B and 15C**

After regulation 15A

insert

15B **Liquor licensed premises – outdoor smoking area**

- (1) For the purposes of section 11(1) of the Act, the licensee of liquor licensed premises may designate one or more parts of the outdoor eating and drinking areas in or on the premises to be exempt areas (***outdoor smoking areas***).
- (2) The outdoor smoking areas must comprise not more than 50% of the total outdoor eating and drinking areas in or on the liquor licensed premises.
- (3) In addition, the outdoor smoking areas have effect as exempt areas only if all of the following conditions are satisfied:
 - (a) each outdoor smoking area must be clearly delineated from other areas in or on the liquor licensed premises and marked by signage indicating it is an outdoor smoking area;
 - (b) food (other than pre-packaged food as defined in section 5A(3) of the Act) cannot be consumed in the outdoor smoking areas;
 - (c) each outdoor smoking area must have buffers along its perimeter that is adjacent to other parts of the outdoor eating and drinking areas in or on the premises;
 - (d) except as provided by subregulation (5), entertainment (for example, live performances, gaming machines and pool tables) must not be provided in the outdoor smoking areas;
 - (e) the licensee of the premises must ensure the outdoor smoke-free areas in or on the premises are at least of equal amenity to the outdoor smoking areas in or on the premises;
 - (f) the licensee of the premises must maintain a smoking management plan that is up to date and available for inspection by authorised officers and patrons.
- (4) For subregulation (3)(c), ***buffer*** means:
 - (a) a screen that is impervious to smoke and at least 2.1 metres high; or

- (b) an area satisfying all of the following requirements:
 - (i) the area is at least 2 metres wide;
 - (ii) patrons are not permitted to eat, drink or smoke in the area;
 - (iii) at least half of the area must be taken from the area that would otherwise form part of the outdoor smoking area.

Examples for subregulation (4)(a)

1 A thick screening hedge that is 2.1 metres high.

2 An artificial screen, or a wall, that is 2.1 metres high.

Example for subregulation (4)(b)

A garden bed, or an area of potted plants, that is 2 metres wide.

- (5) Subregulation (3)(d) does not prevent the provision of the following forms of entertainment:
 - (a) visual equipment (for example, television and projected screens);
 - (b) audio equipment (for example, speakers and juke boxes), other than equipment that is being controlled by a disc jockey.
- (6) For subregulation (3)(f), a **smoking management plan**:
 - (a) is a document prepared by the licensee of the liquor licensed premises stating how smoking is managed at the liquor licensed premises with the aim of reducing the harm from smoking in or on the premises; and
 - (b) must:
 - (i) identify the outdoor eating and drinking areas; and
 - (ii) identify the outdoor smoking areas; and
 - (iii) identify the buffers for the outdoor smoking areas; and
 - (iv) state how the licensee will minimise the exposure of staff and patrons to environmental tobacco smoke; and
 - (v) describe the training or instruction that is given to staff to ensure the Act and the plan are complied with; and
 - (vi) provide for signage that clearly identifies where smoking is or is not allowed.

(7) In this regulation:

outdoor smoke-free area means any part of an outdoor eating and drinking area that is not an exempt area.

15C Certificate for outdoor smoking area

- (1) The licensee of liquor licensed premises who has designated, or proposes to designate, an area to be an outdoor smoking area under regulation 15B may apply to the Director for the issue of a certificate for all or part of the outdoor smoking area.
- (2) The certificate is a document signed by the Director, stating the following matters:
 - (a) for an existing outdoor smoking area – the Director is satisfied the area meets the requirements in regulation 15B(2) to (4), to the extent to which they relate to specified buildings and installations existing in or on the premises (the **relevant requirements**) when the certificate is issued;
 - (b) for a proposed outdoor smoking area – the Director is satisfied the area will meet the requirements in regulation 15B(2) to (4), to the extent to which they relate to specified proposed buildings and installations in or on the premises (the **relevant requirements**) when they are built or installed as proposed;
 - (c) for the purposes of deciding whether the relevant requirements are complied with for paragraph (a) or (b) – the Director is satisfied specified areas comprise all the outdoor eating and drinking areas in or on the premises.
- (3) The application for the certificate must be:
 - (a) in a form approved by the Director; and
 - (b) accompanied by a fee of an amount equal to 50 revenue units.
- (4) The Director may issue the certificate only if the Director is satisfied about the things mentioned in subregulation (2)(a) to (c) as stated in the certificate.
- (5) In deciding the application, the Director may:
 - (a) require a report to be obtained by the licensee in relation to compliance with the relevant requirements (for example, a report about buildings and installations to which the requirements relate); and

- (b) require the licensee to give the report and any other information relating to the application to the Director; and
 - (c) take into account the report, information and other matters as the Director considers appropriate.
- (6) Without limiting subregulation (5), the Director may require a report prepared by an architect, a building certifier or another person approved by the Director to be obtained for subregulation (5)(a).
- (7) In a proceeding for an offence against the Act, the certificate is evidence of the matters stated in the certificate.
- (8) The Director may cancel the certificate if the Director is no longer satisfied about the things mentioned in subregulation (2)(a) to (c) as stated in the certificate.

34 Amendment of Part 4 heading

Part 4, heading

omit

, displays

35 Amendment of regulation 19 (Price boards)

- (1) Regulation 19(2)

omit

and then only if there are no shelf tickets for tobacco products at the point of sale

- (2) Regulation 19(4) and (5)

omit, substitute

- (4) A price board must not:
- (a) include a lighting effect that has the effect, or is intended to have the effect, of attracting attention to the board; and
 - (b) without limiting paragraph (a) – be illuminated by any of the following if it will have the effect of causing the board to appear brighter than its surroundings:
 - (i) interior lighting;
 - (ii) exterior lighting attached to the board;

- (iii) a spotlight or other illuminating device trained directly or indirectly on the board; and
- (c) include a device that causes movement, or the appearance of movement, of all or any part of the board; and
- (d) be positioned so that it faces towards a window or public entrance unless the board is more than 2 metres from the window or public entrance.

36 Repeal of regulations 20, 21 and 21A

Regulations 20, 21 and 21A

repeal

37 Amendment of regulation 25 (Application for grant of licence)

- (1) Regulation 25, heading, after "**grant**"

insert

or renewal

- (2) Regulation 25(1)

omit

all the words from "section" to "grant"

substitute

sections 29(1)(c) and 29A of the Act, an application for the grant or renewal

- (3) Regulation 25(2)

omit, substitute

- (2) For sections 29(1)(c) and 29A of the Act, the fee for an application for the grant or renewal of a tobacco retail licence is an amount equal to 200 revenue units.

Schedule Further amendments of Tobacco Control Act

section 28

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
sections 8(1), 9(1), 10(1), 12(1), (2) and (3), 13, 14, 15(1), 16, 17, 19(1), 23(1), 24(1), 28, 33, 37, 42(1), 43(1) and (2), 46, 52, 53(2) and 54	Penalty	Maximum penalty
sections 3(a), 9(2)(a), 10(2)(a) and (b), 28(a) and 42(4)(a)	;	; and
sections 15(2)(a), 19(1)(a) and (b), 28(b)(i), 38(1)(a) to (d) and (3)(a), 50(2)(g)(i), 56(1)(a) and (b) and 58(2)(a)	;	; or
sections 8(1), 10(1), 12(1), (2) and (3), 13, 14, 15(1), 16, 17, 19(1), 23(1), 24(1), 28, 33, 37, 42(1), 43(1) and (2), 46, 52, 53(2), 54 and 58(4)(b)	a natural person	an individual