

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Assistant Minister for Health)

Smoke-Free Legislation Amendment Bill 2016

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Smoke-Free Legislation Amendment Bill 2016

A Bill for

An Act to amend legislation about smoking, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Smoke-Free Legislation Amendment Act 2016*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see [Legislation
11 Act](#), s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see [Legislation Act](#), s 79).

15 **3 Legislation amended**

16 This Act amends the following legislation:

- 17
- 18 • [Smoke-Free Public Places Act 2003](#)
 - 19 • [Smoking in Cars with Children \(Prohibition\) Act 2011](#)
 - 20 • [Tobacco Act 1927](#).

Note This Act also amends other legislation (see sch 1).

1 **Part 2** **Smoke-Free Public Places**
2 **Act 2003**

3 **4 Dictionary**
4 **Section 3, note 1**

5 *omit*

6 *Tobacco Act 1927*

7 *substitute*

8 *Tobacco and Other Smoking Products Act 1927*

9 **5 Meaning of *smoke***
10 **Section 5B (1)**

11 *substitute*

12 (1) For this Act, *smoke* means—

13 (a) smoke from an ignited smoking product; or

14 (b) vapour from a personal vaporiser.

15 *Note* A personal vaporiser is a smoking product (see *Tobacco and Other*
16 *Smoking Products Act 1927*, s 3A).

17 **6 Section 5B (2) (a)**

18 *omit*

19 puffs smoke

20 *substitute*

21 puffs, draws or inhales smoke

7 Section 5B (2) (b)

2 *after*

3 it is ignited

4 *insert*

5 or a personal vaporiser while it is activated

8 Section 5B (3)

7 *omit everything before paragraph (a), substitute*

8 (3) However, a person does not *smoke* only because the person holds or
9 has control over a smoking product or personal vaporiser if the
10 person holds or has control over it for the purpose of extinguishing
11 it, deactivating it, or removing it from—

9 Section 5B (4)

13 *omit*

**10 Meaning of *outdoor eating or drinking place*
Section 9A (1) (c) (ii), except examples**

16 *substitute*

17 (ii) tables or chairs are provided for use by people consuming
18 food or drink provided at the place.

11 Section 9A (1) (c) (ii), new examples 4 to 6

20 *insert*

21 4 an outdoor area at premises containing stand-up tables at which food or drink
22 purchased at the premises may be consumed

23 5 an outdoor area containing milk crates to sit on at a cafe

24 6 a sports stadium containing chairs at which food or drink purchased at outlets
25 at the sports stadium may be consumed

- 1 **12 Section 9A (4), new definition of *licensed premises***
- 2 *insert*
- 3 *licensed premises*—see the *Liquor Act 2010*, dictionary.
- 4 **13 Inspectors**
- 5 **Section 10 (1) (a)**
- 6 *omit*
- 7 *Tobacco Act 1927*
- 8 *substitute*
- 9 *Tobacco and Other Smoking Products Act 1927*
- 10 **14 Dictionary, definition of *herbal product***
- 11 *omit*
- 12 **15 Dictionary, new definition of *personal vaporiser***
- 13 *insert*
- 14 *personal vaporiser*—see the *Tobacco and Other Smoking Products*
- 15 *Act 1927*, section 3B.
- 16 **16 Dictionary, definition of *smoking product***
- 17 *substitute*
- 18 *smoking product*—see the *Tobacco and Other Smoking Products*
- 19 *Act 1927*, section 3A.
- 20 **17 Dictionary, definition of *tobacco product***
- 21 *omit*

1 **Part 3** **Smoking in Cars with Children**
2 **(Prohibition) Act 2011**

3 **18 Section 6 heading**

4 *substitute*

5 **6 Meaning of *smoke***

6 **19 Section 6 (1)**

7 *substitute*

8 (1) For this Act, *smoke* means—

9 (a) smoke from an ignited smoking product; or

10 (b) vapour from a personal vaporiser.

11 *Note* A personal vaporiser is a smoking product (see *Tobacco and Other*
12 *Smoking Products Act 1927*, s 3A).

13 **20 Section 6 (2) (b)**

14 *after*

15 it is ignited

16 *insert*

17 or a personal vaporiser while it is activated

18 **21 Section 6 (3)**

19 *omit*

20 **22 Dictionary, definition of *herbal product***

21 *omit*

- 1 **23 Dictionary, new definition of *personal vaporiser***
- 2 *insert*
- 3 *personal vaporiser*—see the *Tobacco and Other Smoking Products*
- 4 *Act 1927*, section 3B.
- 5 **24 Dictionary, definition of *smoking product***
- 6 *substitute*
- 7 *smoking product*—see the *Tobacco and Other Smoking Products*
- 8 *Act 1927*, section 3A.
- 9 **25 Dictionary, definition of *tobacco product***
- 10 *omit*

1 **Part 4 Tobacco Act 1927**

2 **26 Section 1**

3 *substitute*

4 **1 Name of Act**

5 This Act is the *Tobacco and Other Smoking Products Act 1927*.

6 **27 New sections 3A and 3B**

7 *insert*

8 **3A Meaning of *smoking product***

9 In this Act:

10 *smoking product* means any of the following:

- 11 (a) a tobacco product;
- 12 (b) a herbal product;
- 13 (c) a personal vaporiser or a personal vaporiser related product.

14 **3B Meaning of *personal vaporiser* and *personal vaporiser***
15 ***related product***

16 (1) In this Act:

17 *personal vaporiser* means—

- 18 (a) a device that—
- 19 (i) is made for the purpose or apparent purpose of delivering
- 20 a substance into a person's body when the person inhales
- 21 through the device; and

- 1 (ii) has 1 or more of the following:
- 2 (A) a battery;
- 3 (B) an electric heating element;
- 4 (C) a cartridge or container to store a substance; or
- 5 (b) a device prescribed by regulation.
- 6 ***personal vaporiser related product*** means—
- 7 (a) a device or other product that—
- 8 (i) is not capable of being used to deliver a substance into an
- 9 individual's body without an adjustment, modification or
- 10 addition; but
- 11 (ii) is apparently intended to be part of a personal vaporiser;
- 12 or
- 13 (b) a device or other product to which paragraph (a) does not apply
- 14 that is apparently intended to be used in connection with a
- 15 personal vaporiser; or
- 16 (c) a device or other product prescribed by regulation.
- 17 **Examples—personal vaporiser products**
- 18 • an electric heating element, battery, cartridge, container or mouthpiece
- 19 • a product that combines an electric heating element and cartridge in a single
- 20 unit
- 21 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 22 does not limit, the meaning of the provision in which it appears (see
- 23 [Legislation Act](#), s 126 and s 132).
- 24 (2) However, a ***personal vaporiser*** or a ***personal vaporiser related***
- 25 ***product*** does not include the following:
- 26 (a) a device designed to be used to deliver oxygen into an
- 27 individual's body;
- 28 (b) a drug pipe;

- 1 (c) any of the following within the meaning of the *Therapeutic*
2 *Goods Act 1989* (Cwlth) included in the Australian Register of
3 Therapeutic Goods, other than a device prescribed as a
4 personal vaporiser:
5 (i) a therapeutic good;
6 (ii) a medical device;
7 (iii) a therapeutic device;
8 (d) a device or other product prescribed by regulation.

9 (3) In this section:

10 *Australian Register of Therapeutic Goods* means the register of
11 therapeutic goods established under the *Therapeutic Goods*
12 *Act 1989* (Cwlth), section 9A.

13 *drug pipe*—see the *Criminal Code*, section 621A (2).

14 **28 Dictionary, new definitions**

15 *insert*

16 *personal vaporiser*—see section 3B.

17 *personal vaporiser related product*—see section 3B.

18 **29 Dictionary, definition of *smoking product***

19 *substitute*

20 *smoking product*—see section 3A.

1 **Schedule 1** **Consequential amendments**

2 (see s 3)

3 **Part 1.1** **Children and Young People**
4 **Act 2008**

5 **[1.1] Section 781 (3)**

6 *omit*

7 *Tobacco Act 1927*

8 *substitute*

9 *Tobacco and Other Smoking Products Act 1927*

10 **Part 1.2** **Fair Trading (Australian**
11 **Consumer Law) Act 1992**

12 **[1.2] Section 34 (2), definition of *consumer and trader***
13 ***legislation*, paragraph (g)**

14 *substitute*

15 (g) the *Tobacco and Other Smoking Products Act 1927*.

1 **Part 1.3** **Magistrates Court (Tobacco**
2 **Infringement Notices)**
3 **Regulation 2010**

4 **[1.3] Section 1**

5 *substitute*

6 **1 Name of regulation**

7 This regulation is the *Magistrates Court (Tobacco and Other*
8 *Smoking Products Infringement Notices) Regulation 2010.*

9 **[1.4] Sections 5 to 12**

10 *omit*

11 [Tobacco Act](#)

12 *substitute*

13 [Tobacco and Other Smoking Products Act](#)

14 **[1.5] Schedule 1 heading**

15 *substitute*

16 **Schedule 1 Tobacco and Other Smoking**
17 **Products Act infringement**
18 **notice offences and penalties**

1 **[1.6] Dictionary, definition of *authorised officer***

2 *omit*

3 [Tobacco Act](#)

4 *substitute*

5 [Tobacco and Other Smoking Products Act](#)

6 **[1.7] Dictionary, definition of *Tobacco Act***

7 *omit*

8 **[1.8] Dictionary, new definition of *Tobacco and Other Smoking***
9 ***Products Act***

10 *insert*

11 *Tobacco and Other Smoking Products Act* means the [Tobacco and](#)
12 [Other Smoking Products Act 1927](#).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 March 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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