



Western Australia

Tobacco Products Control Amendment Act 2018

As at 18 Sep 2018

No. 21 of 2018

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Tobacco Products Control Amendment Act 2018

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Western Australia

Tobacco Products Control Amendment Act 2018

No. 21 of 2018

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

[Assented to 18 September 2018]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Tobacco Products Control Amendment Act 2018*.

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) section 4 — on the day after the period of 24 months beginning on assent day;
- (c) the rest of the Act — on the day after the period of 6 months beginning on assent day.

3. Act amended

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

4. Section 18A inserted

After section 18 insert:

18A. No retail sale by person under 18 years

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: see section 115.

5. Sections 21A and 21B inserted

After section 21 insert:

21A. No sale of cigarettes in certain packages

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

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) After section 23(1) insert:

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

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

s. 7

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

- (2) Delete section 23(4).

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

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

7. Section 25 amended

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

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

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

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

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

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

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

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

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

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

8. Section 33A inserted

After section 33 insert:

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

- (1) A person must not establish or conduct —
- (a) a programme or arrangement under which a gift or other benefit may be obtained by a purchaser of a tobacco product on the basis of the amount or type of the product purchased, whether or not the programme or arrangement extends to the purchase of other goods or services; or
 - (b) a programme or arrangement under which a purchaser of goods or services may be entitled to a gift of a tobacco product or any other benefit in relation to a tobacco product, whether or not the purchaser may choose to accept another type of gift or benefit.

Penalty for this subsection: see section 115.

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

9. Section 38 amended

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

allows.

10. Section 39 amended

- (1) 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 a sporting, cultural or other event.

- (2) 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 any period of suspension, until the earlier of —
- (i) the end of the period of 21 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

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

11. Section 40 amended

Delete section 40(2) and insert:

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

12. Section 77 replaced

Delete section 77 and insert:

77. Appointment of restricted investigators

- (1) In this section —
enforcement agency means —
 - (a) the CEO; or
 - (b) a local government; or
 - (c) a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this definition.
- (2) An enforcement agency may appoint, by instrument in writing, a person to be a restricted investigator.

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

13. Section 78 amended

After section 78(1) insert:

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

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

14. Section 81 amended

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

and

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

- (2) An identity card must contain —

- (a) the name of the investigator or restricted investigator; and
- (b) a statement to the effect that the person identified by the card is an investigator or restricted investigator for the purposes of this Act; and
- (c) a photograph of the investigator or restricted investigator; and
- (d) the expiry date or currency of the appointment of the investigator or restricted investigator.

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

investigator or restricted investigator,

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

Identity cards for investigators and restricted investigators

15. Section 82 amended

- (1) In section 82(1):
 - (a) delete “must show the investigator’s” and insert:

or restricted investigator must show their
 - (b) in paragraph (a) after “investigator” insert:

or restricted investigator
- (2) In section 82(2):
 - (a) delete “A restricted investigator or an” and insert:

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

16. Section 92 amended

- (1) Delete section 92(2)(a)(i) and (ii) and insert:
 - (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 any relevant appeal) is completed or discontinued; or
 - (ii) if a person is charged with the offence and convicted of the offence — during the period of 3 months beginning on the day the relevant prosecution (including any relevant appeal) is completed

(unless an order of forfeiture is made under section 119); or

- (iii) if no prosecution is commenced — as soon as practicable after the decision to not prosecute is made;

(2) After section 92(2) insert:

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

17. Section 115 amended

In section 115(1) in the Table:

- (a) after “s. 18” insert:

s. 18A

- (b) after “s. 21” insert:

s. 21A

s. 21B

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

- (d) after “s. 33(1)” insert:

s. 33A(1)

18. Section 119 amended

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

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

19. Section 124 amended

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

23 or

20. Part 9 inserted

After section 127 insert:

Part 9 — Transitional provisions for *Tobacco Products Control Amendment Act 2018*

128. Restricted investigators

- (1) Subsection (2) applies to a person who, immediately before the day on which the *Tobacco Products Control Amendment Act 2018* section 12 comes into operation, is a restricted investigator for the purposes of this Act.
- (2) The person’s appointment as a restricted investigator continues, subject to section 77(5), for the remainder of the period of the appointment.

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

Section 119(1), as in effect on and after the day on which the *Tobacco Products Control Amendment Act 2018* section 18 comes into operation, does not apply in relation to the conviction of a person before that day.

21. Glossary amended

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

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

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

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

or restricted investigator

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