

Legislative Council

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South Australia

Tobacco Products Regulation (E-Cigarettes and Review) 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-Cigarettes and Review) Amendment Act 2018*.

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*

4—Amendment of long title

Long title—delete "the sale, packing, importing, advertising and use of tobacco products;" and substitute:

tobacco products and e-cigarette products,

5—Substitution of section 1

Section 1—delete the section and substitute:

1—Short title

This Act may be cited as the *Tobacco and E-Cigarette Products Act 1997*.

6—Amendment of section 3—Objects of Act

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

, and in recognition of 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)(i)—delete subparagraph (i) and substitute:
 - (i) by requiring health warnings to be displayed on tobacco products and e-cigarette products and otherwise disseminating information about the harmful effects of such smoking or consumption;
- (4) Section 3(b)(ii)—after "tobacco products" insert:

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

and e-cigarette products
- (6) Section 3(c)—after "tobacco smoke" insert:

and e-cigarette vapour

7—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *advertise*—after "tobacco products" first occurring insert:

or e-cigarette products
- (2) Section 4(1), definition of *advertise*—delete "tobacco" second, third and fourth occurring and substitute:

such
- (3) Section 4(1), definition of *advertise*— delete ", and *tobacco advertisement* and *advertisement* have corresponding meanings"
- (4) Section 4(1), after the definition of *child* insert:

cigarette does not include an e-cigarette;
- (5) 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
 - (iii) chew or suck; or
 - (iv) give away; or
 - (b) in relation to an e-cigarette—smoke;
- (6) Section 4(1)—after the definition of *contract of service* insert:

contravene includes fail to comply with;

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 excluded from the ambit of this definition by the regulations;

e-cigarette advertisement includes any writing, still or moving picture, sign, symbol or other visual image or message designed to promote or publicise—

- (a) the purchase or use of an e-cigarette product; or
- (b) a trademark or brand name, or part of a trademark or brand name, of an e-cigarette product;

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
- (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;

- (7) Section 4(1), definition of ***health warning***—delete the definition and substitute:

health warning, in relation to a tobacco product or e-cigarette product, means a warning prescribed by regulation (or by direction of the Minister under the regulations) for the purposes of this Act in relation to such a product;

- (8) Section 4(1), definition of ***label***—delete "but that does not comprise part of the package; and ***labelling*** and ***labelled*** have a corresponding meaning" and substitute:

or e-cigarette products but that does not comprise part of the package

- (9) Section 4(1), definition of ***purchase***—delete "includes receipt of tobacco" and substitute:

or e-cigarette products includes receipt of such

- (10) Section 4(1), definition of ***record***—delete ", microfilm"

- (11) Section 4(1), after the definition of ***shared area*** insert:

shisha tobacco means a fibrous plant product (whether or not comprised of or containing tobacco) that is designed for smoking in a shisha, hookah, water pipe or similar device;

- (12) Section 4(1), definition of *smoke*—delete the definition and substitute:
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—inhale from, hold or otherwise have control over, an e-cigarette that is in use;
- (13) Section 4(1), definition of *tobacco advertisement*—delete "means" and substitute:
includes
- (14) Section 4(1), definition of *tobacco product*—after paragraph (c) insert:
(ca) shisha tobacco; or
- (15) Section 4(1), definition of *tobacco product*, (f)—delete paragraph (f) and substitute:
(f) any other product, of a kind prescribed by regulation, that is comprised of or contains tobacco; or
- (16) Section 4(1), definition of *tobacco product*, (g)—after "product" insert:
(other than an e-cigarette product)
- (17) Section 4(1), definition of *vending machine*—delete "tobacco"

8—Repeal of section 4A

Section 4A—delete the section

9—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

10—Amendment of section 9—Licence conditions

- (1) Section 9(2)—delete "the conditions of a licence may include" and substitute:
a licence condition may limit the sale of tobacco products or e-cigarette products, including by
- (2) Section 9(2)(a) and (b)—delete "tobacco" wherever occurring and substitute in each case:
such
- (3) Section 9(5)—delete ", or fail to comply with,"

11—Amendment of Heading to Part 3

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

12—Repeal of section 29

Section 29—delete the section

13—Substitution of section 30

Section 30—delete the section and substitute:

30—Restrictions on retail sale of tobacco products and e-cigarette products

- (1) The following provisions apply in relation to the retail sale of tobacco products:
 - (a) a person must not sell cigarettes—
 - (i) singly or loose; or
 - (ii) if the package enclosing the cigarettes—
 - (A) contains, or is designed to contain, fewer than 20 cigarettes; or
 - (B) is able, or is readily able, to be divided into portions containing fewer than 20 cigarettes each;
 - (b) a person must not sell a tobacco product unless it is enclosed in a package that complies with the regulations and is labelled in accordance with the regulations;
 - (c) a person must not sell a tobacco product that is enclosed in 2 or more packages unless each package complies with the regulations and is labelled in accordance with the regulations;
 - (d) a person must not sell a package containing a tobacco product unless the package is wrapped in a material that is wholly transparent;
 - (e) a person must not sell a tobacco product if the order for the product has been placed by mail, telephone, fax, email, Internet or other electronic means.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (2) A person must not sell an e-cigarette product if the order for the e-cigarette product has been placed by mail, telephone, fax, email, Internet or other electronic means.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (3) In this section—

sell means sell by retail.

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

Section 36—after "product" second occurring insert:

or an e-cigarette

15—Amendment of section 37—Sale of tobacco products or e-cigarette products by vending machine

Section 37(2)—delete subsection (2) and substitute:

- (2) A person must not sell e-cigarettes or any other e-cigarette products by means of a vending machine.

Maximum penalty: \$10 000.

Expiation fee: \$500.

16—Insertion of section 37A

After section 37 insert:

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

- (1) A person must not sell e-cigarettes or any other e-cigarette product by retail from a temporary outlet.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (2) An occupier of premises must not cause or permit another person to sell e-cigarettes or any other e-cigarette products by retail on those premises in contravention of subsection (1).

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (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.

17—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

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

such

18—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 e-cigarette product

- (2) Section 38A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a responsible person who is the proprietor of a business—

- (i) for a first offence—\$20 000;
 - (ii) for a second or subsequent offence—\$40 000; or
 - (b) in any other case—\$5 000.
- (3) Section 38A(1), expiation fee provision—delete the expiation fee provision and substitute:
 - Expiation fee: \$1 200.
- (4) Section 38A(5)—after "tobacco products" first occurring insert:
 - or e-cigarette products
- (5) Section 38A(5)—after "tobacco" second occurring insert:
 - such
- (6) Section 38A(6), definition of *responsible person*—after "tobacco product" insert:
 - or e-cigarette product

19—Amendment of section 39—Power to require evidence of age

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

20—Amendment of section 40—Certain advertising prohibited

- (1) Section 40(1)—after "tobacco products" insert:
 - or e-cigarette products
- (2) Section 40(2)(a)—after "tobacco advertisement" insert:
 - or e-cigarette advertisement
- (3) Section 40(2)(b)—after "tobacco advertisement" insert:
 - or e-cigarette advertisement
- (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

21—Amendment of section 41—Prohibition of certain sponsorships

- (1) Section 41(1)(a)—after "tobacco product" first and second occurring insert:
 - or e-cigarette product
- (2) Section 41(1)(b)—after "tobacco product" first occurring insert:
 - or e-cigarette product
- (3) Section 41(1)(b)—delete "tobacco" second occurring

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

Section 42(1)—after "tobacco product" wherever occurring insert:
or e-cigarette product

23—Amendment of section 43—Free samples

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

24—Amendment of section 51—Smoking banned in certain public areas—short term bans

- (1) Section 51(1)—delete "or areas, and during the period (being a period not exceeding 3 days)," and substitute:
or areas described, or shown on a map, in the notice and during a period not exceeding 3 days
- (2) Section 51(5)—delete subsection (5) and substitute:
 - (5) The occupier of a public area to which a notice under subsection (1) applies must place signs in the area setting out the effect of the notice in such numbers and positions as to be likely to be seen by persons within the area.
Maximum penalty: \$750.

25—Amendment of section 52—Smoking banned in certain public areas—longer term bans

- (1) Section 52(1)—delete "specified" and substitute:
described, or shown on a map,
- (2) Section 52(3) and (4)—delete subsections (3) and (4) and substitute:
 - (3) A regulation made under this section—
 - (a) may exempt specified areas, specified circumstances or specified times from the operation of subsection (2); and
 - (b) may be conditional or unconditional.
 - (4) The occupier of a public area to which a declaration under this section applies must place signs in the area setting out the effect of the declaration in such numbers and positions as to be likely to be seen by persons within the area.
Maximum penalty: \$750.

26—Amendment of section 66—Powers of authorised officers

- (1) Section 66(1)—after "Subject to this Part" insert:
, an authorised officer may

- (2) Section 66(1)(a)—delete "an authorised officer may "
- (3) Section 66(1)(c)—delete paragraph (c) and substitute:
 - (c) require a person to produce any record as reasonably required in connection with the administration or enforcement of this Act;
- (4) Section 66(1)(e)—delete "public dining or café area" and substitute:

area that is subject to smoking restrictions under this Act
- (5) Section 66(1)(g)—after "tobacco products" insert:

, e-cigarette products

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

- (1) Section 69—after "tobacco products" insert:

or e-cigarette products
- (2) Section 69(a)—delete "and sell the products by public tender"
- (3) Section 69(e)—delete paragraph (e) and substitute:
 - (e) any products forfeited under this section may be disposed of in such manner as the Minister may direct;

28—Repeal of Part 6

Part 6—delete Part 6

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

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

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

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

or e-cigarette products

30—Amendment of section 71—Exemptions

- (1) Section 71(1)—delete "Subject to this section, the" and substitute:

The
- (2) Section 71(1)(a)—delete paragraph (a) and substitute:
 - (a) exempt a person, tobacco product or e-cigarette product, or a class of persons, tobacco products or e-cigarette products, from the operation of a provision of this Act subject to such conditions as may be set out in the proclamation;
- (3) Section 71(2) to (4)—delete subsections (2) to (4) (inclusive)

31—Amendment of section 85—Evidence

- (1) Section 85(2)—after "tobacco products" first occurring insert:
or e-cigarette products
- (2) Section 85(2)—delete "tobacco" second occurring and substitute:
such

32—Insertion of section 86A

After section 86 insert:

86A—Immunity

- (1) No personal liability attaches to an authorised officer or any other person engaged in the administration of this Act for an honest act or omission in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function, power or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

33—Amendment of section 87—Regulations

Section 87(2)—delete subsections (2) and (3) and substitute:

- (2) Without limiting the generality of subsection (1), the regulations may make provision for or in relation to—
 - (a) the design, construction and materials of packages containing tobacco products or e-cigarette products; and
 - (b) labelling requirements for packages containing tobacco products or e-cigarette products; and
 - (c) warnings and information that must be displayed—
 - (i) on packages containing tobacco products or e-cigarette products; and
 - (ii) at premises at which tobacco products or e-cigarette products are offered for sale by retail,
(including the manner and form in which such warnings must be displayed); and
 - (d) other warnings in relation to tobacco products or e-cigarette products generally or tobacco products or e-cigarette products of a particular class; and
 - (e) signs that must be displayed in relation to places or areas where smoking is prohibited or permitted and the manner and form in which those signs must be displayed; and
 - (f) fines (not exceeding \$10 000) for offences against the regulations; and

- (g) expiation fees (not exceeding \$500) for alleged offences against the regulations; and
 - (h) evidentiary provisions to facilitate proof of contraventions of the Act or the regulations for the purposes of proceedings for offences.
- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature consequent on the enactment of the *Tobacco Products Regulation (E-Cigarettes and Review) Amendment Act 2018* or on the commencement of a specified provision of that Act or on the making of regulations under this Act; and
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or an authorised officer.

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

principal Act means the *Tobacco Products Regulation Act 1997* as in force immediately before the commencement of this clause.

2—Licences

- (1) A licence that is in force under Part 2 of the principal Act 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 10 of this Act, be taken to include a reference to an e-cigarette product.

3—References to *Tobacco Products Regulation Act 1997*

A reference in a licence under the principal Act or in any instrument, contract, agreement or other document to the *Tobacco Products Regulation Act 1997* will, on and from the commencement of this clause, have effect as if it were a reference to the *Tobacco and E-Cigarette Products Act 1997*.

Schedule 2—Further amendment of *Tobacco Products Regulation Act 1997*—penalty provisions

Penalty provision amended or inserted	How amended
Section 6	Delete the penalty provision and substitute: Maximum penalty: \$20 000. Expiation fee: \$1 000.
Section 9(5)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 31(1)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 31(2)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 34A(4)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 35	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 36	Delete the penalty provision and substitute: Maximum penalty: \$10 000.
Section 37(1)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 38(1)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 38(2)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 38A(5)	Delete the penalty provision and substitute: Maximum penalty: \$1 250. Expiation fee: \$160.
Section 39(2)	Delete the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.

Penalty provision amended or inserted	How amended
Section 40(1)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$1 000.
Section 40(2)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$1 000.
Section 41(1)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$1 000.
Section 41(2)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$1 000.
Section 42(1)	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$1 000.
Section 43	Delete the penalty provision and substitute: Maximum penalty: \$10 000.
Section 45	Delete the penalty provision and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 46(2)	Delete the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.
Section 46(3)	Delete the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 46(4)	Delete the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 48(1)	Delete the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.
Section 49(1)	Delete the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.
Section 50(1)	Delete the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.

Penalty provision amended or inserted	How amended
Section 51(4)	Delete the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.
Section 52(2)	Delete the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.
Section 65(3)	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 67	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 75	Delete the penalty provision and substitute: Maximum penalty: \$75 000.
Section 76(2)	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 78	Delete the penalty provision and substitute: Maximum penalty: \$20 000.