

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented and read a first time, 31 August 1989)*

(SENATOR POWELL)

A BILL

FOR

An Act to prohibit certain advertisements relating to smoking and tobacco products, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the Smoking and Tobacco Products Advertisements (Prohibition) Act 1989.

Commencement

2. (1) Subject to this section, this Act commences on 1 January 1990.

(2) Subsection 5(3), in so far as it applies to an announcement, notification or intimation made in pursuance

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of a contract, commences on the earlier of the day after the contract expires or 1 July 1991.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears:

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"advertisement" includes any matter or thing deemed by section 5 to be an advertisement;

"Australia" includes the external Territories;

"corporation" means:

(a) a body corporate that is a foreign corporation within the meaning of paragraph 51 (xx) of the Constitution; 10

(b) a body corporate that is a trading corporation, within the meaning of paragraph 51(XX) of the Constitution formed within the limits of the Commonwealth; 15

(c) a body corporate, not being a body corporate of a kind referred to in paragraph (b), that is incorporated in a Territory; or 20

(d) a body corporate that is a holding company of a body corporate of a kind referred to in paragraph (a), (b) or (c);

"newspaper" includes a magazine, journal or periodical or any other publication copies of which contain: 25

(a) news, intelligence, information or reports  
of occurrences; or

(b) remarks, observations or comments in  
relation to any news, intelligence,  
information or occurrences or in relation  
to any other matter of interest to the  
public or any section of the public;

whatever language it is printed in and  
whether it is published at regular or irregular  
intervals;

"publish", in relation to an advertisement, includes  
issue, show, display, exhibit or make known the  
advertisement in any manner other than  
broadcasting or televising the advertisement;

"smoking" means inhaling or puffing the smoke of  
cigarettes or cigars of any composition or  
tobacco in any form;

"tobacco product" means cigarettes or cigars of any  
tobacco composition or tobacco in any form, and  
includes snuff, cigarette paper, cigarette  
rollers and pipes;

"writing" includes printing, lithography, typewriting,  
photography and any other mode of representing  
or producing words, figures or images in visible  
form.

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(2) For the purpose of this Act, the question whether a body corporate is the holding company of another body corporate shall be determined in the same manner as that question is required to be determined by section 7 of the Companies Act 1981.

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**Extension to Territories**

4. This Act extends to every external Territory.

**Advertisements**

5. (1) In this Act, but without limiting the ordinary meaning of the term "advertisement", that term, unless the contrary intention appears, includes any matter or thing deemed to be an advertisement by subsection (2),(3),(4) or (5).

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(2) A notice, circular, pamphlet, brochure, programme, price-list, label, wrapper or other document:

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(a) that is designed to attract, or is reasonably capable of attracting, public attention; or

(b) that is designed to bring in, or is reasonably capable of bringing in, custom;

shall be deemed to be an advertisement unless it is, or is contained in, a publication of a corporation that manufactures or distributes tobacco products, being a publication that is for the private business use of a person who buys or sells such products in the course of, and for the purpose of, a business.

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5 (3) An announcement, notification or intimation to any person made by means of a poster, placard, notice or other document posted up on, affixed to or displayed on a wall, billboard, hoarding, or any other object or thing shall, subject to subsection 2(2), be deemed to be an advertisement.

10 (4) An announcement, notification or intimation to any person made by means of producing or transmitting sound or light, whether for aural or visual reception or both, shall, subject to subsection 2(2), be deemed to be an advertisement.

15 (5) An announcement, notification or intimation to any person in writing otherwise than as described in subsection (3) or (4) shall be deemed to be an advertisement if:

- (a) it is designed to attract, or is reasonably capable of attracting, public attention; or
- (b) it is designed to bring in, or is reasonably capable of bringing in, custom.

20 **Prohibition on advertising of smoking and tobacco products**

6. (1) Subject to section 7, a corporation shall not publish or cause to be published an advertisement:

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- (a) that contains an express or implied inducement or request to purchase tobacco products or to indulge in smoking;
  - (b) that contains an express or implied suggestion that tobacco products be purchased or smoking be indulged in; or

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(c) that, either expressly or impliedly, is calculated, or may reasonably be expected, to lead to, to induce, to urge, to promote or to encourage the use of tobacco products.

(2) Subject to section 7, a corporation shall not 5  
caus to be communicated to a person orally an advertisement of a kind described in subsection (1).

(3) Subject to subsection (4), a corporation shall not give or distribute, or cause to be given or distributed, to a person any tobacco products. 10

(4) Subsection (3) does not apply to the giving or distributing of a sample of cigarettes, cigars or tobacco to a person who is engaged in the sale or distribution of tobacco products.

(5) A corporation that contravenes subsection 15  
(1),(2) or (3) is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

(6) Where a contravention by a corporation of subsection (1),(2) or (3), continues over 2 or more days, the corporation is guilty of a separate offence on each day 20  
after the first day on which the contravention continues punishable, on conviction, by a fine not exceeding \$5,000.

5 (7) Where a contravention by a corporation of subsection (1), (2) or (3) continues over 2 or more days, the corporation may be charged with, and convicted of, the contravention that occurred on any one or more of those days notwithstanding that it has previously been charged with, and convicted of, the same contravention that occurred on any one or more previous days.

**Certain advertising permitted**

7. (1) Section 6 does not apply to:
- 10 (a) an advertisement relating to smoking contained in a newspaper to which this paragraph applies by virtue of subsection (2);
- (b) an advertisement by way of a notice in premises or a place where tobacco products are sold:
- 15 (i) that states, for the information of the public, only the name or names of the brand or brands of the tobacco products that are sold at those premises or at that place; and
- 20 (ii) that complies with the provisions of subsection (3); or
- (c) an advertisement on a tobacco product or on a carton, packet or other container in which a tobacco product is sold or exhibited for sale.
- 25 (2) Paragraph 1(a) applies to a newspaper:
- (a) that is printed or published outside Australia; and
- (b) that is brought into Australia for sale, free distribution or personal use;

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other than a newspaper declared by the Minister, by notice published in the Gazette, not to be a newspaper to which paragraph (1) (a) applies.

(3) A notice referred to in paragraph (1) (b) complies with the provisions of this subsection: 5

(a) if it is the only notice in the premises or place that states the name or names of the brand or brands of the tobacco products that are sold at those premises or at that place; and

(b) if it: 10

(i) does not exceed 2,500 square centimetres in area;

(ii) is not self-illuminated; and

(iii) does not contain any word, picture, drawing or representation inducing, urging, promoting or encouraging the use of tobacco products; 15

but not otherwise.

**Certain actions do not lie**

8. Where a contract entered into before or after the commencement of this Act relates to the advertising of tobacco products or smoking, an action does not lie in any court against a party to the contract for failing, neglecting or refusing, after the commencement of this Act, to publish an advertisement relating to tobacco products or smoking as required by the contract if the failure, neglect or refusal is attributable to, or occasioned by, the operation of this Act. 20 25



**Evidence**

9. In proceedings in any court for an offence against subsection 6(1) or (2), proof that an advertisement contains the brand name of a tobacco product or the name of a corporation whose business activity is or includes the manufacture of any tobacco products shall be prima facie evidence that the advertisement:

(a) contains an implied inducement or request to purchase tobacco products or to indulge in smoking;

(b) contains an implied suggestion that tobacco products be purchased or smoking be indulged in; and

(c) impliedly is calculated, or may reasonably be expected, to lead to, to induce, to urge, to promote or to encourage the use of tobacco products for the purpose of smoking.

**Officers of corporations**

10. An officer or employee of a corporation who is in anyway, by act or omission, directly or indirectly, knowingly concerned in, or party to, the doing by the corporation of an act the doing of which contravenes subsection 6(1), (2) or (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

**Additional operation of this Act**

11. (1) Without prejudice to its effect apart from this section, this Act has effect as provided by this section.

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(2) This Act has, by force of this subsection, the effect it would have if:

- (a) in subsections 6(1), (2) and (3) "a corporation shall not" were omitted and "a person shall not, in the course of, or for the purposes of, trade or commerce to which this Act applies by virtue of subsection 11(3)" were substituted; 5
- (b) in subsections 6(5),(6) and (7) "corporation" (wherever occurring) were omitted and "person" were substituted; 10
- (c) in subsection 6(5) "\$50,000" were omitted and "\$2,000" were substituted; and
- (d) in subsection 6(6) "\$5,000 "were omitted and "\$200" were substituted.

(3) For the purpose of this Act having effect by virtue of subsection (2), this Act applies to trade and commerce: 15

- (a) between Australia and places outside Australia;
- (b) among the States;
- (c) between a State and a Territory or between 2 Territories; or 20
- (d) by way of the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth.

(4) This Act has, by force of this subsection, the effect it would have if: 25

- (a) in subsections 6(1), (2) and (3) "a corporation shall not" were omitted and "a person shall not in a Territory (not being the Northern Territory)" were substituted; and 30
- (b) the changes set out in paragraphs (2)(b), (c) and (d) were made.











