

## Tobacco Products Control Amendment Bill 2017

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Western Australia

LEGISLATIVE COUNCIL

## **Tobacco Products Control Amendment Bill 2017**

**A Bill for**

**An Act to amend the *Tobacco Products Control Act 2006*.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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1   **1.       Short title**

2           This is the *Tobacco Products Control Amendment Act 2017*.

3   **2.       Commencement**

4           This Act comes into operation as follows —

- 5           (a) sections 1 and 2 — on the day on which this Act  
6               receives the Royal Assent (*assent day*);
- 7           (b) section 4 — on the day after the period of 24 months  
8               beginning on assent day;
- 9           (c) the rest of the Act — on the day after the period of  
10               6 months beginning on assent day.

11   **3.       Act amended**

12           This Act amends the *Tobacco Products Control Act 2006*.

13   **4.       Section 18A inserted**

14           After section 18 insert:  
15

16       **18A.    No retail sale by person under 18 years**

17           The holder of a retailer’s licence must not authorise or  
18           allow a person who has not reached 18 years of age to  
19           sell a tobacco product.

20           Penalty: see section 115.  
21

1 **5. Sections 21A and 21B inserted**

2 After section 21 insert:

3

4 **21A. No sale of cigarettes in certain packages**

5 The holder of a licence must not sell, or authorise or  
6 allow to be sold, cigarettes in a package that is  
7 designed to be, or is capable of being, split into 2 or  
8 more portions each containing fewer than 20 cigarettes.

9 Penalty: see section 115.

10 **21B. No sale of flavoured cigarettes**

11 The holder of a licence must not sell, or authorise or  
12 allow to be sold, a cigarette that, when smoked, has a  
13 flavour or aroma of —

14 (a) any kind of fruit; or

15 (b) mint (but not menthol), chocolate, vanilla,  
16 caramel, coconut or any other flavour (but not a  
17 spice) commonly used in the production of  
18 confectionery.

19 Penalty: see section 115.

20

21 **6. Section 23 amended**

22 (1) In section 23(1) insert in alphabetical order:

23

24 *commencement day* means the day on which the  
25 *Tobacco Products Control Amendment Act 2017*  
26 section 6 comes into operation;

27 *first transition period* means the period of 12 months  
28 beginning on commencement day;

**s. 6**

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- 1                    *second transition period* means the period of  
2                    12 months beginning on the day after the first transition  
3                    period ends;  
4
- 5            (2) In section 23(1) in the definition of *specialist retailer* after  
6            paragraph (b) insert:  
7
- 8                    (ba) 80% or more of the average gross turnover of  
9                    the business for the most recently ended  
10                    financial year was derived from the sale of  
11                    tobacco products; and  
12
- 13            (3) In section 23(4):  
14                    (a) after “section 22(1)” insert:  
15  
16                    that is alleged to have been committed during the first  
17                    transition period,  
18
- 19                    (b) in paragraph (c) delete “licence.” and insert:  
20  
21                    licence; and  
22
- 23                    (c) after paragraph (c) insert:  
24
- 25                    (d) in the case of a display of a tobacco product  
26                    (other than in or on a vending machine), a  
27                    health warning sign that is in accordance with  
28                    the regulations was displayed, immediately  
29                    adjacent to the display.  
30

1 (4) After section 23(4) insert:  
2

3 (5) If a person is charged with an offence under  
4 section 22(1) that is alleged to have been committed  
5 during the second transition period, it is a defence to  
6 prove that at the time the offence is alleged to have  
7 been committed —

8 (a) the person was a specialist retailer; and

9 (b) the display could not be seen from a public  
10 place outside the premises specified in the  
11 licence; and

12 (c) in the case of a display of a tobacco product  
13 (other than in or on a vending machine), a  
14 health warning sign that is in accordance with  
15 the regulations was displayed, immediately  
16 adjacent to the display.  
17

18 **7. Section 25 amended**

19 (1) At the end of section 25(1) insert:  
20

21 Penalty for this subsection: a fine of \$1 000.  
22

23 (2) At the end of section 25(2) insert:  
24

25 Penalty for this subsection: a fine of \$1 000.  
26

**s. 8**

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- 1       (3) Delete section 25(3) and insert:  
2
- 3           (3) The holder of a retailer’s licence must ensure that if the  
4           price of a tobacco product is displayed, there is  
5           displayed, in close proximity to the price, a health  
6           warning sign that is in accordance with the regulations.  
7           Penalty for this subsection: a fine of \$1 000.  
8
- 9       (4) At the end of section 25(4) insert:  
10
- 11           Penalty for this subsection: a fine of \$1 000.  
12
- 13       (5) At the end of section 25 delete the Penalty.  
14
- 15   **8.       Section 33A inserted**  
16       After section 33 insert:  
17
- 18       **33A.    Tobacco products not to be included in loyalty**  
19       **programme**
- 20           (1) A person must not establish or conduct —  
21               (a) a programme or arrangement under which a gift  
22               or other benefit may be obtained by a purchaser  
23               of a tobacco product on the basis of the amount  
24               or type of the product purchased, whether or  
25               not the programme or arrangement extends to  
26               the purchase of other goods or services; or  
27               (b) a programme or arrangement under which a  
28               purchaser of goods or services may be entitled  
29               to a gift of a tobacco product or any other  
30               benefit in relation to a tobacco product, whether  
31               or not the purchaser may choose to accept  
32               another type of gift or benefit.  
33           Penalty for this subsection: see section 115.



- 1           (2) Subsection (1)(a) does not apply in relation to a  
2                   programme or arrangement under which a gift or other  
3                   benefit may be obtained on the sole basis of the method  
4                   of payment used to purchase a tobacco product.  
5

6   **9.       Section 38 amended**

7           In section 38(3) delete “allows having regard to section 40(2).”  
8           and insert:

9  
10          allows.  
11

12   **10.     Section 39 amended**

13          (1) In section 39(2) delete the passage that begins with “to  
14               authorise” and continues to the end of the subsection and insert:

15  
16               for the purpose of authorising the sale or supply of tobacco  
17               products at a sporting, cultural or other event.  
18

19          (2) After section 39(6) insert:

20  
21               (7) If an application for the renewal of a licence is made no  
22               later than 28 days before the due day and the CEO does  
23               not renew or refuse to renew the licence before the due  
24               day —

25                   (a) the licence continues in force under this  
26                   subsection, without affecting any period of  
27                   suspension, until the earlier of —

28                           (i) the end of the period of 21 days  
29                           beginning on the day immediately  
30                           following the due day; or

**s. 11**

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- 1 (ii) the beginning of the day on which the  
2 CEO renews or refuses to renew the  
3 licence;  
4 and  
5 (b) any renewal of the licence is taken for all  
6 purposes to have taken effect on the day  
7 immediately following the due day.  
8

9 **11. Section 40 amended**

10 Delete section 40(2) and insert:  
11

- 12 (2) If the CEO refuses to renew a licence, the CEO must  
13 give written notice to the applicant setting out the  
14 decision and the reasons for the decision.  
15 (2A) If a decision to refuse to renew a licence is made later  
16 than 14 days before the due day, the licence continues  
17 in force under this subsection, without affecting any  
18 period of suspension, until the end of the period of  
19 14 days beginning on the day immediately following  
20 the day on which notice of the decision is given under  
21 subsection (2).  
22

23 **12. Section 77 replaced**

24 Delete section 77 and insert:  
25

26 **77. Appointment of restricted investigators**

- 27 (1) In this section —  
28 ***enforcement agency*** means —  
29 (a) the CEO; or  
30 (b) a local government; or

- 1                   (c) a person or body, or a person or body within a  
2                   class of persons or bodies, prescribed by the  
3                   regulations for the purposes of this definition.
- 4           (2) An enforcement agency may appoint, by instrument in  
5           writing, a person to be a restricted investigator.
- 6           (3) An enforcement agency must not appoint a person  
7           under subsection (2) unless the agency —
- 8                   (a) considers that the person has the appropriate  
9                   qualifications and experience to perform the  
10                  functions referred to in section 78(1); and
- 11                  (b) has regard to any guidelines issued under  
12                  subsection (4).
- 13           (4) The CEO may issue guidelines that describe the  
14           qualifications and experience that are appropriate for a  
15           person to be appointed to be a restricted investigator  
16           under subsection (2).
- 17           (5) A person ceases to be a restricted investigator —
- 18                   (a) when the period of the person’s appointment  
19                   expires; or
- 20                   (b) when the person’s appointment is revoked.
- 21           (6) An enforcement agency must —
- 22                   (a) maintain a list of restricted investigators  
23                   appointed by the agency; and
- 24                   (b) give a copy of the list to the CEO if requested  
25                   to do so.
- 26

**s. 13**

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1    **13.    Section 78 amended**

2            After section 78(1) insert:

3

4            (1A) A restricted investigator has the functions referred to in  
5                subsection (1) for the following purposes only —

- 6                    (a) to seek evidence of a suspected offence under  
7                        regulations made under section 125;
- 8                    (b) to assess whether or not regulations made under  
9                        section 125 are being complied with;
- 10                   (c) any other purpose relevant to the administration  
11                       of regulations made under section 125.

12

13    **14.    Section 81 amended**

14           (1) In section 81(1) delete “except a” and insert:

15

16                and

17

18           (2) Delete section 81(2) and insert:

19

20           (2) An identity card must contain —

- 21                   (a) the name of the investigator or restricted  
22                       investigator; and
- 23                   (b) a statement to the effect that the person  
24                       identified by the card is an investigator or  
25                       restricted investigator for the purposes of this  
26                       Act; and
- 27                   (c) a photograph of the investigator or restricted  
28                       investigator; and
- 29                   (d) the expiry date or currency of the appointment  
30                       of the investigator or restricted investigator.

31

1 (3) In section 81(3) delete “investigator,” and insert:

2

3 investigator or restricted investigator,

4

5 Note: The heading to amended section 81 is to read:

6

**Identity cards for investigators and restricted investigators**

7 **15. Section 82 amended**

8 (1) In section 82(1):

9

(a) delete “must show the investigator’s” and insert:

10

11 or restricted investigator must show their

12

13 (b) in paragraph (a) after “investigator” insert:

14

15 or restricted investigator

16

17 (2) In section 82(2):

18

(a) delete “A restricted investigator or an” and insert:

19

20 An

21

22 (b) in paragraph (a) delete “restricted investigator or”.

23 **16. Section 92 amended**

24 (1) Delete section 92(2)(a)(i) and (ii) and insert:

25

26

(i) if a person is charged with the offence  
and found not guilty of the offence, or  
the prosecution of the offence is  
discontinued — as soon as practicable  
after the relevant prosecution (including

27

28

29

30

**s. 17**

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- 1                                   any relevant appeal) is completed or  
2                                   discontinued; or
- 3                                   (ii) if a person is charged with the offence  
4                                   and convicted of the offence — during  
5                                   the period of 3 months beginning on the  
6                                   day the relevant prosecution (including  
7                                   any relevant appeal) is completed  
8                                   (unless an order of forfeiture is made  
9                                   under section 119); or
- 10                                  (iii) if no prosecution is commenced — as  
11                                  soon as practicable after the decision to  
12                                  not prosecute is made;
- 13
- 14                   (2) After section 92(2) insert:
- 15
- 16                   (3) If a thing was taken in connection with the prosecution  
17                   or possible prosecution in relation to more than one  
18                   alleged offence under this Act then a reference in  
19                   subsection (2)(a)(i) or (ii) to the offence is taken to be a  
20                   reference to the offence the prosecution of which is  
21                   completed (including any relevant appeal) or  
22                   discontinued last.
- 23

24   **17. Section 115 amended**

25                   In section 115(1) in the Table:

26                   (a) after “s. 18” insert:

27

28                                   s. 18A

29

30                   (b) after “s. 21” insert:

31

32                                   s. 21A

33                                   s. 21B

34

1 (c) delete “s. 25(1), (2), (3), (4)”;

2 (d) after “s. 33(1)” insert:

3

4 s. 33A(1)

5

6 **18. Section 119 amended**

7 In section 119(1) delete “On the conviction of a person for an  
8 offence under this Act, the court may” and insert:

9

10 If a person is convicted of an offence under this Act, the court  
11 may, at any time during the period of 3 months beginning on the  
12 day on which the person was convicted of the offence,

13

14 **19. Section 124 amended**

15 In section 124(2)(d) after “section” insert:

16

17 23 or

18

19 **20. Part 9 inserted**

20 After section 127 insert:

21

22 **Part 9 — Transitional provisions for *Tobacco***  
23 ***Products Control Amendment Act 2017***

24 **128. Restricted investigators**

25 (1) Subsection (2) applies to a person who, immediately  
26 before the day on which the *Tobacco Products Control*  
27 *Amendment Act 2017* section 12 comes into operation,  
28 is a restricted investigator for the purposes of this Act.

**s. 21**

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1           (2) The person’s appointment as a restricted investigator  
2 continues, subject to section 77(5), for the remainder of  
3 the period of the appointment.

4           **129. Application of s. 119(1) to certain convictions**

5           Section 119(1), as in effect on and after the day on  
6 which the *Tobacco Products Control Amendment*  
7 *Act 2017* section 18 comes into operation, does not  
8 apply in relation to the conviction of a person before  
9 that day.  
10

11       **21. Glossary amended**

12       (1) In the Glossary clause 1 insert in alphabetical order:  
13

14                       *due day*, in relation to a licence, means the day on which the  
15 licence is due to expire, before the application of  
16 section 39(7) or 40(2A);

17                       *restricted investigator* means a person appointed under  
18 section 77(2);  
19

20       (2) In the Glossary clause 1 in the definition of *identity card* after  
21 “an investigator” insert:  
22

23                       or restricted investigator  
24

25

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