

EXPLANATORY MEMORANDUM

TOBACCO PRODUCTS CONTROL AMENDMENT BILL 2016

Introduction

The *Tobacco Products Control Amendment Bill 2016* amends the *Tobacco Products Control Act 2006*.

In particular the Bill:

- Provides various measures to protect children and young people from exposure to tobacco products;
- Improves and strengthens existing provisions in relation to the retail sale of tobacco products; and
- Simplifies and streamlines administrative arrangements for tobacco licence holders and the Department of Health.

Clause 1: Short title

This clause provides for the short title of the Bill, the *Tobacco Products Control Amendment Act 2016*.

Clause 2: Commencement

This clause provides for the commencement of the Bill:

- sections 1 and 2, on the day on which the Bill receives Royal Assent (assent day);
- the rest of this Bill, 6 months after assent day.

Clause 3: Act amended

This clause provides that this Bill amends the *Tobacco Products Control Act 2006*.

Clause 4: Section 18A inserted

This clause inserts section 18A after section 18 of the *Tobacco Products Control Act 2006*.

Section 18A concerns the sale of tobacco products by a person who is not 18 and provides that the holder of a retailer's licence must not authorise or allow a person who has not reached 18 years of age to sell a tobacco product.

Penalty: As set out under section 115 of the *Tobacco Products Control Act 2006*.

For an individual –

- (a) for a first offence, a fine of \$10 000;
- (b) for a second or subsequent offence, a fine of \$20 000;

For a body corporate –

- (a) for a first offence, a fine of \$40 000;
- (b) for a second or subsequent offence, a fine of \$80 000.

Clause 5: Sections 21A and 21B inserted

This clause inserts sections 21A and 21B after section 21 of the *Tobacco Products Control Act 2006*.

Section 21A concerns the sale of cigarettes in packages that can be split into portions and provides that the holder of a licence must not sell, or authorise or allow to be sold, cigarettes in a package that is designed or capable of being split into 2 or more portions containing fewer than 20 cigarettes.

Penalty: As set out under section 115 of the *Tobacco Products Control Act 2006*.

For an individual –

- (a) for a first offence, a fine of \$10 000;
- (b) for a second or subsequent offence, a fine of \$20 000;

For a body corporate –

- (a) for a first offence, a fine of \$40 000;
- (b) for a second or subsequent offence, a fine of \$80 000.

Section 21B concerns the sale of flavoured cigarettes and provides that 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 any kind of fruit or flavouring commonly used in confectionery.

Penalty: As set out under section 115 of the *Tobacco Products Control Act 2006*.

For an individual –

- (a) for a first offence, a fine of \$10 000;
- (b) for a second or subsequent offence, a fine of \$20 000;

For a body corporate –

- (a) for a first offence, a fine of \$40 000;
- (b) for a second or subsequent offence, a fine of \$80 000.

Clause 6: Section 23 amended

This clause amends section 23 of the *Tobacco Products Control Act 2006*.

Section 22 of the *Tobacco Products Control Act 2006* provides that the holder of a licence must ensure that a tobacco product, package or smoking implement is not displayed. Section 23 of the *Tobacco Products Control Act 2006* provides a defence for a specialist retailer who displays tobacco products or packages within the relevant premises.

The amendments to section 23 provide that following two transition periods, a specialist retailer will no longer have a defence to the display of tobacco products. The effect will be that:

- (i) Following the first transition period (12 months from the commencement of clause 6 of the Bill), a specialist retailer will not be able to display tobacco products in such a way that they could be seen from a public place outside the premises.

- (ii) Following the second transition period (12 months from the end of the day after the first transition period ends), a specialist retailer will not be able to display tobacco products.

The definition of “specialist retailer” in section 23(1) of the *Tobacco Products Control Act 2006* is amended by the addition of paragraph (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”

As a consequence of the amendment to the definition of “specialist retailer” a person must, in addition to the criteria set out in section 23(1)(a) to (c), derive 80% of the turnover of the business for the most recently ended financial year from the sale of tobacco products, to be considered a “specialist retailer”.

Clause 7: Section 25 amended

This clause amends section 25 of the *Tobacco Products Control Act 2006*.

Clause 7(1) inserts the penalty for subsection 25(1) of the *Tobacco Products Control Act 2006* with reference to section 115. There is no change to the current penalty for this subsection.

Clause 7(2) inserts the penalty for subsection 25(2) of the *Tobacco Products Control Act 2006* with reference to section 115. There is no change to the current penalty for this subsection.

Clause 7(3) deletes section 25(3) of the *Tobacco Products Control Act 2006*. This section has been moved to section 23 (inserted pursuant to clause 6 of the Bill), which provides for a defence to the display of tobacco products by a specialist retailer. This defence will be phased out during the transition periods referred to in clause 6 of the Bill.

Clause 7(4) inserts a new subsection (3A) before section 25(4) of the *Tobacco Products Control Act 2006*. Subsection (3A) provides that if the price of a tobacco product is displayed then a health warning sign must be displayed in close proximity.

Penalty: As set out under section 115 of the *Tobacco Products Control Act 2006*.

For an individual –

- (a) for a first offence, a fine of \$10 000;
- (b) for a second or subsequent offence, a fine of \$20 000;

For a body corporate –

- (a) for a first offence, a fine of \$40 000;
- (b) for a second or subsequent offence, a fine of \$80 000.

Clause 7(5) deletes the penalty for section 25 of the *Tobacco Products Control Act 2006* and inserts the penalty for section 25(4) of the *Tobacco Products Control Act 2006* with reference to section 115.

Clause 8: Section 33A inserted

This clause inserts section 33A after section 33 of the *Tobacco Products Control Act 2006*.

Section 33A(1) concerns the inclusion of tobacco products in a loyalty programme and provides that a person must not establish or conduct, a customer reward programme under which a gift or other benefit may be obtained by a purchaser of tobacco products; or a customer reward programme under which a purchaser of goods or services may be entitled to a gift of tobacco products or any other benefit in relation to tobacco products.

Section 33A(1) does not apply to a customer reward programme which is based on the method of payment.

Clause 9: Section 38 amended

This clause deletes the reference to “40(2)” in section 38(3) of the *Tobacco Products Control Act 2006* and inserts “40”.

As a consequence of the amendments to section 40 pursuant to clause 11, the reference to section 40(2) is to be replaced with a reference to section 40. This will mean that an application for the renewal of a licence is to be made no later than 28 days before the expiry date of the licence or such later time as the CEO allows having regard to section 40.

Section 40 of the *Tobacco Products Control Act 2006* provides for the process that the CEO is to comply with when notifying a decision to refuse, renew or amend a licence and the time periods in which the CEO is required to notify the decision to the licence holder or applicant.

The process outlined under section 40 has been amended and accordingly the reference to section 40(2) needs to be replaced with a reference to section 40.

Clause 10: Section 39 amended

This clause amends section 39 of the *Tobacco Products Control Act 2006*. Section 39 provides for the issuing and renewing of licences for the sale of tobacco products.

Clause 10(1) inserts a new subsection (1A) before section 39(1), which provides new definitions for the purposes of section 39 and section 40 of the *Tobacco Products Control Act 2006* of “due day” and “working day”.

Clause 10(2) amends section 39(2) of the *Tobacco Products Control Act 2006*. As amended, section 39(2) provides that the CEO is not to issue a retailer’s licence for the sale or supply of tobacco products at an event.

Clause 10(3) inserts section 39(7) after section 39(6) of the *Tobacco Products Control Act 2006*.

Section 39(7) provides that if an application for the renewal of a licence is made no later than 28 days before the due day (definition inserted by clause 10(1)) and the CEO does not renew or refuse to renew the licence before the due day, the licence continues in force until either 21 days from the day following the due day or the beginning of the day on which the CEO renews or refuses the licence, whichever is the earlier date.

Clause 11: Section 40 amended

Clause 11 deletes section 40(2) of the *Tobacco Products Control Act 2006* and inserts subsections (2A), (2B) and a new subsection (2).

Section 40 of the *Tobacco Products Control Act 2006* provides for the process that the CEO is to comply with when notifying a decision to refuse, renew or amend a licence and the time periods in which the CEO is required to notify the decision to the applicant.

Subsection (2) provides that if the CEO refuses to renew a licence, the CEO must give written notice to the applicant setting out the decision and the reasons for the decision.

Subsection (2A) provides that the CEO must give the notice of the decision in accordance with the following. If the decision is made:

- at any time before the day that is 14 days before the due day (the 14th day) – on or before the 14th day;
- within the period beginning on the 14th day and ending on the due day – on or before the due day;
- when the licence is in force under section 39(7) – before the end of 21 days immediately following the due day.

Subsection (2B) provides that if the CEO refuses to renew a licence on or after the 14th day, the licence continues from the beginning of the day on which the CEO refuses to renew the licence until the end of the period of 14 days after the day on which the notice is given under subsection (2).

Clause 12: Section 77 replaced

This clause replaces the existing section 77, providing for the appointment of restricted investigators by an enforcement agency having regard to any guidelines issued by the CEO and consideration as to whether the person has the appropriate qualifications and experience to perform the functions of a restricted investigator.

Clause 13: Section 92 amended

Section 92 of the *Tobacco Products Control Act 2006* outlines access to and requirements for the return of things that have been taken from a person, in connection with the commission of an offence under the Act.

The amendment to section 92 is required as a consequence of the amendment to section 119, which concerns forfeiture of anything that was used in the commission of an offence.

The amendment to section 92(2) provides that if a person is convicted of an offence, anything that has been taken from the relevant premises, must be returned within three months of the conviction unless an order of forfeiture is made under section 119.

Clause 14: Section 115 amended

This clause amends section 115 of the *Tobacco Products Control Act 2006*. Section 115 of the *Tobacco Products Control Act 2006* provides for the penalty applicable to an offence under the Act where not otherwise stated.

Section 115 has been amended by inserting a reference to sections 18A, 21A, 21B, 25(1), (2), (3A), (4) and 33A(1) and deleting the reference to section 25(1), (2), (3) and (4).

Clause 15: Section 119 amended

This clause amends section 119 of the *Tobacco Products Control Act 2006*. Section 119 provides that on conviction, the court may order the forfeiture to the Crown of anything that was used in the commission of the particular offence. The amendment to section 119 provides that, on conviction, the court may order the forfeiture to the Crown of anything that was used in the commission of the offence, within three months of the day of the conviction.

Clause 16: Section 124 amended

This clause amends section 124 of the *Tobacco Products Control Act 2006*. Section 124 provides power for the Governor to make regulations.

Section 124(2)(d) of the *Tobacco Products Control Act 2006* provides power for the Governor to make regulations relating to signage. As a consequence of the amendment to section 23, it is necessary to add a reference to section 23 in addition to the reference to section 25.

Clause 17: Glossary amended

The Glossary provides meanings of words and terms used in the *Tobacco Products Control Act 2006*.

The definition of restricted investigator is to be added to the Glossary and provides that a restricted investigator is a person appointed under section 77(2) of the Act.