

# **CLAUSE NOTES**

***Public Health Amendment Bill 2011***

<b>Clause 1</b>	Short title
<b>Clause 2</b>	<p>The provisions of the Bill will commence on 1 March 2012. Upon passage of the Bill through Parliament, the Department will embark upon an education campaign. From 1 March 2012 enforcement officers will take an education first approach to enforcement of the new provisions, with full compliance to be enforced from 1 May 2012.</p>
<b>Clause 3</b>	The Bill amends the <i>Public Health Act 1997</i> .
<b>Clause 4</b>	<p>This clause amends the Act's interpretation section to include new and amended definitions, and existing definitions moved from other areas of the Act.</p> <p>The term tobacco product has been amended to include all forms of tobacco, so that the Act will, instead of referring to 'tobacco or tobacco products', simply refer to 'tobacco products'.</p> <p>More information on the use of these terms appears where they are referred to in the Bill.</p>
<b>Clause 5</b>	<p>The meaning of outdoor smoking area has been amended to clarify that all eating establishments, whether or not they hold a liquor licence, must, if providing an outdoor smoking area, ensure that area complies with the Act's rules for outdoor smoking areas (ie not serviced and no roof – unless no more than 50 percent of the perimeter consists of walls and windows, in which case a roof is permitted).</p>
<b>Clause 6</b>	Amends a heading
<b>Clause 7</b>	<p>The definition of a nominated officer has been moved from the interpretation into a new section. The Director will now have the ability to approve classes of persons (and not just individuals) as nominated officers and limit powers or attach conditions to approvals. For example the Director could approve all hospital security staff, to exercise only the power to issue an infringement notice for smoking in a smoke-free area, on hospital grounds, during employment hours.</p>
<b>Clause 8</b>	<p>Section 63 has been amended to provide that, in addition to not smoking or using a tobacco product, a child must not possess a tobacco product (unless in the course of employment with the holder of a tobacco seller's licence).</p>

<b>Clause 9</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 10</b>	Section 66 is amended so that a nominated officer will not only be able to seize tobacco products being smoked or used by a child, but also those that are simply in a child's possession. However, in doing so, a nominated officer is not permitted to use force against a child or conduct a personal search of a child or a child's possessions. Section 67 of the Act already provides that a nominated officer may give a warning and educative information to a child.
<b>Clause 11</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 12</b>	Section 67B of the Act is amended to include new smoke-free areas, as follows:
New clause 67B(1)(d)	<p>Anywhere within 20 metres of the specified areas at any venue where organised sport is being played must be smoke-free.</p> <p>This will apply to all sports that are planned in advance and conducted in accordance with established rules, by an established professional or amateur sporting body or by an educational institution, whether as a one-off event or as part of a round of events. It does not include informal or impromptu sporting events (provided for in new subsection (3)).</p> <p>The smoke-free area will apply during the game and for the period 30 minutes before and 30 minutes after to cover the period where patrons are entering and exiting the venue.</p> <p>All sports are included – from netball, to rugby, to little athletics, to football – every sport, regardless of league and regardless of where it is played, is included.</p> <p>This offers protection to all competitors, spectators and officials.</p>
New clause 67B(1)(g)	Anywhere within 10 metres of children's playgrounds must be smoke-free. This applies to all playgrounds to which the public has access.
New clause 67B(1)(h)	Between the flags at beaches patrolled by surf lifesaving must be smoke-free.
New clause 67B(1)(i)	Anywhere at a public swimming pool must be smoke-free.
New clause	The Director will have the ability to designate particular, or

67B(1)(j)	classes, of public events as smoke-free. Discussions with relevant event organisers will commence during 2012 and sufficient notice to implement the change will be given. The events that are likely to be first considered are those at which children are frequent attendees (eg regattas, music festivals).
New clause 67B(1)(k)	<p>The 50 percent smoke-free dining provisions are extended so that 100 percent of outdoor dining areas must be smoke-free.</p> <p>An outdoor dining area is an area provided by an occupier for patrons to consume food and beverages.</p> <p>Once the occupier stops offering the service of food outside, the area may, if the occupier chooses, be used as an outdoor smoking area and beverages may be consumed. However, in that case the area must satisfy the rules for outdoor smoking areas contained in the Act (ie the area cannot be serviced, and cannot have a roof, unless no more than 50 percent of the perimeter consists of walls and windows, in which case a roof is permitted).</p>
New clause 67B(1)(l)	Anywhere within 3 metres of an outdoor dining area must be smoke-free, unless there is a screen surrounding the outdoor dining area that is at least 2.1 metres high and impervious to smoke.
New clauses 67B(1)(m), (n), (o)	Anywhere in a pedestrian and bus mall, and anywhere within three-metres of a bus shelter, must be smoke-free.
<b>Clause 13</b>	It will no longer be a defence to the section 67C(1) offence of 'smoking in a smoke-free area' for a person to simply stop smoking when requested to do so.
<b>Clause 14</b>	The amenity of smoke-free areas must not be of inferior amenity to any outdoor smoking area provided by an occupier. This obligation already appears at section 67F of the Act and has been amended to reflect that outdoor dining will be 100 percent smoke-free (rather than only 50 percent).
<b>Clause 15</b>	These words are no longer necessary.
<b>Clause 16</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 17</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').

<b>Clause 18</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 19</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 20</b>	The existing sections of the Act that provide for the holding of tobacco products for retail and the display of tobacco products have been repealed and organised into a new structure, with new obligations attaching to specialist tobacconist premises (as noted below).
<b>New section 71</b>	<p>This clause replicates the existing holding provisions attaching to general tobacco retailers and applies them now to specialist tobacconists.</p> <p>The effect of this section is that tobacco products may only be kept on the premises in plain sales units or concealed storage facilities. A person is not in breach of this obligation in the fleeting and incidental handling of tobacco products reasonably attaching to the specified activities.</p> <p>The existing ban on the use of 'bells and whistles' on sales units has been incorporated into the definition of a plain sales unit. The Director of Public Health will, prior 1 March 2012, amend the existing <i>Guidelines for the Sale of Tobacco</i> to extend the rules applying to information on sales units to ensure information is kept to a minimum (guidelines are tabled before Parliament when issued).</p> <p>The existing requirements as to the placement of a sales unit remain – it can only be located in the service area; not within 75 centimetres of confectionary or products marketed at children; it cannot be directly facing a window or store entrance; and it can't be located near any part of the premises colour coded to match tobacco packets.</p> <p>These requirements are consistent with the ban on tobacco advertising and ensure that attention is not drawn to tobacco products.</p> <p>Vending machines are permitted in licensed premises only – and only one is permitted per premise. It must be located in the service area in an area in which children are not permitted to enter.</p> <p>Electronic dispensing units are permitted in the service area of any retail premise. They are operated by staff through an electronic keypad at the point of sale. These units are more</p>

	secure than traditional sales units yet relatively new so there is not the same association between their visual look and the products they contain as there is with traditional vending machines. This is less likely to develop with EDU given the ban on the display of tobacco products.
<b>New section 72</b>	<p>This section replicates the existing provisions that impose a ban on the permanent display of tobacco products in general retail premises that are not specialist tobacconists.</p> <p>The fleeting incidental display of tobacco products is permitted in specified circumstances up to a maximum of one square metre.</p> <p>A person visiting or working at the store in possession of a personal quantity of tobacco product and accoutrements is not in breach of this section.</p>
<b>New section 72A</b>	<p>This section introduces a ban on the permanent display of ancillary tobacco products in specialist tobacconist premises. This covers tobacco/cigar packets and cartons and loose tobacco.</p> <p>The fleeting incidental display of ancillary tobacco products is permitted in the same circumstances as for general retailers (up to one square metre).</p> <p>Other tobacco products can continue to be displayed in a single area, to a maximum of 4 square metres (this replicates the existing display area applying to specialist tobacconists). That display cannot be enhanced and only one example of each product line may be on display.</p> <p>As for general retailers, a person visiting or working at the store in possession of a personal quantity of tobacco product and accoutrements is not in breach of this section.</p>
<b>Clause 21</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 22</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 23</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 24</b>	The licensing provisions at section 74A are amended to clarify that only an employee of a licence holder is permitted to act under that licence. If somebody new buys the business they are

	not entitled to sell tobacco products under the previous owners licence. They must apply for a licence in their own name.
<b>Clause 25</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 26</b>	<p>The licensing provisions at section 74C are amended to require the Director, in determining a licence application, not only be satisfied that the licence applicant is 18 years or older and is likely to comply with the Act, but also to be satisfied of any matters provided for in guidelines.</p> <p>It is through this mechanism that the Director will implement the policy not to issue licences to retail tobacco at temporary public events (such as regattas, music festivals, sporting events).</p> <p>This section is also amended to enable the Director to include as a licence condition, if appropriate, the requirement that a tobacco seller's licence be displayed. This reflects that this will not otherwise be a mandatory obligation (see clause 34).</p>
<b>Clause 27</b>	The licensing provisions at section 74D are amended to refer to the address of the premises to which the licence relates, as opposed to 'all the premises' as a licence will only ever relate to one premise.
<b>Clause 28</b>	<p>The licensing provisions at section 74F are amended to clarify that there is one licence that issues per premise, as distinct from one licence with multiple premises listed.</p> <p>This will not result in a change to the existing fee structure that applies here, as is already a requirement for a notice of additional premises to be accompanied by the same fee as a licence application.</p>
<b>Clause 29</b>	<p>A new section is introduced here to clarify that a tobacco seller's licence is not capable of being transferred to another person. This supports the clarification made in section 74A that only an employee is entitled to act on behalf of a licence holder and not, for example, a person who has purchased the business/premises from a licence holder.</p> <p>It also supports the changes to section 74F that clarify that one licence will issue in relation to one premise.</p>
<b>Clause 30</b>	The circumstances in which the Director may cancel a licence, set out in section 74H, are amended to include circumstances where a licence holder has purported to transfer the licence to

	another person.
<b>Clause 31</b>	Reflects the changed terminology (from 'tobacco or tobacco product' to 'tobacco product').
<b>Clause 32</b>	The requirement to make the tobacco seller's licence register publicly available will be removed. This will prevent tobacco companies from viewing the register with the aim of targeting licence holders and potential licence holders with a view to promoting/selling tobacco products.
<b>Clause 33</b>	In line with the one licence per premise approach, section 74K providing for notification of additional premises is no longer needed. Licence holders acquiring new premises at which they want to retail tobacco will be required to apply for a new licence prior to selling tobacco.
<b>Clause 34</b>	Section 74L is amended to remove the obligation on a retailer to display a tobacco seller's licence. This is not considered necessary as it is another piece of information at the point of sale that draws attention to the fact tobacco is sold at the premises. In case it is appropriate in some circumstances to display the licence, the Director has the ability to attach the obligation as a licence condition (see clause 26).
<b>Clause 35</b>	A new section is introduced to prohibit tobacco products from being included in shopper loyalty programs.
<b>Clause 36</b>	Standard repeal clause.