



Tobacco Advertising Prohibition Amendment Act 2012

No. 5, 2012

***An Act to amend the *Tobacco Advertising
Prohibition Act 1992*, and for related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Tobacco Advertising Prohibition Amendment Act 2012

No. 5, 2012

An Act to amend the Tobacco Advertising Prohibition Act 1992, and for related purposes

[Assented to 6 March 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tobacco Advertising Prohibition
Amendment Act 2012*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 March 2012
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	6 September 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Tobacco Advertising Prohibition Act 1992

Part 1—Amendments

1 Subparagraph 6(3)(a)(i)

After “16,” insert “16A, 16B,”.

2 Section 7

After “16,” insert “16A, 16B,”.

3 Section 8

Insert:

electronically: a person publishes a tobacco advertisement
electronically if the person publishes the tobacco advertisement
within the meaning of paragraph 10(1)(da).

4 Subsection 10(1)

Omit “publishes”, substitute “*publishes*”.

Note: The heading to section 10 is altered by omitting “*a tobacco advertisement*” and substituting “**a tobacco advertisement**”.

5 After paragraph 10(1)(d)

Insert:

- (da) the person 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 an electronic means in connection with a telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution including, for example:
- (i) by means of the internet; or
 - (ii) by making the advertisement remotely accessible by a computer, mobile phone or any other electronic device;

6 At the end of subsection 13(1) (after the penalty)

Insert:

Note: A defendant bears an evidential burden in relation to the matters in section 14: see subsection 13.3(3) of the *Criminal Code*.

7 Paragraph 15(1)(a)

After “16,”, insert “16B,”.

8 At the end of subsection 15(1)

Add:

Note: A defendant bears an evidential burden in relation to the matters in sections 16 and 16B to 20: see subsection 13.3(3) of the *Criminal Code*.

9 Subsection 15(2)

After “16,”, insert “16B,”.

10 At the end of subsection 15(2)

Add:

Note: A defendant bears an evidential burden in relation to the matters in sections 16 and 16B to 20: see subsection 13.3(3) of the *Criminal Code*.

11 Subsection 15(3)

After “16,”, insert “16B,”.

12 At the end of subsection 15(3)

Add:

Note: A defendant bears an evidential burden in relation to the matters in sections 16 and 16B to 20: see subsection 13.3(3) of the *Criminal Code*.

13 After section 15

Insert:

15A Tobacco advertisements not to be published electronically

Offence

- (1) A person commits an offence if:
- (a) the person publishes something, or authorises or causes something to be published; and
 - (b) the thing is a tobacco advertisement; and

- (c) the tobacco advertisement is published electronically; and
- (d) the tobacco advertisement is published in Australia.

Penalty: 120 penalty units.

Exceptions

- (2) Subsection (1) does not apply to the publication of a tobacco advertisement if its publication is permitted by any of sections 16A, 16B, 17, 19 and 20.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Geographical application

- (3) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

Meaning of published in Australia

- (4) In this section, a tobacco advertisement that is published electronically is **published in Australia** if:
 - (a) the advertisement originates in Australia; or
 - (b) all of the following apply:
 - (i) the advertisement did not originate in Australia, or the advertisement's origin cannot be determined;
 - (ii) the advertisement has an Australian link;
 - (iii) the advertisement is accessible, or intended to be accessible, by the public, or a section of the public, in Australia.
- (5) A tobacco advertisement has an **Australian link** if:
 - (a) at a particular time, the advertisement is published, or authorised or caused to be published, by an entity, or the person or persons constituting or responsible for an entity; and
 - (b) at that time, the circumstances described in the following table apply to the entity.

Schedule 1 Tobacco Advertising Prohibition Act 1992

Part 1 Amendments

Item	Entity	Applicable circumstances
1	Individual	Any of the following circumstances: (a) the individual is an Australian citizen; (b) the individual is an individual whose continued presence in Australia is not subject to a limitation as to time imposed by law; (c) the individual is physically present in Australia.
2	Body corporate	Any of the following circumstances: (a) the body corporate has been incorporated in Australia; (b) the body corporate has its central management and control in Australia.
3	Trust	The trust has been created in Australia.
4	Partnership	The partnership has been formed in Australia.
5	Unincorporated body	The unincorporated body has its central management and control in Australia.

14 Paragraph 16(2)(b)

After “content”, insert “, format”.

15 After section 16

Insert:

16A Point of sale advertising permitted—internet sales

- (1) A person may publish a tobacco advertisement on the internet if:
- (a) the advertisement is accessible by the public, or a section of the public, in a State or Territory; and
 - (b) the advertisement provides a facility for a person accessing the advertisement to purchase a tobacco product; and
 - (c) a law of the State or Territory regulates the advertising of tobacco products on the internet; and
 - (d) that law contains provisions expressly dealing with the publication of advertisements for tobacco products on the internet that provide a facility for a person accessing the advertisement to purchase a tobacco product; and
 - (e) under those provisions, publishing the advertisement is not an offence.

- (2) A person may publish a tobacco advertisement on the internet if:
- (a) the advertisement is accessible by the public, or a section of the public, in a State or Territory; and
 - (b) the advertisement provides a facility for a person accessing the tobacco advertisement to purchase a tobacco product; and
 - (c) either:
 - (i) there is no law of the State or Territory that regulates the advertising of tobacco products on the internet; or
 - (ii) there is such a law, but it does not contain any provisions expressly dealing with the publication of advertisements for tobacco products on the internet that provide a facility for a person accessing the advertisement to purchase a tobacco product; and
 - (d) the publication of the advertisement complies with all applicable requirements set out in regulations made for the purposes of this subsection.
- (3) In this section, a tobacco advertisement *provides a facility* for a person accessing the advertisement to purchase a tobacco product if the advertisement is published in conjunction with the facility or otherwise includes or provides the facility.
- (4) Regulations made for the purposes of subsection (2) may prescribe requirements as to any of the following:
- (a) the size, content, format and location of tobacco advertisements;
 - (b) without limiting paragraph (a)—the inclusion in tobacco advertisements of any of the following:
 - (i) health warnings;
 - (ii) warnings about age restrictions on the sale of tobacco products;
 - (iii) information about any fees, taxes and charges payable in relation to tobacco products;
 - (c) age restricted access systems for access to tobacco advertisements.

16B Conduct by carriers etc. permitted

- (1) A person may publish a tobacco advertisement if:
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- (a) the person is a carrier and, in publishing the tobacco advertisement, is acting solely in the person's capacity as a carrier; or
- (b) the person is a carriage service provider and, in publishing the tobacco advertisement, is acting solely in the person's capacity as a carriage service provider; or
- (c) the person is an internet service provider and, in publishing the tobacco advertisement, is acting solely in the person's capacity as an internet service provider; or
- (d) the person is an internet content host and, in publishing the tobacco advertisement, is acting solely in the person's capacity as an internet content host.

(2) In this section:

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

carrier has the same meaning as in the *Telecommunications Act 1997*.

internet content host has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

internet service provider has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

Part 2—Transitional

16 Publication of a tobacco advertisement before commencement

- (1) This item applies if a tobacco advertisement was published electronically (within the meaning of the *Tobacco Advertising Prohibition Act 1992* as amended by Part 1 of this Act) before the commencement of Part 1 of this Act.
- (2) The *Tobacco Advertising Prohibition Act 1992*, as amended by Part 1 of this Act, applies in relation to the publication of the tobacco advertisement if the tobacco advertisement is accessible by the public, or a section of the public, at or after the commencement of Part 1 of this Act.

*[Minister's second reading speech made in—
House of Representatives on 17 November 2010
Senate on 23 March 2011]*

(268/10)

Schedule 1 Tobacco Advertising Prohibition Act 1992
Part 2 Transitional
