

TASMANIA

PUBLIC HEALTH AMENDMENT (VAPING) BILL 2024

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PUBLIC HEALTH AMENDMENT (VAPING) BILL 2024

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.

LAURA ROSS, *Clerk of the House*
26 November 2024

(Brought in by the Minister for Health, Mental Health and Wellbeing, the Honourable Guy Barnett)

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:

1. Short title

This Act may be cited as the *Public Health Amendment (Vaping) Act 2024*.

2. Commencement

This Act commences on 1 October 2024 or on the day on which it receives the Royal Assent, whichever is later.

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3. Principal Act

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

4. Section 3 amended (Interpretation)

Paragraph (c) of the definition of *exempt device* in section 3 of the Principal Act is amended as follows:

- (a) by omitting “goods, or devices,” and substituting “goods or devices, other than vaping goods within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth,”;
- (b) by omitting “the *Therapeutic Goods Act 1989* of the Commonwealth” and substituting “that Act”.

5. Section 69A amended (Information relating to tobacco products)

Section 69A of the Principal Act is amended as follows:

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

*No. 86 of 1997

6. Section 74A amended

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

- (a) by renumbering the text of the section as subsection (1);
- (b) by inserting the following subsection after subsection (1):
 - (2) Subsection (1) does not apply to a person selling a personal vaporiser product if the person –
 - (a) holds a licence under section 16(1)(b) of the *Poisons Act 1971*; and
 - (b) sells the personal vaporiser product to another person who holds a smoking product licence that authorises the other person to sell personal vaporiser products.

7. 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Section 74B of the Principal Act is repealed and the following section is substituted: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 a tobacco product.

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- (2) An owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*, may apply to the Director for a licence to sell a personal vaporiser product at the relevant pharmacy business premises, within the meaning of that Act, for the pharmacy business.
- (3) An application under this section –
 - (a) is to be in an approved form; and
 - (b) is to specify whether the application is made under subsection (1) or (2); and
 - (c) is to be accompanied by the prescribed fee.

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

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

- (a) by inserting the following paragraph after paragraph (a) in subsection (2):
 - (ab) if the application relates to personal vaporiser products, must be satisfied that –
 - (i) the applicant is the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*; and

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- (ii) the applicant intends to sell the personal vaporiser products from the pharmacy business premises relating to that pharmacy business; and
 - (iii) that pharmacy business premises is registered under that Act; and
- (b) by omitting subsection (2AB) and substituting the following subsection:
 - (2AB) The Director must not grant an application for a smoking product licence if –
 - (a) the applicant already holds a smoking product licence in respect of a different smoking product; or
 - (b) the application relates to tobacco products and the Director is satisfied that the applicant intends to sell those products from a premises that forms part of a pharmacy business premises that is registered under the *Pharmacy Control Act 2001*.
- (c) by inserting the following subsection after subsection (4):

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- (4A) In addition to any conditions imposed on a smoking product licence under subsection (1) or (4), the regulations may prescribe conditions that apply to all smoking product licences or a specified class of smoking product licences.
- (d) by inserting the following subsection after subsection (5):
- (5A) In addition to subsection (5), the Director may make any enquiries that the Director thinks fit from one or more of the following bodies, if the Director is making a determination under subsection (2)(ab):
- (a) the Tasmanian Pharmacy Authority established by section 6 of the *Pharmacy Control Act 2001*;
 - (b) any relevant registration board within the meaning of the *Pharmacy Control Act 2001*;
 - (c) the Australian Health Practitioner Regulation Agency, established by section 23 of the Health Practitioner Regulation National Law (Tasmania);

- (d) any other prescribed body or entity.

9. Section 74D amended (Issue of licence)

Section 74D of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) specify, on the licence, any conditions prescribed under this Division that apply in respect of the licence; and

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

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

- (a) by inserting the following subsection after subsection (3):

(3A) The Director must not grant an application for the renewal of a smoking product licence if the Director is satisfied that –

- (a) the smoking product licence relates to personal vaporiser products and –

- (i) the applicant is no longer the owner of a pharmacy business, within the meaning of the

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Pharmacy Control Act 2001; or

(ii) the pharmacy business premises relating to that pharmacy business is no longer registered under that Act; or

(b) the smoking product licence relates to tobacco products and the applicant intends to sell those products from a premises that forms part of a pharmacy business premises that is registered under the *Pharmacy Control Act 2001*.

(b) by inserting the following subsection after subsection (8):

(8A) In addition to any conditions under subsection (8), a licence renewed under this section is also subject to any conditions prescribed under section 74C(4A) that apply in respect of the previous licence.

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

Section 74G of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Subsection (1) does not apply in respect of a condition prescribed under section 74C(4A).

12. Section 74HA inserted

After section 74H of the Principal Act, the following section is inserted in Division 3:

74HA. Smoking product licence void in certain circumstances

- (1) A smoking product licence relating to personal vaporiser products is void if –
- (a) the holder of the licence ceases to be the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*; or
 - (b) the pharmacy business premises relating to that pharmacy business is no longer registered under that Act.
- (2) A licence that is void under this section –
- (a) ceases to have effect on becoming void; and

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(b) has no value.

(3) The voiding of a licence under this section is not subject to review under section 160A.

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

Section 74J(2) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

(ba) the smoking product to which each licence relates;

14. Section 74LA inserted

After section 74L of the Principal Act, the following section is inserted in Division 3:

74LA. Effect of *Public Health Amendment (Vaping) Act 2024*

(1) On the day on which the *Public Health Amendment (Vaping) Act 2024* commences, a smoking product licence that was issued, in respect of more than one smoking product, before the commencement of that Act –

(a) is taken to be issued in respect of a tobacco product, if the licence is issued to a person who is not the owner of a pharmacy business, within the meaning of

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the *Pharmacy Control Act 2001*;
and

- (b) is taken to be issued in respect of a personal vaporiser product, if the licence is issued to the owner of a pharmacy business, within the meaning of that Act.
- (2) On the day on which the *Public Health Amendment (Vaping) Act 2024* commences, a smoking product licence issued in respect of a personal vaporiser product is void if the holder of the licence is not the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*.
- (3) Except as specified under subsections (1) and (2), a smoking product licence that was in force immediately before the commencement of the *Public Health Amendment (Vaping) Act 2024* continues in force after that commencement day on the same terms and conditions.

15. Section 198C inserted

After section 198B of the Principal Act, the following section is inserted in Division 8:

198C. Review of amendments made by *Public Health Amendment (Vaping) Act 2024*

- (1) The Minister is to commission a person, who in the opinion of the Minister is

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suitably qualified, to undertake an independent review of the amendments enacted by the *Public Health Amendment (Vaping) Act 2024*, by no later than July 2027.

- (2) A person who undertakes such a review must give the Minister a written report of the review.
- (3) The Minister is to cause a copy of the report of the review to be laid before each House of Parliament, as soon as practicable after receiving the report.

16. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.