

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO ACT 1992

No. 47 of 1992

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NORTHERN TERRITORY OF AUSTRALIA

No. 47 of 1992

AN ACT

to restrict the sale of tobacco products,
and for related purposes

[Assented to 7 September 1992]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. **SHORT TITLE**

This Act may be cited as the *Tobacco Act 1992*.

2. **COMMENCEMENT**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. **INTERPRETATION**

(1) In this Act, unless the contrary intention appears -

"authorised officer" means a person appointed under section 4 to be an authorised officer;

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

"Chief Medical Officer" means the Chief Medical Officer appointed under section 5 of the *Public Health Act*;

"child" means a person who has not attained the age of 18 years;

"health warning" means a prescribed health warning;

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"package", in relation to a tobacco product, includes-

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

"premises" includes a building, vehicle or boat;

"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;

"tobacco product" means tobacco, cigarettes, cigars and all products the main ingredient of which is tobacco and which are prepared for human consumption or use, but does not include nicotine or a product containing nicotine so far as the *Poisons and Dangerous Drugs Act* applies to or in relation to nicotine or to the product containing nicotine;

"trade mark" means a registered trade mark within the meaning of the *Trade Marks Act 1955* of the Commonwealth;

"vending machine" means a machine, device or contrivance that is constructed to contain tobacco products which may be obtained from it by an operation that involves the insertion in the machine of a banknote, coin, token or similar object.

(2) A reference in this Act to the carrying on of the business of selling tobacco products includes a reference to -

- (a) the selling of tobacco products only, whether or not by a vending machine, or in conjunction with other merchandise; or

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- (b) the carrying on of the business whether or not in conjunction with another business.

4. AUTHORISED OFFICERS

(1) The Chief Medical Officer may, by notice in writing, appoint a person to be an authorised officer for the purposes of this Act.

(2) The Chief Medical Officer shall cause to be issued to each authorised officer a certificate of appointment and the authorised officer shall produce the certificate on request by a person in respect of whom the authorised officer has exercised or is about to exercise his or her powers under this Act.

5. DUTIES AND POWERS OF AUTHORISED OFFICERS

(1) The duties of authorised officers are to ensure that this Act is being observed.

(2) An authorised officer may, at all reasonable times, enter premises where the officer believes that tobacco products are being packaged, sold or supplied for the purposes of -

- (a) examining tobacco products and packages used or intended for packaging tobacco products; and
- (b) examining vending machines.

(3) Where an authorised officer believes that an offence against this Act has been or is being committed, the authorised officer may take possession of goods or samples of goods for use as evidence in a prosecution for the offence.

6. PACKAGING OF CIGARETTES

(1) A person shall not sell cigarettes by retail unless they are enclosed in a package that displays a health warning in the size and manner prescribed and placed as prescribed in relation to the prescribed space on the package.

Penalty: \$5,000.

(2) A person shall not sell cigarettes by retail that are enclosed in 2 or more packages unless each package displays a health warning referred to in subsection (1).

Penalty: \$5,000.

(3) A person shall not sell a package containing cigarettes on which the words -

- (a) "non-injurious" or "non-hazardous" appear; or

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- (b) words that convey, or tend to convey, an indication that smoking is not a hazard to health appear,

whether or not the package is otherwise marked in accordance with this Act.

Penalty: \$5,000.

7. VENDING MACHINES TO HAVE HEALTH WARNING AND PRESCRIBED NOTICE AFFIXED

The owner of a vending machine and the occupier of the premises where the vending machine is installed shall ensure that -

- (a) a health warning; and
- (b) a prescribed notice,

are affixed to, and kept conspicuously displayed on, the front of the machine.

Penalty: \$5,000.

8. SALE OF TOBACCO PRODUCTS TO CHILDREN PROHIBITED

(1) The occupier of premises where the business of selling tobacco products is being carried on shall display a prescribed notice in a manner and position that is likely to attract the attention of his or her customers.

Penalty: \$5,000.

(2) A person shall not sell, or cause or permit to be sold, a tobacco product to a child.

Penalty: \$10,000.

(3) The occupier of premises on which a vending machine is installed shall not permit a child to obtain a tobacco product from the machine.

Penalty: \$10,000.

(4) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant proves that he or she -

- (a) had reasonable cause to believe that the person purchasing or obtaining the tobacco product was not a child; or
- (b) had taken all reasonable precautions to ensure that the tobacco product was not sold or supplied to the child.

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9. SUPPLY OF TOBACCO PRODUCTS TO CHILDREN PROHIBITED

(1) A person shall 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: \$10,000.

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

Penalty: \$10,000.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves that he or she -

- (a) had reasonable cause to believe that the person to whom the tobacco product was supplied was not a child; or
- (b) had taken all reasonable precautions to ensure that the tobacco product was not supplied to a child.

10. REGULATORY OFFENCES

An offence against section 6 or 7 is a regulatory offence.

11. 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) Without limiting the generality of subsection (1), the Regulations may prescribe -

- (a) the words or symbols that comprise health warnings or notices;
- (b) the place where words or symbols are to be marked;
- (c) the size, type face and colour in which words or symbols, and the colour of their background, are to be marked;
- (d) the manner of marking, whether by printing or otherwise, a health warning or notice;

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- (e) the manner, form and method of displaying health warnings and notices;
- (f) the area or size of a health warning or notice; and
- (g) a penalty not exceeding a fine of \$10,000 for an offence against the Regulations.

12. REPEAL

The Acts specified in the Schedule are repealed.

SCHEDULE

ACTS REPEALED

Act	No.	Year
<i>The Children's Protection Amendment Act, 1904 of South Australia in its application to the Territory</i>	875	1904
<i>Cigarette Containers (Labelling) Ordinance 1972</i>	68	1972
<i>Cigarette Containers (Labelling) Amendment Act 1986</i>	7	1986
