

Version No. 052
Tobacco Act 1987
Act No. 81/1987

Version incorporating amendments as at 5 April 2005

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The Parliament of Victoria enacts as follows:

Preamble

Whereas—

- (a) the following guiding principles are recognised in relation to the use, supply and promotion of tobacco—
 - (i) tobacco use is so injurious to the health of both smokers and non-smokers as to warrant restrictive legislation;
 - (ii) tobacco use has adverse health effects even with infrequent use and there is no completely safe form of tobacco use;
 - (iii) tobacco use is a widely accepted practice amongst adults which it is inappropriate to ban completely;
 - (iv) the extent of the health effects of smoking requires strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking;
 - (v) the association of smoking with social success, business advancement and sporting prowess through use of advertising and promotion has a particularly harmful effect by encouraging children and young people to take up smoking; and
- (b) it has been resolved to discourage the use of tobacco in all its forms and to prohibit various types of promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death.

The Parliament of Victoria therefore enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to prohibit certain sales or promotion of tobacco products and to establish the Victorian Health Promotion Foundation.

2. Commencement

- (1) Except as provided in this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 6(1) and (3), 13 and 15 come into operation on 1 April 1988.
- (3) Section 14 comes into operation on 1 July 1988.
- (4) Section 6(2) comes into operation on 1 January 1989.

3. Definitions

In this Act—

S. 3 def. of "angled stack" inserted by No. 28/2001 s. 3(1).

"angled stack" means packages stacked behind each other from the point of view of the customer's side of the customer service area;

S. 3 def. of "approved venue" inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3(Sch. 6 item 13.1(a)).

"approved venue" has the same meaning as in the **Gambling Regulation Act 2003**;

<p>"bar area", in relation to a casino, means an area in the casino that is used predominantly for the serving and consumption of alcoholic drinks;</p>	<p>S. 3 def. of "bar area" inserted by No. 31/2002 s. 4(1).</p>
<p>"bingo" has the same meaning as in the Gambling Regulation Act 2003;</p>	<p>S. 3 def. of "bingo" inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3(Sch. 6 item 13.1(b)).</p>
<p>"bingo area" has the meaning given by section 3C;</p>	<p>S. 3 def. of "bingo area" inserted by No. 31/2002 s. 4(1).</p>
<p>"bingo centre" has the same meaning as in the Gambling Regulation Act 2003;</p>	<p>S. 3 def. of "bingo centre" inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3(Sch. 6 item 13.1(b)).</p>
<p>"carton" means a package containing packages of a tobacco product, or a package designed to contain packages of a tobacco product, but does not include a package containing individually-wrapped cigars (unless the package contains a further package or packages of the cigars);</p>	<p>S. 3 def. of "carton" inserted by No. 43/2000 s. 4(1).</p>
<p>"casino" has the same meaning as in the Casino Control Act 1991;</p>	<p>S. 3 def. of "casino" inserted by No. 31/2002 s. 4(1).</p>
<p>"Chairperson" means Chairperson of the Foundation;</p>	

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s. 3

S. 3 def. of
"controlled
shopping
centre"
inserted by
No. 43/2000
s. 4(1),
repealed by
No. 28/2001
s. 3(2)(a).

* * * * *

S. 3 def. of
"declared
smoking
area"
inserted by
No. 31/2002
s. 4(1).

"declared smoking area", in relation to a casino,
means an area declared under section 5I(4);

S. 3 def. of
"designated
non-smoking
room"
inserted by
No. 31/2002
s. 4(1).

"designated non-smoking room", in relation to
licensed premises, means a room designated
under section 5O(1);

S. 3 def. of
"dining area"
inserted by
No. 43/2000
s. 4(1).

"dining area" has the meaning given by
section 3D;

S. 3 def. of
"display"
inserted by
No. 43/2000
s. 4(1).

"display", in relation to a tobacco product at a
retail outlet or a wholesale outlet, means
display to the customers of the retail outlet or
wholesale outlet;

S. 3 def. of
"driver
licence"
inserted by
No. 43/2000
s. 4(1).

"driver licence" means a driver licence issued
under the **Road Safety Act 1986**;

"enclosed", in relation to an area, room or premises, means an area or room that is, or premises that are, except for doorways, passageways and internal wall openings, completely or substantially enclosed by a solid permanent ceiling or roof and solid permanent walls or windows, whether the ceiling, roof, walls or windows are fixed or movable and open or closed;

S. 3 def. of "enclosed" inserted by No. 43/2000 s. 4(1), amended by No. 31/2002 s. 4(2)(a)(b).

"evidence of age document" means—

S. 3 def. of "evidence of age document" inserted by No. 43/2000 s. 4(1).

- (a) a proof of age card or a card issued in another State or a Territory that is the equivalent of a proof of age card; or
- (b) a driver licence or a licence issued in another State or a Territory that is the equivalent of a driver licence; or
- (c) an Australian or foreign passport; or
- (d) a document issued—
 - (i) by a person; or
 - (ii) on behalf of a government department or an agency—
approved by the Minister that bears a photograph of the person to whom it is issued and enables that person's age to be determined;

"Foundation" means the Victorian Health Promotion Foundation;

"gaming machine" has the same meaning as in the **Gambling Regulation Act 2003**;

S. 3 def. of "gaming machine" inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3(Sch. 6 item 13.1(a)).

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s. 3

S. 3 def. of
"gaming
machine
area"
inserted by
No. 31/2002
s. 4(1),
amended by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.1(a)).

"gaming machine area" has the same meaning
as in the **Gambling Regulation Act 2003**;

S. 3 def. of
"gaming
room"
inserted by
No. 31/2002
s. 4(1).

"gaming room" means a room in an approved
venue in which gaming machines available
for gaming are installed;

S. 3 def. of
"high roller
room"
inserted by
No. 31/2002
s. 4(1).

"high roller room" means a room in a casino that
is used substantially for gaming by
international visitors to the casino;

S. 3 def. of
"immediate
package"
inserted by
No. 43/2000
s. 4(1).

"immediate package", in relation to a tobacco
product, means a package containing the
product—

- (a) in the case of a tobacco product other
than cigars, not including a package
containing a further package or
packages of the product; and
- (b) in the case of cigars—
 - (i) including a package constituted by
the individual wrapping of a cigar,
and a package containing
individually wrapped or
unwrapped cigars; but
 - (ii) not including any other package
containing a further package or
packages of cigars (whether
wrapped or unwrapped);

"inspector" means a person—

- (a) who is an environmental health officer appointed by a council (within the meaning of section 3(1) of the **Local Government Act 1989**) for the purposes of the **Health Act 1958**; or
- (b) who is appointed under this Act to be an inspector for the purposes of this Act;

S. 3 def. of "inspector" inserted by No. 43/2000 s. 4(1).

"licensed premises" means premises in respect of which a general licence, an on-premises licence or a club licence within the meaning of the **Liquor Control Reform Act 1998** is in force, other than premises that are a restaurant or cafe or a bingo centre;

S. 3 def. of "licensed premises" inserted by No. 31/2002 s. 4(1).

"member" means member of the Foundation;

"minor gaming permit" means a permit issued under Division 2 of Part 3 of Chapter 8 of the **Gambling Regulation Act 2003**;

S. 3 def. of "minor gaming permit" inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3(Sch. 6 item 13.1(c)).

"newspaper" means any paper or pamphlet in paper form containing any public news or comments on public news or any political matter printed for sale or distribution and published periodically at intervals not exceeding 26 days but does not include any document containing only matter wholly of a commercial nature;

S. 3 def. of "newspaper" substituted by No. 56/1998 s. 5(2).

"occupier", in relation to an area or premises, means a person who appears to be of or over 16 years of age and who is, or appears to be, in control of the area or premises;

S. 3 def. of "occupier" inserted by No. 43/2000 s. 4(1).

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s. 3

S. 3 def. of
"on-airport
duty free
shop"
inserted by
No. 28/2001
s. 3(1).

"on-airport duty free shop" has the same meaning as in regulation 93 of the Customs Regulations 1926 of the Commonwealth;

S. 3 def. of
"package"
inserted by
No. 43/2000
s. 4(1).

"package" does not include a transparent wrapping, unless the wrapping has a tobacco advertisement printed on it;

S. 3 def. of
"point of sale"
inserted by
No. 43/2000
s. 4(1).

"point of sale" means a place where tobacco products are sold within a retail outlet or wholesale outlet, and includes a vending machine from which tobacco products are sold;

S. 3 def. of
"premises"
inserted by
No. 43/2000
s. 4(1).

"premises" includes any part of premises and includes a vehicle or vessel and a permanent or temporary structure;

S. 3 def. of
"product line"
inserted by
No. 43/2000
s. 4(1),
amended by
No. 31/2002
s. 4(3).

"product line" means a kind of tobacco product distinguishable from other kinds by one or more of the following characteristics—

* * * * *

- (b) brand name;
- (c) nicotine or tar content;
- (d) flavour—

but not by the size of the package containing the tobacco product;

S. 3 def. of
"proof of age
card"
inserted by
No. 43/2000
s. 4(1).

"proof of age card" means a document issued by the Director of Liquor Licensing under section 176 of the **Liquor Control Reform Act 1998**;

"public place" includes a place to which the public ordinarily has access, whether by payment or not, but does not include a part

of a place to which the public has access by reason only of the carrying on of a trade, business or profession on or in that place;

"restaurant or cafe" means premises that are, or an area in premises that is, used by the public, or a section of the public, predominantly for the consumption of food or non-alcoholic drinks purchased on the premises (whether or not food or non-alcoholic drinks are also sold on the premises for consumption off the premises) and—

S. 3 def. of "restaurant or cafe" inserted by No. 43/2000 s. 4(1).

- (a) in the case of a restaurant or cafe that is an area in premises, includes any abutting area in those premises that is not separately enclosed from that area, irrespective of the purpose or purposes for which the abutting area is used; but
- (b) does not include premises in respect of which a general licence or a club licence within the meaning of the **Liquor Control Reform Act 1998** is in force;

"retail outlet" means premises where tobacco products are available for sale by retail;

S. 3 def. of "retail outlet" inserted by No. 43/2000 s. 4(1).

"retail shopping centre" means a cluster of premises 5 or more of which are retail premises and—

S. 3 def. of "retail shopping centre" inserted by No. 43/2000 s. 4(1), substituted by No. 28/2001 s. 3(2)(b), amended by No. 114/2003 s. 12.1.3(Sch. 6 item 13.1(b)).

- (a) all of which have, or if leased would have, a common head landlord; or
- (b) each of which is on a lot on the same plan of subdivision and those lots are land affected by a body corporate within the meaning of the **Subdivision Act 1988**—

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s. 3

but does not include—

- (c) a building with more than one storey except in relation to each storey of the building on which is situated a cluster of premises in respect of which paragraph (a) or (b) applies; or
- (d) any part of those premises—
 - (i) that is not used by the public, or a section of the public; or
 - (ii) that is an enclosed restaurant or cafe; or
 - (iii) in respect of which a general licence or a club licence within the meaning of the **Liquor Control Reform Act 1998** is in force; or
 - (iv) that is a bingo centre within the meaning of the **Gambling Regulation Act 2003**; or
 - (v) that is a road or road related area within the meaning of the **Road Safety Act 1986**;

S. 3 def. of "room" inserted by No. 31/2002 s. 4(1).

"**room**" means an enclosed room;

S. 3 def. of "Secretary" inserted by No. 43/2000 s. 4(1).

"**Secretary**" means Secretary to the Department of Human Services;

"**sell**" includes—

- (a) barter or exchange; and
- (b) offer or expose for sale, barter or exchange; and

-
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
 - (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

"TAB area", in relation to a casino, means an area in the casino in which wagering or approved betting competitions (within the meaning of the **Gambling Regulation Act 2003**) or both are conducted in accordance with the wagering licence granted under Part 3 of Chapter 4 of that Act;

S. 3 def. of "TAB area" inserted by No. 31/2002 s. 4(1), amended by No. 114/2003 s. 12.1.3(Sch. 6 item 13.1(d) (i)(ii).

"theatre" means a place where any live entertainment or film is presented, performed or exhibited to which admission is or may be procured by payment or by ticket or by any other means, token or consideration;

"tobacco advertisement" means writing or a picture, symbol, light or other visible device, object or sign, or a combination of two or more of the foregoing that gives publicity to, or otherwise promotes—

S. 3 def. of "tobacco advertisement" amended by No. 43/2000 s. 4(2).

- (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—

and includes the display of an immediate package of a tobacco product;

"tobacco product" means tobacco, cigarette or cigar or any other product the main ingredient of which is tobacco and which is designed for human consumption;

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s. 3A

S. 3 def. of
"tobacco
retailing
business"
inserted by
No. 43/2000
s. 4(1).

"tobacco retailing business" means the business of selling tobacco by retail, either alone or in conjunction with any other merchandise, and includes—

- (a) any such business carried on as part of, or in conjunction with, any other business; and
- (b) any business that consists of, or involves, management of a retail outlet where tobacco products are available for sale by means of a vending machine;

S. 3 def. of
"tobacco
wholesaling
business"
inserted by
No. 43/2000
s. 4(1).

"tobacco wholesaling business" means the business of selling tobacco for the purposes of resale, either alone or in conjunction with any other merchandise, and includes any such business carried on as part of, or in conjunction with, any other business;

"vending machine" means a machine, device or contrivance that is constructed to contain tobacco products that may be obtained from it by an operation that involves the insertion in the machine, device or contrivance of a coin, token or similar object;

S. 3 def. of
"wholesale
outlet"
inserted by
No. 43/2000
s. 4(1).

"wholesale outlet" means premises where tobacco products are available for sale exclusively by wholesale.

S. 3A
inserted by
No. 43/2000
s. 5.

3A. Vending machines

The presence on any premises of a vending machine is deemed to constitute the carrying on on those premises of a tobacco retailing business.

* * * * *

S. 3B
inserted by
No. 43/2000
s. 5,
repealed by
No. 31/2002
s. 5.

3C. Bingo area

For the purposes of this Act, an area (other than an outdoor area) is a bingo area at any time when the predominant activity in that area is the conducting of a session of bingo under a minor gaming permit.

S. 3C
inserted by
No. 43/2000
s. 5,
repealed by
No. 28/2001
s. 4,
new s. 3C
inserted by
No. 31/2002
s. 6.

3D. Dining area

For the purposes of this Act, an area (other than an outdoor area) used by the public or a section of the public in premises in respect of which a general licence or a club licence within the meaning of the **Liquor Control Reform Act 1998** is in force is a dining area at any time when the predominant activity in that area is the consumption of food or non-alcoholic drinks.

S. 3D
inserted by
No. 43/2000
s. 5.

4. Application of Act

- (1) Nothing in this Act applies to anything done by radio or television broadcast.
- (2) Nothing in this Act or the regulations applies to—
 - (a) the labelling of packages of tobacco if the tobacco is packed for sale outside Victoria and is not sold in Victoria; or
 - (b) anything which causes, permits, authorises or assists in the sale or promotion of the sale, purchase, use or consumption of a tobacco product if the sale, purchase, use or consumption occurs solely outside Victoria.

- (3) Nothing in section 9 applies to anything done before 1 January 1989 under a contract or agreement entered into before 8 October 1987.

5. Objects of Act

- (1) The objects of this Act are—
- (a) the active discouragement of the smoking of tobacco—
 - (i) by encouraging non-smokers, particularly young people, not to start smoking; and
 - (ii) by limiting exposure of children and young people to persuasion to smoke; and
 - (iii) by encouraging and assisting smokers to give up smoking; and
 - (b) the promotion of health and illness prevention.
- (2) In giving effect to the objects of this Act, the Minister shall cause steps to be taken to—
- (a) plan and co-ordinate an integrated State-wide program to reduce the prevalence of smoking in Victoria; and
 - (b) encourage agreements to prohibit or limit the places and times at which people may smoke in enclosed public places or in the work environment; and
 - (c) ensure that tobacco usage by all age and sex groups in the population is monitored and reported upon regularly; and
 - (d) evaluate the effectiveness of anti-smoking programs and plan future activities and policies on tobacco usage.

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Part 2—Controls Relating to Tobacco Products

s. 5A

PART 2—CONTROLS RELATING TO TOBACCO PRODUCTS

Pt 2
(Heading)
substituted by
No. 43/2000
s. 6.

Division 1—No Smoking Areas

Pt 2 Div. 1
(Heading)
inserted by
No. 31/2002
s. 7.

**5A. Enclosed restaurants and cafes and dining areas:
offence by smoker**

S. 5A
inserted by
No. 43/2000
s. 7(1).

- (1) A person must not smoke in an enclosed restaurant or cafe or in a dining area.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is committing or has committed an offence against sub-section (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

- (3) A person who is contravening sub-section (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty applying to this sub-section: 5 penalty units.

**5B. Enclosed restaurants and cafes and dining areas:
offence by occupier**

S. 5B
inserted by
No. 43/2000
s. 7(1).

- (1) If smoking occurs in an enclosed restaurant or cafe or in a dining area, in contravention of section 5A, the occupier of the enclosed restaurant or cafe or dining area is guilty of an offence.

Penalty: 5 penalty units.

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Part 2—Controls Relating to Tobacco Products

s. 5BA

- (2) It is a defence to a prosecution under sub-section (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—
- (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) the defendant—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

S. 5BA
inserted by
No. 31/2002
s. 8.

5BA. Enclosed restaurants and cafes and dining areas: no smoking signs

- (1) The occupier of an enclosed restaurant or cafe, or of a dining area, is guilty of an offence if, without reasonable excuse, no smoking signs that comply with sub-section (2) are not displayed, or are not displayed in the prescribed manner (if any).

Penalty: 5 penalty units.

- (2) A sign referred to in sub-section (1) must comply with any prescribed requirements as to size and the information contained in it.

S. 5C
inserted by
No. 43/2000
s. 7(2).

5C. Retail shopping centres: offence by smoker

- (1) A person must not smoke in an enclosed area of a retail shopping centre.

Penalty: 5 penalty units.

S. 5C(1)
amended by
No. 28/2001
s. 5(1).

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Part 2—Controls Relating to Tobacco Products

s. 5D

(2) If an inspector believes on reasonable grounds that a person is committing or has committed an offence against sub-section (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

(3) A person who is contravening sub-section (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

(4) It is a defence to a prosecution under sub-section (1) if the defendant proves that, at the time of the contravention, a sign in accordance with section 5E was not displayed in the retail shopping centre in accordance with that section.

S. 5C(4)
amended by
Nos 28/2001
s. 5(2),
31/2002
s. 10(a).

5D. Retail shopping centres: offence by occupiers

(1) If smoking occurs in any enclosed area of a retail shopping centre, in contravention of section 5C, the occupier of the area is guilty of an offence and liable on conviction to a fine not exceeding 5 penalty units.

S. 5D
inserted by
No. 43/2000
s. 7(2),
substituted by
No. 28/2001
s. 6.

(2) It is a defence to a prosecution under sub-section (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

(a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

(b) the defendant—

(i) requested the person contravening to stop smoking; and

(ii) informed the person that the person was committing an offence.

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s. 5E

S. 5E
inserted by
No. 31/2002
s. 9.

5E. Retail shopping centres: no smoking signs

- (1) The owner of a retail shopping centre or, if there is more than one owner, each owner must cause no smoking signs that comply with sub-section (2) to be displayed in such prominent positions at entrances to any enclosed areas of the centre as would reasonably identify those areas of the centre as no smoking areas for persons entering them.

Penalty: 5 penalty units in the case of a natural person.

10 penalty units in any other case.

- (2) A sign referred to in sub-section (1) must comply with any prescribed requirements as to size and the information contained in it.
- (3) In this section—

"owner" includes a person who is, or is entitled to be registered under the **Transfer of Land Act 1958** as, the proprietor of an estate in fee simple in the land, or any part of the land, on which the retail shopping centre is situated.

S. 5F
inserted by
No. 31/2002
s. 9.

5F. Bingo areas and centres: offence by smoker

- (1) A person must not smoke in a bingo area or bingo centre.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is committing or has committed an offence against sub-section (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

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s. 5G

- (3) A person who is contravening sub-section (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

5G. Bingo areas and centres: offence by occupier

S. 5G
inserted by
No. 31/2002
s. 9.

- (1) If smoking occurs in a bingo area or bingo centre in contravention of section 5F(1), the occupier of the bingo area or bingo centre is guilty of an offence.

Penalty: 5 penalty units.

- (2) It is a defence to a prosecution under sub-section (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

- (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (b) the defendant—
- (i) requested the person contravening to stop smoking; and
- (ii) informed the person that the person was committing an offence.

5H. Bingo areas and centres: no smoking signs

S. 5H
inserted by
No. 31/2002
s. 9.

- (1) The occupier of a bingo area or bingo centre is guilty of an offence if, without reasonable excuse, no smoking signs that comply with sub-section (2) are not displayed in accordance with that sub-section.

Penalty: 5 penalty units.

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s. 5I

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- (2) Signs referred to in sub-section (1)—
- (a) must contain—
- (i) a no smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least 70mm in height; and
- (ii) the phrase "No Smoking" or "Smoking Prohibited", or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20mm in height; and
- (b) must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the bingo area or bingo centre or from within the bingo area or bingo centre.

S. 5I
inserted by
No. 31/2002
s. 9.

5I. Casinos: offence by smoker

- (1) A person must not smoke in a casino, except in a declared smoking area.
- Penalty: 5 penalty units.
- (2) If an inspector believes on reasonable grounds that a person is committing or has committed an offence against sub-section (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.
- (3) A person who is contravening sub-section (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.
- Penalty: 5 penalty units.

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- (4) For the purpose of this section, the Minister, by notice published in the Government Gazette, may declare an area in a casino that, in the Minister's opinion, is a bar area, a TAB area or a high roller room to be a declared smoking area.
 - (5) The Minister, by notice published in the Government Gazette, may revoke or vary a declaration under sub-section (4).
 - (6) The Minister must consult the Minister administering Part 2 of the **Casino Control Act 1991** before making, revoking or varying a declaration under this section.

5J. Casinos: offence by occupier

S. 5J
inserted by
No. 31/2002
s. 9.

- (1) If smoking occurs in an area of a casino in contravention of section 5I(1), the occupier of the area is guilty of an offence.

Penalty: 5 penalty units.

- (2) It is a defence to a prosecution under sub-section (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—
 - (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) the defendant—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

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S. 5K
inserted by
No. 31/2002
s. 9.

5K. Casinos: no smoking signs

- (1) The occupier of an area of a casino, other than a declared smoking area, is guilty of an offence if, without reasonable excuse, no smoking signs that comply with sub-section (2) are not displayed in accordance with that sub-section.

Penalty: 5 penalty units.

- (2) Signs referred to in sub-section (1)—
 - (a) must contain—
 - (i) a no smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least 70mm in height; and
 - (ii) the phrase "No Smoking" or "Smoking Prohibited", or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20mm in height; and
 - (b) must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the area or from within the area.

S. 5L
inserted by
No. 31/2002
s. 9.

5L. Approved venues: offence by smoker

- (1) A person must not smoke in a gaming machine area in an approved venue that consists of only one room (not including a toilet, bathroom, hallway, foyer, storeroom or similar room) that—
 - (a) in the case of a club—is regularly open to members of the club or members of the public; or

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(b) in any other case—is regularly open to members of the public.

Penalty: 5 penalty units.

(2) A person must not smoke in a gaming room in an approved venue that consists of two or more rooms (not including a toilet, bathroom, hallway, foyer, storeroom or similar room) that—

(a) in the case of a club—are regularly open to members of the club or members of the public; or

(b) in any other case—are regularly open to members of the public.

Penalty: 5 penalty units.

(3) If an inspector believes on reasonable grounds that a person is committing or has committed an offence against sub-section (1) or (2), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

(4) A person who is contravening sub-section (1) or (2) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

5M. Approved venues: offence by occupier

(1) If smoking occurs in a gaming machine area or gaming room in contravention of section 5L, the occupier of the area or room is guilty of an offence.

Penalty: 5 penalty units.

(2) It is a defence to a prosecution under sub-section (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

S. 5M
inserted by
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- (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (b) the defendant—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

S. 5N
inserted by
No. 31/2002
s. 9.

5N. Approved venues: no smoking signs

- (1) The occupier of a gaming machine area or gaming room in which smoking is prohibited by section 5L is guilty of an offence if, without reasonable excuse, no smoking signs that comply with sub-section (2) are not displayed in accordance with that sub-section.

Penalty: 5 penalty units.

- (2) Signs referred to in sub-section (1)—
 - (a) must contain—
 - (i) a no smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least 70mm in height; and
 - (ii) the phrase "No Smoking" or "Smoking Prohibited", or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20mm in height; and
 - (b) must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the

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gaming machine area or gaming room or
from within the area or room.

50. Licensed premises: non-smoking rooms

S. 50
inserted by
No. 31/2002
s. 9.

- (1) If licensed premises at any time have two or more rooms in operation, the occupier of the licensed premises must designate one of those rooms to be a non-smoking room.

Penalty: 5 penalty units.

- (2) For the purposes of sub-section (1)—
- (a) a room does not include—
- (i) a gaming room; or
 - (ii) a toilet, bathroom, hallway, foyer, storeroom or other similar room; and
- (b) a room is in operation when—
- (i) in the case of a club—it is open to, and available for use by, members of the club or members of the public; or
 - (ii) in any other case—it is open to, and available for use by, members of the public.
- (3) Nothing in this section is to be taken as limiting the requirements of section 5A, 5B or 5BA in relation to dining areas.

5P. Licensed premises: offence by smokers

S. 5P
inserted by
No. 31/2002
s. 9.

- (1) A person must not smoke in a designated non-smoking room of licensed premises.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is committing or has committed an offence against sub-section (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

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- (3) A person who is contravening sub-section (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

S. 5Q
inserted by
No. 31/2002
s. 9.

5Q. Licensed premises: offence by occupier

- (1) If smoking occurs in a designated non-smoking room in contravention of section 5P(1), the occupier of the room is guilty of an offence.

Penalty: 5 penalty units.

- (2) It is a defence to a prosecution under sub-section (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

(a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

(b) the defendant—

(i) requested the person contravening to stop smoking; and

(ii) informed the person that the person was committing an offence.

S. 5R
inserted by
No. 31/2002
s. 9.

5R. Licensed premises: no smoking signs

- (1) The occupier of a designated non-smoking room is guilty of an offence if, without reasonable excuse, no smoking signs that comply with sub-section (2) are not displayed in accordance with that sub-section.

Penalty: 5 penalty units.

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s. 6

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- (2) Signs referred to in sub-section (1)—
- (a) must contain—
 - (i) a no smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least 70mm in height; and
 - (ii) the phrase "No Smoking" or "Smoking Prohibited", or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20mm in height; and
 - (b) must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the designated non-smoking room or from within the room.

Division 2—Advertising and Other Controls

Pt 2 Div. 2
(Heading)
inserted by
No. 31/2002
s. 10(b).

6. Certain advertising prohibited

- (1) A person must not for any direct or indirect pecuniary benefit—
- (a) display or cause or permit to be displayed, or authorise the display of, a tobacco advertisement in a theatre; or
 - (b) sell, or cause or permit to be sold, any film or video tape that contains a tobacco advertisement; or

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s. 6

- (c) distribute or cause or permit to be distributed, or authorise the distribution of, to the public any unsolicited leaflet, handbill or other document that is a tobacco advertisement.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

- (2) A person must not for any direct or indirect pecuniary benefit—

- (a) place or display or cause or permit to be placed or displayed, or authorise the placing or display of, a tobacco advertisement that is visible from a public place; or

- (b) place or display, or cause or permit to be placed or displayed, or authorise the placing or display of, a tobacco advertisement on the outside of any road, sea or air vehicle or vessel.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

S. 6(2A)
inserted by
No. 43/2000
s. 8(1) (as
amended by
No. 28/2001
s. 19(1)).

- (2A) If there is a tobacco advertisement of a product line of a tobacco product at a point of sale at a retail outlet or wholesale outlet that is not in accordance with section 6A, the person carrying on the tobacco retailing business or the tobacco wholesaling business at that outlet is guilty of an offence.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

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- (2B) A person must not, in the course of carrying on a tobacco retailing business or tobacco wholesaling business, display tobacco products at a retail outlet or wholesale outlet other than at a point of sale.

S. 6(2B)
inserted by
No. 43/2000
s. 8(1) (as
amended by
No. 28/2001
s. 19(1)).

Penalty: For a first offence: 10 penalty units.
For a second or subsequent offence:
100 penalty units.

- (2C) Sub-section (2B) does not apply to—

S. 6(2C)
inserted by
No. 43/2000
s. 8(1) (as
amended by
No. 28/2001
s. 19(1)).

- (a) the display of cigars in an operating humidior; or
- (b) the display of cartons at an on-airport duty free shop.

- (3) Nothing in this section applies to—

- (a) a tobacco advertisement in or on—
 - (i) a newspaper or magazine; or
 - (ii) a book; or
 - (iii) a package containing a tobacco product, other than a package at a point of sale; or
- (b) a tobacco advertisement that is an accidental or incidental accompaniment to a film or video tape; or
- (c) a tobacco advertisement (other than a display of a tobacco product carried about on a person) at a point of sale inside a retail outlet or wholesale outlet that is in accordance with section 6A; or

S. 6(3)(a)(iii)
amended by
No. 43/2000
s. 8(2)(a).

S. 6(3)(c)
substituted by
No. 43/2000
s. 8(3) (as
amended by
No. 28/2001
s. 19(3)(a)–(c)).

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S. 6(3)(ca)
inserted by
No. 43/2000
s. 8(3) (as
amended by
No. 28/2001
s. 19(3)(a)–(c)).

(ca) one notice about tobacco products at one or more points of sale at a retail outlet or wholesale outlet that complies with the prescribed requirements as to size, information contained in it and the manner in which the information is set out or displayed; or;

S. 6(3)(cb)
inserted by
No. 43/2000
s. 8(3) (as
amended by
No. 28/2001
s. 19(3)(a)–(c)).

(cb) tickets or labels on, or adjacent to, immediate packages of tobacco products displaying retail prices, being tickets or labels that comply with the prescribed requirements as to size, information contained in them and the manner in which the information is set out or displayed; or

S. 6(3)(cc)
inserted by
No. 43/2000
s. 8(3) (as
amended by
No. 28/2001
s. 19(3)(a)–(c)).

(cc) tickets or labels on, or adjacent to, representations of immediate packages of tobacco products in vending machines displaying retail prices, being tickets or labels that comply with the prescribed requirements as to size, information contained in them and the manner in which the information is set out or displayed; or

S. 6(3)(d)
amended by
No. 28/2001
s. 7.

- (d) a tobacco advertisement that is within a retail outlet (whether or not it is visible from a public place) and that does not contain a trademark or brand name, or part of a trademark or brand name, of a tobacco product or the name of a manufacturer or distributor of a tobacco product; or
- (e) anything to which, by reason of section 10, this section does not apply; or
- (f) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

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s. 6A

6A. Point of sale advertisements

S. 6A
inserted by
No. 43/2000
s. 9 (as
amended by
No. 28/2001
s. 20(1)–(5)).

- (1) A tobacco advertisement at one point of sale at a retail outlet or at any point of sale at a wholesale outlet may advertise a product line of a tobacco product in one only of the following ways—
- (a) by the display of a single immediate package of the product line in the form in which the package is available for sale at that point of sale (including the display of an immediate package if only cartons are available for sale);
 - (b) by means of a stack dispenser for immediate packages of the product line in the form in which the packages are available for sale at that point of sale if—
 - (i) in the case of an angled stack, the most that is displayed is—
 - (A) any part of the single package at the front of the stack; and
 - (B) any part (other than the face) of the other packages in the stack; and
 - (C) those parts of the faces of the other packages that bear the warning message required by the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 1994 of the Commonwealth; and
 - (ii) in the case of packages stacked on top of each other, the most that is displayed is any part of the package on the top of the stack and any part of the package on the bottom of the stack;

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s. 6A

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- (c) if the point of sale is a vending machine, by a single representation of an immediate package of the product line in the form in which the package is available, or usually available, for sale at that point of sale no larger than the actual size of the package, with the same appearance as the package;
 - (d) in the case of a product line of cigars, by the display of either or both of the following—
 - (i) up to 13 cigars of the product line in an open box, or in any other manner;
 - (ii) a single closed box full of the product line in the form in which the box is available for sale at that point of sale.
- (2) A tobacco advertisement at any other point of sale at a retail outlet may advertise a product line of a tobacco product by means of a stack dispenser for immediate packages of the product line in the form in which the packages are available at that point of sale if—
- (a) in the case of an angled stack, the most that is displayed is—
 - (i) any part (other than the face) of any package in the stack; and
 - (ii) those parts of the faces of the packages that bear the warning message required by the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 1994 of the Commonwealth; and
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s. 6A

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- (b) in the case of packages stacked on top of each other, the most that is displayed is any part of the package on the top of the stack (but not including the face or the top of that package as stacked or the side or end of that package directly facing the customer) and any part of the package on the bottom of the stack (but not including the face or the bottom of that package as stacked or the side or end of that package directly facing the customer).
- (3) A display of tobacco products at a point of sale may not consist of the display of the products, packages of the products or representations of the products or packages so as to constitute a tobacco advertisement itself as distinct from the display of each product, package or representation.
- (4) A display of a product line at a point of sale at a retail outlet may not include the display of a carton of the product line, or any part of the carton, whether or not the carton is empty or partly empty.
- (5) Despite sub-section (4), a product line at a point of sale at a retail outlet that is an on-airport duty free shop may be displayed in such a way that—
- (a) one carton of the product line is visible; or
 - (b) in the case of cartons of the same size as each other, the cartons are stacked directly behind each other, and the most that is visible is—
 - (i) any part of the carton at the front of the stack; and
 - (ii) any end or the top (or both) of the next carton in the stack; or
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s. 7

- (c) in the case of cartons of different sizes, the most that is visible is—
 - (i) one carton of one size; and
 - (ii) any end or the top (or both) of one other carton of that size; and
 - (iii) the smallest side (or one of the smallest sides) of one carton of any other size.
- (6) A display of a product line at a point of sale at a wholesale outlet—
 - (a) may include the display of one or more cartons of the product line, but only with the smallest (or one of the smallest) sides of the carton (or cartons) facing the customer service area; and
 - (b) must otherwise comply with this section.
- (7) The area of display of tobacco products that constitute a tobacco advertisement referred to in sub-section (1) at a retail outlet must not exceed the prescribed area.
- (8) A display of tobacco products on a vending machine may include a display of one packet only of each product line available, or usually available, from the machine and must not include the display of any other product lines.

7. Competitions

- (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) supply to the purchaser or any other person—
 - (i) any non-tobacco product or other benefit (whether or not a separate charge is made for that product or benefit); or

S. 7(1)(a)(i)
substituted by
No. 28/2001
s. 8(1)(a).

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s. 7

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

S. 7(1)(a)(ii)
amended by
No. 28/2001
s. 8(1)(b).

(iii) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, any non-tobacco product or other benefit (whether the entitlement or qualification is absolute or conditional);
or

S. 7(1)(a)(iii)
amended by
No. 28/2001
s. 8(1)(c).

(b) conduct a scheme declared by the Governor in Council by Order published in the Government Gazette for the purposes of this section to be a scheme to promote the sale of a tobacco product or to promote smoking generally.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

(2) In proceedings for an offence against subsection (1), it is a defence 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.

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s. 8

S. 7(3)
inserted by
No. 28/2001
s. 8(2).

- (3) Sub-section (1) does not prohibit the sale of non-tobacco products such as lighters, matches, ashtrays or other items that are necessary for, or ancillary to, the smoking of tobacco products, unless the consideration for the sale of those non-tobacco products is less than it would have been had they not been sold in connection with the sale of tobacco products.

8. Free samples

- (1) A person must not, for the purpose of inducing or promoting—
- (a) the sale of a tobacco product; or
 - (b) the use or consumption of a tobacco product;
or
 - (c) smoking generally—

offer, give or distribute to a member of the public a free sample of a tobacco product or a product which advertises a tobacco product.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

- (2) Nothing in sub-section (1) applies to a gratuitous offer of a tobacco product to a person without any direct or indirect pecuniary benefit or inducement to purchase a tobacco product.

9. Prohibition of certain sponsorships

- (1) A person must not, under a contract, agreement, undertaking or understanding, whether or not legally binding, with another person—
- (a) promote—
 - (i) a tobacco product; or

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- (ii) a trademark or brand name or part of a trademark or brand name of a tobacco product; or
- (b) promote the name or interests of a manufacturer or distributor of a tobacco product in association, whether directly or indirectly, with that tobacco product—
in exchange for a sponsorship, gift, prize, scholarship or like benefit given or agreed to be given by another person.
- Penalty: For a first offence: 10 penalty units.
For a second or subsequent offence: 100 penalty units.
- (2) A person must not, under a contract, agreement, undertaking or understanding, whether or not legally binding, with another person give or agree to give any sponsorship, gift, prize, scholarship or like benefit in exchange for the promotion of, or an agreement to promote, a tobacco product or a name, interest, trademark or brand name referred to in sub-section (1).
- Penalty: For a first offence: 10 penalty units.
For a second or subsequent offence: 100 penalty units.
- (3) Nothing in sub-section (1) or (2) applies to the giving of, or an agreement to give, a scholarship by a manufacturer or distributor of a tobacco product to an employee or a member of the family of an employee, of the manufacturer or distributor.
- (4) Nothing in this section applies to the annual festival known as the Myrtleford Tobacco, Hops and Timber Festival.
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s. 10

S. 10(1)
amended by
No. 43/2000
s. 10.

10. Exemptions

(1) Sections 6(1)(c), 6(2) or (2A) and 9 do not apply to a person who, under a contract or agreement relating to a sports or arts function or event or series of functions or events, with another person, in exchange for a sponsorship, gift, prize or like benefit, displays only in connection with such a function or event—

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

(b) the name of the manufacturer or distributor of a tobacco product—

if the display of the trademark, brand name or name is restricted in accordance with the regulations to—

(c) signs or objects on or within the site of such a function or event; or

(d) naming such a function, event or part of such a function or event, a scholarship, gift or prize; or

(e) any booklet, leaflet or handbill distributed to the public; or

(f) signs or objects on the outside of any road, sea or air vehicle used in any such function or event or on any participant in any such function or event.

(2) The Governor in Council, on the recommendation of the Minister, by Order published in the Government Gazette, may declare that section 6(2) does not apply in respect of a specified tobacco advertisement or a specified class of tobacco advertisement placed or displayed before 1 July 1991 in accordance with an agreement entered into before 8 October 1987.

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- (3) In making a recommendation to the Governor in Council for the purposes of sub-section (2), the Minister must take into account—
- (a) the desirability of the application of the prohibitions in section 6(2) in stages; and
 - (b) the extent to which undue hardship will be suffered by compliance with section 6(2) before 1 July 1991.

11. Packing of tobacco

A person must not sell any tobacco prepared for smoking that is in a package—

- (a) that is not labelled in accordance with the regulations with a prescribed statement and warning (if any) applicable to packages of that class; or
- (b) that is not labelled with the prescribed statement (if any) applicable to packages of that class giving the tar content of the tobacco; or
- (c) that is not labelled with any other prescribed information applicable to packages of that class.

Penalty: 100 penalty units.

11A. Offence to possess certain tobacco products

A person who carries on a tobacco retailing business or a tobacco wholesaling business must not, without reasonable excuse, have in the person's possession or under the person's control, any tobacco products that the person knows or ought reasonably to know—

- (a) are smuggled goods or prohibited imports within the meaning of the **Customs Act 1901** of the Commonwealth; or

S. 11A
inserted by
No. 43/2000
s. 11.

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(b) are excisable goods within the meaning of the **Excise Act 1901** of the Commonwealth upon which excise duty has not been paid.

Penalty: 50 penalty units.

12. Supplying tobacco to person under 18 years

S. 12(1)
amended by
Nos 83/1993
s. 4, 43/2000
s. 12(1)(a).

(1) A person must not sell a tobacco product to a person under the age of 18 years.

Penalty: 50 penalty units.

S. 12(2)
amended by
No. 83/1993
s. 4.

(2) A person must not purchase a tobacco product for the use of a person under the age of 18 years.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
20 penalty units.

S. 12(3)
amended by
Nos 83/1993
s. 4, 43/2000
s. 12(1)(b).

(3) A person must not permit a person under the age of 18 years to obtain a tobacco product from a vending machine situated on premises occupied by the first-mentioned person.

Penalty: 50 penalty units.

S. 12(3A)
inserted by
No. 43/2000
s. 12(2).

(3A) If an employee commits an offence against sub-section (1), each manager is deemed to have committed an offence against the sub-section, whether or not the employee committed the offence without the manager's authority or contrary to the manager's orders or instructions.

S. 12(3B)
inserted by
No. 43/2000
s. 12(2).

(3B) Proceedings under this section may be brought against a manager whether or not proceedings have been brought against the employee and whether or not the employee has been convicted.

S. 12(3C)
inserted by
No. 43/2000
s. 12(2).

(3C) If an offence is committed against sub-section (1) on premises at which a business is carried on, it must be presumed, unless the contrary is established, that the offence was committed in the course of the carrying on of that business.

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(3D) In this section—

"manager" means—

S. 12(3D)
inserted by
No. 43/2000
s. 12(2).

- (a) the employer of the employee;
- (b) a person who authorised the person who committed the offence to sell tobacco products as the person's agent;
- (c) in the case of an offence committed in the course of the carrying on of a business, a person who owns, manages, controls, conducts or operates that business.

(4) It is a defence to a prosecution under this section if a person proves that he or she—

- (a) had reasonable cause to believe that the person purchasing the tobacco product, or for whom the tobacco product was purchased or to whom the tobacco product was supplied, was not under the age of 18 years; or
- (b) had taken all precautions that were reasonably required to ensure that the tobacco product was not sold to a person under the age of 18 years; or
- (c) at the time of the alleged offence, had seen an evidence of age document of the person whose age is material to the offence, indicating that the person is of or over the age of 18 years; or
- (d) in the case of a prosecution against a manager for an offence under sub-section (1)—
 - (i) had no knowledge of the offence; and
 - (ii) could not, by the exercise of due diligence, have prevented the commission of the offence.

S. 12(4)(a)
amended by
No. 83/1993
s. 4.

S. 12(4)(b)
amended by
Nos 83/1993
s. 4, 43/2000
s. 12(3).

S. 12(4)(c)
inserted by
No. 43/2000
s. 12(3).

S. 12(4)(d)
inserted by
No. 43/2000
s. 12(3).

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13. Vending machines

(1) A person must not place or cause or permit to be placed a vending machine for operation by members of the public in any premises unless the premises are—

S. 13(1)(a)
amended by
No. 43/2000
s. 22(1)(a).

(a) licensed premises within the meaning of the **Liquor Control Reform Act 1998**; or

S. 13(1)(b)
amended by
Nos 16/1997
s. 120(a),
114/2003
s. 12.1.3(Sch.
6 item 13.2).

(b) a bingo centre within the meaning of the **Gambling Regulation Act 2003** in respect of which—

(i) the age limit prescribed under that Act is at least 16; or

S. 13(1)(b)(ii)
amended by
No. 16/1997
s. 120(b).

(ii) a condition of the relevant operator's licence to operate the bingo centre prohibits entry to the centre by persons under the age of 16; or

(c) premises set aside by an employer as a staff amenity area for the use of persons over the age of 16 years.

Penalty: 10 penalty units.

(2) A person who owns or is the lessee of a vending machine must ensure that there is kept conspicuously displayed on the front of the vending machine a statement in the prescribed form.

Penalty: 2 penalty units.

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s. 13A

13A. Mobile selling of tobacco products

S. 13A
inserted by
No. 28/2001
s. 9.

- (1) A person must not, in the course of carrying on a business or in the course of his or her employment, sell any tobacco product that is carried about on his or her person.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

- (2) A person must not authorise another ("**the seller**") to sell any tobacco product that is carried about on the seller's person.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

- (3) A reference in this section to a tobacco product carried about on a person includes a reference to a tobacco product that is intended to be sold from a tray, bag or other container whether or not it is being carried about on the person at the time of sale.

14. Packages of cigarettes

S. 14
amended by
No. 28/2001
s. 10.

A person must not sell cigarettes unless the cigarettes are in a package containing at least 20 cigarettes.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

15. Smokeless tobacco

- (1) A person must not manufacture or sell a tobacco product other than a product prepared for smoking.

Penalty: 100 penalty units.

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s. 15C

(2) Sub-section (1) does not apply to the manufacture or sale of prescribed tobacco products.

S. 15A
inserted by
No. 43/2000
s. 13(1) (as
amended by
No. 28/2001
s. 21(1)(a)
(b)(2)),
repealed by
No. 31/2002
s. 10(c).

* * * * *

S. 15B
inserted by
No. 43/2000
s. 13(2),
substituted by
No. 28/2001
s. 11,
repealed by
No. 31/2002
s. 10(c).

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S. 15C
inserted by
No. 43/2000
s. 13(3) (as
amended by
No. 28/2001
s. 22).

15C. Retail outlets: signage

- (1) The occupier of premises on which a tobacco retailing business is carried on must cause to be displayed on those premises in accordance with the regulations—
- (a) a health warning sign; or
 - (b) a sign relating to programs assisting in the cessation of smoking.

Penalty: 10 penalty units.

- (2) A sign referred to in sub-section (1) must comply with any prescribed requirements as to size, information contained in it (including where people may obtain more information) and the manner in which the information is set out or displayed.

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- (3) The occupier of premises on which a tobacco retailing business is carried on must cause to be displayed on those premises in accordance with the regulations a prescribed sign relating to the prohibition of the sale of tobacco products to persons under the age of 18 years.

S. 15C(3)
inserted by
No. 28/2001
s. 12.

Penalty: 10 penalty units.

15D. Prohibition of retailing at premises where offences have been committed

S. 15D
inserted by
No. 43/2000
s. 14.

- (1) If—
- (a) a person ("the retailer") carries on a tobacco retailing business at premises that are a retail outlet; and
 - (b) that person, or an associate of that person, is found guilty of a relevant offence in respect of, or relating to, the carrying on of that business at those premises; and
 - (c) the offence is a first relevant offence committed in respect of those premises by any of the retailer and the associates of the retailer—

the court, in addition to imposing any other penalty, may order that the retailer not carry on a tobacco retailing business at those premises or, if the court so determines, at any new premises within 5 kilometres of those premises, for such period, not exceeding 3 months, and commencing on such date, as the court determines.

- (2) If—
- (a) a person ("the retailer") carries on a tobacco retailing business at premises that are a retail outlet; and

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- (b) one relevant offence in respect of, or relating to, the carrying on of that business at those premises has been committed by any of the retailer and the associates of the retailer and there has been a finding of guilt; and
- (c) the retailer, or an associate of the retailer, is found guilty of another relevant offence in respect of, or relating to, the carrying on of that business at those premises—

the retailer, or any associate of the retailer, must not carry on a tobacco retailing business at those premises or, if the court so determines, at any new premises within 5 kilometres of those premises, during the period of 3 months or, if the court which makes the finding of guilt specifies a longer period not exceeding 12 months, during that specified period, and commencing on such date, as the court determines.

Penalty: 50 penalty units and, for a continuing offence, an additional penalty of 2 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention by an inspector on the person carrying on the business; or
 - (b) if no notice of contravention has been served, after the commencement of the period.
- (3) If—
- (a) a person ("the retailer") carries on a tobacco retailing business at premises that are a retail outlet; and

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- (b) two or more relevant offences in respect of, or relating to, the carrying on of that business at those premises have been committed by any one or more of the retailer and the associates of the retailer, and there has been a finding of guilt for each such offence; and
 - (c) the retailer, or an associate of the retailer, is found guilty of another relevant offence in respect of, or relating to, the carrying on of that business at those premises—

the retailer, or any associate of the retailer, must not carry on a tobacco retailing business at those premises or, if the court so determines, at any new premises within 5 kilometres of those premises, during the period of 5 years commencing on such date as the court determines.

Penalty: 50 penalty units and, for a continuing offence, an additional penalty of 2 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention by an inspector on the person carrying on the business; or
 - (b) if no notice of contravention has been served, after the commencement of the period.
- (4) A person is not prohibited from carrying on a tobacco retailing business at any premises by reason of sub-section (2) or (3) if the court referred to in that sub-section—

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- (a) is satisfied that there are exceptional circumstances and that it is reasonable that the tobacco retailing business continue to be carried on at those premises; and
- (b) makes an order to that effect.
- (5) An offence is not to be taken into account for the purposes of this section while an appeal is pending against a finding of guilt for the offence.
- (6) If two or more persons are found guilty of an offence arising from the sale or possession of the same tobacco products, there is deemed to be only one offence for the purposes of this section.
- (7) If a retailer and an associate of a retailer are prohibited from carrying on a tobacco retailing business for 2 or more periods that overlap, those periods are, to the extent that they apply to the same premises, to apply consecutively.
- (8) In this section—
- "associate"**, in relation to a person, means—
- (a) if the person carries on a tobacco retailing business in partnership with another person, that other person;
- (b) if the person is a corporation—
- (i) a director or person concerned in the management of the corporation; or
- (ii) a person who is entitled to more than 25% of the shares in the corporation;
- "new premises"**, in relation to an offence by a person in relation to premises, does not include premises at which the person carried on a tobacco retailing business before the offence was committed;
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"relevant offence" means—

- (a) an offence against section 12; or
 - (b) an offence against section 11A; or
 - (c) an offence against the Customs Act 1901 of the Commonwealth in respect of the possession of tobacco products that are smuggled goods or prohibited imports within the meaning of that Act; or
 - (d) an offence against the Excise Act 1901 of the Commonwealth in respect of the possession of tobacco products that are excisable goods within the meaning of that Act upon which excise duty had not been paid.
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**PART 3—VICTORIAN HEALTH PROMOTION
FOUNDATION**

16. Victorian Health Promotion Foundation

- (1) There is established by this Act a body to be called the Victorian Health Promotion Foundation.
 - (2) The Foundation—
 - (a) is a body corporate with perpetual succession; and
 - (b) shall have an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property for the purpose of performing its functions and exercising its powers under this Act; and
 - (e) is capable of doing and suffering all such acts and things as bodies corporate may by law do or suffer and which are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.
 - (3) The Foundation represents, and shall be taken to be part of, the Crown.
 - (4) The official seal of the Foundation shall be kept in such custody as the Foundation directs and must not be used except as authorised by the Foundation.
 - (5) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Foundation affixed to a document and shall presume that it was duly affixed.
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17. Objectives of Foundation

The objects of the Foundation are—

- (a) to fund activity related to the promotion of good health, safety or the prevention and early detection of disease; and
- (b) to increase awareness of programs for promoting good health in the community through the sponsorship of sports, the arts and popular culture; and
- (c) to encourage healthy lifestyles in the community and support activities involving participation in healthy pursuits; and
- (d) to fund research and development activities in support of these objects.

18. Functions of Foundation

The following are the functions of the Foundation—

- (a) to promote its objects;
- (b) to make grants from the Fund for activities, facilities, projects or research programs in furtherance of the objects of the Foundation;
- (c) to provide sponsorships for sporting or cultural activities;
- (d) to keep statistics and other records relating to the achievement of the objects of the Foundation;
- (e) to provide advice to the Minister on matters related to its objects referred by the Minister to the Foundation and generally in relation to the achievement of its objects;

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S. 18(g)
amended by
No. 43/2000
s. 22(1)(b).

- (f) to make loans or otherwise provide financial accommodation for activities, facilities, projects or research programs in furtherance of the objects of the Foundation;
- (g) to consult regularly with relevant Government Departments and agencies and to liaise with persons and organisations affected by the operation of this Act;
- (h) to perform such other functions as are conferred on the Foundation by this or any other Act.

19. Powers of Foundation

- (1) The Foundation has power to do all things necessary to be done in the performance of its functions or achievement of its objects.
- (2) In addition to its other powers, the Foundation has power, following consultation with the Minister, to make grants from the Fund for the relief of loss suffered as a result of the application of this Act to anything existing at or before the date of enactment of this Act where special circumstances warrant assistance of that kind.

20. Foundation to be responsible to Minister

- (1) The Foundation shall perform its functions and exercise its powers subject to any guidelines or directions on any matter or class of matters declared by the Governor in Council on the recommendation of the Minister after consultation with the Minister administering the **Sport and Recreation Act 1972** by notice published in the Government Gazette to be guidelines or directions for the purposes of this section.

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- (2) Section 15 of the **Subordinate Legislation Act 1994** applies to a guideline of which notice is published under sub-section (1) as if the guideline were a statutory rule within the meaning of that Act notice of which had been published in the Government Gazette on the day on which the notice under sub-section (1) was published. **S. 20(2) substituted by No. 43/2000 s. 22(2).**
- (3) A guideline notice of which is published under sub-section (1) is subject to disallowance by a House of the Parliament and sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply as if the guideline were a statutory rule notice of which had been published in the Government Gazette on the day on which the notice under sub-section (1) was published. **S. 20(3) substituted by No. 43/2000 s. 22(2).**

21. Membership of Foundation

- (1) The Foundation shall consist of—
- (a) three persons with expertise in health and illness prevention, one of whom shall be chosen by the Minister from a panel of three names submitted by the Anti-Cancer Council; and
 - (b) four persons with expertise in sport or sports administration, one of whom shall be chosen by the Minister from a panel of three names submitted by the Sports Federation of Victoria or, if that body ceases to exist, another body representing amateur sport in Victoria and nominated by the Minister and one of whom shall be nominated by the Minister as representing country sport; and
 - (c) two persons with expertise in business, management, communications or law; and
 - (d) one person with expertise in the arts or arts administration; and
 - (e) one person with expertise in advertising; and

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- (f) three persons who are members of the Legislative Council or the Legislative Assembly elected by the Legislative Council and Legislative Assembly jointly.
- (2) The Minister may appoint a Chairperson and a Deputy Chairperson from amongst the members referred to in sub-section (1) (other than paragraph (f)).
- (3) The members (other than the members referred to in sub-section (1)(f))—
 - (a) shall be appointed by the regulations; and
 - (b) are not, in respect of the office of member, subject to the **Public Administration Act 2004** (other than Part 5 of that Act).
- (4) If the regulation appointing a member is disallowed, the appointment ceases to have effect.

S. 21(3)(b)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 204.1).

22. Term of appointment

- (1) Subject to this Part, a member appointed under section 21 holds office for such period not exceeding 5 years as is specified in the instrument of appointment but is eligible for re-appointment.

S. 22(2)(3)
repealed by
No. 42/1995
s. 224(Sch. 2
item 41).

* * * * *

- (4) A member elected under section 21(1)(f) holds office, subject to this Part for three years but is eligible for re-election.
- (5) Subject to this Part, a member holds office on such terms and conditions as are determined by the Governor in Council.

23. Remuneration and allowances

A member (other than a member referred to in section 21(1)(f)) shall be paid such remuneration and allowances (if any) as are determined by the Governor in Council.

24. Removal from office

The Governor in Council may remove a member from office.

25. Resignation

A member may resign office by writing signed by him or her and delivered to the Governor in Council.

26. Disclosure of interests etc.

- (1) A member of the Foundation who is in any way, whether directly or indirectly interested in a contract or proposed contract with the Foundation must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the fact and the nature and extent of the interest at a meeting of the Foundation.
- (2) Sub-section (1) does not apply if the interest of the member consists only of being a member or creditor of a body that is interested in a contract or proposed contract with the Foundation if the interest may properly be regarded as not being a material interest.
- (3) For the purposes of sub-section (1), a general notice given to the members of the Foundation by a member to the effect that he or she is a member, officer or employee of a body and is to be regarded as interested in any contract that may, after the date of the notice, be made with that body is sufficient declaration of interest in relation to any contract so made or proposed to be made if—

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- (a) the notice states the nature and extent of the interest of the member in the body; and
 - (b) when the question of the confirming or entering into a contract is first taken into consideration, the extent of the member's interest is not greater than that stated in the notice; and
 - (c) the notice is read at a meeting of the Foundation or the member takes reasonable steps to ensure that it is brought up and read at the next meeting of the Foundation after it is given.
- (4) A member of the Foundation who possesses any property or holds any office whereby, whether directly or indirectly, interests or duties might be created in conflict with the member's interests or duties as a member must, in accordance with sub-section (5), declare at a meeting of the members of the Foundation the fact and nature and extent of the conflict.
- (5) A declaration required by sub-section (4) in relation to the possession of any property or the holding of any office must be made by a person—
- (a) if the person possesses the property or holds the office as mentioned in sub-section (4) when he or she becomes a member—at the first meeting of the Foundation held after—
 - (i) he or she becomes a member; or
 - (ii) the relevant facts as to the possession of the property or the holding of the office come to his or her knowledge—
whichever is the later; or
 - (b) if the person comes into possession of the property or commences to hold the office as mentioned in sub-section (4) after he or she
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becomes a member—at the first meeting of the Foundation held after the relevant facts as to the possession of the property or the holding of the office come to his or her knowledge.

- (6) The Chairperson must cause to be recorded every declaration under this section in the minutes of the meeting at which it was made.
- (7) This section is in addition to, and not in derogation of, the operation of any Act or rule of law restricting a member from having an interest in contracts with the Foundation or from possessing property or holding offices involving interests or duties in conflict with the member's interests or duties as a member.

27. Validity of acts and decisions

S. 27
amended by
No. 43/2000
s. 22(3).

An act or decision of the Foundation is not invalid by reason only—

- (a) of a vacancy in the office of a member; or
- (b) of any defect or irregularity in or in connection with the appointment of a member; or
- (c) in the case of a person appointed to act as Chairperson or as a member, that the occasion for so acting had not arisen or had ceased.

28. Meetings of Foundation

- (1) The Chairperson shall preside at a meeting of the Foundation at which he or she is present and, if the Chairperson is not present, the members present shall elect a member to preside.
- (2) A majority of members in office at any time constitutes a quorum at a meeting of the Foundation.

- (3) A question arising at a meeting of the Foundation shall be determined by a majority of votes of the members present and voting on the question.
- (4) If there is an equality of votes on a question at a meeting, the Chairperson or other person presiding at the meeting has a casting vote.
- (5) Subject to this Part, the Foundation may regulate its own procedure.

29. Patrons

The Governor in Council may appoint persons as honorary patrons of the Foundation.

30. Advisory committees

- (1) The Foundation may, following consultation with the Minister and the Minister administering the **Sport and Recreation Act 1972**, appoint advisory committees for the purposes of providing advice and information to assist the Foundation in the performance of its functions.
- (2) A member of an advisory committee shall be paid such allowances and expenses as are determined by the Governor in Council.

31. Chief executive officer and staff

- (1) There shall be a chief executive officer of the Foundation, who shall be appointed by the Governor in Council on the recommendation of the Minister for such period and subject to such terms and conditions as are determined by the Governor in Council.
- (2) Before making a recommendation for the purposes of sub-section (1), the Minister must seek the advice of the Foundation.
- (3) The Governor in Council may remove the chief executive officer from office.

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- (4) The chief executive officer may resign office in writing signed by him or her and delivered to the Governor in Council.
- (5) The chief executive officer is not, in respect of the office of chief executive officer, subject to the **Public Administration Act 2004**.
- (6) The Foundation shall appoint such other staff as are necessary for the purposes of this Part.
- (7) If the chief executive officer or a member of the staff of the Foundation was, immediately before his or her appointment, an officer within the meaning of the **Superannuation Act 1958**, the chief executive officer or member continues, subject to that Act, to be an officer within the meaning of that Act while he or she continues to be the chief executive officer or such a member.
- (8) If a person was, immediately before appointment as the chief executive officer or a member of the staff of the Foundation, an employee in the public service, the person upon ceasing to be the chief executive officer or member, is eligible to be employed in the public service with a classification and emolument corresponding with or higher than that which the person held or received in the public service immediately before appointment as the chief executive officer or such a member as if the period of service as the chief executive officer or such a member had been service in the public service.

S. 31(5)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 204.2).

S. 31(8)
substituted by
No. 46/1998
s. 7(Sch. 1).

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32. Victorian Health Promotion Fund

- (1) There shall be established in the Public Account as part of the Trust Fund an account to be known as the Victorian Health Promotion Fund.
- (2) The Fund shall be administered by the Foundation.
- (3) All money received by the Foundation must be paid into the Fund.

S. 32(3)
substituted by
No. 94/1997
s. 21(1).

- (3A) There shall be paid out of the Consolidated Fund (which is to the necessary extent appropriated accordingly) into the Victorian Health Promotion Fund, in respect of the financial year commencing on 1 July 1997, an amount of \$21 395 000 in such instalments and at such times as are determined by the Treasurer.
- (4) There shall be paid out of the Fund in accordance with the budget of the Foundation—

S. 32(3A)
inserted by
No. 94/1997
s. 21(1).

S. 32(4)(a)
amended by
No. 94/1997
s. 21(2).

- (a) amounts determined by the Foundation for payment to sporting bodies; and

S. 32(4)(b)
amended by
No. 94/1997
s. 21(2).

- (b) amounts determined by the Foundation for payment to bodies for the purpose of health promotion; and
- (c) other amounts by way of grant or loan or financial accommodation for payment in accordance with this Act to persons or bodies determined by the Foundation; and
- (d) the cost and expenses incurred by the Foundation under this Act; and

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Part 3—Victorian Health Promotion Foundation

s. 33

- (e) amounts determined by the Minister for payment to a body or bodies specified by the Minister for the purpose of medical research related to the prevention and treatment of illness; and
 - (f) any other money authorised under this or any other Act to be paid out of the Fund.
- (5) The Foundation may, with the approval of the Minister administering Part 7 of the **Financial Management Act 1994**, maintain an account or accounts with an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth.
- (6) An amount paid to a body out of the Fund under sub-section (4) (except paragraph (d)) must be presented or otherwise delivered to the body by the Chairperson or the chief executive officer or by a member of the Foundation (other than a member appointed under section 21(1)(f)) nominated by the Chairperson for that purpose and must be made only in the name of the Foundation.

S. 32(5)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 11/2001
s. 3(Sch.
item 76).

33. Budget

- (1) The Foundation must, before 1 June in each year, submit to the Minister for the Minister's approval a budget for the next financial year of money to be paid into the Fund and money to be paid out of the Fund.
- (2) The budget must be in a form required by the Minister.
- (2A) The amounts included in the budget for a financial year to be paid out of the Fund to sporting bodies and to bodies for the purpose of health promotion must each be not less than 30% of the total money budgeted to be paid into the Fund out of the Consolidated Fund in that year.

S. 33(2A)
inserted by
No. 94/1997
s. 21(3).

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- (3) The Minister may, after consultation with the Treasurer and the Minister administering the **Sport and Recreation Act 1972**, approve a budget as submitted to the Minister, or approve it with such alterations as the Minister determines.
- (4) The Minister may, if requested to do so by the Foundation, at any time, approve alterations to the budget.

Ss 34–36
repealed by
No. 31/1994
s. 4(Sch. 2
item 90).

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Part 3A—Inspectors and Powers of Inspectors

s. 36

PART 3A—INSPECTORS AND POWERS OF INSPECTORS

Pt 3A
(Heading and
ss 36–36T)
inserted by
No. 43/2000
s. 15.

36. Appointment of persons as inspectors

New s. 36
inserted by
No. 43/2000
s. 15.

The Secretary may, by instrument, appoint as an inspector—

- (a) a person nominated by the Chief Executive Officer of a council within the meaning of the **Local Government Act 1989** and employed by, or providing services to, that council;
- (b) an employee or member of a class of employees employed under Part 3 of the **Public Administration Act 2004**.

S. 36(b)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 204.2).

36A. Inspector's identity card

S. 36A
inserted by
No. 43/2000
s. 15.

- (1) The Secretary must issue an identity card to each inspector.
- (2) An identity card must contain a photograph of the inspector to whom it is issued.

36B. Production of identity card

S. 36B
inserted by
No. 43/2000
s. 15.

- (1) An inspector must produce his or her identity card for inspection—
 - (a) before exercising a power under this Part other than a requirement made by post; and
 - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

- (2) This section does not apply to the exercise of a power under section 36E(1).

S. 36B(2)
amended by
No. 28/2001
s. 13.

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Act No. 81/1987

Part 3A—Inspectors and Powers of Inspectors

s. 36C

s. 36C
inserted by
No. 43/2000
s. 15.

36C. Power to require names and addresses

- (1) An inspector may request a person to state his or her name and address if the inspector believes on reasonable grounds that the person has committed, or is about to commit, an offence against a provision of this Act referred to in the Schedule.
- (2) An inspector who makes a request under sub-section (1) must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.
- (3) A person must not, in response to a request made by an inspector in accordance with this section—
 - (a) refuse or fail to comply with the request; or
 - (b) state a name that is false in a material particular; or
 - (c) state an address other than the full and correct address of his or her ordinary place of residence or business.

Penalty: 5 penalty units.

- (4) A person who is requested by an inspector to state his or her name and address may request the inspector to state, orally or in writing, his or her name and to produce his or her identity card.
- (5) An inspector must not, in response to a request under sub-section (4)—
 - (a) refuse or fail to comply with the request; or
 - (b) state a name that is false in a material particular; or
 - (c) refuse to comply with the request in writing if requested to do so.

Penalty: 5 penalty units.

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Part 3A—Inspectors and Powers of Inspectors

s. 36D

36D. Entry or search with consent

S. 36D
inserted by
No. 43/2000
s. 15.

- (1) If an inspector believes, on reasonable grounds, that a person has contravened this Act or the regulations, the inspector, with the consent of the occupier of the premises—
 - (a) may enter and search any premises;
 - (b) may seize anything found on the premises which the inspector believes, on reasonable grounds, to be connected with the alleged contravention;
 - (c) may inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector—
 - (a) has produced his or her identity card for inspection; and
 - (b) has informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

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s. 36D

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- (3) If an occupier consents to an entry and search, the inspector who requested consent must before entering the premises ask the occupier to sign an acknowledgment in the prescribed form stating—
 - (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
 - (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
 - (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
 - (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
 - (6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.
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s. 36E

36E. Entry of premises open to the public

- (1) An inspector may enter and inspect any part of premises that, at the time of the entry and inspection, are open to the public and—
 - (a) may take photographs; and
 - (b) may direct the occupier to remove any tobacco advertisement placed or displayed in the premises in contravention of this Act.
- (2) After entering premises under sub-section (1), an inspector may inspect and measure any tobacco advertisement that is visible from the customer's side of the customer service area, whether or not the advertisement is in a part of the premises open to the public.

S. 36E
inserted by
No. 43/2000
s. 15,
amended by
No. 28/2001
s. 14 (ILA
s. 39B(1)).

S. 36E(2)
inserted by
No. 28/2001
s. 14.

36F. Search warrants

- (1) An inspector, with the written approval of the Secretary or, if the inspector is an environmental health officer of a council or a person employed by, or providing services to, a council, with the written approval of the Chief Executive Officer of the council, may apply to a magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened this Act or the regulations.
- (2) If a magistrate is satisfied, by the evidence, on oath or by affidavit, of the inspector that there are reasonable grounds to believe that there is a thing or things of a particular kind connected with a contravention of this Act or the regulations on any premises, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or

S. 36F
inserted by
No. 43/2000
s. 15.

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Part 3A—Inspectors and Powers of Inspectors

s. 36F

persons named or otherwise identified in the warrant and with any necessary equipment—

- (a) to enter the premises specified in the warrant, if necessary by force; and
- (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) inspect and make copies of, or take extracts from—

a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with the alleged contravention.

- (3) A search warrant issued under this section must state—
 - (a) the purpose for which the search is required and the nature of the alleged contravention; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

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s. 36G

36G. Announcement before entry

S. 36G
inserted by
No. 43/2000
s. 15.

- (1) On executing a search warrant, the inspector executing the warrant—
 - (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector need not comply with sub-section (1) if he or she believes, on reasonable grounds, that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.

36H. Details of warrant to be given to occupier

S. 36H
inserted by
No. 43/2000
s. 15.

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to a person at the premises; and
 - (b) give to the person a copy of the warrant.

36I. Seizure of things not mentioned in the warrant

S. 36I
inserted by
No. 43/2000
s. 15.

A search warrant under section 36F authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

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s. 36J

- (a) the inspector believes, on reasonable grounds, that the thing is of a kind which could have been included in a search warrant issued under that section and will afford evidence about the contravention of this Act or the regulations; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or the regulations.

S. 36J
inserted by
No. 43/2000
s. 15.

36J. Copies of seized documents

- (1) If an inspector retains possession of a document seized from a person under this Part, the inspector must give the person, within 21 days after the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under sub-section (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

S. 36K
inserted by
No. 43/2000
s. 15.

36K. Retention and return of seized documents or things

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

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- (b) the Magistrates' Court makes an order under section 36L extending the period during which the document or thing may be retained.

36L. Magistrates' Court may extend 3 month period

S. 36L
inserted by
No. 43/2000
s. 15.

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension of the period for which the inspector may retain the document or thing.
- (2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—
 - (a) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (b) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

36M. Requirement to assist inspector during entry

S. 36M
inserted by
No. 43/2000
s. 15.

To the extent that it is reasonably necessary to determine compliance with this Act or the regulations, an inspector exercising a power of entry under this Part who produces his or her identity card for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

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s. 36N

S. 36N
inserted by
No. 43/2000
s. 15.

36N. Refusal or failure to comply with requirement

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an inspector under this Part.

Penalty: 60 penalty units.

S. 36O
inserted by
No. 43/2000
s. 15.

36O. Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite sub-section (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.
- (3) If—
 - (a) before producing a document that the person is required to produce by or under this Part, the person claims that the document would tend to incriminate the person; and
 - (b) the document would in fact tend to incriminate the person—

the document is not admissible in evidence against the person in a criminal proceeding other than a proceeding in respect of an offence against this Act or the regulations.

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s. 36P

36P. Offence to give false or misleading information

S. 36P
inserted by
No. 43/2000
s. 15.

A person must not—

- (a) give information to an inspector under this Part that the person knows to be false or misleading in any material particular; or
- (b) produce a document to an inspector under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

36Q. Offence to hinder or obstruct inspector

S. 36Q
inserted by
No. 43/2000
s. 15.

A person must not, without reasonable excuse, hinder or obstruct an inspector who is exercising a power under this Part.

Penalty: 60 penalty units.

36R. Offence to impersonate inspector

S. 36R
inserted by
No. 43/2000
s. 15.

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

36S. Service of documents

S. 36S
inserted by
No. 43/2000
s. 15.

- (1) A written requirement by an inspector under this Part may be given personally or by registered post to a person—
 - (a) at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, at the registered office of the body corporate.

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- (2) A person who provides a document or information in response to a requirement of an inspector under this Part may send that document or information to the inspector by registered post.

S. 36T
inserted by
No. 43/2000
s. 15.

36T. Confidentiality

- (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Part, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.

Penalty: 60 penalty units.

- (2) Sub-section (1) does not apply to the giving of information—
- (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or
 - (d) with the written authority of the Secretary or, if the inspector is an environmental health officer of a council or a person employed by, or providing services to, a council, with the written authority of the Chief Executive Officer of the council; or
 - (e) with the written authority of the person to whom the information relates.

PART 4—MISCELLANEOUS

37. Removal of advertisements

- | | | | | | |
|---|---|---|---|---|--|
| * | * | * | * | * | S. 37(1)
repealed by
No. 43/2000
s. 16(1)(a). |
|
 | | | | | |
| (2) If a person is convicted of an offence under section 6(2) or (2A), the Court, in addition to imposing any other penalty, may order— | | | | | S. 37(2)
amended by
No. 43/2000
s. 16(1)(b). |
| (a) that the advertisement may be removed or obscured by an inspector; and | | | | | S. 37(2)(a)
amended by
No. 43/2000
s. 16(1)(c). |
| (b) that the person convicted pay the reasonable costs incurred by the inspector in removing or obscuring the advertisement. | | | | | S. 37(2)(b)
amended by
No. 43/2000
s. 16(1)(c). |
|
 | | | | | |
| (3) Costs payable under sub-section (2) may be recovered as a debt due to the Council of the municipality or the State, as the case requires. | | | | | |
| * | * | * | * | * | S. 37(4)
amended by
Nos 125/1993
s. 20(12),
46/1998
s. 7(Sch. 1),
repealed by
No. 43/2000
s. 16(1)(d). |

38. Infringement notices

- | | |
|---|--|
| (1) An inspector may serve an infringement notice in the prescribed form on a person whom the inspector believes has committed an infringement referred to in the Schedule requiring the person to pay the penalty for that infringement specified in the Schedule. | S. 38(1)
amended by
No. 43/2000
s. 16(2)(a)(b). |
|---|--|

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Part 4—Miscellaneous

s. 38

S. 38(2)
amended by
No. 43/2000
s. 16(2)(a).

- (2) The inspector may withdraw the infringement notice within 28 days after serving it by sending a notice in the prescribed form to the person on whom the infringement notice was served.
- (3) If the person pays the penalty before the infringement notice is withdrawn, the person is entitled to a refund of the penalty.

S. 38(4)
amended by
No. 43/2000
s. 16(2)(a).

- (4) If the person pays the penalty within the time specified in the notice or, if the inspector allows, before a summons is served on the person in respect of the infringement—
 - (a) further proceedings are not to be taken against the person; and
 - (b) a conviction must not be recorded against that person for the infringement.

S. 38(5)
amended by
Nos 57/1989
s. 3(Sch. item
198(a)(b)),
43/2000
s. 16(2)(a).

- (5) A penalty paid under this section must be applied as if the person who paid it was convicted of the infringement in the Magistrates' Court on a charge filed by the inspector.
- (6) If—
 - (a) a person served with an infringement notice has not paid the penalty within the time specified in the notice; or
 - (b) an infringement notice is withdrawn—proceedings may still be taken or continued for the infringement.
- (7) If the court hearing the proceedings—
 - (a) is satisfied that an infringement notice was served and not withdrawn; and

(b) the court finds the person guilty of the infringement—

that finding is not to be treated as a conviction for any purpose whatsoever except the making of the finding itself and any later proceedings in respect of that finding, including any proceedings by way of appeal or order to review.

* * * * *

S. 38(8)
repealed by
No. 43/2000
s. 16(2)(c).

39. Proceedings

(1) Proceedings for an offence under this Act or for an infringement referred to in section 38 may be brought by a member of the police force or an inspector.

S. 39(1)
amended by
No. 43/2000
s. 16(3).

(2) Proceedings shall not be brought for an offence under section 9 without the consent in writing of the Minister.

S. 39(2)
amended by
No. 28/2001
s. 15(1).

(3) The amendment of sub-section (2) made by section 15(1) of the **Tobacco (Further Amendment) Act 2001** applies to offences under section 6 irrespective of when the offence is alleged to have been committed.

S. 39(3)
inserted by
No. 28/2001
s. 15(2).

40. Application of penalties

(1) Except as provided in sub-section (2) penalties under this Act form part of and must be paid into the Consolidated Fund.

(2) Penalties under this Act in respect of proceedings brought by or on behalf of the council of a municipality or in respect of infringement notices served by an inspector who is an environmental health officer of a council or who is employed by, or provides services to, a council are payable to the municipal fund of that council.

S. 40(2)
amended by
No. 43/2000
s. 17.

41. Offences by a body corporate

If a body corporate commits an offence against this Act, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for, that offence unless the director or other person proves that he or she exercised reasonable diligence to prevent commission of the offence.

S. 41A
inserted by
No. 31/2002
s. 11.

41A. No double jeopardy

If an act or omission constitutes more than one offence against this Act, the offender is liable to be prosecuted for any or all of those offences but is not liable to be punished more than once for the same act or omission.

42. Civil proceedings

An action does not lie against a person for the failure or refusal to do anything that would constitute an offence against this Act.

S. 42AA
inserted by
No. 31/2002
s. 12.

42AA. Victorian Casino and Gaming Authority and Director of Gaming and Betting to supply Secretary with certain information

(1) In this section—

* * * * *

S. 42AA(1)
def. of
"Authority"
repealed by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(a)).

"commencement day" means the
commencement of section 12 of the **Tobacco
(Miscellaneous Amendments) Act 2002**;

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Part 4—Miscellaneous

s. 42AA

"Commission" means Victorian Commission for Gambling Regulation established by the **Gambling Regulation Act 2003**;

S. 42AA(1)
def. of
"Commission"
inserted by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(b)).

* * * * *

S. 42AA(1)
def. of
"Director"
repealed by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(a)).

"relevant approved venue" means an approved venue of a kind referred to in section 5L(1).

* * * * *

S. 42AA(2)
repealed by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(c)).

(3) If at any time after the commencement day the Commission, under Part 3 of Chapter 3 of the **Gambling Regulation Act 2003**, varies the approval of a gaming machine area in a relevant approved venue, the Commission must provide to the Secretary, as soon as practicable after making that variation, a revised plan of the approved venue showing any gaming machine area in that venue as at that time.

S. 42AA(3)
amended by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(d)
(i)(ii)).

(4) If at any time after the commencement day the Commission, under section 3.3.17 of the **Gambling Regulation Act 2003**, approves a modification of a gaming machine area in a relevant approved venue, the Commission must provide to the Secretary, as soon as practicable after granting that approval, details of the modification.

S. 42AA(4)
amended by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(e)
(i)(ii)).

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Part 4—Miscellaneous

s. 42A

S. 42AA(5)
amended by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(f)
(i)(ii)).

(5) If at any time after the commencement day the Commission, under Part 3 of Chapter 3 of the **Gambling Regulation Act 2003**, approves a gaming machine area in a relevant approved venue, the Commission must provide to the Secretary, as soon as practicable after the granting of that approval, a plan of the approved venue showing any gaming machine area in that venue as at that time.

S. 42AA(6)
amended by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(g)
(i)(ii)).

(6) If at any time after the commencement day the approval of a gaming machine area in a relevant approved venue is, under Part 3 of Chapter 3 of the **Gambling Regulation Act 2003**, cancelled, revoked or surrendered, the Commission must provide to the Secretary, as soon as practicable after that event, details of the cancellation, revocation or surrender.

S. 42AA(7)
amended by
No. 114/2003
s. 12.1.3(Sch.
6 item 13.3(h)).

(7) The Secretary may provide to an inspector any plan, revised plan or information provided to the Secretary in accordance with this section, despite anything to the contrary in the **Gambling Regulation Act 2003** or any other Act.

S. 42A
inserted by
No. 43/2000
s. 18.

42A. Power to require names of persons supplied with tobacco

(1) The Secretary may, in writing addressed to a person who manufactures tobacco products, or sells tobacco products by wholesale, require the person to provide to the Secretary within a reasonable period, being not less than one month after the requirement is made, the names and addresses of persons carrying on a tobacco retailing business in Victoria to whom the person has supplied tobacco products in Victoria within the preceding 12 months.

Tobacco Act 1987
Act No. 81/1987

Part 4—Miscellaneous

s. 42B

- (2) If a person to whom a requirement under subsection (1) is addressed refuses or fails to respond or provides information that the person knows to be false or misleading in any material particular, the person is guilty of an offence.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence:
100 penalty units.

- (3) The Secretary must not give to any other person, whether directly or indirectly, any information acquired by the Secretary under this section except to the extent necessary to enable an inspector to carry out functions under this Act.

Penalty: 60 penalty units.

- (4) Sub-section (3) does not apply to the giving of information—

(a) to a court or tribunal in the course of legal proceedings; or

(b) pursuant to an order of a court or tribunal; or

(c) with the written authority of the person to whom the information relates.

42B. Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 42, as it has effect on and after the commencement of section 19 of the **Tobacco (Amendment) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.

- (2) It is the intention of section 42, as it has effect immediately after the commencement of each of the amendments made to this Act by the **Tobacco (Further Amendment) Act 2001**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 42B
inserted by
No. 43/2000
s. 19,
amended by
No. 28/2001
s. 16 (ILA
s. 39B(1)).

S. 42B(2)
inserted by
No. 28/2001
s. 16.

Tobacco Act 1987
Act No. 81/1987

Part 4—Miscellaneous

s. 43

S. 42B(3)
inserted by
No. 31/2002
s. 13.

- (3) It is the intention of section 42, as it has effect on and after the commencement of sections 8 and 9 of the **Tobacco (Miscellaneous Amendments) Act 2002**, to alter or vary section 85 of the **Constitution Act 1975**.

43. Regulations

S. 43(1)(aa)
inserted by
No. 83/1993
s. 5.

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the labelling of packages containing tobacco including the position of labels on packets and the size, colour, style and nature of labels or labelling; and
 - (aa) specifying the method or methods by which average yields of tar, nicotine and carbon monoxide of tobacco in a package are to be determined if a label is required to disclose those yields; and
 - (b) prescribing statements or warnings for the purpose of labelling packages; and
 - (c) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may apply, adopt or incorporate (with or without modification) any matter contained in an Act of the Commonwealth or in an instrument made under such an Act as in force from time to time.

Tobacco Act 1987
Act No. 81/1987

Part 4—Miscellaneous

s. 43

(3) The regulations are subject to disallowance by a House of the Parliament.

S. 43(3)
substituted by
No. 43/2000
s. 22(4).

(4) This section authorises the prescribing by regulation of the matters contained in the Health (Tobacco Warning Labels) Regulations 1986 and those Regulations have effect as if they had been made under this section.

s. 44

New Pt 5
 (Heading and
 ss 44, 45)
 inserted by
 No. 43/2000
 s. 20.

PART 5—TRANSITIONAL

New s. 44
 inserted by
 No. 43/2000
 s. 20.

44. Proceedings under section 6(2)

Despite the repeal of sub-section (1) of section 37 by section 16 of the **Tobacco (Amendment) Act 2000**, that sub-section, as in force immediately before the commencement of that section, continues to apply in respect of an offence committed before that commencement if a notice under that sub-section in respect of that offence was given before that commencement.

New s. 45
 inserted by
 No. 43/2000
 s. 20.

45. Section 15D

A reference in section 15D to an offence does not include a reference to an offence committed before the commencement of section 14 of the **Tobacco (Amendment) Act 2000**.

Pt 5
 (Heading)
 repealed by
 No. 94/1997
 s. 21(4).

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S. 44
 repealed by
 No. 94/1997
 s. 21(4).

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Ss 45, 46
 repealed by
 No. 83/1993
 s. 6.

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Tobacco Act 1987
Act No. 81/1987

Sch.

SCHEDULE

INFRINGEMENTS

Sch.
substituted by
No. 43/2000
s. 21,
amended by
Nos 28/2001
s. 17(1)(2),
31/2002
s. 14(a)-(c).

<i>Infringements</i>	<i>Penalty</i>
1. An offence against section 5A(1)	1 penalty unit
2. An offence against section 5B(1)	1 penalty unit
2A. An offence against section 5BA(1)	1 penalty unit
3. An offence against section 5C(1)	1 penalty unit
3A. An offence against section 5D(1)	1 penalty unit
3B. An offence against section 5E(1)	1 penalty unit
3C. An offence against section 5F(1)	1 penalty unit
3D. An offence against section 5G(1)	1 penalty unit
3E. An offence against section 5H(1)	1 penalty unit
3F. An offence against section 5I(1)	1 penalty unit
3G. An offence against section 5J(1)	1 penalty unit
3H. An offence against section 5K(1)	1 penalty unit
3I. An offence against section 5L(1) or (2)	1 penalty unit
3J. An offence against section 5M(1)	1 penalty unit
3K. An offence against section 5N(1)	1 penalty unit
3L. An offence against section 5O(1)	1 penalty unit
3M. An offence against section 5P(1)	1 penalty unit
3N. An offence against section 5Q(1)	1 penalty unit
3O. An offence against section 5R(1)	1 penalty unit
4. An offence against section 6(2A)	1 penalty unit
4A. An offence against section 6(2B)	1 penalty unit
5. An offence against section 12(1)	2 penalty units
6. An offence against section 12(2)	1 penalty unit
7. An offence against section 12(3)	2 penalty units
8. An offence against section 13	1 penalty unit
8A. An offence against section 13A	1 penalty unit
8B. An offence against section 14	1 penalty unit
* * *	* *
* * *	* *
11. An offence against section 15C	1 penalty unit
12. An offence against section 36C(3)	1 penalty unit.

Tobacco Act 1987
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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 7 October 1987

Legislative Council: 30 October 1987

Long title

The long title for the Bill for this Act was "A Bill to provide for the regulation of the sale and promotion of tobacco products and for other purposes."

The **Tobacco Act 1987** was assented to on 24 November 1987 and came into operation as follows:

Sections 6(1)(3), 13, 15 on 1 April 1988: section 2(2); section 6(2) on 1 January 1989: section 2(4); section 14 on 1 July 1988: section 2(3); rest of Act on 24 November 1987: section 2(1).

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Tobacco Act 1987** by Acts and subordinate instruments.

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Tobacco (Amendment) Act 1993, No. 83/1993

Assent Date: 3.11.93
Commencement Date: Ss 1–3, 5, 6 on 3.11.93; s. 4 on 1.1.94: s. 2(2)
Current State: All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 20(12) on 7.12.93: s. 2(4)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 90) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 41 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Gaming No. 2 Act 1997, No. 16/1997

Assent Date: 6.5.97
Commencement Date: S. 120 on 31.3.98: s. 2(4)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Business Franchise Fees (Safety Net) Act 1997, No. 94/1997

Assent Date: 16.12.97
Commencement Date: S. 21 on 16.12.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

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Endnotes

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Printers and Newspapers (Repeal) Act 1998, No. 56/1998

Assent Date: 13.10.98
Commencement Date: S. 5(2) on 19.11.98: Government Gazette 19.11.98 p. 2792
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco (Amendment) Act 2000, No. 43/2000 (as amended by No. 28/2001)

Assent Date: 6.6.00
Commencement Date: Ss 4–6, 7(2), 11, 12, 13(2), 14, 15, 16(1)(a)(c)(d)(2)(3), 17–22 on 1.11.00: s. 2(2); ss 7(1), 13(1)(3) on 1.7.01: s. 2(3); ss 8–10, 16(1)(b) on 1.1.02: s. 2(4)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 76) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco (Further Amendment) Act 2001, No. 28/2001

Assent Date: 12.6.01
Commencement Date: S. 16 on 13.6.01: s. 2(1); s. 8 on 1.7.01: s. 2(2); ss 7, 9, 10, 12, 15, 17(2) on 1.10.01: s. 2(3); ss 3(2), 4–6, 11 on 1.11.01: s. 2(4); ss 3(1), 13, 14, 17(1) on 1.1.02: s. 2(5)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco (Miscellaneous Amendments) Act 2002, No. 31/2002

Assent Date: 12.6.02
Commencement Date: Ss 4(3), 5, 12 on 13.6.02: s. 2(1); ss 4(1)(2), 6–11, 13, 14 on 1.9.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Gambling Regulation Act 2003, No. 114/2003

Assent Date: 16.12.03
Commencement Date: S. 12.1.3(Sch. 6 items 13.1–13.3) on 1.7.04: Government Gazette 1.7.04 p. 1843
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

Tobacco Act 1987
Act No. 81/1987

Endnotes

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 204) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Tobacco Act 1987**

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Endnotes

3. Explanatory Details

No entries at date of publication.