

TASMANIA

PUBLIC HEALTH AMENDMENT (HEALTHY TASMANIA) BILL 2017

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This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
8 August 2017

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to amend the *Public Health Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Public Health Amendment (Healthy Tasmania) Act 2017*.

2. Commencement

This Act commences on a day to be proclaimed.

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PART 2 – PUBLIC HEALTH ACT 1997 AMENDED

3. Principal Act

In this Part, the *Public Health Act 1997** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *excluded person*:

exempt device means –

- (a) a device designed to be used for the purpose of delivering oxygen into a person's body; and
- (b) a device, object or product used, or designed to be used, to deliver a controlled substance, within the meaning of the *Misuse of Drugs Act 2001*, into a person's body; and
- (c) any of the following goods, or devices,

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included in the Australian Register of Therapeutic Goods maintained under section 9A of the *Therapeutic Goods Act 1989* of the Commonwealth:

- (i) therapeutic goods within the meaning of that Act;
 - (ii) a medical device within the meaning of that Act;
 - (iii) a therapeutic device within the meaning of that Act; and
 - (d) a device or object prescribed by the regulations to be an exempt device;
- (b) by omitting “of a substance” from the definition of *non-tobacco cigarette* and substituting “that contains a substance or a herb or other plant matter”;
- (c) by omitting “produced by a commercial process” from the definition of *non-tobacco cigarette*;

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- (d) by omitting “tobacco product” from the definition of *personal quantity* and substituting “smoking product”;
- (e) by inserting the following paragraph after paragraph (a) in the definition of *personal quantity*:
 - (ab) a single personal vaporiser product; or
- (f) by inserting the following definition after the definition of *personal quantity*:

personal vaporiser product means any of the following, other than an exempt device:

- (a) an electronic cigarette, or a device, object or product, that –
 - (i) with or without modification, is capable of heating any substance into an aerosol, mist or vapour which is inhaled into a person’s body; and
 - (ii) has one or more of the following parts:
 - (A) a battery;

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- (B) an electronic heating element;
 - (C) a cartridge or container capable of holding a substance;
 - (b) each part of an electronic cigarette, or a device, object or product, referred to in paragraph (a);
 - (c) a substance or item apparently intended, with or without modification, to be used in connection with an electronic cigarette, or a device, object or product, referred to in paragraph (a);
 - (d) a device, object, or product, that is prescribed by the regulations to be a personal vaporiser product;
 - (g) by omitting “tobacco product” from paragraph (f) of the definition of *plain sales unit* and substituting “smoking product”;

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- (h) by omitting “tobacco product” from paragraph (g) of the definition of *plain sales unit* and substituting “smoking product”;
- (i) by omitting “tobacco product, means a kind of tobacco product distinguishable from another kind of tobacco product” from the definition of *product line* and substituting “smoking product, means a kind of smoking product distinguishable from another kind of smoking product”;
- (j) by omitting “tobacco products” from paragraph (b) of the definition of *sales unit* and substituting “smoking products”;
- (k) by omitting the definition of *smoke* and substituting the following definition:

smoke means –

- (a) any smoke, fumes, vapour, mist or aerosol emitted from a smoking product, non-tobacco cigarette, non-tobacco cigar, non-tobacco pipe or other non-tobacco smoking device; and
- (b) to inhale, puff, draw or vape any smoke, fumes, vapour, mist or aerosol whilst using a smoking product, non-tobacco

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cigarette, non-tobacco
cigar, non-tobacco pipe or
other non-tobacco
smoking device; and

(c) to hold or otherwise have
control over –

(i) a tobacco product
while it is ignited;
or

(ii) a non-tobacco
cigarette, non-
tobacco cigar,
non-tobacco pipe
or other non-
tobacco smoking
device while it is
ignited; or

(iii) a personal
vaporiser product
while it is
activated;

(l) by inserting the following after the
definition of *smoking accoutrement*:

smoking product means either or both
of the following:

(a) any tobacco product;

(b) any personal vaporiser
product;

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smoking product advertisement

means writing, a still or moving picture, a sign, symbol or other visual image, or visual message, an audible message, or a combination of 2 or more visual images, visual messages or audible messages, that gives publicity to, or otherwise promotes or is intended to promote –

- (a) the purchase or use of any smoking product; or
- (b) the trademark or brand name, or part of a trademark or brand name, of any smoking product;

smoking product licence means a licence to sell smoking product in force under Division 3 of Part 4;

- (m) by omitting the definition of *tobacco advertisement*;
- (n) by omitting the definition of *tobacco seller's licence*.

5. Part 4: Heading amended

Part 4 of the Principal Act is amended by omitting “**TOBACCO**” from the heading to that Part and substituting “**SMOKING**”.

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6. Section 63 amended (Smoking, &c., by children)

Section 63 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “tobacco product” and substituting “smoking product”;
- (b) by omitting from subsection (1)(c) “tobacco product” and substituting “smoking product”;
- (c) by omitting from subsection (2) “tobacco product” and substituting “smoking product”;
- (d) by omitting from subsection (2) “tobacco seller’s licence” and substituting “smoking product licence”.

7. Section 64 amended (Sale to children)

Section 64 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco product” and substituting “smoking product”;
- (b) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: Fine not exceeding –

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- (a) for a first offence, 120 penalty units; and
 - (b) for a second offence, 240 penalty units; and
 - (c) for a third and subsequent offence, 360 penalty units.
- (c) by omitting from subsection (2) “tobacco seller’s licence” and substituting “smoking product licence”;
- (d) by omitting from subsection (2) “tobacco product” and substituting “smoking product”;
- (e) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: Fine not exceeding –

 - (a) for a first offence, 120 penalty units; and
 - (b) for a second offence, 240 penalty units; and
 - (c) for a third and subsequent offence, 360 penalty units.
- (f) by omitting from subsection (3) “tobacco seller’s licence” and substituting “smoking product licence”;

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- (g) by omitting from subsection (3) “tobacco product” and substituting “smoking product”;
- (h) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: Fine not exceeding –

- (a) for a first offence, 120 penalty units; and
 - (b) for a second offence, 240 penalty units; and
 - (c) for a third and subsequent offence, 360 penalty units.
- (i) by omitting from subsection (6) “any tobacco product” and substituting “any smoking product”;
- (j) by omitting from subsection (6) “tobacco products” and substituting “smoking products”;
- (k) by omitting from subsection (7) “tobacco products” and substituting “smoking products”.

8. Section 66 amended (Seizure of smoking products)

Section 66 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “tobacco product” and substituting “smoking product”;
- (b) by omitting from subsection (2) “tobacco product” and substituting “smoking product”;
- (c) by omitting from subsection (3) “tobacco product” and substituting “smoking product”.

9. Section 67 amended (Warnings and information)

Section 67(3)(c) of the Principal Act is amended by omitting “tobacco product” and substituting “smoking product”.

10. Section 67B amended (Smoke-free areas)

Section 67B(2)(b) of the Principal Act is amended by omitting “residential care facility or prison” and substituting “or of any residential care facility,”.

11. Section 69 amended (Marketing device, plan or scheme)

Section 69 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco product” and substituting “smoking product”;

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- (b) by omitting from subsection (2) “tobacco product” and substituting “smoking product”.

12. Section 69A substituted

Section 69A of the Principal Act is repealed and the following section is substituted:

69A. Information relating to smoking products

- (1) A person who sells a smoking product to a person must give the person, in the form and manner specified in any relevant guidelines, the information specified in any relevant guidelines as the information to be given to a person for the purposes of this section.

Penalty: Fine not exceeding –

- (a) for a first offence, 50 penalty units; and
 - (b) for a subsequent offence, 100 penalty units.
- (2) A person who sells any smoking products must display an approved notice or approved notices in the manner specified in any relevant guidelines as the manner in which an approved notice or approved notices are to be displayed for the purposes of this section.

Penalty: Fine not exceeding –

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- (a) for a first offence, 50 penalty units; and
- (b) for a subsequent offence, 100 penalty units.

13. Section 70 amended (Display of smoking product advertisements, &c.)

Section 70 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco advertisement” and substituting “smoking product advertisement”;
- (b) by omitting from subsection (2)(a) “tobacco advertisement” and substituting “smoking product advertisement”;
- (c) by omitting from subsection (2)(a) “tobacco product” twice occurring and substituting “smoking product”;
- (d) by omitting from subsection (2)(b) “tobacco” first occurring and substituting “smoking product”;
- (e) by omitting from subsection (2)(b)(i) “tobacco product” twice occurring and substituting “smoking product”;
- (f) by omitting from subsection (2)(c) “tobacco” first occurring and substituting “smoking product”;

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- (g) by omitting from subsection (2)(c)(ii) “tobacco products” and substituting “smoking products”;
- (h) by omitting from subsection (5) “tobacco advertisement” and substituting “smoking product advertisement”;
- (i) by omitting from subsection (5) “publicise a tobacco product” and substituting “publicise a smoking product”;
- (j) by omitting from subsection (5) “tobacco product” second occurring and substituting “smoking product”.

14. Section 71 amended (Restrictions on holding smoking products, &c., in specialist tobacconist premises and general retail premises)

Section 71 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1) This section applies to –
 - (a) premises in or from which tobacco products are sold, including specialist tobacconist premises; and
 - (b) premises in or from which personal vaporiser products are sold.

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- (b) by omitting from subsection (2) “tobacco products” and substituting “smoking products”;
- (c) by omitting from subsection (3) “tobacco products” first occurring and substituting “smoking products”;
- (d) by omitting from subsection (3)(b) “tobacco products” first occurring and substituting “smoking products”;
- (e) by omitting from subsection (3)(b) “tobacco products” second occurring and substituting “smoking products”;
- (f) by omitting from subsection (3)(c) “tobacco products” and substituting “smoking products”;
- (g) by omitting from subsection (3)(d) “tobacco products” and substituting “smoking products”;
- (h) by omitting from subsection (3)(e) “tobacco products” and substituting “smoking products”;
- (i) by omitting from subsection (3)(f) “tobacco products” and substituting “smoking products”;
- (j) by omitting from subsection (4)(c) “tobacco product” and substituting “smoking products”;

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- (k) by omitting from subsection (4)(d) “tobacco product” twice occurring and substituting “smoking product”;
 - (l) by omitting from subsection (9) “tobacco product” and substituting “smoking product”;
 - (m) by omitting “tobacco products” from the definition of *electronic dispensing unit* in subsection (10) and substituting “smoking products”;
 - (n) by omitting “tobacco products” from paragraph (a) of the definition of *service area* in subsection (10) and substituting “smoking products”;
 - (o) by omitting “tobacco products” from the definition of *vending machine* in subsection (10) and substituting “smoking products”.

15. Section 72 amended (Restrictions on display, &c., of smoking products in general retail premises)

Section 72 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco products” and substituting “smoking products”;
- (b) by omitting from subsection (2) “tobacco products” and substituting “smoking products”;

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- (c) by omitting from subsection (3) “tobacco products reasonably” and substituting “smoking products reasonably”;
- (d) by omitting from subsection (3)(b) “tobacco products from” and substituting “smoking products from”;
- (e) by omitting from subsection (3)(b) “the tobacco products” and substituting “the smoking products”;
- (f) by omitting from subsection (3)(c) “tobacco products held” and substituting “smoking products held”;
- (g) by omitting from subsection (3)(d) “tobacco products from plain” and substituting “smoking products from plain”;
- (h) by omitting from subsection (3)(e) “tobacco products from concealed” and substituting “smoking products from concealed”;
- (i) by omitting from subsection (3)(f) “tobacco products are delivered” and substituting “smoking products are delivered”;
- (j) by omitting from subsection (3) “tobacco products so” and substituting “smoking products so”;

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- (k) by omitting from subsection (4)(a) “tobacco product” and substituting “smoking product”;
- (l) by omitting from subsection (4)(b) “tobacco product” and substituting “smoking product”;
- (m) by omitting the definition of *tobacco product* from subsection (5) and substituting the following definition:

smoking product includes a smoking product package that has been emptied of its contents.

16. Section 73 amended (Packaging of smoking products)

Section 73 of the Principal Act is amended by omitting “tobacco product” twice occurring and substituting “smoking product”.

17. Section 74 amended (False information relating to legislation)

Section 74 of the Principal Act is amended as follows:

- (a) by omitting “or supplier” and substituting “, supplier or retailer”;
- (b) by omitting “tobacco product” and substituting “smoking product”;

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- (c) by omitting “tobacco control” and substituting “any smoking product or smoking”.

18. Section 74AA amended (Incorrect information relating to health effects of tobacco products)

Section 74AA of the Principal Act is amended by omitting “or supplier” and substituting “, supplier or retailer”.

19. Part 4, Division 3: Heading amended

Division 3 of Part 4 of the Principal Act is amended by omitting “*Tobacco seller’s*” from the heading to that Division and substituting “*Smoking product*”.

20. Section 74A amended (Licence to sell smoking products)

Section 74A of the Principal Act is amended as follows:

- (a) by omitting “tobacco product” and substituting “smoking product”;
- (b) by omitting paragraph (a) and substituting the following paragraph:
 - (a) the person is authorised by a smoking product licence to sell the smoking product; or

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- (c) by omitting from paragraph (b) “the holder of a tobacco seller’s licence” and substituting “a person authorised by a smoking product licence to sell the smoking product”.

21. Section 74B substituted

Section 74B of the Principal Act is repealed and the following section is substituted:

74B. Application for smoking product licence

- (1) A person who is 18 or more years of age may apply to the Director for a licence to sell either or both of the following:
 - (a) a tobacco product;
 - (b) a personal vaporiser product.
- (2) An application –
 - (a) is to be in an approved form; and
 - (b) is to specify the smoking products in respect of which the smoking product licence is sought; and
 - (c) is to be accompanied by the prescribed fee.

22. Section 74C amended (Grant or refusal of licence)

Section 74C of the Principal Act is amended as follows:

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(a) by omitting from subsection (1)(a) “tobacco seller’s licence” and substituting “smoking product licence,”;

(b) by omitting subsection (2) and substituting the following subsection:

(2) In determining the application, the Director –

(a) is to –

(i) consider whether the applicant is likely to comply with the Act; and

(ii) be satisfied that the applicant is 18 or more years of age; and

(iii) consider whether the applicant is a fit and proper person to hold a smoking product licence; and

(iv) have regard to any relevant guidelines; and

(b) may take into account any convictions and proceedings taken against the applicant in the

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Commonwealth, this State
or another State or a
Territory; and

(c) may take into account the
results of any enquiries
made in accordance with
subsection (5); and

(d) may take into account any
other matter the Director
considers relevant.

(c) by omitting from subsection (2A)
“tobacco seller’s licence” and
substituting “smoking product licence”;

(d) by omitting from subsection (2A)
“tobacco” second occurring and
substituting “smoking product”;

(e) by inserting the following subsection
after subsection (2A):

(2AB) The Director must not grant an
application for a smoking product
licence if the licence is for the
purpose of selling personal
vaporiser products in specialist
tobacconist premises.

(f) by omitting from subsection (4) “tobacco
seller’s licence” and substituting
“smoking product licence”;

(g) by inserting the following subsections
after subsection (4):

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- (5) For the purposes of making a determination under subsection (2), the Director may make any enquiries he or she thinks fit from an agency of the State, the Commonwealth or another State or a Territory that performs functions under an enactment in respect of the regulation of poisons, a smoking product, non-tobacco cigarette, smoke or other smoking-related matter.
- (6) For the purposes of subsection (2)(b), the Director may require an applicant for a smoking product licence to authorise the Director to obtain reports from –
- (a) the Commissioner of Police, in respect of convictions of, and proceedings taken against, the applicant in this State; and
 - (b) a person holding office in another State or a Territory that corresponds to the office of the Commissioner of Police in this State in respect of convictions of, and proceedings taken against,

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the applicant in that other
State or that Territory;
and

- (c) a person or authority
responsible for the
investigation or
prosecution of offences
against a law of the
Commonwealth.

- (7) Subject to subsection (8), the
Director may request the
Commissioner of Police, a person
referred to in subsection (6)(b) or
a person or authority referred to
in subsection (6)(c) to provide the
Director with a report containing
any convictions of, and
proceedings taken against, an
applicant for a smoking product
licence in this State, the
Commonwealth or that other
State or that Territory.

- (8) If the Director makes a request
for a report under subsection (7),
the Director is to provide the
Commissioner of Police, a person
referred to in subsection (6)(b) or
a person or authority referred to
in subsection (6)(c) with –

- (a) the name of the applicant
for the smoking product
licence and a copy of the

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authorisation provided to the Director by the applicant under subsection (6); and

- (b) any information and documentation that the Director considers relevant to the request.
- (9) Upon receipt of a request for a report under subsection (7), the Commissioner of Police must inquire into, and report to the Director on, any convictions of, and proceedings taken against, the applicant for the smoking product licence in this State.
- (10) If a requirement made under subsection (6) is not complied with, the Director may refuse to determine the application for a smoking product licence.

23. Section 74D amended (Issue of licence)

Section 74D of the Principal Act is amended as follows:

- (a) by omitting “tobacco seller’s licence” and substituting “smoking product licence”;
- (b) by omitting from paragraph (c)(iii) “issued.” and substituting “issued; and”;

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(c) by inserting the following subparagraph after subparagraph (iii) in paragraph (c):

(iv) the smoking product in respect of which the licence is granted.

24. Section 74E amended (Duration of smoking product licence)

Section 74E of the Principal Act is amended by omitting “tobacco seller’s licence” and substituting “smoking product licence”.

25. Section 74F amended (Renewal of smoking product licence)

Section 74F of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “tobacco seller’s licence” and substituting “smoking product licence”;

(b) by inserting the following paragraph after paragraph (a) in subsection (2):

(ab) accompanied by information or returns, if the licence was granted subject to a condition relating to the provision of that information or those returns by the licensee; and

(c) by omitting from subsection (4) “tobacco seller’s licence” and substituting “smoking product licence”;

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- (d) by omitting from subsection (7) “tobacco seller’s licence” and substituting “smoking product licence”;
- (e) by omitting from subsection (10) “tobacco seller’s licence” and substituting “smoking product licence”.

26. Section 74G amended (Variation of smoking product licence)

Section 74G of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco seller’s licence” and substituting “smoking product licence”;
- (b) by omitting from subsection (2) “tobacco seller’s licence” and substituting “smoking product licence”;
- (c) by omitting from subsection (3) “tobacco seller’s licence” and substituting “smoking product licence”.

27. Section 74GA amended (Other features of smoking product licence)

Section 74GA of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco seller’s licence” and substituting “smoking product licence”;

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- (b) by omitting from subsection (1)(b) “tobacco products” and substituting “smoking products”;
- (c) by omitting from subsection (2) “tobacco seller’s licence” and substituting “smoking product licence”;
- (d) by omitting from subsection (3) “tobacco seller’s licence” and substituting “smoking product licence”.

28. Section 74H amended (Cancellation of smoking product licence)

Section 74H of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco seller’s licence” and substituting “smoking product licence”;
- (b) by inserting the following paragraph after paragraph (a) in subsection (1):
 - (ab) is considered by the Director to no longer be a fit and proper person to hold a smoking product licence; or
- (c) by omitting from subsection (2) “tobacco seller’s licence” and substituting “smoking product licence”;
- (d) by omitting from subsection (3) “tobacco seller’s licence” and substituting “smoking product licence”.

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29. Section 74I amended (Selling smoking products)

Section 74I of the Principal Act is amended as follows:

- (a) by omitting “tobacco seller’s licence” and substituting “smoking product licence”;
- (b) by omitting “tobacco products” and substituting “the smoking products that he or she is authorised by his or her licence to sell”.

30. Section 74J amended (Register of smoking product licences)

Section 74J of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco seller’s licences” and substituting “smoking product licences”;
- (b) by omitting from subsection (2)(a) “tobacco seller’s licences” and substituting “smoking product licences”.

31. Section 74L amended (Offences relating to smoking product licence)

Section 74L(1) of the Principal Act is amended as follows:

Public Health Amendment (Healthy Tasmania) Act 2017
Act No. of

Part 2 – Public Health Act 1997 Amended

s. 32

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- (a) by omitting “tobacco seller’s licence” and substituting “smoking product licence”;
 - (b) by omitting “tobacco product” and substituting “smoking product”.

32. Section 74M amended (Smoking products not to be included in business loyalty programs)

Section 74M of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tobacco product” and substituting “smoking product”;
- (b) by omitting the definition of *tobacco product* from subsection (2) and substituting the following definition:

smoking product includes –

- (a) a discount on a smoking product; and
- (b) a coupon, voucher or other instrument that may be redeemed for a smoking product.

33. Section 154 amended (Offences against authorised officers)

Section 154 of the Principal Act is amended as follows:

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Part 2 – Public Health Act 1997 Amended

- (a) by inserting in subsection (2) “, other than a child,” after “person”;
- (b) by inserting the following subsection after subsection (2):
 - (3) A person who is a child must not fail to comply with a requirement of an authorised officer, nominated officer or police officer under this Act.

Penalty: Fine not exceeding 100
penalty units.

34. Section 160A amended (Reviews relating to smoking product licence)

Section 160A(a) of the Principal Act is amended by omitting “tobacco seller’s licence” and substituting “smoking product licence”.

35. Section 194A amended (Evidence relating to smoking product)

Section 194A of the Principal Act is amended by omitting “tobacco product” and substituting “smoking product”.

**PART 3 – WORK HEALTH AND SAFETY
REGULATIONS 2012 AMENDED**

36. Principal Regulations

In this Part, the *Work Health and Safety Regulations 2012** are referred to as the Principal Regulations.

37. Regulation 328 amended (Application of Part 7.1)

Regulation 328(6)(b) of the Principal Regulations is amended by omitting “products made of tobacco” and substituting “a smoking product within the meaning of the *Public Health Act 1997*”.

*S.R. 2012, No. 122

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s. 38

Part 4 – Miscellaneous Provisions

PART 4 – MISCELLANEOUS PROVISIONS

38. Transitional provisions

- (1) A tobacco seller's licence that is in force immediately before the commencement day –
 - (a) is, on and after the commencement day, taken to be a smoking product licence issued under this Act; and
 - (b) is, on and after the commencement day, subject to the same terms and conditions to which it was subject immediately before the commencement day; and
 - (c) subject to this Act, continues in force, on and after the commencement day, for the remainder of the period for which it was issued or renewed.
- (2) An application for a tobacco seller's licence made before the commencement day and not determined before that day is, on and after that day, to be treated as an application for a smoking product licence.
- (3) In this section –

commencement day means the day on which this Act commences.

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39. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.