



New South Wales

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

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Public Health (Tobacco) Act 2008* (**the Act**) to—
 - (i) establish a licensing scheme to regulate the sale of tobacco products and non-tobacco smoking products by retail and wholesale, and
 - (ii) provide for clearer offences relating to the display of prices and brands of tobacco products and non-tobacco smoking products and to increase penalties for particular offences,
- (b) to make consequential amendments to the *Public Health (Tobacco) Regulation 2022*.

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.

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

Schedule 1[1] amends section 4 to insert relevant definitions consequent on the amendments in Schedule 1[8]. **Schedule 1[7]** makes a minor consequential amendment.

Schedule 1[2] amends section 6 to increase the maximum penalties for the offences of selling tobacco products other than in the manufacturer's packing or selling tobacco products as

individual items or in packs of less than 20 from 100 penalty units to 200 penalty units for an individual and from 500 penalty units to 1,000 penalty units for a corporation.

Schedule 1[3] amends section 7 to increase the maximum penalties for the offences of packing or selling tobacco products in packaging without a health warning from 100 penalty units to 200 penalty units for an individual and from 500 penalty units to 1,000 penalty units for a corporation.

Schedule 1[5] inserts proposed section 16E, which creates a standalone offence for displaying the retail prices or names of tobacco products in a way that can be seen from public places unless the display is within retail premises and complies with prescribed requirements. The new offence carries a maximum penalty of 100 penalty units for an individual and 500 penalty units for a corporation. **Schedule 1[4]** makes a consequential amendment to section 16 to omit the elements of the new offence from the existing offence relating to advertising tobacco products.

Schedule 1[6] amends section 22 to increase the maximum penalties for the offences of selling a tobacco or a non-tobacco smoking product to a person who is under the age of 18 years—

- (a) for an individual—from 100 penalty units to 200 penalty units for a first offence and from 500 penalty units to 1,000 penalty units for a second or subsequent offence, and
- (b) for a corporation—from 500 penalty units to 1,000 penalty units for a first offence and from 1,000 penalty units to 2,000 penalty units for a second or subsequent offence.

Schedule 1[8] substitutes Part 5, Divisions 1–3 to replace the existing restrictions on, and offences relating to, tobacco retailing with a licensing scheme to regulate the sale of tobacco products and non-tobacco smoking products by retail and wholesale as follows—

- (a) proposed Division 1 sets out the key definitions for the scheme,
- (b) proposed Division 2, which—
 - (i) sets out the types of licences that may be granted, being—
 - (A) retail licences, which authorise licence holders to sell tobacco products or non-tobacco smoking products by retail from either a single physical premises or a single online store, and
 - (B) wholesale licences, which authorise licence holders to sell tobacco products or non-tobacco smoking products by wholesale, and
 - (ii) provides for the form of licences, and
 - (iii) provides that licences may be granted or renewed for periods of up to 12 months, and
 - (iv) provides that licences cannot be transferred, and
 - (v) provides that the Secretary may impose or vary licence conditions at any time, and
 - (vi) enables the regulations to prescribe standard conditions that apply to all licences, and
 - (vii) includes the following principal offences relating to the sale or acquisition of tobacco products or non-tobacco smoking products—
 - (A) a person selling tobacco products or non-tobacco smoking products by retail without a retail licence, with a maximum penalty of 2,000 penalty units for a corporation or 400 penalty units for an individual,
 - (B) a licensed retailer selling tobacco products or non-tobacco smoking products by retail other than in accordance with the Act or the conditions of the retail licence, with a maximum penalty of 2,000 penalty units for a corporation or 400 penalty units for an individual,
 - (C) a person selling tobacco products or non-tobacco smoking products by wholesale without a wholesale licence, with a maximum penalty of 2,000 penalty units for a corporation or 400 penalty units for an individual,
 - (D) a licensed wholesaler selling tobacco products or non-tobacco smoking products by wholesale other than in accordance with the Act or the conditions of the wholesale licence, with a maximum penalty of 2,000 penalty units for a corporation or 400 penalty units for an individual, and

- (viii) sets out the processes and requirements for—
 - (A) applying for and granting licences, and
 - (B) renewing licences, including the continuation of licences that expire before an application for renewal is decided, and
- (ix) provides a power for the Secretary to revoke licences in the following circumstances after a show cause process—
 - (A) the licence holder has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods,
 - (B) the licence holder has provided false or misleading information for the Act,
 - (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) other circumstances that may be prescribed by the regulations, and
- (x) enables a licence holder to surrender a licence, and
- (xi) requires the Secretary to keep a public register of licences, and
- (xii) makes it an offence to falsely claim to be a licensed retailer or licensed wholesaler, with a maximum penalty of 400 penalty units.

Schedule 1[9] makes a minor amendment consequent on the amendments in Schedule 1[8].

Schedule 1[10] and [11] amend section 47 to increase the maximum penalty for obstructing or impersonating inspectors from 5 penalty units to 100 penalty units.

Schedule 1[12] amends section 54 to increase the maximum penalty that the Local Court may impose for an offence from 1,000 penalty units to 2,000 penalty units.

Schedule 1[13] amends section 58 to enable the regulations to make further provision for particular matters relating to retail and wholesale licences and licensed retailers and wholesalers.

Schedule 1[14] inserts a transitional provision that allows persons who are currently authorised to sell tobacco products and non-tobacco smoking products to continue to sell tobacco under the existing provisions until the person's application for a licence under the new licensing scheme is determined.

Schedule 2 Amendment of Public Health (Tobacco) Regulation 2022

Schedule 2[1] and [2] amend section 11 to update cross-references as a consequence of the amendments made by Schedule 1[4] and [5].