

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO CONTROL LEGISLATION AMENDMENT ACT 2014

Act No. 40 of 2014

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 40 of 2014

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

[Assented to 13 November 2014]

[Second reading 26 August 2014]

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 2014*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Tobacco Control Act

3 Act amended

This Part amends the *Tobacco Control Act*.

4 Section 5 amended

(1) Section 5

insert (in alphabetical order)

motor vehicle means a vehicle designed to be self-propelled, including a trailer or caravan when attached to such a vehicle, but excluding the following:

- (a) a vehicle that runs on rails;
- (b) a powered cycle, as defined in section 5(1) of the *Motor Vehicles Act*;
- (c) a campervan or caravan that is parked and set up as a place for living or sleeping;
- (d) a smoke-free area.

(2) Section 5, definition **shared accommodation**, paragraph (b)

omit, insert

- (b) commercial visitor accommodation, as defined in the *Public and Environmental Health Regulations*.

5 Section 5C amended

Section 5C(4), penalty provision

omit, insert

Maximum penalty: 20 penalty units.

6 Section 6A inserted

After section 6, in Part 1

insert

6A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

7 Section 8 amended

- (1) Section 8(1), penalty provision
omit, insert
Maximum penalty: 20 penalty units.
- (2) Section 8(2)
omit
a regulatory offence
insert
an offence of strict liability

8 Section 9 amended

- (1) Section 9(2)(b)
omit
area; and
insert
area.
- (2) Section 9(2)(c)
omit

9 Section 10 amended

- Section 10(1)
omit, insert
- (1) The occupier of premises commits an offence if:
- (a) a person smokes in an area of the premises; and
 - (b) the area is a smoke-free area.
- Maximum penalty: 20 penalty units.
- (1A) Strict liability applies to subsection (1)(a).

10 Section 11 amended

Section 11(4), penalty provision

omit, insert

Maximum penalty: 20 penalty units.

11 Part 2A inserted

After section 11

insert

Part 2A Smoking in motor vehicles with children under 16 prohibited**11A Offence to smoke in motor vehicle with child under 16**

- (1) A person who is 16 years or older commits an offence if:
- (a) the person smokes in a motor vehicle; and
 - (b) the motor vehicle is on a public street or in a public place; and
 - (c) another person is in the motor vehicle; and
 - (d) the other person is under 16 years of age.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) In proceedings for an offence against subsection (1), if it is proved that the other person appeared to be under the 16 years, the person is presumed to be under 16 years in the absence of evidence to the contrary.

Note for subsection (3)

The prosecution has a legal burden to prove that the person appeared to be under 16 years. The defendant has an evidentiary burden in relation to evidence to the contrary.

- (4) In this section:

public place means a place the public is entitled to use or that is open to or used by the public, whether on payment of money or otherwise.

12 Section 12 amended

- (1) Section 12(1), (2) and (3) penalty provision

omit, insert

Maximum penalty: 100 penalty units.

- (2) Section 12(4)

omit

a regulatory offence

insert

an offence of strict liability

13 Section 13 amended

Section 13, penalty provision

omit, insert

Maximum penalty: 20 penalty units.

14 Section 14 amended

Section 14, penalty provision

omit, insert

Maximum penalty: 20 penalty units.

15 Section 15 amended

Section 15(1), penalty provision

omit, insert

Maximum penalty: 200 penalty units.

16 Section 16 amended

Section 16, penalty provision

omit, insert

Maximum penalty: 200 penalty units.

17 Section 17 replaced

Section 17

repeal, insert

17 Price discounting not to be advertised

A person commits an offence if:

- (a) the person engages in price discounting of a product; and
- (b) the product is a tobacco product; and
- (c) the person advertises the price discounting of the product.

Maximum penalty: 20 penalty units.

18 Section 18 amended

Section 18, penalty provision

omit, insert

Maximum penalty: 20 penalty units.

19 Section 19 amended

Section 19(1), penalty provision

omit, insert

Maximum penalty: 200 penalty units.

20 Section 20 amended

- (1) Section 20(1), penalty provision

omit, insert

Maximum penalty: 20 penalty units.

- (2) Section 20(3)

omit

a regulatory offence

insert

an offence of strict liability

21 Section 22 amended

- (1) Section 22(4), penalty provision

omit, insert

Maximum penalty: 20 penalty units.

- (2) Section 22(5)

omit

a regulatory offence

insert

an offence of strict liability

22 Section 23 amended

- (1) Section 23(1), penalty provision

omit, insert

Maximum penalty: 100 penalty units.

- (2) section 23(2)

omit

a regulatory offence

insert

an offence of strict liability

23 Sections 24 to 27 replaced

Sections 24 to 27

repeal, insert

25 Point of sale restrictions

- (1) The occupier of premises commits an offence if:

(a) the premises are not liquor licensed premises; and

(b) there is more than one point of sale for tobacco products in or on the premises.

Maximum penalty: 100 penalty units.

- (2) The occupier of premises commits an offence if:
- (a) the premises are liquor licensed premises; and
 - (b) in or on the premises there is:
 - (i) more than one over the counter point of sale for tobacco products for each bar area of the premises; or
 - (ii) more than one vending machine for tobacco products for each bar area of the premises.

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

26 Vending machine restrictions

- (1) The occupier of premises commits an offence if:
- (a) the premises are not liquor licensed premises; and
 - (b) there is a vending machine for tobacco products in or on the premises.

Maximum penalty: 100 penalty units.

- (2) The occupier of premises commits an offence if:
- (a) the premises are liquor licensed premises; and
 - (b) there is a vending machine for tobacco products in an area of the premises; and
 - (c) the area is neither of the following:
 - (i) a children free area;
 - (ii) a supervised children area.

Maximum penalty: 100 penalty units.

- (3) The occupier of premises commits an offence if:
- (a) the premises are liquor licensed premises; and
 - (b) there is a vending machine for tobacco products in an area of the premises; and
 - (c) the area is a supervised children area; and

- (d) the vending machine is located out of the line of sight of a bar service area in the area of the premises.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

- (5) In this section:

children free area means an area a child must not enter or remain in under the *Liquor Act*.

supervised children area means an area which, under the *Liquor Act*, a child must not enter or remain in unless the child is in the company of an adult who is the child's parent, guardian or spouse.

Note for section 26

A child may be prohibited from entering or remaining in a liquor licensed area in a declaration made under section 106 of the Liquor Act or under conditions of a licence issued under the Liquor Act.

27 Signs to be displayed at point of sale other than vending machine

- (1) The occupier of premises commits an offence if:
- (a) there is a point of sale for tobacco products, other than a vending machine, in or on the premises; and
 - (b) neither of the following are displayed at the point of sale:
 - (i) a prescribed health warning;
 - (ii) a prescribed notice indicating that selling tobacco products to children is prohibited.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

24 Section 28 amended

Section 28, penalty provision

omit, insert

Maximum penalty: 500 penalty units.

25 Section 30 amended

Section 30, penalty provision

omit, insert

Maximum penalty: 100 penalty units.

26 Section 33 amended

Section 33, penalty provision

omit, insert

Maximum penalty: 20 penalty units.

27 Section 37 amended

Section 37, penalty provision

omit, insert

Maximum penalty: 20 penalty units.

28 Section 42 amended

Section 42(1), penalty provision

omit, insert

Maximum penalty: 200 penalty units.

29 Section 43 amended

(1) Section 43(1)

omit

or has reason to believe

insert

, or ought reasonably to know,

(2) Section 43(1) and (2), penalty provision

omit, insert

Maximum penalty: 200 penalty units.

30 Section 45 replaced

Section 45

repeal, insert

45 False identification

A person commits an offence if:

- (a) the person uses photographic identification; and
- (b) the photographic identification is false or belongs to another person; and
- (c) the person does so with intent to obtain a tobacco product.

Maximum penalty: 20 penalty units.

31 Section 46 amended

Section 46, penalty provision

omit, insert

Maximum penalty: 20 penalty units.

32 Section 48 amended

After section 48(2)

insert

- (3) An offence against subsection (2) is an offence of strict liability.

33 Section 50A inserted

After section 50

insert

50A Power to stop motor vehicle and smoking in motor vehicle

If an authorised officer suspects on reasonable grounds that a person in a motor vehicle is committing or has committed an offence against section 11A, the authorised officer may do either or both of the following:

- (a) require the driver of the motor vehicle to stop the motor vehicle;

(b) require the person to stop smoking.

34 Section 52 amended

(1) Section 52(b)

omit

refuse or

(2) Section 52, penalty provision

omit, insert

Maximum penalty: 100 penalty units.

35 Section 53 amended

Section 53(2), penalty provision

omit, insert

Maximum penalty: 100 penalty units.

36 Section 53A inserted

After section 53

insert

53A Wholesalers to provide information about quantity of tobacco products supplied

(1) The Chief Health Officer may request a wholesaler to provide the Chief Health Officer with information about the quantity of tobacco products sold or supplied by the wholesaler to retailers of tobacco products.

(2) A wholesaler must comply with a request made under subsection (1).

Maximum penalty: 100 penalty units.

37 Section 54 replaced

Section 54

repeal, insert

54 Misleading information

- (1) A person commits an offence if:
- (a) the person gives information to another person; and
 - (b) the other person is a relevant officer; and
 - (c) the person knows the information is misleading; and
 - (d) the person knows the relevant officer is acting in an official capacity.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if:
- (a) the person gives a document to another person; and
 - (b) the other person is a relevant officer; and
 - (c) the person knows the document contains misleading information; and
 - (d) the person knows the relevant officer is acting in an official capacity.

Maximum penalty: 100 penalty units.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) Subsection (2) does not apply if the person, when giving the document:
- (a) draws the misleading aspect of the document to the relevant officer's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the relevant officer the information necessary to remedy the misleading aspect of the document.

(5) In this section:

acting in an official capacity, in relation to a relevant officer, means the relevant officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

relevant officer means the Director, the Chief Health Officer or an authorised officer.

38 Section 57 replaced

Section 57

repeal, insert

57 Confidentiality of information

(1) A person commits an offence if:

- (a) the person obtains information in the course of performing functions connected with the administration of this Act; and
- (b) the person engages in conduct that results in the disclosure of the information.

Maximum penalty: 100 penalty units.

(2) Subsection (1) does not apply if:

- (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
- (b) the information is otherwise available to the public.

Note for subsection (2)

In addition to the circumstances mentioned in subsection (2), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

39 Part 9 inserted

After section 60

insert

Part 9 Transitional matters for Tobacco Control Legislation Amendment Act 2014**61 Offences – before and after commencement**

- (1) The offence provisions, as amended by the *Tobacco Control Legislation Amendment Act 2014*, apply only in relation to offences committed after the commencement of that Act (**commencement**).
- (2) The offence provisions, as in force before commencement, continue to apply in relation to offences committed before commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before commencement, the offence is taken to have been committed before commencement.
- (4) In this section:

offence provisions means the provisions of this Act that relate to offences (including in relation to criminal responsibility, defences and penalties).

Part 3 Amendment of Tobacco Control Regulations**40 Regulations amended**

This Part amends the *Tobacco Control Regulations*.

41 Regulation 8A amended

Regulation 8A(4), penalty provision

omit, insert

Maximum penalty: 100 penalty units.

Note for subregulation (4)

The transitional provision in section 61 of the Act applies in relation to this offence.

42 Regulation 22 repealed

Regulation 22

*repeal***43 Schedule amended**

(1) Schedule, item for section 24(1)

omit

(2) Schedule

insert (in numerical order)

Section 11A(1) Offence to smoke in car with child under 16	2 penalty units
Section 25(1) Point of sale restrictions	0.8 penalty unit
Section 25(2) Point of sale restrictions	0.8 penalty unit
Section 26(1) Vending machine restrictions	0.8 penalty unit
Section 26(2) Vending machine restrictions	0.8 penalty unit
Section 26(3) Vending machine restrictions	0.8 penalty unit
Section 27(1) Signs to be displayed at point of sale other than vending machine	0.8 penalty unit

Part 4 Expiry of Act**44 Expiry of Act**

This Act expires on the day after it commences.