



# TOBACCO PRODUCTS CONTROL ACT, 1986

No. 74 of 1986

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# ELIZABETHAE II REGINAE

A.D. 1986

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No. 74 of 1986

**An Act to regulate the sale, packing, importing, advertising and use of tobacco products; to repeal the Cigarettes (Labelling) Act, 1971, and the Tobacco Sales to Children (Prohibition) Act, 1984; and for other purposes.**

*[Assented to 27 November 1986]*

The Parliament of South Australia enacts as follows:

- Short title.** 1. This Act may be cited as the "Tobacco Products Control Act, 1986".
- Commencement.** 2. (1) This Act shall come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
- (3) The Governor shall not fix a day for section 7 to come into operation unless the Governor is satisfied that legislation similar in effect to section 7 has come into operation, or is likely to come into operation, in the Australian Capital Territory and at least 3 States of the Commonwealth apart from this State.
- Interpretation.** 3. In this Act, unless the contrary intention appears—
- "authorized officer" means a person authorized in writing by the Minister to exercise the powers of an authorized officer under this Act:
- "child" means a person who has not attained the age of 16:
- "health warning" in relation to a tobacco product means a warning prescribed by regulation for the purposes of this Act in relation to tobacco products of that class:
- "to sell" includes—
- (a) to barter or exchange;
- (b) to offer or expose for sale, barter or exchange;

(c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit;

(d) to supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain:

“sucking tobacco” means tobacco that has been prepared for sucking but not chewing:

“tobacco products” means tobacco, cigarettes, cigars and all other products the main ingredient of which is tobacco and which are designed for human consumption.

4. (1) A person shall not sell a tobacco product by retail unless it is enclosed in a package that displays a health warning in the prescribed manner and form.

Sale of tobacco products by retail.

(2) A person shall not sell by retail a tobacco product that is enclosed in two or more packages unless each package displays a health warning in the prescribed manner and form.

(3) A person shall not sell cigarettes by retail in a package containing less than 20.

(4) The Governor may, by regulation, exempt a person from the operation of subsection (3) in relation to cigarettes of a prescribed class.

5. (1) A person shall not import tobacco products that have been packed for sale by retail unless—

Importing and packing of tobacco products.

(a) each package displays a health warning in the prescribed manner and form;

and

(b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages imported by that person in each financial year.

(2) A person who packs tobacco products for sale by retail shall ensure—

(a) that each package displays a health warning in the prescribed manner and form;

and

(b) where two or more health warnings have been prescribed—the various warnings are distributed in approximately equal numbers between the packages packed by that person in each financial year.

(3) Where tobacco products have been packed for sale by retail in two or more packages only the smallest of those packages and the warning it displays shall be taken into account when determining the number of packages on which each health warning is displayed.

6. Notwithstanding any other provision of this Act, where no health warning is prescribed in relation to a tobacco product of a particular class—

Tobacco products in relation to which no health warning has been prescribed.

(a) a tobacco product of that class need not be enclosed in a package;

and

(b) a package that contains a tobacco product of that class need not (provided it does not also contain a tobacco product of a class in relation to which a health warning is prescribed) display a health warning.

Advertisements of tobacco products.

7. (1) Subject to subsection (3), a person shall not publish, or cause to be published, an advertisement for a tobacco product unless the advertisement incorporates, or appears in conjunction with, a health warning.

(2) The warning must be published in the prescribed manner and form.

(3) The Governor may, by regulation, exclude a class of advertisements from the operation of this section.

Notice of tar, nicotine, etc., content of cigarettes.

8. (1) A person who sells cigarettes by retail shall display a notice setting out the quantity of tar and carbon monoxide that will be produced, and the quantity of nicotine that will be released, in the normal course of smoking each cigarette.

Penalty: \$500.

(2) The notice must be in a form approved by the South Australian Health Commission and must be displayed in a manner and position that is likely to attract the attention of persons who purchase those cigarettes.

Penalty: \$500.

Sale of sucking tobacco.

9. (1) A person shall not sell sucking tobacco by retail.

(2) The Governor may, by regulation, exempt a person from the operation of subsection (1) subject to such conditions as are set out in the regulation.

Sale of confectionery.

10. A person shall not sell by retail confectionery that is designed to resemble a tobacco product.

Sale of tobacco products to children.

11. (1) A person shall not supply, or offer to supply, (whether by sale, gift or any other means) a tobacco product to a child or a person who the supplier knows or has reason to believe will supply the product to a child.

Penalty: \$1 000.

(2) A person shall not permit a child to obtain a tobacco product from a vending machine situated on premises that he or she occupies.

Penalty: \$1 000.

(3) It is a defence to a charge of an offence against subsections (1) and (2)—

(a) to prove that the defendant had reasonable cause to believe that the child was of, or over, the age of 16;

or

(b) where a tobacco product was supplied by means of a vending machine—to prove that the defendant had taken all precautions that were reasonably required to ensure that the tobacco product was not supplied to a child.

(4) A person who sells tobacco products by retail or who occupies premises on which a vending machine that is designed to sell tobacco

products is situated shall display a notice in the prescribed form setting out the effect of, and the penalty for, an offence against, subsection (1) in a manner and position that is likely to attract the attention of his or her customers or of persons using the machine.

Penalty: \$500.

12. (1) Subject to subsection (2), a person shall not smoke a tobacco product in a bus that is carrying members of the public. Smoking in buses.

Penalty: \$200.

(2) Subsection (1) does not apply where—

- (a) the bus is operated by the State Transport Authority;
- (b) the bus has been hired for the exclusive use of members of a group;

or

- (c) the bus is in the course of a journey to, or from, a place outside South Australia.

13. (1) A person shall not smoke a tobacco product in a lift. Smoking in lifts.

Penalty: \$200.

(2) A person who, being the owner or a lessee or occupier of a building, or part of a building, in which a lift is situated, is responsible for the maintenance of the lift, shall cause a notice in the prescribed form and made of the prescribed material to be displayed in the lift.

Penalty: \$200.

14. (1) An authorized officer may, at any reasonable time—

- (a) enter premises that the officer believes, on reasonable grounds, are being used to sell, pack or store tobacco products;
- (b) require any person who is possessed of books of account, or other records, relevant to transactions involving the sale or purchase of tobacco products, to produce those books of account or other records for inspection;
- (c) require any person who is in a position to provide information relating to the sale, purchase, supply, packing or importing of tobacco products to answer any question on those subjects.

Powers of authorized officers.

(2) An authorized officer may—

- (a) examine tobacco products and packages used, or intended, for packing tobacco products that are on premises entered under subsection (1);
- (b) examine books of account or other records produced under this section;
- (c) make copies of, or take extracts from, any such books of account or other records;
- (d) retain the books of account or other records for such reasonable period as may be necessary for the purposes referred to above.

(3) Subject to subsection (4), a person shall not—

- (a) hinder an authorized officer in the exercise of powers conferred by this section;
- (b) fail, without reasonable excuse, to comply with a requirement of an authorized officer under this section;
- (c) fail, without reasonable excuse, to answer, to the best of that person's knowledge, information and belief, a question put by an authorized officer.

(4) A person is not obliged to comply with a request or requirement of an authorized officer or to answer a question put by an authorized officer if the officer has failed (after being requested to do so by that person) to produce to that person the officer's written authorization signed by the Minister.

**Offences.**

15. A person who contravenes or fails to comply with a provision of this Act is guilty of a summary offence and, except where otherwise provided, is liable to a penalty not exceeding \$2 500.

**Regulations.**

16. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) In particular the regulations may—

- (a) prescribe warnings that must be displayed on packages containing tobacco products and in, or in conjunction with, advertisements of tobacco products;
- (b) prescribe the manner and form in which those warnings must be displayed or published.

(3) A regulation may prescribe a warning in relation to tobacco products generally or in relation to tobacco products of a particular class.

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**SCHEDULE**

The Cigarettes (Labelling) Act, 1971, and the Tobacco Sales to Children (Prohibition) Act, 1984, are repealed.

**In the name and on behalf of Her Majesty, I hereby assent to this Bill.**

**D. B. DUNSTAN, Governor**