

**House of Assembly—No 23**

As laid on the table and read a first time, 20 June 2018

South Australia

**Tobacco Products Regulation (E-Cigarette  
Regulation) Amendment Bill 2018**

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

This Act may be cited as the *Tobacco Products Regulation (E-Cigarette Regulation) Amendment Act 2018*.

#### 2—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*

### 3—Amendment of long title

Long title—after "products" insert:

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

### 5 4—Amendment of section 3—Objects of Act

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

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

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

and e-cigarettes

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

and e-cigarette products

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

and e-cigarette products

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

15 and e-cigarette vapour

### 5—Amendment of section 4—Interpretation

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

or e-cigarette products

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

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

*consume* means—

(a) in relation to a tobacco product—

25 (i) smoke; or

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

(iii) chew or suck; or

(iv) give away; or

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

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

*e-cigarette* means—

(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;

5 *e-cigarette product* means—

- (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  
10 (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:

15 *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;

20 (7) Section 4(1), definition of *venting machine*—delete "tobacco"

### **6—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

### **7—Amendment of section 9—Licence conditions**

25 (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:

30 or e-cigarette products (or both)

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

those

### **8—Amendment of Heading to Part 3**

Heading to Part 3—after "tobacco products" insert:

35 and e-cigarette products

**9—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

5 (2) Section 30(5)—delete "tobacco" second occurring

**10—Amendment of section 36—Products designed to resemble tobacco products**

Section 36—after "product" second occurring insert:

or an e-cigarette

10 **11—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.

15 Expiation fee: \$315.

**12—Insertion of section 37A**

After section 37 insert:

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

20 (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).

25 Maximum penalty: \$5 000.

Expiation fee: \$315.

(3) In this section—

30 *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.

**13—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:

35 or e-cigarette products

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

those

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

- (1) Section 38A(1)—after "tobacco product" insert:  
or an e-cigarette product
- 5 (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—Amendment of section 39—Power to require evidence of age**

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

**16—Amendment of section 40—Certain advertising prohibited**

- (1) Section 40(1)—after "tobacco products" insert:  
or e-cigarette products
- 15 (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
- (4) Section 40(3)(a)—after "tobacco products" insert:  
20 or e-cigarette products
- (5) Section 40(3)(b)—after "tobacco products" insert:  
or e-cigarette products

**17—Amendment of section 41—Prohibition of certain sponsorships**

- (1) Section 41(1)(a)—after "tobacco product" first and second occurring insert:  
25 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

**18—Amendment of section 42—Competitions and reward schemes etc**

- 30 (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:  
or an e-cigarette product,

**19—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:  
the

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**20—Amendment of section 66—Powers of authorised officers**

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

**21—Amendment of section 69—Powers in relation to seized products**

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

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**22—Amendment of section 70A—Confiscation of products from children**

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

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

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

**23—Amendment of section 71—Exemptions**

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

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

**24—Amendment of section 85—Evidence**

(1) Section 85(2)—after "tobacco products" first occurring insert:  
or e-cigarette products

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

**25—Amendment of section 87—Regulations**

(1) Section 87(2)(f)—after "tobacco products" insert:  
or e-cigarette products

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

## **Schedule 1—Transitional provision**

### **1—Existing licences**

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- (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 7 of this Act, be taken to include a reference to an e-cigarette product.