



New South Wales

Public Health (Tobacco) Amendment (E-cigarettes) Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Health (Tobacco) Act 2008* to prohibit the sale of e-cigarettes and e-cigarette accessories to persons who are under the age of 18 years.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Schedule 1 [3] makes it an offence for a person to 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. **Schedule 1 [1], [4] and [6]** make consequential amendments. **Schedule 1 [2] and [5]** define the terms *authorised product*, *e-cigarette* and *e-cigarette accessory*.

An *e-cigarette* is defined to mean 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. It is also defined to include certain other kinds of devices if they have been prescribed by the regulations.

An ***e-cigarette accessory*** is defined to include such things as a cartridge, capsule or other container designed to contain a liquid, aerosol, gas, vapour or other substance for use in an e-cigarette and a heating element designed for use in e-cigarettes.

An ***authorised product*** is defined to mean certain therapeutic goods that are registered (or the subject of an approval or authority) under the *Therapeutic Goods Act 1989* of the Commonwealth or supplied under a licence or authority in force under the *Poisons and Therapeutic Goods Act 1966* or the regulations under that Act.

The maximum penalty for the offence will be:

- (a) in the case of an individual, 100 penalty units (currently, \$11,000) for a first offence or 500 penalty units (currently, \$55,000) for a second or subsequent offence, or
- (b) in the case of a corporation, 500 penalty units (currently, \$55,000) for a first offence or 1,000 penalty units (currently, \$110,000) for a second or subsequent offence.



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New South Wales

Public Health (Tobacco) Amendment (E-cigarettes) Bill 2015

No. , 2015

A Bill for

An Act to amend the *Public Health (Tobacco) Act 2008* to prohibit the sale of e-cigarettes and e-cigarette accessories to persons who are under the age of 18 years.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

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

3

2 Commencement

4

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

5

Schedule 1	Amendment of Public Health (Tobacco) Act 2008	1
	No 94	2
[1] Section 3 Objects of Act		3
	Omit “those products” from section 3 (2) (b).	4
	Insert instead “tobacco products, non-tobacco smoking products, e-cigarettes and e-cigarette accessories”.	5 6
[2] Section 4 Definitions		7
	Insert in alphabetical order in section 4 (1):	8
	<i>e-cigarette</i> means:	9
	(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	10 11 12 13 14 15
	(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.	16 17 18 19
	<i>e-cigarette accessory</i> means:	20
	(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	21 22
	(b) a heating element designed for use in an e-cigarette, or	23
	(c) any other component of an e-cigarette (or class of e-cigarettes) of a kind prescribed by the regulations.	24 25
[3] Section 22 Sale of tobacco and non-tobacco smoking products or e-cigarettes and e-cigarette accessories to minors		26 27
	Insert after section 22 (2):	28
	(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.	29 30
	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 <i>Poisons and Therapeutic Goods Act 1966</i> .	31 32 33 34
	(2B) A person who contravenes this section is guilty of an offence.	35
	Maximum penalty:	36
	(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	37 38
	(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.	39 40
[4] Section 22 (3)		41
	Omit “or non-tobacco smoking product” wherever occurring.	42
	Insert instead “, non-tobacco smoking product, e-cigarette or e-cigarette accessory”.	43

[5] Section 22 (4)	1
Omit the maximum penalty from the end of section 22. Insert instead:	2
(4) In this section:	3
<i>authorised product</i> means a device or accessory (other than a device or accessory of a kind excluded by the regulations) that is:	4
(a) a therapeutic good (as defined in the <i>Therapeutic Goods Act 1989</i> of the Commonwealth):	5
(i) registered in the Australian Register of Therapeutic Goods maintained under section 9A of that Act, or	6
(ii) the subject of an approval or authority under section 19 of that Act, or	7
(b) supplied under a licence or authority in force under the <i>Poisons and Therapeutic Goods Act 1966</i> or the regulations under that Act.	8
[6] Section 28 Liability of employers	9
Omit “or non-tobacco smoking products” from section 28 (4).	10
Insert instead “, non-tobacco smoking products, e-cigarettes or e-cigarette accessories”.	11