

TASMANIA

PUBLIC HEALTH AMENDMENT BILL 2011

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PUBLIC HEALTH AMENDMENT BILL 2011

*(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 2011*.

2. Commencement

This Act commences on 1 March 2012.

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 inserting the following definition after the definition of “air-handling system”:

“ancillary tobacco product” – see section 72A;

- (b) by inserting the following definition after the definition of “closure order”:

“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;
- (c) by inserting the following definition after the definition of “disease”:

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“electronic dispensing unit” – see section 71;

- (d) by omitting the definition of “nominated officer” and substituting the following definition:

“nominated officer” means – see section 13A;

- (e) by omitting “while consuming” from the definition of “outdoor dining area” and substituting “to consume”;
- (f) by omitting “tobacco or” from the definition of “packet”;
- (g) by inserting the following definition after the definition of “personal information”:

“personal quantity”, of tobacco product, 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;
- (h) by inserting the following definition after the definition of “place of assembly licence”:

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“plain sales unit” means a sales unit that –

- (a) is not displaying any wording or imagery that contravenes 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 or 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 not displaying any wording, trademarks or colour schemes usually used in the packaging of

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any tobacco product held
in it; and

(g) is not displaying any
partial wording or
imagery of any packaging
of tobacco product held in
it; and

(h) has no lines, borders or
other visual design effects
that make it stand out; and

(i) is not linked to any
hologram;

(i) by omitting “tobacco or” three times
occurring from the definition of “product
line”;

(j) by inserting the following definition after
the definition of “public place”:

“public street” means a public street
as defined in the *Traffic Act 1925*,
and includes a part of such a
street;

(k) by inserting the following definition after
the definition of “regulated system”:

“regulations” means regulations made
and in force under this Act;

(l) by inserting the following definition after
the definition of “roof”:

“sales unit” means –

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- (a) in the case of specialist tobacconist premises, a receptacle, area of shelving, electronic dispensing unit or other thing from which tobacco products are dispensed when sold; or
- (b) in the case of retail premises other than specialist tobacconist premises, a receptacle, area of shelving, vending machine, electronic dispensing unit or other thing from which tobacco products are dispensed when sold;
- (m) by inserting the following definition after the definition of “smoke-free area”:

“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;

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- (f) a tobacco filter;
- (n) by omitting “tobacco or” from paragraph (a) of the definition of “tobacco advertisement”;
- (o) by omitting “tobacco or” from paragraph (b) of the definition of “tobacco advertisement”;
- (p) by omitting the definition of “tobacco product” and substituting the following definition:

“tobacco product” means any of the following:

- (a) tobacco in any form;
 - (b) any product of which tobacco is an ingredient;
 - (c) any device or article designed or intended only for use in connection with tobacco;
 - (d) any prescribed product;
 - (e) any package, or cigarette shipper, containing a thing referred to in paragraph (a), (b), (c) or (d) of this definition;
- (q) by omitting the definition of “tobacco product vending machine”;

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- (r) by inserting the following definition after the definition of “vehicle”:

“vending machine” – see section 71;

5. Section 3A amended (Meaning of “outdoor smoking area”)

Section 3A(1) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) it is provided for the use of customers who smoke by the occupier of –
- (i) premises to which a licence or permit under the *Liquor Licensing Act 1990* applies; or
 - (ii) premises in which an outdoor dining area is provided; and

6. Part 2, Division 1: Heading amended

Division 1 of Part 2 of the Principal Act is amended by omitting “*Authorised officers*” from the heading to that Division and substituting “*Authorised officers, &c.*”.

7. Section 13A inserted

After section 13 of the Principal Act, the following section is inserted in Division 1:

13A. Nominated officers

- (1) For the purposes of this Act, each of the following is a nominated officer:
 - (a) the Director;
 - (b) a health officer;
 - (c) a police officer;
 - (d) a person approved by the Director;
 - (e) a member of a class of persons approved by the Director.
- (2) An approval under paragraph (d) or (e) may –
 - (a) impose conditions on the exercise or performance by the relevant person or persons of the powers or functions of a nominated officer under this Act; or
 - (b) be unconditional.

8. Section 63 substituted

Section 63 of the Principal Act is repealed and the following section is substituted:

63. Smoking, &c., by children

- (1) A child must not –

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- (a) smoke; or
 - (b) use a tobacco product; or
 - (c) possess a tobacco product.
- (2) However, subsection (1)(c) does not apply to the possession of a tobacco product by a child if the possession is reasonably incidental to the child's employment with the holder of a tobacco seller's licence.

9. Section 64 amended (Sale to children)

Section 64 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "tobacco or";
- (b) by omitting from subsection (2) "tobacco or";
- (c) by omitting from subsection (3) "tobacco or";
- (d) by omitting from subsection (6) "tobacco or" twice occurring;
- (e) by omitting from subsection (7) "any tobacco or tobacco product" and substituting "tobacco products".

10. Section 66 amended (Seizure of tobacco and tobacco products)

Section 66 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsections:

(1) A nominated officer may seize any tobacco product being smoked or used by a child or in a child's possession.

(1A) However, in exercising power under subsection (1), a nominated officer is not entitled to –

(a) use force against a child;
or

(b) conduct a personal search of a child or of a child's clothing or possessions.

(b) by omitting from subsection (2) “tobacco or”;

(c) by omitting from subsection (3) “tobacco or”.

11. Section 67 amended (Warnings and information)

Section 67(3)(c) of the Principal Act is amended by omitting “tobacco or”.

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12. Section 67B amended (Smoke-free areas)

Section 67B of the Principal Act is amended as follows:

- (a) by omitting paragraph (d) from subsection (1) and substituting the following paragraph:
 - (d) at an outdoor sporting venue during an organised sporting event being held at that venue, anywhere within 20 metres of –
 - (i) any permanently or temporarily erected public seating; or
 - (ii) any seating, marshalling area, warm-up area, podium or other part of the venue reserved for the use of competitors or officials; or
 - (iii) any part of the venue used to conduct the actual organised sporting event;
- (b) by omitting from subsection (1)(e) “an area” and substituting “anywhere”;
- (c) by omitting from subsection (1)(f) “an area” and substituting “anywhere”;
- (d) by inserting the following paragraphs after paragraph (f) in subsection (1):

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- (g) anywhere within 10 metres of any play equipment erected at a children's playground in a public place;
- (h) on a beach at which a surf-lifesaving organisation has temporarily erected a pair of red and yellow flags for the safety of beach users, the area "between the flags" (being the rectangular area bordered by the flags, the water's edge and the landward fringe of the beach);
- (i) anywhere at a public swimming pool, including the curtilage of the public swimming pool;
- (e) by omitting paragraphs (j) and (k) from subsection (1) and substituting the following paragraphs:
 - (j) anywhere that the Director, by public notice, designates as a smoke-free area in connection with a public event or class of public events specified in that public notice;
 - (k) anywhere in an outdoor dining area;
 - (l) anywhere within 3 metres of an outdoor dining area that is not surrounded by a screen, or other

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- barrier, that is at least 2.1 metres high and impervious to smoke;
- (m) a public street that the regulations declare to be a pedestrian mall;
 - (n) a public street that the regulations declare to be a bus mall;
 - (o) anywhere within 3 metres of a bus shelter on a public street.
- (f) by omitting paragraph (c) from subsection (2);
- (g) by inserting the following subsection after subsection (2):
- (3) For the purposes of subsection (1)(d) –
 - (a) an organised sporting event is a sporting event planned in advance and conducted, according to established rules, by an established professional or amateur sporting body or by an educational institution, whether as a one-off event or as a part of a round of events; and
 - (b) an informal or impromptu sporting event is not an organised sporting event; and

(c) the duration of an organised sporting event is taken to include the 30-minute period leading up to the official start of the event and the 30-minute period immediately following the official finish of the event.

(h) by omitting paragraphs (e) and (f) from subsection (2).

13. Section 67C amended (Smoking in smoke-free areas prohibited)

Section 67C(2) of the Principal Act is amended by omitting paragraph (b).

14. Section 67F substituted

Section 67F of the Principal Act is repealed and the following section is substituted:

67F. Amenity of smoke-free areas

The occupier of an outdoor dining area must ensure that it is not of inferior amenity to any outdoor smoking area provided by that occupier.

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- (a) in the case of a natural person, 10 penalty units;
or
- (b) in the case of a body corporate, 50 penalty units.

15. Section 67H amended (Restrictions on smoking in vehicles)

Section 67H(2) of the Principal Act is amended by omitting “On or after 1 January 2008, a person” and substituting “A person”.

16. Section 68A amended (Restrictions regarding toys and confections, &c.)

Section 68A of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “tobacco or”;
- (b) by omitting from paragraph (b) “tobacco or”;
- (c) by omitting paragraph (c);
- (d) by omitting subparagraph (i) from paragraph (d) and substituting the following subparagraph:
 - (i) confectionery-flavoured or
confectionery-scented; or

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(e) by omitting subparagraph (i) from paragraph (e) and substituting the following subparagraph:

(i) confectionery-flavoured or confectionery-scented; or

17. Section 69 amended (Marketing device, plan or scheme)

Section 69 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco or”;
- (b) by inserting in subsection (2) “in connection with the sale of any tobacco product” after “scheme”.

18. Section 69A amended (Notice to be displayed)

Section 69A of the Principal Act is amended by omitting “tobacco or”.

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

Section 70 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “tobacco or” twice occurring;

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- (b) by omitting from subsection (2)(b) “tobacco or”;
- (c) by omitting from subsection (2)(c)(ii) “tobacco or”;
- (d) by omitting from subsection (5) “tobacco or” twice occurring.

20. Sections 70A, 71, 72 and 72A substituted

Sections 70A, 71, 72 and 72A of the Principal Act are repealed and the following sections are substituted:

71. Restrictions on holding tobacco products, &c., in specialist tobacconist premises and general retail premises

- (1) This section applies to premises in or from which tobacco products are sold, including specialist tobacconist premises.
- (2) A person must not hold any tobacco products in the premises 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 products reasonably attaching to –

- (a) the stocking or replenishment of plain sales units in the premises; or
- (b) the removal of tobacco products from plain sales units in the premises to make immediate sales of the tobacco products; or
- (c) the stocktaking of tobacco products held in the premises; or
- (d) the removal of tobacco products from plain sales units in the premises to concealed storage facilities in the premises, or to places off site, for the purposes of –
 - (i) cleaning, servicing, repairing, remounting, relocating or replacing the plain sales units; or
 - (ii) repairing or refurbishing the premises; or
- (e) the removal of tobacco products from concealed storage facilities in the premises to places off site; or
- (f) where a consignment of tobacco products is delivered to the

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premises, the immediate placement of that consignment in concealed storage facilities in the premises.

- (4) A person must not –
- (a) cause or allow a sales unit to be located in the premises anywhere outside of a service area of the premises; or
 - (b) cause or allow a sales unit to be located in the premises within 75 centimetres of –
 - (i) any confectionery; or
 - (ii) any product designed or marketed for the use of children; or
 - (c) cause or allow a sales unit to be so located in the premises in such a way that any of the tobacco product held in the sales unit faces more or less towards a public entrance or external window unless –
 - (i) the direction faced is perpendicular to the plane of the public entrance or external window; or
 - (ii) the public entrance or external window is at

least 2 metres away from
the sales unit; or

- (d) cause or allow a tobacco product to be held in a sales unit in the premises if the premises are colour coded, within 5 metres of the sales unit, in colours that form part of the packaging of the tobacco product.

Penalty: Fine not exceeding 50 penalty units.

- (5) If the premises are not licensed premises, a person must not cause or allow a vending machine to be located in the premises.

Penalty: Fine not exceeding 50 penalty units.

- (6) If the premises are licensed premises, a person must not cause or allow more than one vending machine to be located in the premises.

Penalty: Fine not exceeding 50 penalty units.

- (7) If the premises are licensed premises and a vending machine is located therein, a person must not –

- (a) cause or allow the vending machine to be located anywhere

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other than in a restricted area of the premises; or

- (b) cause or allow the vending machine to be operated by any member of the public.

Penalty: Fine not exceeding 50 penalty units.

- (8) If an electronic dispensing unit is located in the premises, a person must not cause or allow the electronic dispensing unit to be operated by any member of the public.

Penalty: Fine not exceeding 50 penalty units.

- (9) Nothing in this section makes it an offence for a person visiting or working at the premises to be in possession of a personal quantity of tobacco product (and relevant smoking accoutrements) for his or her own use.

- (10) In this section –

“electronic dispensing unit” means a machine that is designed to dispense tobacco products and be operated by means of an electronic keypad, whether or not, at a given time, the machine is in working order;

“external window”, of premises, means a window through which a

person standing outside the premises can see into the premises (or any part thereof);

“hold” means hold for sale;

“restricted area”, of licensed premises, means an area of the premises that is designated under section 84(1) of the *Liquor Licensing Act 1990* as an area in which a person under the age of 18 years cannot enter or remain;

“service area”, of premises, means an area of the premises –

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

“vending machine” means a machine, other than an electronic dispensing unit, that is designed to dispense tobacco products, whether or not, at a given time, the machine is in working order.

72. Restrictions on display, &c., of tobacco products in general retail premises

- (1) This section applies to premises in or from which tobacco products are sold,

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other than specialist tobacconist premises.

- (2) A person must not display any tobacco products in the premises.

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 display of tobacco products reasonably attaching to –

(a) the stocking or replenishment of plain sales units in the premises; or

(b) the removal of tobacco products from plain sales units in the premises to make immediate sales of the tobacco products; or

(c) the stocktaking of tobacco products held in the premises; or

(d) the removal of tobacco products from plain sales units in the premises to concealed storage facilities in the premises, or to places off site, for the purposes of –

(i) cleaning, servicing,
repairing, remounting,

relocating or replacing the plain sales units; or

(ii) repairing or refurbishing the premises; or

(e) the removal of tobacco products from concealed storage facilities in the premises to places off site; or

(f) where consignments of tobacco products are delivered to the premises, the immediate placement of those consignments in concealed storage facilities in the premises –

provided the total area of tobacco products so incidentally displayed does not at any time exceed, for the entire premises, one square metre.

(4) Nothing in this section makes it an offence for –

(a) a person visiting the premises to inadvertently display a personal quantity of tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use; or

(b) a person working at the premises to inadvertently and fleetingly display a personal quantity of

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tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use.

(5) In this section –

“tobacco product” includes a tobacco product package that has been emptied of its contents.

72A. Restrictions on display, &c., of tobacco products in specialist tobacconist premises

- (1) This section applies to specialist tobacconist premises.
- (2) A person must not display any tobacco products in the premises other than ancillary tobacco products.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person who displays an ancillary tobacco product in the premises must –
 - (a) confine the display to a single area of the premises; and
 - (b) ensure that the total area of all ancillary tobacco products displayed in the premises does not at any time exceed 4 square metres.

Penalty: Fine not exceeding 50 penalty units.

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- (4) A person who displays an ancillary tobacco product in the premises must not enhance the display by means of any of the following:
- (a) wording, trademarks or colour schemes usually used in the packaging of the ancillary tobacco product;
 - (b) partial wording or imaging of any packaging of the ancillary tobacco product;
 - (c) mirrors or other reflective devices that reflect images of the ancillary tobacco product;
 - (d) holograms linked to the display;
 - (e) lines, borders or other visual design effects that make the display stand out;
 - (f) empty packages of any ancillary tobacco products.

Penalty: Fine not exceeding 50 penalty units.

- (5) A person must not, in the premises, display more than one example of each product line of the ancillary tobacco products held in the premises.

Penalty: Fine not exceeding 50 penalty units.

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- (6) A person is not to be taken to have contravened subsection (2) or (5) merely by reason of any fleeting incidental display of tobacco products reasonably attaching to –
- (a) the stocking or replenishment of plain sales units in the premises; or
 - (b) the removal of tobacco products from plain sales units in the premises to make an immediate sale of the tobacco products; or
 - (c) the stocktaking of tobacco products held in the premises; or
 - (d) the removal of tobacco products from plain sales units in the premises to concealed storage facilities in the premises, or to places off site, for the purposes of –
 - (i) cleaning, servicing, repairing, remounting, relocating or replacing the plain sales units; or
 - (ii) repairing or refurbishing the premises; or
 - (e) the removal of tobacco products from concealed storage facilities in the premises to places off site; or

- (f) where consignments of tobacco products are delivered to the premises, the immediate placement of the consignments in concealed storage facilities in the premises –

provided the total area of tobacco products so incidentally displayed does not at any time exceed, for the entire premises, one square metre.

- (7) Nothing in this section makes it an offence for –

- (a) a person visiting the premises to inadvertently display a personal quantity of tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use; or

- (b) a person working at the premises to inadvertently and fleetingly display a personal quantity of tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use.

- (8) In this section –

“ancillary tobacco product” means a tobacco product other than –

- (a) tobacco in any form; or

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(b) a product of which tobacco is an ingredient;
or

(c) a package or cigarette shipper containing a thing referred to in paragraph (a) or (b) of this definition.

21. Section 73 amended (Packaging of tobacco products)

Section 73 of the Principal Act is amended by omitting “tobacco or” twice occurring.

22. Section 74 amended (False information relating to legislation)

Section 74 of the Principal Act is amended by omitting “tobacco or”.

23. Section 74AA amended (Incorrect information relating to health effects of tobacco products)

Section 74AA of the Principal Act is amended by omitting “tobacco or” twice occurring.

24. Section 74A substituted

Section 74A of the Principal Act is repealed and the following section is substituted:

74A. Licence to sell tobacco product

A person must not sell a tobacco product unless –

- (a) the person is the holder of a tobacco seller’s licence; or
- (b) the person is an employee of the holder of a tobacco seller’s licence and the sale is effected in the course of that employment.

Penalty: Fine not exceeding –

- (a) for a first offence, 50 penalty units; and
- (b) for a subsequent offence, 100 penalty units.

25. Section 74B amended (Application for tobacco seller’s licence)

Section 74B(1) of the Principal Act is amended by omitting “tobacco or”.

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26. Section 74C amended (Grant or refusal of licence)

Section 74C of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “an” and substituting “the”;
- (b) by omitting from subsection (2)(a) “and any relevant guidelines”;
- (c) by omitting from subsection (2)(b) “18 years or older.” and substituting “18 years of age or older; and”;
- (d) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (c) have regard to any relevant guidelines.
- (e) by omitting subsection (4) and substituting the following subsection:
 - (4) Without limiting the generality of subsection (1)(a), a tobacco seller’s licence may be granted subject to conditions relating to –
 - (a) the provision of information or returns by the licensee; and
 - (b) the display of the licence.

27. Section 74D amended (Issue of licence)

Section 74D(c) of the Principal Act is amended by omitting subparagraph (iii) and substituting the following subparagraph:

- (iii) the addresses of the premises in respect of which the licence is issued.

28. Section 74F amended (Renewal of tobacco seller's licence)

Section 74F of the Principal Act is amended by inserting after subsection (9) the following subsection:

- (10) A tobacco seller's licence is not, on renewal under this section, capable of being varied with respect to the premises specified on the licence.

29. Section 74GA inserted

After section 74G of the Principal Act, the following section is inserted in Division 3:

74GA. Other features of tobacco seller's licence

- (1) A tobacco seller's licence –
 - (a) is only valid for and in respect of the premises specified on the licence; and

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- (b) does not confer authority on the holder of the licence, or any person acting on that licensee's behalf, to sell tobacco products from any other premises.
- (2) A tobacco seller's licence is not capable of being transferred to any other person.
- (3) The holder of a tobacco seller's licence may, by notice to the Director, surrender the licence at any time, but the licence has no surrender value.

30. Section 74H amended (Cancellation of tobacco seller's licence)

Section 74H(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) "of the licence" after "condition";
- (b) by inserting the following paragraph after paragraph (c):
 - (ca) purports to transfer the licence to another person; or

31. Section 74I amended (Selling tobacco and tobacco products)

Section 74I of the Principal Act is amended by omitting "tobacco and".

32. Section 74J amended (Register of tobacco seller's licences)

Section 74J of the Principal Act is amended by omitting subsection (3).

33. Section 74K repealed

Section 74K of the Principal Act is repealed.

34. Section 74L amended (Offences relating to tobacco seller's licence)

Section 74L of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "tobacco or";
- (b) by omitting subsection (2).

35. Part 4, Division 4 inserted

After section 74L of the Principal Act, the following Division is inserted in Part 4:

Division 4 – Miscellaneous

74M. Tobacco products not to be included in business loyalty programs

- (1) A person must not offer a tobacco product as an inducement or reward in a business loyalty program.

Penalty: Fine not exceeding 50 penalty units.

- (2) In this section –

“business loyalty program” means a program or arrangement, other than a business transactions program, that rewards the customers or clients of a business for their patronage;

“business transactions program” means a program or arrangement that rewards the customers or clients of a business for –

- (a) using a particular means of payment to purchase its goods or services; or
- (b) not using a particular means of payment to purchase its goods or services;

“means of payment” includes, but is not limited to the following:

- (a) cash;
- (b) cheque;
- (c) credit card;
- (d) debit card;

“tobacco product” includes –

- (a) a discount on a tobacco product; and
- (b) a coupon, voucher or other instrument that may be redeemed for a tobacco product.

36. Repeal of Act

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