



Smoking and Tobacco Products Advertisements (Prohibition) Act 1989

No. 181 of 1989

**An Act to prohibit certain advertisements relating to
smoking and tobacco products, and for related purposes**

[Assented to 28 December 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Smoking and Tobacco Products Advertisements (Prohibition) Act 1989*.

Commencement

2. This Act commences on the first day after the end of the period of 12 months beginning on the day on which it receives the Royal Assent.

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Interpretation

3. (1) In this Act, unless the contrary intention appears:

“Australia” includes the external Territories;

“corporation” means:

- (a) a body corporate that is a foreign corporation within the meaning of paragraph 51 (xx) of the Constitution; or
- (b) a body corporate that is a trading corporation, within the meaning of paragraph 51 (xx) of the Constitution formed within the limits of the Commonwealth; or
- (c) a body corporate that is a holding company of a body corporate of a kind referred to in paragraph (a) or (b); or
- (d) a body corporate that is controlled by a corporation described in paragraph (a), (b) or (c); or
- (e) a partnership at least one of the partners in which is a corporation described in paragraph (a), (b), (c) or (d);

“newspaper” includes a magazine, journal or periodical or any other publication copies of which contain:

- (a) news, intelligence, information or reports of occurrences; or
- (b) remarks, observations or comments in relation to any news, intelligence, information or occurrences or in relation to any other matter of interest to the public or any section of the public;

whatever language it is printed in and whether it is published at regular or irregular intervals;

“printed” includes made by any method of producing text or pictures in a material form;

“print medium” means a newspaper, handbill, program, ticket or other printed document, but does not include a document displayed as a poster;

“publish” does not include communicate to a person in the tobacco trade or in a tobacco product trade;

“smoking” means inhaling or puffing the smoke of cigarettes or cigars of any composition or tobacco in any form;

“tobacco product” means cigarettes or cigars of any tobacco composition or tobacco in any form, and includes snuff, cigarette paper, cigarette rollers and pipes;

(2) For the purpose of this Act, the question whether a body corporate is the holding company of another body corporate shall be determined in the same manner as that question is required to be determined by section 7 of the *Companies Act 1981*.

Extension to Territories

4. This Act extends to every external Territory.

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Prohibition of advertising of smoking and tobacco products

5. (1) Subject to section 6, a corporation must not publish, or cause to be published, in a print medium an advertisement:

- (a) for smoking; or
- (b) for, or for the use of:
 - (i) cigarettes; or
 - (ii) cigarette tobacco; or
 - (iii) other tobacco products.

Penalty: \$60,000.

(2) A reference in subsection (1) to the publication of an advertisement shall be read as not including a reference to the publication by a corporation of matter of an advertising character as an accidental or incidental accompaniment of the publication of other matter in circumstances in which the corporation does not receive payment or other valuable consideration for publishing the advertising matter.

Print media printed outside Australia

6. Subsection 5 (1) does not apply to a print medium:

- (a) printed outside Australia; and
- (b) not principally intended for distribution or use in Australia.

Certain actions do not lie

7. Where a contract entered into before or after the commencement of this Act relates to the advertising of tobacco products or smoking, an action does not lie in any court against a party to the contract for failing, neglecting or refusing, after the commencement of this Act, to publish an advertisement relating to tobacco products or smoking as required by the contract if the failure, neglect or refusal is attributable to, or occasioned by, the operation of this Act.

Conduct by directors, servants or agents

8. (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions to avoid the conduct.

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(3) A reference in subsection (1) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(4) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(5) A reference in this section to an offence against this Act includes a reference to an offence created by section 6, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to this Act.

Additional operation of this Act

9. (1) Without prejudice to its effect apart from this section, this Act has effect as provided by this section.

(2) This Act has, by force of this subsection, the effect it would have if:

- (a) in subsection 5 (1) "a corporation must not" were omitted and "a person must not, in the course of, or for the purposes of, trade or commerce to which this Act applies by virtue of subsection 9 (3)" were substituted; and
- (b) in subsection 5 (1) "\$60,000" were omitted and "\$12,000" substituted; and
- (c) in subsection 5 (2) "corporation" (wherever occurring) were omitted and "person" substituted.

(3) For the purpose of this Act having effect by virtue of subsection (2), this Act applies to trade and commerce:

- (a) between Australia and places outside Australia; or
- (b) among the States; or
- (c) between a State and a Territory or between 2 Territories; or
- (d) by way of the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth.

(4) This Act has, by force of this subsection, the effect it would have if:

- (a) in subsection 5 (1) "a corporation must not" were omitted and "a person must not in a Territory (not being the Australian Capital Territory, the Northern Territory or Norfolk Island)" were substituted; and
- (b) in subsection 5 (1) "\$60,000" were omitted and "\$12,000" substituted.

[*Second reading speech made in—*

Senate on 31 August 1989

House of Representatives on 22 December 1989]