

Legislative Council—No 267

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South Australia

**Tobacco Products Regulation (E-Cigarette
Regulation) Amendment Bill 2017**

A BILL FOR

An Act to amend the *Tobacco Products Regulation Act 1997*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Tobacco Products Regulation (E-Cigarette Regulation) Amendment Act 2017*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Tobacco Products Regulation Act 1997*

5 **4—Amendment of long title**

Long title—after "products" insert:

 ; to regulate the sale, advertising and use of e-cigarette products

5 **5—Amendment of section 3—Objects of Act**

(1) Section 3—after "resources" insert:

10 , and recognising the potential harm caused by smoking e-cigarettes

(2) Section 3(b)—after "tobacco products" first occurring insert:

 and e-cigarettes

(3) Section 3(b)(ii)—after "tobacco products" insert:

 and e-cigarette products

15 (4) Section 3(b)(iv)—after "tobacco products" insert:

 and e-cigarette products

(5) Section 3(c)—after "tobacco smoke" insert:

 and e-cigarette vapour

6 **6—Amendment of section 4—Interpretation**

20 (1) Section 4(1), definition of *advertise*—after "tobacco products" first, second, third and fourth occurring insert:

 or e-cigarette products

(2) Section 4(1), definition of *advertise*— delete ", and *tobacco advertisement* and *advertisement* have corresponding meanings"

25 (3) Section 4(1), definition of *consume*—delete the definition and substitute:

consume means—

 (a) in relation to a tobacco product—

 (i) smoke; or

 (ii) inhale (in the form of a powder); or

30 (iii) chew or suck; or

 (iv) give away; or

 (b) in relation to an e-cigarette—to smoke;

(4) Section 4(1)—after the definition of *contract of service* insert:

e-cigarette means—

- 5
- (a) a device that is designed to generate or release an aerosol or vapour for inhalation by its user in a manner similar to the inhalation of smoke from an ignited tobacco product; or
 - (b) a device of a kind declared by the Minister by notice in the Gazette to be an e-cigarette,

but does not include a device of a kind prescribed by the regulations not to be an e-cigarette for the purposes of this definition;

10 *e-cigarette product* means—

- 15
- (a) an e-cigarette; or
 - (b) any part comprising an e-cigarette; or
 - (c) a cartridge, capsule or other container designed to contain a liquid, aerosol, gas, vapour or other substance for use in an e-cigarette; or
 - (d) a heating element designed for use in an e-cigarette; or
 - (e) a battery designed for use in an e-cigarette; or
 - (f) a product of a kind prescribed by the regulations;

(5) Section 4(1), definition of *purchase*—delete "tobacco" wherever occurring

(6) Section 4(1), definition of *smoke*—delete the definition and substitute:

20 *smoke* means—

- (a) in relation to a tobacco product—smoke, hold, or otherwise have control over, an ignited tobacco product; or
- (b) in relation to an e-cigarette—to inhale from, hold or otherwise have control over, an e-cigarette that is in use;

25 (7) Section 4(1), definition of *vending machine* —delete "tobacco"

7—Amendment of section 6—Requirement for licence

Section 6—after paragraph (a) insert:

- (ab) carry on the business of selling e-cigarette products by retail; or

8—Amendment of section 9—Licence conditions

30 (1) Section 9(2)(a)—after "tobacco products" first occurring insert:

or e-cigarette products (or both)

(2) Section 9(2)(a)—delete "tobacco" second occurring and substitute:

those

(3) Section 9(2)(b)—after "tobacco products" first occurring insert:

35 or e-cigarette products (or both)

(4) Section 9(2)(b)—delete "tobacco" second occurring and substitute:

those

9—Amendment of Heading to Part 3

Heading to Part 3—after "tobacco products" insert:
and e-cigarette products

10—Amendment of section 30—Sale of tobacco products and e-cigarette products by retail

- (1) Section 30(5)—after "tobacco product" first occurring insert:
or an e-cigarette product
- (2) Section 30(5)—delete "tobacco" second occurring

11—Amendment of section 36—Products designed to resemble tobacco products

Section 36—after "product" second occurring insert:
or an e-cigarette

12—Amendment of section 37—Sale of products by vending machine

Section 37—after subsection (2) insert:

- (3) A person must not sell e-cigarette products by means of a vending machine.
Maximum penalty: \$5 000.
Expiation fee: \$315.

13—Insertion of section 37A

After section 37 insert:

37A—Sale of e-cigarette products from temporary outlet

- (1) A person must not sell an e-cigarette product by retail from a temporary outlet.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) An occupier of premises must not cause or permit another person to sell an e-cigarette product by retail on those premises in contravention of subsection (1).
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) In this section—
temporary outlet means a booth, stand, tent or other temporary or mobile structure or enclosure, whether or not part of that booth, stand, tent, structure or enclosure is permanent.

14—Amendment of section 38—Carrying tray etc of tobacco products or e-cigarette products for making of successive retail sales

(1) Section 38(1)—after "tobacco products" first occurring insert:
or e-cigarette products

5 (2) Section 38(1)—delete "tobacco" second occurring and substitute:
those

15—Amendment of section 38A—Sale or supply of tobacco products or e-cigarette products to children

(1) Section 38A(1)—after "tobacco product" insert:
10 or an e-cigarette product

(2) Section 38A(5)—after "tobacco products" first occurring insert:
or e-cigarette products

(3) Section 38A(6), definition of *responsible person*—after "tobacco product" insert:
or an e-cigarette product

15 **16—Amendment of section 39—Power to require evidence of age**

Section 39(1)—after "tobacco product" insert:
or an e-cigarette product

17—Amendment of section 40—Certain advertising prohibited

(1) Section 40(1)—after "tobacco products" insert:
20 or e-cigarette products

(2) Section 40(2)(a)—after "tobacco advertisement" insert:
or an e-cigarette advertisement

(3) Section 40(2)(b)—after "tobacco advertisement" insert:
or an e-cigarette advertisement

25 (4) Section 40(3)(a)—after "tobacco products" insert:
or e-cigarette products

(5) Section 40(3)(b)—after "tobacco products" insert:
or e-cigarette products

18—Amendment of section 41—Prohibition of certain sponsorships

30 (1) Section 41(1)(a)—after "tobacco product" first and second occurring insert:
or an e-cigarette product

(2) Section 41(1)(b)—after "tobacco product" first occurring insert:
or an e-cigarette product

(3) Section 41(1)(b)—delete "tobacco" second occurring

19—Amendment of section 42—Competitions and reward schemes etc

- (1) Section 42(1)—after "tobacco product" first and second occurring insert:
or an e-cigarette product
- (2) Section 42(1)(b)—after "product" insert:
5 or an e-cigarette product,

20—Amendment of section 43—Free samples

- (1) Section 43—after "tobacco product" first occurring insert:
or an e-cigarette product
- (2) Section 43—delete "a tobacco" second occurring and substitute:
10 the

21—Amendment of section 66—Powers of authorised officers

Section 66(1)(g)—after "tobacco products" insert:
, e-cigarette products

22—Amendment of section 69—Powers in relation to seized products

15 Section 69—after "tobacco products" insert:
or e-cigarette products

23—Amendment of section 70A—Confiscation of products from children

- (1) Section 70A(1)—after "tobacco products" insert:
or e-cigarette products
- 20 (2) Section 70A(2)—after "tobacco products" insert:
or e-cigarette products
- (3) Section 70A(3)—after "tobacco products" insert:
or e-cigarette products

24—Amendment of section 71—Exemptions

- 25 (1) Section 71(1)(a)—after "person" insert:
, e-cigarette product
- (2) Section 71(1)(a)—after "persons" insert:
, e-cigarette products

25—Amendment of section 85—Evidence

- 30 (1) Section 85(2)—after "tobacco products" first occurring insert:
or e-cigarette products
- (2) Section 85(2)—after "tobacco products" second occurring insert:
or e-cigarette products (as the case requires)

26—Amendment of section 87—Regulations

- (1) Section 87(2)(f)—after "tobacco products" insert:
or e-cigarette products
- (2) Section 87(3)—after "tobacco products" first and second occurring insert:
or e-cigarette products

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Schedule 1—Transitional provision

1—Existing licences

- (1) A licence that is in force under Part 2 of the *Tobacco Products Regulation Act 1997* immediately before the commencement of this clause will, on the commencement of this clause, be taken to authorise the carrying on of the business of selling e-cigarette products by retail.
- (2) A reference to a tobacco product in a licence condition in force immediately before the commencement of this clause will, on the commencement of section 8 of this Act, be taken to include a reference to an e-cigarette product.

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