



New South Wales

# Public Health Amendment (Tobacco) Act 1996 No 33

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New South Wales

## **Public Health Amendment (Tobacco) Act 1996 No 33**

Act No 33, 1996

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An Act to amend the *Public Health Act 1991* with respect to the sale of tobacco to minors and the proof of age of persons purchasing tobacco; and for other purposes. [Assented to 24 June 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Public Health Amendment (Tobacco) Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Public Health Act 1991 No 10**

The *Public Health Act 1991* is amended as set out in Schedule 1.

## Schedule 1 Amendments

(Section 3)

### [ 1 ] Section 59 Sale of tobacco to person under 18 prohibited

Omit subsection (2). Insert instead:

- (2) It is a defence to a prosecution for an offence under subsection (1) if the court is satisfied that:
  - (a) the person to whom the tobacco was sold was over the age of 14 years at the time of the sale, and
  - (b) at or before the time of the sale there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person to whom the tobacco was sold and as proving that the person was at least 18 years of age.
- (3) Evidence that is of a kind prescribed by the regulations for the purposes of section 117E (Reasonable evidence of age) of the *Liquor Act 1982* is taken to be documentary evidence for the purposes of subsection (2). However, this does not preclude the use of any other documentary evidence that might reasonably be accepted as evidence that a person is at least 18 years of age for the purposes of subsection (2).
- (4) The following persons are authorised persons for the purposes of section 152A (Confiscation of proof of age cards) of the *Liquor Act 1982*:
  - (a) any environmental health officer,
  - (b) a person who sells tobacco and any employee of that person (being a person or employee over the age of 18 years), but only on, or in the immediate vicinity of, the premises or place where the tobacco is sold.

**[2] Section 59A**

Insert after section 59:

**59A Liability of employers**

- (1) If an employee contravenes section 59, the employer is taken to have contravened that section (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).
- (2) It is a defence to a prosecution against an employer for such a contravention if it is established:
  - (a) that the employer had no knowledge of the contravention, and
  - (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under section 59 by virtue of this section whether or not the employee has been proceeded against or convicted under that provision.
- (4) For the purposes of this section, the following additional persons are taken to be employers of persons who contravene section 59:
  - (a) any person who authorised a person who contravenes section 59 to sell tobacco as the person's agent,
  - (b) if the employer of the person is not the holder of a tobacco retailer's licence or group tobacco retailer's licence under the *Business Franchise Licences (Tobacco) Act 1987*, the holder of the licence under that Act under which the tobacco was sold by the person in contravention of section 59.

**[3] Schedule 4 Savings and transitional provisions**

Insert after Part 3 of Schedule 4:

**Part 4 Provisions consequent on enactment of the  
Public Health Amendment (Tobacco) Act  
1996**

**13 Sale of tobacco to persons under 18**

- (1) Section 59, as amended by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of proceedings for an offence under that section alleged to have been committed before the commencement of that amendment.
- (2) Section 59, as in force immediately before the commencement of that amendment, continues to apply in respect of any such proceedings as if the amendment had not been made.

**14 Liability of employers**

Section 59A, as inserted by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of a contravention of section 59 that occurred before the commencement of section 59A.

[Minister's second reading speech made in—  
Legislative Assembly on 24 April 1996  
Legislative Council on 2 May 1996]