

[Act 1997 No 129]



New South Wales

Public Health Amendment (Tobacco Advertising) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to re-enact, with modifications, the provisions of the *Tobacco Advertising Prohibition Act 1991* as amendments to Part 6 (Tobacco products) of the *Public Health Act 1991*. The Bill provides for the repeal of the former Act. Modifications included in the re-enacted provisions are for the most part based on recommendations arising from the Department of Health's review of the Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the *Public Health Act 1991* set out in Schedule 1.

Clause 4 repeals the *Tobacco Advertising Prohibition Act 1991*.

Schedule 1 Amendments

Prohibition of certain sales

Schedule 1 [4] repeals section 54 of the Act and replaces it with a new section that re-enacts the existing provision prohibiting sales of unpackaged tobacco products together with the prohibition, now contained in section 10 of the *Tobacco Advertising Prohibition Act 1991* (the *repealed Act*), of the sale of cigarettes in packets containing fewer than 20.

Advertising of tobacco products

Schedule 1 [10] inserts a new Division 4 into Part 6 of the Act (sections 61A–61P) to deal with advertising of tobacco products. The effect of the proposed new sections is as follows:

Proposed section 61A (Objects of this Division)—states the public health objects of the proposed Division.

Proposed section 61B (Certain advertising prohibited)—re-enacts the substance of section 5 of the repealed Act (the principal section imposing a prohibition on advertising of tobacco products) with five modifications, namely:

- (1) the advertising prohibition does not apply to books or other printed material printed or published before the commencement of the repealed Act (see proposed section 61B (3) (b) (ii)), and
- (2) the provisions of section 5 (4) (c) of the repealed Act, which allow an advertisement to be displayed on the package that contains a tobacco product, are now restricted so as to allow such advertisements as meet certain requirements prescribed by regulation (see proposed section 61B (3) (c) and (4)), and
- (3) the provisions of section 5 (4) (d) of the repealed Act have been revised for consistency with paragraph (b) of the same subsection and extend to live stage performances the current exemption relating to advertisements appearing incidentally in film and videotape productions, and
- (4) the provisions of section 5 (4) (e) and (5) of the repealed Act, relating to advertisements displayed inside shops, are omitted, and
- (5) the presumption, currently contained in section 5 (6) of the repealed Act, that a tobacco advertisement containing certain indications of the identity of the manufacturer or distributor of the product is taken

(unless disproved) to be displayed for a direct or indirect benefit is applied to proceedings for offences corresponding to those under section 5 (2) of the repealed Act as well as under section 5 (1) of that Act.

Proposed section 61C (Competitions)—re-enacts the substance of section 6 of the repealed Act, which deals with promotional competitions, with two modifications, namely:

- (1) the supply to a tobacco retailer of any benefit or thing for resupply to the consumer is prohibited to the same extent as a benefit or thing supplied directly to the consumer (see proposed section 61C (2)), and
- (2) a provision (proposed section 61C (4)) is inserted to the effect that an offence may be committed even when the benefit or thing is of no value or of negligible value only.

Proposed section 61D (Free samples)—re-enacts the substance of section 7 of the repealed Act, which prohibits the supply of free samples of tobacco products for promotional purposes, with one modification, namely the omission of the words “sample of” (to make it clear that the quantity supplied is not at issue).

Proposed section 61E (Promotion of sponsorships)—re-enacts the substance of section 8 of the repealed Act, which prohibits sponsorships by tobacco companies.

Proposed section 61F (Tobacco vending machines)—re-enacts the substance of section 9 of the repealed Act, which regulates the placement of tobacco vending machines. The proposed section in addition allows placement of such machines in registered clubs, but restricts their placement in licensed premises to areas where unaccompanied minors are not allowed. Some minor amendments are also made so as to simplify the definition of *tobacco vending machine*.

Proposed section 61G (Smokeless tobacco, confectionery and toys)—re-enacts the substance of section 11 of the repealed Act, which prohibits the manufacture or sale of smokeless tobacco products and of confectionery or food resembling a tobacco product, but extends the prohibition to include the sale of toys, amusements or other products that resemble a tobacco product.

Proposed section 61H (Exemptions)—re-enacts the substance of section 12 of the repealed Act, which deals with exemptions from the advertising prohibitions imposed by the repealed Act on grounds of hardship or in order to ensure the holding of significant sporting, racing or cultural events. The provisions are modified by limiting exemptions given for events to events of

international significance, and by providing that, for the exemption to be granted, the Minister must be satisfied that the event would probably not be held in Australia if the exemption were not granted.

Proposed section 61I (Powers of authorised officers)—the provisions of this section are largely new, replacing section 18 of the repealed Act, which conferred on authorised officers a power of entry on to premises by court order for the purpose of removing or obscuring advertisements offensive to the Act. The provisions of the proposed section confer wider powers of entry and inspection for the purpose of detecting any contravention of advertising prohibitions and other provisions of Part 6 of the Act.

Proposed section 61J (Authorised officer may require information)—confers power on an authorised officer to require a person by whom a provision of Part 6 of the Act is being or has been contravened, or who is in charge of premises where such a contravention is in evidence, to furnish his or her name and address. The officer may also require production of invoices relating to tobacco products supplied in connection with certain offensive advertising material or promotional objects.

Proposed section 61K (Removal of certain advertisements)—re-enacts the substance of sections 17 and 18 of the repealed Act, which deal with removing advertisements displayed in contravention of that Act.

Proposed section 61L (Consent required for prosecutions)—re-enacts the substance of section 20 of the repealed Act, which requires prosecutions for offences to be authorised by the Director-General of the Department of Health or another authorised person.

Proposed section 61M (Proceedings for offences)—provides for summary proceedings for offences before a Local Court or before the Supreme Court in its summary jurisdiction.

Proposed section 61N (Penalties)—re-enacts the substance of section 21 of the repealed Act, which provides penalties for offences under that Act.

Proposed section 61O (Certain civil proceedings barred)—re-enacts the provisions of section 24 of the repealed Act, which preclude the taking of civil action in respect of offences under that Act.

Proposed section 61P (Regulations)—re-enacts the regulation-making power contained in section 25 of the repealed Act with minor modifications.

Other amendments

Schedule 1 [1]–[3], [5]–[9] and [13] make consequential amendments.

Schedule 1 [11] and [12] amend section 74 of the Act so as to include offences of intimidating or assaulting an authorised officer in the execution of his or her duties.

Schedule 1 [14] and [15] amend Schedule 4 of the Act to allow the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [16] provides savings in relation to unspent exemptions granted under section 12 of the repealed Act and the placement of tobacco vending machines, terminates an agreement made in 1989 between the then Minister for Health and Australian tobacco manufacturers and dissolves the Tobacco Advertising Prohibition Committee.