

WESTERN AUSTRALIA

**Tobacco Products
Control Amendment
Bill 2016**

DRAFT BILL AS TABLED IN THE LEGISLATIVE ASSEMBLY

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Tobacco Products Control Amendment Bill 2016

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Western Australia

Tobacco Products Control Amendment Bill 2016

A Bill for

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

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Tobacco Products Control Amendment Act 2016*.

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) the rest of the Act — on the day after the period of
8 6 months beginning on assent day.

9 **3. Act amended**

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

11 **4. Section 18A inserted**

12 After section 18 insert:
13

14 **18A. No sale by person under 18 years**

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

18 Penalty: see section 115.
19

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

21 After section 21 insert:
22

23 **21A. No sale of cigarettes in packages that can be split**
24 **into portions of fewer than 20 cigarettes**

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

29 Penalty: see section 115.

21B. No sale of flavoured cigarettes

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

- (a) any kind of fruit; or
- (b) mint (but not menthol), chocolate, vanilla, caramel, coconut or any other flavour (but not a spice) commonly used in the production of confectionery.

Penalty: see section 115.

6. Section 23 amended

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

commencement day means the day on which the Tobacco Products Control Amendment Act 2016 section 6 comes into operation;

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

second transition period means the period of 12 months beginning on the day after the first transition period ends;

- (2) In section 23(1) in the definition of *specialist retailer* after paragraph (b) insert:

- (ba) 80% or more of the average gross turnover of the business for the most recently ended financial year was derived from the sale of tobacco products; and

- (3) In section 23(4):

- (a) delete “section 22(1)” and insert:

section 22(1) that is alleged to have been committed during the first transition period,

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- 1 (b) in paragraph (c) delete “licence.” and insert:
2
3 licence; and
4
5 (c) after paragraph (c) insert:
6
7 (d) in the case of a display of a tobacco product
8 (other than in or on a vending machine), a
9 health warning sign that is in accordance with
10 the regulations was displayed, immediately
11 adjacent to the display.
12
- 13 (4) After section 23(4) insert:
14
- 15 (5) If a person is charged with an offence under
16 section 22(1) that is alleged to have been committed
17 during the second transition period, it is a defence to
18 prove that at the time the offence is alleged to have
19 been committed —
20 (a) the person was a specialist retailer; and
21 (b) the display could not be seen from a public
22 place outside the premises specified in the
23 licence; and
24 (c) in the case of a display of a tobacco product
25 (other than in or on a vending machine), a
26 health warning sign that is in accordance with
27 the regulations was displayed, immediately
28 adjacent to the display.
29

30 **7. Section 25 amended**

- 31 (1) At the end of section 25(1) insert:
32
33 Penalty for this subsection: see section 115.
34
- 35 (2) At the end of section 25(2) insert:
36
37 Penalty for this subsection: see section 115.
38

1 (3) Delete section 25(3).

2 (4) Before section 25(4) insert:

3

4 (3A) The holder of a retailer's licence must ensure that if the
5 price of a tobacco product is displayed, there is
6 displayed, in close proximity to the price, a health
7 warning sign that is in accordance with the regulations.

8 Penalty for this subsection: see section 115.

9

10 (5) In section 25(4) delete the Penalty and insert:

11

12 Penalty for this subsection: see section 115.

13

14 **8. Section 33A inserted**

15 After section 33 insert:

16

17 **33A. Tobacco products not to be included in loyalty**
18 **programme**

19 (1) A person must not establish or conduct —

20 (a) a programme or arrangement under which a gift
21 or other benefit may be obtained by a purchaser
22 of tobacco products on the basis of the amount
23 or type of those products purchased, whether or
24 not the programme or arrangement extends to
25 the purchase of other goods or services; or

26 (b) a programme or arrangement under which a
27 purchaser of goods or services may be entitled
28 to a gift of tobacco products or any other
29 benefit in relation to tobacco products, whether
30 or not the purchaser may choose to accept
31 another type of gift or benefit.

32 Penalty for this subsection: see section 115.

33 (2) Subsection (1)(a) does not apply in relation to a
34 programme or arrangement under which a gift or other
35 benefit may be obtained on the sole basis of the method
36 of payment used.

37

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9. Section 38 amended

In section 38(3) delete “40(2).” and insert:

40.

10. Section 39 amended

(1) Before section 39(1) insert:

(1A) In this section and section 40 —

due day, in relation to a licence, means the day on which the licence is due to expire, before the application of subsection (7) or section 40(2B);

working day means a day other than a Saturday, a Sunday or a public holiday throughout the State.

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

for the purpose of authorising the sale or supply of tobacco products at an event.

(3) After section 39(6) insert:

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

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

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

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

and

- 1 (b) any renewal of the licence is taken for all
2 purposes to have taken effect on the day
3 immediately following the due day.
4

5 **11. Section 40 amended**

6 Delete section 40(2) and insert:
7

- 8 (2) If the CEO refuses to renew a licence, the CEO must
9 give written notice to the applicant setting out the
10 decision and the reasons for the decision.
11 (2A) The CEO must give the notice under subsection (2) —
12 (a) if the decision is made at any time before
13 the day that is 14 days before the due day
14 (the **14th day**) — on or before the 14th day; or
15 (b) if the decision is made within the period
16 beginning on the 14th day and ending on the
17 due day — on or before the due day; or
18 (c) if the decision is made when the licence is in
19 force under section 39(7) — before the end of
20 the period referred to in section 39(7)(a)(i).
21 (2B) If the CEO refuses to renew a licence on or after the
22 14th day, the licence continues in force under this
23 subsection, without affecting a period of suspension,
24 from the beginning of the day on which the CEO
25 refuses to renew the licence until the end of the period
26 of 14 days after the day on which the notice is given
27 under subsection (2).
28

29 **12. Section 77 replaced**

30 Delete section 77 and insert:
31

32 **77. Appointment of restricted investigators**

- 33 (1) In this section —
34 **enforcement agency** means —
35 (a) the CEO; or
36 (b) a local government; or

s. 13

- 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 a person to be a
5 restricted investigator for the purposes of this Act if the
6 enforcement agency, having regard to any guidelines
7 issued by the CEO under subsection (3), considers that
8 the person has the appropriate qualifications and
9 experience to perform the functions of a restricted
10 investigator.
- 11 (3) The CEO may issue guidelines that describe the
12 qualifications and experience that are appropriate for a
13 person to be appointed as a restricted investigator
14 under subsection (2).
- 15 (4) A person ceases to be a restricted investigator —
16 (a) when the period of the person's appointment
17 expires; or
18 (b) if the CEO revokes the person's appointment,
19 when the appointment is revoked.
- 20 (5) Each enforcement agency must maintain a list of
21 restricted investigators appointed by the enforcement
22 agency.
- 23 (6) A person who, immediately before the day on which
24 the *Tobacco Products Control Amendment Act 2016*
25 section 12 comes into operation, holds an appointment
26 as a restricted investigator (the **prior appointment**) is
27 taken to have been appointed to be a restricted
28 investigator under this section by the CEO on that day
29 and, subject to this section, is a restricted investigator
30 for the remainder of the period of their prior
31 appointment.
32

33 **13. Section 92 amended**

- 34 (1) Delete section 92(2)(a)(i) and (ii) and insert:
35
36 (i) if a person is charged with the offence
37 and found not guilty of the offence, or
38 the prosecution of the offence is
39 discontinued — as soon as practicable
40 after the relevant prosecution (including

- 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 is taken in connection with the prosecution or
17 possible prosecution in relation to more than one
18 alleged offence then a reference in subsection (2)(a)(i)
19 and (ii) to the offence is taken to be a reference to the
20 offence the prosecution of which is completed
21 (including any relevant appeal) or discontinued last.
22

23 **14. Section 115 amended**

24 In section 115(1) in the Table:

- 25 (a) after “s. 18” insert:
26

27 s. 18A
28

- 29 (b) after “s. 21” insert:
30

31 s. 21A

32 s. 21B
33

- 34 (c) delete “s. 25(1), (2), (3), (4)” and insert:
35

36 s. 25(1), (2), (3A), (4)
37

s. 15

1 (d) after “s. 33(1)” insert:

2

3 s. 33A(1)

4

5 **15. Section 119 amended**

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

8

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

12

13 (2) After section 119(3) insert:

14

15 (4) Subsection (1), as in effect on and after the day on
16 which the *Tobacco Products Control Amendment*
17 *Act 2016* section 15 comes into operation, does not
18 apply in relation to the conviction of a person before
19 that day.

20

21 **16. Section 124 amended**

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

23

24 23 or

25

26 **17. Glossary amended**

27 In the Glossary clause 1 insert in alphabetical order:

28

29 *restricted investigator* means a person appointed under
30 section 77(2);

31

32
