

c2024-237B
OPP--Opposition

LEGISLATIVE ASSEMBLY

Public Health (Tobacco) Amendment Bill (No 2) 2024

First print

Proposed amendments

No. 1 **Prohibition on certain sales**

Page 3, Schedule 1[2], proposed section 6, penalty, lines 21 and 22. Omit all words on the lines. Insert instead—

- (a) for a corporation—7,000 penalty units, or
- (b) for an individual—1,400 penalty units.

No. 2 **Prohibition on packing and sale of tobacco product without health warning**

Page 3, Schedule 1[3], proposed section 7, penalty, lines 26 and 27. Omit all words on the lines. Insert instead—

- (a) for a corporation—7,000 penalty units, or
- (b) for an individual—1,400 penalty units.

No. 3 **Prohibited words**

Page 3, Schedule 1, insert after line 27—

[3A] Section 8 Prohibited words

Omit section 8(1), penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—7,000 penalty units, or
- (b) for an individual—1,400 penalty units.

No. 4 **Close associates**

Page 4, Schedule 1[8], proposed section 31. Insert after line 21—
close associate—see section 31A.

No. 5 **Relevant applicants and relevant applications**

Page 4, Schedule 1[8], proposed section 31. Insert after line 29—

relevant applicant means a person who has made a relevant application.

relevant application means—

- (a) an application for a licence under section 39(1), or
- (b) an application to renew a licence under section 39B(1).

No. 6

Close associates

Page 4, Schedule 1[8], proposed Part 5, Division 1. Insert after line 44—

31A Meaning of “close associate”

- (1) A person is a *close associate* of a relevant applicant if the person—
 - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power, whether in the person’s own right or on behalf of another person, in the business of the relevant applicant to which the relevant licence relates and, because of that interest or power, is or will be able, in the Secretary’s opinion, to exercise a significant influence over or in relation to the management or operation of the business, or
 - (b) holds or will hold any relevant position, whether in the person’s own right or on behalf of another person, in the business of the relevant applicant to which the licence relates.
- (2) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.
- (3) In this section—

relevant financial interest, in relation to a business, means—

 - (a) any share in the capital of the business, or
 - (b) any entitlement to receive any income derived from the business, or any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law, in equity or otherwise, or
 - (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on.

relevant position means—

 - (a) the position of director, manager or secretary, or
 - (b) any other executive position, however designated.

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

 - (a) to participate in a directorial, managerial or executive decision, or
 - (b) to elect or appoint a person to a relevant position.

No. 7

Deciding applications for licences

Page 7, Schedule 1[8], proposed section 39A(2), lines 37–44. Omit all words on the lines. Insert instead—

- (2) The Secretary must not grant a licence unless the Secretary is satisfied the applicant is—
 - (a) of good repute, having regard to the applicant’s character, honesty and integrity, and
 - (b) a fit and proper person to carry on the business or activity to which the proposed licence relates.
- (2A) Without limiting subsection (2)(b), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if—
 - (a) the Secretary has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person—
 - (i) that the person is a member or close associate of, or regularly associates with 1 or more members of, a declared organisation

within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and

- (ii) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence, or
- (b) the applicant, or a relevant person for the applicant, has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods under—
 - (i) this Act or the regulations, or
 - (ii) another Act or law, including a law of the Commonwealth or another State or Territory.
- (3) The Secretary is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

No. 8 **Deciding applications to renew licences**

Page 9, Schedule 1[8], proposed section 39C(2), lines 2–10. Omit all words on the lines. Insert instead—

- (2) In deciding the application, the Secretary must consider whether the applicant is—
 - (a) of good repute, having regard to the applicant's character, honesty and integrity, and
 - (b) a fit and proper person to carry on the business or activity to which the licence sought to be renewed relates.
- (2A) Without limiting subsection (2)(b), a person is not a fit and proper person to carry on the business or activity to which the licence sought to be renewed relates if—
 - (a) the Secretary has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person—
 - (i) that the person is a member or close associate of, or regularly associates with 1 or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and
 - (ii) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the licence is renewed, or
 - (b) the applicant, or a relevant person for the applicant, has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods under—
 - (i) this Act or the regulations, or
 - (ii) another Act or law, including a law of the Commonwealth or another State or Territory.
- (3) The Secretary is not, under this or any other Act or law, required to give any reasons for not renewing a licence because of subsection (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

No. 9 **Investigations and information relating to applications for licences and licence renewals**

Page 11, Schedule 1[8], proposed Part 5, Division 2, Subdivision 8. Insert after line 37—

39LA Investigations, inquiries and referrals in relation to relevant licence applications

- (1) If the Secretary receives a relevant licence application, the Secretary may carry out any investigations and inquiries in relation to the application the Secretary considers necessary to properly consider the application.
- (2) Without limiting subsection (1), the Secretary may—
 - (a) refer to the Commissioner of Police details of the application, together with any supporting information in relation to the application, that the Secretary considers appropriate to refer to the Commissioner of Police, and
 - (b) ask the Commissioner of Police to inquire into, and report to the Secretary on, matters relevant to the Secretary's consideration of the application.
- (3) The Commissioner of Police may inquire into, and report to the Secretary on, any matters relating to the application requested by the Secretary.

39LB Secretary may require further information

- (1) Without limiting sections 39(4) and 39B(4), the Secretary may, by written notice, require a relevant applicant, or a close associate of a relevant applicant, to do any of the following things—
 - (a) give, in accordance with directions in the notice, information that the Secretary considers relevant to the investigation or proper consideration of the application and that is specified in the notice,
 - (b) produce, in accordance with directions in the notice, any records the Secretary considers relevant to the investigation or proper consideration of the application and allow—
 - (i) the examination of the records, and
 - (ii) the taking of extracts from the records, and
 - (iii) the copying of the records,
 - (c) authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),
 - (d) give the Secretary any authorisations and consents the Secretary requires for the purpose of enabling the Secretary to obtain information, including financial and other confidential information, from other persons about the person and the person's associates.
- (2) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.
- (3) The Secretary may refuse to decide a relevant application if a requirement made under this section in relation to the application is not complied with.

No. 10 **Proceedings for offences**

Page 12, Schedule 1[12], line 10. Omit "2,000". Insert instead "7,000".

No. 11 **Proceedings for offences**

Page 12, Schedule 1, insert after line 10—

[12A] Section 54(3)

Omit "12 months". Insert instead "2 years".