



Tobacco Advertising Prohibition Act 1992

Act No. 218 of 1992 as amended

This compilation was prepared on 17 June 2004
taking into account amendments up to Act No. 148 of 2003

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to limit the exposure of the public to advertisements for smoking and tobacco products, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Tobacco Advertising Prohibition Act 1992*.

2 Commencement [see Note 1]

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (2) Subsections 17(2) to (5) (inclusive) and Division 3 of Part 3 commence on a day to be fixed by Proclamation.
- (3) Part 5 commences on 1 July 1993.

3 Object

- (1) This Act is intended to limit the exposure of the public to messages and images that may persuade them:
 - (a) to start smoking, or to continue smoking; or
 - (b) to use, or to continue using, tobacco products.
- (2) The object is to improve public health.

4 Act extends to external Territories

This Act extends to all the external Territories.

4A Act not to apply so as to exceed Commonwealth power

- (1) Unless the contrary intention appears, if a provision of this Act:
 - (a) would, apart from this section, have an invalid application; but

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- (b) also has at least one valid application;
it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
- (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
 - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.
- (3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.
- (5) This section is in addition to, and not in derogation of, section 15A of the *Acts Interpretation Act 1901*.

- (6) In this section:

application means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases; or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power.

valid application, in relation to a provision, means an application which, if it were the provision's only application, would be within the Commonwealth's legislative power.

5 Act binds the Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) The Crown in a capacity covered by subsection (1) is not liable to be prosecuted for an offence against, or arising out of, this Act.

5A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

6 Operation of State and Territory laws

- (1) This Act does not exclude or limit the operation of a tobacco advertising law of a State or Territory that is capable of operating concurrently with this Act.
- (2) If:
 - (a) particular conduct constitutes an offence against this Act; and
 - (b) apart from this Act, that conduct also constitutes an offence against a tobacco advertising law of a State or Territory;this Act does not exclude or limit the application of that law to that conduct.
- (3) If:
 - (a) either:
 - (i) particular conduct is permitted by section 14, 16, 17, 18, 19 or 20; or
 - (ii) a person could, in respect of particular conduct, establish a defence referred to in section 21 or 22; and
 - (b) apart from this Act, that conduct constitutes an offence against a tobacco advertising law of a State or Territory;this Act does not exclude or limit the application of that law to that conduct.
- (4) In this section:

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tobacco advertising law means a law that prohibits or regulates the advertising of tobacco products.

7 Permission provisions only have effect for the purposes of this Act

Sections 14, 16, 17, 18, 19 and 20 only have effect for the purposes of this Act.

Part 2—Interpretation

8 Defined terms

In this Act, unless the contrary intention appears:

Australia includes all the external Territories except Norfolk Island.

broadcast means transmit by means of:

- (a) a broadcasting service within the meaning of the *Broadcasting Services Act 1992*; or
- (b) something that would be such a broadcasting service if the definition of **broadcasting service** in subsection 6(1) of that Act were amended by omitting all the words from and including “but does not include” to the end of the definition; or
- (c) a datacasting service within the meaning of the *Broadcasting Services Act 1992*.

display includes continue to display.

distributor of tobacco products has a meaning affected by section 12.

exempt library means:

- (a) a public library; or
- (b) a library of a tertiary educational institution; or
- (c) a library of an authority of the Commonwealth or of a State or Territory.

government or political matters means government or political matters relating to any level of government in Australia, and includes any of the following matters:

- (a) participation in, association with and communications in relation to any election or appointment to public office; and
- (b) political views or public conduct relating to activities that have become the subject of political debate; and

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- (c) the performance, conduct, capacity or fitness for office of a person elected or appointed to, or seeking election or appointment to, any public office; and
- (d) the actions or policies, or proposed actions or policies, of any government in Australia or any Australian political party.

holding company has the meaning given by section 11.

manufacturer of tobacco products has a meaning affected by section 12.

non-tobacco product means a product other than a tobacco product.

periodical means an issue (however described) of a newspaper, magazine, journal, newsletter, or other similar publication, issues of which are published at regular or irregular intervals.

person includes a partnership or an unincorporated body referred to in paragraph (e) or (f) of the definition of **regulated corporation**.

public place means a place to which the public, or a section of the public, ordinarily has access, whether or not by payment or by invitation (including, for example, a shop, restaurant, hotel, cinema or club).

publish:

- (a) in relation to a tobacco advertisement, has the meaning given by section 10; and
- (b) in relation to something other than a tobacco advertisement, has a meaning equally as broad as it has in relation to a tobacco advertisement.

regulated corporation means:

- (a) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a foreign corporation; or
- (b) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a trading corporation, or a financial corporation, 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 body corporate of a kind referred to in paragraph (a), (b) or (c); or
- (e) a partnership at least one of the partners in which is a body corporate of a kind referred to in paragraph (a), (b), (c) or (d); or
- (f) a body corporate, or an unincorporated body, established by a law of the Commonwealth.

regulated trade or commerce means trade or 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.

retailer of tobacco products has a meaning affected by section 12.

smoking means smoking tobacco products.

tobacco advertisement has the meaning given by section 9.

tobacco product means:

- (a) tobacco (in any form); or
- (b) any product (for example a cigar or cigarette):
 - (i) that contains tobacco as its main or a substantial ingredient; and
 - (ii) that is designed or intended for human consumption or use; and
 - (iii) that is not included in the Australian Register of Therapeutic Goods maintained under the *Therapeutic Goods Act 1989*; or
- (c) a cigarette paper, cigarette roller or pipe.

workplace means premises in which employees or contractors work, other than any part of such premises that is primarily used as a private dwelling.

9 Meaning of *tobacco advertisement*

Basic meaning

- (1) Subject to this section, for the purposes of this Act, a tobacco advertisement is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:
 - (a) smoking; or
 - (b) the purchase or use of a tobacco product or a range of tobacco products; or
 - (c) the whole or a part of a trade mark that is registered under the *Trade Marks Act 1955* in respect of goods that are or include tobacco products; or
 - (d) the whole or a part of a design that is registered under the *Designs Act 2003* in relation to products that are or include tobacco products; or
 - (e) the whole or a part of the name of a person:
 - (i) who is a manufacturer of tobacco products; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products; or
 - (f) any other words (for example the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products).

Exception—political discourse

- (1A) To remove any doubt, it is declared that if:
 - (a) something (*the advertisement*) does not promote, and is not intended to promote, any particular tobacco product or particular range of tobacco products; and
 - (b) the advertisement does not promote, and is not intended to promote, smoking; and

(c) the advertisement relates solely to government or political matters;

the advertisement is not a tobacco advertisement for the purposes of this Act.

Use of name of manufacturer etc.

- (1B) Without limiting the scope of paragraphs (1A)(a) and (b), the use in an advertisement of the whole name of a manufacturer, distributor or retailer of tobacco products does not, of itself, constitute:
- (a) promotion of a tobacco product or range of tobacco products for the purposes of paragraph (1A)(a); or
 - (b) promotion of smoking for the purposes of paragraph (1A)(b).

Prohibited uses of names

- (1C) Subsection (1B) does not apply in relation to use of such a name in a way prohibited by regulations made for the purposes of this subsection.

Exception—words etc. on products, packaging and business documents

- (2) Words, signs or symbols that appear:
- (a) on a tobacco product; or
 - (b) on the packaging of a tobacco product; or
 - (c) as part of the standard wording of an invoice, statement, order form, letterhead, business card, cheque, manual, or other document, ordinarily used in the normal course of the business of a manufacturer, distributor or retailer of tobacco products;
- do not, when so appearing, constitute a tobacco advertisement (but this does not prevent a still or moving picture, or other visual image, of a tobacco product, of the packaging of a tobacco product, or of a document referred to in paragraph (c), from being a tobacco advertisement).

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Exception—words etc. on premises of manufacturers

- (3) Words, signs or symbols that appear in or on land or buildings occupied by a manufacturer of tobacco products do not, when so appearing, constitute a tobacco advertisement (but this does not prevent a still or moving picture, or other visual image, of words, signs or symbols that so appear from being a tobacco advertisement).

Exceptions—management advertisements and certain advertisements as to availability of products

- (3A) To remove any doubt, it is declared that the following do not constitute tobacco advertisements:
- (a) the doing of anything that is, or apart from this Act would be, required to be done by any other law of the Commonwealth or by any law of a State or Territory;
 - (b) an advertisement (for example, an advertisement for staff or calling for tenders), relating to the internal management of the business of a manufacturer, distributor or retailer of tobacco products, that does not promote a tobacco product or smoking;
 - (c) an advertisement by a manufacturer, distributor or retailer of tobacco products indicating that tobacco products, or tobacco products of a particular kind, are available from the manufacturer, distributor or retailer, as the case may be, provided that the advertisement does not:
 - (i) state the brand name of any individual product; or
 - (ii) contain any other matter that would enable any individual product to be identified; or
 - (iii) promote, or give publicity to, any individual product;
 - (d) the taking of any action to prevent a product from causing injury to anyone, including action:
 - (i) to recall a product; or
 - (ii) to disclose a defect in, or a dangerous characteristic of, a product; or
 - (iii) to disclose circumstances in which the use of a product is or may be dangerous; or
 - (iv) to disclose procedures for disposing of a product; or

- (v) to tell people who have bought a product that the product will be repaired or replaced, or that the price of the product will be refunded.

Exception—non-tobacco product having the same name as a tobacco product

(3B) If:

- (a) apart from this subsection, something (*the advertisement*) that relates to a non-tobacco product would, technically, be a tobacco advertisement because the name, or part of the name, of the non-tobacco product is the same as, or substantially similar to, the name, or part of the name, of:
 - (i) a tobacco product; or
 - (ii) the manufacturer, distributor or retailer of a tobacco product; and
 - (b) the manufacturer of the non-tobacco product is not associated in any way with the manufacturer of the tobacco product;
- then, despite subsection (1), the advertisement is not a tobacco advertisement for the purposes of this Act.

Related bodies corporate taken to be associated with each other

- (3C) Without limiting the circumstances in which 2 persons would, apart from this subsection, be taken to be associated with each other for the purposes of subsection (3B), 2 bodies corporate that are related to each other are taken to be associated with each other for the purposes of that subsection.

Exception—certain advertisements for non-tobacco products

(4) If:

- (a) apart from this subsection, something (*the advertisement*) would, technically, be a tobacco advertisement because it gives publicity to, or otherwise promotes:
 - (i) the purchase or use of a tobacco product or a range of tobacco products referred to in paragraph (1)(b); or
 - (ii) the whole or a part of a trade mark registered as mentioned in paragraph (1)(c) in respect of goods that are or include tobacco products; or

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- (iii) the whole or a part of a design registered as mentioned in paragraph (1)(d) in respect of articles that are or include tobacco products; or
 - (iv) the whole or a part of the name of a person referred to in paragraph (1)(e); or
 - (v) any words or designs, or combination of words and designs, associated as mentioned in paragraph (1)(f) with a tobacco product or a range of tobacco products; and
- (b) either:
- (i) if subparagraph (a)(i), (ii), (iii) or (v) applies, a tobacco product or tobacco products of a kind referred to in the subparagraph were sold in Australia on or before 1 January 1995; or
 - (ii) if subparagraph (a)(iv) applies, the person referred to in that subparagraph was in existence under that name on 1 January 1995 or at a time before that date; and
- (c) the advertisement does not explicitly promote, or give publicity to, any particular tobacco product or particular range of tobacco products; and
- (d) the advertisement is not an advertisement in respect of whose publication section 21 would have applied if paragraphs (1)(c) and (d) of that section had not been enacted; and
- (e) the advertisement:
- (i) explicitly promotes, or gives publicity to; or
 - (ii) appears on, or on the packaging of;
- a product that is covered by a notice in force under subsection (5);

then, despite subsection (1), the advertisement is not a tobacco advertisement for the purposes of this Act.

Specification of classes of products for the purposes of subsection (4)

- (5) For the purposes of subsection (4), the Minister may, by notice published in the *Gazette*, specify a class of products if, and only if:
- (a) the Minister is satisfied that:
 - (i) the products are not tobacco products; and

- (ii) the products, or similar or substantially similar products, were available for purchase from a place in Australia before 1 April 1992; and
- (b) the Minister is satisfied that not specifying the class of products would cause significant financial detriment to the manufacturer of products in the class or to some other person involved in the distribution or sale of products in the class.

Note: Section 29 provides for the making of applications to have classes of products specified in notices under this subsection.

When a notice under subsection (5) comes into force

- (6) A notice under subsection (5) comes into force:
 - (a) on the day when it is published in the *Gazette*; or
 - (b) if a later day is specified in the notice as the day when it is to come into force—on that later day.

Exception—anti-smoking advertisements

- (7) If:
 - (a) apart from this subsection, something (*the advertisement*) would, technically, be a tobacco advertisement; and
 - (b) it is clear from the advertisement that its sole or principal purpose is to discourage smoking or the use of tobacco products;then, despite subsection (1), the advertisement is not a tobacco advertisement for the purposes of this Act.

Meaning of words

- (8) In this section:
words includes abbreviations, initials and numbers.

10 Meaning of *publish a tobacco advertisement*

Basic meaning

- (1) Subject to this section, for the purposes of this Act, a person publishes a tobacco advertisement if the person does any of the following things:

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- (a) the person includes the advertisement in a document (including, for example, a newspaper, magazine, program, leaflet or ticket) that is available, or distributed, to the public or a section of the public;
- (b) the person includes the advertisement in a film, video, television program or radio program that is, or is intended to be, seen or heard by the public or a section of the public;
- (c) the person:
 - (i) sells, hires or supplies the advertisement, or something containing the advertisement, to the public or a section of the public; or
 - (ii) offers the advertisement, or something containing the advertisement, for sale or supply to, or hire by, the public or a section of the public;
- (d) the person displays, screens or plays the advertisement, or something that contains the advertisement, so that it can be seen or heard in or from:
 - (i) a public place; or
 - (ii) public transport; or
 - (iii) a workplace;
- (e) the person otherwise brings the advertisement, or something that contains the advertisement, to the notice of, or disseminates the advertisement, or something that contains the advertisement, to, the public, or a section of the public, by any means (including, for example, by means of a film, video, computer disk or electronic medium).

Publish does not include broadcast

- (2) For the purposes of this Act, the broadcasting of a tobacco advertisement by a person does not amount to the publication of the advertisement by the person.

Exception—trade communications

- (3) For the purposes of this Act, the communication of information that is or includes a tobacco advertisement to a group of people all of whom are involved in the manufacture, distribution or sale of tobacco products does not, of itself, amount to a publication of the tobacco advertisement.

Exception—advertisements in telephone directories

- (3A) For the purposes of this Act, the publication of the name of a manufacturer, distributor or retailer of tobacco products in a telephone directory does not, of itself, amount to the publication of a tobacco advertisement.

Exception—ordinary activities of exempt libraries

- (4) Nothing that a person does for the purposes of the ordinary activities of an exempt library amounts, for the purposes of this Act, to a publication of a tobacco advertisement.

Exception—acknowledgments of assistance or support

- (5) For the purposes of this Act, the publication of an acknowledgment of assistance or support does not amount to the publication of a tobacco advertisement if it complies with regulations made for the purposes of this subsection that permit the publication of such acknowledgments.

11 Meaning of *holding company and related body corporate*

For the purposes of this Act:

- (a) a body corporate is a holding company of another body corporate if, for the purposes of the *Corporations Act 2001*, the first-mentioned body corporate is a holding company of the other body corporate; and
- (b) the question whether 2 bodies corporate are related to each other is to be determined in the same way as the question would be determined under the *Corporations Act 2001*.

12 Meaning of *manufacturer, distributor and retailer*

In this Act, a reference to a manufacturer, distributor or retailer of tobacco products includes a reference to a person who manufactures, distributes or sells a range of products, only some of which are tobacco products.

Part 3—Prohibition of tobacco advertisements

Division 1—Broadcasting of tobacco advertisements

13 Tobacco advertisements not to be broadcast

- (1) A person must not broadcast a tobacco advertisement in Australia or Norfolk Island on or after 1 July 1993 otherwise than as permitted by section 14.

Penalty: 120 penalty units.

- (2) This section has effect subject to section 26A.

14 Accidental or incidental broadcast permitted

A person may broadcast a tobacco advertisement if:

- (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement (in addition to any direct or indirect benefit that the person receives for broadcasting the other matter).

Division 2—Publication of tobacco advertisements

15 Tobacco advertisements not to be published

- (1) A regulated corporation must not:
 - (a) publish a tobacco advertisement in Australia on or after 1 July 1993, otherwise than as permitted by section 16, 17, 18, 19 or 20; or
 - (b) authorise or cause a tobacco advertisement to be so published.
- (2) A person must not publish a tobacco advertisement in Australia on or after 1 July 1993 in the course of, or for the purposes of, regulated trade or commerce otherwise than as permitted by section 16, 17, 18, 19 or 20.
- (3) A person must not publish a tobacco advertisement in a Territory, other than the Australian Capital Territory, the Northern Territory or Norfolk Island, on or after 1 July 1993 otherwise than as permitted by section 16, 17, 18, 19 or 20.
- (4) This section has effect subject to section 26A.

Penalty: 120 penalty units.

16 Point of sale advertising permitted

- (1) A person may display a tobacco advertisement at or on a place where tobacco products are offered for sale to the public if:
 - (a) a law of the State or Territory in which the place is located regulates the advertising of tobacco products; and
 - (b) that law contains provisions expressly dealing with the display of advertisements for tobacco products at or on places where tobacco products are offered for sale to the public; and
 - (c) under those provisions, the display of the advertisement is not an offence.

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- (2) A person may display a tobacco advertisement at or on a place where tobacco products are offered for sale to the public if:
- (a) either:
 - (i) there is no law of the State or Territory in which the place is located that regulates the advertising of tobacco products; or
 - (ii) there is such a law, but it does not contain any provisions expressly dealing with the display of advertisements for tobacco products at or on places where tobacco products are offered for sale to the public; and
 - (b) the display of the advertisement complies with all applicable requirements as to the size, content and location of the advertisement set out in regulations made for the purposes of this subsection.
- (3) For the purposes of this section, a vending machine from which tobacco products can be purchased by the public is taken to be a place where tobacco products are offered for sale to the public.

17 Periodicals printed outside Australia—acts of publication permitted *[see Note 2]*

- (1) A person may do, with a periodical that contains a tobacco advertisement, something that amounts to publishing the advertisement if:
- (a) the periodical:
 - (i) is printed outside Australia; and
 - (ii) is not principally intended for distribution or use in Australia; and
 - (b) there is no notice in force under subsection (2) that applies to the periodical.

18 Australian sporting and cultural events of international significance—acts of publication permitted

- (1) A person may publish a tobacco advertisement if:
- (a) the advertisement is published in connection with a sporting or cultural event held, or to be held, in Australia; and

- (b) the event is specified in a notice in force under subsection (2); and
 - (c) the publication of the advertisement complies with the conditions (if any) specified in the notice in accordance with subsection (3).
- (2) For the purposes of subsection (1), the Minister may, by notice published in the *Gazette*, specify a sporting or cultural event to be held in Australia if, and only if:
- (a) the Minister is satisfied that the event will be completed before 1 October 2006; and
 - (b) in a case where the event is to be held on or after 1 October 2000:
 - (i) a similar event held before that date (the *earlier event*) was specified in a notice under this subsection; and
 - (ii) no application to have another similar event specified in a notice under this subsection has been rejected since the earlier event; and
 - (c) the Minister is satisfied, having regard to the guidelines in force under subsection (5), that:
 - (i) the event is of international significance; and
 - (ii) failure to specify the event would be likely to result in the event not being held in Australia.
- (3) In a notice under subsection (2) specifying an event, the Minister may also, having regard to the guidelines in force under subsection (5), specify conditions to be complied with in relation to the publication of tobacco advertisements in connection with the event, being conditions related to:
- (a) the content of the advertisements that may be published; or
 - (b) the number of advertisements, or the number of advertisements of a particular kind, that may be published, or that may be published in a particular way; or
 - (c) the way in which advertisements may be published.
- (4) A notice under subsection (2):
- (a) comes into force:
 - (i) on the day when it is published in the *Gazette*; or
 - (ii) if a later day is specified in the notice as the day when it is to come into force—on that later day; and

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- (b) stops being in force (unless it is revoked earlier):
 - (i) at the end of 3 years after it came into force; or
 - (ii) if an earlier day is specified in the notice as the day when it stops being in force—on that earlier day.
- (5) The Minister may, by writing, determine guidelines for the purposes of subsections (2) and (3).
- (6) An instrument under subsection (5) determining guidelines is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

19 Accidental or incidental publication permitted

A person may publish a tobacco advertisement if:

- (a) the person publishes the advertisement as an accidental or incidental accompaniment to the publication of other matter; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any direct or indirect benefit that the person receives for publishing the other matter).

20 Publication by individual not receiving any benefit permitted

An individual may publish a tobacco advertisement if:

- (a) the publication is not in the course of the manufacture, distribution or sale of tobacco products; and
- (b) the individual publishes the advertisement on his or her own initiative; and
- (c) the individual does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement.

21 Defence—advertising pursuant to pre-1 April 1992 contracts or arrangements

- (1) It is a defence to a prosecution of a person for an offence against subsection 15(1), (2) or (3) in respect of the publication of a tobacco advertisement if the person proves that:

- (a) the publication was under a contract or arrangement entered into before 1 April 1992 for the sponsorship of an event, activity or service; and
- (b) if the terms of the contract or arrangement, in so far as they relate to things other than the period to which it applies, were varied on or after 1 April 1992 and before the publication—if the contract or arrangement had not been so varied, the publication could still be said to have been under the contract or arrangement; and

Note: Even if the period to which the contract or arrangement applies has been varied, paragraphs (c) and (d) must still be satisfied.

- (c) if the advertisement was published in connection with a cricket match, or a series of cricket matches—the advertisement was published before 1 May 1996; and
 - (d) if paragraph (c) does not apply—the advertisement was published before 1 January 1996; and
 - (e) before the publication of the advertisement, each of the parties to the contract or arrangement notified the Minister, in writing, of:
 - (i) the date on which the contract or arrangement was entered into; and
 - (ii) particulars of the contract or arrangement in so far as it relates to the publication of tobacco advertisements, including the circumstances of publication of the advertisements and the nature of the advertisements.
- (2) For the purposes of this section, if:
- (a) a party to a contract or arrangement of a kind referred to in paragraph (1)(a), for the purposes of publishing a tobacco advertisement under the contract or arrangement, engaged (whether before or after 1 April 1992) another person to do something that amounted to publishing the advertisement; and
 - (b) the other person did that thing and, consequently, published the advertisement;
- the other person is taken to have published the advertisement under the contract or arrangement.

22 Defence—display of signs before 31 December 1995

- (1) It is a defence to a prosecution of a person for an offence against subsection 15(1), (2) or (3) in respect of the display of a tobacco advertising sign if the person proves that:
 - (a) the sign was displayed under a contract or arrangement entered into before 1 April 1992; and
 - (b) if the terms of the contract or arrangement were varied on or after 1 April 1992—if the contract or arrangement had not been so varied, the display of the sign could still be said to have been under the contract or arrangement; and
 - (c) the display of the sign was permitted by regulations made for the purposes of subsection (2).
- (2) The regulations may permit the display, in specified circumstances, and before a specified date not later than 31 December 1995, of tobacco advertising signs of a specified size and composition.
- (3) In this section:

sign includes an electronic installation used to display advertisements.

tobacco advertising sign means a sign that is or contains a tobacco advertisement.

Division 3 (ss 23-25) [Not in operation-*see* Note 2]

Part 4—Miscellaneous

26 Failure to broadcast or publish advertisement not actionable if Act would be contravened

No action of any kind lies in any court against a person for refusing or failing to broadcast or publish a tobacco advertisement if the broadcast or publication is prohibited by this Act.

26A Broadcast or publication of advertisements during flights of aircraft

- (1) It is not an offence against this Act to broadcast or publish a tobacco advertisement in an aircraft during a flight of the aircraft unless the flight begins at a place in Australia and is intended to end at another place in Australia.
- (2) For the purposes of subsection (1), each sector of a flight of an aircraft is taken to be a separate flight.

27 Activities of trading or financial corporations—severability of Act's operation

- (1) By force of this subsection, this Act, as it applies to a regulated corporation that is a trading corporation or a financial corporation, has effect in relation to things done, or authorised or caused to be done, by the regulated corporation in the course of its trading activities, or its financial activities, as the case requires.
- (2) By force of this subsection, this Act, as it applies to a regulated corporation that is a trading corporation or a financial corporation, has effect in relation to things done, or authorised or caused to be done, by the regulated corporation otherwise than in the course of its trading activities, or its financial activities, as the case requires.
- (3) In this section:

financial corporation means:

Section 28

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

trading corporation means:

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

28 Compensation for acquisition of property

- (1) If, apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is to pay the person such reasonable amount of compensation as is agreed on between the person and the Commonwealth or, failing agreement, as is determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered, or other remedy given, in proceedings that are instituted otherwise than under this section must be taken into account in assessing compensation payable in proceedings instituted under this section and that arise out of the same event or circumstance.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

29 Applications for the purposes of subsections 9(5) and 18(2)

- (1) A person may apply to the Minister:
 - (a) to have a particular class of products specified in a notice under subsection 9(5); or
 - (b) to have a particular event specified in a notice under subsection 18(2).
- (2) An application must be in writing and must set out the grounds on which the applicant thinks the Minister should grant it.
- (3) If the Minister needs further information to decide an application, the Minister may ask the applicant to provide the information.
- (4) Subject to subsections (5) to (7), the Minister must decide an application within the prescribed number of days after receiving it.
- (5) If the Minister thinks that it will take longer to decide an application, the Minister may extend, by up to the prescribed number of days, the period for deciding it.
- (6) An extension must be made by written notice given to the applicant within the prescribed number of days after the Minister receives the application concerned.
- (7) If the Minister makes an extension, the Minister must decide the application concerned within the extended period.
- (8) If the Minister has not decided an application before the end of the day by which the Minister is required to decide it, the Minister is taken to have decided, under whichever of subsections 9(5) and 18(2) is applicable, to refuse the application at the end of that day.
- (9) Nothing in this section limits the power of the Minister to make a decision under subsection 9(5) or 18(2) otherwise than because of an application under this section.
- (10) In this section:

prescribed number of days means:

Section 30

- (a) in relation to an application under paragraph (1)(a)—30 days;
and
- (b) in relation to an application under paragraph (1)(b)—60 days.

30 Review of decisions

Subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of a decision made under subsection 9(5), 17(2), 18(2) or 18(3).

31 Offences by partnerships and unincorporated bodies

- (1) If a partnership that is a regulated corporation commits an offence against this Act, that offence is taken to have been committed by each of the partners.
- (2) If an unincorporated body that is a regulated corporation commits an offence against this Act, that offence is taken to have been committed by the controlling officer or controlling officers of the body.
- (3) In a prosecution for an offence a partner or controlling officer is so taken to have committed, it is a defence if the partner or controlling officer:
 - (a) did not aid, abet, counsel or procure the act or omission constituting the offence; and
 - (b) was not in any way (whether directly or indirectly or by act or omission) knowingly concerned in, or party to, the act or omission constituting the offence.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) In this section:

controlling officer, in relation to an unincorporated body, means a person who has authority to determine, or who has control over:

- (a) the general conduct of the affairs of the body; or
- (b) the conduct of that part of the affairs of the body in relation to which the act or omission constituting the offence occurred.

32 Conduct by directors, servants and agents

- (1) If, 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 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 actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show that:
 - (a) the conduct was engaged in by a servant or agent of the person within the scope of actual or apparent authority; and
 - (b) the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate (*the employer*) by a servant or agent of the employer within the scope of actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the employer unless the employer establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) A reference in subsection (1) or (3) 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.

Section 33

- (6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State or Territory.
- (7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (8) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7 or 7A, or subsection 86(1) of the *Crimes Act 1914*, being an offence that relates to this Act.

33 Delegation

The Minister may, by signed instrument, delegate to an officer of the Department all or any of the Minister's powers:

- (a) under subsections 9(5) and 17(2); and
- (b) under section 29, in so far as that section relates to applications under paragraph 29(1)(a).

34 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

34A Reports to Parliament

- (1) As soon as practicable after each 31 December occurring after 1 January 2001, the Minister must cause to be prepared a report on:
 - (a) the number and nature of any contraventions of the Act occurring in the preceding 12 months; and
 - (b) action taken by the Minister or a Commonwealth agency in response to each contravention.
- (2) A person who prepares a report under subsection (1) must give a copy to the Minister.

Section 34A

- (3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after receiving it.

Part 5 Repeal and amendment of other Acts

Division 1 Repeal of the Smoking and Tobacco Products Advertisements (Prohibition) Act 1989

Section 35

Part 5—Repeal and amendment of other Acts

Division 1—Repeal of the Smoking and Tobacco Products Advertisements (Prohibition) Act 1989

35 Repeal

The Smoking and Tobacco Products Advertisements (Prohibition) Act 1989 is repealed.

Division 2—Amendment of the Broadcasting Services Act 1992

Sections 36 and 37

Note:

The amendments made by this Division are incorporated in the compilation on SCALEplus.

Broadcasting Services Act 1992

For access to the wording of the amendments made by this Division, *see* Act No. 218, 1992.

Table of Acts**Notes to the *Tobacco Advertising Prohibition Act 1992*****Note 1**

The *Tobacco Advertising Prohibition Act 1992* as shown in this compilation comprises Act No. 218, 1992 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tobacco Advertising Prohibition Act 1992</i>	218, 1992	24 Dec 1992	Ss. 17(2)–(5) and Div. 3 of Part 3 (ss. 23–25): [see Note 2] Part 5 (ss. 35-37): 1 July 1993 Remainder: Royal Assent	
<i>Tobacco Advertising Prohibition Amendment Act 1995</i>	17, 1995	29 Mar 1995	29 Mar 1995	S. 4
<i>Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000</i>	108, 2000	3 Aug 2000	Schedule 3 (item 7): 1 Jan 2001 (see <i>Gazette</i> 2000, No. GN50) (a)	—
<i>Tobacco Advertising Prohibition Amendment Act 2000</i>	135, 2000	24 Nov 2000	24 Nov 2000	—
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (item 549): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (b)	Ss. 4–14
<i>Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001</i>	111, 2001	17 Sept 2001	17 Sept 2001	S. 4

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Designs (Consequential Amendments) Act 2003</i>	148, 2003	17 Dec 2003	Schedules 1 and 2: (c) Remainder: Royal Assent	—

Act Notes

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- (a) The *Tobacco Advertising Prohibition Act 1992* was amended by Schedule 3 (item 7) only of the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (b) The *Tobacco Advertising Prohibition Act 1992* was amended by Schedule 3 (item 549) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (c) Subsection 2(1) (item 2) of the *Designs (Consequential Amendments) Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedules 1 and 2	Immediately after the commencement of section 4 of the <i>Designs Act 2003</i> .	17 June 2004

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 4A	ad. No. 17, 1995
S. 5A	ad. No. 111, 2001
Part 2	
S. 8.....	am. No. 17, 1995; No. 108, 2000
S. 9.....	am. No. 17, 1995; No. 148, 2003
S. 10.....	am. No. 17, 1995
S. 11.....	rs. No. 17, 1995 am. No. 55, 2001
Part 3	
Division 1	
S. 13.....	am. No. 17, 1995; No. 111, 2001
Division 2	
S. 15.....	am. No. 17, 1995; No. 111, 2001
S. 18.....	am. No. 135, 2000
Part 4	
S. 26A.....	ad. No. 17, 1995
S. 29.....	am. No. 17, 1995
S. 31.....	am. No. 111, 2001
Note to s. 31(3).....	ad. No. 111, 2001
S. 34A.....	ad. No. 135, 2000

Note 2

[*see* NOTE below] Subsections 17(2)-(5) and Division 3 of Part 3 (sections 23-25) provide as follows:

17 Periodicals printed outside Australia—acts of publication permitted

- (2) The Minister may, by notice in writing published in the *Gazette*, exclude the application of subsection (1) to:
 - (a) a specified periodical; or
 - (b) a specified class of periodicals;if, and only if, the Minister is satisfied, having regard to the guidelines in force under subsection (4), that it is not appropriate for subsection (1) to apply to the periodical, or to the periodicals in the class, as the case requires.
- (3) A notice under subsection (2) comes into force:
 - (a) on the day when it is published in the *Gazette*; or
 - (b) if a later day is specified in the notice as the day when it is to come into force—on that later day.
- (4) The Minister may, by writing, determine guidelines for the purposes of subsection (2).
- (5) An instrument under subsection (4) determining guidelines is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 3—Other regulated conduct

23 Periodicals specified under subsection 17(2) that contain tobacco advertisements not to be imported

A person must not, on or after 1 July 1993, knowingly or recklessly, import into Australia a periodical:

- (a) that contains a tobacco advertisement (other than a tobacco advertisement that appears as an incidental accompaniment to other matter); and

Note 2

(b) that is covered by a notice in force under subsection 17(2).

Penalty: \$12,000.

24 Defence—importing for private use

It is a defence to a prosecution of a person for an offence against section 23 in respect of the importation of a periodical if the person proves that the periodical was imported for the person's private use.

25 Defence—importing for exempt libraries

It is a defence to a prosecution of a person for an offence against section 23 in respect of the importation of a periodical if the person proves that the periodical was imported for the purpose of its inclusion in the collection of an exempt library.

Subsection 2(2) of the *Tobacco Advertising Prohibition Act 1992* provides as follows:

- (2) Subsections 17(2) to (5) (inclusive) and Division 3 of Part 3 commence on a day to be fixed by Proclamation.

As at 17 June 2004 no date had been fixed for the commencement of subsections 17(2)-(5) and Division 3 of Part 3.

[NOTE] The *Tobacco Advertising Prohibition Act 1992* was amended by Schedule 1 (item 11) of the *Tobacco Advertising Prohibition Amendment Act 1995*. The applicable provision provides as follows:

11 Section 23

Omit the penalty, substitute:

Penalty: 120 penalty units.

Schedule 1 (item 11) of the *Tobacco Advertising Prohibition Amendment Act 1995* commenced on 29 March 1995.

Table A

Table A

Application, saving or transitional provisions

Tobacco Advertising Prohibition Amendment Act 1995 (No. 17, 1995)

4 Saving of notices

A notice published under subsection 9(5) of the Principal Act that was in force after that commencement as if it had been published under subsection 9(5) of the Principal Act as amended by this Act.

Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001 (No. 111, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.