



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2020-155

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	3
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

14 August 2020

By email: HealthFOI@act.gov.au
Freedom of Information Coordinator
ACT Health Directorate
GPO Box 825
Canberra City ACT 2601

Dear Freedom of Information Coordinator

Freedom of Information Application

This is an application under the *Freedom of Information Act 2016* (ACT) to the ACT Health Directorate (**Directorate**).

We refer to the *Tobacco and Other Smoking Products Act 1927* (ACT) (**Act**) and in particular:

- (a) in Part 3 of the Act:
 - (i) section 14, which prohibits the sale of a smoking product to a person under the age of 18 years; and
 - (ii) section 15, which prohibits the purchase of a smoking product for use by a person under the age of 18 years;
- (b) in Part 6A:
 - (i) section 42B, which defines a “compliance test” as involving a young person, under the supervision of an authorised officer, purchasing, or trying to purchase tobacco products from tobacco licence-holders for the purpose of obtaining evidence that may lead to the prosecution of a person, or other action being taken against a person, for an offence against section 14 of the Act;
 - (ii) section 42C, which empowers the Minister to approve a program for compliance testing;
 - (iii) section 42D, which empowers the Minister to approve procedures for carrying out approved programs for compliance testing; and
 - (iv) section 42E, which empowers an authorised officer to carry out a compliance test in accordance with an approved program and the approved procedures; and
- (c) section 50, which provides that the Commissioner for Fair Trading must not grant or renew an application for a tobacco licence if the Commissioner is satisfied, on reasonable grounds, that within the period of 2 years immediately preceding the date when the application is made, 2 offences relating to the sale or supply of



smoking products to a person under the age of 18 years have been found proved in respect of the applicant.

We request, for the years 2019 and 2020, a document or documents that record:

- (a) the number of prosecutions for a breach of section 14 of the Act;
- (b) the number of penalties imposed for a breach of section 14 of the Act;
- (c) the number of prosecutions for a breach of section 15 of the Act;
- (d) the number of penalties imposed for a breach of section 15 of the Act;
- (e) the number of approvals by the Minister, in accordance with section 42C of the Act, of programs for compliance testing;
- (f) the number of approvals by the Minister, in accordance with section 42D of the Act, of procedures for the carrying out of compliance testing;
- (g) the number of compliance tests carried out by authorised officers in accordance with section 42E of the Act;
- (h) the number of compliance tests that have led to a prosecution of a person, or other action being taken against a person, for an offence against section 14 of the Act;
- (i) where action, other than a prosecution, is taken against a person for an offence against section 14 of the Act:
 - (i) the number of actions taken; and
 - (ii) the nature of the action taken; and
- (j) the number of tobacco licences that have not been renewed or granted by the Commissioner of Fair Trading by force of section 50 of the Act.

We do not require the Directorate to disclose information about specific prosecutions, penalties, actions, approvals or compliance tests or specific tobacco licences that have not been renewed or granted. We only seek aggregated information for the years in question. The request also does not require the Directorate to disclose any personal information, including information capable of identifying any individual person or business.

The email address to which notices under the *Freedom of Information Act* in respect of this application may be sent is 

If you have any questions in relation to the above, please do not hesitate to contact us. We otherwise look forward to your advice regarding the payment of any processing charges.

Yours faithfully





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2020-155

[REDACTED]

via email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 18 August 2020, in which you specifically sought access to:

"...for the years 2019 and 2020, a document or documents that record:

- (a) the number of prosecutions for a breach of section 14 of the Act;*
- (b) the number of penalties imposed for a breach of section 14 of the Act;*
- (c) the number of prosecutions for a breach of section 15 of the Act;*
- (d) the number of penalties imposed for a breach of section 15 of the Act;*
- (e) the number of approvals by the Minister, in accordance with section 42C of the Act, of programs for compliance testing;*
- (f) the number of approvals by the Minister, in accordance with section 42D of the Act, of procedures for the carrying out of compliance testing;*
- (g) the number of compliance tests carried out by authorised officers in accordance with section 42E of the Act;*
- (h) the number of compliance tests that have led to a prosecution of a person, or other action being taken against a person, for an offence against section 14 of the Act;*
 - (i) where action, other than a prosecution, is taken against a person for an offence against section 14 of the Act:*
 - (i) the number of actions taken; and*
 - (ii) the nature of the action taken; and*
- (j) the number of tobacco licences that have not been renewed or granted by the Commissioner of Fair Trading by force of section 50 of the Act."*

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance of section 40 of the Act, CMTEDD was required to provide a decision on your access application by 15 September 2020.

Decision on access

Searches were completed for relevant documents and one document was identified that falls within the scope of your request.

I have decided to grant full access to the relevant document. The document released to you is provided as **Attachment A** to this letter.

Charges

Processing charges are not applicable for this request because the total number of pages to be released to you is below the charging threshold of 50 pages.

Online publishing– Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application and my decision in response to your access application will be published in the CMTEDD disclosure log after 3 days after the date of this decision. Your personal contact details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2020>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal

Level 4, 1 Moore St

GPO Box 370

Canberra City ACT 2601

Telephone: (02) 6207 1740

<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daniel Riley', written in a cursive style.

Daniel Riley

Information Officer

Information Access Team

Chief Minister, Treasury and Economic Development Directorate

21 August 2020

Tobacco and Other Smoking Products Act 1927 (ACT)

We request, for the years 2019 and 2020, a document or documents that record:

Information Requested	Number/Action
a. the number of prosecutions for a breach of section 14 of the Act;	0*
b. the number of penalties imposed for a breach of section 14 of the Act	0*
c. the number of prosecutions for a breach of section 15 of the Act	0*
d. the number of penalties imposed for a breach of section 15 of the Act	0*
e. the number of approvals by the Minister, in accordance with section 42C of the Act, of programs for compliance testing;	0*
f. the number of approvals by the Minister, in accordance with section 42D of the Act, of procedures for the carrying out of compliance testing;	0*
g. the number of compliance tests carried out by authorised officers in accordance with section 42E of the Act;	0*
h. the number of compliance tests that have led to a prosecution of a person, or other action being taken against a person, for an offence against section 14 of the Act;	0*
i. where action, other than a prosecution, is taken against a person for an offence against section 14 of the Act: (i) the number of actions taken; and (ii) the nature of the action taken;	0*
j. the number of tobacco licences that have not been renewed or granted by the Commissioner of Fair Trading by force of section 50 of the Act.	0*

**Access Canberra advises that it has not undertaken any Tobacco Compliance Testing during the 2019-20 financial year. Compliance Testing is used as a tool when there is a level of non-compliance identified that warrants this type of activity being undertaken”.*