

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

[2015-16]



New South Wales

Status Information

Currency of version

Historical version for 30 June 2015 to 1 September 2015 (accessed 23 November 2024 at 11:25)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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



New South Wales

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.

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”.