

TASMANIA

PUBLIC HEALTH AMENDMENT BILL 2010

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PUBLIC HEALTH AMENDMENT BILL 2010

*(Brought in by the Minister for Health, the Honourable
Michelle Anne O'Byrne)*

A BILL FOR

An Act to amend the *Public Health Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Public Health Amendment Act 2010*.

2. Commencement

This Act commences on 2 February 2011 or on the day on which it receives the Royal Assent, whichever is later.

3. Principal Act

In this Act, the *Public Health Act 1997** is referred to as the Principal Act.

*No. 86 of 1997

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4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “sales unit”;
- (b) by omitting the definition of “service area”.

5. Section 70 amended (Display of tobacco advertisements, &c.)

Section 70 of the Principal Act is amended by omitting subsection (3).

6. Section 72 inserted

After section 71 of the Principal Act, the following section is inserted in Division 2:

72. Display restrictions on specialist tobacconist premises

- (1) A person who displays tobacco or tobacco product in any specialist tobacconist premises must confine the display to a single area of the premises.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person who displays tobacco or tobacco product in any specialist tobacconist premises must ensure that the

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total area of all tobacco and tobacco product displayed in the premises does not at any time exceed 4 square metres.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person must not, in any specialist tobacconist premises, display more than one packet of each product line of tobacco or tobacco product held on the premises.

Penalty: Fine not exceeding 50 penalty units.

- (4) A person must not, in any specialist tobacconist premises, display tobacco or tobacco product except in plain sales units.

Penalty: Fine not exceeding 50 penalty units.

- (5) A person who, in any specialist tobacconist premises, displays tobacco or tobacco product in a sales unit must not enhance the display by means of any of the following:

- (a) colour coding of the premises, within 5 metres of the sales unit, in colours that form part of the packaging of the tobacco or tobacco product;

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- (b) wording, trademarks or colour schemes usually used in the packaging of the tobacco or tobacco product;
- (c) partial wording or imaging of any packet or packaging of the tobacco or tobacco product;
- (d) empty packets or packages of any tobacco or tobacco product;
- (e) lines, borders or other visual design effects that make the display stand out;
- (f) mirrors or other reflective devices that reflect images of the tobacco or tobacco product;
- (g) holograms linked to the display.

Penalty: Fine not exceeding 50 penalty units.

- (6) A person must not, in any specialist tobacconist premises, cause or allow a sales unit, other than one tobacco product vending machine, to be located outside a service area.

Penalty: Fine not exceeding 50 penalty units.

- (7) A person is not to be taken to have contravened subsection (1), (3) or (4) merely by reason of any fleeting

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incidental display of tobacco or tobacco product reasonably attaching to –

- (a) the stocking or replenishment of a plain sales unit in the relevant premises; or
- (b) the removal of tobacco or tobacco product from a plain sales unit in the relevant premises to make an immediate sale of the tobacco or tobacco product; or
- (c) the stocktaking of tobacco or tobacco product held on the relevant premises; or
- (d) the removal of tobacco or tobacco product from a plain sales unit in the relevant premises to a concealed storage facility in the same premises, or to a place off site, for the purposes of –
 - (i) cleaning, servicing, repairing, remounting, replacing or relocating the sales unit; or
 - (ii) repairing or refurbishing the relevant premises; or
- (e) the removal of tobacco or tobacco product from a concealed storage facility in the relevant premises to a place off site; or

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(f) where a consignment of tobacco or tobacco product is delivered to the relevant premises, the immediate placement of that consignment in a concealed storage facility in the same premises.

(8) In this section –

“concealed storage facility” means –

- (a) a storeroom, cellar or other enclosed place; or
- (b) a cupboard, locker or drawer –

that –

- (c) is inaccessible to the public; and
- (d) is kept closed, except when there is an immediate need to put things in it or take things from it; and
- (e) when closed, cannot be seen into by the public;

“display” does not include any fleeting incidental display reasonably attaching to the immediate personal use of a personal quantity of tobacco (and

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relevant smoking accoutrements)
by a person working at specialist
tobacconist premises;

“personal quantity”, of tobacco,
means a small quantity for
personal use, not in any event
exceeding –

- (a) a single package of
cigarettes; or
- (b) a single package of cigars;
or
- (c) a single package of
tobacco;

“plain sales unit” means a sales unit
that –

- (a) is not displaying any
product or pricing
information contrary to
the guidelines; and
- (b) does not have any mirror
or other reflective device;
and
- (c) does not have any interior
or exterior lighting; and
- (d) does not have any lighting
directed specifically at it,
whether from a spotlight,
down light or otherwise

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and whether the illumination is constant or intermittent; and

(e) is not fitted with or connected to any device capable of causing the sales unit (or any part of it) or its contents (or any of its contents) to move in a way that is visible to the public; and

(f) is so located that none of the tobacco or tobacco product held in it faces more or less towards a public entrance or window, unless –

(i) the direction faced is perpendicular to the plane of the public entrance or window; or

(ii) the public entrance or window is at least 2 metres away from the sales unit;

“sales unit” means a receptacle, area of shelving, tobacco product vending machine or other thing

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from which tobacco or tobacco products are dispensed when sold;

“service area” means an area of specialist tobacconist premises –

- (a) from where sales of tobacco or tobacco product are ordinarily effected; and
- (b) to which the public does not normally have access;

“smoking accoutrement” means any of the following tobacco products:

- (a) a cigar cutter;
- (b) a cigarette holder;
- (c) a cigarette roller;
- (d) a packet of cigarette papers;
- (e) a pipe;
- (f) a tobacco filter;

“tobacco product” includes carton and cigarette shipper.

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7. Section 72A substituted

Section 72A of the Principal Act is repealed and the following section is substituted:

72A. Display and holding restrictions on other premises where tobacco or tobacco product is sold

- (1) This section applies to premises in or from which tobacco or tobacco product is sold, other than specialist tobacconist premises.
- (2) A person must not hold tobacco or tobacco product on any premises to which this section applies except in –
 - (a) plain sales units; or
 - (b) concealed storage facilities.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person is not to be taken to have contravened subsection (2) merely by reason of any fleeting incidental handling of tobacco or tobacco product reasonably attaching to –
 - (a) the stocking or replenishment of a plain sales unit in the relevant premises; or
 - (b) the removal of tobacco or tobacco product from a plain sales unit in the relevant premises to make an

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- immediate sale of the tobacco or tobacco product; or
- (c) the stocktaking of tobacco or tobacco product held on the relevant premises; or
 - (d) the removal of tobacco or tobacco product from a plain sales unit in the relevant premises to a concealed storage facility in the same premises, or to a place off site, for the purposes of –
 - (i) cleaning, servicing, repairing, remounting, relocating or replacing the sales unit; or
 - (ii) repairing or refurbishing the relevant premises; or
 - (e) the removal of tobacco or tobacco product from a concealed storage facility in the relevant premises to a place off site; or
 - (f) where a consignment of tobacco or tobacco product is delivered to the relevant premises, the immediate placement of that consignment in a concealed storage facility in the same premises; or
 - (g) the immediate personal use of a personal quantity of tobacco (and

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relevant smoking accoutrements)
by a person working at the
relevant premises.

- (4) A person must not display tobacco or tobacco product in any premises to which this section applies.

Penalty: Fine not exceeding 50 penalty units.

- (5) A person who, in any premises to which this section applies, handles tobacco or tobacco product as provided by subsection (3) is not to be taken to have contravened subsection (4) merely by reason of any fleeting incidental display of tobacco or tobacco product reasonably attaching to that handling, provided the total area of all tobacco and tobacco product so displayed does not at any time exceed, for the entire premises, one square metre.

- (6) A person must not, in any premises to which this section applies, cause or allow a sales unit, other than one tobacco product vending machine, to be located outside a service area.

Penalty: Fine not exceeding 50 penalty units.

- (7) A person must not, in any premises to which this section applies, cause or allow tobacco or tobacco product to be held in a sales unit if the premises are colour

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coded, within 5 metres of the sales unit, in colours that form part of the packaging of the tobacco or tobacco product.

Penalty: Fine not exceeding 50 penalty units.

- (8) A person must not, in any premises to which this section applies, cause or allow a sales unit to be located within 75 centimetres of –
- (a) any confectionary; or
 - (b) any product that is designed or marketed for the use of children.

Penalty: Fine not exceeding 50 penalty units.

- (9) In this section –

“concealed storage facility” has the same meaning as in section 72;

“display” does not include any incidental display reasonably attaching to the possession of a personal quantity of tobacco (and relevant smoking accoutrements) by a customer or prospective customer of a business conducted in or from premises to which this section applies;

“hold” means hold for sale;

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“personal quantity”, of tobacco, has the same meaning as in section 72;

“plain sales unit” means a sales unit that –

- (a) is not displaying any product or pricing information contrary to the guidelines; and
- (b) does not have any mirror or other reflective device; and
- (c) does not have any interior or exterior lighting; and
- (d) does not have any lighting directed specifically at it, whether from a spotlight, down light or otherwise and whether the illumination is constant or intermittent; and
- (e) is not fitted with or connected to any device capable of causing the sales unit (or any part of it) or its contents (or any of its contents) to move in a way that is visible to the public; and

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- (f) is so located that, when open, its contents do not face more or less towards a public entrance or window, unless –
 - (i) the direction faced is perpendicular to the plane of the public entrance or window; or
 - (ii) the public entrance or window is at least 2 metres away from the sales unit; and
- (g) is not displaying any wording, trademarks or colour schemes usually used in the packaging of any tobacco or tobacco product held in it; and
- (h) is not displaying any partial wording or imaging of any packet or packaging of any tobacco or tobacco product held in it; and
- (i) has no lines, borders or other visual design effects

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that make the sales unit stand out; and

(j) is not linked to any hologram;

“sales unit” has the same meaning as in section 72;

“service area” means an area of premises to which this section applies –

(a) from where sales of tobacco or tobacco product are ordinarily effected; and

(b) to which the public does not normally have access;

“smoking accoutrement” has the same meaning as in section 72;

“tobacco product” includes carton and cigarette shipper.

8. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.