

Passed by both Houses



New South Wales

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

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

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

Act No _____, 2024

An Act to amend the *Public Health (Tobacco) Act 2008* and the *Public Health (Tobacco) Regulation 2022* to establish a licensing scheme to regulate the sale of tobacco products and non-tobacco smoking products; to provide for clearer offences relating to the display of prices and brands and to increase penalties for particular offences; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Public Health (Tobacco) Amendment Act (No 2) 2024*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 1[2]–[8], [11] and [12] and Schedule 2—on the date of assent to this Act,
- (b) otherwise—on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Public Health (Tobacco) Act 2008 No 94

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

approved form, for Part 5—see section 31.

law enforcement agency means the following—

- (a) the NSW Police Force,
- (b) a Police Force of another State or a Territory of the Commonwealth,
- (c) the Australian Federal Police,
- (d) another authority or person responsible for the enforcement of the laws of the Commonwealth or the State, another State or a Territory of the Commonwealth.

licence means a retail licence or a wholesale licence.

licensed online retail shop, for Part 5—see section 31.

licensed retail outlet, for Part 5—see section 31.

licensed retailer means a person who holds a retail licence.

licensed wholesaler means a person who holds a wholesale licence.

relevant person, for Part 5—see section 31.

retail licence—see section 32(a).

show cause notice, for Part 5, Division 2, Subdivision 5—see section 39H(1).

show cause period, for Part 5, Division 2, Subdivision 5—see section 39H(2).

vaping goods has the same meaning as in the *Therapeutic Goods Act 1989* of the Commonwealth.

wholesale licence—see section 32(b).

[2] Section 6 Certain sales prohibited

Omit the penalty. Insert instead—

Maximum penalty—

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

[3] Section 7 Packing and sale of tobacco product without health warning prohibited

Omit the penalty. Insert instead—

Maximum penalty—

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

[4] 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.

[5] Section 16 Certain advertising prohibited

Omit “where the display complies with this Act and the regulations,” from section 16(3)(e).

[6] Section 16E

Insert after section 16—

16E Display of retail prices and names of tobacco products prohibited

- (1) A person must not, in New South Wales, display the retail prices or names of tobacco products in, or so that the display can be seen from, any of the following—
 - (a) a public place,
 - (b) a place prescribed by the regulations.Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) Subsection (1) does not apply to the display of the retail prices or names of tobacco products within a retail outlet if the prices and names are displayed in a way that complies with any requirements for the display of retail prices and names of tobacco products prescribed by the regulations.

[7] Section 22 Sale of tobacco and non-tobacco smoking products to minors

Omit section 22(2B), penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—
 - (i) 1,000 penalty units for a first offence, and
 - (ii) 2,000 penalty units for a second or subsequent offence, or
- (b) for an individual—
 - (i) 200 penalty units for a first offence, and
 - (ii) 1,000 penalty units for a second or subsequent offence.

[8] Section 30 Smoking in motor vehicle prohibited if juvenile present

Omit section 30(8), definition of *vaping goods*.

[9] Part 5 Restrictions on tobacco retailing

Omit Part 5, Divisions 1–3. Insert instead—

Division 1 Preliminary

31 Definitions

In this part—

approved form means a form approved by the Secretary under section 39M.

licensed online retail shop, in relation to a retail licence, means the website specified in the licence as the online retail shop through which the licence holder is authorised to sell tobacco products or non-tobacco smoking products under the licence.

licensed retail outlet, in relation to a retail licence, means the retail premises specified in the licence as the retail outlet from which the licence holder is authorised to sell tobacco products or non-tobacco smoking products under the licence.

relevant person, for an applicant for the grant or renewal of a licence, means a person who holds or will hold any of the following positions of the applicant

or in a business through which the applicant will sell tobacco products or non-tobacco smoking products under the licence if the licence is granted or renewed—

- (a) director,
- (b) another position prescribed by the regulations.

retail premises means either of the following types of premises, whether or not the premises are used wholly or predominantly for the relevant purpose—

- (a) premises from which goods or services are available for supply, or are supplied, to a consumer, or
- (b) premises that are used in connection with the supply of goods or services to a consumer.

show cause notice, for Division 2, Subdivision 5—see section 39H(1).

show cause period, for Division 2, Subdivision 5—see section 39H(2).

Division 2 Licences for selling tobacco products or non-tobacco smoking products

Subdivision 1 Retail and wholesale licences generally

32 Types of licences

The Secretary may grant the following types of licences under this division—

- (a) a **retail licence** that authorises the licence holder to sell, in accordance with this Act and the conditions of the licence, tobacco products or non-tobacco smoking products by retail either—
 - (i) from a single licensed retail outlet, or
 - (ii) through a single licensed online retail shop,
- (b) a **wholesale licence** that authorises the licence holder to sell, in accordance with this Act and the conditions of the licence, tobacco products or non-tobacco smoking products by wholesale.

33 Form of licences

A licence must be in the approved form and include the following details—

- (a) the type of licence,
- (b) the name of the licence holder,
- (c) for a retail licence—the licensed retail outlet or the licensed online retail shop for the licence,
- (d) any conditions imposed on the grant or renewal of the licence,
- (e) the expiry date for the licence.

34 Duration of licences

- (1) The Secretary may grant or renew a licence for—
 - (a) a period of 12 months, or
 - (b) a shorter period specified in the licence.
- (2) A licence—
 - (a) takes effect on the day stated in the licence, and
 - (b) remains in effect for the period for which the licence has been granted or renewed, unless sooner revoked or surrendered.

35 Licences cannot be transferred

A licence cannot be transferred from the licence holder to another person.

36 Licence conditions

- (1) The Secretary may, at any time, by written notice to a licence holder—
 - (a) impose a condition on the licence, or
 - (b) vary a condition imposed on the licence by the Secretary, or
 - (c) revoke a condition imposed on the licence by the Secretary.
- (2) The regulations may impose standard conditions on licences.

Subdivision 2 Principal offences relating to sale of tobacco products or non-tobacco smoking products

37 Selling tobacco products or non-tobacco smoking products by retail without licence

- (1) A person must not sell tobacco products or non-tobacco smoking products by retail unless the person holds a retail licence that is in effect.
Maximum penalty—
 - (a) for a corporation—2,000 penalty units, or
 - (b) for an individual—
 - (i) 100 penalty units for a first offence, or
 - (ii) 400 penalty units for a second or subsequent offence.
- (2) A person does not commit an offence under subsection (1) if—
 - (a) the person is employed by or otherwise engaged to work for a licensed retailer, and
 - (b) the sale is made in accordance with—
 - (i) this Act and the regulations, and
 - (ii) a retail licence held by the licensed retailer.
- (3) A licensed retailer must not sell tobacco products or non-tobacco smoking products by retail other than in accordance with—
 - (a) this Act and the regulations, and
 - (b) a retail licence held by the licensed retailer.
Maximum penalty—
 - (a) for a corporation—2,000 penalty units, or
 - (b) for an individual—
 - (i) 100 penalty units for a first offence, or
 - (ii) 400 penalty units for a second or subsequent offence.

38 Selling tobacco products or non-tobacco smoking products by wholesale without licence

- (1) A person must not sell tobacco products or non-tobacco smoking products by wholesale unless the person holds a wholesale licence that is in effect.
Maximum penalty—
 - (a) for a corporation—2,000 penalty units, or
 - (b) for an individual—400 penalty units.

- (2) A person does not commit an offence under subsection (1) if—
 - (a) the person is employed by or otherwise engaged to work for a licensed wholesaler, and
 - (b) the sale is made in accordance with—
 - (i) this Act and the regulations, and
 - (ii) the wholesale licence held by the licensed wholesaler.
- (3) A licensed wholesaler must not sell tobacco products or non-tobacco smoking products by wholesale other than in accordance with—
 - (a) this Act and the regulations, and
 - (b) the wholesale licence held by the licensed wholesaler.Maximum penalty—
 - (a) for a corporation—2,000 penalty units, or
 - (b) for an individual—400 penalty units.

Subdivision 3 Applications for licences

39 Applications for licences

- (1) A person (the *applicant*) may apply to the Secretary for—
 - (a) a retail licence, or
 - (b) a wholesale licence.
- (2) An application may not be made by an individual who is under the age of 18 years.
- (3) The application must—
 - (a) be in the approved form, and
 - (b) be accompanied by the fee, if any, prescribed by the regulations for the application, and
 - (c) state the type of licence being applied for, and
 - (d) state the applicant's name and business address, and
 - (e) for an application for a retail licence—
 - (i) if the applicant proposes a single retail premises be specified as the licensed retail outlet for the retail licence—state the address of the retail premises, and
 - (ii) if the applicant proposes a single website be specified as the licensed online retail shop for the retail licence—include the details of the website, and
 - (iii) include the details of a person with the day-to-day responsibility for running the proposed licensed retail outlet or licensed online retail shop who is nominated by the applicant to be the designated person for the retail licence, and
 - (f) include any other information required by the Secretary, and
 - (g) otherwise be made in accordance with the regulations.
- (4) The Secretary may, at any time before deciding the application, require the applicant to give the Secretary further information in relation to the application.

- (5) If, before the application is decided by the Secretary, a change occurs in the information provided in or in connection with the application, the applicant must immediately notify the Secretary of the details of the change.

39A Deciding applications for licences

- (1) The Secretary must decide the application for the licence by—
- (a) granting the licence, or
 - (b) refusing to grant the licence.
- (2) In deciding the application, the Secretary may consider the following—
- (a) whether 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,
 - (b) any other matters prescribed by the regulations.
- (3) Despite subsection (1), the Secretary may refuse to decide the application if the applicant—
- (a) does not comply with a requirement to give information under section 39(4), or
 - (b) fails to notify the Secretary of a change in information under section 39(5).
- (4) Without limiting the grounds on which the Secretary may refuse to grant a licence, the Secretary may refuse to grant a licence on one or more of the following grounds—
- (a) 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,
 - (b) any information given by the applicant for this Act or the regulations is false or misleading in a material way,
 - (c) the applicant has failed to comply with another retail or wholesale licence currently or previously held by the applicant,
 - (d) on the recommendation of, or receipt of relevant information from, a law enforcement agency,
 - (e) another ground prescribed by the regulations.
- (5) The Secretary may grant a licence with or without conditions.
- (6) As soon as practicable after deciding the application, the Secretary must—
- (a) give the applicant written notice of the decision, and
 - (b) if the decision is to grant the licence—issue the applicant with a licence.

Subdivision 4 Applications for renewal of licences

39B Applications to renew licences

- (1) A licence holder may, before the expiry of the licence, apply to the Secretary to renew the licence.
- (2) Despite subsection (1), the Secretary may accept an application to renew a licence made within 30 days after the expiry of the licence if the Secretary is satisfied it is reasonable to accept the application in the circumstances.
- (3) The application must—
 - (a) be in the approved form, and
 - (b) be accompanied by the fee, if any, prescribed for the application, and
 - (c) include details of the licence sought to be renewed, and
 - (d) include any other information required by the Secretary, and
 - (e) otherwise be made in accordance with the regulations.
- (4) The Secretary may, at any time before deciding the application, require the applicant to give the Secretary further information in relation to the application.

39C Deciding applications to renew licences

- (1) The Secretary must decide an application to renew a licence by—
 - (a) renewing the licence, or
 - (b) refusing to renew the licence.
- (2) In deciding the application, the Secretary must consider the following—
 - (a) whether 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,
 - (b) any other matters prescribed by the regulations,
 - (c) any other matters the Secretary considers relevant.
- (3) Despite subsection (1), the Secretary may refuse to decide the application if the applicant does not comply with a requirement to give information under section 39B(3).
- (4) Without limiting the grounds on which the Secretary may refuse to renew a licence, the Secretary may refuse to renew a licence on 1 or more of the following grounds—
 - (a) 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,
 - (b) any information given by the applicant for this Act or the regulations is false or misleading in a material way,

- (c) the applicant has failed to comply with another retail or wholesale licence currently or previously held by the applicant,
 - (d) on the recommendation of, or receipt of relevant information from, a law enforcement agency,
 - (e) another ground prescribed by the regulations.
- (5) The Secretary may renew a licence with or without conditions.
- (6) As soon as practicable after deciding the application, the Secretary must—
- (a) give the applicant written notice of the decision, and
 - (b) if the decision is to renew the licence—issue the applicant the renewed licence.

39D Continuation of licences subject of renewal applications

- (1) This section applies if—
- (a) a licence holder has applied for the renewal of the licence under section 39B(1) and the Secretary has not decided the application before the expiry of the licence, or
 - (b) the Secretary accepts an application for the renewal of a licence from a person after the expiry of the licence under section 39B(2).
- (2) Despite section 34(2)(b)—
- (a) for a licence referred to in subsection (1)(a)—the licence continues in effect from the date of the expiry of the licence until the Secretary gives the applicant written notice of the Secretary's decision on the application for renewal under section 39C(6), or
 - (b) for a licence referred to in subsection (1)(b)—the licence is taken to have continued in effect from the date of the expiry of the licence and continues in effect until the Secretary gives the applicant written notice of the Secretary's decision on the application for renewal under section 39C(6).

Subdivision 5 Revocation of licences

39E Definitions

In this subdivision—

show cause notice—see section 39H(1).

show cause period—see section 39H(2).

39F Revoking licences

The Secretary may revoke a licence held by a licence holder in accordance with this subdivision.

39G Grounds for revoking licences

The Secretary may revoke a licence on 1 or more of the following grounds—

- (a) the licence holder has been found guilty of an offence against—
 - (i) this Act or the regulations or the provisions of another Act or regulation relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods, or
 - (ii) a law of the Commonwealth or another State or Territory that the Secretary reasonably considers to be similar to a law mentioned in subparagraph (i),

- (b) any information given by the licence holder for this Act or the regulations is false or misleading in a material way,
- (c) the licence holder has failed to comply with a condition of the licence,
- (d) the licence holder asks the Secretary to revoke the licence,
- (e) on the recommendation of, or receipt of relevant information from, a law enforcement agency,
- (f) another ground prescribed by the regulations.

39H Show cause notice for proposed revocations

- (1) If the Secretary proposes to revoke a licence, the Secretary must, before deciding whether to revoke the licence, give the licence holder written notice (a *show cause notice*) setting out the following—
 - (a) the details of the proposed revocation,
 - (b) the grounds for the proposed revocation,
 - (c) an outline of the facts and circumstances forming the basis for the grounds for the proposed revocation,
 - (d) any other information prescribed by the regulations.
- (2) The show cause notice must include a statement that the licence holder may make written submissions to the Secretary in relation to the proposed revocation within a period, being not less than 14 days after the date the show cause notice is given to the licence holder, stated in the notice (the *show cause period*).

39I Decision to revoke licences

- (1) If, after considering any written submissions made by the licence holder within the show cause period, the Secretary is satisfied a ground for revoking the licence has been established, the Secretary may decide to—
 - (a) revoke the licence, or
 - (b) take no further action.
- (2) If the Secretary decides to revoke the licence, the Secretary must give the licence holder written notice stating the following—
 - (a) the date on which the revocation takes effect,
 - (b) the reasons for the revocation.

Subdivision 6 Surrender of licences

39J Licence holder may surrender licence

- (1) A licence holder may, by written notice to the Secretary in accordance with the regulations, surrender a licence to the Secretary.
- (2) The surrender of the licence takes effect on—
 - (a) the day the licence holder gives the Secretary notice under subsection (1), or
 - (b) if a later day is specified in the notice—the later day.

Subdivision 7 Register of licences

39K Register of licences

- (1) The Secretary must keep a register of licences granted or renewed under this part.
- (2) The register must be kept in the way approved by the Secretary.
- (3) The Secretary may—
 - (a) include in the register any information in relation to a licence the Secretary considers appropriate, and
 - (b) correct any error in or omission from the register, and
 - (c) on request, give information included in the register to members of the public in another way.
- (4) The regulations may make further provision about the register, including the following—
 - (a) information that must, or must not, be included on the register,
 - (b) the information included in the register that must be made publicly available, including on payment of a fee,
 - (c) the circumstances in which information on the register must be made available to particular persons, including on payment of a fee.

Subdivision 8 Miscellaneous

39L Offence of falsely claiming to be licensed

A person must not falsely claim to be a licensed retailer or a licensed wholesaler.

Maximum penalty—400 penalty units.

39M Approved forms

The Secretary may approve forms for use under this part.

[10] Section 40 Seizure of tobacco products for contravention of retailing prohibition

Omit “Division 2” from section 40(1). Insert instead “this part”.

[11] Section 47 Obstruction or impersonation of inspectors

Omit section 47(1), penalty. Insert instead—

Maximum penalty—100 penalty units.

[12] Section 47(2)

Omit the penalty. Insert instead—

Maximum penalty—100 penalty units.

[13] Section 54 Proceedings for offences

Omit “1,000 penalty units” from section 54(2). Insert instead “2,000 penalty units”.

[14] Section 54(3)

Omit “12 months”. Insert instead “2 years”.

[15] Section 58 Regulations

Omit “accessories.” from section 58(1)(k). Insert instead—

accessories,

- (l) eligibility requirements for retail and wholesale licences,
- (m) the standard terms and form of retail and wholesale licences,
- (n) the imposition, variation and revocation of standard conditions on retail or wholesale licences,
- (o) the renewal of retail or wholesale licences,
- (p) the payment of fees in relation to retail or wholesale licences, including the following—
 - (i) annual fees for licences,
 - (ii) fees for applications relating to licences,
 - (iii) the waiving, discounting or refunding of fees,
- (q) the display of retail or wholesale licences, or licence information, at places where tobacco products, non-tobacco smoking products or vaping goods are sold,
- (r) the keeping, publication, inspection and sharing of documents or information relating to retail or wholesale licences,
- (s) the monitoring and enforcement of compliance with Part 5,
- (t) the review of decisions under Part 5,
- (u) any other matters relating to licences or licence holders.

[16] Section 61

Omit the section. Insert instead—

61 Review of certain provisions

- (1) The Minister must conduct a review of the reviewable provisions to identify if—
 - (a) the policy objectives of the reviewable provisions remain valid, and
 - (b) the terms of the reviewable provisions remain appropriate for securing the objectives.
- (2) The review must be commenced within 6 months after the period of 5 years after the commencement date.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 1 year after the last day by which the review must commence.
- (4) In this section—

commencement date means the date on which the amendments to Part 5 made by the *Public Health (Tobacco) Amendment Act (No 2) 2024* commence.

reviewable provisions means the provisions inserted into Part 5 by the *Public Health (Tobacco) Amendment Act (No 2) 2024*.

[17] Schedule 1 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provisions consequent on enactment of Public Health (Tobacco) Amendment Act (No 2) 2024

Definitions

In this part—

amended, in relation to a provision, means the provision as amended by the *Public Health (Tobacco) Amendment Act (No 2) 2024*.

commencement means the commencement of the *Public Health (Tobacco) Amendment Act (No 2) 2024*, Schedule 1[8].

relevant applicant means a person who—

- (a) has, before the commencement, applied to the Secretary for a retail licence or wholesale licence under this part, or
- (b) applies to the Secretary for a retail or wholesale licence within 3 months after the commencement.

transitional period, for a relevant applicant, means the period—

- (a) starting on the day on which the relevant applicant makes, or is taken to have made, the application for a retail licence or wholesale licence under amended Part 5, Division 2, Subdivision 3, and
- (b) ending on the earlier of the following days—
 - (i) if the Secretary refuses to decide the application under section 39A(3)—the day on which the Secretary gives the relevant applicant written notice of the refusal,
 - (ii) if the relevant applicant withdraws the application—the day on which the relevant applicant gives the Secretary written notice of the withdrawal,
 - (iii) the day on which the Secretary gives the relevant applicant written notice of the Secretary's decision on the application under section 39A(6).

Applications for retail or wholesale licences may be made before commencement

- (1) A person may apply to the Secretary for a retail licence or wholesale licence under amended Part 5, Division 2, Subdivision 3 before the commencement as if the provisions of amended Part 5 had commenced.
- (2) An application by a person under subclause (1) is taken to have been made on the commencement.

Application of amended Part 5 to applicants for retail and wholesale licences

- (1) During the transitional period for a relevant applicant, amended Part 5 applies in relation to the relevant applicant and persons employed by or otherwise engaged to work for the relevant applicant as follows—
 - (a) if the relevant applicant has applied for a retail licence—
 - (i) as if the relevant applicant holds a retail licence that—
 - (A) is in force, and
 - (B) is not subject to any conditions, and
 - (ii) if the relevant applicant's application proposes a single retail premises be specified as the licensed retail outlet for the retail licence—the premises specified in the application is the licensed retail outlet for the licence, and

- (iii) if the relevant applicant's application proposes a single website be specified as the licensed online retail shop for the retail licence—as if the website specified in the application were the online retail shop for the licence,
- (b) if the relevant applicant has applied for a wholesale licence—as if the relevant applicant holds a wholesale licence that—
 - (i) is in force, and
 - (ii) is not subject to any conditions.

Schedule 2 Amendment of Public Health (Tobacco) Regulation 2022

[1] Section 11, heading

Omit “the Act, s 16”. Insert instead “the Act, s 16E”.

[2] Section 11(1)

Omit “the Act, section 16(3)(e)”. Insert instead “the Act, section 16E(2)”.