

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TOBACCO ADVERTISING PROHIBITION BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Aged, Family and Health Services,  
the Honourable Peter Staples MP)

## **TOBACCO ADVERTISING PROHIBITION BILL 1992**

### **GENERAL OUTLINE**

This Bill creates an offence for the publication (which includes display) or broadcast of an advertisement for cigarettes and other tobacco products, including cigarette papers, pipes etc. Publicity of a tobacco brand name or the manufacturer of a tobacco product is considered to be an advertisement.

Certain material is specifically excluded from the definition of a tobacco advertisement for practical reasons. For example, the use of the Company name on the letterhead of a tobacco manufacturer is not a tobacco advertisement.

The broadcast of incidental tobacco advertising (essentially material which is outside the control of the broadcaster) is permitted. For example, reporting of a sporting event held overseas that is sponsored by a tobacco company will not be affected by the legislation.

Particular conduct is excluded from the definition of publishing a tobacco advertisement where the advertisement is not being published in order to promote a tobacco product to the public. For example, a tobacco advertisement may be included in a newsletter to persons within the tobacco industry.

The Bill also provides for a number of exemptions from the prohibition on publishing a tobacco advertisement either as explicit permissions or as defences. Those constructed as defences are required to be proved by the defendant as they involve facts and circumstances which would be peculiarly within the knowledge of the defendant and particularly costly and difficult for the prosecution to have to prove beyond reasonable doubt.

Permitted publication of tobacco advertisements includes, for example, advertising associated with events of international significance that have been specified by the Minister. Publication that may be defended concerns advertising arising from contracts and other legal agreements entered into before 1 April 1992. Such advertising is to be phased out rather than immediately banned to ease the transition to the prohibition.

### **FINANCIAL IMPACT**

The Bill is budget neutral. There will be some cost in administering the Bill, particularly granting exemptions. This cost, however, will be met within existing budget allocations.

**NOTES ON CLAUSES****PART 1 - PRELIMINARY****Clause 1 - Short title**

This clause is a formal provision that provides for this Act to be cited as the Tobacco Advertising Prohibition Act 1992.

**Clause 2 - Commencement**

**Subclause (1)** provides that the majority of the Act will commence on the day on which it receives Royal Assent.

**Subclause (2)** provides that subclauses 17(2) to 17(5) inclusive, which permit the Minister to specify imported periodicals that must comply with the prohibition and Division 3 of Part 3 (clauses 23, 24 and 25), which regulates the import of such periodicals, do not commence until some future date to be proclaimed.

These provisions will be proclaimed if it appears that the exception permitting tobacco advertising in imported periodicals is being exploited to avoid the objective of the Act.

**Subclause (3)** provides that the existing legislation restricting tobacco advertising will be amended by Part 5 of this Act on 1 July 1993, the date that the offences created in the Act take effect.

**Clause 3 - Object**

This clause describes the objective of the Act. The Act is intended to improve public health by limiting the broadcasting and publication of messages and images promoting the use of tobacco products.

**Clause 4 - Act extends to external Territories**

This clause provides that the Act will apply to all external Territories.

**Clause 5 - Act binds the Crown**

This clause obliges the Commonwealth, State and Territory governments and their instrumentalities to abide by the Act.

**Clause 6 - Operation of State and Territory laws**

This clause describes the interaction between the proposed new Commonwealth prohibition on tobacco advertising and existing (or future) State and Territory prohibitions. The intention is this Act will set a minimum standard of tobacco advertising prohibition and that any State and Territory legislation that is a "tobacco advertising law" will take precedence wherever it has a more restrictive prohibition.

- . If particular conduct is an offence against both this Act and a State or Territory Act, then it is an offence against both. Such conduct will, however, only be prosecuted under one or other of the Acts, not both;
- . If particular conduct is an offence against this Act but is permitted under a State or Territory Act, then it may be prosecuted under the Commonwealth Act;
- . If particular conduct is permitted under this Act but prohibited under a State or Territory Act, then it may be prosecuted under the State or Territory Act; and
- . Particular conduct is only permitted if it is permitted under both this Act and the relevant State or Territory Act.

**Subclause (4)** provides that the relevant State or Territory "tobacco advertising law" referred to in this provision is a law that prohibits or regulates the advertising of tobacco products.

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

This clause provides that any express permissions contained in this Act are limited to a permission with respect to this Act and does not have any effect on any other Commonwealth, State or Territory laws.

**PART 2 - INTERPRETATION****Clause 8 - Defined terms**

This clause provides that in this Act, unless stated otherwise, certain words and phrases are to be interpreted as set out in the clause. The words and phrases defines include: "Australia"; "broadcast"; "display"; "exempt library"; "periodical"; "person"; "public place"; "publish"; "regulated corporation"; "regulated trade or commerce"; "smoking"; "tobacco product"; and "workplace".

In addition:

- . "distributor of tobacco products", "manufacturer of tobacco products" and "retailer of tobacco products" are partially defined terms and clause 12 is to be considered when interpreting them;

"holding company", "publish a tobacco advertisement" and "tobacco advertisement" are defined terms and are to be interpreted as set out in clauses 11, 10 and 9 respectively.

#### Clause 9 - Meaning of "tobacco advertisement"

Subclause (1) (Basic meaning) provides that, for the purposes of interpreting this Act, the phrase "tobacco advertisement" is any visual or audible message which promotes (by giving publicity to or by any other means) any words or designs closely associated with tobacco products whether or not they are also closely associated with other kinds of products. The clause specifically includes any messages and images promoting: smoking; the purchase or use of a tobacco product; and tobacco trademarks, brand names, designs and manufacturers' names as advertisements.

This is intended to be a wide definition so that the use of any phrase or image associated with tobacco products is included within the operation of this Act. This will avoid the need for frequent amendments to be made to this Act when new advertising techniques are created. Material which would be included in this definition but which is not intended to be considered as a "tobacco advertisement" is specifically excluded in the following subclauses.

A message or image which primarily promotes a non-tobacco product but which also promotes a tobacco product, either explicitly or implicitly, would be considered to be a "tobacco advertisement" for the purposes of this Act.

Subclauses (2) (Exception - words etc. on products, packaging and business documents) and (3) (Exception - words etc. on premises of manufacturers) provide that some material, which would otherwise fall within the definition of "tobacco advertisement", is not to be considered a tobacco advertisement. This material includes:

- . words, signs or symbols appearing on the tobacco product, either directly or on the packaging;
- . words, signs or symbols appearing on business documents of tobacco manufacturers, distributors and retailers;
- This exception from the definition of a "tobacco advertisement" is limited to the standard words on these documents when they are being used in the normal course of business. For example:
  - : regardless of whether the letterhead is exempt (depending on whether the letter is being sent in the normal course of business), the contents of a letter may be considered to be a "tobacco advertisement" as the contents of the letter is additional to the standard letterhead;
  - : a special run of an order form to promote a new tobacco product would be considered to be a "tobacco advertisement";

: on a docket from a shop, the description of the tobacco product purchased would not be a "tobacco advertisement" but any additional words may be.

words, signs or symbols appearing on land or buildings occupied by tobacco manufacturers (e.g. signs on such premises identifying the occupants). To attract this exemption it is not sufficient for the land or building to be merely owned by a tobacco manufacturer.

The exception for this material does not extend to its secondary transmission.

**Subclauses (4) (Exception - advertisements for non-tobacco products) and (5) (Specification of products for the purposes of subsection (4))** provide that some material, which would otherwise fall within the definition of a "tobacco advertisement", is not to be considered a "tobacco advertisement". This material is explicit advertising for non-tobacco merchandise specified by the Minister by notice published in the Gazette. The factors to be considered by the Minister in granting an exception are contained in subclause (5).

For example, if a person manufactures 'xyz cigarettes' and 'xyz widgets' (a hypothetical non-tobacco product available before 1 April 1992) and the Minister has specified 'xyz widgets' then:

- (a) an advertisement for 'xyz cigarettes' would be considered a tobacco advertisement;
- (b) an advertisement for 'xyz' generally would be considered a tobacco advertisement; and
- (c) an advertisement clearly promoting 'xyz widgets' and not 'xyz cigarettes' would not be considered a tobacco advertisement.
- (d) Furthermore, the use of 'xyz' on the widgets would not be considered a tobacco advertisement.

**Subclause (6)** provides that a notice under subclause (5) comes into force either on the day when it is published in the Gazette or on a specified later day.

**Subclause (7) (Exception - anti-smoking advertisements)** provides that something (such as a health campaign message) clearly intended to discourage smoking is not to be considered to be a "tobacco advertisement".

**Subclause (8)** provides that "words" includes abbreviations, initials and numbers.

#### **Clause 10 - Meaning of "publish a tobacco advertisement"**

**Subclause (1) (Basic meaning)** provides a wide definition of the phrase "publish a tobacco advertisement". For the purposes of this Act, a tobacco advertisement is published if it is included in a document, film, video, audio program or other object that is available to the public or is otherwise displayed or distributed to the public. Note that public includes a section of the public.

**Subclause (2) (Publish does not include broadcast)** excludes the broadcasting of a tobacco advertisement from the definition of "publish a tobacco advertisement". This is to avoid overlap between publishing and broadcasting a tobacco advertisement, which are addressed separately in this Act.

**Subclause (3) (Exception - trade communications)** excludes communication of information within the tobacco industry to people all of whom are involved in the tobacco industry from the definition of "publish a tobacco advertisement".

Thus, publishing a tobacco advertisement in a journal that goes only to people or organisations involved in the tobacco industry would not be "publishing a tobacco advertisement" within the meaning of this Act. If this journal containing tobacco advertising was also available to the public, however, or to people whose only involvement in the tobacco industry is as consumers, then the publishing would be considered "publishing a tobacco advertisement".

**Subclause (4) (Exception - ordinary activities of exempt libraries)** excludes anything done on behalf of an "exempt library" for the normal practices of that library from the definition of "publish a tobacco advertisement".

**Subclause (5) (Exception - acknowledgements of assistance or support)** excludes limited recognition of sponsorship from the definition of "publish a tobacco advertisement". Such recognition must comply with relevant regulations made for the purposes of this provision in order to qualify for this exception.

#### **Clause 11 - Meaning of "holding company"**

This clause provides a definition of a "holding company" for the purposes of this Act.

#### **Clause 12 - Meaning of "manufacturer", "distributor" and "retailer"**

This clause provides that, for the purposes of this Act, a person who manufactures (or distributes or sells) tobacco products and non-tobacco products is a manufacturer (or distributor or retailer) of tobacco products.

### **PART 3 - PROHIBITION OF TOBACCO ADVERTISEMENTS**

#### **Division 1 - Broadcasting of tobacco advertisements**

##### **Clause 13 - Tobacco advertisements not to be broadcast**

This clause makes it an offence for any person to knowingly or recklessly broadcast a tobacco advertisement in Australia or in Norfolk Island, that is not explicitly permitted by this Act, on or after 1 July 1993.

The offence attracts a maximum penalty of \$12,000 for a natural person. The maximum penalty for a corporation would be \$60,000 (Crimes Act 1914).

Note that accidental tobacco advertising will not be caught unless it could be described as 'knowingly or recklessly'.

#### **Clause 14 - Incidental broadcast permitted**

This clause permits a tobacco advertisement which is broadcast as an incidental accompaniment to other matter provided the broadcaster does not receive any benefit additional to the benefit they receive for broadcasting the other matter.

This will permit broadcasters to include incidental material which is technically tobacco advertising in their broadcasts, for example in a report of a sporting event where tobacco advertising is permitted at the venue.

- . If however, the broadcaster receives some benefit for the tobacco advertising, additional to the benefit arising from broadcasting the sporting event, the tobacco advertisement would not be permitted.

#### **Division 2 - Publication of tobacco advertisements**

##### **Clause 15 - Tobacco advertisements not to be published**

**Subclause (1)** makes it an offence for any regulated corporation to knowingly or recklessly:

- . publish a tobacco advertisement in Australia, that is not explicitly permitted by this Act, on or after 1 July 1993; or
- . authorise or cause such a tobacco advertisement to be so published.
- Thus, a regulated corporation which assisted another person, who is not a regulated corporation, to publish a tobacco advertisement may be in breach of the Act even if the other person is not in breach.

The offence attracts a maximum penalty of \$12,000 for a person. The maximum penalty for a corporation would be \$60,000 (Crimes Act 1914).

Note that accidental tobacco advertising will not be caught unless it could be described as 'knowingly or recklessly'.

Also note that, unlike broadcasting a tobacco advertisement (clause 13), it is not an offence to publish a tobacco advertisement in Norfolk Island.



**Subclauses (2) and (3)** make it an offence for a person to knowingly or recklessly publish a tobacco advertisement, that is not explicitly permitted by this Act, on or after 1 July 1993, if:

- . that person is doing so for the purposes of regulated trade or commerce; or
- . that person is permitted to publish the tobacco advertisement due to the operation of clauses 16, 17, 18 or 19; or
  - These subclauses, like subclause (1), do not apply to Norfolk Island.
- . that person is doing so in a Territory other than the Australian Capital Territory, the Northern Territory or Norfolk Island.

The offence attracts a maximum penalty of \$12,000 for a person. Note that under the Crimes Act 1914, the maximum penalty for a corporation would be \$50,000.

Also note that accidental tobacco advertising will not be caught unless it could be described as 'knowingly or recklessly'.

#### **Clause 16 - Point of sale advertising permitted**

This clause permits the publication of certain tobacco advertisements where tobacco products are sold.

**Subclause (1)** provides that if there is relevant State or Territory legislation dealing with point of sale tobacco advertising then the advertisement need only to comply with the State/Territory requirements to be permitted.

**Subclause (2)** provides that if, however, there is no relevant State or Territory legislation dealing with point of sale tobacco advertising then the advertisement must comply with any Commonwealth regulations made for the purposes of this provision concerning the size, content and location of the advertisement in order to be permitted.

**Subclause (3)** provides that a tobacco product vending machine is considered to be a point of sale. Thus, should the legislation of a State or Territory deal with tobacco advertising at retailers or at vending machines, any Commonwealth regulations will not apply for either type of point of sale advertising.

#### **Clause 17 - Periodicals printed outside Australia - acts of publication permitted**

**Subclause (1)** permits tobacco advertisements to be published in any magazine, newspaper, journal or similar document which is printed outside Australia, not principally intended for the Australian market and which has not been specified by the Minister.

- . Note that tobacco advertising would not be permitted in the Australian edition of a periodical nor in a periodical which has more than 50% of its readership in Australia.

**Subclause (2)** provides that the Minister may, in accordance with guidelines, specify a periodical or a class of periodicals to be excluded from the application of subclause (1) by notice in writing published in the Gazette. Such a specification means that tobacco advertising would not be permitted in the periodical, even if it is imported and not principally intended for the Australian market.

However, such a specification does not mean that the tobacco advertisement could not be permitted under another clause in this Act.

Note that the Minister may not specify periodicals until this subclause and those following, which detail the method of such specification, have been proclaimed.

The proportion of imported periodicals that would be required to comply with the prohibition is expected to be very small. Should a periodical be specified, the importer would be notified to reduce the chance of a person publishing the tobacco advertisement accidentally.

**Subclause (3)** provides for a date to be specified in the Gazette notice from which tobacco advertising published in the periodical is no longer permitted under this clause. If no date is specified, then the prohibition commences on the day when the notice is published in the Gazette.

**Subclause (4)** provides for guidelines to be made which must be considered by the Minister in determining whether to specify a periodical.

**Subclause (5)** provides that the guidelines are to be tabled in Parliament and are to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

#### **Clause 18 - Australian sporting and cultural events of international significance - acts of publication permitted**

**Subclause (1)** permits the publication of tobacco advertisements in association with specified sporting or cultural events. Advertising associated with a specified event which has been notified in the Gazette cannot explicitly promote tobacco products and must comply with any conditions specified in the Gazette notice for the publication to be permitted under this provision.

For example, if 'xyz' is a brand of cigarettes then an advertisement for 'xyz' cigarettes at a specified event would be prohibited but an advertisement for 'xyz' generally would be permitted if it satisfied any conditions imposed by the Minister.

**Subclause (2)** provides that in order for the Minister to specify an event by notice in the Gazette, the Minister must be satisfied that the event is of international significance and that if the Minister did not specify it, Australia would be unlikely to hold the event.

**Subclause (3)** provides that the Minister may impose conditions on the tobacco advertising permitted at a specified event. The Minister is to have regard to any guidelines in force under subclause (5) in imposing conditions relating to the content, number, size and placement etc, of advertisements that may be published under this provision.

**Subclause (4)** provides for a date of effect to be specified in the Gazette notice from which the tobacco advertising associated with the specified event is permitted and a date, not more than three years later, when the specification ceases to have effect. If no date is specified, then the notice ceases to have effect three years after it came into force.

Note, however, that this clause does not preclude the organisers of an event from seeking further specifications each for a limited period nor from seeking the specification any length of time in advance.

**Subclause (5)** provides for guidelines to be made which must be considered by the Minister in determining whether to specify an event.

**Subclause (6)** provides that the guidelines are to be tabled in Parliament and are to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

#### **Clause 19 - Incidental publication permitted**

This clause permits the publication of a tobacco advertisement which is published as an incidental accompaniment to other matter and for which the publisher does not receive any benefit additional to the benefit they receive for publishing the other matter.

This will permit publishers to include incidental material which is technically tobacco advertising in their publications, provided they receive no benefit for including such material.

- . This clause would permit, for example, the reporting of a tobacco sponsored sporting event, the display of an object of historical value which contains a tobacco advertisement and the use of cigarettes by characters in films. If however, the publisher receives some benefit for the tobacco advertising, the incidental tobacco advertisement would not be permitted.

#### **Clause 20 - Publication by natural person not receiving any benefit permitted**

This clause permits the publication of a tobacco advertisement by an individual if that person:

- . is not publishing the advertisement as part of his or her involvement in the manufacture, sale or distribution of a tobacco product;
- . is publishing the advertisement on his or her own initiative; and
- . is not receiving any benefit for the publication.

This clause is to make it clear the independent individuals are not being affected by the ban on tobacco advertising and may continue, for example, to wear clothing with printed tobacco brand names provided they are not receiving any benefit for so doing.

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

**Subclause (1)** provides a temporary defence from the publishing prohibition for persons publishing tobacco advertisements arising from a sponsorship contract or other legally enforceable arrangement already entered into before 1 April 1992. The advertisement may not be published (including displayed) after 31 December 1995, or for those associated with cricket matches, 30 April 1996.

In order to qualify for this defence, each party to the contract or arrangement must have notified the Minister, before the advertisement was published, of the specifics of the advertisements (e.g. location, size, content) which are to be published and the date of the contract or arrangement out of which the advertising arises.

The contract or arrangement may be altered without affecting the defence provided that the advertising arose from legally enforceable obligations under the original contract or arrangement. Furthermore, the advertising may be continued past the original termination date of the contract or arrangement.

**Subclause (2)** provides that, should this defence applies to advertising published as a result of a particular sponsorship contract or arrangement, then the defence would also apply to other persons involved in the publishing of such tobacco advertising.

**Clause 22 - Defence - display of signs before 31 December 1995**

**Subclause (1)** provides a temporary defence from the publishing prohibition for persons publishing a tobacco advertisement on a billboard, illuminated sign or other outdoor sign. The advertisement may not be published (including displayed) after 31 December 1995 or an earlier date if specified in any regulations made pursuant to this provision and must arise from a contract or arrangement entered into before 1 April 1992.

. Note that the contracts or arrangements may not be extended.

**Subclause (2)** provides that regulations are to be made which specify the permitted circumstances for the display of signs, the size and composition of such signs and the final date that such signs may be used to publish tobacco advertisements.

**Subclause (3)** ensures that this defence applies also to persons who publish a tobacco advertisement using an electronic sign. This subclause defines the terms "sign" and "tobacco advertising sign" which fall within this provision.

**Division 3 - Other regulated conduct**

Note that the offence and the defences contained in this Division do not come into effect unless, and until, these provisions are proclaimed together with subclauses 17(2) to 17(5) inclusive.

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

This clause makes it an offence for any person to knowingly or recklessly import a periodical into Australia on or after 1 July 1993 that:

- . contains a non-incidenta1 tobacco advertisement; and
- . has been specified by the Minister (under subclause 17(2)) as an imported periodical which must comply with the prohibition on tobacco advertising.

The offence attracts a maximum penalty of \$12,000 for a natural person. Note that under the Crimes Act 1914, the maximum penalty for a corporation would be \$60,000.

**Clause 24 - Defence - importing for private use**

This clause provides a defence so that, regardless of whether a periodical contains a tobacco advertisement and whether it has been specified under subclause 17(2), a person may import a periodical containing a tobacco advertisement for their own private use.

**Clause 25 - Defence - importing for libraries**

This clause provides a defence so that, regardless of whether a periodical contains a tobacco advertisement and whether it has been specified under subclause 17(2), a person may import a periodical containing a tobacco advertisement so that it may be used by an "exempt library".

**PART 4 - MISCELLANEOUS****Clause 26 - Failure to broadcast or publish advertisement not actionable if Act would be contravened**

This clause provides that if a person refuses or fails to broadcast or publish a tobacco advertisement in compliance with the prohibitions contained in this Act, then no legal action can be taken against that person for not engaging in that prohibited conduct.

**Clause 27 - Activities of trading or financial corporations - severability of Act's operation**

This clause provides that if a trading or financial corporation engages in conduct which would otherwise be prohibited by this Act as part of its non-trading or non-financial activities, this does not affect whether that conduct is also undertaken as part of the corporation's trading or financial activities.

**Subclause (2)** defines the terms "financial corporation" and "trading corporation" by reference to paragraph 51(xx) of the Constitution.

**Clause 28 - Compensation for acquisition of property**

**Subclause (1)** provides that, should this Act result in acquisition of property by the Commonwealth just compensation must be paid in accordance with the requirements of paragraph 51(xxxi) of the Constitution.

**Subclause (2)** provides that any compensation paid must take into account any damages, compensation or other remedy already given to the owner of the property in proceedings instituted otherwise than pursuant to this provision.

**Subclause (3)** defines the terms "acquisition of property" and "just terms".

**Clause 29 - Application for the purposes of subsections 9(5) and 18(2)**

**Subclause (1)** provides that a person may apply to the Minister for an exception (under subclause 9(5)) for advertising of a non-tobacco product which may be interpreted as tobacco advertising or for a specification (under subclause 18(2)) for an event of international significance.

**Subclause (2)** provides that applications under this provision must be in writing and set out the grounds that the applicant thinks the exception or specification should be given.

**Subclause (3)** provides for the Minister to ask the applicant to provide further information to enable the Minister to decide on an application.

**Subclause (4)** provides that the Minister must decide an application within 30 days for a non-tobacco product or 60 days for an international event (as prescribed by subclause (10)).

**Subclause (5)** provides that the Minister may extend the period for deciding an application by up to an additional 30 days for non-tobacco products or 60 days for international events.

**Subclause (6)** requires the giving of notice in writing to the applicant where the Minister has decided to extend the period for deciding an application.

**Subclause (7)** requires the Minister to decide the application within any extended period.

**Subclause (8)** provides that if the Minister has not reached a decision on the application after 30 days (for a non-tobacco product) or 60 days (for an international event) and the Minister has not extended the period, then it is to be taken that the Minister has refused the application.

**Subclause (9)** makes it clear that the Minister is able to make decisions in respect of matters under subclause 9(5) and 18(2) without an application being made pursuant to this provision.

**Clause 30 - Review of decisions**

This clause provides that decisions concerning non-tobacco products (subclause 9(5)), imported periodicals (subclause 17(2)) and events of international significance (subclauses 18(2) and 18(3)) are to be reviewable by the Administrative Appeals Tribunal.

**Clause 31 - Offences by partnerships and unincorporated bodies**

This clause provides for the imputing of mens rea to partnerships and unincorporated bodies in relation to offences against the Bill. Each partner (or controlling officer of the unincorporated body) is held responsible for offences committed by the partnership (or unincorporated body) unless the partner (or controlling officer) is able to prove that he or she was not knowingly involved, or a party to, the act or omission constituting the offence.

The provisions of this clause are a statement of the liability of partners or controlling officers of unincorporated bodies. It is necessary, therefore, to provide a defence for the 'innocent' partner or controlling officer in order to avoid them being held responsible for something outside their control. The matters to be proved would be peculiarly within the knowledge of the defendant and it would be extremely difficult for the prosecution to prove the partner or controlling officer claiming to be 'innocent' was knowingly involved. Therefore, the onus of proof has been placed on the partner or controlling officer.

**Clause 32 - Conduct by directors, servants and agents**

This clause provides for the imputing of mens rea to corporations in relation to offences against the Act. The corporation is held responsible for offences committed by a director, servant or agent unless the person operated outside their actual or apparent authority.

This clause also provides for a defence where the person (other than the a body corporate) which employs the servant or agent establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct which was in breach of the prohibitions in this Act.

**Clause 33 - Delegation**

This clause provides that the Minister's power to make decisions concerning non-tobacco products (subclause 9(5)) and imported periodicals (subclause 17(2)) may be delegated to officers of the Department. The power of the Minister to consider applications under paragraph 29(1)(a) of the Act may also be delegated, including the power to extend the time period for deciding an application. Note that the decisions concerning events of international significance cannot be delegated.

**Clause 34 - Regulations**

This clause provides that regulations may be made where necessary or convenient to give effect to the Bill. This clause also provides that regulations may be made in respect of the matters required or permitted to be prescribed under this Act: for example, to get the benefit of an exemption, tobacco advertising may need to comply with regulations concerning point of sale advertising, vending machines advertising, signs or acknowledgement of assistance.

**PART 5 - REPEAL AND AMENDMENT OF OTHER ACTS****Division 1 - Repeal of the Smoking and Tobacco Products Advertisements (Prohibition) Act 1989****Clause 35 - Repeal**

This clause repeals the Smoking and Tobacco Products Advertisements (Prohibition) Act 1989 (Previous Act) on 1 July 1993. This Act makes redundant the the ban on tobacco advertising in the print media contained in the Previous Act.

**Division 2 - Amendment of the Broadcasting Services Act 1992****Clause 36 - Principal Act**

This clause defines that the phrase "Principal Act" refers to the Broadcasting Services Act 1992 in this Division.

**Clause 37 - Schedule 2**

This clause amends the Principal Act to make it consistent with this Act, by repealing those provisions that prohibit tobacco advertising in the broadcast media and make it an offence to broadcast a tobacco advertisement in contravention of this Act.