



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 42 of 1988

An Act to amend the Tobacco Products Control Act, 1986, the Tobacco Products (Licensing) Act, 1986, and the Fair Trading Act, 1987.

[Assented to 5 May 1988]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Tobacco Products Control Act Amendment Act, 1988*.
- (2) The *Tobacco Products Control Act, 1986*, is in this Act referred to as "the principal Act".

Commencement

2. (1) This Act will 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 until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of long title

3. The long title to the principal Act is amended by inserting "to establish the South Australian Sports Promotion, Cultural and Health Advancement Trust and prescribe its functions and powers;" after "tobacco products;".

Insertion of new heading

4. The following heading is inserted before section 1 of the principal Act:

PART I
PRELIMINARY.

Commencement

5. Section 2 of the principal Act is amended by striking out subsection (3).

Insertion of new section 2a

6. The following section is inserted after section 2 of the principal Act:

Objects of Act

2a. The objects of this Act are as follows:

- (a) to reduce the incidence of smoking and other consumption of tobacco products in the population, especially young people—
 - (i) by requiring health warnings to be displayed on tobacco products and otherwise disseminating information about the harmful effects of tobacco consumption;
 - (ii) by prohibiting the supply of tobacco products to children;
 - (iii) by encouraging non-smokers, especially young people, not to start smoking and encouraging and assisting smokers to give up smoking;
 - (iv) by prohibiting or limiting advertising, sponsorships and other practices designed to promote or publicize tobacco products and their consumption;
 - (v) by providing funds to sporting or cultural bodies in place of funds that they might otherwise have received through tobacco advertising and sponsorships;
 - (b) to protect non-smokers from unwanted and unreasonable exposure to tobacco smoke;
- and
- (c) generally, to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption.

Interpretation

7. Section 3 of the principal Act is amended by inserting in the appropriate alphabetical order the following definitions:

“the Fund” means the Sports Promotion, Cultural and Health Advancement Fund established under Part III:

“public place” includes a place to which the public ordinarily has access:

“sponsorship” includes a scholarship, prize, gift or other benefit:

“tobacco advertisement” means any writing, still or moving picture, sign, symbol or other visual image or message designed to promote or publicize—

(a) the purchase or use of a tobacco product;

or

(b) a trademark or brand name, or part of a trademark or brand name, of a tobacco product:

“the Trust” means the South Australian Sports Promotion, Cultural and Health Advancement Trust established under Part III.

Insertion of new heading and section 3a

8. The following heading and section are inserted after section 3 of the principal Act:

PART II

CONTROLS RELATING TO TOBACCO PRODUCTS

Application of Part

3a. This Part does not apply in relation to anything done by means of a radio or television broadcast.

Sale of tobacco products by retail

9. Section 4 of the principal Act is amended by striking out subsection (4).

Repeal of section 7

10. Section 7 of the principal Act is repealed.

Sale of sucking tobacco

11. Section 9 of the principal Act is amended by striking out subsection (2).

Insertion of new sections 11a to 11e

12. The following sections are inserted after section 11 of the principal Act:

Certain advertising prohibited

11a. (1) A person must not for any direct or indirect pecuniary benefit display a tobacco advertisement so that it may be seen in or from a public place.

(2) A person must not—

(a) distribute to the public any unsolicited leaflet, handbill, or other document that constitutes a tobacco advertisement;

or

(b) sell any object that constitutes or contains a tobacco advertisement.

(3) This section does not apply in relation to—

(a) a tobacco advertisement in or on—

(i) a newspaper or magazine;

(ii) a book;

(iii) a package containing a tobacco product;

(b) a tobacco advertisement that is an accidental or incidental part of a film or video tape;

(c) a tobacco advertisement that is displayed inside a shop or warehouse adjacent to a place where tobacco products are offered for sale;

(d) a tobacco advertisement that is displayed outside a shop or warehouse where tobacco products are offered for sale but relates only to tobacco products generally or the prices at which particular tobacco products may be purchased;

(e) a tobacco advertisement that is authorized by the Australian Formula One Grand Prix Board as part of the conduct or promotion of a motor racing event within the meaning of the *Australian Formula One Grand Prix Act, 1984*;

(f) a tobacco advertisement that is displayed or distributed under a contract providing sponsorship for a cricket match in South Australia that forms

part of the Sheffield Shield series or a series of international cricket matches;

or

(g) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

Certain advertisements to contain health warnings

11b. A person must not display a tobacco advertisement in a shop or warehouse where tobacco products are offered for sale unless the advertisement incorporates, or appears in conjunction with, a health warning that—

(a) complies with the prescribed requirements;

or

(b) is given reasonable prominence having regard to the nature of the advertisement.

Prohibition of certain sponsorships

11c. (1) A person must not promote or publicize, or agree to promote or publicize—

(a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product;

or

(b) the name or interests of a manufacturer or distributor of a tobacco product in association directly or indirectly with that tobacco product,

under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person.

(2) A person must not provide, or agree to provide, a sponsorship under a contract or arrangement of a kind referred to in subsection (1).

(3) This section does not apply in relation to any motor racing event within the meaning of the *Australian Formula One Grand Prix Act, 1984*.

(4) This section does not apply in relation to any contract providing sponsorship for a cricket match in South Australia that forms part of the Sheffield Shield series or a series of international cricket matches.

Competitions

11d. (1) A person must not, in connection with the sale of a tobacco product, or for the purpose of promoting the sale of a tobacco product—

(a) provide or offer to provide—

(i) a prize, gift or other benefit;

or

(ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which any person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional);

or

(b) conduct a scheme declared by regulation to be a scheme to promote the sale of a tobacco product or to promote smoking generally.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the benefit or thing supplied, or participation in the scheme, was only incidentally connected with the purchase of a tobacco product and that equal opportunity to receive the benefit or thing, or to participate in the scheme, was afforded generally to persons who purchased products whether or not they were tobacco products.

Free samples

11e. A person must not, for the purpose of inducing or promoting the sale of a tobacco product, offer or give to a member of the public a free sample of a tobacco product.

Smoking in buses

13. Section 12 of the principal Act is amended—

(a) by inserting between paragraphs (a) and (b) of subsection (2) the word “or”;

and

(b) by striking out paragraph (c) of subsection (2) and the word “or” preceding that paragraph.

Powers of authorized officers

14. Section 14 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) “to sell, pack or store” and substituting “for or in connection with the sale, packing, storage, advertising or promotion of”;

(b) by striking out from paragraph (b) of subsection (1) “or purchase” and substituting “, purchase, advertising or promotion”;

(c) by striking out from paragraph (c) of subsection (1) “or importing” and substituting “, importing, advertising or promotion”;

and

(d) by inserting after subsection (4) the following subsection:

(5) A person is not obliged to answer a question put by an authorized officer if the answer would result in or tend towards his or her self-incrimination.

Insertion of new section, Part and headings

15. The following section, Part and headings are inserted after section 14 of the principal Act:

Exemptions

14a. (1) Subject to this section, the Governor may, by proclamation—

(a) exempt a person from the operation of a provision of this Part subject to such conditions as may be set out in the proclamation;

(b) vary or revoke an exemption under this section.

(2) An exemption may not be granted under this section except as recommended by the appropriate Minister—

(a) to facilitate the promotion and conduct of a sporting or cultural event or function;

(b) to allow the performance of a contract entered into before 3 March, 1988;

or

(c) to relieve undue hardship that might result if the exemption were not granted.

(3) For the purposes of subsection (2), the appropriate Minister is—

(a) in relation to an exemption other than an exemption referred to in paragraph (b) or (c)—the Minister;

(b) in relation to an exemption to facilitate the promotion and conduct of a sporting event or function—the Minister of Recreation and Sport;

(c) in relation to an exemption to facilitate the promotion and conduct of a cultural event or function—the Minister for the Arts.

(4) The Minister of Recreation and Sport and the Minister for the Arts must, before recommending that an exemption be granted in relation to a sporting or cultural event or function—

(a) consult with the Minister;

and

(b) have regard to whether—

(i) there is national or international interest in the event or function;

(ii) there are links between the event or function and other events or functions outside the State;

and

(iii) reasonable efforts have been made to obtain support for the event or function that would not require the granting of such an exemption.

(5) An exemption granted for a purpose referred to in subsection (2) (b) may not have effect beyond 30 June, 1992.

PART III

SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST

Establishment of Trust

14b. (1) The South Australian Sports Promotion, Cultural and Health Advancement Trust is established.

(2) The Trust—

(a) is a body corporate with perpetual succession and a common seal;

(b) is capable of suing and being sued;

(c) is capable of holding, acquiring, dealing with and disposing of real and personal property;

(d) is capable of acquiring or incurring any other rights or liabilities;

and

(e) is an agency of, and holds its property on behalf of, the Crown.

(3) A document is duly executed by the Trust if it is sealed with the common seal of the Trust and signed by two members of the Trust.

(4) A document apparently executed by the Trust will be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed.

Constitution of Trust

14c. (1) The Trust will consist of seven persons appointed by the Governor, of whom—

- (a) one will be appointed to be the presiding member of the Trust;
- (b) one will be a person with knowledge and experience in the area of public health nominated by the Minister;
- (c) three will be persons with knowledge and experience in the area of sports or sports administration nominated by the Minister of Recreation and Sport;
- (d) one will be a person with knowledge and experience in the area of the arts or arts administration nominated by the Minister for the Arts;

and

- (e) one will be a person with knowledge and experience in the area of advertising.

(2) The Governor and each nominating Minister must, in appointing persons or nominating persons for appointment as members of the Trust (other than the presiding member), endeavour to ensure as far as is practicable that men and women are equally represented.

Functions and powers of Trust

14d. (1) The functions of the Trust are to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption, and more particularly for that purpose—

- (a) to manage the Fund and provide financial support from the Fund by way of grants, loans or other financial accommodation to sporting and cultural bodies or for any sporting, recreational or cultural activities that contribute to health;
- (b) to conduct or support public awareness programmes;
- (c) to provide sponsorships;
- (d) to keep statistics and other records;
- (e) to provide advice to the Minister;
- (f) to consult regularly with Government departments and agencies and liaise with persons and bodies affected by this Act;
- (g) to perform such other functions as are assigned to the Trust—
 - (i) by the Minister acting after consultation with the Minister of Recreation and Sport and the Minister for the Arts;

or

- (ii) by or under this or any other Act.

(2) The Trust has all such powers as are reasonably necessary for the effective performance of its functions.

(3) In addition to its other powers, the Trust has power, after consultation with the Minister, to make a grant from the Fund for the relief of loss suffered as a result of the application of this Act to any matter or thing existing at or before the passing of this Act.

(4) The Trust must, in performing its functions and exercising its powers—

- (a) endeavour to ensure that any sporting or cultural body that received financial support through tobacco advertising or sponsorships before the com-

mencement of this Act is not financially disadvantaged by the operation of this Act;

and

- (b) have regard to any guidelines issued from time to time by the Minister after consultation with the Minister of Recreation and Sport and the Minister for the Arts.

Establishment of Fund

14e. (1) The Sports Promotion, Cultural and Health Advancement Fund is established at the Treasury.

(2) The Fund consists of—

- (a) money paid into the Fund pursuant to the *Tobacco Products (Licensing) Act, 1986*;

and

- (b) all other money received by the Trust.

(3) The Fund may be applied by the Trust in accordance with a budget approved by the Minister—

- (a) in paying amounts that the Trust determines should be paid by way of grant, loan or other financial accommodation under this Act;

- (b) in paying costs and expenses incurred by the Trust under this Act;

and

- (c) in making other payments required or authorized by this or any other Act to be made from the Fund.

Budget

14f. (1) The Trust must before 1 June in each year submit to the Minister for the Minister's approval a budget to govern the Trust's financial operations for the next financial year.

(2) The budget must be in a form required by the Minister.

(3) The Trust may at any time, with the approval of the Minister, alter its budget.

(4) The Minister must, before giving an approval under this section, consult with—

- (a) the Treasurer;

- (b) the Minister of Recreation and Sport;

and

- (c) the Minister for the Arts.

Further provisions

14g. Further provisions governing the constitution of the Trust and its proceedings and operations are set out in schedule 2.

PART IV MISCELLANEOUS

Offences

16. Section 15 of the principal Act is amended—

- (a) by striking out "\$2 500" and substituting "\$5 000";

and

- (b) by inserting after the present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) Where a person is guilty of an offence against this Act, any other person who caused, permitted or authorized the act or omission that constituted the offence is also guilty of a summary offence and liable to the same penalty as is prescribed for the principal offence.

(3) Where a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is also guilty of a summary offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member exercised reasonable diligence to prevent commission of the offence.

Insertion of new schedule

17. The following schedule is inserted after the schedule to the principal Act (now to be designated as schedule 1):

SCHEDULE 2

PROVISIONS RELATING TO SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST

Term and conditions of membership

1. (1) A member of the Trust will be appointed for such term not exceeding three years as the Governor determines and will, on the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may appoint a deputy of a member and the deputy, while acting in the absence of the member, has all the powers, duties and functions of that member.

(3) A member (or deputy member) is entitled to such allowances and expenses (if any) as the Governor may determine.

(4) The Governor may remove a member from office for—

- (a) a breach of, or non-compliance with, conditions of appointment;
- (b) mental or physical incapacity to carry out official duties satisfactorily;
- (c) neglect of duty;

or

(d) dishonourable conduct.

(5) The office of a member becomes vacant if the member—

- (a) dies;
- (b) completes a term of appointment and is not reappointed;
- (c) resigns by written notice to the Minister;
- (d) is absent without leave of the Trust from three consecutive meetings of the Trust;

or

(e) is removed from office by the Governor under this clause.

(6) On the office of a member becoming vacant, a person will be appointed in accordance with this Act to the vacant office but where the office of a member becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

Validity of acts of Trust

2. An act or proceeding of the Trust is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Meetings and procedure

3. (1) Four members of the Trust constitute a quorum of the Trust.

(2) In the absence of the presiding member at a meeting of the Trust, the members present may decide who is to preside.

(3) A decision carried by the votes of a majority of the members present at a meeting is a decision of the Trust.

(4) Each member present at a meeting of the Trust is entitled to one vote on a matter arising for determination at the meeting and the presiding member has, in the event of an equality of votes, a second or casting vote.

(5) The Trust must cause accurate minutes to be kept of its proceedings.

(6) Subject to this Act, the business of the Trust may be conducted in a manner determined by the Trust.

Disclosure of interest

4. (1) A member of the Trust who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Trust—

(a) must disclose the nature of the interest to the Trust;

and

(b) must not take part in any deliberation or decision of the Trust with respect to the matter.

Penalty: \$2 500.

(2) A disclosure under this clause must be recorded in the minutes of the Trust.

Delegation by Trust

5. (1) Subject to this clause, the Trust may, by instrument in writing, delegate any of its powers, duties or functions under this Act—

(a) to a member or employee of the Trust;

or

(b) to a committee established by or under this Act to advise or assist the Trust.

(2) The Trust may not delegate its function of determining to whom or in what amounts financial support may be provided from the Fund.

(3) A power, duty or function delegated under this clause may, if the instrument of delegation so provides, be subdelegated.

(4) Where a delegation is made to a committee under this clause—

(a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of the delegation;

and

(b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.

(5) A delegation or subdelegation under this clause—

(a) may be absolute or conditional;

(b) does not derogate from the power of the delegator to act personally in any matter;

and

(c) is revocable at will by the delegator.

(6) A person to whom, or a member of a committee to which, a power, duty or function is delegated under this clause is disqualified from acting in pursuance of the delegation in relation to any matter in which that person has a direct or indirect pecuniary interest or other personal interest.

Committees

6. (1) Three committees are established—

(a) a Sport and Recreation Advisory Committee to advise or assist the Trust in matters relating to sport and recreation;

(b) a Cultural Advisory Committee to advise or assist the Trust in respect of cultural matters;

and

(c) a Health Advisory Committee to advise or assist the Trust in matters relating to health.

(2) The Sport and Recreation Advisory Committee will consist of—

(a) the presiding member of the Trust (who will preside at meetings of the committee);

(b) the members of the Trust appointed on the nomination of the Minister of Recreation and Sport;

and

(c) two other persons appointed by the Trust on the nomination of that Minister.

(3) The Cultural Advisory Committee will consist of—

(a) the presiding member of the Trust (who will preside at meetings of the committee);

(b) the member of the Trust appointed on the nomination of the Minister for the Arts;

and

(c) two other persons appointed by the Trust on the nomination of that Minister.

(4) The Health Advisory Committee will consist of—

(a) the presiding member of the Trust (who will preside at meetings of the committee);

(b) the member of the Trust appointed on the nomination of the Minister;

and

(c) two other persons appointed by the Trust on the nomination of the Minister.

(5) The Trust may establish any other committee (which may consist of members of the Trust, other persons or both members and others) to advise or assist it in the performance of its functions.

(6) A committee established by or under this clause may act in relation to any matter referred or delegated to it by the Trust and will be governed in its proceedings by rules approved by the Trust.

(7) A member of a committee established by or under this clause is entitled to such allowances and expenses (if any) as the Minister may determine.

Employees of Trust

7. (1) The Trust may appoint such employees as are necessary for the effective performance of its functions.

(2) The Trust's employees are not Public Service employees but are employed subject to terms and conditions determined by the Trust.

(3) The Trust may, with the approval of the appropriate Minister, make use of the services of Public Service employees or employees of a Government agency or of facilities or equipment of the Government or a Government agency.

Superannuation

8. The Trust is a public authority for the purposes of the *Superannuation Act, 1974*, and the employees of the Trust are, subject to that Act and any arrangement made between the Trust and the South Australian Superannuation Board, entitled to become contributors to the South Australian Superannuation Fund.

Immunity from liability

9. (1) A member, committee member or employee of the Trust incurs no liability for any act or omission by that person in good faith in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subclause (1), lie against the person lies instead against the Crown.

Non-disclosure of information

10. A member, committee member or employee of the Trust must not disclose any confidential information to which he or she has had access in the course of official duties unless the disclosure is made—

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the administration of this Act;

or

(c) for the purposes of any legal proceedings arising out of the administration of this Act.

Penalty: \$2 500.

Accounts and audit

11. (1) The Trust must cause proper accounts to be kept of its financial affairs and must prepare a statement of accounts in respect of each financial year.

(2) The Auditor-General may at any time and must at least once in each financial year audit the accounts of the Trust.

Annual report

12. (1) The Trust must, on or before the 31st day of October in each year, deliver to the Minister a report on its operations during the period of 12 months that ended on the preceding 30th day of June.

(2) The report must incorporate the audited statement of accounts for the Trust in relation to the relevant period.

(3) The Minister must, within 14 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Amendment of Tobacco Products (Licensing) Act, 1986

18. The *Tobacco Products (Licensing) Act, 1986*, is amended—

(a) by striking out from subparagraph (i) of paragraph (a) of subsection (1) of section 13 “25” and substituting “28”;

(b) by striking out from subparagraph (ii) of paragraph (a) of subsection (1) of section 13 “30” and substituting “33”;

(c) by striking out from subparagraph (i) of paragraph (b) of subsection (1) of section 13 “25” and substituting “28”;

(d) by striking out from subparagraph (ii) of paragraph (b) of subsection (1) of section 13 "30" and substituting "33";

and

(e) by inserting the following section in Part V before section 25:

Application of money collected under Act

24a. (1) The money collected under this Act as licence fees must be paid into the Consolidated Account.

(2) Not less than 10.7 per cent of the amount collected under this Act as fees for tobacco merchants' licences (not being restricted licences) must be paid into the Sports Promotion, Cultural and Health Advancement Fund for application in accordance with the provisions of the *Tobacco Products Control Act, 1986*.

(3) Payments must be made into the Fund for the purposes of subsection (2) at times and in amounts determined by the Treasurer after consultation with the Minister of Health.

(4) This section is sufficient authority for appropriation from the Consolidated Account of the amounts referred to in subsection (3).

Amendment of Fair Trading Act, 1987

19. The *Fair Trading Act, 1987*, is amended—

- (a) by striking out from section 44 the definition of "prohibited trading stamp";
- (b) by striking out from subsection (1) of section 45 "prohibited trading stamp" and substituting "third-party trading stamp";
- (c) by striking out from subsection (2) of section 45 "prohibited trading stamp" and substituting "third-party trading stamp";
- (d) by striking out from subsection (3) of section 45 "prohibited trading stamps" and substituting "third-party trading stamps";
- (e) by striking out from subsection (4) of section 45 "prohibited trading stamps" and substituting "third-party trading stamps".

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

D. B. DUNSTAN, Governor