

SALE OF CONDOMS ACT 1987**No. 72 of 1987**

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SALE OF CONDOMS ACT 1987

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 No. 72 of 1987
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AN ACT to prescribe the law in relation to the sale of condoms and related matters and to repeal the *Police Offences (Contraceptives) Act 1941* and the *Police Offences (Contraceptives) Repeal Act 1976*.

[Royal Assent 27 November 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Sale of Condoms Act 1987*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be fixed by proclamation.

Interpretation.

3—In this Act, unless the contrary intention appears—

“Board” means the Publications Classification Board established under section 6 of the *Classifications of Publications Act 1984*;

“condom” includes a packet containing a condom or condoms;

“Director-General” means the Director-General of Health Services;

“licence” means a licence issued and in force under Part III;

“licensed installer” means a person who is the holder of a licence;

“mail order”, in relation to the sale of condoms, means an order by a person for the supply of condoms made by post or telephone or other instrument or device for communication;

“Registrar” means the Registrar of the Board appointed under section 7 of the *Classification of Publications Act 1984*;

“the regulations” means the regulations in force under this Act;

“relevant fee”, in relation to any matter or thing arising under this Act, means the fee prescribed by the regulations in relation to that matter or thing;

“sell” means sell, whether by wholesale or retail, and includes—

(a) offer or expose for sale;

(b) keep or have in possession for sale;

(c) barter or exchange;

(d) deal in or agree to sell;

(e) send, forward, or deliver, for, or in expectation of receiving, any payment or other consideration; and

(f) receive for sale or on sale;

“shop” means a building, or part of a building, in or at which any business of selling goods or services is carried on, and includes any building, part of a building, or place, declared by the Minister under section 5 to be a shop but excludes any prescribed building, or prescribed part of a building, or any prescribed class or type of building or part of a building, unless that building or part of a building has been declared by the Minister under section 5 to be a shop;

“vending machine” means a machine or mechanical device from which a condom can be obtained by the insertion of a coin, banknote, or token.

4—The Minister may, by order published in the *Gazette*, prohibit the sale and supply of a particular type or brand of condom. Prohibition on sale of certain condoms.

5—The Minister may, by notice published in the *Gazette*, declare any building, part of a building, or place, to be a shop for the purposes of this Act for such period and on such conditions as may be specified in the notice. Minister may declare building, &., to be a shop.

PART II

SALE OF CONDOMS

6—(1) A person may sell a condom—

(a) in any shop;

(b) through a vending machine installed by a licensed installer; or

(c) by mail order.

Condoms may be sold.

(2) A person shall not sell a condom except in accordance with subsection (1).

(3) A person shall not sell or supply a condom unless the condom complies with the standards prescribed by the regulations.

(4) A person shall not sell or supply a condom of a type or brand the sale and supply of which has been prohibited under section 4.

(5) A person who contravenes subsection (2), (3), or (4) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

Supply of
unsolicited
condoms
prohibited.

7—(1) A person shall not supply, by any means, a condom the supply of which is unsolicited.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding—

(a) where the person is a body corporate, 10 penalty units; or

(b) where the person is not a body corporate, 5 penalty units.

Vending
machines not to
be on any
premises unless
installed by a
licensed installer.

8—(1) Subject to subsection (3), a person shall not allow a vending machine on premises within the control of that person unless the machine has been installed by a licensed installer.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units and a further daily penalty not exceeding 1 penalty unit for every day during which the offence continues.

(3) The Minister may, by notice published in the *Gazette*, declare that this section does not apply to, or in relation to, the vending machine specified in the notice, being a vending machine that was installed before the commencement of this Act.

PART III

LICENCES

Unlicensed
installations of
vending machines
prohibited.

9—(1) A person shall not install a vending machine unless that person is a licensed installer or the employee of a licensed installer.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 50 penalty units.

10—(1) A person who proposes to carry on the business of installing vending machines may apply to the Director-General for a licence. Applications for licences.

(2) An application for a licence shall be—

- (a) in a form approved by the Director-General; and
- (b) accompanied by the relevant fee.

(3) The Director-General may require an applicant for a licence to furnish such further information or such documents as the Director-General thinks necessary in order to enable him to make a recommendation to the Minister in relation to the granting of that licence.

(4) Where an application for a licence is made and, before the licence is granted or refused, a change occurs in the particulars specified in the application, or furnished in accordance with subsection (3), the applicant shall notify the Director-General of the change immediately.

(5) An applicant who fails to comply with subsection (4) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 1 penalty unit.

(6) The Director-General shall forward an application for a licence, together with recommendations in relation to that application, to the Minister.

11—(1) On receipt of an application for a licence, the Minister may grant or refuse to grant the licence. Granting of licences, &c.

(2) The Minister shall, by causing a notice in writing to be served on the applicant, inform the applicant of the decision made under subsection (1).

12—A licence while it is in force authorizes the licensed installer to carry on the business of installing vending machines subject to and in accordance with the conditions to which the licence is subject. Authority of licence.

13—(1) A licence is subject to such conditions as are specified in the licence, being conditions which are determined by the Minister after consultation with such bodies, organizations, or persons as the Minister considers appropriate. Licences subject to conditions.

(2) Without limiting the generality of subsection (1), the conditions of a licence may—

- (a) specify the locations or class or type of locations at which a vending machine may be installed; and

(b) specify the class or type and the quality of vending machines which may be installed.

(3) The Minister may, by causing a notice in writing to be served on a licensed installer, vary the conditions to which the licence of that licensed installer is subject.

(4) Where the Minister has varied the conditions to which a licence is subject under subsection (3), the variation shall, subject to section 18 (3), take effect on such date as the Minister specifies in the notice, being a date not less than 14 days after the service of the notice on the licensed installer.

(5) A licensed installer who fails to comply with, or contravenes a condition of, a licence is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units.

Issue of licences.

14—Where the Minister has granted a licence under section 11, the Director-General shall, upon payment of the relevant fee, issue the applicant for the licence with a licence.

Renewal of licences.

15—(1) A licence shall remain in force for a period of 36 months commencing on the day on which the licence is issued under section 14.

(2) A licensed installer may, within the period of 28 days before the licence held by that installer ceases to be in force, apply to the Director-General for the renewal of the licence.

(3) An application for the renewal of a licence—

(a) shall be in a form approved by the Director-General; and

(b) shall be accompanied by the prescribed fee.

(4) The Director-General may require an applicant for the renewal of a licence to furnish such further information or such documents as the Director-General thinks necessary in order to make a recommendation to the Minister in relation to the granting of the application.

(5) On receipt of an application made under this section, the Director-General shall forward an application for the renewal of a licence, together with recommendations in respect of that application, to the Minister.

(6) On receipt of an application for the renewal of a licence and the recommendations of the Director-General under subsection (5), the Minister may grant or refuse to grant the renewal of the licence.

(7) Where an application for the renewal of a licence is made before the date on which the licence would, but for this subsection, have ceased to be in force (which date is, in this subsection, referred to as “the date of expiry”) and—

- (a) the renewal is granted before the date of expiry—on the grant of renewal, the licence shall be in force for the period of 36 months commencing on the date of expiry; or
- (b) the renewal is not granted or not refused before the date of expiry and the application is not withdrawn before the date of expiry—
 - (i) the licence shall be deemed to continue in force on and from the date of expiry until the renewal is granted or the application is withdrawn, or, where the Minister refuses to grant the renewal, the date on which that refusal takes effect, whichever first occurs; and
 - (ii) on the grant of the renewal, the licence shall be deemed to have taken effect on and from the date of expiry.

(8) Where an application for the renewal of a licence is refused by the Minister, the Minister shall, by causing a notice in writing to be served on the applicant, inform the applicant of the refusal and the ground on which the refusal is based.

(9) The refusal referred to in subsection (8) shall, subject to section 18 (3), take effect on such date as the Minister specifies in the notice, being a date not earlier than 14 days after the service of the notice on the holder of the licence.

16—(1) A licensed installer may at any time surrender the licence by delivering it to the Director-General together with a notification in writing to the effect that the licence is being surrendered. Surrender of licences.

(2) The Director-General shall, on receipt of a licence and notification under subsection (1), cancel the licence.

17—(1) The Minister may, subject to subsection (3), suspend a licence for such period as he thinks fit, or cancel a licence— Suspension and cancellation of licences.

- (a) if he is satisfied that the grant or the renewal of the licence was obtained improperly;
- (b) if the holder of the licence has been convicted of an offence under this Act; or

(c) if he is satisfied that the licence should be suspended or cancelled in the public interest.

(2) A licence that is suspended under subsection (1) shall be of no effect for the period of the suspension.

(3) The Minister shall not exercise his powers under subsection (1) in relation to a licence unless the Minister has first afforded the licensed installer an opportunity to make submissions in relation to that matter.

(4) Where a licence has been suspended or cancelled under this section, the Minister shall, by causing a notice in writing to be served on the licensed installer, inform the licensed installer of the suspension or cancellation.

(5) The suspension or cancellation referred to in subsection (4) shall, subject to section 18 (3), take effect on such date as the Minister specifies in the notice, being a date not earlier than 14 days after the service of the notice on the licensed installer.

Appeals.

18—(1) A person aggrieved by—

- (a) the refusal of the Minister to grant a licence to that person;
- (b) the conditions of a licence issued to that person;
- (c) the variation of the conditions to which a licence held by that person is subject;
- (d) the refusal of the Minister to grant the renewal of a licence to that person; or
- (e) the suspension or cancellation under section 17 of a licence held by that person,

may appeal to a magistrate.

(2) An appeal under this section shall be instituted within a period of 14 days from—

- (a) in the case of an appeal against the refusal of the Minister to grant a licence, the service of a notice under section 11 (2);
- (b) in the case of an appeal against the conditions of a licence, the receipt of the licence by the person to whom it is issued;
- (c) in the case of an appeal against the variation of the conditions of a licence, the service of a notice under section 13 (3);

(d) in the case of an appeal against the refusal of the Minister to grant the renewal of a licence, the service of a notice under section 15 (8); or

(e) in the case of an appeal against the suspension or cancellation of a licence, the service of a notice under section 17 (4).

(3) Where an appeal is brought under this section in respect of—

(a) the refusal of the Minister to grant the renewal of a licence;

(b) the variation of the conditions of a licence; or

(c) the suspension or cancellation of a licence under section 17,

that refusal, variation, suspension, or cancellation shall not have effect until the determination or abandonment of the appeal or until such later date as the magistrate may determine.

(4) At the hearing of an appeal under this section, the magistrate, unless he dismisses the appeal, may quash the decision of the Minister and direct the Minister to take such action as the magistrate considers necessary in the matter to which the appeal relates.

(5) The Minister shall comply with any directions given under subsection (4).

(6) The magistrate shall cause a copy of his decision in relation to an appeal under this section to be served on the parties to the appeal.

(7) The decision of a magistrate on the hearing of an appeal under this section is final.

(8) Subject to this section, an appeal under this section shall be instituted, heard, and determined as prescribed by the regulations.

19—(1) The Director-General may, by notice in writing served on a licensed installer, require the licensed installer to deliver his licence within the time specified in the notice.

Delivery of
licences to
Director-General.

(2) Where the Director-General receives, pursuant to a notice served under subsection (1), a licence which has been suspended or cancelled, the Director-General shall endorse on the licence a note of the fact of the suspension or cancellation.

(3) A licensed installer who, without reasonable excuse, fails to comply with a notice served on him under subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 2 penalty units.

(4) A reference in subsections (1) and (3) to a licence includes a licence that has been cancelled under this Act and, in relation to any licence that has been so cancelled, a reference in those subsections to a licensed installer is a reference to the person whose licence was cancelled.

Licensed installers to keep records.

20—(1) A licensed installer shall keep such records with respect to the business to which the licence relates as may be prescribed by the regulations and shall furnish to the Director-General such returns and such copies of those records as the Director-General may determine when required to do so.

(2) A licensed installer who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

Register of licences.

21—(1) The Director-General shall cause a register to be kept of licensed installers.

(2) The register shall be made available at all reasonable times for inspection by any person.

Prescribed standards.

22—(1) A licensed installer shall not install a vending machine unless that machine complies with the prescribed standards.

(2) A licensed installer who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units.

PART IV

ADVERTISING

Approval of advertisements.

23—(1) The Board on its motion may, or when directed by the Minister shall, consider an advertisement relating to condoms.

(2) Where the Board considers an advertisement relating to condoms, the Board may require a person who intends to publish or cause to be published, or who has published or caused to be published, an advertisement relating to condoms to supply a copy of that advertisement to the Board for consideration.

(3) A person who fails to supply the Board with a copy of an advertisement when required to do so under subsection (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 50 penalty units.

(4) After considering an advertisement, the Board may—

(a) approve the advertisement;

(b) approve the advertisement subject to such conditions as the Board considers necessary; or

(c) refuse to approve the advertisement.

(5) The Board shall only approve an advertisement under subsection 4 (a) or (b) if the Board is satisfied that there are medical, hygienic, or social benefits to be gained from the advertisement.;

(6) Where the Board approves an advertisement subject to conditions under subsection (4) (b) or refuses to approve an advertisement under subsection (4) (c), the Board shall notify such publishers or other persons as it considers appropriate of those conditions or that refusal, as the case may require, in such manner as the Board considers appropriate.

24—(1) A person shall not publish or cause to be published—

(a) an advertisement that the Board has approved subject to conditions under section 23 (4) (b) otherwise than in accordance with those conditions; or

(b) an advertisement that the Board has refused to approve under section 23 (4) (c).

Publishing of
certain
advertisements
prohibited.

(2) The Board may require a person who sells or supplies any matter that contains an advertisement that the Board has refused to approve under section 23 (4) (c) to—

(a) surrender that matter to the Board at such place as the Board may determine; or

(b) destroy that matter in such manner as the Board may determine.

(3) A person who contravenes subsection (1) or fails to comply with a requirement made by the Board under subsection (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 50 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues.

PART V

MISCELLANEOUS

Minister may
require removal
of vending
machines.

25—(1) The Minister may, at any time, require a licensed installer who has installed a vending machine or the person who has the control of premises on which there is a vending machine to remove that vending machine.

(2) A person who fails to remove a vending machine if required to do so by the Minister under subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units and a further daily penalty not exceeding 1 penalty unit for every day during which the offence continues.

False or
misleading
information.

26—(1) A person shall not, in making any application, furnishing any information or return, or keeping any record pursuant to this Act, make, or cause to be made, a statement or representation that to the knowledge or belief of that person is false or misleading in a material particular.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.

Offences by
bodies corporate.

27—Where an offence under this Act has been committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director of, or other person concerned in the management of, the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and is liable to a penalty not exceeding that prescribed for the offence unless he proves that he could not by the exercise of reasonable diligence have prevented the commission of the offence.

28—(1) A certificate purporting to be signed by the Director- ^{Evidence.}
General certifying—

- (a) that a person was or was not a licensed installer at the time mentioned in the certificate; or
- (b) that any provision set out in the certificate was, at the time mentioned in the certificate, a condition of a licence given under this Act,

is admissible in any proceedings under this Act and shall, until the contrary is established, be evidence of the matters so certified.

(2) A certificate purporting to be signed by the Registrar certifying—

- (a) that the Board has approved, approved subject to conditions, or refused to approve an advertisement relating to condoms; or
- (b) that any provision set out in the certificate was, at the time specified in the certificate, a condition to which the approval of the Board in respect of an advertisement relating to condoms was subject,

is admissible in any proceedings under this Act and shall, until the contrary is established, be evidence of the matters so certified.

29—(1) In proceedings for an offence under this Act it shall, ^{Defences.}
subject to subsection (2), be a defence for the person charged to prove—

- (a) that the commission of the offence was due to reliance on information provided by, or the act or default of, another person other than his employee, or to some cause beyond his control;
- (b) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
- (c) that the person was an employee of a licensed installer and was acting on the instructions of the licensed installer.

(2) In proceedings for an offence under this Act, a person shall not, without the leave of the court, be entitled to rely on the defence that the commission of an offence was due to the act or default of another person or to reliance on

information provided by another person unless, not less than 14 days before the hearing, that person has served on the complainant a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Service of
documents, &c.

30—(1) Where under this Act a document or a notice is required to be served on a person, the document or notice may be served—

(a) in the case of a person who is neither a body corporate nor a firm—

(i) by delivering it to that person personally;

(ii) by leaving it at that person's place of residence last known to the person required to serve the document or notice with someone who apparently resides there, or at that person's place of business or employment last known to the person required to serve the document or notice with someone who is apparently employed there, being in either case a person who has or apparently has attained the age of 16 years; or

(iii) by sending it by post to that person's place of residence, business, or employment last known to the person required to serve the document or notice;

(b) in the case of a body corporate—

(i) by delivering it to the secretary of the body corporate personally;

(ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or

(iii) by sending it by post to the registered office of the body corporate or to the place or principal place of business of the body corporate; or

(c) in the case of a firm—

(i) by delivering it to a member of the firm personally;

(ii) by leaving it at the place or principal place of business of the firm in Tasmania last known to the person required to serve the document or notice with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or

(iii) by sending it by post to the place or principal place of business of the firm in Tasmania last known to the person required to serve the document or notice.

(2) A reference in subsection (1) to the registered office of a body corporate includes a reference to a registered office that is outside Tasmania.

(3) The provisions of this section are in addition to the provisions of section 528 of the *Companies (Tasmania) Code*.

31—(1) All expenses incurred in the administration of this Act shall be paid out of money to be provided by Parliament for that purpose. Administration.

(2) All fees and penalties received under this Act shall be paid into the Consolidated Fund.

32—(1) The Governor may make regulations for the purposes of this Act. Regulations.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or in respect of the following matters:—

- (a) the buildings, or parts of buildings, or the class or type of buildings or parts of buildings, which are not shops for the purposes of this Act;
- (b) the standards for vending machines;
- (c) the forms of notices, certificates, and other documents under this Act;
- (d) the cases in which, and the conditions upon which, duplicates of licences may be issued and the fees payable in respect of the issue of those duplicates;
- (e) the keeping of records by licensed installers;
- (f) the labelling, packaging, information provided in or on packages, and storage of condoms;

(g) the procedures to be followed, and the action that may be taken, to prevent the sale or supply of condoms which do not comply with the prescribed standards.

(3) Regulations made under this section may be made subject to such conditions, or be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitation or restrictions, whether as to time or circumstances or otherwise, as may be so specified.

(4) Regulations under this section may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding 10 penalty units and, in the case of a continuing offence, a further penalty not exceeding 1 penalty unit for each day during which the offence continues.

(5) The regulations may, with respect to the standards for condoms which may be sold or supplied under this Act or the standards for vending machines, adopt either wholly or in part and with or without modification, and, either specifically or by reference, any of the standard rules, codes, or specifications of any prescribed authority, whether the standard rules, codes, or specifications are published or issued before or after the commencement of this Act.

(6) In subsection (5), “prescribed authority” means—

- (a) the Standards Association of Australia;
- (b) the British Standards Institution;
- (c) the International Organization for Standardization;
and
- (d) such other body, organization, or Government department or agency as is specified in the regulations for the purposes of this section.

(7) A reference in subsection (5) to standard rules, codes, or specifications includes a reference to an amendment of those standard rules, codes, or specifications, whether the amendment is published or issued before or after the commencement of this Act.

(8) In subsection (7), “amendment” means—

- (a) the omission of matter;
- (b) the insertion of additional matter; and
- (c) the omission of matter and the substitution of other matter.

33—The *Police Offences (Contraceptives) Act 1941* and the *Police Offences (Contraceptives) Repeal Act 1976* are repealed. ^{Repeals.}

