

TOBACCO ADVERTISING PROHIBITION BILL 1991*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to encourage healthier lifestyles by prohibiting certain activities aimed at promoting the sale of tobacco products and consequently reducing the incentive for people to smoke.

The Bill also establishes the New South Wales Health Foundation whose objectives include the funding of activities related to the promotion of good health, especially among the young.

The Bill prohibits the advertising of tobacco products in certain specified ways and also prohibits the use of competitions and other activities for the purpose of promoting tobacco products.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day to be appointed by proclamation.

Clause 3 states the purposes of the proposed Act as the following:

- (a) the active discouragement of smoking by:
 - encouraging non-smokers not to start smoking
 - limiting exposure of young people to persuasion to smoke
 - encouraging smokers to give up smoking
- (b) the promotion of good health.

Clause 4 defines certain terms used in the proposed Act.

* Amended in committee—see table at end of volume.

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PART 2—TOBACCO PRODUCTS

Clause 5 prohibits commercial tobacco advertising:

- in, or so that it can be seen or heard from, a public place
- on unsolicited material distributed to the public
- by means of goods sold, hired or supplied for some benefit

but does not prohibit such advertising:

- on radio or television
- in a newspaper or book printed or published outside the State, if incidental to the main purpose of the newspaper or book
- on a package containing a tobacco product
- incidental to a film or video tape
- in a tobacconist's shop or similar retail outlet
- on documents used in the ordinary course of business
- otherwise exempted under the Act

The maximum penalty for a first offence, if committed by an individual, is 50 penalty units (currently \$5,000) and for subsequent offences is 100 penalty units (currently \$10,000).

The maximum penalty for a first offence, if committed by a corporation, is 200 penalty units (currently \$20,000) and for subsequent offences is 400 penalty units (currently \$40,000).

An additional daily penalty of up to 50 penalty units (for an individual) or 200 penalty units (for a corporation) may be imposed in the case of a continuing offence. (Penalties for offences under Part 2 are set out in proposed section 28.)

Clause 6 prohibits certain kinds of promotional schemes conducted either in connection with the sale of a tobacco product or for the purpose of promoting such sales.

The Governor is empowered by the proposed section to declare schemes as promoting the sale of a tobacco product or as promoting smoking generally and the conduct of any such scheme is prohibited.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 7 prohibits the offering, giving or distributing of free samples of tobacco products as a promotion of a sale of such a product.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 8 prohibits the promotion of, or agreements to promote, tobacco products or their trademark or brand name in return for a sponsorship of some activity and also prohibits the provision of a sponsorship on such terms, subject to certain exceptions and exemptions.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5

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Clause 9 prohibits the placement of tobacco vending machines in premises where they may be operated by the public unless the premises are either:

- licensed under the Liquor Act 1982
- a staff amenity area provided by an employer

The clause also provides that the owner or lessee of a tobacco vending machine who does not display a statement prescribed by regulations on the front of the machine commits an offence.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 10 prohibits the sale of loose cigarettes or of packets containing less than 20 cigarettes.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 11 prohibits the sale of tobacco products that are not prepared for smoking (such as chewing tobacco or snuff) except in certain circumstances set out in regulations.

The maximum penalties for offences committed by individuals or corporations are the same as for an offence under proposed section 5.

Clause 12 provides some exemptions from the prohibitions contained in proposed sections 5 and 8. The exemptions are to be specified by the Minister in a notice published in the Gazette and must have regard to certain criteria set out in the clause or, where designed to avoid significant hardship, are to operate only for a specified transitional period.

PART 3—NEW SOUTH WALES HEALTH PROMOTION FOUNDATION

Clause 13 establishes a body corporate having the corporate name of New South Wales Health Promotion Foundation.

Clause 14 provides for the Foundation to inform the Minister of its activities as required

Clause 15 provides for the Foundation to consist of 9 members representing appropriate organisations and Departments.

Clause 16 provides for members of the Foundation who are representative of non-governmental organisations to be appointed for periods not exceeding 3 years.

Clause 17 provides for the members' remuneration and allowances.

Clause 18 provides for the resignation of members.

Clause 19 gives formal effect to Schedule 1 relating to further provisions governing the constitution, proceedings and operations of the Foundation.

Clause 20 states the objectives of the foundation as being:

- to fund activities promoting good health
- to offer sponsorship of sporting and arts activities as an alternative to that of tobacco manufacturers or wholesalers

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- to fund research relevant to health promotion
- to raise funds through donations and grants and the marketing of goods and services related to health promotion
- to fulfil the purposes of the proposed Act

Clause 21 gives the Foundation the powers necessary to achieve its objectives and provides that, in the exercise of those powers, priority is to be given (for 5 years) to compensating persons (other than manufacturers or wholesalers of tobacco products) who have suffered hardship as a consequence of the operation of the proposed Act.

Clause 22 empowers the Minister to give directions to the Foundation concerning its functions and requires any such direction to be reported in the Foundation's annual report.

Clause 23 provides for the personnel and consultancy resources necessary for the Foundation to achieve its objectives.

Clause 24 provides for the funding of the Foundation and for the establishment of the New South Wales Health Promotion Fund.

Provision is also made for the proportional allocation of funding under the Foundation's annual program and for the return to the Consolidated Fund of any funds not spent within 4 months of the end of the financial year.

Clause 25 provides for temporary investment of the Foundation's funds.

Clause 26 applies the Public Finance and Audit Act 1983 to the operations of the Foundation, subject to the other provisions of Part 3.

PART 4—ENFORCEMENT

Clause 27 provides that any prosecution under the proposed Act requires the consent of the Director-General of the Department of Health or of an authorised person.

Clause 28 states the penalties for offences against the proposed Act.

Clause 29 allows proceedings for an offence against the proposed Act to be taken in a Local Court (in which case the maximum penalty that may be imposed is 50 penalty units) or, at the option of the prosecutor, on indictment.

Clause 30 provides that every officer of a body corporate that commits an offence also commits a like offence. The clause defines "officer" and provides a statutory defence for any such officer.

PART 5—GENERAL

Clause 31 bars civil proceedings against a person for the doing, or the omission to do, any thing which is done or omitted to be done in compliance with the proposed Act.

Clause 32 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 33 provides that 3 years after the proposed Act has commenced, the Minister is to have its operation, and the continuing need for it, investigated and a report made. The report is to be tabled in Parliament.

Clause 34 gives effect to the amendments to other Acts set out in Schedule 2.

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SCHEDULE 1—FURTHER PROVISIONS RELATING TO NEW SOUTH WALES HEALTH PROMOTION FOUNDATION

Clause 1 defines certain terms used in Schedule 1.

Clause 2 provides for the meetings of the Foundation and the procedures to be followed.

Clause 3 requires the disclosure of a member's pecuniary or other interests.

Clause 4 empowers the Foundation to delegate some of its functions.

Clause 5 empowers the Foundation to establish committees.

Clause 6 requires a member or officer of the Foundation to act honestly and with reasonable care and diligence.

The maximum penalty for an offence is 50 penalty units (currently \$5,000).

Clause 7 forbids unauthorised disclosure of confidential information.

The maximum penalty for an offence is 25 penalty units (currently \$2,500).

SCHEDULE 2—AMENDMENT OF OTHER ACTS

Schedule 2 provides for the consequential amendment of certain other Acts.
