

# House of Representatives

## Supplementary Order Paper

Wednesday, 13 August 2003

### Smoke-free Environments Amendment Bill

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#### *Proposed amendments*

Hon Damien O'Connor, in Committee, to move the following amendments:

*Clause 1A(3)*

To omit the expression "**10(3)**," at line 13 on page 2, and substitute the expression "**10(2A)**,".

*Clause 2(1)*

To insert, in their appropriate alphabetical order, the following definitions:

**"children's product—**

- "(a) means a product (such as comics, games, and toys) marketed primarily for children; and
- "(b) includes confectionery, ice-cream, soft drinks, and other similar products

**"face, in relation to a tobacco carton or tobacco package—**

- "(a) means a more or less flat area of the surface of the carton or package that is bounded by edges of the package; and
- "(b) in the case of a tobacco package that is a pouch pack, includes a curved area of the surface of the package that is between 2 faces

**"point of sale—**

- "(a) means a checkout where tobacco products may be bought; and
- "(b) includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of a checkout

**"pouch pack** means a package made, from flexible material, in the form of a rectangular pocket with a flap covering the opening

“**tobacco carton** means a box, carton, pack, packet, pouch, tin, wrapping, or other package containing 2 or more tobacco packages

“**tobacconist’s shop**—

“(a) means a retail shop that,—

“(i) is held out as a specialist retail seller of tobacco products (even if it is also held out as a specialist retail seller of other products such as newspapers and magazines, or it also provides services such as hairdressing, or both); and

“(ii) obtains from the retail sale of tobacco products at least 60% of the gross revenue it obtains from retail sales; but

“(b) does not include any retail shop within premises in which petroleum products are sold to motorists

“**tobacco package** means a box, carton, pack, packet, pouch, tin, wrapping, or other package that—

“(a) contains a tobacco product or products; but

“(b) does not contain other tobacco packages within it

#### Clause 6

To add, as *subclause (2)*, after line 7 on page 16, the following subclause:

(2) Section 17 of the principal Act is consequentially amended by inserting, after subsection (2), the following subsections:

“(2A) The managers of any premises who fail to comply with **section 7A(1)** commit an offence, and are liable—

“(a) in the case of managers who are a body corporate, to a fine not exceeding \$4,000; and

“(b) in the case of managers who are not a body corporate, to a fine not exceeding \$400 each.

“(2B) The occupier of any premises who fails to comply with **section 7A(3)** commit an offence, and is liable—

“(a) in the case of an occupier who is a body corporate, to a fine not exceeding \$4,000; and

“(b) in the case of an occupier who is not a body corporate, to a fine not exceeding \$400.”

#### Clause 7

To insert, after the expression “section 17” (at line 10 on page 20), the words “(as amended by **section 6(2)** of this Act)”.

#### Clause 8

To omit proposed new *section 23(1)(a)* of the principal Act (lines 12 to 14 on page 25), and substitute the following paragraph:

“(a) expose tobacco products for sale inside the retailer’s place of business if their exposure—

“(i) complies with **section 23A**; and

“(ii) complies with any regulations for the time being in force under **section 39(1)(ia)**; and

*Clause 8A*

To insert in proposed *new section 23A(1)* of the principal Act, after *paragraph (e)*, the following paragraphs:

- “(ea) no tobacco package (other than a pouch pack of loose tobacco) with a face that has an area greater than 66 cm<sup>2</sup> is exposed for sale; and
- “(eb) no pouch pack of loose tobacco with a face that has an area greater than 105 cm<sup>2</sup> is exposed for sale; and
- “(ec) no tobacco carton with a face that has an area greater than 266 cm<sup>2</sup> is exposed for sale; and

To omit proposed *new section 23A(4)* of the principal Act (lines 8 to 37 on page 27 and line 1 on page 28).

*Clause 10*

To omit *subclause (3)* (lines 32 to 36 on page 37 and lines 1 to 22 on page 38), and substitute the following subclauses:

- (2A) Section 36 of the principal Act is amended by inserting, after subsection (5), the following subsections:
  - “(5A) Every person who, in contravention of **section 29A(2)** distributes a tobacco product to which **section 29A(1)** applies, or supplies a tobacco product to which **section 29A(1)** applies to another person for later distribution, or, in the case of a retailer, supplies a tobacco product to which **section 29A(1)** applies to another person for the purpose of that retailer’s business commits an offence, and is liable—
    - “(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$10,000; and
    - “(b) in any other case, to a fine not exceeding \$5,000.
  - “(5B) Every person commits an offence and is liable to a fine not exceeding \$2,000 who in contravention of **section 29B**—
    - “(a) permits an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access; or
    - “(b) permits a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access.”
- (3) Section 36 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:
  - “(6) Every person commits an offence and is liable to a fine not exceeding \$2,000 who—
    - “(a) sells a tobacco product or herbal smoking product in contravention of **section 30(1)**; or
    - “(b) supplies a tobacco product or herbal smoking product in a public place in contravention of **section 30AA(1)**.”

*Clause 11*

To insert, after subclause (1) (after line 19 on page 39), the following subclause:

- (1A) Section 39(1) of the principal Act is amended by inserting, after paragraph (i), the following paragraph:
- “(ia) prescribing for the purposes of **section 23(1)(a)(ii)** requirements with which the exposure of tobacco products for sale in a retailer’s place of business must comply:”.

To insert in *subclause (2)*, after line 21 on page 39, the following subsections:

- “(2A) Regulations under **subsection (1)(ia)** may prescribe requirements of either or both of the following kinds:
- “(a) requirements that are not of the same kind as those in **section 23A**:
- “(b) requirements that are of the same kind as, but are more stringent than, those in **section 23A**.
- “(2B) Regulations under **subsection (1)(ia)** must be made on the recommendation of the Minister.
- “(2C) The Minister must not recommend the making of regulations under **subsection (1)(ia)** without having first consulted—
- “(a) organisations that, in the Minister’s opinion, represent the interests of retailers of a kind who customarily sell tobacco products; and
- “(b) every organisation (if any) that is known to the Minister to represent the interests of manufacturers, importers, or wholesalers of tobacco products; and
- “(c) every manufacturer, importer, or wholesaler of tobacco products that is known to the Minister—
- “(i) to be likely to be substantially affected by the regulations; and
- “(ii) not to be represented by an organisation consulted under **paragraph (b)**.
- “(2D) Regulations made under **subsection (1)(ia)** must come into force no earlier than the day 6 months after the date on which they are made.

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### Explanatory note

The amendments to *clauses 1A, 6, 7, and 10* are drafting amendments, having the effect of ensuring that the various offence provisions line up with, and come into force at the same time as, the provisions whose breach constitutes the offences.

The amendment to *clause 2(1)* inserts into the principal Act several definitions at present set out in proposed *new section 23A(4)* (which is to be omitted).

At present *clause 8* amends section 23 of the principal Act (which allows, as exceptions to the general ban on tobacco advertising, certain displays of tobacco products in shops and vending machines) so that displays in shops are exempt only if they comply with various requirements set out in *new section 23A* (as proposed to be inserted by *clause 8A*).

The amendment to *clause 8* has the effect that displays in shops are exempt only if they also comply with various requirements prescribed by regulation. It is not intended to prescribe requirements by regulation unless there are devised new display arrangements that comply with the letter of *new section 23A* but effectively put before the public larger quantities of tobacco products than *new section 23A* contemplates.

The amendments to *clause 8A* have 2 effects.

First, maximum face sizes are prescribed for tobacco packages and cartons on display in shops, so that the limited display allowed by *new section 23A* cannot be expanded by the creation of larger and larger packages and cartons. The sizes, which are large enough to permit all usual packages and cartons, are—

- 66 cm<sup>2</sup> for tobacco packages other than pouch packs of loose tobacco:
- 105 cm<sup>2</sup> for pouch packs of loose tobacco:
- 266 cm<sup>2</sup> for tobacco cartons.

Secondly, proposed *new section 23A(3)*, which contains certain definitions that are now to be inserted into section 2 of the principal Act, is omitted.

The amendment to *clause 11* enables the making of regulations prescribing additional display requirements for the purposes of section 23 of the principal Act.

There will be some constraints on the making of these regulations. The regulations made must come into force at least 6 months after they are made. The regulations must be made on the recommendation of the Minister of Health. And the Minister must not recommend the making of the regulations without consulting—

- organisations representing retailers, manufacturers, importers, and wholesalers of a tobacco products; and
- manufacturers, importers, and wholesalers of tobacco products that are likely to be substantially affected by the regulations, and are not represented by a consulted organisation.