

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO CONTROL ACT

As in force at 1 July 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2016

TOBACCO CONTROL ACT

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

Part 1 Preliminary

1 Short title

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

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:

- (a) by discouraging people from smoking; and
- (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.

affected person, see section 41A.

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; or
- (b) the name of the manufacturer; or
- (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.

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.

child means a person who is under 18 years of age.

commercial passenger vehicle has the same meaning as in the *Commercial Passenger (Road) Transport Act*.

Director-General, see section 3 of the *Licensing (Director-General) Act*.

educational facility means:

- (a) a school, including all of the school's buildings and grounds; or

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

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 has the meaning in section 5A.

indoor food service area means a food service area that is part of an enclosed public area or part of an enclosed workplace area.

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.

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.

outdoor eating and drinking area, see section 5B.

outdoor food service area means a food service area that is not an enclosed public area or an enclosed workplace area.

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

premises includes a building, a vehicle and a vessel.

public transport means a vehicle or vessel (including but not limited to a commercial passenger vehicle, 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.

reviewable decision, see section 41.

sell includes:

- (a) to barter or exchange; and
- (b) to offer or expose for sale, barter or exchange; and
- (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 residential facility for which an approval is in force under the *Aged Care Act 1997* (Cth) for an approved provider to provide residential care to persons in the facility; or
- (b) commercial visitor accommodation, as defined in the *Public and Environmental Health 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.

specialist tobacconist means a person who conducts a business selling tobacco products by retail where:

- (a) 85% or more of the average annual gross turnover of the business is derived from the sale of tobacco products; and
- (b) the business is conducted separately from, and not in conjunction with, any other business.

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; or
- (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.

voluntarily declared area, see section 7A.

5A Food service area

- (1) An area is a food service area during any period food is prepared or served in the area.
- (2) However, an area is not a food service area during a period if the only food prepared or served in the area during the period is a prescribed class of food.
- (3) In this section:

pre-packaged food means food that is sealed in the container or package in which the manufacturer of the food intended the food to be sold by retail.

preparing or serving, of food, does not include:

- (a) selling pre-packaged food; or
- (b) eating food (including food prepared or served elsewhere).

service, of food, includes self-service.

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: 20 penalty units.

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 *Medicines, Poisons and Therapeutic Goods 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.

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.

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;
- (k) a voluntarily declared area;
- (l) an outdoor eating and drinking 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.

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).

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.

Maximum penalty: 20 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (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.

Maximum 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; and

- (b) that there was no other indication given by the occupier of the area that it 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) 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).

- (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); and
 - (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); and
 - (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 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) an indoor food service 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 that is not part of an outdoor food service 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.
- (3A) For the purposes of subsection (3)(a), a smoke-free area of equal amenity is to be additional to any smoke-free areas specified in subsection (2).

- (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.

Maximum penalty: 20 penalty units.

- (4A) The regulations may prescribe the following matters:
- (a) the issue by the Director-General, 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.
- (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 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.

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.

Maximum penalty: 100 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.

Maximum penalty: 100 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.

Maximum penalty: 100 penalty units.

(4) An offence against this section is an offence of strict liability.

13 Size of cigarette packets for sale

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

Maximum penalty: 20 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.

Maximum penalty: 20 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.

Maximum penalty: 200 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; or
 - (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.

Maximum penalty: 200 penalty units.

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 Restrictions on price boards

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

Maximum penalty: 20 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; or
- (b) the name of a manufacturer of a tobacco product; or
- (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.

Maximum penalty: 200 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 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: 20 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 an offence of strict liability.

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).

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

(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: 20 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

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;
 - (b) 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.

Division 4 Restrictions on points of sale

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.

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; and
- (b) the person is:
 - (i) the licensed tobacco retailer in respect of the premises referred to in paragraph (a); or
 - (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).

Maximum penalty: 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-General; and
 - (b) is to specify:
 - (i) the premises to which the application relates; and
 - (ii) a licence period of 1 year, 3 years or 5 years; and
 - (c) is to be accompanied by the information and fee prescribed by regulation.
- (2) On receipt of an application for the grant of a tobacco retail licence in accordance with subsection (1), the Director-General may:
 - (a) grant the licence for the licence period specified in the application, subject to the conditions (if any) specified in the licence; or
 - (b) refuse to grant the licence.
- (3) The Director-General may only grant a tobacco retail licence if:
 - (a) the Director-General is satisfied:
 - (i) if the application relates to liquor licensed premises – that the applicant is the liquor licensee of those premises; and
 - (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-General 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-General may require the applicant to provide further specified information within 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.

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.

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: 100 penalty units.

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 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 end of the licence period;
 - (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).

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.

Maximum penalty: 20 penalty units.

34 Surrender of licence

A licensed tobacco retailer may surrender his or her licence by returning it to the Director-General.

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-General; 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-General 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-General 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-General may require the applicant to provide further specified information within 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-General; 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-General 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-General must not approve the transfer of a tobacco retail licence if, had the application been for the grant of the licence instead, the Director-General would have refused to grant the licence.
- (5) In considering an application for approval to transfer a tobacco retail licence, the Director-General 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-General approves the transfer or, if the approval specifies a later date, the later date.

36A Licence not personal property

For section 8(1)(k) of the *Personal Property Securities Act 2009* (Cth), a tobacco retail licence is not personal property for that Act.

Note for section 36A

A law of the Commonwealth, a State or a Territory may declare a right, licence or authority granted by or under that law not to be personal property for the Personal Property Securities Act 2009 (Cth).

37 Director-General to be notified of change in circumstances

A licensed tobacco retailer must notify the Director-General 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.

Maximum penalty: 20 penalty units.

38 Cancellation or suspension

- (1) The Director-General 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; or
 - (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); or
 - (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); or
 - (d) a retailer under the licence is issued with 2 or more infringement notices within a 12-month period; or
 - (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-General 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; or
 - (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-General 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; or

- (aa) a decision under section 29A renewing a tobacco licence subject to a specified condition or refusing to renew a tobacco licence; or
- (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-General's own initiative) or refusing to vary the conditions of a tobacco retail licence; or
- (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-General 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-General 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-General 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-General 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.

Part 4A Review of decisions

41 Meaning of *reviewable decision*

A *reviewable decision* is:

- (a) a decision specified in the Schedule, unless the decision was made by a delegate of the Director-General; or
- (b) a decision made on the review, under Part 3 of the *Licensing (Director-General) Act*, of a decision that:
 - (i) is specified in the Schedule; and
 - (ii) was made by a delegate of the Director-General.

Note for section 41

A decision made under this Act by a delegate of the Director-General is not a reviewable decision but may be a delegate decision under the Licensing (Director-General) Act. Part 3 of that Act sets out procedures for applying for a review of a delegate decision.

41A Meaning of *affected person*

- (1) A person is an *affected person* for a reviewable decision mentioned in section 41(a) if any of the following apply:
 - (a) for a decision that relates to disciplinary action relating to a licence – the person is the licensee;
 - (b) for a decision that was made in relation to an application – the person is the applicant;
 - (c) the person made a submission, complaint or objection (however described) during the process that resulted in the decision being made.
- (2) A person is an *affected person* for a reviewable decision mentioned in section 41(b) if the person was an affected person under the *Licensing (Director-General) Act* for the decision that was reviewed under Part 3 of that Act.

41B Jurisdiction of Civil and Administrative Tribunal

- (1) An affected person for a reviewable decision may apply to the Civil and Administrative Tribunal for a review of the decision.
- (2) For a reviewable decision that was made under the *Licensing (Director-General) Act*, that Act and this Act are together taken to be the relevant Act for the *Northern Territory Civil and Administrative Tribunal Act*.

41C Delegate decisions

The regulations may declare that a decision made under this Act by a delegate of the Director-General, other than a decision specified in the Schedule, is not a delegate decision for the *Licensing (Director-General) 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.
Maximum penalty: 200 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); and
 - (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 ought reasonably to know, will supply the product to a child.

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 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 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.

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).

Maximum penalty: 20 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.

Maximum penalty: 20 penalty units.

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

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; or

- (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.
- (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.

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.

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) fail to comply with a requirement of an authorised officer under this Act or the Regulations.

Maximum penalty: 100 penalty units.

53 Wholesalers to provide information about retailers

- (1) The Director-General may require a wholesaler of tobacco products to provide the Director-General 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).

Maximum penalty: 100 penalty units.

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.

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-General, the Chief Health Officer or an authorised officer.

55 Delegation by Chief Health Officer or Director-General

- (1) The Chief Health Officer or the Director-General 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-General a power or function under section 47 in relation to the appointment of authorised officers, the Director-General 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; or
 - (b) the Director-General; or
 - (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.
- (4) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of an authorised officer who is or has been a member of the Police Force.

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).

Part 7 Miscellaneous**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.

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; or
 - (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;
 - (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 an individual 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 **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.

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.

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 10 **Transitional matters for Licensing (Director-General) Act 2014**

Division 1 **Definitions**

62 **Definitions**

In this Part:

2014 Acts means the *Licensing (Director-General) Act 2014* and 2014 Amending Act.

2014 Amending Act means the *Licensing (Repeals and Consequential Amendments) Act 2014*.

commencement means the commencement of section 22 of the *Licensing (Director-General) Act 2014*.

Commission means the Commission as defined in section 3 of the NTLC Act.

NTLC Act means the *Northern Territory Licensing Commission Act* as in force immediately before the commencement.

NTLC Director means the Director as defined in section 3 of the NTLC Act.

old legislation means the NTLC Act and this Act, as in force immediately before the commencement.

Division 2 **Applications**

63 **Application to NTLC Director – pending decision**

- (1) This section applies if, before the commencement:
 - (a) an application had been made under this Act for a decision to be made by the NTLC Director; but
 - (b) the NTLC Director had not made a decision on the application.
- (2) The application:
 - (a) is taken to be an application made on the commencement for the decision to be made by the Director-General; and

- (b) must be dealt with and determined in accordance with this Act as amended by the 2014 Amending Act.

Note for section 63

The Director-General's decision on the application will be a decision made after the commencement and may therefore be a reviewable decision or a decision to which Part 3 of the Licensing (Director-General) Act applies.

Division 3 Review of decisions

64 New review regime applies to post-commencement decisions

Part 4A applies only in relation to decisions made after the commencement.

65 Review of pre-commencement decision – application not yet made

- (1) This section applies if, before the commencement:
 - (a) a decision had been made under this Act and the period for applying for a review of the decision under Part 4 of the NTLC Act, as then in force, had not expired; but
 - (b) an application for a review of the decision had not been made.
- (2) A person who would have been entitled to apply for a review of the decision under the old legislation may do so under the old legislation, as if the 2014 Acts had not commenced.
- (3) The Commission must review the decision in accordance with the old legislation as if the 2014 Acts had not commenced.

66 Review of pre-commencement decision – application made

- (1) This section applies if, before the commencement:
 - (a) an application had been made under section 28 of the NTLC Act, as then in force, for review of a decision made under this Act; but
 - (b) the Commission had not completed the review.
- (2) The Commission must complete the review in accordance with the old legislation as if the 2014 Acts had not commenced.

Division 4 **General matters**

67 **Continuation of ongoing documents and things**

- (1) This section applies if:
 - (a) before the commencement, a power or function was conferred by this Act on the NTLC Director; and
 - (b) on the commencement, the power or function (or a substantially similar power or function) is conferred on the Director-General.
- (2) On the commencement, an ongoing document continues with the same force and effect as if it had been issued by, or given to, the Director-General.
- (3) On the commencement, an ongoing thing continues with the same force and effect as if it had been done by, or in relation to, the Director-General.
- (4) This section applies subject to the other provisions of this Part and Part 5, Division 2 of the *Licensing (Director-General) Act*.
- (5) In this section, a reference to something done before the commencement includes a reference to something done after the commencement in accordance with this Part as if it had been done before the commencement.
- (6) In this section:

ongoing document means a document that:

- (a) was issued by, or given to, the NTLC Director before the commencement in or for the exercise of the power or performance of the function; and
- (b) immediately before the commencement, had ongoing effect.

ongoing thing means a thing that:

- (a) was done by, or in relation to, the NTLC Director before the commencement in or for the exercise of the power or performance of the function; and
- (b) immediately before the commencement, had ongoing effect.

68 Legal immunity of NTLC Director continues

Despite the amendment made to section 56 by the 2014 Amending Act, that section continues to apply to a person who has been the NTLC Director as if the 2014 Amendment Act had not commenced.

Schedule Reviewable decisions

sections 41 and 41C

Section	Decision
29	Decision to grant, or refuse to grant, tobacco retail licence
29A	Decision to grant, or refuse to grant, renewal of tobacco retail licence
35	Decision to vary, or refuse to vary, conditions of tobacco retail licence
36	Decision to approve, or refuse to approve, transfer of tobacco retail licence
38	Decision to cancel or suspend licence

ENDNOTES

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KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

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LIST OF LEGISLATION***Tobacco Control Act 2002 (Act No. 68 2002)***

Assent date 11 December 2002
 Commenced pt 3, divs 2, 3 (other than s 23), 4 (other than s 27) and s 28:
 31 May 2003; rem: 1 January 2003 (s 2)

Tobacco Control Act Amendment Act 2003 (Act No. 24, 2003)

Assent date 26 June 2003
 Commenced 31 May 2003 (s 2)

Commercial Passenger (Road) Transport (Consequential Amendments) Act 2003 (Act No. 41, 2003)

Assent date 7 July 2003
 Commenced 1 August 2003 (*Gaz* G30, 30 July 2003, p 2)

Police Administration Amendment (Powers and Liability) Act 2005 (Act No. 11, 2005)

Assent date 17 March 2005
 Commenced 20 April 2005 (*Gaz* G16, 20 April 2005, p 5)

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date 14 December 2005
 Commenced 14 December 2005

Tobacco Control Legislation Amendment Act 2010 (Act No. 25, 2010)

Assent date 30 June 2010
 Commenced pt 3: 2 January 2011; rem: 30 June 2010 (s 2)

Personal Property Securities (National Uniform Legislation) Implementation Act 2010 (Act No. 30, 2010)

Assent date 9 September 2010
 Commenced ss 58 to 60: 30 January 2012 (S 2, 24 January 2012);
 rem: 25 November 2011 (*Gaz*, S68, 25 November 2011)

Public and Environmental Health Act 2011 (Act No. 7, 2011)

Assent date 16 March 2011
Commenced 1 July 2011 (*Gaz S28*, 3 June 2011)

Private Hospitals and Private Nursing Homes Amendment Act 2011 (Act No. 16, 2011)

Assent date 20 May 2011
Commenced 20 May 2011

Medicines, Poisons and Therapeutic Goods Act 2012 (Act No. 13, 2012)

Assent date 27 April 2012
Commenced 1 May 2014 (*Gaz S22*, 30 April 2014, p 12)

Tobacco Control Legislation Amendment Act 2014 (Act No. 40, 2014)

Assent date 13 November 2014
Commenced 1 December 2014 (*Gaz S122*, 1 December 2014)

Licensing (Repeals and Consequential Amendments) Act 2014 (Act No. 44, 2014)

Assent date 5 December 2014
Commenced 1 January 2015 (*Gaz S130*, 19 December 2014, p 2)

Red Tape Reduction (Miscellaneous Amendments) Act 2016 (Act No. 12, 2016)

Assent date 10 May 2016
Commenced 1 July 2016 (*Gaz G26*, 29 June 2016, p 2)

3 LIST OF AMENDMENTS

s 3	amd No. 25, 2010, s 28
s 5	amd No. 24, 2003, s 4; No. 41, 2003, s 5; No. 25, 2010, ss 4 and 15; No. 16, 2011, s 19; No. 7, 2011, s 140; No. 40, 2014, s 4; No. 44, 2014, s 128
s 5A	ins No. 24, 2003, s 5
s 5B	ins No. 25, 2010, s 16
s 5C	ins No. 25, 2010, s 16
	amd No. 40, 2014, s 5
s 6	amd No. 13, 2012, s 304
s 6A	ins No. 40, 2014, s 6
s 7	amd No. 25, 2010, ss 5 and 17
s 7A	ins No. 25, 2010, s 6
s 8	amd No. 25, 2010, s 28; No. 40, 2014, s 7
s 9	amd No. 25, 2010, s 28; No. 40, 2014, s 8
s 10	amd No. 25, 2010, s 28; No. 40, 2014, s 9
s 11	amd No. 24, 2003, s 6; No. 25, 2010, s 18; No. 40, 2014, s 10; No. 44, 2014, s 131
pt 2A hdg	ins No. 40, 2014, s 11
s 11A	ins No. 40, 2014, s 11
s 12	amd No. 25, 2010, s 28; No. 40, 2014, s 12
s 13	amd No. 25, 2010, s 28; No. 40, 2014, s 13
s 14	amd No. 25, 2010, s 28; No. 40, 2014, s 14
s 15	amd No. 25, 2010, s 28; No. 40, 2014, s 15
s 16	amd No. 25, 2010, s 28; No. 40, 2014, s 16
s 17	amd No. 25, 2010, s 28
	sub No. 40, 2014, s 17
s 18	amd No. 25, 2010, s 19; No. 40, 2014, s 18
s 19	amd No. 25, 2010, s 28; No. 40, 2014, s 19
s 20	sub No. 25, 2010, s 20
	amd No. 40, 2014, s 20
s 21	amd No. 24, 2003, s 7
	rep No. 25, 2010, s 20

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s 22	amd No. 25, 2010, s 21; No. 40, 2014, s 21
s 23	amd No. 25, 2010, s 28; No. 40, 2014, s 22
s 24	amd No. 25, 2010, s 28 rep No. 40, 2014, s 23
ss 25 – 27	sub No. 40, 2014, s 23
s 28	amd No. 25, 2010, s 28; No. 40, 2014, s 24
s 29	amd No. 25, 2010, s 22; No. 44, 2014, s 131; No. 12, 2016, s 27
s 29A	ins No. , 2010, s 23
s 30	sub No. 25, 2010, s 7 amd No. 40, 2014, s 25
s 32	sub No. 25, 2010, s 24 amd No. 12, 2016, s 28
s 33	amd No. 25, 2010, s 28; No. 40, 2014, s 26
ss 34 – 36	amd No. 44, 2014, s 131
s 36A	ins No. 30, 2010, s 50
s 37	amd No. 25, 2010, s 28; No. 40, 2014, s 27; No. 44, 2014, s 131
s 38	amd No. 25, 2010, s 28; No. 44, 2014, s 131
s 39	amd No. 25, 2010, s 25; No. 44, 2014, s 131
s 40	amd No. 44, 2014, s 131
pt 4A hdg	ins No. 44, 2014, s 129
s 41	sub No. 44, 2014, s 129
ss 41A – 41C	ins No. 44, 2014, s 129
s 42	amd No. 25, 2010, s 28; No. 40, 2014, s 28
s 43	amd No. 25, 2010, s 28; No. 40, 2014, s 29
s 45	amd No. 25, 2010, s 8 sub No. 40, 2014, s 30
s 46	amd No. 25, 2010, s 28; No. 40, 2014, s 31
s 48	amd No. 25, 2010, s 9; No. 40, 2014, s 32
s 50	amd No. 25, 2010, s 28
s 50A	ins No. 40, 2014, s 33
s 52	amd No. 25, 2010, s 28; No. 40, 2014, s 34
s 53	amd No. 25, 2010, s 28; No. 40, 2014, s 35; No. 44, 2014, s 131
s 53A	ins No. 40, 2014, s 36
s 54	amd No. 25, 2010, s 28 sub No. 40, 2014, s 37 amd No. 44, 2014, s 131
s 55	amd No. 44, 2014, s 131
s 56	amd No. 11, 2005, s 27; No. 44, 2005, s 35; No. 25, 2010, s 28; No. 44, 2014, s 131
s 57	amd No. 25, 2010, s 10 sub No. 40, 2014, s 38
s 57A	ins No. 25, 2010, s 26
s 58	amd No. 25, 2010, s 28
pt 8 hdg	sub No. 25, 2010, s 11
s 59	sub No. 25, 2010, s 11
s 60	rep No. 25, 2010, s 11 ins No. 25, 2010, s 27
pt 9 hdg	ins No. 40, 2014, s 39
s 61	ins No. 40, 2014, s 39
pt 10 hdg	ins No. 44, 2014, s 130
pt 10	
div 1 hdg	ins No. 44, 2014, s 130
s 62	ins No. 44, 2014, s 130
pt 10	
div 2 hdg	ins No. 44, 2014, s 130
s 63	ins No. 44, 2014, s 130
pt 10	
div 3 hdg	ins No. 44, 2014, s 130

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ss 64 – 66 pt 10	ins No. 44, 2014, s 130
div 4 hdg	ins No. 44, 2014, s 130
ss 67 – 68	ins No. 44, 2014, s 130
sch	ins No. 44, 2014, s 130