

Serial 118
Tobacco
Mr Manzie

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO BILL 1991

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

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

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 1991*.

2. COMMENCEMENT

(1) Sections 7 and 10 shall come into operation on 1 January 1993.

(2) The remaining provisions of this Act shall come into operation on 1 May 1992.

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 16 years;

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"health warning", in relation to a tobacco product, means a prescribed health warning;

"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 advertisement" means writing or a still or moving picture, sign, symbol, light or other visible device, object or sign, or an audible message, and includes a combination of them, designed -

- (a) to promote the purchase or use of a tobacco product; or
- (b) to give publicity to a brand name;

"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;

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"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
- (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 an 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;
- (b) inspecting tobacco advertisements; and
- (c) 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
- (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 prescribed health warning notice; 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 or of persons using a vending machine on the premises.

Penalty: \$5,000.

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(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.

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. TOBACCO ADVERTISEMENTS

(1) A tobacco advertisement may contain a brand name or trade mark or both, and may contain a representation of the product being advertised.

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(2) A person shall not display, or cause to be displayed, a tobacco advertisement -

- (a) unless it contains a health warning;
- (b) that contains or depicts anything other than a health warning, the brand name, trademark or a representation of the product being advertised or any of them unless the advertisement relates to a sporting, racing, arts or cultural event; or
- (c) in which the area of the health warning is less than the prescribed area.

Penalty: \$10,000.

(3) If an authorised officer believes that a person has contravened subsection (2), the authorised officer shall give to the person written notification requiring the person to remove or obscure the advertisement in a specified manner within 28 days after the notification is given, and the person shall comply with the notification.

(4) Subject to subsection (7), proceedings against a person for an offence against subsection (2) shall not be commenced -

- (a) unless notification has been given to the person under subsection (3);
- (b) until after 28 days after the notification was given to the person; or
- (c) if the person has removed or obscured the tobacco advertisement in accordance with the notification before the expiration of the period of 28 days.

(5) A court may, where a person is convicted of an offence against subsection (2), in addition to imposing a penalty, order that the person remove or obscure the advertisement within the period specified in the order.

(6) Where a person fails to remove or obscure a tobacco advertisement in accordance with an order under subsection (5), an authorised officer may arrange for its removal or obscuring and the reasonable cost of doing so is a debt due and payable by the person to the Territory.

(7) Where a person referred to in subsection (2) commits a second or subsequent offence, an authorised officer is not required to give a notification under subsection (3), and subsection (4) does not apply.

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11. REGULATORY OFFENCES

An offence against section 6, 7 or 10 is a regulatory offence.

12. 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;

(b) the manner of marking, whether by printing or otherwise, a health warning on packages and packaging of tobacco products;

(c) the size, type face or colour in which words or symbols are to be marked;

(d) the place where words or symbols are to be marked on packages or packaging of tobacco products;

(e) the manner and form of notices or signs, and the method of displaying notices or signs, required by this Act; and

(f) a penalty not exceeding a fine of \$10,000 for an offence against the Regulations.

13. REPEAL

The Acts specified in the Schedule are repealed.

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SCHEDULE

ACTS REPEALED

Section 13

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