



New South Wales

Public Health (Tobacco) Amendment (E-cigarettes) Act 2015 No 16

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Public Health (Tobacco) Act 2008 No 94	3



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Public Health (Tobacco) Amendment (E-cigarettes) Act 2015 No 16

Act No 16, 2015

An Act to amend the *Public Health (Tobacco) Act 2008* to regulate the sale, packaging, advertising and display of e-cigarettes and to prohibit the sale of e-cigarettes and e-cigarette accessories to persons who are under the age of 18 years; and for related purposes. [Assented to 30 June 2015]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Health (Tobacco) Amendment (E-cigarettes) Act 2015*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Public Health (Tobacco) Act 2008 No 94

[1] Section 3 Objects of Act

Omit “and non-tobacco smoking products” from section 3 (2) (a).

Insert instead “, non-tobacco smoking products and e-cigarettes”.

[2] Section 3 (2) (b)

Omit “those products”.

Insert instead “tobacco products, non-tobacco smoking products, e-cigarettes and e-cigarette accessories”.

[3] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

e-cigarette means:

- (a) a device (other than a device of a kind excluded by the regulations) that is designed to generate or release an aerosol or vapour (whether or not containing nicotine) by electronic means for inhalation by its user in a manner that replicates, or produces an experience similar to, the inhalation of smoke from an ignited tobacco product or ignited non-tobacco smoking product, or
- (b) any other device of a kind prescribed by the regulations that is designed to be used by its user in a way that replicates, or produces an experience similar to, the use of a tobacco product or non-tobacco smoking product.

e-cigarette accessory means:

- (a) a cartridge, capsule or other container designed to contain a liquid, aerosol, gas, vapour or other substance for use in an e-cigarette, or
- (b) a heating element designed for use in an e-cigarette, or
- (c) any other component of an e-cigarette (or class of e-cigarettes) of a kind prescribed by the regulations.

e-cigarette vending machine means a machine, device or contrivance from which e-cigarettes or e-cigarette accessories can be obtained by an operation that involves inserting money, or a token or object, into the machine, device or contrivance, whether or not some other action is required to activate the machine.

[4] Section 4 (1)

Omit the definition of *tobacco vending machine token*. Insert in alphabetical order:

vending machine token means:

- (a) in relation to a tobacco vending machine—a tobacco vending machine token, or
- (b) in relation to an e-cigarette vending machine—a token that is designed to be inserted into an e-cigarette vending machine to enable the purchase or supply of e-cigarettes or e-cigarette accessories from the vending machine.

[5] Section 8A

Insert before section 9:

8A Application of Division to e-cigarettes and e-cigarette accessories

- (1) This Division applies in relation to e-cigarettes and e-cigarette accessories in the same way as it applies in relation to tobacco products and smoking accessories, respectively.
- (2) For this purpose:
 - (a) each reference in this Division to a tobacco product is to be read as including a reference to an e-cigarette, and
 - (b) each reference in this Division to a smoking accessory is to be read as including a reference to an e-cigarette accessory.

[6] Part 2, Division 3, heading

Insert “**and e-cigarette vending machines**” after “**machines**”.

[7] Section 12 Places where tobacco or e-cigarette vending machines may be placed

Omit “tobacco vending machine” wherever occurring in section 12 (1) and (2).

Insert instead “tobacco or e-cigarette vending machine”.

[8] Section 13 Operation of tobacco or e-cigarette vending machines to be controlled by staff

Omit “tobacco vending machine” where firstly occurring, “tobacco products or non-tobacco smoking products” and “tobacco vending machine token”.

Insert instead “tobacco or e-cigarette vending machine”, “tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories” and “vending machine token”, respectively.

[9] Section 14 Regulation of product display on tobacco or e-cigarette vending machines

Omit “tobacco vending machine”, “tobacco products or non-tobacco smoking products” and “form” from section 14 (1).

Insert instead “tobacco or e-cigarette vending machine”, “tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories” and “form (if any)”, respectively.

[10] Section 15 Responsibilities of occupiers for vending machines

Omit “tobacco vending machine” and “tobacco products or non-tobacco smoking products” wherever occurring.

Insert instead “tobacco or e-cigarette vending machine” and “tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories”, respectively.

[11] Section 15 (4)

Omit “tobacco products”.

Insert instead “tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories”.

[12] Part 3, heading

Insert “**and e-cigarettes**” after “**tobacco products**”.

[13] Section 15A

Insert before section 16:

15A Application of Part to e-cigarettes and e-cigarette accessories

- (1) This Part applies in relation to e-cigarette advertisements and e-cigarettes in the same way as it applies in relation to tobacco advertisements and tobacco products, respectively.
- (2) For this purpose:
 - (a) each reference in this Part to a tobacco advertisement is to be read as including a reference to an e-cigarette advertisement, and
 - (b) each reference in this Part to a tobacco product is to be read as including a reference to an e-cigarette, and
 - (c) the reference to otherwise than by smoking in section 21 (1), in its application to e-cigarettes, is to be read as including a reference to otherwise than by inhalation of an aerosol or vapour.
- (3) In this section, an *e-cigarette advertisement* means writing, or any still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of two or more of them, that gives publicity to, or otherwise promotes or is intended to promote:
 - (a) the purchase or use of an e-cigarette, or
 - (b) the trademark or brand name, or part of a trademark or brand name, of an e-cigarette,but does not include anything of a kind excluded by the regulations.

[14] Section 22 Sale of tobacco and non-tobacco smoking products or e-cigarettes and e-cigarette accessories to minors

Insert after section 22 (2):

- (2A) A person must not sell an e-cigarette or e-cigarette accessory to a person who is under the age of 18 years unless it is an authorised product.

Note. The sale of an e-cigarette that generates or releases an aerosol or vapour that contains nicotine, or the sale of an e-cigarette accessory containing nicotine, is prohibited in New South Wales unless it is an authorised product. See, in particular, the *Poisons and Therapeutic Goods Act 1966*.
- (2B) A person who contravenes this section is guilty of an offence.

Maximum penalty:

 - (a) in the case of an individual, 100 penalty units for a first offence or 500 penalty units for a second or subsequent offence, or
 - (b) in the case of a corporation, 500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

[15] Section 22 (3)

Omit “or non-tobacco smoking product” wherever occurring.

Insert instead “, non-tobacco smoking product, e-cigarette or e-cigarette accessory”.

[16] Section 22 (4)

Omit the maximum penalty from the end of section 22. Insert instead:

(4) In this section:

authorised product means a device or accessory (other than a device or accessory of a kind excluded by the regulations) that is:

- (a) a therapeutic good (as defined in the *Therapeutic Goods Act 1989* of the Commonwealth):
 - (i) registered in the Australian Register of Therapeutic Goods maintained under section 9A of that Act, or
 - (ii) the subject of an approval or authority under section 19 of that Act, or
- (b) supplied under a licence or authority in force under the *Poisons and Therapeutic Goods Act 1966* or the regulations under that Act.

[17] Section 23 Purchasing tobacco, smoking or vaping products on behalf of minors

Omit “tobacco product or non-tobacco smoking product” from section 23 (1).

Insert instead “tobacco, smoking or vaping product”.

[18] Section 23 (3)

Insert after section 23 (2):

(3) In this section:

tobacco, smoking or vaping product means any of the following:

- (a) a tobacco product,
- (b) a non-tobacco smoking product,
- (c) an e-cigarette that is not an authorised product within the meaning of section 22,
- (d) an e-cigarette accessory that is not an authorised product within the meaning of section 22.

[19] Section 24 Supplying vending machine tokens to minors and activating tobacco or e-cigarette vending machines for minors

Omit “tobacco vending machine” where firstly and thirdly occurring in section 24 (1) and wherever occurring in section 24 (2).

Insert instead “tobacco or e-cigarette vending machine”.

[20] Section 24 (1)

Omit “tobacco vending machine token”. Insert instead “vending machine token”.

[21] Section 25 Obtaining vending machine tokens on behalf of minors

Omit “tobacco vending machine token” from section 25 (1).

Insert instead “vending machine token”.

[22] Section 26 Seizure of tobacco products, non-tobacco smoking products or e-cigarettes in possession of minors

Omit “or non-tobacco smoking product” and “or non-tobacco smoking products” wherever occurring.

Insert instead “, non-tobacco smoking product or e-cigarette” and “, non-tobacco smoking products or e-cigarettes”, respectively.

[23] Section 28 Liability of employers

Omit “or non-tobacco smoking products” from section 28 (4).

Insert instead “, non-tobacco smoking products, e-cigarettes or e-cigarette accessories”.

[24] Section 30 Smoking in motor vehicle prohibited if juvenile present

Insert in alphabetical order in section 30 (8):

smoke includes using an e-cigarette to generate or release an aerosol or vapour.

[25] Section 58 Regulations

Omit “tobacco vending machines” from section 58 (1) (d).

Insert instead “tobacco or e-cigarette vending machines”.

[Second reading speech made in—

Legislative Assembly on 6 May 2015

Legislative Council on 27 May 2015]