

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO CONTROL ACT 2002

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Act No. 68 of 2002

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# **NORTHERN TERRITORY OF AUSTRALIA**

Act No. 68 of 2002

## **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

*[Assented to 11 December 2002]  
[Second reading 16 October 2002]*

**The Legislative Assembly of the Northern Territory enacts as follows:**

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Tobacco Control Act 2002*.

#### **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 –

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- (a) by discouraging people from smoking;
- (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;
- (b) the name of the manufacturer;
- (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;

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"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;

"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;
- (b) a pre-school, including all of the pre-school's buildings and grounds;
- (c) a commercial childcare facility (other than domestic premises used for that purpose), including all of the facility's buildings and grounds;
- (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;

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"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" means an area in which food (other than a prescribed class of food) is prepared or served;

"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 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;
- (b) a passport; or
- (c) a form of photographic identification prescribed by the Regulations;

"premises" includes a building, a vehicle and a vessel;

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"public transport" means a vehicle or vessel (including but not limited to a bus, taxi, private hire car, 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;
- (b) to offer or expose for sale, barter or exchange;
- (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; 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 nursing home within the meaning of the *Private Hospitals and Nursing Homes Act*; 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;



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"specialist tobacconist" means a person who conducts a business that consists solely or predominantly of selling tobacco products by retail;

"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;
- (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.

### **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.

(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.

**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.

Penalty: If the offender is a natural person – 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.

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;
- (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.

Penalty: If the offender is a natural person – 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);
- (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);
- (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

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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) a food service area that is an enclosed public area or an enclosed workplace 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);
- (d) an entrance area;
- (e) an air-conditioning inlet area.

(3) The matters that the Regulations may specify as conditions for the purposes of subsection (1) include but are not limited to the following:

- (a) a requirement that an occupier of an exempt area establish and maintain a smoke-free area of equal amenity to that of the exempt area;

- (b) a requirement that an occupier of an exempt area put in place measures to minimise employees' exposure to environmental tobacco smoke.

(4) If a person smokes in an exempt area in circumstances that contravene a condition specified by the Regulations for the purposes of subsection (1), the occupier of the exempt area commits an offence.

Penalty: If the offender is a natural person – 20 penalty units.

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

(5) This section does not, and a regulation made for the purposes of this section cannot, require an occupier of premises to designate an area within the premises to be an exempt area.

### **PART 3 – PACKAGING, ADVERTISING AND SPONSORSHIP, DISPLAYS, POINTS OF SALE**

#### ***Division 1 – Packaging requirements***

#### **12. Health warnings on packaging**

(1) A person must not sell tobacco products unless they are enclosed in a package that displays a prescribed health warning.

Penalty: If the offender is a natural person – 100 penalty units.

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

(2) A person must not sell tobacco products that are enclosed in 2 or more packages unless each package displays a prescribed health warning.

Penalty: If the offender is a natural person – 100 penalty units.

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

(3) A person must not sell a package containing tobacco products on which –

- (a) the words "non-injurious" or "non-hazardous" appear; or
- (b) words that convey, or tend to convey, an indication that smoking is not a hazard to health appear,

whether the package otherwise complies with this Act and the Regulations or not.

Penalty: If the offender is a natural person – 100 penalty units.

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

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- (4) An offence against this section is a regulatory offence.

### **13. Size of cigarette packets for sale**

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

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 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;
- (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.

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 20 penalty units.

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

**18. Restrictions on price boards and shelf ticketing**

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

Penalty: If the offender is a natural person – 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;
- (b) the name of a manufacturer of a tobacco product;
- (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.

Penalty: If the offender is a natural person – 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. Occupier commits offence**

(1) An occupier of premises commits an offence if a tobacco product is displayed in or on the premises –

- (a) elsewhere than at a point of sale; or
- (b) in contravention of –
  - (i) a condition specified in this Division; or
  - (ii) if the Regulations prescribe a condition in substitution of a condition specified in this Division – the prescribed condition.

Penalty: If the offender is a natural person – 20 penalty units.

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

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

**21. Conditions of displays other than vending machines**

(1) This section applies in relation to displays of tobacco products that are at points of sale other than vending machines.

(2) There is to be only one display at the point of sale (although the display may consist of one or more kinds of tobacco products).

(3) The numbers of packets of cigarettes, cigars (other than cigars sold singly) or other tobacco products that are displayed –

- (a) cannot exceed the prescribed number (if any) of packets of each kind of cigarette, cigar or other tobacco product that is available under each brand name; and
  - (b) cannot exceed the prescribed number (if any) of each size of packet for each kind of cigarette, cigar or other tobacco product that is available under each brand name.
- (4) The numbers of cigars sold singly that are displayed –
- (a) cannot exceed the prescribed number (if any) of each kind of cigar that is available under each brand name;
  - (b) cannot exceed the prescribed number (if any) of each size of cigar that is available under each brand name; and



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(c) cannot exceed in total the prescribed number (if any) of cigars.

(5) Cartons of cigarettes cannot be displayed (although the availability and prices of cartons of cigarettes may be displayed on a price board or shelf ticket that complies with the requirements (if any) prescribed for the purposes of section 18).

(6) The display can only be behind a counter, but cannot form part of or be within or above the counter.

(7) The display cannot be within the prescribed distance (if any) from a display of products designed or marketed for consumption or use by children (including but not limited to displays of confectionery and toys).

(8) The area occupied by the display cannot exceed the prescribed area (if any).

(9) For the purposes of subsection (8), the area occupied by a display of tobacco products includes the following:

(a) the area of any reflective surface or electronic image used to reflect or reproduce the image of a tobacco product –

(i) whether the whole of the reflection or image is of the tobacco product or not; and

(ii) whether the whole of the tobacco product is reflected, or is in the image, or not;

(b) the area of any visual effect (including but not limited to borders, lines or colour coding) that enhances or is intended to enhance the prominence of the display.

(10) A display is not to be illuminated by –

(a) interior lighting;

(b) exterior lighting attached to the display; or

(c) a spotlight or other illuminating device trained directly or indirectly on the display,

that has the effect of causing the display to appear brighter than its surroundings.

(11) The display cannot include a lighting effect that has the effect, or is intended to have the effect, of attracting attention to the display.

(12) The display cannot include a device that causes movement, or the appearance of movement, of all or any part of the display that can be seen in or from a public place.

(13) The display cannot be positioned so that a tobacco product faces towards a window or public entrance unless the display is more than 2 metres from the window or entrance.

(14) For the purposes of this section, the Regulations may prescribe a number, distance or area to be nil.

## **22. Conditions of vending machine displays**

(1) If a vending machine is the sole point of sale of tobacco products in a bar area of liquor licensed premises –

- (a) the numbers of packets of cigarettes, cigars (other than cigars sold singly) or other tobacco products displayed in or on the machine –
  - (i) cannot exceed one packet of each kind of cigarette, cigar or other tobacco product that is available under each brand name; and
  - (ii) cannot exceed one packet of each size of packet for each kind of cigarette, cigar or other tobacco product that is available under each brand name; and
- (b) the total area of tobacco products displayed in or on the machine cannot exceed the prescribed area (if any).

(2) If a vending machine is one of 2 points of sale of tobacco products in a bar area of liquor licensed premises, the machine cannot display (including by advertisement or other depiction) any tobacco products (although the machine may display the availability and price of tobacco products in accordance with the prescribed requirements (if any)).

(3) For the purposes of subsection (1), the Regulations may prescribe an area to be nil.

## **23. Signs to be displayed on vending machines**

(1) The liquor licensee of liquor licensed premises on which a vending machine is located must ensure that both of the following are affixed to, and kept conspicuously displayed on, the front of the machine:

- (a) a prescribed health warning;

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

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 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;
- (b) the person is –
  - (i) the licensed tobacco retailer in respect of the premises referred to in paragraph (a);
  - (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).

Penalty: If the offender is a natural person – 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;
  - (b) is to specify the premises to which the application relates; and
  - (c) is to be accompanied by the prescribed information (if any).

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(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;
  - (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.

### **30. No conditions about level of sales**

A tobacco retail licence cannot be subject to a condition about the value or quantity of tobacco products sold under the licence.

### **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. Duration of licence**

A tobacco retail licence remains in force until –

- (a) it is surrendered or cancelled under this Part;

- (b) if the licensed tobacco retailer is a natural person – the person dies;  
or
- (c) if the licensed tobacco retailer is a body corporate – the body corporate is dissolved.

**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.

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 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;
  - (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);
  - (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);
  - (d) a retailer under the licence is issued with 2 or more infringement notices within a 12-month period;
  - (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;
  - (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;
- (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;
- (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*.

**PART 5 – SALE OR SUPPLY TO CHILDREN**

**42. Sale to children prohibited**

- (1) A person must not sell a tobacco product to a child.

Penalty: If the offender is a natural person – 200 penalty units.

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

- (2) For the purposes of subsection (1), it is irrelevant that the child was purchasing the tobacco product for or on behalf of an adult.

- (3) If an adult employee of a licensed tobacco retailer sells a tobacco product to a child, the licensed tobacco retailer is taken to have committed an offence against subsection (1).

- (4) If a child employee of a licensed tobacco retailer sells a tobacco product to another child –

- (a) the child employee is taken not to have committed an offence against subsection (1);
- (b) the licensed tobacco retailer is taken to have committed an offence against subsection (1); and
- (c) if, at the time of the sale, the child employee was being supervised by an adult employee of the licensed tobacco retailer – the adult employee is taken to have committed an offence against subsection (1).

- (5) If a child obtains a tobacco product from a vending machine –

- (a) the liquor licensee of the liquor licensed premises on which the machine was located is taken to have committed an offence against subsection (1); and
- (b) the employee of the liquor licensee who, at the time the child obtained the tobacco product, was in charge of the bar area in which the vending machine was located is taken to have committed an offence against subsection (1).

(6) A person may be prosecuted and found guilty of an offence against subsection (1), including an offence committed by virtue of subsection (3), (4)(b) or (c) or (5)(a) or (b), even though no other person is prosecuted or found guilty of an offence against subsection (1).

**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.

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 20 penalty units.

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

**46. Sale of children's products resembling tobacco products**

A person must not sell a product designed or marketed for consumption or use by children (including but not limited to confectionery and toys) if it –

- (a) resembles, or is packaged to resemble, a tobacco product; or
- (b) has or is likely to have the effect of encouraging children to smoke (whether it is intended to have that effect or not).

Penalty: If the offender is a natural person – 20 penalty units.

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

**PART 6 – ADMINISTRATION AND ENFORCEMENT**

**47. Authorised officers**

(1) The Chief Health Officer may appoint in writing a person or class of persons to be an authorised officer or authorised officers.

(2) An appointment under subsection (1) authorises an authorised officer –

- (a) to administer and enforce the provisions of this Act or the Regulations specified in the appointment or, if none are specified, to administer and enforce the provisions of this Act and the Regulations generally; and
- (b) to perform the functions and exercise the powers of an authorised officer in relation to the class or classes of premises specified in the appointment or, if none are specified, to perform the functions and exercise the powers of an authorised officer in relation to premises generally.

(3) A member of the Police Force is an authorised officer.

**48. Identity cards**

(1) The Chief Health Officer must issue to an authorised officer (other than a member of the Police Force) an identity card that specifies the name and appointment of the authorised officer and on which there is a recent photograph and the signature of the authorised officer.

(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.

Penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 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;
  - (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.

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(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.

Penalty: If the offender is a natural person – 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).

Penalty: If the offender is a natural person – 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.

Penalty: If the offender is a natural person – 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;

(b) the Director;

(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.

**57. Confidentiality**

(1) This section applies to a person who is or has been –

(a) the Chief Health Officer;

(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.

Penalty: If the offender is a natural person – 100 penalty units.

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

## **PART 7 – MISCELLANEOUS**

### **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;
- (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;

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- (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 a natural person 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 – REPEAL AND TRANSITIONAL**

### **59. Repeal**

The *Tobacco Act 1992* (Act No. 47 of 1992) and the *Tobacco Amendment Act 1993* (Act No. 20 of 1993) are repealed.

### **60. Transitional: section 28**

Section 28 does not apply to a person who applies under section 29 for the grant of a tobacco retail licence before 31 May 2003 until –

- (a) if the Director makes a decision under section 29 granting the licence – the end of the day on which the applicant is notified under section 40 of the Director's decision; or
- (b) if the Director makes a decision under section 29 refusing to grant the licence –

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- (i) the end of the period for making an application under section 28 of the *Northern Territory Licensing Commission Act* for a review of the Director's decision by the Northern Territory Licensing Commission; or
  - (ii) if, during the period referred to in subparagraph (i), the applicant applies for a review of the Director's decision by the Commission – the end of the day on which the applicant is notified under section 29 of the *Northern Territory Licensing Commission* of the Commission's decision on the application for review.
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