



New South Wales

Smoke-free Environment Amendment Bill 2018

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 *Smoke-free Environment Act 2000* and the *Public Health (Tobacco) Act 2008*:

- (a) to prohibit the use of e-cigarettes and heat-not-burn tobacco products in places where smoking of tobacco is currently prohibited, and
- (b) to require persons who intend to engage in e-cigarette retailing to notify the Secretary of the Ministry of Health of that intention and certain other matters.

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 Smoke-free Environment Act 2000 No 69

Schedule 1 [2] defines certain terms used in the *Smoke-free Environment Act 2000* to ensure the terms are consistent with those used in the *Public Health (Tobacco) Act 2008* and to make it clear that smoking includes the production of smoke, aerosol or vapour by e-cigarettes or other heat-not-burn tobacco products. **Schedule 1 [1]** makes a consequential amendment.

Schedule 1 [3] contains provisions of a transitional nature in relation to the smoking of e-cigarettes on the premises of existing e-cigarette retailers.

Schedule 2 Amendment of Public Health (Tobacco) Act 2008 No 94

Schedule 2 [4] amends the *Public Health (Tobacco) Act 2008* to extend the current provisions requiring a tobacco retailer to provide certain information to the Secretary of the Ministry of Health to apply to e-cigarette retailers. A person will be required to inform the Secretary of any intention to engage in e-cigarette retailing before doing so and to provide certain other information relating to the e-cigarette retailing business. **Schedule 2 [1]–[3], [5] and [6]** make consequential amendments.

Schedule 2 [7] and [8] contain provisions of a savings and transitional nature consequent on the amendment of the *Public Health (Tobacco) Act 2008*.

Schedule 3 Consequential amendment of Passenger Transport (General) Regulation 2017

Schedule 3 makes consequential amendments to the *Passenger Transport (General) Regulation 2017*.



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Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Smoke-free Environment Act 2000 No 69	3
Schedule 2	Amendment of Public Health (Tobacco) Act 2008 No 94	4
Schedule 3	Consequential amendment of Passenger Transport (General) Regulation 2017	7



New South Wales

Smoke-free Environment Amendment Bill 2018

No. , 2018

A Bill for

An Act to amend the *Smoke-free Environment Act 2000* and the *Public Health (Tobacco) Act 2008* to regulate the sale and smoking of e-cigarettes, heat-not-burn tobacco products and other products restricted under the *Public Health (Tobacco) Act 2008*; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Smoke-free Environment Amendment Act 2018*.

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2 Commencement

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

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Schedule 1	Amendment of Smoke-free Environment Act 2000	1
	No 69	2
[1]	Section 3 Object of Act	3
	Insert “, as well as aerosol or vapour (whether or not containing nicotine) generated by e-cigarettes,” after “other smoke”.	4 5
[2]	Section 4 Definitions	6
	Omit the definitions of <i>smoke</i> and <i>smoking product</i> .	7
	Insert in alphabetical order:	8
	<i>e-cigarette</i> , <i>non-tobacco smoking product</i> and <i>tobacco product</i> have the same meanings as in the <i>Public Health (Tobacco) Act 2008</i> .	9 10
	<i>smoke</i> means use, consume, hold or otherwise have control over a tobacco product, non-tobacco smoking product or e-cigarette that is generating (whether or not by burning) smoke or an aerosol or vapour.	11 12 13
[3]	Schedule 2 Savings, transitional and other provisions	14
	Insert after Part 2:	15
Part 3	Provision consequent on enactment of Smoke-free Environment Amendment Act 2018	16 17
4	Exemption relating to premises of existing e-cigarette retailers	18
(1)	This clause applies to the premises of existing e-cigarette retailers who notify the Secretary under section 39 of the <i>Public Health (Tobacco) Act 2008</i> (as substituted by the <i>Smoke-free Environment Amendment Act 2018</i>) of an intention to engage in e-cigarette retailing.	19 20 21 22
(2)	The Secretary may, by order in writing, exempt persons from sections 7 and 8 in relation to the smoking of e-cigarettes on the premises of an existing e-cigarette retailer.	23 24 25
(3)	An exemption may be subject to such conditions, including requiring the display of the order, as may be specified in the order.	26 27
(4)	An exemption does not apply unless the person complies with all applicable conditions of the exemption.	28 29
(5)	In this clause:	30
	<i>engage in e-cigarette retailing</i> has the same meaning as in Part 5 of the <i>Public Health (Tobacco) Act 2008</i> .	31 32
	<i>existing e-cigarette retailer</i> means a person who, immediately before the commencement of this clause, engaged in e-cigarette retailing but was not engaged in tobacco retailing within the meaning of Part 5 of the <i>Public Health (Tobacco) Act 2008</i> .	33 34 35 36

Schedule 2 Amendment of Public Health (Tobacco) Act 2008 No 94

[1] Part 5, heading

Insert “and e-cigarette retailing” after “retailing”.

[2] Section 31A

Insert after section 31:

31A Meaning of “engaging in e-cigarette retailing”

For the purposes of this Part, a person *engages in e-cigarette retailing* when:

- (a) e-cigarettes or e-cigarette accessories are sold by retail in the course of the carrying on of a business that is owned, managed, conducted or operated by the person, or
- (b) the person is the owner or lessee of an e-cigarette vending machine that is situated on premises for the purpose of the sale of e-cigarettes or e-cigarette accessories, or
- (c) the person is the occupier of premises on which an e-cigarette vending machine is situated for the purpose of the sale of e-cigarettes or e-cigarette accessories (whether or not the vending machine was placed there by the person).

[3] Part 5, Division 3, heading

Insert “and e-cigarette retailers” after “retailers”.

[4] Section 39

Omit the section. Insert instead:

39 Notification by person engaging in tobacco retailing or e-cigarette retailing

- (1) A person must not engage in tobacco retailing or e-cigarette retailing, or both, unless the person has notified the Secretary, in accordance with this section, that the person intends to engage in retailing of a type so notified.
Maximum penalty: 100 penalty units.
- (2) A notice must be provided in the manner prescribed by the regulations and contain the following information:
 - (a) the business address of the person intending to engage in tobacco retailing or e-cigarette retailing,
 - (b) the address of the premises at which the person intends to engage in tobacco retailing or e-cigarette retailing,
 - (c) the registered business name (if any) of the relevant business and, if the business is incorporated, the ACN,
 - (d) the names and addresses of the owners and directors of the relevant business,
 - (e) whether the person is intending to engage in tobacco retailing or e-cigarette retailing, or both types of retailing.
- (3) A person engaged in tobacco retailing or e-cigarette retailing (but not both) must, before engaging in the other type of retailing, notify the Secretary of the intention to engage in that other type of retailing.

(4)	A person engaged in tobacco retailing or e-cigarette retailing, or both, must notify the Secretary of any of the following events within 28 days after becoming aware of the event:	1
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(a)	a change in the person’s business address,	4
(b)	a change in the address of the premises at which the person engages in that retailing,	5
		6
(c)	a change in the name or address of any owner or director of the retailing business,	7
		8
(d)	a change in the ownership of the retailing business.	9
(5)	The Secretary is, as soon as practicable after being notified that a person intends to engage in tobacco retailing, e-cigarette retailing or both, to ensure that the person:	10
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(a)	has a retailer identification number, or	13
(b)	if the person does not have a retailer identification number—is issued a retailer identification number.	14
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[5]	Section 39A Restriction on obtaining or selling tobacco, e-cigarettes or e-cigarette accessories by wholesale without retailer identification number	16
		17
	Insert “, e-cigarette or e-cigarette accessory” after “tobacco product” wherever occurring.	18
[6]	Section 39A	19
	Omit “tobacco retailer notification number” wherever occurring.	20
	Insert instead “retailer identification number”.	21
[7]	Schedule 1 Savings, transitional and other provisions	22
	Insert at the end of clause 1 (1):	23
	any other Act that amends this Act	24
[8]	Schedule 1, Part 3	25
	Insert after Part 2:	26
	Part 3 Provisions consequent on enactment of Smoke-free Environment Amendment Act 2018	27
		28
9	Definition	29
	In this Part:	30
	<i>amending Act</i> means the <i>Smoke-free Environment Amendment Act 2018</i> .	31
10	Existing tobacco retailers and e-cigarette retailers	32
(1)	A person who, immediately before the substitution of section 39 by the amending Act, had been issued a tobacco retailer notification number by the Secretary is taken to have notified the Secretary of an intention to engage in tobacco retailing under that section as so substituted.	33
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(2)	A tobacco retailer notification number issued under section 39 before the substitution of that section is taken to be a retailer identification number for the purposes of that section.	37
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		39
(3)	A person who was engaged in e-cigarette retailing immediately before the substitution of section 39 by the amending Act does not commit an offence	40
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against section 39 if the person gives notice of the intention to engage in
e-cigarette retailing within the period of 3 months after the day of that
substitution.

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Schedule 3	Consequential amendment of Passenger Transport (General) Regulation 2017	1
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[1] Clause 3 Definitions		3
	Omit the definition of <i>smoke</i> from clause 3 (1).	4
[2] Clause 51 No smoking		5
	Omit clause 51 (3). Insert instead:	6
	(3) In this clause, <i>smoke</i> has the same meaning as in the <i>Smoke-free Environment Act 2000</i> .	7
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