

Western Australia

Tobacco Products Control Amendment Act 2009

As at 22 Sep 2009

No. 22 of 2009

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Tobacco Products Control Amendment Act 2009

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Western Australia

Tobacco Products Control Amendment Act 2009

No. 22 of 2009

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

[Assented to 22 September 2009]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This Act is the *Tobacco Products Control Amendment Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the rest of the Act — on the day after the end of the period of 12 months after assent day.

3. Act amended

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

4. Section 22 replaced

Delete section 22 and insert:

22. Prohibition on display of tobacco products, packages, smoking implements

- (1) The holder of a retailer's licence must ensure that a tobacco product, package or smoking implement is not displayed in the premises specified in the licence.
Penalty: see section 115.
- (2) If a person is charged with an offence under subsection (1) it is a defence to prove that the display was made to a specific customer at the customer's request.

5. Section 23 amended

- (1) In section 23(1) delete the definition of *50% retailer*.
- (2) Delete section 23(2) and (3).

(3) In section 23(4):

(a) delete “22(2)” and insert:

22(1)

(b) in paragraph (b) delete “at the time for the purposes of section 22(2); and” and insert:

by the regulations; and

6. Section 24 amended

In section 24(1) after “products” insert:

or smoking implements

7. Section 32 amended

In section 32(1):

(a) in paragraph (d) after “tobacco products” insert:

or smoking implements

(b) in paragraph (d) after “those products” insert:

or implements

(c) in paragraph (f) after “product” insert:

or smoking implement

8. Section 77 amended

In section 77(1) delete “environmental health officer” and insert:

a person who belongs to a class of persons prescribed for the purpose of this section

9. Sections 107A to 107F inserted

After section 106 insert:

107A. Prohibition on smoking “between the flags”

A person must not smoke in an area that is between flags or other markers placed on a beach for the purpose of indicating a patrolled swimming area.

Penalty: a fine of \$1 000.

107B. Prohibition on smoking in outdoor eating areas

(1) A person must not smoke in an outdoor eating area unless the place in which the person is smoking is a smoking zone.

Penalty: a fine of \$2 000.

(2) If a person commits an offence under subsection (1) the occupier of the outdoor eating area commits an offence.

Penalty: a fine of \$2 000.

(3) If a person is charged with an offence under subsection (2) it is a defence to prove that —

(a) neither the accused nor any employee or agent of the accused was aware, or could reasonably be expected to have been aware, that the offence was occurring; or

- (b) as soon as the accused or an employee or agent of the accused became aware that the offence was occurring, the accused or an employee or agent of the accused —
 - (i) informed the person concerned that the person was committing an offence; and
 - (ii) requested the person to stop smoking in the outdoor eating area and to extinguish, and properly dispose of, the tobacco product; and
 - (iii) if the person failed to comply with a request under subparagraph (ii), requested the person to leave the outdoor eating area until the person finished smoking the tobacco product.
- (4) A responsible person in relation to licensed premises may allocate as a smoking zone for the premises one or more places in one or more outdoor eating areas to which a restaurant licence does not apply, but the total area of all the smoking zones for the premises must not exceed 50% of the total area of all the outdoor eating areas to which a restaurant licence does not apply.
- (5) For the purposes of *The Criminal Code* section 338A(d) and any other written law, a person is lawfully entitled to abstain from working in a smoking zone when the smoking zone is open to, or being used by, the public or a section of the public.

107C. Prohibition on smoking near playground equipment

A person must not smoke within 10 metres of children's playground equipment that —

- (a) is in a public place or a part of a public place; and
- (b) is not in an enclosed public place.

Penalty: a fine of \$1 000.

107D. Prohibition on smoking in or on vehicles if under 17 year old present

- (1) In this section —

child —

- (a) means any boy or girl who has not reached 17 years of age; and
- (b) in the absence of positive evidence as to age, means any boy or girl who apparently has not reached 17 years of age;

vehicle means any thing used or capable of being used to transport people or goods on roads;

road means any highway, road or street open to, or used by, the public and includes every carriageway, footway, reservation, median strip and traffic island on it and any parking area in a public place.

- (2) A person must not smoke in or on a vehicle if —
- (a) the vehicle is on a road; and
 - (b) any other person in or on the vehicle is a child.

Penalty: a fine of \$1 000.

107E. Local government legislative power not affected

Nothing in section 107A, 107B or 107C is intended to limit the power conferred on a local government by the

Local Government Act 1995 or any other Act to make local laws about matters mentioned in those sections.

107F. Dismissal or detriment because of refusal to work in smoking zone and employee's remedy for breach

- (1) In this section —
employee and *employer* have the respective meanings given in the *Industrial Relations Act 1979* section 7(1).
- (2) An employer must not —
 - (a) dismiss an employee; or
 - (b) alter an employee's position to the employee's disadvantage; or
 - (c) refuse to promote or transfer an employee; or
 - (d) otherwise injure an employee in relation to the employee's employment; or
 - (e) threaten to do any of those things,

for the reason, or for reasons that include the reason, that the employee does not consent to working in a smoking zone when the smoking zone is open to, or being used by, the public or a section of the public (the *consent*).

Penalty: see section 115.

- (3) In proceedings for a contravention of subsection (2), if it is proved that an employer took any course of action mentioned in that subsection against or in relation to an employee after the employee refused to give the consent, it is for the employer to prove that the course of action was taken for some reason other than because the employee refused to give the consent.
- (4) Subsection (2) is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.

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- (5) The *Industrial Relations Act 1979* section 97YG applies as if the reference in that section to a contravention of section 97YF of that Act includes a reference to a contravention of the *Tobacco Products Control Act 2006* section 107F(2).

10. Section 115 amended

- (1) In section 115(1)(b) in the Table in column 1 delete “s. 22(1), (2), (3), (4)” and insert:

s. 22(1)

- (2) In section 115(1)(b) in the Table at the end of column 2 insert:

s. 107F(2)

11. Section 124A inserted

After section 123 insert:

124A. Provision of information about alleged offences of smoking near children

- (1) If a police officer suspects on reasonable grounds that a person has committed an offence under section 107C or 107D, the Commissioner of Police is to supply the CEO with the alleged offender’s name, address and date of birth and the date and details of the alleged offence, to the extent that the Commissioner has that information.
- (2) Information supplied under subsection (1) may be used in the performance of any function that the CEO or the Foundation has under this Act.

- (3) Subsection (1) applies whether or not the person is charged with having committed the alleged offence, or otherwise dealt with for the alleged offence without being prosecuted.

12. Section 124 amended

In section 124(2):

- (a) after paragraph (b) insert:
- (ca) prescribing matters in relation to the storage of tobacco products, packages and smoking implements at places where those items are sold by way of retail sale including the means to avoid or minimise attention being given to those items;
- (b) in paragraph (c) after “products” insert:
- or smoking implements

13. Glossary amended

In the Glossary insert in alphabetical order:

enclosed public place has the meaning given to that term in regulations mentioned under section 125 about smoking in public places as it may be amended from time to time;

occupier, in relation to a public place, means a person having the management or control, or otherwise being in charge, of that place;

outdoor eating area means a public place or part of a public place —

- (a) that is provided, on a commercial basis, as an area where food or drink may be consumed by people sitting at tables; and
- (b) that is not an enclosed public place;

restaurant licence, in relation to a place, means —

- (a) a restaurant licence granted under the *Liquor Control Act 1988* in relation to that place; or
- (b) a condition of any other kind of licence, order or permit under the *Liquor Control Act 1988* —
 - (i) to the effect that a provision of that Act relating to restaurant licences applies to that place; or
 - (ii) that otherwise has an effect in relation to that place that is similar to a provision of that Act relating to restaurant licences;

smoking zone means a place allocated under section 107B(4);

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