

CLAUSE NOTES

Public Health Amendment Bill 2010

- Clause 1** **Short Title**
- Clause 2** **Commencement**
- The Bill will commence on 2 February 2011, to coincide with the existing date upon which the tobacco display ban commences. If the Bill is not dealt with until 2011, then it will commence on Royal Assent.
- Clause 3** **Principal Act**
- The Bill amends the *Public Health Act 1997*.
- Clause 4** **Interpretation**
- This clause removes the definition of ‘sales unit’ and ‘service area’ which are now referenced in the specific sections in which they appear.
- Clause 5** **Display of tobacco advertisements**
- This clause removes subsection 70(3) as these requirements reappear in the Bill in relation to the relevant premises to which they apply.
- Clause 6** **Display restrictions on specialist tobacconist premises**
- Presently the Act provides that after 1 February 2011, there is a ban on the display of tobacco and tobacco products in premises other than specialist tobacconist premises. As such, there are differing requirements for specialist tobacconist premises and other retail premises. The Bill deals separately with these two groups, so that the obligations attaching to each are clear.
- This clause inserts section 72 into the Act and sets out the requirements that attach to specialist tobacconist premises.

In relation to section 72:

- Subsections (1)-(6) reflect the existing display requirements relating to specialist tobacconist premises (presently contained in subsection 70(3)(a) and section 72A of the Act).
- Subsection (7) clarifies that it is not a contravention of the Act for the display of tobacco or tobacco products to occur outside the single area, outside the sales unit, or in relation to more than one product line, if that display is fleeting and incidental to the activities listed (eg restocking, selling, stocktaking, cleaning and repairing, taking off-site or packing away a delivery). The Act does not currently give any guidance as to the use of the term 'display', leaving it open to a broad interpretation. This new subsection ensures that display in this context does not mean that a specialist tobacconist is in breach of the Act when engaging in these activities, which are 'part and parcel' of running a retail business.
- Subsection (8):
 - defines '*concealed storage facility*' which is introduced in subsection (7);
 - excludes from the use of the term '*display*' the fleeting incidental display of a personal quantity of tobacco and smoking accoutrements by a person working at specialist tobacconist premises, ensuring that such a person engaging in this activity is not contravening the Act;
 - defines what a '*personal quantity*' of tobacco is;
 - defines a '*plain sales unit*' which captures the existing requirements of subsection 72A(3) of the Act;
 - reintroduces the definition of '*sales unit*', clarifying that a sales unit includes a tobacco product vending machine;
 - reintroduces the definition of '*service area*';
 - introduces the term '*smoking accoutrement*' which is referred to the 'display' definition;
 - reintroduces the definition of '*service area*'; and
 - enhances the usual definition of '*tobacco product*' by including cartons (these provisions are presently dealt with in subsections 72A(8) and (9) of the Act, however the provisions are unclear and as such cartons will be treated as regular tobacco products).

Clause 7

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

This clause repeals the existing section 72A and substitutes it with a new one that sets out the requirements that attach to premises where tobacco or tobacco products are sold (other than specialist tobacconist premises).

In relation to the new section 72A:

- Subsection (2) provides that tobacco or tobacco products cannot be held on the premises unless in a plain sales unit or concealed storage facility. A 'concealed storage facility' is not currently referenced in the Act, but has been introduced here to ensure that stock not kept in a sales unit in the service area can still be held on the premises without there being a contravention of the Act.
- Subsection (3) clarifies that it is not a contravention of the Act for tobacco or tobacco product to be outside of a plain sales unit or concealed storage facility if the reason for that is due to the fleeting and incidental handling of the tobacco or tobacco product as a consequence of engaging in the activities listed. These activities are the same activities as those permitted by specialist tobacconists.
- Subsection (4) reinstates the display ban, clarifying that it applies to premises from which tobacco or tobacco products are sold.
- Subsection (5) clarifies that it is not a contravention of the Act for the display of tobacco or tobacco products to occur if that display is fleeting and incidental to the activities listed in subsection (3) (eg restocking, selling, stocktaking, cleaning and repairing, taking off-site, packing away a delivery, or personal use), and if the area of tobacco or tobacco products so displayed does not exceed 1 square metre.
- Subsections (6) – (8) reflect the existing requirements at subsections 72A(3)(b), 72A(7)(a), 72A(1) and 70(3)(b) of the Act.

- Subsection (9) provides the definitions attaching to the new section 72A. Those that have a different meaning to that which applies to specialist tobacconists in section 72 are:
 - ‘display’ - in this context it does not include the incidental display of a personal quantity of tobacco and smoking accoutrements by a customer or prospective customer of the retailer, ensuring that such a person engaging in this activity is not contravening the Act (note, the fleeting and incidental display by a person working at the retail premises is permitted by virtue of subsection (3)(g) and section (5));
 - ‘hold’ – means hold for sale;
 - ‘plain sales unit’ - in this context it not only captures the existing requirements of subsection 72A(3) of the Act, but also captures those restrictions at the existing 72A(7) that haven’t already been covered (these restrictions still apply to specialist tobacconists but the manner in which the provisions are structured is slightly different).

Clause 8

Repeal of Act