

## Tobacco Products Control Amendment Bill 2017

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Western Australia

LEGISLATIVE COUNCIL

*(As amended in Committee)*

## **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) After section 23(1) insert:

23

24 (2) If a person is charged with an offence under  
25 section 22(1) it is a defence to prove that at the time the  
26 offence is alleged to have been committed —

- 27 (a) the person was a specialist retailer; and  
28 (b) the display was of a cigar or an implement  
29 designed to cut a cigar; and

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- 1 (c) the display could not be seen from a public  
2 place outside the premises specified in the  
3 licence; and  
4 (d) a health warning sign in accordance with the  
5 regulations was displayed immediately adjacent  
6 to the display.  
7

8 (2) Delete section 23(4).

9 Note: The heading to amended section 23 is to read:

10 **Defence to s. 22(1) offence for specialist retailers**

11 **7. Section 25 amended**

12 (1) At the end of section 25(1) insert:

13

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

15

16 (2) At the end of section 25(2) insert:

17

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

19

20 (3) Delete section 25(3) and insert:

21

22 (3) The holder of a retailer's licence must ensure that if the  
23 price of a tobacco product is displayed, there is  
24 displayed, in close proximity to the price, a health  
25 warning sign that is in accordance with the regulations.

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

27

28 (4) At the end of section 25(4) insert:

29

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

31

1 (5) At the end of section 25 delete the Penalty.  
2

3 **8. Section 33A inserted**

4 After section 33 insert:  
5

6 **33A. Tobacco products not to be included in loyalty**  
7 **programme**

- 8 (1) A person must not establish or conduct —  
9 (a) a programme or arrangement under which a gift  
10 or other benefit may be obtained by a purchaser  
11 of a tobacco product on the basis of the amount  
12 or type of the product purchased, whether or  
13 not the programme or arrangement extends to  
14 the purchase of other goods or services; or  
15 (b) a programme or arrangement under which a  
16 purchaser of goods or services may be entitled  
17 to a gift of a tobacco product or any other  
18 benefit in relation to a tobacco product, whether  
19 or not the purchaser may choose to accept  
20 another type of gift or benefit.

21 Penalty for this subsection: see section 115.

- 22 (2) Subsection (1)(a) does not apply in relation to a  
23 programme or arrangement under which a gift or other  
24 benefit may be obtained on the sole basis of the method  
25 of payment used to purchase a tobacco product.  
26

27 **9. Section 38 amended**

28 In section 38(3) delete “allows having regard to section 40(2).”  
29 and insert:  
30

31 allows.  
32

**s. 10**

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1   **10.   Section 39 amended**

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

4  
5       for the purpose of authorising the sale or supply of tobacco  
6       products at a sporting, cultural or other event.

7  
8       (2) After section 39(6) insert:

9  
10       (7) If an application for the renewal of a licence is made no  
11       later than 28 days before the due day and the CEO does  
12       not renew or refuse to renew the licence before the due  
13       day —

14           (a) the licence continues in force under this  
15           subsection, without affecting any period of  
16           suspension, until the earlier of —

17               (i) the end of the period of 21 days  
18               beginning on the day immediately  
19               following the due day; or

20               (ii) the beginning of the day on which the  
21               CEO renews or refuses to renew the  
22               licence;

23           and

24           (b) any renewal of the licence is taken for all  
25           purposes to have taken effect on the day  
26           immediately following the due day.

27



1 **11. Section 40 amended**

2 Delete section 40(2) and insert:

3

4 (2) If the CEO refuses to renew a licence, the CEO must  
5 give written notice to the applicant setting out the  
6 decision and the reasons for the decision.

7 (2A) If a decision to refuse to renew a licence is made later  
8 than 14 days before the due day, the licence continues  
9 in force under this subsection, without affecting any  
10 period of suspension, until the end of the period of  
11 14 days beginning on the day immediately following  
12 the day on which notice of the decision is given under  
13 subsection (2).  
14

15 **12. Section 77 replaced**

16 Delete section 77 and insert:

17

18 **77. Appointment of restricted investigators**

19 (1) In this section —

20 *enforcement agency* means —

21 (a) the CEO; or

22 (b) a local government; or

23 (c) a person or body, or a person or body within a  
24 class of persons or bodies, prescribed by the  
25 regulations for the purposes of this definition.

26 (2) An enforcement agency may appoint, by instrument in  
27 writing, a person to be a restricted investigator.

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

22   **13. Section 78 amended**

23           After section 78(1) insert:  
24

- 25           (1A) A restricted investigator has the functions referred to in  
26           subsection (1) for the following purposes only —  
27                 (a) to seek evidence of a suspected offence under  
28                 regulations made under section 125;  
29                 (b) to assess whether or not regulations made under  
30                 section 125 are being complied with;

- 1 (c) any other purpose relevant to the administration  
2 of regulations made under section 125.  
3

4 **14. Section 81 amended**

- 5 (1) In section 81(1) delete “except a” and insert:  
6

7 and  
8

- 9 (2) Delete section 81(2) and insert:  
10

- 11 (2) An identity card must contain —

- 12 (a) the name of the investigator or restricted  
13 investigator; and  
14 (b) a statement to the effect that the person  
15 identified by the card is an investigator or  
16 restricted investigator for the purposes of this  
17 Act; and  
18 (c) a photograph of the investigator or restricted  
19 investigator; and  
20 (d) the expiry date or currency of the appointment  
21 of the investigator or restricted investigator.  
22

- 23 (3) In section 81(3) delete “investigator,” and insert:  
24

25 investigator or restricted investigator,  
26

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

28 **Identity cards for investigators and restricted investigators**

**s. 15**

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1 **15. Section 82 amended**

2 (1) In section 82(1):

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

4

5 or restricted investigator must show their

6

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

8

9 or restricted investigator

10

11 (2) In section 82(2):

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

13

14 An

15

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

17 **16. Section 92 amended**

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

19

20 (i) if a person is charged with the offence  
21 and found not guilty of the offence, or  
22 the prosecution of the offence is  
23 discontinued — as soon as practicable  
24 after the relevant prosecution (including  
25 any relevant appeal) is completed or  
26 discontinued; or

27 (ii) if a person is charged with the offence  
28 and convicted of the offence — during  
29 the period of 3 months beginning on the  
30 day the relevant prosecution (including  
31 any relevant appeal) is completed

- 1 (unless an order of forfeiture is made  
2 under section 119); or  
3 (iii) if no prosecution is commenced — as  
4 soon as practicable after the decision to  
5 not prosecute is made;  
6

7 (2) After section 92(2) insert:  
8

- 9 (3) If a thing was taken in connection with the prosecution  
10 or possible prosecution in relation to more than one  
11 alleged offence under this Act then a reference in  
12 subsection (2)(a)(i) or (ii) to the offence is taken to be a  
13 reference to the offence the prosecution of which is  
14 completed (including any relevant appeal) or  
15 discontinued last.  
16

17 **17. Section 115 amended**

18 In section 115(1) in the Table:

- 19 (a) after “s. 18” insert:  
20

21 s. 18A  
22

- 23 (b) after “s. 21” insert:  
24

25 s. 21A

26 s. 21B  
27

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

- 29 (d) after “s. 33(1)” insert:  
30

31 s. 33A(1)  
32

**s. 18**

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1 **18. Section 119 amended**

2 In section 119(1) delete “On the conviction of a person for an  
3 offence under this Act, the court may” and insert:  
4

5 If a person is convicted of an offence under this Act, the court  
6 may, at any time during the period of 3 months beginning on the  
7 day on which the person was convicted of the offence,  
8

9 **19. Section 124 amended**

10 In section 124(2)(d) after “section” insert:  
11

12 23 or  
13

14 **20. Part 9 inserted**

15 After section 127 insert:  
16

17 **Part 9 — Transitional provisions for *Tobacco***  
18 ***Products Control Amendment Act 2017***

19 **128. Restricted investigators**

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

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

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

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

8           **21.    Glossary amended**

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

10  
11                           *due day*, in relation to a licence, means the day on which the  
12                           licence is due to expire, before the application of  
13                           section 39(7) or 40(2A);

14                           *restricted investigator* means a person appointed under  
15                           section 77(2);  
16

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

19  
20                           or restricted investigator  
21

22

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